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June 16, 2014

Dale E. Hartley
P.O. Box 462
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Re: Open Meeting Law Complaint / AG File No. 13-042 and 14-003
McDermitt Fire District Board/Humboldt County Hospital Board of Trustees

Dear Mr. Hartley:

In this letter we review two recent Open Meeting Law (OML) complaints which have been filed against the McDermitt Fire District Board (MFDB) and the Humboldt County Hospital Board of Trustees (HCH), a public body created under the authority of NRS 450.070). MRDB is the governing board for the fire district in McDermitt. This letter will address all allegations in these complaints related to the OML.¹

Essentially, the allegation against the MFDB is that it has not been sending you agendas and minutes regularly, or not at all, since October 18, 2013. The allegation against HCH is that the Complainant's request for minutes and agendas related to two construction projects in McDermitt, have not been fulfilled after repeated requests. HCH sent him a Request for Information form, but he resisted returning it because it required him to state whether the public records he asked for would be used for commercial

¹ Much correspondence was received regarding alleged actions or inactions on the part of the MFDB suggesting that these too, were violations of the OML. We disagree and find that these several matters were outside this office's jurisdiction of the Open Meeting Law. The selection and election of members of the MFDB is a county matter and based on the facts alleged, does not rise to the level of an OML violation. Whether two members of the MFDB may appoint someone to serve the balance of an existing term is not an OML issue, nor is the allegation of Discrimination based on sex. Other issues such as the auction of a fire truck(s) does not rise to the level of an OML violation as review of the minutes of meetings provides clear evidence that the MFDB provided advance notice of the auction and discussion of the decision to sell the truck. Disclosure of who bought it and whether it was sold based on a petition or an appraisal is irrelevant to our OML jurisdiction; it is a local county issue and in fact the county D.A. provided advice regarding the auction and sale as reported in the minutes of MFDB October 30, 2013 meeting.

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purposes. Additionally, the HCH form would require \$.60 per page for copies of the documents requested. These matters will be considered together in the following discussion.

We were unable to find any evidence of recent meetings regarding appointments to the Fire District Board. Whether the appointment to the Board is according to county policy is not an OML issue; board positions are elected positions. We did however, find evidence in the minutes and agendas for board meetings that discussed openly the need for individuals to fill unexpired terms. The County will have to assist the Board when filling unexpired terms.

During our lengthy investigation of the allegations in the complaint, we have been in contact with the Humboldt County District Attorney's Office (DA) and the Humboldt County Comptroller's Office (Comptroller) during the past several months to gather information regarding the allegations. We also interviewed Patti Albibu and Gary Wilson, a former member of the MFDB who resigned at the end of December 2013, both of whom played roles in the administration of the MFDB during the period covered by your complaint. Ms. Albibu typed minutes and recalls the mailing list for requests for agendas and minutes. She recollects that she mailed both agendas and minutes to Complainant between January 2014 and May 2014, but she also recollects that she was under the impression minutes had to be approved before being released. She has provided a statement of her recollection which confirms that Complainant is still on the mailing list at this time.

We also spoke with counsel for HCH, Kent Maher (Mr. Maher), about the Hospital's Request for Information form. We believe two matters deserve immediate attention with regard to the form. The form is not applicable to anyone who is requesting an agenda or minutes from Trustee's meetings. There is no Open Meeting Law authority that allows a public body to condition the release of public records - agenda or minutes of public meetings - based on whether disclosure of the requested information is for commercial use. Additionally, since the 2013 legislative session, the minutes or audio recordings of a meeting must be provided to a requester at no charge. See NRS 241.035(2).

Another issue raised in correspondence from the Complainant is whether the MFDB is compliant with the Americans with Disabilities Act (A.D.A.). The Complainant sent a letter to the MFDB requesting an assistive listening device be installed in the Community Hall where meetings are held, and that it be in compliance with federal law, allowing him to attend meetings. In his letter he states that he has sent prior notice of his request for an assistive listening device that complies with federal law, and the Americans with Disabilities Act to the County Manager and the District Attorney. Complainant also stated that there are people who attend meetings and wear hearing devices.

The Open Meeting law requires that public officers and employees responsible for public meetings "shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend." NRS 241.020(1). Title II of the Americans with Disabilities Act applies to state and local government and it prohibits discrimination on the basis of disability from state and local government services, and activities. A.D.A., Title II, Technical Assistance Manual 1-1.1000 (Manual).

In order to be an individual protected by A.D.A. Title II, the individual must be a "qualified" individual with a disability. To constitute a "disability," a condition must substantially limit a major life activity such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. Manual, II-2.2.4000. To be qualified for protection under the A.D.A., the individual with a disability must meet the "essential eligibility requirements" for receipt of services or participation in a public entity's programs, activities, or services with or without: (1) Reasonable modifications to a public entity's rules, policies, or practices; 2) Removal of architectural, communication, or transportation barriers; or 3) Provision of auxiliary aids and services. Manual II-2.8000. The "essential eligibility requirements" for participation in many activities of public entities may be minimal. Manual, II-2.8000.

The A.D.A. Technical Assistance Manual provides some answers for the question: "*When does an impairment "substantially limit" a major life activity?* [ans.] There is no absolute standard for determining when an impairment is a substantial limitation. Some impairments obviously by its nature substantially limit the ability of an individual to engage in a major life activity. Manual, II-2-4.000. For example, a person who is deaf is substantially limited in the major life activity of hearing; a person with a minor hearing impairment, on the other hand, may not be substantially limited.

Whether the complainant is entitled to relief under the A.D.A., as explained above, is a matter for Humboldt County to assess. The Open Meeting law only requires that public officers and employees for the public body make reasonable efforts to accommodate the individual who wishes to attend its meetings. We believe that MDFB's invitation to attend, that was put in writing by Chairman Bruce Easterday, in January 2014, meets the reasonable effort criteria. **Further investigation may be necessary to determine whether or not and to what extent an accommodation based on a hearing impairment is necessary.** Accommodation could run the gamut from a simple amplification of the meeting for the benefit of the attendees to more expensive remedies, but the County will have to make the investigation and the decision.

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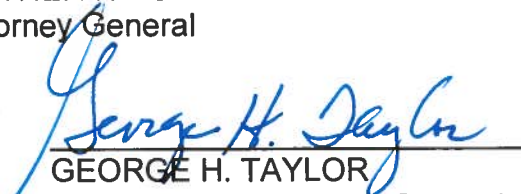
Our investigation shows that the Complainant has made demand for the MFDB to accommodate him with an assistive listening device that meets certain federal law minimum requirements. This office does not have jurisdiction to remedy his demand, if in fact, there is merit to the demand. This would require further investigation, which the County is in the unique position to conduct. We cannot enforce A.D.A. regulations under the Open Meeting Law; we only ensure that access to public meetings is reasonably available. It appears that the MFDB has invited the complainant to attend meetings where these issues can be discussed after being agendized. This would be a good start.

We will hold this matter open until the complainant notifies us that he is receiving agendas and minutes of meetings on a regular basis. There is no need to find either entity in violation of the OML unless these issues are not remedied.

Sincerely,

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Attorney General

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