

1 OFFICE OF THE ATTORNEY GENERAL  
2 STATE OF NEVADA

3  
4 In the matter of  
5 BELMONT TOWN ADVISORY BOARD  
6

OAG FILE NO.: 13897-235  
7  
8 **FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

9 **BACKGROUND**

10 Neil Jones filed a Complaint (Complaint) with the Office of the Attorney General  
11 (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Belmont Town  
12 Advisory Board (Board). The Complaint alleges that the Board violated the OML as  
13 follows:

14 **ALLEGATION NO. 1:** The Board failed to include Mr. Jones's public comment  
15 statements into its April 22, 2017 Board Meeting minutes following Mr. Jones's specific  
16 request for their inclusion into the minutes.

17 **ALLEGATION NO. 2:** The Board failed to include Chairman Anthony Perchetti's  
18 statements into its April 22, 2017 Board Meeting minutes following Mr. Jones's specific  
19 request for their inclusion into the minutes.

20 **ALLEGATION NO. 3:** The Board failed to timely provide Mr. Jones with minutes  
21 and audio recordings of its April 22, 2017 and June 24, 2017 meetings.

22 **ALLEGATION NO. 4:** The Board failed to include a proposed agenda item from  
23 Mr. Jones on its June 24, 2017 Board Meeting agenda, regarding water quality and wells  
24 in Belmont, and took action on the issue in violation of the OML.

25 **ALLEGATION NO. 5:** The Board fails to properly retain the audio recordings of  
26 its board meetings.

27 The OAG has statutory enforcement powers under the OML and the authority to  
28 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS  
241.040. The OAG's investigation of the Complaint included a review of the following: the

1 agendas and minutes of the April 22, 2017 board meeting (April Board Meeting), and June  
2 24, 2017 board meeting (June Board Meeting); the video recordings of the April and June  
3 board meetings; the Board's certificates of mailing for the April and June board meeting  
4 minutes and audio recordings; and email communications between Mr. Jones and members  
5 of the Board.

6 After investigating the Complaint, the OAG determines that the Board violated the  
7 OML by failing to timely provide its April Board Meeting minutes and audio recording to  
8 Mr. Jones. The OAG finds that the Board did not violate the OML concerning the  
9 remaining claims contained in Mr. Jones's Complaint.

#### 10 FINDINGS OF FACT

11 1. The Board is a "public body" as defined in NRS 241.015(4) and is subject to  
12 the OML.

13 2. On April 22, 2017, the Board held a public meeting and provided two public  
14 comment periods. The Board restricted public comments to three (3) minutes per speaker  
15 during the two periods. The Board also provided a public comment period before Agenda  
16 Item #1 of New Business – "Discussion of water/wells in the town of Belmont" (Agenda Item  
17 #1). Prior to discussion of Agenda Item #1, Chairman Perchetti explained that the item  
18 was included on the agenda for discussion purposes only based on the fact that the Board  
19 is an Advisory Board that does not have the authority to take action.

20 3. Mr. Jones attended the April Board Meeting and provided public comment, in  
21 the form of a prepared statement, during the public comment period before Agenda Item  
22 #1. Mr. Jones orally requested that his statement be included in the meeting minutes for  
23 the April Board Meeting and he provided a copy of his prepared statement to the Board.  
24 Mr. Jones made several additional public comments during the Board's discussion of  
25 Agenda Item #1.

26 4. At the June Board Meeting, the Board approved the minutes of the April  
27 Board Meeting. The approved April Board Meeting minutes reference Mr. Jones's  
28 statement during the discussion on Agenda Item #1 as well as Mr. Jones's complete written

1 statement which is included as Exhibit "A" of the minutes.

2 5. During the discussion of Agenda Item #1, Board Chairman Perchetti, Mr.  
3 Jones, and other members of the Board addressed the involvement of the Nevada Division  
4 of Water Resources (Division) in establishing well drilling sites in Belmont. The Board's  
5 discussion of the Division's involvement in Belmont is briefly referenced on Page 7 of the  
6 April Board Meeting minutes. On June 11, 2017, Mr. Jones emailed Board Member  
7 Jeppsen, along with other members of the Board, with his request that Chairman  
8 Perchetti's comments regarding Division's actions be included in the minutes of the April  
9 Board Meeting. The Board did not include Chairman Perchetti's comments regarding the  
10 Division into the April Board Meeting minutes.

11 6. On June 25, 2017, Mr. Jones submitted a request to the Board for the minutes  
12 and audio recordings of the April and June board meetings. On July 13, 2017, Board  
13 Member Diana Jeppsen emailed the requested minutes to Mr. Jones. On July 13, 2017,  
14 Member Jeppsen also mailed the audio recordings of the April and June board meetings to  
15 Mr. Jones.

16 7. On June 11, 2017, Mr. Jones requested that the Board include a discussion  
17 item on its June Board Meeting agenda regarding the drilling of illegal wells in Belmont.  
18 The Board did not include the requested item on the agenda of the June Board Meeting.

19 8. At the June Board Meeting, Mr. Jones inquired about the ability to obtain  
20 audio recordings of the Board's meetings. Board Member Jeppsen explained that the audio  
21 recordings are saved on her laptop and that she can provide copies upon request.

## 22 LEGAL STANDARDS AND CONCLUSIONS OF LAW

- 23 1. **The Board's minutes from the April and June board meetings complied**  
24 **with the OML's Content Requirements.**

25 Nevada Revised Statute ("NRS") 241.035 governs public meeting minutes and it  
26 provides that each public body shall keep written minutes of each of its meetings, including  
27 the following:

28 . . .

- 1 (a) The date, time and place of the meeting.
- 2 (b) Those members of the public body who were present, whether in person  
3 or by means of electronic communication, and those who were absent.
- 4 (c) The substance of all matters proposed, discussed or decided and, at the  
5 request of any member, a record of each member's vote on any matter  
6 decided by vote.
- 7 (d) The substance of remarks made by any member of the general public  
8 who addresses the public body if the member of the general public requests  
9 that the minutes reflect those remarks or, if the member of the general  
10 public has prepared written remarks, a copy of the prepared remarks if the  
11 member of the general public submits a copy for inclusion.
- 12 (e) Any other information which any member of the public body requests to  
13 be included or reflected in the minutes.

14 NRS 241.035(1).

15 Here, Mr. Jones attended the April Board Meeting as a member of the general public.  
16 Mr. Jones prepared written remarks to the Board which he read aloud during the April  
17 Board Meeting and he provided a copy of his written remarks to the Board for inclusion in  
18 the minutes. The OAG's review of the Board's April Board Meeting minutes, which the  
19 Board approved during its June Board Meeting, includes Mr. Jones's prepared written  
20 statement as Exhibit "A" of the minutes. Therefore, the Board complied with NRS  
21 241.035(1)(d) by properly including Mr. Jones's public comment statement into the April  
22 Board Meeting minutes.

23 Additionally, Mr. Jones also requested that the comments from Chairman Perchetti,  
24 regarding the actions of the Nevada Division of Water Resources, be included in the April  
25 Board Meeting minutes. The Board did not include Chairman Perchetti's comments into  
26 the minutes. However, the OML does not require a public body to include information into  
27 its minutes, at the request of a member of the public, unless the information is the public  
28 comment remarks of the member of the public. As such, the Board did not violate the OML  
by choosing not to include Chairman Perchetti's comments into the minutes. Additionally,  
the April Board Meeting minutes included the substance of the discussion regarding water  
quality concerns and wells in Belmont, as well as the other content requirements listed in  
NRS 241.035(1), and so they satisfy the OML's requirements for meeting minutes.

1 **2. The Board failed to timely provide Mr. Jones with the minutes of its April**  
2 **Board Meeting but it timely provided Mr. Jones with the minutes of June**  
3 **Board Meeting.**

4 NRS 241.035 governs public meeting minutes and it designates meeting minutes as  
5 public records which must be available for inspection by the public within 30 working days  
6 after adjournment of the meeting. NRS 241.035(2). The OML designates a “working day”  
7 as “every day of the week except Saturday, Sunday and any day declared to be a legal  
8 holiday pursuant to NRS 236.015.” NRS 241.015(6). Each public body must make a copy  
9 of the minutes or audio recording available to a member of the public at no charge. NRS  
10 241.035(2).

11 Here, the Board’s April Board Meeting took place on April 22, 2017 while its June  
12 Board Meeting took place on June 24, 2017. Pursuant to NRS 241.035, the Board was  
13 obligated to make the April Board Meeting minutes or audio recording available for  
14 inspection by June 5, 2017, and to make the June Board Meeting minutes or recording  
15 available for inspection by August 7, 2017, which are thirty (30) working days after  
16 adjournment of the respective meetings. Mr. Jones requested a copy of the April and June  
17 board meeting minutes and audio recordings on June 25, 2017, but the Board did not  
18 provide the minutes or audio recordings to Mr. Jones until July 13, 2017. Notably, Board  
19 Member Jeppsen emailed the April Board Meeting minutes to her fellow Board members  
20 on May 30, 2017, indicating that the minutes were timely prepared but not provided to Mr.  
21 Jones.<sup>1</sup> The Board violated the OML’s requirement to make a copy of the April Board  
22 Meeting minutes or audio recordings available to the public within 30 working days of the  
23 adjournment of the meeting.

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27 <sup>1</sup> The Board timely provided a copy of the June Board Meeting Minutes and audio  
28 recording to Mr. Jones since it provided the records to Mr. Jones on July 13, 2017 and they  
were not due until August 7, 2017.

1 3. The Board was not obligated to include an item on the agenda of its June  
2 Board Meeting regarding water quality and wells in Belmont and it did not  
3 take action on the issue in violation of the OML.

4 NRS 241.020(2) governs agendas of meetings of public bodies and it provides, in  
5 pertinent part, that public bodies must include the following information on items to be  
6 considered during a meeting:

7 (1) A clear and complete statement of the topics scheduled to be considered  
8 during the meeting.

9 (2) A list describing the items on which action may be taken and clearly  
10 denoting that action may be taken on those items by placing the term "for  
11 possible action" next to the appropriate item or, if the item is placed on the  
12 agenda pursuant to NRS 241.0365, by placing the term "for possible corrective  
13 action" next to the appropriate item.

14 (6) Notification that:

15 (I) Items on the agenda may be taken out of order;

16 (II) The public body may combine two or more agenda items for  
17 consideration; and

18 (III) The public body may remove an item from the agenda or delay  
19 discussion relating to an item on the agenda at any time.

20 NRS 241.015(1) defines "action" to mean:

21 (a) A decision made by a majority of the members present, whether in person  
22 or by means of electronic communication, during a meeting of a public body;

23 (b) A commitment or promise made by a majority of the members present,  
24 whether in person or by means of electronic communication, during a meeting  
25 of a public body;

26 (c) If a public body may have a member who is not an elected official, an  
27 affirmative vote taken by a majority of the members present, whether in  
28 person or by means of electronic communication, during a meeting of the public  
body; or

(d) If all the members of a public body must be elected officials, an affirmative  
vote taken by a majority of all the members of the public body.

...

1 In enacting the OML, the Legislature intended for public bodies to “take their actions  
2 and conduct their deliberations openly.” *Schmidt v. Washoe County*, 123 Nev. 128, 159  
3 P.3d 1099, 1103, *abrogated on other grounds by Buzz Stew, LLC v. City of North Las Vegas*,  
4 124 Nev. 224 (2008). The Legislature included the “clear and complete statement” standard  
5 to the OML because “incomplete and poorly written agendas deprive citizens of their right  
6 to take part in government’ and interfere with the ‘press’ ability to report the actions of  
7 government.” *Sandoval v. Bd. of Regents of Univ. & Cmty. Coll. Sys. Of Nev.*, 119 Nev.  
8 148, 154, 67 P.3d 902, 905 (2003). A public body may refuse to consider an agenda item at  
9 any time. *Schmidt*, 123 Nev. at 135, 159 P.3d at 1104.

10 Here, Mr. Jones alleges that the Board violated the OML by refusing to place the  
11 issue of Belmont’s water quality and wells on the agenda at his request and by taking  
12 unlawful action to determine, as a Board, not to have further discussion on the issue. First,  
13 the OML does not require the Board to include items on its agenda at the request of  
14 members of the public. Members of the public, including Mr. Jones, have the right to voice  
15 their concerns and request action by the Board during public comment. The Board may  
16 choose to place an item on its agenda based on requests by members of the public, but is  
17 not required to do so. Second, the Board’s decision not to place a discussion item on its  
18 agenda did not violate the OML because the Board is entitled, pursuant to *Schmidt*, to  
19 refuse to consider an agenda item at any time. Finally, the Board did not take action on  
20 the issue of Belmont’s water quality and wells. As Chairman Perchetti explained during  
21 the June Board Meeting, the Board does not have the authority to take any action  
22 regarding the water and wells issue and the matter will be taken over by the Nye County  
23 Commission. Ultimately, the Board acted in its authority to not reopen the water quality  
24 and wells issue by placing it on the June Board Meeting agenda and it did not take action  
25 on the issue. Therefore, the Board did not violate the Open Meeting Law.

26 ...  
27 ...  
28 ...

1 **4. The Board did not violate the OML by electronically maintaining Board**  
2 **Meeting audio recordings.**

3 NRS 241.035 governs audio recordings of meetings of public bodies and it requires  
4 all public bodies to either record their meetings on audiotape or another means of sound  
5 reproduction or to cause the meeting to be transcribed by a certified court reporter. NRS  
6 241.035(4). Public bodies must retain the audio recordings of their meetings for at least  
7 one (1) year after the adjournment of the meeting. NRS 241.035(4)(a). Moreover, public  
8 bodies must make the audio recordings available for inspection by the public during the  
9 time the recording is retained.

10 Here, Mr. Jones alleges that the Board committed an OML violation because the  
11 Board maintains its meeting recordings on the computer of one of its members. Board  
12 Member Jeppsen confirmed that she maintained the audio recordings of the Board's  
13 meetings on her computer and is able to provide copies at the request of the public. NRS  
14 241.035 requires that the Board retains the audio recordings of its meetings but it does not  
15 designate the means through which the Board must retain the recordings. As Board  
16 Member Jeppsen was able to provide Mr. Jones with the audio recordings of the Board's  
17 April and June Board Meetings upon request, the OAG does not find a violation of the  
18 OML.

19 **SUMMARY AND INCLUSION OF AGENDA ITEM**

20 If the Attorney General investigates a potential OML violation and makes findings  
21 of fact and conclusions of law that a public body has taken action in violation of the OML,  
22 "the public body must include an item on the next agenda posted for a meeting of the public  
23 body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The  
24 public body must treat the opinion of the Attorney General as supporting material for the  
25 agenda item in question for the purpose of NRS 241.020. *Id.*


26 Here, upon investigating the present Complaint, the OAG makes a findings of fact  
27 and conclusions of law that the Board committed an OML violation by failing to timely  
28 provide Mr. Jones with a copy of its April Board Meeting minutes. Therefore, the Board



1 must place an item on its next Board Meeting agenda in which the Board acknowledges  
2 the present Findings of Fact and Conclusions of Law ("Opinion") which results from the  
3 OAG investigation in the matter of Attorney General File No. 13897-235. The Board must  
4 also include the OAG Opinion in the supporting materials for its next meeting.

5 DATED: October 23, 2017.

6 ADAM PAUL LAXALT  
7 Attorney General

8 By:   
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