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Ms. Andrea (Ande) Engleman
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Dear Ladies and Gentlemen:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

This office has received four complaints alleging violations of the Open Meeting Law at a Special Meeting of the Board of Regents (Board) held on November 17, 2003, and the continuance of the Special Meeting of the Board to November 20, 2003.¹ The alleged violations of the Open Meeting Law are as follows:²

¹ Regent Mark Alden has submitted two additional complaints — one on December 1, 2003, alleging that certain Regents privately discussed disciplinary action against certain UCCSN employees and came to a decision regarding the actions taken at the November 20, 2003 special meeting of the Board prior to that meeting, and a second stemming from the UCCSN meeting of December 12, 2003, alleging that the chair of the Audit Committee violated the Open Meeting Law by discussing certain persons who were not noticed pursuant to NRS 241.033. These complaints are currently being investigated by our office, and separate determinations are forthcoming.

1. Was an appropriate motion to close the meetings made and passed?
2. Did the Board violate the Open Meeting Law by deliberating and taking action in closed session on whether to allow Chancellor Nichols to be present during the closed session?
3. Did the Board violate the Open Meeting Law by deliberating and forming recommendations and a consensus during the course of the closed session?
4. Did the Board violate the Open Meeting Law by considering, during closed session, the character, alleged misconduct, professional competence, or physical or mental health of elected officials?
5. Did the Board properly notify each person whose character, alleged misconduct, professional competence, or physical or mental health, which was considered at the time and place of the closed session, in accordance with the Open Meeting Law?
6. Did the Board violate the Open Meeting Law when it did not provide notice that administrative action may be taken against certain individuals?
7. Did the Board Chair violate the Open Meeting Law by excluding certain persons from attending the closed session?
8. Did the agenda, and actions taken at the meetings, comply with the Open Meeting Law?

Our investigation consisted of a review of the audio recording and written minutes of the open and closed portions of the November 17 and 20 meetings; the agenda for the November 17, 2003 meeting; the notices that were served pursuant to NRS 241.033 to those persons whose character, alleged misconduct, and professional competence were considered during the closed session; relevant pleadings from two

² It is important to note that certain complainants raise issues beyond the scope of the Open Meeting Law. Accordingly, for purposes of this opinion, only allegations implicating violations of the Open Meeting Law will be addressed.

In addition, complainant Andrea Engleman alleges an Open Meeting Law violation concerning the decision to initiate the investigation referred to in this opinion, and alleges violations concerning providing minutes of the closed session to those entitled. Upon this office's review of the evidence presently available, there is nothing before us to indicate the Open Meeting Law was violated on these two points.

Finally, this opinion addresses additional Open Meeting Law issues not raised by the complainants but which have been determined by this office to be violations of the Open Meeting Law.

If deemed necessary by the Board of Regents, the Board may take a number of possible actions in response to the information received by the Board, including possible personnel or disciplinary actions. The Board may also issue directives to certain executive officers and employees of the UCCSN in response to any alleged conduct and may also issue directives to UCCSN personnel relating to possible amendments to Board policies and the continuation of the investigation. In the event the Board of Regents determines that personnel or disciplinary actions should be initiated, in conformity with the UCCSN Code, Board of Regents' policies and the statutory and contractual rights of employees, such actions may include: warning; reprimand; reduction in pay; suspension; termination; or reassignment. The Board of Regents may also make interim appointments and take any other action deemed appropriate.

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|-----------|-----------------------|---------------------------|
| 3. | PUBLIC COMMENT | <u>INFORMATION</u> |
| 4. | NEW BUSINESS | <u>INFORMATION</u> |

The majority of the time spent in closed session focused on the presentation and discussion of a 1,046 page investigative report concerning certain UCCSN employees, legislators and others, and discussion of UCCSN policies and procedures concerning UCCSN employment and lobbying practices. As previously noted, it appears from the record that the investigation was initiated by Chancellor Nichols. Counsel for the Board has advised this office that the investigative report has been disseminated to the public.

At the commencement of the November 17 meeting, a motion was made to go into closed session. Prior to going into closed session, the minutes state:

Regent Sisolak noted a point of order and asked who would be allowed to remain in the closed session. General Counsel Ray replied those entitled to be in the closed session were individuals necessary to consider the matter. He stated this would include the Regents and anyone necessary to facilitate the closed session. He recommended that Board staff and legal counsel be present. He noted beyond that was the Chair's decision

Chair Anthony stated the Regents, legal counsel, including Walt Ayers and Mary Dugan, the investigator, Suzanne Ernst, Fini Dobyns, Lisa Martinovic and Chancellor Nichols could stay in the closed session.

Regent Alden objected. Regents Sisolak and Howard objected as well. General Counsel Ray suggested an

appeal of the Chair's decision should be held during the closed session. He noted there was the possibility of litigation and recommended that further discussion take place in closed session. Regent Sisolak asked if the parties involved were entitled to hear the debate. General Counsel Ray answered no. Regent Alden asked whether that discussion would be disingenuous to parties excluded and would set precedence for litigation of unfairness. General Counsel Ray recommended the Board terminate discussion now in the open session, adding that all discussion should take place in closed session

The Board then voted 12—1 to go into the closed session.

It is the understanding of this office that the minutes of the closed session have not been made a part of the public record. Accordingly, while we must proceed cautiously and not reveal the specific comments made during the closed session, we do believe it appropriate to generally summarize what, in this office's opinion and based upon the evidence presented, occurred during the closed session.

The closed session of November 17 began with a heated discussion regarding the Chair's decision to allow Chancellor Nichols to be present during the closed session. In closed session, a motion was made to exclude Chancellor Nichols from the session, which failed, 9—4.

The closed session proceeded with a presentation and discussion of the results of the investigation initiated by Chancellor Nichols concerning the character, alleged misconduct, and professional competence of certain UCCSN employees, certain members of the Legislature, and a certain lobbyist. In addition, certain Regents discussed a need for new UCCSN policies relating to employment and lobbying practices in the context of the discussion of the individuals under consideration. Regents also discussed Board policies, and state and federal laws as they related to the alleged conduct of the individuals who were the subjects of the closed session.

The November 17 closed session continued for approximately nine hours before it was recessed and the Board returned to open session. In open session, the Board voted to recess the meeting until November 20, 2003.

The November 20, 2003 meeting commenced at 12:05 p.m. In open session, one Regent expressed concern that the Board had violated NRS 241.031 by considering the character, alleged misconduct, and professional competence of two elected officials. Counsel for the Board responded by stating that the purpose of NRS 241.031 is that a closed meeting could not be held to discuss the character or consider the conduct of an elected official, and that this meeting was to consider the conduct of

employees of UCCSN; he stated he would not allow the closed meeting to go into a session about a member of an elected body.

While still in open session, one Regent moved to appeal the Chair's ruling to have Chancellor Nichols sit in on the closed session. Another Regent seconded the motion, objecting that the vote taken in closed session to allow the Chancellor to be present during the closed session should be done in the open portion of the meeting. General Counsel Ray stated a motion for reconsideration could be made to appeal the decision of the Chair but it would need to be done in closed session. The Board then went back into closed session, and a motion was made to approve reconsidering the motion to include the Chancellor in the room during the discussion. Debate on the issue ensued, and a vote on the motion was taken; the motion failed, 8—4, and the Chancellor was permitted to remain in the closed session.⁴

The closed session continued with the presentation of the results of the investigation and related discussion among the Regents. Upon completion of the presentation, the Board was presented with options as to what action it could take against certain employees. Each Regent was then told he/she could discuss what he/she felt based upon the investigation. The lengthy and quite substantive discussion involved each Regent's reactions and feelings about the information they had received, including the adequacy and results of the investigation.

Regarding whether action should be taken by the Board, some members stated they felt action should be taken, one member recommended termination of certain employees, and another implied termination.

The Board went back into open session and voted to approve the following actions:

1. To forward the results of the investigation to the Attorney General and FBI to take appropriate actions;
2. To remove Dr. Ronald Remington as President of CCSN immediately and have Chancellor Nichols take action to return him to the proper academic department;
3. To direct the interim president, or if one is not selected soon, the Chancellor, to reassign John Cummings to the faculty at CCSN effective immediately and prohibit him from serving in an administrative capacity at CCSN until a majority vote of the Regents changed the motion, and have the Board Chair select an independent special administrative code officer to review and evaluate the materials in the investigation with respect to Mr. Cummings and at his/her discretion be empowered to commence a Chapter 6 termination procedure for a tenured faculty member and if the

⁴ One Regent was absent.

- procedure was begun under Chapter 6, the Board Chair and Chancellor appoint a committee pursuant to Chapter 6 if a permanent interim president or permanent president were not available at that time;
4. That the Chair and Chancellor develop and deliver a message to all personnel of CCSN acknowledging the Board's sincere thanks and appreciation for the service and contributions to higher education in Nevada, that the staff are dedicated and hardworking members of the team, however there are a few individuals at CCSN who have violated directives established for orderly completion of their charges and that will come to an immediate stop, any future violations will be immediately identified and appropriate Chapter 7 actions initiated, and to keep up the good work, and;
 5. That at the next Board meeting, December 11-12, 2003, the following 4 items be addressed for information/action: (a) discuss the policy on whether UCCSN employees can serve in the System and legislature, and address NRS section 241.031; (b) discuss the way lobbying efforts are handled in the legislature and the only persons to go to the legislature are the Chancellor and who she directs; (c) tighter control of lobbyist and host expenditures by all System employees, and; (4) tighten up personnel and hiring practices at all institutions for all employees.

In addition, the following motions were made and failed:

1. Motion to direct the interim president or, in the absence of an interim president, the Chancellor, that a letter of non-reappointment be sent to the professional employee, Chris Giunchigliani, to notify her that she would not be reappointed to her position when the current contract expired;
2. Motion to direct whoever is in charge, the Chancellor or interim president, to issue a letter of non-reappointment to Brigit Jones;
3. Motion to issue a termination notice to Brigit Jones;
4. Motion to direct the interim president or Chancellor to terminate Ms. Jones;
5. Motion for the Chancellor to take the results of the investigation and consult with the interim president and allow that person to make any managerial changes necessary at the institution, and;
6. Motion for the Chancellor and interim president to review the current job description and performance standards and requirements for Ms. Jones for accuracy and put in place a monitoring program to ensure standards and performance expectations are met.

ANALYSIS

In enacting the Open Meeting Law in 1960, the Nevada Legislature stated “This act being necessary to secure and preserve the public health, safety, convenience and welfare of the people of the State of Nevada, it shall be liberally construed to effect its purpose.” Assembly Bill 1, Sec. 12, Fiftieth Session (1960). In finding that the Board of Regents violated the Open Meeting Law, the Nevada Supreme Court recently reaffirmed this important public policy by stating:

NRS 241.020(2)(c)(1) requires that a public body provide an agenda consisting of a ‘clear and complete statement of the topics scheduled to be considered during the meeting.’ NRS 241.010 explains that the Legislature enacted the Open Meeting Law to ensure that all public bodies deliberate and take action openly because ‘all public bodies exist to aid in the conduct of the people’s business’. Indeed, the legislative history of NRS 241.020(2)(c)(1) illustrates that the Legislature enacted the statute because ‘incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interfere with the ‘press’[s] ability to report the actions of government.’

The Legislature evidently enacted NRS 241.020(2)(c)(1) to ensure that the public is on notice regarding what will be discussed at public meetings. By not requiring strict compliance with agenda requirements, the ‘clear and complete’ standard would be rendered meaningless because the discussion at a public meeting could easily exceed the scope of the stated agenda topic, thereby circumventing the notice requirement. . . . [W]e conclude that the plain language of NRS 241.020(2)(c)(1) requires that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda.

.....

. . . Nevada’s Open Meeting Law seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.

Sandoval v. Board of Regents, 119 Nev. Adv. Op. 19 at 7—9 (May 2, 2003).⁵

⁵ See generally *McKay v. Board of Supervisors*, 102 Nev. 644 (1986); *McKay v. Board of County Commissioners*, 103 Nev. 490 (1987). NRS 241.010 further provides it is the intent of the law that actions be taken openly, and that deliberations be conducted openly.

Accordingly, in addressing the following allegations, this office will strictly adhere to the mandates of the Nevada Legislature and the Nevada Supreme Court, and will liberally construe all provisions of the Open Meeting Law so that the purpose of preserving the welfare of the people of the State of Nevada will be accomplished.

1. Was an appropriate motion to close the meetings made and passed?

As a threshold matter, this office notes that the Open Meeting Law does not require a public body to go into a closed session to consider the character, alleged misconduct, or professional competence of a person.⁶ Rather, the election by a public body to go into a closed session under these circumstances is solely within the discretion of the public body.⁷

Here, prior to going into closed session on November 17, and again on November 20, the Board voted to close the meeting and stated the purpose for which the closed session would be held. Each motion complied with this office's previous opinions as to the appropriate manner in which to proceed to a closed session. NEVADA OPEN MEETING LAW MANUAL, § 9.06 (9th ed. 2001). Accordingly, with the exception of the findings set forth in this opinion with regards to the agenda, this office finds that the Board did not violate the Open Meeting Law when it voted to go into a closed session under the circumstances then present.

2. Did the Board violate the Open Meeting Law by deliberating and taking action in closed session on whether to allow Chancellor Nichols to be present during the closed session?

Because the Open Meeting Law is silent on who may attend a closed session, we have generally recommended that it is up to the chairperson to decide who shall be included in the closed session. See NEVADA OPEN MEETING LAW MANUAL, § 9.06 (9th ed. 2001). In many cases, this is simply a procedural decision made by the Chair.

In the instant case, the Chair made the decision to allow the Chancellor to be present during the closed session. However, controversy quickly ensued over this decision. It is unequivocal from the minutes of both the open and closed session that the decision to allow the Chancellor, who was a subject of the investigation and a witness, to participate in the closed session was not a procedural decision, but a

⁶ See *Del Papa v. Board of Regents*, 114 Nev. 388, 394 (1998) (The spirit and policy behind NRS 241 favors open meetings). NEVADA OPEN MEETING LAW MANUAL, §§ 9.04, 9.06 (9th ed. 2001)

⁷ However, § 9.06 of the Open Meeting Law Manual states "an agenda item denoting an authorized closed session and a motion to go into the session may avoid naming the individual although it is recommended the public body consider naming the individual if the closed session involves a controversy in which there is a strong and legitimate public interest."

substantive decision. Such decision was within the control of the Board, and one which was of such great importance to the Board that it compelled them to debate and take action, not once, but twice during the closed session.⁸

It is firmly established under Nevada law that a Board cannot deliberate and take action during a closed session.⁹ The minutes from the closed session of the Board clearly demonstrate a lengthy deliberation over whether to allow the Chancellor to participate in the closed session, and a vote.

Accordingly, we find that the Board violated the Open Meeting Law by deliberating and taking action in closed session on whether the Chancellor would be permitted to participate in the closed session.

3. Did the Board violate the Open Meeting Law by deliberating and forming recommendations and a consensus during the course of the closed sessions?

In allowing closed sessions pursuant to NRS 241.030, the legislature expressly stated: “4. The exception provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.”

Moreover, pursuant to NRS 241.030, during a closed session, a public body is only permitted to consider, that is, “to think about” the information presented.¹⁰ A public body may not form recommendations or decisions about an action to take or build a consensus during a closed session. See NEVADA OPEN MEETING LAW MANUAL, §§ 9.04 and 9.06 (9th ed. 2001).

As previously stated, upon completion of the presentation during the closed session of November 20, the Board was presented with options as to what action it could take against certain UCCSN employees. After hearing the options, each Regent was then told he/she could discuss what he/she felt based upon the investigation. The lengthy and quite substantive discussion involved each Regent expressing his/her reactions and feelings about the information they he/she had received, including the adequacy and results of the investigation.

⁸ There is no question that what occurred in the closed session was “action” pursuant to NRS 241.015(1), which provides: 1. “Action” means: (a) A decision made by a majority of the members present during a meeting of the public body; (b) A commitment or promise made by a majority of the members present during a meeting of a public body,

⁹ See *McKay v. Board of Supervisors*, 102 Nev. 644 (1986).

¹⁰ *Id.*

Moreover, regarding whether action should be taken by the Board against certain UCCSN employees, some members even stated they felt action should be taken, one member recommended termination of certain employees, and another implied termination.

Upon a thorough review of the audio tapes and written minutes of the closed session of November 20, it is this office's opinion that this portion of the closed meeting went far beyond "thinking about" or consideration of the character, alleged misconduct, and professional competence of certain UCCSN employees. Rather, the Board deliberated and formed recommendations and a consensus regarding whether to take action.

Indeed, this office's review of the tapes and minutes revealed that it is fairly simple to measure a Regent's judgment and position on whether he/she felt it necessary to take action against certain UCCSN employees.¹¹

Accordingly, we find the Board violated the Open Meeting Law by deliberating and forming recommendations during the course of the closed session.

4. Did the Board violate the Open Meeting Law by considering, during closed sessions, the character, alleged misconduct, professional competence, or physical or mental health of elected officials?

Pursuant to NRS 241.031, a public body shall not hold a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of an elected member of a public body. Such a law is fundamental because there is a strong and legitimate public interest to hear and witness discussions by public bodies of an elected official.

During the closed session, the character, alleged misconduct, and professional competence of two elected officials was discussed; one of them being complainant Ms. Chris Giunchigliani. Counsel for the Board felt there was no violation of NRS 241.031, claiming the Board was discussing Ms. Giunchigliani in the context of her being an employee of UCCSN. We do not find this reasoning persuasive or conclusive in establishing that there was no violation of NRS 241.031.

¹¹ To "deliberate" is to examine, weigh, and reflect upon the reasons for or against the choice. Deliberation thus connotes not only collective discussion, but also the collective acquisition or the exchange of facts preliminary to the ultimate decision. See *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 69 Cal. Rptr. 480 (Cal. Ct. App. 1968).

Ms. Giunchigliani has dual roles — one as a legislator and one as a UCCSN employee. The alleged misconduct of Ms. Giunchigliani discussed by the Board occurred during the 2003 Legislative Session, in her capacity as an elected official. While the Regents may have discussed her character and alleged misconduct in her capacity as an employee of UCCSN, they also discussed her character and alleged misconduct in her capacity as an elected official; the Board's discussion regarding the two responsibilities are inextricably intertwined.

Accordingly, we find the Board violated section NRS 241.031 by considering the character, alleged misconduct, and professional competency of Assemblywoman Giunchigliani during closed session. In addition, we find the Board violated NRS 241.031 when it went into closed session to consider the character, alleged misconduct, and professional competency of a certain Assemblyman.¹²

5. Did the Board properly notify each person whose character, alleged misconduct, professional competence, or physical or mental health, which was considered at the time and place of the closed session, in accordance with the Open Meeting Law?

NRS 241.033(1) provides that a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting at least five working days before the meeting if delivered personally or 21 working days if sent by certified mail.

The information provided to this office establishes that, with the exception of one individual lobbyist, proper notice pursuant to NRS 241.033(1) was given to each person whose character, alleged misconduct, professional competence, or physical or mental health was to be considered at the closed session. With regard to the aforementioned individual, this office finds the Board violated NRS 241.033(1), and intends to inform this person of this office's conclusion. However, due to issues of privacy, the identity of this individual shall remain confidential.

6. Did the Board violate the Open Meeting Law when it did not provide notice that administrative action may be taken against certain individuals?

The notice given under NRS 241.033(1) stated that:

¹² While the Open Meeting Law does not apply to the Legislative body, this office does not believe the intent of NRS 241.031 is to allow discussion of elected members of the Legislature in closed session. Such an interpretation would provide a road map for the practical abolition of NRS 241.031.

NOTICE IS HEREBY GIVEN that, pursuant to NRS 241.033, the Board of Regents of the University and Community College System of Nevada intends to conduct a closed personnel session to consider certain employment practices and use of personnel employed by the Community College of Southern Nevada. This discussion may include matters related to your professional competence, character or any alleged misconduct.

NOTICE IS FURTHER GIVEN that this personnel session will be conducted during a special Board of Regents meeting on November 17, 2003. The meeting commences at 11:00 a.m. The meeting will be held at the Tam Alumni Center, University of Nevada, Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada.

NOTICE IS FURTHER GIVEN that pursuant to NRS 241.033, you are entitled to this written notice of the Board of Regents intention to hold this meeting.

Those persons did not receive notice pursuant to NRS 241.034 which provides, in pertinent part:

1. A public body shall not consider at a meeting whether to:
 - (a) Take administrative action against a person; or
 - (b) Acquire real property owned by a person by the exercise of the power of eminent domain, unless the public body has given written notice to that person of the time and place of the meeting.
2. The written notice required pursuant to subsection 1 must be:
 - (a) Delivered personally to that person at least 5 working days before the meeting; or
 - (b) Sent by certified mail to the last known address of that person at least 21 working days before the meeting. A public body must receive proof of service of the written notice provided to a person pursuant to this section before the public body may consider a matter set forth in subsection 1 relating to that person at a meeting.

The Eighth Judicial District Court of Clark County, Nevada, in considering a motion for a temporary restraining order filed by the Plaintiffs in consolidated cases *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275

found no violation of NRS 241.034. The Court's Findings of Fact and Conclusions of Law state, in pertinent part:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

[T]he Court finds that both Pltfs [sic] had notice pursuant to NRS 241.033 and 241.034 of an impending meeting that would consider their character and fitness as an employee. Although proof of such notice to the Board is a prerequisite to any actions taken pursuant to NRS 241.033, and 241.034, both Pltfs [sic] in their pleading acknowledged timely service of the notice that the Board would be meeting to discuss conduct, character, and fitness in relation to employment.

A reasonable and objective person would assume that such notice brought with it notification that some form of action regarding one's employment status might occur. Nothing by statute requires such notice to have the actual wording 'administrative action may take place.'¹³

This office takes a different view of the facts, circumstances, and law applicable to this situation. The notice requirements of NRS 241.034 are clear: if a public body considers whether to take administrative action against a person at a meeting of the public body, it must specifically notify the person of this fact; to find otherwise undermines the clear language of the statute.

In applying the Eighth Judicial District Court's reasoning, a person would have to speculate as to whether administrative action might be taken against him. However, this is not what the Legislature intended. In adding NRS 241.034 to the Open Meeting Law, the Legislative history provides:

. . . The second part of the amendment is to require *more specific* and personal notice be given to persons in two circumstances: if the public body is going to be considering whether to take administrative action against a person or if the public body is going to be considering whether to acquire the person's property by imminent [sic] domain

See Journal of the Nevada State Assembly (comments of Assemblyman Bache), 955 (April 25, 2001) (emphasis added).

. . . Finally, AB 225 creates an *additional* notice

¹³ See consolidated cases *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275, *Findings of Fact, Conclusions of Law, and Order* at 2: 7—17 (December 30, 2003).

requirement under the open meeting law before a public body considers taking an administrative action against a person It must personally deliver written notice to that person at least five working days before the meeting or send notice by certified mail to the last-known address of the person at least 21 working days before the meeting.

See Journal of the Nevada State Assembly (comments of Assemblyman Bache), 1024 (April 26, 2001) (emphasis added).

Accordingly, NRS 241.034 is an *additional* notice requirement that a public body may take administrative action, such as discipline, against a person. Such notice cannot be inferred by receiving notice pursuant to NRS 241.033 that a public body may be meeting to consider one's character, alleged misconduct, or professional competence. Hence, it is the opinion of this office that the Board violated NRS 241.034.

7. Did the Board Chair violate the Open Meeting Law by excluding certain persons from attending the closed sessions?

Of all those who were given notice that their character, alleged misconduct, and professional competence might be considered at the Board's closed meeting, only Chancellor Nichols was permitted to attend; the others were expressly excluded.

As aforementioned, NRS 241.033 is silent on the exclusion of a person whose character, alleged misconduct, professional competence, or physical or mental health will be considered during a closed session. While this office has opined on the issue of excluding disruptive persons and witnesses from meetings of public bodies,¹⁴ whether a person is properly excluded from a closed session under these circumstances is a novel issue.

The Eighth Judicial District Court of Clark County, Nevada, in considering the motion for a temporary restraining order in consolidated cases *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275 found the following: "Pltfs [sic] were not entitled pursuant to statute to be present during the closed session, although by statute, if such a closed meeting occurs, then Pltfs [sic] are entitled to a transcript of the closed meeting proceedings. . . ."¹⁵

¹⁴ See NEVADA OPEN MEETING MANUAL, §§ 8.05, 8.06 (9th ed. 2001).

¹⁵ See consolidated cases *Cummings v. Board of Regents of the University System, et al.*, Case No. A477025, and *Remington v. University and Community College System, et al.*, Case No. A477275, *Findings of Fact, Conclusions of Law, and Order* at 2: 18—20 (December 30, 2003).

This office is not aware of any facts that explain why, among similarly situated individuals, that the Chancellor was allowed to attend the closed meeting while the others were excluded. Indeed, the Chancellor was not only allowed to attend, but was given the opportunity to address the Board on the findings of the investigation relative to her alleged conduct, while the others were not.

It is the position of this office that the Legislature and the law contemplated and intended that persons who are at risk of a public body taking administrative action against them have the fundamental right to confront the public body that is considering administrative action against them. Moreover, the Legislature and law certainly would not permit a public body to discriminate among similarly situated persons and allow only one of them to attend and be heard at a closed meeting of the public body where their conduct is subject to administration action.

For these reasons, and given the important nature and the public interest with regard to the issue of who is entitled to attend a closed meeting of this nature, this office will request a court of competent jurisdiction to declare whether the closed session provisions of the Open Meeting Law require that those considered during the closed session be permitted to attend the closed session.

8. Did the agenda, and actions taken at the November 17 and November 20, 2003 meetings comply with the Open Meeting Law?

As aforementioned, the agenda for the November 17 meeting provided, in pertinent part:

CLOSED SESSION

1. PERSONNEL SESSION INFORMATION

1.1 CLOSED SESSION

In compliance with NRS 241.030, a closed session will be held for purposes of discussion of the character, alleged misconduct, professional competence, or physical or mental health of certain executive employees of the UCCSN.

1.2 RETURN TO OPEN SESSION

The Board will return to open session.

2. PERSONNEL ACTIONS AND RELATED MATTERS ACTION

If deemed necessary by the Board of Regents, the Board may take

a number of possible actions in response to the information received by the Board, including possible personnel or disciplinary actions. The Board may also issue directives to certain executive officers and employees of the UCCSN in response to any alleged conduct and may also issue directives to UCCSN personnel relating to possible amendments to Board policies and the continuation of the investigation. In the event the Board of Regents determines that personnel or disciplinary actions should be initiated, in conformity with the UCCSN Code, Board of Regents' policies and the statutory and contractual rights of employees, such as actions may include: warning; reprimand; reduction in pay; suspension; termination; or reassignment. The Board of Regents may also make interim appointments and take any other action deemed appropriate.

As previously stated, in *Sandoval v. Board of Regents*, 119 Nev. Adv. Op. 19 (May 2, 2003) the Nevada Supreme Court clearly pronounced, when finding the Board in violation of the Open Meeting Law, that an agenda must be written to ensure that the public is on notice regarding what will be discussed at public meetings. This pronouncement is clearly relevant to the present case. NRS 241.020(2)(c) requires, at a minimum, that an agenda include a clear and complete statement of the topics scheduled to be *considered* during the meeting, and a list describing the items on which action may be taken and *clearly denoting* that action may be taken on those items.

While this Office recognizes that NRS 241.030(1) contemplates some degree of confidentiality, we have always opined that when the public body is going to take action concerning a person, the agenda must specify the name of the person; this is especially true when there is a strong legitimate public interest in the person(s), as in the case at hand.¹⁶ The actions taken and the topics considered by the Board at the November 17 and 20 meetings were of great public interest, as evidenced by subsequent press reports and public turnout at the December meeting of the Board of Regents, where reconsideration of their November decisions was on the agenda.

Section 2 of the agenda for the November 17 meeting did not include the names of the persons who might be subject to disciplinary or other action by the Board. At the very least, and consistent with the prior opinions of this office, those persons should have been named under Section 2 of the agenda. Accordingly, we find that failing to name Dr. Ronald Remington, Mr. Cummings, Assemblywoman Chris Giunchigliani, and Topazia "Brigit" Jones, all persons whom either action was taken or recommended to be taken, was a violation of NRS 241.030(1).

¹⁶ See NEVADA OPEN MEETING LAW MANUAL, §§ 9.06 and 9.07 (9th ed. 2001).

In addition, Section 1 of the agenda only noted that consideration would be made of "executive employees" of UCCSN. However, it is clear from this office's review of this matter that the character, alleged misconduct, and professional competence of persons other than "executive employees" of UCCSN was considered during the closed session. Accordingly, we find that the Board violated NRS 241.030(1) in this regard as well.

CONCLUSION

Based upon the foregoing violations, pursuant to NRS 241.036 and NRS 241.037, this Office will file an action against the Board of Regents seeking avoidance of the following actions taken by the Board at its November 17 and 20, 2003 meetings: (1) voting in closed session to allow Chancellor Nichols to participate in the closed session; (2) voting to remove Dr. Ronald Remington as President of CCSN immediately and to have Chancellor Nichols take action to return him to the proper academic department, and; (3) voting to direct the interim president or the Chancellor, to reassign John Cummings to the faculty at CCSN effective immediately, to prohibit him from serving in an administrative capacity at CCSN until a majority vote of the Regents changed the motion, to have the Board Chair select an independent special administrative code officer to review and evaluate the materials in the investigation with respect to Mr. Cummings, and at his/her discretion be empowered to commence a Chapter 6 termination procedure for a tenured faculty member and, if the procedure was begun under Chapter 6, to allow the Board Chair and Chancellor to appoint a committee pursuant to Chapter 6 if a permanent interim president or permanent president were not available at that time.

In addition, this office will seek declaratory relief that: (1) the Board violated the Open Meeting Law by deliberating and forming recommendations and a consensus on matters outside the scope of the closed session; (2) the Board violated the Open Meeting Law by considering, during closed session, the character, alleged misconduct, professional competence, or physical or mental health of elected officials, and of non-executive employees and others; (3) the Board violated the Open Meeting Law by not providing notice that administrative action might be taken against certain persons, and; (4) that the Board violated the agenda requirements of the Open Meeting Law with regard to both the closed and open session of the Board meetings. This office will also be seeking the court's declaration on whether the closed session provisions of the Open Meeting Law require that those considered during the closed session be permitted to attend the closed session.

Finally, consistent with prior actions against the Board, this office will seek an injunction requiring the Board to comply with the provisions of the Open Meeting Law, and prohibiting future violations of this nature.

By: _____
BRIAN SANDOVAL
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State of Nevada

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ANN WILKINSON
Assistant Attorney General

January 20, 2004

Ann Schrieber
Belva Perkins
Betty Burge
Jane Feldman
Hermi Hiatt
Art Dixon
c/o Post Office Box 118
Moapa, NV 89025

Re: Open Meeting Law Complaint
Clark County Multiple Species Habitat Conservation Plan
Implementation and Monitoring Committee
OMLO 2004-02/AG File No. 03-036

Dear Mss. Schreiber, Perkins, Burge, Feldman, Hiatt and Mr. Dixon:

This office has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law, NRS chapter 241. This office has received a complaint from you alleging that certain meetings from a group which you have termed the "permit partners" and other agency staff meetings should be held in compliance with the Open Meeting Law.

FACTS

The Clark County Board of County Commissioners (Board) formally established the Desert Conservation Program Implementation Monitoring Committee (IMC) to, among other things, make recommendations to the Board with respect to all Desert Conservation Program issues. The IMC is a public body subject to the Open Meeting Law. The IMC members include representatives of various public agencies, representatives from various private environmental and developer groups, and representatives of recreational groups.

Various governmental agencies are holders of a permit issued by the United States Fish and Wildlife Service pursuant to the provisions of the Endangered Species Act to authorize the taking of approximately 79 species located within Clark County. The permit holders are Clark County, the Nevada Department of Transportation, and the cities of Boulder City, Henderson, Las Vegas, Mesquite, and North Las Vegas (Permit Partners).

Staff of the Permit Partners periodically meet to discuss issues of common interest to the Permit Partners. This group was not formed through any formal action of the governing authorities of the Permit Partners or the IMC. Although you assert that the Permit Partners group was formed as a subgroup of IMC, the referenced minutes do not support this assertion. The staff of the Permit Partners meet as part of their duties for their public employers and represent the interests of their specific employers at these meetings. The staff of the Permit Partners meet on issues of common interest to their employers on issues which go beyond the issues considered by the IMC. Although some of the same staff members of governmental agencies who are members of the IMC also represent their employers at staff meetings of the Permit Partners, the Permit Partners do not meet as a subgroup of the IMC and do not meet to advise or make recommendations to the IMC. The employees of the Permit Partners meet to formulate recommendations to their individual employers and do not have any specific power or authority other than that which they have in connection with their job duties for their employers.

ANALYSIS

The Open Meeting Law only applies to public bodies. NRS 241.015(3) defines, in part, a public body as:

[A]ny administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof

The statute requires two elements in order for an entity to be considered a public body. First, it must be an "administrative, advisory, executive or legislative body of the state or a local government." This means that the entity must: (1) owe its existence to and have some relationship with a state or local government; (2) be organized to act in an administrative, advisory, executive or legislative capacity; and (3) must perform a government function. Op. Nev. Att'y Gen. No. 2002-19 (May 7, 2002). Second, it must

expend or disburse or be supported in whole or in part by tax revenue, or advise or make recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue. *Id.*

We have previously opined that a committee formed at the pleasure of the Commissioner of Insurance to address the requirements of a federal law was not a public body within the meaning of the Open Meeting Law. Op. Nev. Att’y Gen. No. 2002-08 (February 8, 2002). The committee consisted of staff of the Commissioner of Insurance and a deputy attorney general assigned to the Insurance Division. The committee acted in an advisory capacity to the Commissioner of Insurance. We opined that this committee was not a public body within the meaning of the Open Meeting Law because the committee did not expend or disburse tax revenue and it did not advise a multi-member entity that expends or disburses tax revenue. The fact that the members of the committee were receiving their governmental salary while engaged in committee business did not cause the committee to be an entity supported by tax revenue because the employees would receive their governmental salary whether engaged in the work of the committee or other business of their employer. *Id.*

Generally, the Open Meeting Law does not apply to internal staff groups or committees reporting to an individual. *Id.*; *National Park Medical Center v. Arkansas Department of Human Services*, 911 S.W.2d 250, 254 (Ark. 1995). Open meeting laws do not apply to the everyday dealings of public employees when they meet with each other and those outside of state government in the day-to-day conduct of state business. *KILA, Inc. v. State of Alaska, Department of Administration*, 876 P.2d 1102, 1109 (Alas. 1994). Open meeting laws do not apply to “employees who voluntarily, and in the interest of efficiency or ‘good staff work,’ meet together periodically in the performance of their duties, preliminarily to providing their recommendations.” *The People ex rel. Cooper v. Carlson*, 328 N.E.2d 675, 678 (Ill. App. 1975).

In *Cooper*, the court noted that there was no statute, ordinance or resolution, or other official action of the county board, or any of its committees, which designated or appointed the directors of five divisions of a county department as a public body or subsidiary body. The directors met periodically to provide more efficient service to the county board. *Id.* Under these circumstances, the court found their meetings were not subject to the open meeting law. The court stated that the open meeting law was not intended to apply to “voluntary meetings, conferences, or whatever they may be called, of department heads or employees who seek to improve with dispatch their performance or function of assisting in the conduct of the people’s business.” *Id.*

In *Salmon For All v. Department of Fisheries*, 821 P.2d 1211 (Wash. 1992), Salmon For All brought an action alleging that Washington’s open meeting law applied to negotiations by the Department of Fisheries with Oregon, federal, and tribal fisheries officials in the development of Columbia River salmon fishing regulations. The court

found that Washington's open meeting law did not apply to agencies governed by a single director and not possessing a multimember governing body. *Id.* at 1216. The court also found that Washington's open meeting law does not apply to meetings that state employees have with other jurisdictions to negotiate regarding regulations.

Negotiations of employees of a state agency involved with other jurisdictions do not constitute the 'governing body' of that agency even though the agency may ultimately, after evaluation by a director or a 'governing body', ratify or accept the results of the negotiations of its employees. The Director of Fisheries was not bound by the negotiations, although the effect was to defer to the recommendations. The Columbia River Compact does not compel acceptance of its recommendations. . . .

Id.

When opining on whether Alaska's open meeting law applies to interagency and intra agency meetings, the Alaska Attorney General stated as follows:

Ad hoc groups or task forces whose membership consists of nonspecific, interchangeable representatives of various state agencies or of state agencies and their counterparts from federal agencies, whose functions are vague and similarly nonspecific and change from meeting to meeting should not, therefore, be included within the coverage of the Open Meetings Act. It would be possible, of course, to establish (by law or by gubernatorial and secretarial directive) a formal, interagency or intergovernmental committee with a specific membership and vest it with specific powers and assign it certain functions to be acted upon by a vote of the committee's membership. If that is done, the law applies. But where the committee, task force, or group has no power to act by a vote of its members, has no fixed functions which constitute its business, and has no fixed membership to exercise its power by vote, then the Open Meetings Act, by its own terms, does not apply.

Op. Alas. Att'y Gen. (May 11, 1981).

In general, as can be seen from the authorities set forth above, staff meetings within an agency or interagency meetings of groups which have no independent legal authority, no independent budget, and no formal mission or purpose will not fall within

the definition of a public body if these groups, as a group, do not advise or make recommendations to a public body.

We have no evidence that any Clark County staff meetings constitute meetings of a public body such that the meetings must be conducted in accordance with the Open Meeting Law. In addition, we do not believe that the Permit Partners constitute a public body within the meaning of the Open Meeting Law. Meetings of the Permit Partners are simply meetings of employees of various governmental agencies to discuss areas of common interest. This group is not vested with any legal authority, is not a committee or subcommittee of any public body, and does not expend or disburse tax revenue. In addition, the group is not supported, in whole or in part, by tax revenue. The fact that the public employees who meet do so while earning their governmental salary does not mean that the group is supported, in whole or in part, by tax revenue. The employees would receive their governmental pay whether they were meeting with employees from other agencies or if they were engaged in other job duties for their employer.

CONCLUSION

We find that the meetings of staff members of the Permit Partners are not meetings of a public body subject to the Open Meeting Law. This finding is limited to the specific facts as set forth herein. Because we find no violation of the Open Meeting Law as alleged in the complaint, we are closing our file in this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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ANN WILKINSON
Assistant Attorney General

February 10, 2004

Louise T. Basanez
Board Secretary
Mountain City Visitor Center
Post Office Box 185
Mountain City, Nevada 89831

Re: Open Meeting Law Inquiry
Mountain City Visitor Center Board of Trustees
OMLO 2004-03/AG File No. 03-043

Dear Ms. Basanez:

You have inquired as to whether the Mountain City Visitor Center Board of Trustees (Board) is a public body subject to the Nevada Open Meeting Law, NRS chapter 241.

DISCUSSION

You have informed us that the Mountain City Visitor Center (Center) was formed as a result of the United States Forest Service (Forest Service) approaching community members in Mountain City regarding the use of office space. The Forest Service was scaling back the size of its staff and would only need to use a portion of the building that it leased. The Forest Service offered to assist community members to establish the Center through a federal grant if the grant were matched by in-kind donations of volunteer hours by the community members to staff the Center. The Forest Service also offered the use of a portion of the building. The functions of the volunteers would be to answer the phones, provide information about the area to visitors, and promote tourism in the Mountain City area. The grant application was funded and the Center opened in the Forest Service building in 2000.

The Center has sponsored an event, the "Good Ole Mountain City Days," which includes a parade, vendor booths, duck race, dinner, and dance. Some of the expenses for the event are reimbursed through the grant. Other expenses reimbursed

through the grant are for a dumpster, supplies for the Center, and flower barrels on the street. The Center received reimbursements for some of the expenses from Elko County, which in turn, gets reimbursement from the federal grant because apparently it is a requirement of the federal grant that it flow through a local government. The five-member Board consists of one local Forest Service employee and four community members who volunteer at the Center.

ANALYSIS

The Open Meeting Law only applies to public bodies. NRS 241.015(3) defines a public body as:

[A]ny administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof "Public body" does not include the legislature of the State of Nevada.

The statute requires two elements in order for an entity to be considered a public body. First, it must be an "administrative, advisory, executive or legislative body of the state or a local government." This means that the entity must (1) owe its existence to and have some relationship with a state or local government, (2) be organized to act in an administrative, advisory, executive, or legislative capacity, and (3) must perform a government function. OPEN MEETING LAW MANUAL, § 3.01 (9th ed. 2001), AG File No. 00-030 (April 12, 2001). Second, it must expend or disburse or be supported in whole or in part by tax revenue, advise or make recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue. *Id.*

This office has considered the application of the Open Meeting Law to the Economic Development Authority of Western Nevada (EDAWN). See OMLO 99-05 (January 20, 1999). In that opinion, this office found that the receipt of money from a public body does not by itself transform an entity into a public body. To hold otherwise would mean that every charity that receives grants, every government contractor that receives payment for services or products, and every trade group or common interest organization to which a government body belongs, would automatically become a public body under the Open Meeting Law. EDAWN was organized as a private nonprofit corporation. Its organizers were private citizens. There was no evidence that EDAWN was created by the order of or otherwise owed its existence to any state or local government body, and there was no evidence that EDAWN was organized to act in an administrative, advisory, executive, or legislative capacity. Therefore, this office's

Louise T. Basanez
February 10, 2004
Page 3

opinion was that EDAWN was not subject to the Open Meeting Law. *Id.*

This office also has considered the application of the Open Meeting Law to the Community Development Corporation (CDC) and the Eureka County Economic Development Council (ECEDC). AG File No. 00-030 (April 12, 2001). In that opinion, this office found that the CDC and the ECEDC were public bodies within the meaning of the Open Meeting Law because, among other reasons, each entity was formed by or at the direction of the county commission and its funding came directly from the county. *Id.*

CONCLUSION

In this case we believe the Board is similar to the EDAWN organization. Neither the Board nor the Center owes its existence to or has a relationship with state or local government beyond the receipt of flow-through federal grant money. Neither the Board nor the Center was organized under any governmental program, statute, or ordinance. Neither the Board nor the Center was formed by order of any governmental body to perform any administrative, executive, advisory, or legislative function for any government. The Board and the Center do not perform a function reserved to government. As in the opinion regarding EDAWN, we believe that the receipt of grant money from a public body does not transform the Center or its Board into a public body.

Based on the information that you have given this office, we are of the opinion that the Board is not a public body subject to the Open Meeting Law.

Sincere regards,

BRIAN SANDOVAL
Attorney General

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ANN WILKINSON
Assistant Attorney General

February 12, 2004

Louis Benezet
HC74 Box 150
Pioche, Nevada 89043

Re: Open Meeting Law Complaint
Joint City/County Impact Alleviation Committee
OMLO 2004-14/AG File No. 03-032

Dear Mr. Benezet:

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law, NRS chapter 241. We received a complaint from you alleging that the Joint City/County Impact Alleviation Committee (Committee) has failed to make minutes available for public inspection in violation of the Open Meeting Law. You complain that the Committee failed to make the minutes of the April 15, May 8, and June 26, 2003 meetings of the Committee available to the public.

DISCUSSION

The chairman of the Lincoln County Nuclear Oversight Program responded to the complaint by stating that he was unaware of any specific request for the minutes of the meetings. The chairman also stated that the Committee had staff turnover and that this turnover may have resulted in some delays of distribution of materials. The chairman provided this office with the minutes and also provided you with copies of the minutes.

ANALYSIS

NRS 241.035(2) provides, in part, that "[m]inutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken." The minutes of the June meeting were available within 30 working days, but it is unclear whether the minutes of the April and May meetings were available for public inspection within 30 working days after adjournment of those meetings.

Louis Benezet
February 12, 2004
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However, we note that if they were not, any delay was caused by a staffing vacancy and the Committee has promptly remedied any delay. By copy of this letter, we remind the Committee of the provisions of NRS 241.035(2).

In addition, the Open Meeting Law does not require the public body to furnish copies of the minutes upon request but rather this type of request would be covered by the Public Records Law, which is outside the scope of an Open Meeting Law complaint. However, we do note that the Committee furnished the requested minutes to you shortly after you filed this complaint.

CONCLUSION

We find that the minutes of the June Committee meeting were made available for public inspection in accordance with the Open Meeting Law. It is unclear whether or not the April and May minutes were available for public inspection in accordance with NRS 241.035(2), but if they were not, the Committee has remedied any delay. Therefore, we are closing our file on this matter.

We caution the Committee to strictly adhere to the requirements of the Open Meeting Law and that any alleged future violations will merit close scrutiny.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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Senior Deputy Attorney General
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TML:KDM:mas
cc: Kevin Phillips, Chairman
Lincoln Co. Nuclear Oversight Program



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ANN WILKINSON
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February 12, 2004

Jeanette Dahl
Executive Director
Lahontan Valley Environmental Alliance
446 West Williams Avenue
Fallon, Nevada 89406

Re: Open Meeting Law Complaint
Lahontan Valley Environmental Alliance/
Carson River Park Working Group
OMLO 2004-05/AG File No. 03-034

Dear Ms. Dahl:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction to investigate and prosecute complaints alleging violations of the Nevada Open Meeting Law, NRS chapter 241. This office received a complaint alleging that the Carson River Park Working Group (Working Group) of the Lahontan Valley Environmental Alliance has been holding meetings in violation of the Open Meeting Law by failing to properly notice its meetings.

DISCUSSION

The Lahontan Valley Environmental Alliance (LVEA) was created by an interlocal agreement between Churchill County, the City of Fallon, the City of Fernley, the Truckee-Carson Irrigation District, and the Lahontan and Stillwater Conservation Districts. It is our understanding that the LVEA makes recommendations to the Churchill County Board of County Commissioners. The LVEA created the Working Group for the purpose of receiving input from the public and various agencies. The Working Group does not have a fixed membership. The Working Group reports to and makes recommendations to the LVEA.

It is our understanding that the LVEA conducts its meetings in accordance with the Open Meeting Law. It is also our understanding that the Working Group held meetings in June and July 2003 without posting such meetings in accordance with the Open Meeting Law because staff of the LVEA was unaware that the Working Group may be subject to the Open Meeting Law. The Working Group was advised that it may be required to comply with the Open Meeting Law. The Working Group then posted its next meeting on August 21, 2003, in accordance with the Open Meeting Law. The Working Group has not held a meeting since August 21, 2003.

ANALYSIS

NRS 241.020(1) requires all meetings of "public bodies" to be open and public, unless otherwise provided by a specific statute. "Public body" is defined in NRS 241.015(3). It provides:

Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to any board, commission, *committee, subcommittee, or subsidiary thereof* and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. "Public body" does not include the legislature of the State of Nevada. [Emphasis added.]

CONCLUSION

Pursuant to NRS 241.015(3), the committees and subcommittees are public bodies in their own right and are subject to the Open Meeting Law. OMLO 98-03 (July 7, 1998), OMLO 98-04 (July 7, 1998). In this case the Working Group reports to and makes recommendations to a public body and thus may be considered a public body subject to the Open Meeting Law. Once this situation was brought to the attention of the LVEA staff, the Working Group voluntarily began to comply with the Open Meeting Law. Therefore, we believe that no further action is required in this matter and we are closing our file.

Jeanette Dahl
February 12, 2004
Page 3

However, we caution the Working Group to adhere to the requirements of the Open Meeting Law, and future violations will merit close scrutiny. We appreciate your cooperation.

Sincere regards,

BRIAN SANDOVAL
Attorney General

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KDM:mas
cc: Becky Bosshart
Lahontan Valley News



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February 18, 2004

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Mike Osborn
Executive Director
Nevada Classified School Employees
1135 Terminal Way, #100
Reno, Nevada 89502

Re: Open Meeting Law Complaint
Washoe County School District Board of Trustees
OMLO 2004-06/AG File No. 03-042

Dear Ms. Bangert and Messrs. Blanck and Osborn:

This office has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law, NRS chapter 241. This office has received three complaints alleging that the Washoe County School District Board of Trustees (Board) violated the Open Meeting Law when it considered and took action on an item at its September 30, 2003 and October 28, 2003 meetings. In addition, it is alleged that the Board violated the Open Meeting Law by not maintaining an accurate record of its September 30, 2003 meeting. There are also other allegations in the complaints that are beyond the scope of the Open Meeting Law, such as allegations of breach of fiduciary duty and failing to properly justify the Board's actions. We do not have jurisdiction under the Open Meeting Law to consider such allegations and therefore we will not address such allegations.

Sylvia Bangert
Herbert F. Blanck, Esq.
Mike Osborn
February 18, 2004
Page 2

FACTS

The Board held a meeting on September 30, 2003. The agenda for this meeting contained the following as an action item: "APPROVAL OF CONTRACT FOR OUTSIDE LEGAL SERVICES FOR THE WASHOE COUNTY SCHOOL DISTRICT Presenter: Jim Hager, Superintendent RECOMMENDATION: That the Board of Trustees approve the contract for legal services with Steve Peek and the law firm Hale, Lane, Peek, Dennison and Howard."

During this agenda item, it was moved and seconded to approve the contract for legal services. Discussion ensued whether the Board should approve a written contract that it had not yet seen. The motion was then amended to state "Board contract for legal services."

Prior to the September 30, 2003 meeting, the Board was threatened with litigation regarding a personnel issue. The Board met with a law firm, pursuant to NRS 241.015(2)(b)(2), in order to receive advice from that firm regarding the threatened litigation. That firm advised the Board regarding the hiring of the firm which was the subject of the September 30, 2003 agenda item.

At the Board's October 14, 2003 meeting, the Board's agenda included approval of the minutes from the September 30, 2003 meeting. The draft minutes reflected that the motion regarding the contract for outside legal services was for approval of the contract. During the October 14, 2003 meeting, a Board member requested that the draft minutes be amended to reflect the actual motion made, which was for the Board to contract for the legal services. Apparently, due to a clerical error, this change was not made to the minutes even though the Board approved that change.

The Board held a meeting on October 28, 2003. The agenda for this meeting contained the following action item:

APPROVAL OF CONTRACT FOR OUTSIDE LEGAL
SERVICES TO ASSIST THE WASHOE COUNTY SCHOOL
DISTRICT SUPERINTENDENT WITH PERSONNEL
MATTERS WHERE THERE IS A PERCEIVED OR REAL
INTERNAL OR EXTERNAL CONFLICT

Sylvia Bangert
Herbert F. Blanck, Esq.
Mike Osborn
February 18, 2004
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Recommendation: That the Board of Trustees approve the contract for legal services with Steven Peek and the law firm of Hale, Lane, Peek, Dennison and Howard to assist the Washoe County School District Superintendent with Personnel Matters where there is a perceived or real internal or external conflict.

During this agenda item, the Board president indicated that there were some changes to the proposed contract and detailed those changes. There was some discussion regarding the rates to be charged under the contract. The Board's in-house counsel, who was present at the meeting as the Board's legal counsel and a staff member, had some questions regarding the contract and had a dialogue with the Board president regarding those questions. The in-house counsel began asking questions of the Board president regarding the underlying facts and issues upon which the outside counsel would be advising the superintendent. The Board president indicated to counsel that it would not be appropriate to discuss such issues because of the Open Meeting Law.

After the in-house counsel was told that the matter would not be discussed further because of the Open Meeting Law, in-house counsel submitted a public comment card to the Board. The Board president asked counsel how he would like to handle that given that he was counsel to the Board. There was further dialogue between the president and counsel regarding his questions on the contract. Counsel then stated that he had one last comment. He made a final comment to which the Board president did not respond.

A motion was then made to approve the amended contract for legal services. When the president called for further discussion, counsel stated that he would like his three minutes to speak. The president told him to go ahead and speak. Counsel then attempted to venture into the underlying facts of a personnel issue. The president stated that the discussion was not appropriate at that time. Counsel asked the president if she was denying him his three minutes of public comment and she stated that she was. The Board then voted to approve the contract.

The first complaint received by this office alleges that the Board minutes for the September 30, 2003 meeting were altered by the Board at the October 14, 2003 meeting. This complaint also alleges that the agenda item for the September 30, 2003 meeting was ambiguous because the Board already has several attorneys. This complaint alleges that the Board must have discussed the contract outside of a public meeting because the Board members appeared to have more information than they were sharing.

Sylvia Bangert
Herbert F. Blanck, Esq.
Mike Osborn
February 18, 2004
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The second complaint alleges that the approval of the contract at the October 28, 2003 meeting, was done without any justification or explanation and that there was no agenda support material regarding this item.

The third complaint alleges that the agenda item for the October 28, 2003 meeting was confusing and failed to give the public notice of the item. This complaint also alleges that the Board must have met in closed session regarding the contract because there was no discussion by the Board of the need for the contract and the need for the contract was never explained. This complaint alleges that the in-house counsel, who did not submit the complaint, was denied a right to speak during public comment. The complaint alleges that the Board violated its fiduciary duty by approving the contract.

ANALYSIS

1. Notice Requirements

The Open Meeting Law requires that, except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. NRS 241.020(2)(c)(1). Items upon which action may be taken must be clearly denoted as action items. NRS 241.020(2)(c)(2). The purpose of the clear and complete standard is that the public will receive notice, in fact, of what is to be discussed by the public body.

We find that the agenda items in question for both the September 30, 2003 and the October 28, 2003 meetings were in compliance with the Open Meeting Law. The agenda items clearly alerted the public that the Board would be considering and acting upon a recommendation that the Board retain outside legal counsel. The Board did not stray from the topics as set forth on the agenda.

2. Minutes of the September 30, 2003 Meeting

NRS 241.035(1)(c) requires that Board to keep written minutes of each of its meetings including, among other things, the "substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote." The minutes of the September 30, 2003 meeting were presented to the Board, in draft form, for approval at its October 14, 2003 meeting. The Board, prior to approval of those minutes, noted some inaccuracies in the draft minutes. The Board member who made the motion concerning outside counsel at the

September 30, 2003 meeting asked that the minutes reflect the actual motion made. A review of the videotape of the September 30, 2003 meeting indicates that the draft minutes were not an accurate reflection of the motion made and the change requested and approved accurately reflected the action taken at the meeting. Therefore, we find no violation of the Open Meeting Law by this amendment to the minutes. However, we do note that the change as approved by the Board was inadvertently not made to the actual minutes. It is our understanding this issue will be remedied so that the written minutes are consistent with how they were approved by the Board.

3. Alleged closed meeting

Two of the complaints allege that the Board members must have discussed the contract for outside legal services in a closed or secret meeting because of the lack of discussion regarding the need for the contract at the meeting. In response to the complaint, you have indicated that the Board members did gather to discuss certain aspects of legal representation under the authority of NRS 241.015(2)(b)(2).

A meeting is defined in NRS 241.015(2) as follows:

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing

Sylvia Bangert
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litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

Prior to the September 30, 2003 meeting, the Board met with an attorney who had previously been retained by the Board to advise the Board regarding threatened litigation. We have been advised that this meeting was for the express purpose of receiving information from an attorney retained by the Board regarding threatened litigation on an issue over which the Board had supervision, control, and jurisdiction. Included in that meeting was the recommendation by counsel that the Board retain specialized counsel in the area of the threatened litigation. We have no evidence to suggest that this gathering went beyond the purpose allowable under NRS 241.0215(2)b)(2).

In addition, the Board did not take any action or commit to any course of action during that gathering, but rather reserved the issue for an open meeting of the Board for action. Therefore, we find no violation of the Open Meeting Law in this regard.

4. Agenda Support Material

NRS 241.020(5) provides as follows:

Upon any request, a public body shall provide, at no charge, at least one copy of:

. . . .

(c) Any other supporting material provided to the members of the body for an item on the agenda, except materials:

- (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement;
- (2) Pertaining to the closed portion of such a meeting of the public body; or
- (3) Declared confidential by law.

Confidential communications between legal counsel and the public body need not be released to the public as agenda support material. OPEN MEETING LAW MANUAL, § 6.06 (9th ed. 2001). In addition, the agenda support material need only be given upon request and must only be given upon request at the time that it is provided to members of the public body. *Id.*

In this case there was no agenda support material for the September 30, 2003 agenda item. This was made clear during the meeting when the Board members were concerned regarding the lack of a written contract. In addition, the agenda support

Sylvia Bangert
Herbert F. Blanck, Esq.
Mike Osborn
February 18, 2004
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material for the October 28, 2003 agenda item was not made available to the Board members at the time the agenda was posted. The agenda support material was not available to the Board members until just prior to the meeting. The material was then distributed at the Board meeting. Therefore, we find no violation of the Open Meeting Law in this regard.

5. Public Comment

The Open Meeting Law requires that each agenda include a “period devoted to comments by the general public, if any, and discussion of those comments.” NRS 241.020(2)(c)(3). Although not specifically required by the Open Meeting Law, it appears that the Board routinely allows public comment during the agenda items and during the public comment period section of the meeting. In this case it is alleged that counsel for the Board was not allowed public comment during an agenda item. This person was the only legal counsel for the Board present at the meeting. He was present as staff of the Board to advise the Board on legal issues.

During the agenda item in question, the Board president answered a number of questions raised by counsel and that counsel was afforded an opportunity to raise concerns that he had. The Board president was also apparently willing to allow counsel to continue his comments even after the comments were becoming argumentative. The Board president terminated the comments at a point when she believed that counsel was venturing into issues that were not appropriate for the Board to consider under the Open Meeting Law for that particular meeting.

We find that the Board did not violate the Open Meeting Law by terminating counsel’s comments. The Board did, in fact, hear a number of comments from counsel on this agenda item. In addition, we believe that a board may impose greater restrictions on members of its staff, who are in attendance at a Board meeting in their official capacities, than it may on members of the general public. See OMLO 99-12, n.10 (October 14, 1999) (noting that some rules regulating the content of public comment may be imposed such as precluding an applicant from speaking on the merits of his application or precluding a citizen who has sued the public body from speaking to the body on the merits of the action). Therefore, we believe that the Board had the right to limit the comments of its attorney during the meeting.

It is necessary for the Board to be able to control which topics staff brings before the Board. Although it is appropriate for members of the general public to bring issues, not on the agenda, to the Board during public comment,¹ if staff were allowed to also

¹ Although such issues brought up by the general public may be discussed, no action may be taken on such items until the item is specifically included on an agenda. NRS 241.020(2)(c)(3).

Sylvia Bangert
Herbert F. Blanck, Esq.
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bring such non-agendized issues to the Board, this would allow the Board, through its staff, to circumvent the notice requirements of the Open Meeting Law. We believe that the Board president acted appropriately in not allowing a member of the Board's staff to discuss the specific facts underlying the possible personnel issues for which outside counsel had been retained when those issues were not specifically set forth on the agenda. Otherwise, the public would not have been on notice that the Board would be considering such issues. Therefore, we find that the Board did not violate the Open Meeting Law by limiting the comments of its in-house legal counsel during the agenda item in question.

CONCLUSION

We find that the Board did not violate the Open Meeting Law as alleged in the complaints. Therefore, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
JONATHAN ANDREWS
Special Assistant Attorney General

TML:JA:mas
cc: C. Robert Cox, Esq.



BRIAN SANDOVAL
Attorney General

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ANN WILKINSON
Assistant Attorney General

February 20, 2004

John Witherow
Post Office 607, #29313
Carson City, Nevada 89702

Re: Open Meeting Law Complaint
Nevada Board of Parole Commissioners
OMLO 2004-07/AG File No. 03-035

Dear Mr. Witherow:

This office has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law. This office has received a complaint alleging, among other things, that the Nevada Board of Parole Commissioners (Board) failed to place you on a list to receive notice. We have received a response from the agency detailing the history of this dispute.

We note that you allege that you are in litigation with the Board and that the Board has failed to comply with the court's order regarding notice. We have no jurisdiction to enforce a court's order. In addition, we note that you have filed another action against the Board alleging the same Open Meeting Law violations as contained in your complaint to this office, and that the court has determined that no violations occurred. Therefore, your complaint on file with this office is moot, and we will be closing our file accordingly.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
KEITH D. MARCHER
Senior Deputy Attorney General
Civil Division
(775) 684-1201

KDM:mas
cc: Dorla Salling, Chairman
Board of Parole Commissioners



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ANN WILKINSON
Assistant Attorney General

February 20, 2004

Nick Nicosia
250-102 Jeanell Drive
Carson City, Nevada 89703

Re: Open Meeting Law Complaint
Virginia City Convention and Tourism Authority
OMLO 2004-08/AG File No. 03-046

Dear Mr. Nicosia:

This office has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law, NRS chapter 241. This office has received a complaint from you alleging that the Virginia City Convention & Tourism Authority (Authority) violated the Open Meeting Law in various respects when it conducted a search for an executive director. You have set forth concerns regarding the competency of the applicants and the interview questions asked of the applicants. However, these concerns are beyond the scope of the Open Meeting Law and will not be addressed in this letter. You have also alleged that you were not provided with certain materials which constituted agenda support materials, including resumes, applications, and score sheets.

We have received a response to your complaint from the Authority. The Authority states that you have now been given all agenda support materials which are required to be given to you pursuant to NRS 241.020(5), including resumes and other information that you requested. The Authority also stated that there were no score sheets that were used as agenda support material and therefore none were given to you. We believe that this action by the Authority resolves any complaint that you have regarding access to agenda support material. In addition, because you have not provided us with a specific request that you made to the Authority for the agenda support material, we are unable to determine whether the Authority violated the Open Meeting Law by failing to provide the material to you earlier. However, by copy of this letter, we are reminding the Authority of its duty under the Open Meeting Law to provide copies of agenda support material, as set forth in NRS 241.020(5), upon request.

Nick Nicosia
February 20, 2004
Page 2

If you have any further concerns regarding the Open Meeting Law, please feel free to contact this office.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
KEITH D. MARCHER
Senior Deputy Attorney General
Civil Division
(775) 684-1201

KDM:mas

cc: Bill Sjovangen, Executive Director
Virginia City Convention & Tourism Authority



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ANN WILKINSON
Assistant Attorney General

March 19, 2004

Ellen Kominsky
7065 West Ann Road, #130-521
Las Vegas, Nevada 89130

Re: Open Meeting Law Complaint
UNLV Rebel Yell Advisory Board
OMLO 2004-09/AG File No. 04-002

Dear Ms. Kominsky:

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law, under NRS chapter 241. We received a complaint from you alleging that the UNLV Rebel Yell Advisory Board violated Nevada's Open Meeting Law on November 24, 2003, by terminating your employment as the Interim Editor-in-Chief for the *Rebel Yell* newspaper. You specifically allege that you were not given notice of the meeting as required by NRS 241.033(1), and that the agenda concerning a possible action against you was not clear and complete as required by NRS 241.020(2)(c)(1). Because of the jurisdictional issue discussed herein, our review of this matter was limited to a legal analysis of NRS 241.038.

FACTS

Your letter alleges that in a meeting of the Rebel Yell Advisory Board, you were terminated as the interim editor-in-chief for the *Rebel Yell* newspaper on November 24, 2003. The *Rebel Yell* newspaper operates pursuant to the "Rebel Yell Bylaws and Rebel Yell Operating Policy" adopted by resolution of the Board of Regents of the University and Community College System of Nevada (UCCSN), and the "Articles of Incorporation Rebel Yell Student Newspaper" also adopted by the Board of Regents.

The *Rebel Yell* is the official newspaper of the University of Nevada, Las Vegas. Rebel Yell Bylaws, § I(A). The *Rebel Yell* is an independent organization that has been separated from the Student Government. Rebel Yell Bylaws, § I(B). However, the Board of Regents has retained ultimate responsibility for the *Rebel Yell*. Articles of

Incorporation, § I. The UCCSN manages the *Rebel Yell* through delegation of power to the University President, who in turn has delegated responsibility to the student editors of the newspaper. *Id.* The *Rebel Yell* newspaper is governed by the Rebel Yell Advisory Board. *Id.*

The Rebel Yell Advisory Board consists of five undergraduate students from the student government membership, one student government senator, two outside media professionals, one faculty staff member from the University News and Publications Office, and one faculty member from the Greenspun School of Communication. Articles of Incorporation, § II; see also Rebel Yell Bylaws, § II(A). The undergraduate members are elected by the student government each spring. *Id.* The student government senator is chosen by the student government senate. *Id.* The Rebel Yell Advisory Board also consists of three nonvoting members, the Rebel Yell editor-in-chief, the business manager, and a faculty advisor. Articles of Incorporation, § II.

The *Rebel Yell* newspaper receives a percentage of the student fees allocated to the student government. Articles of Incorporation, § III. The student government is vested with the authority to make amendments to the Articles of Incorporation with concurrence from the Rebel Yell Advisory Board. Articles of Incorporation, § VI. The Rebel Yell Advisory Board has the authority for selecting the editor-in-chief of the newspaper. Rebel Yell Bylaws, § II(E).

ANALYSIS

As a preliminary matter, this office must determine whether it has jurisdiction to investigate your complaint. NRS 241.038 states, "The Board of Regents of the University of Nevada shall establish for the student governments within the University and Community College System of Nevada requirements equivalent to those of this chapter and shall provide for their enforcement."

The Legislature has therefore mandated that UCCSN "student governments" operate under a system established by the UCCSN and enforced by UCCSN. NRS chapter 241 does not define the term "student governments" and our review of the legislative history of NRS 241.038 did not offer any guidance on the definition. We have been unable to locate any definition through case law or former Attorney General opinions.

This office has determined that it can take guidance on the issue of the definition of the term "student governments" from two sources. The first source is found in the Codification of Board Policy Statement, title 4, chapter 20, § B (Student Government), § 3(2) which states, "Student government" means each association of students within the University and Community College System of Nevada, which association's constitution has been approved by the Board of Regents of the University and Community College System of Nevada."

As previously stated, the UCCSN Board of Regents approved both the Rebel Yell Bylaws and the Rebel Yell Operating Policy. Such approval is consistent with the requirements as set forth in UCCSN's definition of a "student government."

NRS chapter 396 deals generally with the UCCSN. Additional guidance is found in NRS 396.547, which states:

1. The student body of each branch of the System may establish a student government. The student government shall adopt a set of bylaws which are subject to the approval of:
 - (a) A majority of the students who vote in an election held for that purpose; and
 - (b) The Board of Regents.
2. Such a student government to the extent of its authority set forth in the bylaws is self-governing and independent of the administration of the System, financially and otherwise.
3. The Board of Regents shall collect a fee from each undergraduate student at a branch of the System for the support of the student government of that branch upon:
 - (a) Receipt of a request by the student government for the imposition of such a fee; and
 - (b) Approval by the Board of Regents of the amount of the fee so requested.

We first note that NRS 396.547 is instructive only in that it does not specifically define the term "student government." A comparison between NRS 396.547 and the Rebel Yell Bylaws and its Articles of Incorporation is also helpful. The UCCSN Regents approved the Rebel Yell Bylaws and its Articles of Incorporation. See NRS 396.547(1)(b) (requires approval of bylaws by the UCCSN Regents). While the UCCSN maintains ultimate responsibility for the *Rebel Yell* newspaper, it operates as an independent organization. See NRS 396.547(2) (a student government is self-governing and independent of the administration of the system); Articles of Incorporation, § I (UCCSN Regents retain responsibility for the newspaper); Rebel Yell Bylaws, § I(B) (Rebel Yell is an independent organization).

In addition, a portion of student fees collected by the student government is forwarded to the *Rebel Yell*. See NRS 396.547(3) (discussing student fees to be collected to support student government); Articles of Incorporation, § III (Rebel Yell receives a portion of student fees). This office is also guided by the fact that the Rebel Yell Advisory Board consists in part of members of the student government. Articles of Incorporation, § II. With the guiding principles set forth in the opinion, we are persuaded that the Rebel Yell Advisory Board is a "student government" for purposes of NRS 241.038 and that jurisdiction for setting policies and enforcement is vested with the

Ellen Kominsky
March 19, 2004
Page 4

UCCSN Regents. This office is therefore without jurisdiction to investigate or to act upon your complaint. You may wish to review chapter VI of the University and Community College System Code to determine if you have any remedies through UCCSN.

CONCLUSION

Based upon our review and analysis of this matter, the Rebel Yell Advisory Board is part of UCCSN's student government, and this office is therefore without jurisdiction to investigate or act upon this matter pursuant to NRS 241.038.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
ROBERT J. BRYANT
Senior Deputy Attorney General
Civil Division
(774) 684-1205

RJB:mas
cc: Thomas J. Ray, General Counsel, UCCSN



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ANN WILKINSON
Assistant Attorney General

March 16, 2004

Gretchen Smolka
6375 West Charleston Boulevard
Las Vegas, Nevada 89146-1164

Re: University and Community College System of Nevada (UCCSN)
OML Complaint – OMLO 2004-10/AG File No. 04-018

Dear Ms. Smolka:

This office is in receipt of your Open Meeting Law complaint dated February 8, 2004, filed against the University and Community College System of Nevada ("UCCSN"). You allege that UCCSN failed to give you the notice required under NRS 241.033(1) during closed meetings held on November 17 and November 20, 2003. Upon review of the closed session minutes of the UCCSN meetings held on November 17 and November 20, 2003, it is the opinion of this office that your character, alleged misconduct, professional competence, or physical or mental health were not discussed within the meaning of NRS 241.033(1). We are therefore closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
ROBERT J. BRYANT
Senior Deputy Attorney General
(775) 684-1205

RJB/ld

1 informed the four Council members of his intent to purchase new signs with his personal
2 money to replace the old signs.

3 Our investigation has revealed that Mayor Armstrong was not calling the Council
4 members for permission or for a decision from the Council but rather was simply informing the
5 Council members of his personal decision out of respect for the Council members. Mayor
6 Armstrong stated that he would have gone forward with the purchase of the signs even if
7 some or all of the Council members had expressed disagreement with that course of action. It
8 appears that the Council members understood that Mayor Armstrong was not seeking the
9 approval of the Council.

10 The conversations were apparently short and essentially consisted of Mayor Armstrong
11 informing the Council members of his intent and the Council members expressing that they
12 each personally did not have a "problem" with that action. There is no evidence that Mayor
13 Armstrong told any member of the Council what another member of the Council had said
14 during each conversation.

15 Mayor Armstrong spoke to the fifth member of the Council after the new signs were
16 purchased. Mayor Armstrong asked this member of the Council if he had a problem with the
17 signs and this member said he did not and that he would have supported the decision.

18 **III.**

19 **CONCLUSIONS OF LAW**

20 The legislative power of the City of Sparks is vested in the City Council (Council) which
21 consists of five members. Sparks City Charter, § 2.010. The Mayor of Sparks (Mayor) acts
22 as the head of the government of the city for all purposes. Sparks City Charter, § 3.010(1)(b).
23 The Mayor presides over the meetings of the Council. Sparks City Charter § 3.010(1)(a).

24 Except as otherwise provided by specific statute, all meetings of public bodies must be
25 open to the public and the public must have been provided with proper notice of the meeting.
26 NRS 241.020. A meeting is defined in NRS 241.015(2) as follows:

- 27 2. "Meeting":
28 (a) Except as otherwise provided in paragraph (b), means:
(1) The gathering of members of a public body at which a quorum

1 is present to deliberate toward a decision or to take action on any
2 matter over which the public body has supervision, control,
jurisdiction or advisory power.

3 (2) Any series of gatherings of members of a public body at
4 which:

5 (I) Less than a quorum is present at any individual gathering;

6 (II) The members of the public body attending one or more of the
7 gatherings collectively constitute a quorum; and

8 (III) The series of gatherings was held with the specific intent to
9 avoid the provisions of this chapter.

10 (b) Does not include a gathering or series of gatherings of
11 members of a public body, as described in paragraph (a), at which
a quorum is actually or collectively present:

12 (1) Which occurs at a social function if the members do not
13 deliberate toward a decision or take action on any matter over
14 which the public body has supervision, control, jurisdiction or
15 advisory power.

16 (2) To receive information from the attorney employed or retained
17 by the public body regarding potential or existing litigation involving
18 a matter over which the public body has supervision, control,
19 jurisdiction or advisory power and to deliberate toward a decision
20 on the matter, or both.

21 When reviewing the subject of serial communications the Nevada Supreme Court has
22 stated that "absent serial communication of the discussions, there was no quorum and
23 therefore no deliberations in violation of the Open Meeting Law." *Dewey v. Redevelopment*
24 *Agency*, 119 Nev. Adv. Op. 9, 64 P.3d 1070 (2003).¹ The Court found that mere back-to-back
25 briefings, without more, did not constitute a collective quorum. The Court found that there was
26 not substantial evidence in the record showing that the public body met with staff for the
27 purpose of taking action, or collectively discussing, a matter of public business within the
28 control of the public body. *Id.*

29 A quorum of the Council consists of three members. Mayor Armstrong held individual
30 conversations with four of the five Council members prior to purchasing the signs and held a
31 similar conversation with the fifth Council member after the purchase. This office does not
32 believe that there is substantial evidence to support a conclusion that the conversations were
33 held with the specific intent to avoid the provisions of the Open Meeting Law. This conclusion
34 is based upon the fact that our investigation revealed that Mayor Armstrong had already
35 decided to take unilateral action to replace the signs at his own expense and was not seeking

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38 ¹ This decision was based on the law in effect prior to the changes to the definition of meeting in 2001.
However, the analysis is instructive on the subject of a constructive quorum.

1 approval of the Council members. Rather, Mayor Armstrong was informing the Council of his
2 decision as a courtesy.

3 Therefore, neither the Mayor nor the Council members believed that the Council was
4 collectively making a decision or deliberating towards a decision of the Council. Mayor
5 Armstrong was making a personal decision that he wished to share with each Council
6 member prior to it being in the news media. Mayor Armstrong intended to take the action
7 regardless of the response that he received from the Council members. This office has found
8 no evidence that suggests that there was any other intent behind the conversations.
9 Therefore, we find that the conversations were not held with the specific intent to avoid the
10 provisions of the Open Meeting Law and therefore the conversations did not constitute a
11 meeting within the meaning of NRS 241.015(2)(a).

12 This office has been informed by Senior Assistant City Attorney Thomas F. Riley that
13 the Council never discussed the issue set forth herein in a noticed and agendized meeting.
14 However, this office notes that pursuant to NRS 241.015(2) the Council arguably has
15 jurisdiction, control, jurisdiction, and/or advisory power relating to posting of signs on city right-
16 of-way and/or on public property within the City of Sparks. See, e.g., Sparks Municipal Code
17 § 20.56.070(D) (regulating posting of signs on public right-of-way or public property.) This
18 opinion is limited to the specific facts and circumstances set forth herein. While this office has
19 found no violation of the Open Meeting Law, this office cautions Mayor Armstrong that
20 contacting a quorum of Council members outside of a properly agendized and noticed
21 meeting on a matter that arguably falls within their supervision, control, jurisdiction, or advisory
22 power is rife with the potential for violations of the Open Meeting Law.

23 **IV.**

24 **CONCLUSION**

25 Based on our investigation of this matter, we conclude that the Council did not engage
26 in a private meeting in violation of the Open Meeting Law as alleged in the complaint.
27 Therefore, we are closing our file on this matter.

28 DATED this _____ day of April 2004.

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BRIAN SANDOVAL
Attorney General

By:

ROBERT J. BRYANT
Nevada State Bar # 5889
Office of the Attorney General
Senior Deputy Attorney General
100 North Carson Street
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(775) 684-1205

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of April 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

David Raatz
P.O. Box 3216
Wailuku, HI 96793-8216

Tony Armstrong
Mayor
City of Sparks
P.O. Box 857
Sparks, NV 89432

Thomas F. Riley
Senior Assistant City Attorney
P.O. Box 857
Sparks, NV 89432-0857

Michele Smaltz

1 their supervision, control, jurisdiction, or advisory power. See NRS 241.015(2)(a)(1) (defining
2 a “meeting” of a “public body” in part as a gathering of a quorum to deliberate toward a
3 decision or to take action on any matter within the supervision, control, jurisdiction, or advisory
4 power of the public body).¹

5 The December 5, 2003 meeting of the Task Force was therefore subject to the
6 provisions of the Open Meeting Law including, but not limited to, the notice requirements set
7 forth in NRS 241.020. The original agenda was posted on November 25, 2003, and as such
8 was posted in compliance with the three working day limit specified in NRS 241.020(3)(a). No
9 supplemental agenda was posted prior to 9:00 a.m. on December 2, 2003. While the
10 supplemental agenda was intended to modify the original agenda, it is legally still subject to
11 the posting requirements of NRS 241.020(3)(a).

12 The original agenda was timely posted; however, the supplemental agenda was not
13 timely posted therefore a legal issue arises as to whether the supplemental agenda
14 superceded the original agenda such that the Task Force could not have relied on the original
15 agenda to take action at its December 5, 2003 meeting. This office is of the opinion that,
16 under the specific facts and circumstances of this case, the Task Force had the legal authority
17 to rely on the original posting as it was posted in compliance with NRS 241.020(3)(a). The
18 supplemental agenda added only a new video location and clarified that agenda item number
19 five was an action item. In addition, both the original and supplemental agendas were posted
20 at the same locations. Under the facts and circumstances set forth herein, there are not
21 sufficient facts to opine that the supplemental agenda caused such confusion to the public that
22 it could be said to supercede the original agenda.

23 As previously stated, the supplemental agenda added an additional video location.
24 However, the original agenda specified a location where members of the public could attend
25 and provide public comment if they were so interested. The Open Meeting Law does not
26 require multiple locations for members of the public to attend. See NRS 241.020(2)(a) (the
27

28 ¹ UCCSN does not dispute that the Task Force is a public body subject to the requirements of the Open Meeting Law.

1 agenda must state the time, place, and location ["location" in the singular and not *locations*] of
2 the meeting). Nor does the Open Meeting Law require that every location where a member of
3 the public body is located be posted on the agenda. See, e.g., OPEN MEETING LAW MANUAL,
4 § 5.05 (9th ed. 2001) (opines that members of a public body may hold a meeting telephonically
5 so long as a location is provided for members of the public to listen and comment such as
6 through a speaker phone).

7 Based upon the legal analysis set forth herein, the Task Force could have relied on the
8 original agenda to conduct its meeting. The Task Force could not have relied on the
9 supplemental agenda since it was not timely posted as required by the Open Meeting Law.
10 However, this office further believes that under the facts and circumstances present, the Task
11 Force and its general counsel properly undertook the cautious approach by terminating the
12 subject meeting.

13 **IV.**

14 **CONCLUSION**

15 The Task Force was not in violation of the Open Meeting Law when it acted on an
16 agenda item at its December 5, 2003 meeting that was placed on the original agenda. Based
17 upon the conclusion set forth herein, this office will be closing its file on this matter.

18 DATED this _____ day of April 2004.

19 BRIAN SANDOVAL
20 Attorney General

21
22 By:

23 ROBERT J. BRYANT
24 Nevada State Bar # 5889
25 Office of the Attorney General
26 Senior Deputy Attorney General
27 100 North Carson Street
28 Carson City, Nevada 89701-4717
(775) 684-1205

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of April, 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Steve Sisolak
Regent
2959 Industrial Rd.
Las Vegas, NV 89109

Thomas Ray
General Counsel
University and College System of Nevada
2601 Enterprise Rd.
Reno, NV 89512

Michele Smaltz

1 10. FOLLOW-UP: SPECIAL CONTRACT REVIEW, CCSN
2 INFORMATION

3 Internal Audit Director Sandi Cardinal will present the follow-up
4 report of the CCSN Special Contract Review, July 1, 2002 through
5 August 31, 2003. (Ref. A-10)

6 The purpose of this agenda item was to further inform the Audit Committee about an
7 agenda item that was considered by the Audit Committee in a public meeting held on
8 December 11 and 12, 2003. During the December 11 and 12, 2003 meeting, the Audit
9 Committee considered agenda item number 16, which stated:

10 16. SPECIAL CONTRACT REVIEW, CCSN ACTION

11 Internal Audit Director Sandi Cardinal will present the report of the
12 CCSN Special Contract Review, July 1, 2002 through August 31,
13 2003. (Ref. A-16)

14 The agenda support material provided for the December 11 and 12, 2003 Audit
15 Committee meeting included a "Special Contract Review" of the Community College of
16 Southern Nevada (CCSN) for the period of July 1, 2002 through August 31, 2003 (the audit
17 report). The audit report alleged that CCSN failed to obtain the chancellor's signature prior to
18 terminating a contract, that a purchase order was issued before the contract was fully signed,
19 that contract amounts not be exceeded without contract amendments, and that general
20 counsel for UCCSN consider whether certain types of contracts fall outside of competitive
21 bidding requirements. Upon review of the relevant supporting documentation, it appears that
22 the contract that was terminated without approval from the chancellor involved a public
23 relations/advertising firm. It further appears from the supporting documentation that the
24 question to general counsel relating to competitive bidding requirements involved a separate
25 public relations/advertising firm.

26 With the factual history being stated, supplemental material for agenda item number 10
27 at the January 29, 2004 meeting of the Audit Committee involved a statistical comparison of
28 student enrollment during the time periods when the two public relations/advertising firms
29 were contractually employed by CCSN. This office reviewed the tapes for the January 29,
30 2004 meeting. Discussion during agenda item number 10 related generally to student

1 enrollment and issues relating to the apprenticeship program. A statement was made by a
2 regent that UCCSN had received money that it was not entitled to based upon the
3 apprenticeship program. However, no consideration occurred as to which specific person or
4 persons may have been responsible for such actions.

5 A point of order was made by Regent Linda Howard during the subject agenda item.
6 Regent Howard expressed a desire to discuss Dr. Ronald Remington and John Cummings.
7 Dr. Remington was the CCSN President during the period of the audit and John Cummings
8 worked, at least in part, in the area of public relations for CCSN. Chairman Douglas Hill
9 would not allow questions or commentary relating to Dr. Remington or John Cummings.

10 **III.**

11 **CONCLUSIONS OF LAW**

12 The Audit Committee advises the UCCSN Regents and is therefore subject to the
13 requirements of the Open Meeting Law. NRS 241.015(3) (definition of a "public body" for
14 Open Meeting Law purposes includes an entity which advises an entity subject to the law).
15 On January 29, 2004, a quorum of the Audit Committee held a meeting to discuss items within
16 their supervision, control, jurisdiction, or advisory power. See NRS 241.015(2)(a)(1) (defining
17 a "meeting" of a "public body" in part as a gathering of a quorum to deliberate toward a
18 decision or to take action on any matter within the supervision, control, jurisdiction or advisory
19 power of the public body).¹

20 The January 29, 2004 meeting of the Audit Committee was therefore subject to the
21 provisions of the Open Meeting Law including, but not limited to, the notice requirements set
22 forth in NRS 241.033. Regent Alden alleges that the two advertising firms should have been
23 noticed pursuant to NRS 241.033 based upon the information received and/or discussed by
24 the Audit Committee at the January 29, 2004 meeting. This office does not agree with that
25 assertion.

26 ///

27 _____
28 ¹ UCCSN does not dispute that the Audit Committee is a public body subject to the requirements of the
Open Meeting Law.

1 NRS 241.033(1) states in pertinent part that “[a] public body shall not hold a meeting to
2 consider the character, alleged misconduct, professional competence, or physical or mental
3 health of any person unless it has given written notice to that person”

4 We take this opportunity to opine that a business entity is not a “person” within the
5 meaning of NRS 241.033. The Nevada Revised Statutes define the term “person” in its
6 preliminary chapter as:

7
8 **NRS 0.039 “Person” defined.** Except as otherwise expressly
9 provided in a particular statute or required by the context, “person”
10 means a natural person, any form of business or social
11 organization and any other nongovernmental legal entity including,
12 but not limited to, a corporation, partnership, association, trust or
13 unincorporated organization. The term does not include a
14 government, governmental agency or political subdivision of a
15 government.

(Added to NRS by 1985, 499)

16 While the term “person” under NRS 0.039 includes business entities, this office does
17 not believe that the definition is dispositive as the context of NRS 241.033 requires a different
18 conclusion. An analysis conducted under the rules governing statutory construction indicate
19 that, for the purposes of NRS 241.033, the term “person” does not include business entities.
20 When construing a specific portion of a statute, the statute should be read as a whole giving
21 meaning to all of its parts. *Building Constr. Trades v. Public Works*, 108 Nev. 605, 610, 836
22 P.2d 633 (1992). Courts must look to the entire sentence in a statute and construe the
23 meaning as a whole. *State ex rel. State Gen. Obligation Bond Comm’n v. Koontz*, 84 Nev.
24 130, 138, 437 P.2d 72 (1968). No words in a statute should be rendered nugatory and no
25 words should be turned to mere surplage. *One 1978 Chevrolet Van v. County of Churchill*, 97
26 Nev. 510, 512, 634 P.2d 1208 (1981). In addition, a statute should be construed to avoid
27 absurd results. *Anthony Lee R. v. State*, 113 Nev. 1406, 1414, 952 P.2d 1 (1997).

28 With principles of statutory construction in mind, this office believes that the language
which is dispositive on this issue is the portion of NRS 241.033(1) which requires notice to a
“person” when their “physical or mental health” is at issue. It is axiomatic that a business
entity cannot have an issue relating to its physical or mental health. Looking at

1 NRS 241.033(1) as a whole, and reading every word and giving them all meaning, it would
2 amount to an absurd result to interpret the term “person” to include a business entity when the
3 requirements for noticing a “person” include issues relating to physical or mental health.²

4 Regent Alden also alleges that Dr. Remington and John Cummings should have
5 received notice under the Open Meeting Law because of “implied discussion” about those
6 individuals. This office has opined that it is proper, when considering whether notice should
7 have been given pursuant to NRS 241.033(1), to consider the context of the discussion. See
8 OMLO 2001-44 (September 18, 2001); OMLO 2003-18 (April 21, 2003). As the factual
9 findings indicate, the purpose of the agenda item was for the Audit Committee to receive
10 additional information relating to an internal audit that involved recommendations applicable to
11 CCSN as a whole. The general purpose was not to discuss the character or alleged
12 misconduct of either Dr. Remington or John Cummings, but rather to deal with overall policy
13 issues.

14 This office has additionally opined that it will consider what was actually discussed at a
15 meeting to determine whether notice should have been given pursuant to NRS 241.033(1).
16 See OMLO 2002-24 (May 28, 2003). The only references concerning Dr. Remington or John
17 Cummings came when Regent Howard indicated a desire to discuss them. However,
18 Chairman Hill would not allow such discussions. The Audit Committee was focused on
19 general policies and recommendations relating generally to that audit. In addition, the Audit
20 Committee did not consider, deliberate, think about seriously and carefully, or make
21 judgments about the character of either Dr. Remington or John Cummings. See *generally*
22 OMLO 2002-34 (August 2, 2002).

23 Based upon the facts and circumstances present in this complaint, this office will not
24 opine that there was “implied discussions” such that either Dr. Remington or John Cummings
25 were entitled to notice at the January 29, 2004 Audit Committee meeting. Instead, this office
26 will focus on the overall objective of what the Audit Committee was considering and whether

27 ² While this office does not believe that it is necessary to review the legislative history of
28 NRS 241.033(1), a review of that legislative history indicates that the Legislature was considering the term
“person” in the context of employees and individuals and not as business entities.

1 any specific discussion or consideration occurred such that the legal requirement to notice
2 either Dr. Remington or John Cummings arose during the subject meeting. Based upon our
3 review of this matter and the analysis set forth herein, neither Dr. Remington nor John
4 Cummings were required to be noticed pursuant to NRS 241.033(1) based upon agenda item
5 number 10 at the January 29, 2004 Audit Committee meeting.

6 **IV.**

7 **CONCLUSION**

8 The Audit Committee did not violate the Open Meeting Law by failing to notify two
9 business entities pursuant to NRS 241.033(1) as such notice is not required for business
10 entities but is only required for natural persons. The Audit Committee did not violate the Open
11 Meeting Law by failing to notify either Dr. Remington or John Cummings since no
12 consideration or discussion occurred that would have required notice pursuant to
13 NRS 241.033(1). Based upon the conclusion set forth herein, this office will be closing its file
14 on this matter.

15 DATED this _____ day of April 2004.

16 BRIAN SANDOVAL
17 Attorney General

18
19 By: _____
20 ROBERT J. BRYANT
21 Nevada State Bar # 5889
22 Office of the Attorney General
23 Senior Deputy Attorney General
24 100 North Carson Street
25 Carson City, Nevada 89701-4717
26 (775) 684-1205
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of April 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Mark Alden
Regent
University and Community College System of Nevada
9950 W. Cheyenne Avenue
Las Vegas, NV 89129-7700

Thomas J. Ray
General Counsel
University and Community College System of Nevada
2601 Enterprise Road
Reno, NV 89512

Michele Smaltz

1 **FISCAL IMPACT:** *Approval of this measure will allow expenditure*
2 *of the \$500,000 allocated for this purpose by the 2003 Legislature*
3 *(SB507).*

4 This office received as part of its review a document entitled “Board of Regents Briefing
5 Paper, Agenda Item Title: CCSN Public Safety Initiative.” A review of the briefing paper
6 indicates that staff of UCCSN was recommending that the UCCSN Regents release money
7 appropriated by the Legislature for the Community College of Southern Nevada (CCSN) for:

- 8 1. Replacing closed circuit television at the Cheyenne Campus.
- 9 2. Implementing new locking systems.
- 10 3. Upgrading campus lighting.
- 11 4. Installing emergency call box systems.

12 The briefing paper also sets forth the need of the security improvements because of
13 increased criminal incidents on campus, growth of staff and students on campus, and
14 because the Legislature specifically appropriated funds to resolve certain security issues.
15 During the subject agenda item, Regent Steve Sisolak made a “point of order. ” The point of
16 order made by Regent Sisolak was that the agenda item should not be discussed because the
17 required notice under the Open Meeting Law had not been given to Dr. Ronald Remington or
18 to John Cummings. Regent Sisolak referred to a preliminary injunction issued in a pending
19 litigation case between UCCSN and Dr. Remington and John Cummings requiring notice,
20 pursuant to NRS 241.033 and NRS 241.034, prior to discussion of the “Dr. Remington
21 presidency issue.” Dr. Remington is a former president of CCSN. Regent Sisolak also
22 alleged that this agenda item related to the demotion of Dr. Remington as CCSN president.
23 General Counsel Tom Ray advised the UCCSN Regents not to discuss either Dr. Remington
24 or John Cummings during the agenda item.

25 Regent Sisolak made a motion to table agenda item number 24 because he believed
26 that it could not be considered properly without discussion of Dr. Remington and/or John
27 Cummings. Upon a roll call vote of the UCCSN Regents, the motion to table agenda item
28 number 24 was defeated. Regent Howard Rosenberg also moved to table agenda item
 number 24. Upon a second roll call vote of the UCCSN Regents, the motion to table agenda

1 item number 24 was again defeated.

2 The agenda item proceeded into general discussion of various technologies necessary
3 to improve safety and security at CCSN. Discussion also occurred on the necessity for the
4 safety improvements and the procedures that would be followed in spending any money
5 approved for safety and security improvements. There was no discussion, but for the points
6 of order regarding lack of notice to Dr. Remington and John Cummings, relating to either
7 individual. The discussion and consideration of agenda item number 24 was kept to CCSN
8 safety and security measures.

9 **III.**

10 **CONCLUSIONS OF LAW**

11 The UCCSN Regents are subject to the Open Meeting Law as they are a "public body"
12 as that term is defined in NRS 241.015(3). The January 29 and 30, 2004 meetings of the
13 UCCSN Regents were therefore subject to the provisions of the Open Meeting Law including,
14 but not limited to, the notice requirements set forth in NRS 241.033.

15 Regent Alden alleges that Dr. Remington and John Cummings should have received
16 notice, pursuant to NRS 241.033, based upon the consideration of agenda item number 24 at
17 the subject meeting. This office opined recently in A.G. File No. 04-005 (April 19, 2004) that it
18 will consider the context of the overall discussion of an agenda item, and what was actually
19 discussed or considered during an agenda item in determining whether notice pursuant to
20 NRS 241.033(1) was legally required to be given to a person.

21 Both the description of agenda item number 24 and the discussion related thereto
22 focused on general policies and recommendations relating to security measures to be taken at
23 CCSN if the UCCSN Regents approved the release of legislatively appropriated funds. But
24 for the points of order, there was no discussion of either Dr. Remington or John Cummings.
25 Notice need not be given under NRS 241.033 merely because at a previous meeting the
26 same or similar factual issue may have been grounds for disciplinary or other administrative
27 action. What is important for the notice requirements of NRS 241.033, is the focus of the
28 meeting itself and whether any comments or discussions during the agenda item were of such

1 a nature that notice would be required under NRS 241.033. Based upon a careful review of
2 this matter, no notice was required under the Open Meeting Law to any person under agenda
3 item number 24.

4 **CONCLUSION**

5 The UCCSN Regents did not violate the Open Meeting Law by failing to notify any
6 person, pursuant to NRS 241.033(1), under agenda item number 24, as no notice was
7 required under the specific facts and circumstances of this case.

8 DATED this _____ day of April 2004.

9 BRIAN SANDOVAL
10 Attorney General

11 By:

12 _____
13 ROBERT J. BRYANT
14 Nevada State Bar # 5889
15 Office of the Attorney General
16 Senior Deputy Attorney General
17 100 North Carson Street
18 Carson City, Nevada 89701-4717
19 (775) 684-1205

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CERTIFICATE OF MAILING

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9950 W. Cheyenne Avenue
Las Vegas, NV 89129-7700

Thomas J. Ray
General Counsel
University and Community College System of Nevada
2601 Enterprise Road
Reno, NV 89512

Michele Smaltz



BRIAN SANDOVAL
Attorney General

STATE OF NEVADA
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100 N. Carson Street
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ANN WILKINSON
Assistant Attorney General

May 5, 2004

Richard Morrow
Post Office Box 7000
Carson City, Nevada 89702-7000

Re: Open Meeting Law Complaint
Nevada Department of Corrections Psychological Review Panel
OMLO 2004-15/AG File No. 04-026

Dear Mr. Morrow:

We are in receipt of your letter dated February 19, 2004, alleging that the Nevada Department of Corrections Psychological Review Panel violated Nevada's Open Meeting Law. This office opined in AG File No. 03-019, which is attached hereto for your review, that the Nevada Department of Corrections Psychological Review Panel is not subject to Nevada's Open Meeting Law because it is performing a judicial function. See NRS 241.030(3)(a) (the Open Meeting Law does not apply to judicial proceedings).

Since the hearings of the Psychological Review Panel are not subject to the Open Meeting Law, this office is without jurisdiction to investigate your complaint. Therefore, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
ROBERT J. BRYANT
Senior Deputy Attorney General
(775) 684-1205

RJB:mas
Encl.
cc: Dorothy Nash Holmes, Nevada Department of Corrections

1 Lastly, after being telephonically interviewed by this office, Ms. Ingemanson alleges that the
2 Board failed to properly notice its December 11, 2003 meeting.

3 This office has received a written statement from Steve Churchfield indicating that in
4 his discussions with Ms. Ingemanson concerning either an "orientation meeting" or
5 "organizational meeting," he was in fact referring to a noticed Board meeting held on
6 December 11, 2003. This office has received and reviewed the agenda, minutes, and audio
7 tape recordings from the December 11, 2003 Board meeting. A review of the agenda for the
8 Board's December 11, 2003 meeting lists certain agenda items relating to assessor appeals
9 including:

10 10. Discussion of the petition process for review of assessed
11 valuation. Explanation of Assessor's office processing of the
12 petitions and notification to the property owner of the time and date
13 of the appeal hearing.

14 11. Discussion, approval and direction to staff for process of
15 accepting and filing appeals to the Board of Equalization.

16 12. Discussion and approval of scheduling procedures for the
17 Washoe County Board of Equalization Hearings. Discussion of the
18 amount of time allotted to each appeal.

19 13. Setting calendar for Washoe County Board of Equalization
20 hearing dates, requirements for notifying the appellants and
21 publication of the board's hearing dates.

22 This office requested, through the District Attorney's Office, a statement from Chairman
23 Fox as to whether he had any contacts with Board members between the December 11, 2003
24 meeting and the January 7, 2004 Board meeting. The only contact with other Board members
25 that Chairman Fox had during the subject time period was with Board member Martha Allison
26 wherein she apologized for missing the December 11, 2003 meeting.

27 This office additionally requested, through the District Attorney's Office, proof of posting
28 of the agenda for the December 11, 2003 Board meeting. Notice was placed in the Reno
Gazette-Journal on December 4, 2003. The agenda lists six locations of posting. Facsimile
requests for posting were sent to four of the locations on December 2, 2003. An employee of
the Assessor's Office personally posted the agenda at the two remaining locations on
December 2, 2003. The District Attorney's Office has stated that the agenda was probably not
posted on the Board's website. However, the District Attorney's Office stated that the Board

1 does not maintain the website. According to the District Attorney's Office, the website which
2 previously hosted the Board's agendas was maintained by the Washoe County Assessor's
3 Office. The Board's agendas are currently being hosted on a website maintained by the
4 Washoe County Clerk's Office.

5 **III**

6 **CONCLUSIONS OF LAW**

7 The Board is subject to the Open Meeting Law as they are a "public body" as that term
8 is defined in NRS 241.015(3). Accordingly, the Board is required to comply with the
9 provisions of NRS 241.015(2)(a)(2) which defines a "meeting" of a public body as:

10 (2) Any series of gatherings of members of a public body at
11 which:

- 12 (I) Less than a quorum is present at any individual gathering;
- 13 (II) The members of the public body attending one or more of the
14 gatherings collectively constitute a quorum; and
- 15 (III) The series of gatherings was held with the specific intent to
16 avoid the provisions of this chapter.

17 There must be substantial evidence to support an allegation of serial communications.
18 See generally *Dewey v. Redevelopment Agency of Reno*, 119 Nev. Adv. Op. 9, 64 P.3d 1070
19 (March 14, 2003). Ms. Ingemanson has alleged that Chairman Fox appeared "carefully
20 advised" about assessor appeal consolidations at the January 7, 2004 Board meeting.
21 However, Chairman Fox has provided a written statement that he did not discuss
22 consolidation with any Board members between the Board meeting of December 11, 2003
23 and the January 7, 2004 Board meeting. There is no evidence, much less substantial
24 evidence, to support a conclusion that the Board engaged in serial communications in
25 violation of the Open Meeting Law between December 11, 2003 and January 7, 2004.

26 Ms. Ingemanson also alleges that the Board held an unnoticed meeting prior to their
27 January 7, 2004 Board meeting. She bases her allegation on a statement made by Steve
28 Churchfield of the Washoe County Assessor's Office that the Board held either an
"organizational" or "orientation" meeting. In fact, Mr. Churchfield has provided a written
statement to this office indicating that he was referring to the noticed December 11, 2003

1 Board meeting when discussing the issue with Ms. Ingemanson. As specified in the factual
2 findings, the December 11, 2003 meeting clearly had topics of interest for members of the
3 public interested in assessor appeal procedures. Therefore, there is no basis to support an
4 allegation that the Board held an unnoticed meeting under Nevada's Open Meeting Law in
5 December of 2003.

6 Ms. Ingemanson lastly alleges that the Board did not properly notice the December 11,
7 2003 meeting. NRS 241.020(3)(a) states that:

- 8 3. Minimum public notice is:
9 (a) Posting a copy of the notice at the principal office of the public
10 body or, if there is no principal office, at the building in which the
11 meeting is to be held, and at not less than three other separate,
prominent places within the jurisdiction of the public body not later
than 9 a.m. of the third working day before the meeting;

12 A review of the posting conducted by the Board indicates that on December 2, 2003,
13 the agenda was posted at six locations, including the location where the meeting was to be
14 held. Therefore, there is no evidence to support a conclusion that the Board violated the
15 posting requirements of NRS 241.020(3)(a).

16 However, the District Attorney's Office did state that the notice for the December 11,
17 2003 Board meeting was probably not posted on the Board's website. NRS 241.020(4)
18 states:

- 19 4. If a public body maintains a website on the Internet or its
20 successor, the public body shall post notice of each of its meetings
21 on its website unless the public body is unable to do so because of
22 technical problems relating to the operation or maintenance of its
23 website. Notice posted pursuant to this subsection is supplemental
24 to and is not a substitute for the minimum public notice required
25 pursuant to subsection 3. The inability of a public body to post
notice of a meeting pursuant to this subsection as a result of
technical problems with its website shall not be deemed to be a
violation of the provisions of this chapter.

26 Under the rules of statutory construction, no words in a statute should be rendered
27 nugatory and no words should be turned to mere surplusage. *One 1978 Chevrolet Van v.*
28 *County of Churchill*, 97 Nev. 510, 512, 634 P.2d 1208, 1209 (1981). Using statutory

1 construction principles for guidance, this office finds that the public body must actually
2 “maintain” the website. In this case the Board does not maintain the website, but has used
3 the websites of different governmental entities which have offered to assist with the posting.¹
4 The Board did not violate NRS 241.020(4) by failing to post the agenda for the December 11,
5 2003 meeting on a website because it does not maintain a website.

6 We would recommend that boards not maintaining their own websites place a
7 statement on their agenda to the effect that “This Board does not maintain the listed website
8 and therefore timely posting of agendas on the website under the Open Meeting Law cannot
9 be guaranteed.” In that way, the public will have notice that they should not fully rely on
10 website postings for that public body.

11 **IV.**
12 **CONCLUSION**

13 The Board did not engage in serial communications in violation of Nevada’s Open
14 Meeting Law prior to their January 7, 2004 meeting. The Board did not hold an unnoticed
15 meeting prior to their January 7, 2004 meeting. The Board complied with Nevada’s Open
16 Meeting Law with respect to their agenda postings for the December 11, 2003 Board meeting.
17 This office is closing its file on this matter.

18 DATED this _____ day of May 2004.

19 BRIAN SANDOVAL
20 Attorney General

21 By: _____
22 ROBERT J. BRYANT
23 Nevada State Bar # 5889
24 Office of the Attorney General
25 Senior Deputy Attorney General
26 100 North Carson Street
27 Carson City, Nevada 89701-4717
28 (775) 684-1205

¹ If the public body owns the website, even if an independent contractor actually creates or updates the website, this office will construe the public body to be maintaining the website for Open Meeting Law purposes.

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of May 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Leslie Admirand, Deputy District Attorney
Washoe County District Attorney's Office, Civil Division
75 Court Street
P.O. Box 30083
Reno, NV 89520-3083

Maryanne Ingemanson
1165 Vivian Lane
Incline Village, NV 89451

Suellen Fulstone, Esq.
Woodburn & Wedge
6100 Neil Road, Suite 500
Reno, Nevada 89511

Michele Smaltz

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:)

UNIVERSITY AND COMMUNITY COLLEGE)
SYSTEM, BOARD OF REGENTS)

Attorney General File No. 04-021
OMLO 2004-17

I.

INTRODUCTION

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law located in NRS chapter 241. We received a complaint from Thomas Mitchell by letter dated March 17, 2004, alleging that the University and Community College System (UCCSN), Board of Regents violated the Open Meeting Law by failing to provide support materials to the Las Vegas Review-Journal (LVRJ). Mr. Mitchell alleged that the support materials had been provided to the UCCSN Regents for a March 18, 2004 public meeting, the day prior to the meeting, but not to the public. Mr. Mitchell further alleged that UCCSN failed to properly notice an individual whose character, conduct, professional competence, or physical or mental health was to be discussed at the March 18, 2004, UCCSN Regents meeting.

II.

FINDINGS OF FACT

The UCCSN Regents noticed a meeting under the Open Meeting Law for March 18, 2004. By way of a supplemental agenda, the UCCSN Regents added agenda item number 45 as an action item to appoint a new men's basketball coach for the University of Nevada, Las Vegas. The agenda item read:

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1 the public when they are available); OMLO 98-01 (January 21, 1998) (support materials must
2 be available to the public when supplied to members of the public body).

3 Under the facts and circumstances present in this case, it is alleged that the UCCSN
4 Regents received the proposed contract during the morning and/or early afternoon of
5 March 17, 2004. An LVRJ article of March 18, 2004, indicates that the material was released
6 to the LVRJ by 5:30 p.m. on March 17, 2004. Accepting the allegations of the complaint as
7 true, both the UCCSN Regents and the LVRJ had the support material the day before the
8 scheduled meeting. Under these circumstances, the UCCSN did not violate the Open
9 Meeting Law in this regard.

10 The complaint additionally alleges that Mr. Kruger was not properly noticed of the
11 March 18, 2004 meeting as required by NRS 241.033 and NRS 241.034. NRS 241.033(1)
12 requires that a public body give special notice to a person when his character, alleged
13 misconduct, professional competence, or physical or mental health is going to be discussed at
14 a meeting.¹ NRS 241.034(1)(a) requires notice to individuals against whom administrative
15 action may be taken. The notice requirements set forth in NRS 241.033(1) and
16 NRS 241.034(1)(a) are for the benefit of the person whose character, alleged misconduct,
17 professional competence, or physical or mental health are to be considered by the public body
18 or against whom administrative action may be taken. This office has opined that the notice
19 requirements of NRS 241.033(1) may be waived either expressly or impliedly and further
20 believes that the notice required under NRS 241.034 may also be knowingly waived. See
21 NEVADA OPEN MEETING LAW MANUAL, §6.09 (9th ed. 2001). We have received a copy of the
22 waiver from UCCSN that evidences Mr. Kruger was informed of, and expressly and knowingly
23

24 ¹ NRS 241.033(1) reads as follows:

25 1. A public body shall not hold a meeting to consider the character, alleged misconduct,
26 professional competence, or physical or mental health of any person unless it has given written
notice to that person of the time and place of the meeting. Except as otherwise provided in
subsection 2, the written notice must be:

27 (a) Delivered personally to that person at least 5 working days before the meeting; or
(b) Sent by certified mail to the last known address of that person at least 21 working days before
the meeting.

28 A public body must receive proof of service of the notice required by this subsection before such a
meeting may be held.

1 waived, his right to the notice required pursuant to NRS 241.033 and NRS 241.034 on
2 March 15, 2004.

3 The notice requirements set forth herein are for the benefit of the person whose
4 character, alleged misconduct, professional competence, physical or mental health will be
5 considered by the public body and/or against whom administrative action may be taken. The
6 general public is given notice of meetings by other provisions of the Open Meeting Law.
7 Because Mr. Kruger expressly waived his notice rights under NRS 241.033(1), the UCCSN
8 did not violate the Open Meeting Law in this regard.

9 **IV.**

10 **CONCLUSION**

11 Our review of this matter indicates that the Las Vegas Review-Journal was provided
12 with the subject supplemental materials in a manner consistent with the requirements of the
13 Open Meeting Law. In addition, because Mr. Kruger expressly and knowingly waived his right
14 to the notice required by NRS 241.033(1) and NRS 241.034(1)(a), no violation of the Open
15 Meeting Law occurred.

16 DATED this _____ day of May 2004.

17 BRIAN SANDOVAL
18 Attorney General

19 By:

20 _____
21 ROBERT J. BRYANT
22 Nevada State Bar # 5889
23 Office of the Attorney General
24 Senior Deputy Attorney General
25 100 North Carson Street
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of May 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Thomas Mitchell
Editor
Las Vegas Review-Journal
Post Office Box 70
Las Vegas, NV 89125-0070

Thomas J. Ray
General Counsel
University and Community College System of Nevada
2601 Enterprise Road
Reno, NV 89512

Michele Smaltz

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III.

CONCLUSIONS OF LAW

The Legislature created the Board within the Nevada Department of Public Safety. NRS 213.108(1). The Board consists of seven members appointed by the Governor. NRS 213.108(2). The Board holds hearings, which must be open to the public, to determine whether inmates should be granted parole. NRS 213.130(3). The Board may deliberate in private after a public meeting to consider an inmate for parole. NRS 213.130(5).

This office recently opined that the Nevada Department of Corrections Psychological Review Panel was not subject to Nevada's Open Meeting Law to the extent that it was engaged in making certifications required prior to the release of an inmate on parole. AG File No. 03-019 (May 21, 2003). In that opinion, this office stated:

NRS 241.030(3)(a) provides that the Open Meeting Law does not apply to judicial proceedings. The sole function of the Panel is to make certifications before a prisoner may be released on parole. The Panel, like the Parole Board when it conducts parole hearings, acts as an arm of the sentencing court. *Sellers v. Proconier*, 641 F.2d 1295, 1302 n.15 (9th Cir. 1981), *cert. denied*, 454 U.S. 1102 (1982). Because the Panel functions as an arm of the judiciary, we believe that its proceedings are judicial proceedings within the meaning of NRS 241.030(3)(a) and thus are not subject to the requirements of the Open Meeting Law. Even though the Panel may fall within the definition of a public body, its hearings fall within the exemption for judicial proceedings because the Panel is an arm of the sentencing court.

Id.

Since the Psychological Review Panel is not subject to the Open Meeting Law because of its involvement in parole hearings, likewise the Board is not subject to the Open Meeting Law to the extent that it conducts parole hearings since it is acting as an arm of the judiciary (i.e. the sentencing court) and is therefore exempt from the requirements of the Open Meeting Law pursuant to NRS 241.030(3)(a). The Board must hold public parole hearings pursuant to NRS 213.130(3), but those hearings are not subject to the requirements of Nevada's Open

1 Meeting Law located in NRS chapter 241.¹

2 **IV.**

3 **CONCLUSION**

4 For the reasons stated herein, this office finds that the Board, when conducting parole
5 hearings, is not subject to the Open Meeting Law. Since the complaint filed by Mr. Morrow
6 relates specifically to a parole hearing, this office is without jurisdiction to further consider the
7 alleged violations of the Open Meeting Law set forth in his complaint. We are therefore
8 closing our file on this matter.

9 DATED this _____ day of May 2004.

10 BRIAN SANDOVAL
11 Attorney General

12 By:

13 _____
14 ROBERT J. BRYANT
15 Nevada State Bar # 5889
16 Office of the Attorney General
17 Senior Deputy Attorney General
18 100 North Carson Street
19 Carson City, Nevada 89701-4717
20 (775) 684-1205

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28 ¹ This opinion relates only to the applicability of Nevada's Open Meeting Law to the Board's parole
hearings and does not opine whether the other activities of the Board are subject to the law.

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of May 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Richard Morrow
Post Office Box 7000
Carson City, Nevada 89702-7000

By Interoffice Mail to:

Michael Soms
Deputy Attorney General
Nevada Attorney General's Office
Department of Motor Vehicles and Public Safety
555 Wright Way
Carson City, Nevada 89711

Michele Smaltz

1 STATE OF NEVADA
2 OFFICE OF THE ATTORNEY GENERAL
3 NEVADA DEPARTMENT OF JUSTICE
4

5 In the Matter of:

6 NORTH LAS VEGAS CITY COUNCIL
7 _____

)
) Attorney General File No. 03-037
) OMLO 2004-19
)

8 I.

9 INTRODUCTION

10 By letter dated September 17, 2003, Steve Jackson filed a complaint with this office
11 alleging violations of Nevada's Open Meeting Law located in NRS chapter 241. Mr. Jackson
12 generally alleges that the North Las Vegas City Council (Council) violated Nevada's Open
13 Meeting Law at its meeting of June 4, 2003, by failing to have a clear and complete agenda
14 relating to a zoning issue as required by NRS 241.020(2)(c)(1). This office has primary
15 jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law.

16 II.

17 FINDINGS OF FACT

18 Based upon our review of this matter, this office hereby makes Findings of Fact as
19 further set forth in this section. By letter dated September 17, 2003, Mr. Jackson alleges that
20 the Council failed to place on its agenda a clear and complete description of an agenda item
21 relating to a zoning issue. Specifically, Mr. Jackson complains about agenda items numbered
22 4 and 5, on the Council's June 4, 2003 agenda, which read as follows:

23 4. **AMP-11-03 (Craig and Simmons Commercial Center)**; an
24 application, submitted by MDL Group on behalf of the Matonovich
25 Family Trust, Kershaw Canyon, LLC, Thomas Lozzi and C.A.K.
26 Limited Partnership, and the Daniel S. Mosely Rev. Trust
27 Agreement 1996, property owners, for an amendment to the
28 Comprehensive Plan, land use element, to change the current
designation of Very Low Density Residential to Low Density
Residential and Neighborhood Commercial on property generally
located at the northwest corner of Coleman Street and San Miguel
Avenue.

(Associated Item No. 5, Ordinance No. 1795, ZN-17-03)

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5. Ordinance No. 1795; an ordinance related to zoning; amending Section 010 of Chapter 16 of Title 17 of the City of North Las Vegas Municipal Code by reclassifying a certain property therein from a Ranch Estates District to a Single Family Residential District and a Neighborhood Commercial District for property generally located at the northwest corner of Coleman Street and San Miguel Avenue (ZN-17-03, Craig Simmons Commercial Center) and providing for other matters properly relating thereto. **(Continued from May 21, 2003) (Associated Item No. 4, AMP-11-03)**

A review of the minutes from the June 4, 2003 (subject meeting) Council meeting indicates that the subject property consisted of approximately 40 acres. The subject property appears to have consisted of 6 parcels. At the subject meeting, the Council approved taking action to retain two parcels as Neighborhood Commercial zoning and four parcels as Professional Office zoning. As we understand Mr. Jackson's complaint, his assertion is that both agenda items fail to specify that the Council could approve the property, or any of its parcels, for "Professional Office" zoning, and that the Council therefore violated the Open Meeting Law by failing to provide such an option on its June 4, 2003 agenda.

Mr. Jackson further asserts that he never received a notice pursuant to NRS 278.260(4)(b). To the extent that this assertion can be read as an Open Meeting Law complaint, this office will also opine on this issue.

III.

CONCLUSIONS OF LAW

The Council is subject to the Open Meeting Law as they are a "public body" as that term is defined in NRS 241.015(3). Accordingly, the Council is required to comply with the provisions of NRS 241.020(2)(c)(1) which requires that an agenda be "[a] clear and complete statement of the topics scheduled to be considered during the meeting." In addition, NRS 241.010 clearly specifies the legislative intent that the actions of public bodies exist to aid in the people's business and that their actions must therefore be taken in the open. In *Sandoval v. Council of Regents*, 119 Adv. Op. ___, 67 P.3d 902, 906 (May 2, 2003), the Nevada Supreme Court stated in part that "Nevada's Open Meeting Law seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can

1 attend a meeting when an issue of interest will be discussed.”

2 The agenda items relating to the subject, place the public clearly on notice that there
3 were pending applications for a zoning change and that the zoning change would involve
4 commercial zoning. The agenda clearly gives the location of the subject land by specifying
5 cross-streets. The agenda description on its face is therefore in compliance with the clear and
6 complete requirements of NRS 241.020(2)(c)(1). In other words, a person interested in
7 attending to voice concerns over the commercial zoning of the subject property would have
8 been on notice to attend the June 4, 2003 Council meeting.

9 However, a legal issue arises because the Council approved four of the parcels as
10 Professional Office zoning when the agenda only specified the potential for Neighborhood
11 Commercial zoning. This office believes that the issue becomes whether the zoning approved
12 is less invasive to the community than the zoning specified on the agenda. In order to make
13 such a determination, it is necessary to compare Neighborhood Commercial zoning to
14 Professional Office zoning.

15 “Neighborhood commercial district (C-1)” is defined in the NORTH LAS VEGAS MUNICIPAL
16 CODE § 17.20.100. This type of zoning has a multitude of permitted uses including animal
17 hospitals, auto supply stores, book stores, lock and key shops, shoe stores, tailor stores, and
18 watch repair stores. See NORTH LAS VEGAS MUNICIPAL CODE § 17.20.100(B). The purpose of
19 Neighborhood Commercial zoning is to provide low-density businesses which are in harmony
20 with the residential neighborhood. This type of zoning is meant for arterial streets. See
21 NORTH LAS VEGAS MUNICIPAL CODE § 17.20.100(A). The maximum structure height is limited
22 to 35 feet. NORTH LAS VEGAS MUNICIPAL CODE § 17.20.100(F)(3). A review of section
23 17.20.100 did not show any building square footage size limitation.

24 “Professional office commercial district (C-P)” is defined in the NORTH LAS VEGAS
25 MUNICIPAL CODE § 17.20.090. The purpose of this type of zoning is to provide low density
26 businesses, such as professional offices, which are compatible with the adjacent residential
27 neighborhood and generates light vehicular traffic and minimal disruption to traffic flow.
28 NORTH LAS VEGAS MUNICIPAL CODE § 17.20.090(A). The principle permitted uses are for

1 professional office structures of not more than 3,000 square feet. NORTH LAS VEGAS
2 MUNICIPAL CODE § 17.20.090(A). The maximum structure height is limited to 28 feet. NORTH
3 LAS VEGAS MUNICIPAL CODE § 17.20.090(E)(3).

4 In contrasting the codes, it appears to this office as though the Professional Office
5 commercial zoning is arguably less intrusive upon the adjacent residential neighborhood than
6 Neighborhood commercial zoning. For example, Professional Office Commercial zoning has
7 a building square footage limitation, a 28-foot height limitation, and produces light traffic.
8 Whereas Neighborhood Commercial zoning appears to have no building square foot
9 limitation, a 35-foot height limitation, is meant for arterial streets, and has a multitude of
10 permitted uses.

11 In discussing this issue with the North Las Vegas City Attorney's Office, it is their
12 position that it is permissible under Nevada's Open Meeting Law to list the most invasive
13 zoning use upon the neighborhood and that the Council can approve any use that is less
14 invasive. In this case the neighbors were on notice that the Council would be discussing
15 commercial zoning for the subject property. Therefore, any interested neighbor or resident
16 could have attended the subject meeting. The fact that the Council opted for a less invasive
17 zoning than was specified on the agenda does not constitute an Open Meeting Law violation
18 under the specific facts and circumstances of this case because all interested persons could
19 have attended the meeting. Had the Council opted to approve a more invasive type of
20 commercial zoning, the conclusion reached in this opinion may have been different.

21 Mr. Jackson further asserts that he never received a notice pursuant to
22 NRS 278.260(4)(b). NRS 278.260(4)(b) requires that a notice be served upon certain
23 landowners prior to amendments of zoning districts. This office is without jurisdiction to
24 consider the issue as the notice specified in NRS 278.260(4)(b) is not required under the
25 Open Meeting Law. See *generally* AG File No. 00-032 (August 23, 2000) (wherein this office
26 opined that it did not have jurisdiction over allegations of violations of the Administrative
27 Procedures Act when a citizen alleged both violations of the Open Meeting Law and the
28 Administrative Procedures Act).

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IV.

CONCLUSION

The Council's agenda for items numbered 4 and 5 on its June 4, 2003 agenda was clear and complete, and its subsequent actions at the meeting relating to zoning were not in violation of the Open Meeting Law. This office is without jurisdiction to investigate the alleged failure to serve notices pursuant to NRS 278.260(4)(b), as such notices are not required under the Open Meeting Law.

DATED this _____ day of May 2004.

BRIAN SANDOVAL
Attorney General

By: _____
ROBERT J. BRYANT
Nevada State Bar # 5889
Office of the Attorney General
Senior Deputy Attorney General
100 North Carson Street
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of May 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Steve Jackson
4221 Seth Drive
North Las Vegas, Nevada 89032

Sean T. McGowan
North Las Vegas City Attorney
2200 Civic Center Drive
North Las Vegas, Nevada 89030

Michele Smaltz

1 Pursuant to Head Start's Articles of Incorporation, in the event that the non-profit
2 corporation is dissolved, all remaining assets will revert to the United States Department of
3 Health and Human Services, Administration for Children, Youth and Families. Under the
4 Revised Bylaws, the Board of Directors consists of seven members, with six members being
5 representative of the community and one member that may be a parent representative. There
6 is no requirement that a state or local governmental entity approve the membership of the
7 Board of Directors. None of the original incorporators were members of a state or local entity,
8 and none of the current members of the Board of Directors are members of a state or local
9 entity. Further, amendments to bylaws do not need to be approved by any state or local
10 entity.

11 Sources of Head Start funding, with at least some connection to a state or local
12 government, include, Child Care and Development Fund (CCDF) (less than 6 percent of
13 annual budget) and Head Start (HS) Funds. See 42 U.S.C. §§ 9858, *et seq.*, the Child Care
14 and Development Block Grant Act of 1990; see 42 U.S.C. §§ 9831, *et seq.*, the Head Start
15 Act. It is the understanding of this office that Head Start receives HS funds through a contract
16 with the Children's Cabinet. The Nevada Department of Human Resources is responsible for
17 administering the federal CCDF grants.

18 **III.**

19 **CONCLUSIONS OF LAW**

20 It must initially be determined whether or not Head Start is a "public body" as that term
21 is defined in NRS 241.015(3). If Head Start is a "public body" it is subject to the requirements
22 of Nevada's Open Meeting Law. If Head Start is not a "public body" then the requirements of
23 Nevada's Open Meeting Law would not apply to it.

24 NRS 241.015(3) defines a "public body" as:

25 3. Except as otherwise provided in this subsection, "public body"
26 means any administrative, advisory, executive or legislative body
27 of the State or a local government which expends or disburses or
28 is supported in whole or in part by tax revenue or which advises or
makes recommendations to any entity which expends or disburses
or is supported in whole or in part by tax revenue, including, but
not limited to, any board, commission, committee, subcommittee or

1 other subsidiary thereof and includes an educational foundation as
2 defined in subsection 3 of [NRS 388.750](#) and a university
3 foundation as defined in subsection 3 of [NRS 396.405](#). "Public
4 body" does not include the Legislature of the State of Nevada.

5 This office has given further guidance on the meaning of the term "public body" as
6 follows:

7 The statute requires two elements for being considered a public
8 body. First, it must be an "administrative, advisory, executive or
9 legislative body of the state or local government," which means
10 that the body must (1) owe its existence to and have some
11 relationship with a state or local government, (2) be organized to
12 act in an administrative, advisory, executive or legislative capacity,
13 and (3) must perform a governmental function. Second, it must
14 also expend or disburse or be supported in whole or in part by tax
15 revenue, or advise or make recommendations to any entity which
16 expends or disburses or is supported in whole or in part by tax
17 revenue. See *Nevada Open Meeting Law Manual, Eighth Edition*,
18 February 2000, § 3.01; see also OMLO 99-05 (January 12, 1999).

19 OMLO 2001-17 (April 12, 2001).

20 We note initially that this office has opined that the receipt of public money does not in
21 and of itself transform a private non-profit corporation into a public body. See *id.*, citing
22 OMLO 99-05 (January 12, 1999). In OMLO 2001-17, this office opined that a private non-
23 profit corporation was subject to the Open Meeting Law where:

- 24 1. It was formed at the direction of a county commission.
- 25 2. It was incorporated by two of the three county commissioners.
- 26 3. The directors of the non-profit corporation were selected by the county
27 commission.
- 28 4. The non-profit corporation granted loans to persons and the money for the loans
comes directly from the county.
5. The purpose of the loans was economic development of the county.

In the present case, although it appears Head Start was formed to receive federal
funding, none of the Head Start initial incorporators were members of state or local
governments. Further, no local or state government has authority to select the Head Start
Board of Directors. Also, bylaw amendments do not require the approval of state or local

1 entities. Lastly, in the event that Head Start is dissolved, any remaining assets will revert to
2 an agency of the federal government.

3 Head Start does receive CCDF grants that are administered by the Nevada
4 Department of Human Resources. However, the grant money is federal in nature. In addition,
5 the HS funds are federal in nature. In short, Head Start does not owe its existence to a state
6 or local government; rather, it clearly owes its existence to a federal law as it appears to have
7 been created to receive federal funding. This office therefore believes that Head Start is not a
8 "public body" as that term is defined in NRS 241.015(3), since it does not owe its existence to
9 a state or local law, and is therefore not subject to the requirements of Nevada's Open
10 Meeting Law. Because of the determination reached herein, it is unnecessary to determine
11 whether Head Start meets the other requirements of a "public body."

12 **IV.**

13 **CONCLUSION**

14 Head Start is not a "public body" as that term is defined in NRS 241.015(3), and this
15 office is therefore without jurisdiction to investigate or prosecute alleged violations of the Open
16 Meeting Law.

17 DATED this _____ day of May 2004.

18 BRIAN SANDOVAL
19 Attorney General

20
21 By:

22 ROBERT J. BRYANT
23 Nevada State Bar # 5889
24 Office of the Attorney General
25 Senior Deputy Attorney General
26 100 North Carson Street
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of May 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Maria Toledo
Head Start of Northeastern Nevada
1280 Golf Course Road
Elko, Nevada 89802

Nancy Bouge
P.O. Box 1675
Elko, Nevada 89803

Thomas J. Coyle, Jr., Esq.
P.O. Box 1358
Elko, Nevada 89803

Linda Deming

1 III.

2 **CONCLUSIONS OF LAW**

3 Nevada's Open Meeting Law, found in NRS chapter 241, was enacted to require public
4 bodies to take action and conduct deliberations openly. NRS 241.010 provides, "[i]n enacting
5 this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct
6 of the people's business. It is the intent of the law that their actions be taken openly and that
7 their deliberations be conducted openly." Accordingly, it is necessary to determine if the
8 Association is a "public body" as contemplated by Nevada's Open Meeting Law.

9 NRS 241.015(3) defines a "public body" as:

10 Except as otherwise provided in this subsection, "public body"
11 means any administrative, advisory, executive or legislative body of
12 the State or a local government which expends or disburses or is
13 supported in whole or in part by tax revenue or which advises or
14 makes recommendations to any entity which expends or disburses
15 or is supported in whole or in part by tax revenue, including, but not
16 limited to, any board, commission, committee, subcommittee or
17 other subsidiary thereof and includes an educational foundation as
18 defined in subsection 3 of NRS 388.750 and a university foundation
19 as defined in subsection 3 of NRS 396.405. "Public body" does not
20 include the Legislature of the State of Nevada.

21 This office has given further guidance on the meaning of the term "public body" as
22 follows:

23 The statute requires two elements for being considered a public
24 body. First, it must be an "administrative, advisory, executive or
25 legislative body of the state or local government," which means that
26 the body must (1) owe its existence to and have some relationship
27 with a state or a local government, (2) be organized to act in an
28 administrative, advisory, executive or legislative capacity, and
(3) must perform a governmental function. Second, it must also
expend or disburse or be supported in whole or in part by tax
revenue, or advise or make recommendations to any entity which
expends or disburses or is supported in whole or in part by tax
revenue. See *Nevada Open Meeting Law Manual, Eighth Edition*,
February 2000, § 3.01; see also OMLO 99-05 (January 12, 1999).

OMLO 2001-17 (April 12, 2001).

In the present case, the Association is not a body of the state or local government. In addition, the Association does not expend or disburse tax revenue nor is it supported by tax revenue. Accordingly, this office finds the Association is not a "public body" as defined by

1 Nevada's Open Meeting Law. However, the Open Meeting Law recognizes that other
2 "specific statutes" may govern. NRS 241.020(1) states in part, "[e]xcept as otherwise
3 provided by specific statute, all meetings of public bodies must be open and public"

4 Common-Interest Communities are governed by NRS chapter 116. NRS 116.31075
5 provides, "[i]n conducting any meetings, a rural agricultural residential common-interest
6 community must comply with the provisions set forth in chapter 241 of NRS concerning open
7 meetings which are generally applicable to public bodies." In other words, the Open Meeting
8 Law expressly applies to rural agricultural residential common-interest communities. The
9 Open Meeting Law is not applicable to any other common-interest community. In this case
10 the Association is not a rural agricultural residential common-interest community. Therefore,
11 this office finds the Association is not subject to the Open Meeting Law by specific statute.

12 **IV.**
13 **CONCLUSION**

14 The Association is not a "public body" as that term is defined in NRS 241.015(3).
15 Additionally, the Association is not subject to the Open Meeting Law by specific statute.
16 Therefore, this office is without jurisdiction to investigate or prosecute the alleged violations of
17 the Open Meeting Law.

18 DATED this _____ day of June, 2004.

19 BRIAN SANDOVAL
20 Attorney General

21 By: _____
22 JILL E. DRAKE
23 Nevada State Bar #8045
24 Deputy Attorney General
25 100 North Carson Street
26 Carson City, Nevada 89701-4717
27 (775) 684-1232
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of June, 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Victor Alan Perry, Esq.
Perry & Spann
1701 W. Charleston, Suite 200
Las Vegas, Nevada 89102

Angela K. Rock, Esq.
Santoro, Driggs, Walch, Kearney, Johnson & Thompson
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Pamela Young

1 February 6, 2004, by a hand-delivered letter to the Board's Chairman. The General Manager's
2 contract provided for three weeks' notice for him to terminate his contract.

3 On Saturday, February 7, 2004, at 3:00 p.m., on the advice of its private counsel, the
4 Board held an emergency meeting with four hours' notice posted at McAtee Building, Silver
5 Springs Senior Center, Silver Springs Mutual Water Company, the Silver Springs Post Office,
6 and the Silver Springs General Improvement District office where the meeting was held.

7 According to the Chief Deputy District Attorney for Lyon County, a Board member,
8 other than the Chairman, notified those who requested agendas; however, Ms. Johnson
9 stated that her husband, the General Manager who resigned, was notified by the Chairman
10 that there was an emergency meeting at 3:00 p.m. Her husband was not given a copy of the
11 agenda, not told where the meeting was, and was told not to attend. There was no evidence
12 that the General Manager went to the usual meeting place at the McAtee Building at 3:00 p.m.

13 The emergency agenda contained seven items; only two were noticed as non-action
14 items, which were, public comment and Board comments. The Board reviewed the agenda
15 and adopted it unanimously. During public comment, Lyon County Commissioner Bob Milz
16 and Ed James were there; both are from the Carson Water Subconservancy District and
17 offered assistance.

18 The third action by the Board was acceptance of General Manager's letter of
19 resignation. A Board member made a motion to accept the resignation with a note that the
20 General Manager breached his contract without working three weeks after resignation. The
21 motion passed unanimously.

22 It was discussed that somebody needed to be at the plant daily. The particular plant
23 design had an alarm system problem, which had to be investigated each time to determine if
24 the alarm was a false alarm or a true alarm. In addition, someone needed to be in the office.
25 An additional problem was that the office lease expired in one week. The General Manager
26 had arranged for the move, but his plans were not viable since he resigned effective
27 immediately.

28 The fourth action item was "Discussion and possible action to facilitate GID operations

1 to continue operation of plant and GID office to avoid any impairment of the health and safety
2 of the public. ([A]ction will be taken)." It was noted by Lyon County Commissioner Milz that
3 the Rolling A Treatment Plant has the same system and alarm difficulties. Commissioner Milz
4 offered the County's help at no additional charge other than taxes. Two friendly amendments
5 to the motion resulted in a: motion to have the Chairman appoint one Board member to keep
6 the plant operating, coordinating with SPB, Ed James, the County and one Board member to
7 keep the office running until such time that we can have a special meeting as soon as
8 possible and to change all the plant codes and locks. The motion carried 5-0.

9 The fifth action was "Discussion and possible action to immediately relocate office to
10 new location pursuant to Board action January 20, 2004. ([A]ction will be taken)." The move
11 was changed to the next day, February 8, 2004, since the lease expired in one week and the
12 manager was not available for the move. The move was scheduled for February 8, 2004.
13 Even though Board member Dick Power voted against the move on January 20, 2004, since it
14 was an emergency, the motion carried unanimously at this point.

15 The Board, under comment, planned a special meeting for February 17, 2004. The
16 audiotape ran out at this time. The written minutes indicate the Board adjourned the meeting.

17 **III.**

18 **CONCLUSIONS OF LAW**

19 Pursuant to NRS 241.020(2), except in an emergency, written notice of all meetings
20 must be given at least three working days before the meeting. NRS 241.020(7) defines an
21 emergency as: an unforeseen circumstance which requires immediate action and includes,
22 but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or
23 (b) Any impairment of the health and safety of the public.

24 This office has opined that an item cannot constitute an emergency unless it is truly
25 unforeseen and truly requires immediate action. See OMLO 2001-38 (August 20, 2001);
26 OMLO 2001-55 (December 7, 2002). Though it may have been foreseeable that the General
27 Manager would be leaving, it was unforeseeable that he would not abide by the contract and
28 serve the agreed upon three weeks. The resignation of the General Manager, which took

1 effect immediately, created an unforeseen emergency. The Board needed to immediately
2 provide for the day-to-day plant operation for the health and welfare of the residents of the
3 Silver Springs General Improvement District until another manager could be hired on a
4 permanent basis. Each of the five items on which the Board acted upon, required immediate
5 action and was a response to an unforeseen emergency. A special meeting was scheduled
6 as soon as possible.

7 **IV.**

8 **CONCLUSION**

9 The Board correctly held an emergency meeting based on an unforeseen event that
10 required immediate action for the health and welfare of the residents who elected the Board.
11 Under these unique circumstances, the Board did not violate the Open Meeting Law.

12 DATED this _____ day of June, 2004.

13 BRIAN SANDOVAL
14 Attorney General

15 By: _____
16 JANET P. HESS
17 Nevada State Bar #3435
18 Deputy Attorney General
19 100 North Carson Street
20 Carson City, Nevada 89701-4717
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CERTIFICATE OF MAILING

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this _____ day of June, 2004, I served a true and correct copy of the foregoing Findings of Fact and Conclusions of Law on the following parties via first class mail, postage prepaid:

VIRGINIA JOHNSON
3701 ELM STREET
SILVER SPRINGS NV 899429

CHARMAN JOHN CHIAPPONE
SILVER SPRINGS GENERAL IMPROVEMENT DISTRICT
PO BOX 947
SILVER SPRINGS NV 89429

STEPHEN B RYE
CHIEF DEPUTY DISTRICT ATTORNEY
LYON COUNTY DISTRICT ATTORNEY'S OFFICE
31 SOUTH MAIN STREET
YERINGTON NV 89447

An Employee of the Office of the Attorney General

1 time for public comment and a time for discussion of public comment, if any. No action may
2 be taken on the matters raised during public comment. Written minutes of each meeting must
3 be kept as required by NRS 241.035.

4 **II.**

5 **FINDINGS OF FACT**

6 In a response to an inquiry from this office, the Chairman of the District, John Moddrell,
7 admitted in a letter that the District had not followed the Open Meeting Law because it failed to
8 post an agenda notifying the community that action would be taken on the District's upcoming
9 budget. He characterized the omission as inadvertent. He further stated that he called a
10 meeting of the three active Board members (the Board is authorized for five members, but
11 only three are filled) to consider the next year's budget; but due to the tight time for
12 submission to the County, he did not post an agenda or follow the Open Meeting Law. He
13 stated he could not contact Mr. Hartley (the complainant), one of the three active Board
14 members, before the meeting. Mr. Hartley did not know of the meeting on March 12, 2004,
15 thus he did not have an opportunity to discuss or vote on it. Mr. Hartley learned on March 15,
16 2004, that the budget had been sent to the County Comptroller's office with two board
17 signatures. Mr. Moddrell also confirmed that there were no minutes of the meeting.

18 Mr. Moddrell, on advice from this office, following Mr. Hartley's complaint, prepared an
19 amended agenda and re-noticed the meeting for action on the 2004—2005 budgets, among
20 other items. That meeting was held on April 1, 2004. The complainant, Mr. Dale Hartley,
21 acknowledged that the meeting took place on April 1, 2004. He was present and he voted to
22 affirm the 2004—2005 budget. Mr. Hartley was also designated by the Chairman to keep
23 minutes of the meeting.

24 In the past, Mr. Hartley has requested documents including minutes from prior
25 meetings, from the secretary for the Board, who either could not produce them or would not
26 produce them. Mr. Hartley also stated in his complaint he believed the Board has held secret
27 meetings. By admission, at least one meeting was held without notice to Mr. Hartley, although
28 Mr. Moddrell stated that he attempted to contact Mr. Hartley at the time the budget was due to

1 the County. Whether this constitutes a “secret” meeting is not clear.

2 **III.**

3 **CONCLUSIONS OF LAW**

4 The District violated the Open Meeting Law by failing to notice and post an agenda of a
5 Board meeting at least three working days before the meeting. The Board failed to take
6 minutes of the meeting. Finally, there is not sufficient evidence to accept or deny the
7 allegation that the Board has conducted secrets.

8 **IV.**

9 **CONCLUSION**

10 Board Chairman, Mr. John Moddrell, had been cooperative and has expressed his
11 commitment to adhere to the Open Meeting Law in the future. This violation of the Open
12 Meeting Law for failure to notice an post and agenda for an important matter; i.e., the next
13 yearly budget, is a serious one, especially for failure to contact the third member of the Board.
14 The Chairman has successfully rectified that violation by re-noticing the meeting and the
15 Board complied with the Open Meeting Law in all respects at that meeting. Mr. Moddrell gave
16 his assurances in conversations with this office that the Board will adhere to and comply with
17 the Open Meeting Law in the future. He also gave assurances that the Board will keep
18 minutes in compliance with NRS 241.035.

19 Furthermore, the Board is formally notified and admonished that secret meetings are
20 violations of the Open Meeting Law and that serial gatherings of less than a quorum are a
21 violation where they were intended to circumvent the requirements of the Open Meeting Law
22 by deliberating towards a decision or take action over any matter over which the public body
23 has jurisdiction and control.

24 Minutes or audiotapes of a public meeting are public records and must be made
25 available for inspection by the public within 30 working days after adjournment of the meeting.
26 Minutes must be retained for five years. Audiotape recordings of the meeting must be
27 retained for one year. NRS 241.035.

28 The McDermitt Sewer District’s Board of Directors is admonished that their actions

1 have violated the Open Meeting Law. Actions taken in violation of the Open Meeting Law are
2 void. NRS 241.036. Future violations will result in harsher sanctions as authorized by the
3 statute.

4 Based upon the admissions of the Board, we conclude that an admonishment and
5 warning against further violations in the future is appropriate. However, further violations will
6 result in harsher sanctions as authorized by the statute. No further action by this office will be
7 taken at this time.

8 DATED this 22nd day of June 2004.

9 BRIAN SANDOVAL
10 Attorney General

11 By: _____
12 GEORGE H. TAYLOR
13 Nevada State Bar # 3615
14 Office of the Attorney General
15 Senior Deputy Attorney General
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 22nd day of June 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Dale Hartley
Post Office Box 462
McDermitt, Nevada 89421

John R. Moddrell
Chairman
McDermitt Sewer Board
Post Office Box 36
McDermitt, Nevada 89421

Linda Deming

1 requirement of installation of safety equipment in all taxicabs in Clark County.” Page 3 of the
2 Notice indicated all of the locations where the Notice was posted on January 7, 2004. As the
3 meeting pertained to the adoption of regulations, the Notice complied with the requirements of
4 NRS 233B.060 of the Administrative Procedures Act. The Notice did not reflect a separate
5 agenda item for general comments from the public.

6 During that hearing, various members of the public commented on the proposed
7 regulation. Additionally, members of the public discussed a variety of safety options, such as
8 “call police” signs, GPS systems, and a “Don’t Even Try” program. Members of law
9 enforcement made remarks, as did members with labor concerns. Green lights on top of cabs
10 were discussed, as were driver surveys. Reference was also made to a child kidnapping in
11 Florida, safety shields, auto door locks, a stolen survey box, and privacy issues. Comments
12 were elicited from those in attendance several times.

13 After hearing comments from the public and those of its staff, the Taxicab Authority
14 discussed the matter and decided that more information was needed thereon. Consequently,
15 a Taxicab Authority member made a motion to “not adopt the regulations;” to conduct a study
16 to obtain additional information, as the agency did not have sufficient information to require
17 the installation of cameras in the taxicabs; and to place cameras in a percentage of the cabs
18 per company for one year. That motion passed on a 4 to 1 vote.

19 Taxicab Authority staff informed the Taxicab Authority members that the staff would be
20 unable to perform said study due to lack of financial resources. However, a private individual
21 offered to pay for the study. There was a vote to amend the motion to request the individual
22 to pay for the study and that concurrent with the study that some of the taxicab owners install
23 cameras on a number of taxicabs in order for the University of Nevada Las Vegas to study the
24 effects of the cameras for a period of one year. The motion passed on a 4 to 1 vote.

25 **III.**

26 **CONCLUSIONS OF LAW**

27 Except as otherwise provided by specific statute, all meetings of public bodies must be
28 open to the public, and the public must have been provided with proper notice of the meeting.

1 NRS 241.020(1). Written notice of such meetings must be in writing and include:

- 2 (a) The time, place and location of the meeting.
3 (b) A list of the locations where the notice has been posted.
4 (c) An agenda consisting of:
5 (1) A clear and complete statement of *the topics scheduled to be*
6 *considered* during the meeting.
7 (2) A list describing the items on which action may be taken and
8 clearly denoting that action may be taken on those items.
9 (3) A period devoted to comments by the general public, if any,
10 and discussion of those comments. No action may be taken upon
11 a matter raised under this item of the agenda, until the matter itself
12 has been specifically included on an agenda as an item upon
13 which action may be taken pursuant to subparagraph (2).

9 NRS 241.020(2) (emphasis added).

10 The Notice listed the locations where the Notice was posted on page 3; therefore, the
11 Taxicab Authority did not violate NRS 241.020(1)(b). While the Taxicab Authority properly
12 noticed its intent to adopt proposed regulations pursuant to NRS 233B.060, the Administrative
13 Procedures Act (APA), the Taxicab Authority violated the Open Meeting Law by failing to
14 separately agendize a time for general public comment, as required by NRS 241.020(2)(c)(3).
15 Despite this failure, the record clearly reflects that all those who wished to make comment
16 were provided with an opportunity to do so. In the future, the Taxicab Authority is admonished
17 to agendize a separate time for general comments, in accordance with NRS 241.020(2)(c)(3).

18 Mr. Nilsson argues that the Taxicab Authority violated provisions of the APA.
19 Mr. Nilsson mixes allegations regarding the APA with allegations regarding the Open Meeting
20 Law. These two chapters are mutually exclusive. Thus, alleged APA violations cannot be
21 equated with Open Meeting Law violations. The remedies for violations of the APA may be
22 found in NRS 233B.100 and NRS 233B.110, which include petitioning the agency for relief
23 and/or seeking a declaratory judgment in state district court.

24 **IV.**

25 **CONCLUSION**

26 Based on our investigation of this matter, we conclude that the Taxicab Authority
27 violated the Open Meeting Law by failing to notice a separate agenda item for public
28 participation. The Taxicab Authority is admonished to include a separate agenda item for

1 public participation on its agenda in the future. However, since the Taxicab Authority did
2 accept public comment and did not adopt the proposed regulation, there is no action to be
3 rescinded.

4 DATED this _____ day of August 2004.

5 BRIAN SANDOVAL
6 Attorney General

7
8 By:

9 ELIZABETH M. QUILLIN
10 Nevada State Bar # 6098
11 Chief Deputy Attorney General
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of August 2004, I mailed a copy of the attached Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Sven J. Nilsson
4458 Crystal Peak Drive
Las Vegas, Nevada 89115-2777

Yvette G. Moore, Administrator
Taxicab Authority
1785 East Sahara Avenue, Suite 200
Las Vegas, Nevada 89104

An Employee of the Office of
the Attorney General



BRIAN SANDOVAL
Attorney General

STATE OF NEVADA
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ANN WILKINSON
Assistant Attorney General

June 29, 2004

Honorable J. Michael Memeo
District Judge
Fourth Judicial District Court
Department One
Elko County Courthouse
571 Idaho Street
Elko, Nevada 89801

Dear Judge Memeo:

You have requested an opinion from this office regarding whether the Open Meeting Law applies to a juvenile probation committee appointed under NRS 62G.020. Your request extends to the applicability of the Open Meeting Law to a juvenile probation committee fulfilling the full responsibilities included in the statutory description. This opinion will analyze the powers and duties of a probation committee pursuant to NRS 62G.010—NRS 62G.070 and discuss an exception to the Open Meeting Law in relation to judicial proceedings and quasi-judicial functions in the context of Nevada case law.

QUESTION

Do the requirements of the Open Meeting Law apply to a probation committee created by the Juvenile Court pursuant to NRS 62G.020?

ANALYSIS

NRS 62G.010 describes the application of NRS 62G.010—NRS 62G.070 to judicial districts that include a county with a population of less than 100,000.

NRS 62G.020 requires that the Juvenile Court “shall”¹ appoint the probation committee. NRS 62G.030(1) utilizing presumptively mandatory language (shall) defines the powers of the probation committee and the duties that the probation committee is required to perform.

The probation committee must advise the Juvenile Court, investigate certain matters pursuant to a request of the Juvenile Court, prepare an annual report to be filed with the Juvenile Court (which becomes a public document), and make various recommendations to the Juvenile Court. These include the appointment of employees that the probation committee deems necessary for the operation and management of the probation department and each local facility for the detention of children and the establishment of policies, procedures and standards for the proper performance of the duties and responsibilities of probation officers, the employees of the probation department, and the employees of each local facility for the detention of children.

NRS 62G.030(2) uses generally directory and permissive language (may) to allow that the probation committee may investigate any facility for the detention of children and report its findings, conclusions, and recommendations to the Juvenile Court. The probation committee may also recommend the removal or discharge of any probation officer, which pursuant to NRS 62G.040(1), is appointed by the Juvenile Court.

NRS 62G.040(3) provides that the probation committee advises the Juvenile Court concerning policies, procedures, and standards for probation officers and employees of local facilities for the detention of children, which must be established. NRS 62G.040(4) provides that the probation committee advises the Juvenile Court in determining salaries. NRS 62G.050(2) provides that the probation committee advises the chief probation officer, who is supervised by the Juvenile Court.

Although not directly relevant to this analysis, it should be noted that pursuant to NRS 62G.060(2), before a Juvenile Court is capable of demoting or discharging a probation officer or employee of a detention facility, the Juvenile Court must provide a written statement of the reasons for the action and an opportunity to be heard before the Juvenile Court. It should also be noted that NRS 62G.070 declares that all information obtained by an officer or employee of a Juvenile Court is privileged and must not be disclosed other than to the Juvenile Court or as authorized.

The analysis of NRS 62G.010—NRS 62G.070 discloses that all of the functions, activities, and duties that must be performed or may be performed by the probation

¹ *Nevada Comm’n on Ethics v. JMA/Lucchesi*, 110 Nev. 1, 9—10, 866 P 2d. 297 (1994) (It is a well-settled principle of statutory construction that statutes using ‘may’ are generally directory and permissive in nature, while those that employ the term ‘shall’ are presumptively mandatory.)

committee directly relate to its relationship with the Juvenile Court. The functions of the probation committee are to advise the Juvenile Court in several areas and to investigate certain matters, reporting directly to the Juvenile Court. The only possible function that leads to public disclosure is contained in NRS 62G.030(1)(d), which requires the preparation of an annual report of its activities, investigations, findings and recommendations to be filed “with the juvenile court and with the clerk of the court as a public document.” Although the probation committee advises a chief probation officer, this appears to be the equivalent of advising the Juvenile Court.

NRS 241.030 delineates exceptions to the Open Meeting Law. NRS 241.030(3) states: “This chapter does not: (a) Apply to judicial proceedings. . . .” Therefore, the issue to be addressed concerns whether the probation committee, which is created and proceeds pursuant to NRS 62G.010—NRS 62G.070, fits within this exception.

In considering the application of the NRS 241.030(3) “exception” to the Open Meeting Law to the probation committee, which functions solely in relation to the Juvenile Court, the separation of powers doctrine should be noted, as follows:

Inherent judicial powers stem from two sources: the separation of powers doctrine and the power inherent in a court by virtue of its sheer existence. See FELIX F. STUMPF, *INHERENT POWERS OF THE COURTS: SWORD AND SHIELD OF THE JUDICIARY* 6 (The National Judicial College 1994). *Under the separation of powers doctrine, each branch of government is considered to be co-equal, with inherent powers to administer its own affairs. See State v. Second Judicial Dist. Ct., 116 Nev. 953, 11 P.3d 1209 (2000) (citing Goldberg v. Eighth Judicial District Court, 93 Nev. 614, 615-17, 572 P.2d 521, 522 (1977)); see also City of No. Las Vegas v. Daines, 92 Nev. 292, 294, 550 P.2d 399, 400 (1976). Without inherent powers to perform its duties, the judiciary would become a subordinate branch of government, which is contrary to the central tenet of separation of powers. See William Scott Ferguson, Note, Judicial Financial Autonomy and Inherent Power, 57 Cornell L.Rev. 975, 986 (1972). [Emphasis added.]*

Blackjack Bonding v. City of Las Vegas Municipal Court, 14 P.3d 1275, 1279, 116 Nev. 1213, 1218 (2000).

Goldberg, supra, involved whether rule-making meetings held by the Eighth Judicial District Court had to comply with the Open Meeting Law. At the time

NRS 241.030(3) read as follows: “This chapter does not: (a) Apply to judicial proceedings, except those at which consideration of rules or deliberation upon the issuance of administrative orders are conducted.” *Goldberg* at 522, held that the language limiting the judicial proceedings exception “as applied to judicial bodies, is an unconstitutional infringement on the inherent powers of the judiciary which violates the doctrine of separation of powers.” NRS 241.030(3) was later changed to its current form. See Act of May 14, 1977, ch. 527, § 4, 1977 Nev. Stat. 241.030.

State v. Second Judicial Dist. Court ex rel. County of Washoe, 118 Nev. 609, 55 P.3d 420 (2002) concluded, as follows:

We conclude that State employees engaged in child protective services are entitled to quasi-judicial immunity when they provide information to the court (e.g., reports, case plans, testing evaluations and recommendations) pertaining to a child who is or may become a ward of the State. We do not intend the aforementioned examples to be an exclusive list. Rather, they demonstrate some of the duties protective service workers engage in that are integral to the court's decision-making processes. When a state agency or its employees provide their decision-making expertise to the court, they act as an *arm of the court* and are entitled to absolute quasi-judicial immunity. However, once the court makes a decision ratifying the recommendations of the state agency (e.g., placement in foster care, need for further medical evaluation, etc.), the state agency and its employees are no longer acting as an arm of the court. Rather, their function in carrying out the order of the court falls within the executive branch of government and pursuant to their statutory duties. Specifically, quasi-judicial immunity does not apply to state agencies or their employees for the day-to-day management and care of their wards. [Emphasis added.]

Id. at 426—427. The decision relied heavily upon *Duff v. Lewis*, 114 Nev. 564, 571, 958 P.2d 82, 87 (1998) (granting absolute quasi-judicial immunity to a court-appointed psychologist who evaluated individuals in the context of a custody dispute, even though the psychologist had been the subject of disciplinary sanctions by the Nevada State Board of Psychological Examiners for his conduct during the evaluations) and *Foster v. Washoe County*, 114 Nev. 936, 943, 964 P.2d 788, 793 (1998) (extending absolute quasi-judicial immunity to court-appointed special advocates (CASA) involved in a child

Honorable J. Michael Memeo
June 29, 2004
Page 5

abuse investigation by concluding that CASA volunteers were an integral part of the judicial process).

From the analysis above of NRS 62G.010—NRS 62G.070 we must conclude that a probation committee functions as an extension of the Juvenile Court. A probation committee investigates and recommends; it does not have the authority to carry out orders of the Juvenile Court or conduct the day-to-day management functions. The probation committee's meetings are quasi-judicial in nature². The probation committee's meetings are judicial proceedings. Therefore, probation committees are exempted from the requirements of the Open Meeting Law pursuant to NRS 241.030(3)(a).

CONCLUSION

The requirements of the Open Meeting Law do not apply to a probation committee created by the Juvenile Court pursuant to NRS 62G.020.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By:

JAMES E. IRVIN
Deputy Attorney General
Civil Division
(775) 684-1208

JEI:cc

² See *Gilman v. Nevada State Bd. of Veterinary Medical Examiners*, 120 Nev. Adv. Op. 31, 89 P.3d 1000 (2004)

1 the secretary position. Mr. Hardy contacted Murry Whipple. Mr. Whipple was told about the
2 training situation and informed that the Superintendent wanted to train the top candidate.

3 The item to hire a secretary for Meadow Valley Middle School came forward at the
4 June 10, 2004 Board meeting. The vote was unanimous in favor of the motion to hire
5 Ms. Lee. Trustee Bert Cox was not in attendance.

6 **III.**

7 **CONCLUSIONS OF LAW**

8 The legislative rule in Nevada is that public bodies must hold their meetings in an open
9 and public manner. NRS 241.020. The only exception to this rule is found in NRS 241.030,
10 but that exception does not apply to these facts. NRS 241.030(4) states “[t]he exception
11 provided by this section, and electronic communication, must not be used to circumvent the
12 spirit or letter of this chapter in order to discuss or act upon a matter over which the public
13 body has supervision, control, jurisdiction or advisory powers.”

14 Section 5.06 of the Nevada Open Meeting Law Manual (9th ed. 2001) interprets
15 NRS 241.030(4) to apply to telephone polls and polls by facsimile or e-mail. The Attorney
16 General prosecuted a case to the Nevada Supreme Court on facts substantially similar to the
17 facts in this case. In *Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998), the
18 court held that “a quorum of a public body using serial electronic communications to deliberate
19 toward a decision or to make a decision on any matter over which the public body has
20 supervision, control, jurisdiction or advisory power violates the Open Meeting Law.” *Id.* at 400.
21 In that case the Board of Regents was found by the court to have violated the Open Meeting
22 Law because it participated in an informal telephone poll that was used to decide whether to
23 release a “media advisory” to counter what was perceived to be unbalanced media coverage
24 of the process used to select the presidents of the colleges under the Regents’ control. The
25 court examined the legislative history of the Open Meeting Law before concluding that the
26 “legislature intended to prohibit public bodies from making decisions via serial electronic
27 communications.” *Id.* at 397.

28 ///

1 Although the Superintendent claimed that the serial telephone calls to Board members
2 was limited to a discussion regarding the desire to train the top candidate, the Superintendent
3 also points out that he has the authority alone to determine the training needs of personnel. It
4 is clear that the actual purpose of the serial communications was to ensure that if they began
5 training Ms. Lee, she would indeed be chosen to fill the vacancy. The contact, via serial
6 telephone conference to three of the five trustees, violated the Open Meeting Law.

7 **IV.**

8 **CONCLUSION**

9 The conduct discussed above is in violation of NRS 241.020 and NRS 241.030(4). The
10 Office of the Attorney General has the authority to file suit in any court of competent
11 jurisdiction to remedy violations of the Open Meeting Law. In this instance, because this is a
12 first time violation by the Board, this office is offering to settle this matter in accordance with
13 the terms in the attached settlement agreement. If the Board does not accept the proposed
14 settlement agreement by August 2, 2004, the Attorney General may proceed with the filing of
15 a lawsuit in the Seventh Judicial District.

16 DATED this _____ day of July, 2004.

17 BRIAN SANDOVAL
18 Attorney General

19 By: _____
20 GINA C. SESSION
21 Nevada State Bar #5493
22 Deputy Attorney General
23 100 North Carson Street
24 Carson City, Nevada 89701-4717
25 (775) 684-1207
26
27
28

CERTIFICATE OF MAILING

I certify that I am an employee of the Office of the Attorney General, State of Nevada,
and that on this _____ day of July, 2004, I served a true and correct copy of the foregoing
Findings of Fact and Conclusions of Law on the following parties via first class mail, postage
prepaid:

Mr. Kim Terry
Post Office Box 712
Panaca, Nevada 89042

Clark Hardy, Superintendent
Lincoln County School District
Post Office Box 118
Panaca, Nevada 89042

An Employee of the Office of the Attorney General

1 the meeting notice in two places in the City Hall Plaza to which they had immediate access.
2 In addition, staff was in place to inform members of the public who appeared for the 3:00 p.m.
3 start that the meeting was delayed. The Committee began the meeting at approximately 4:30
4 p.m. and took action to make recommendations to the Council. The Council acted upon the
5 recommendations at a subsequent meeting.

6 **III.**

7 **ISSUE**

8 May a public body meet subsequent to the exact time on an agenda on the day of a
9 scheduled meeting? Is a public body required to re-notice a meeting pursuant to the
10 provisions of the Open Meeting Law if the meeting does not begin until after the time listed on
11 the agenda?

12 **IV.**

13 **CONCLUSIONS OF LAW**

14 NRS 241.020(2)(a) requires that written notice of meetings of public bodies include the
15 time, place, and location of the meeting. It is clear that the Committee satisfied the
16 requirements of the foregoing statute when the original notice of the meeting was posted.

17 In determining whether a public body has committed a violation of the Open Meeting
18 Law where there are no clear standards or guidelines, the body must consider themselves as
19 being governed by a standard of reasonableness. See Op. Atty Gen. No. 79—8 (March
20 1979). Also, the provisions of the Open Meeting Law are subject to the rule of substantial
21 compliance, with a determination of such compliance being dependent on the circumstances
22 of each individual case. *Stelzer v. Huddleston*, 526 S.W.2d 710 (Tex. Ct. App. 1975).

23 This office has opined that deviating from an agenda by commencing a meeting *prior* to
24 its noticed meeting time violates the spirit and intent of the Open Meeting Law and nullifies the
25 purpose of the notice requirements set forth in NRS 241.020(2). See OMLO 99—13
26 (December 13, 1999). If a public body begins a meeting prior to the noticed time, it is obvious
27 that the public may be foreclosed from attending and/or participating in the meeting.
28 However, when a public body begins a meeting a relatively short time *after* the time noticed

1 for the meeting, it is the opinion of this office that no Open Meeting Law violation occurs if the
2 body has taken reasonable measures to inform the public of the delay. In turn, a body would
3 not be required to re-notice the meeting. In this case, by notifying the public that the meeting
4 would begin approximately 1-1/2 hours after the original time, the public was on notice that the
5 Committee would meet and would have the option to wait for the meeting to begin. Staff went
6 well beyond putting up a sign on the meeting room door and actually posted a re-notice of the
7 meeting in two locations. In addition, staff was present at the meeting location at
8 3:00 p.m. to inform the public of the late start. More than reasonable measures were taken to
9 ensure the public knew of the change to ensure public participation. A member of the public
10 who chooses not to wait for the meeting to begin cannot claim the notice was insufficient.

11 This opinion is very fact specific and not meant to suggest that a public body may
12 unreasonably delay the start of a meeting to circumvent public participation and/or the spirit of
13 the Open Meeting Law. Out of respect to the public, the Attorney General advises all public
14 bodies to start on time as posted, if at all possible. However, based on staff's actions to
15 ensure notice and the specific facts and circumstances of this particular case, the Committee
16 did not violate the Open Meeting Law. Therefore, the Committee's actions taken at the
17 April 5, 2004 meeting are considered valid, and the subsequent actions taken by the Council,
18 in reliance on the Committee's recommendations, are also considered valid.

19 **V.**

20 **CONCLUSION**

21 A public body may begin a meeting at a reasonable time after the time listed on an
22 agenda if the body takes measures to inform the public of the delay, and there is nothing to
23 suggest the body was attempting to avoid the notice requirements of the Open Meeting Law.
24 Under the specific facts of this case, it was not necessary to re-notice the meeting.

25 . . .

26 . . .

27 . . .

28 . . .

1 Based on the particular facts and circumstances of this case, the Committee is not found to be
2 in violation of the Nevada Open Meeting Law.

3 Dated this 13th day of July, 2004.

4 BRIAN SANDOVAL
5 Attorney General

6
7 By: KEITH D. MARCHER
8 Nevada State Bar 3480
9 Senior Deputy Attorney General
10 100 North Carson Street
11 Carson City, Nevada 89701-4717
12 (775) 684-1201

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 13th day of July, 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Rolando Larraz, Publisher
Las Vegas Tribune
608 South Third Street, Suite B
Las Vegas NV 89101

Bradford R. Jerbic
City Attorney
400 Stewart Avenue
Las Vegas NV 89101

Barbara Renner

1 Municipal Court Judge a 2 percent increase with an annual review, the City Clerk/Treasurer a
2 4 percent increase with an annual review, the City Manager with a 2 percent increase with an
3 annual review, and the City Attorney with a 3 percent increase with no change in his car
4 allowance and an annual review. The City Council went back into the open meeting, made a
5 motion, took public comment, and passed the motion without deliberation.

6 **III.**

7 **ISSUE**

8 1. May the Attorney General investigate or act upon a complaint that is received after
9 the 120-day statute of limitations set forth in NRS 241.037?

10 2. Whether the City Council violated NRS 241.030 when it discussed the City
11 Manager, City Attorney, City Clerk/Treasurer, and Municipal Court Judge's professional
12 competence in a positive light during the closed meeting?

13 3. Whether the City Council violated NRS 241.030 by negotiating or informally
14 discussing in a closed meeting the employment contracts for the City Manager, City Attorney,
15 City Clerk/Treasurer, and Municipal Court Judge?

16 **IV.**

17 **CONCLUSIONS OF LAW**

18 **ISSUE #1** – Statute of Limitations

19 NRS 241.037(3) states that the Attorney General has only 120 days to proceed with
20 legal action against a public body for violating the Open Meeting Law. This Office previously
21 opined that the Attorney General does not have jurisdiction to investigate or act on a
22 complaint alleging that a public body violated the Open Meeting Law where the complaint was
23 received approximately seven months after the action was taken. OMLO 2000-40 (November
24 8, 2000). In this case, this Office received the complaint approximately eight months after the
25 meeting. As a result, this Office will not opine about the conduct of the City Council in the
26 September 30, 2003 meeting.¹

27 _____
28 ¹ As a part of the Attorney General's prosecutorial discretion, this Office may choose not to proceed with
legal action and in lieu of said legal action, issue an opinion after the 120-day statute of limitations in order to
advise a public body. But, the complaint must be received prior to the 120-day statute of limitations.

1 **ISSUE #2** – Discussion of Professional Competence in a Positive Light

2 NRS 241.030(1) states, “Except as otherwise provided in NRS 241.031 and 241.033,
3 nothing contained in this chapter prevents a public body from holding a closed meeting to
4 consider the character, alleged misconduct, professional competence, or physical or mental
5 health of a person.” In Nevada Attorney General Opinion No. 81-A (February 23, 1981), the
6 Office of the Attorney General construed the word “competence” to include: “duly qualified . . .
7 answering all requirements . . . having sufficient ability or authority . . . possessing the natural
8 or legal qualifications . . . able . . . adequate . . . suitable . . . capable . . . legally fit.” Also, in
9 *Miglionico v. Birmingham News Co.*, 378 So. 2d 677 (Ala. 1979), the Alabama Supreme Court
10 analyzed a statute similar to Nevada’s and stated that the term “character” can also mean
11 positive characteristics such as honesty, loyalty, integrity, and reliability.

12 The complainant asserts, “The context of the term ‘professional competence’, . . .
13 seems clearly implied as a *negative* or a *concern* regarding . . .” a person’s professional
14 competence. (Emphasis added.) NRS 241.030 does not state that only a person’s negative
15 professional competence or a public body’s concern about a person’s professional
16 competence can be discussed at a closed meeting. Here, the City Council’s positive
17 consideration of the City Manager, City Attorney, City Clerk/Treasurer, and Municipal Court
18 Judge complied with the meaning of the term “competence.” In these circumstances, the
19 purpose of the closed meeting is to provide a public body the opportunity to consider both the
20 positive and negative aspects of a person’s character, alleged misconduct, professional
21 competence, or physical or mental health. Thus, the City Council’s discussion did not violate
22 the Open Meeting Law.

23 **ISSUE #3** – Negotiations or Informal Discussions of Employment Contracts in a Closed
24 Meeting

25 NRS 241.010 states, “In enacting this chapter, the Legislature finds and declares that
26 all public bodies exist to aid in the conduct of the people’s business. It is the intent of the law
27 that their actions be taken openly and that their deliberations be conducted openly.”

28 As previously stated, NRS 241.030 states, “Except as otherwise provided in

1 NRS 241.031 and 241.033, nothing contained in this chapter prevents a public body from
2 holding a closed meeting to consider the character, alleged misconduct, professional
3 competence, or physical or mental health of a person.”

4 NRS 288.220(1) states:

5 The following proceedings, required by or pursuant to this
6 chapter, are not subject to any provision of NRS which requires a
meeting to be open or public:

7 1. Any negotiation or informal discussion between a local
8 government employer and an employee organization or employees
as individuals, whether conducted by the governing body or
through a representative or representatives.

9 This Office previously opined that a meeting pursuant to NRS 288.220 does not require the
10 public body “to prepare a notice and agenda for the meeting, nor is (the public body) required
11 to prepare minutes, and, of course, the meeting may be closed to the public.” OMLO 98-60
12 (November 3, 1998).

13 Here, because the closed meeting was agendized pursuant to NRS 241.030 only, the
14 City Council could not deliberate toward a decision during the closed portion of the meeting.
15 The City Council limited itself to only considering the character, alleged misconduct,
16 professional competence, or physical or mental health of the four employees during the closed
17 meeting, which it did.

18 However, after discussing each employee’s competence, the facts support that City
19 Council then entered into an exempt meeting to negotiate the terms of the employees’
20 contracts. Pursuant to NRS 288.220, the City Council does not have to comply with any
21 portion of the Open Meeting Law, including notice of the exempt meeting, to negotiate the
22 employees’ contracts. As a result, the City Council did not violate the Open Meeting Law
23 because its conduct was exempt from the Open Meeting Law.

24 In the future, to prevent any misunderstanding, this Office previously recommended
25 under similar circumstances that “when the (public body) is stepping out of a public meeting to
26 go into an exempt proceeding, it may want to announce the nature of the exempt proceeding
27 and statutory exemption.” OMLO 98-60 (November 3, 1998). This Office recommends that in
28 the future the Mesquite City Council should either notice the agenda item as a closed meeting

1 pursuant to NRS 241.031 and an exempt meeting pursuant to NRS 288.220, or inform the
2 public that the City Council may also hold an exempt meeting and state the statutory
3 exemption.

4 **V.**

5 **CONCLUSION**

6 The Mesquite City Council did not violate the Open Meeting Law by considering in a
7 positive light the professional competence of the City Manager, City Attorney, City
8 Clerk/Treasurer, and Municipal Court Judge.

9 The Mesquite City Council did not violate the Open Meeting Law by negotiating or
10 informally discussing employment contracts in a closed session because the negotiations
11 were exempt from the Open Meeting Law pursuant to NRS 288.220.

12 DATED this _____ day of September 2004.

13 BRIAN SANDOVAL
14 Attorney General

15 By:

16 _____
17 NEIL A. ROMBARDO
18 Nevada State Bar 6800
19 Deputy Attorney General
20 100 North Carson Street
21 Carson City, Nevada 89701-4717
22 (775) 684-1205
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of September, 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Terrence P. Marren, City Attorney
City of Mesquite
10 East Mesquite Boulevard
Mesquite, Nevada 89027

Charles Horne
Post Office Box 3481
Mesquite, Nevada 89024

An Employee of the Office of the
Attorney General

1 received a written reprimand based on his conduct at work.¹ Mr. Johnston asked to withdraw
2 his request, but the Airport Authority refused that request and held the closed meeting on
3 June 10, 2004.² On June 3, 2004, the Airport Authority personally delivered a notice to
4 Mr. Johnston of the closed meeting pursuant to NRS 241.033. The notice also stated,
5 "Following the closed meeting, the Board will reconvene in the public Board Room to take any
6 action it deems appropriate." NOTICE OF CLOSED MEETING (June 3, 2004). The Airport
7 Authority held the closed meeting and discussed Mr. Johnston's alleged misconduct. The
8 Airport Authority then opened the meeting and took action to affirm the written reprimand for
9 Mr. Johnston.

10 **III.**

11 **ISSUE**

12 Did the Airport Authority properly conduct the closed meeting?³

13 **IV.**

14 **CONCLUSIONS OF LAW**

15 NRS 241.030 states:

16 1. Except as otherwise provided in NRS 241.031 and 241.033,
17 nothing contained in this chapter prevents a public body from
18 holding a closed meeting to consider the character, alleged
19 misconduct, professional competence, or physical or mental health
20 of a person.

21 2. A public body may close a meeting upon a motion which
22 specifies the nature of the business to be considered.

23 NRS 241.033 states:

24 1. A public body shall not hold a meeting to consider the
25 character, alleged misconduct, professional competence, or
26 physical or mental health of any person unless it has given written
27

28

¹ This opinion will only discuss Open Meeting Law issues and will not consider the veracity of the information provided to the Airport Authority and will not discuss any other potential causes of action alleged by Mr. Johnston in his complaint.

² This opinion will not discuss whether the Airport Authority should have allowed Mr. Johnston to withdraw his request. The issue is a contractual one between the Airport Authority, the Airport Authority Employees Association, and Mr. Johnston.

³ The complaint did not specify a particular Open Meeting Law violation. As a result, this opinion will consider the entire process used by the Airport Authority regarding Mr. Johnston.

1 notice to that person of the time and place of the meeting. Except
as otherwise provided in subsection 2, the written notice must be:

2 (a) Delivered personally to that person at least 5 working days
before the meeting; or . . .

3 NRS 241.034 states:

4 1. A public body shall not consider at a meeting whether to:
5 (a) Take administrative action against a person; or
6 (b) Acquire real property owned by a person by the exercise of
the power of eminent domain,
7 unless the public body has given written notice to that person of
the time and place of the meeting.

8 2. The written notice required pursuant to subsection 1 must be:
(a) Delivered personally to that person at least 5 working days
before the meeting; or

9

10 The following procedures must be followed to close a meeting pursuant to
11 NRS 241.030 to consider the character, alleged misconduct, professional competence, or
12 physical or mental health of a person: (1) an item must be included on the agenda for the
13 meeting which generally describes that a person's character, competence, alleged
14 misconduct, or health may be discussed in a closed meeting; (2) the meeting must be closed
15 upon a motion that in general terms specifies the nature of the business to be discussed;
16 (3) prior personal notice must be given to the person who is the subject of the meeting;
17 (4) written minutes of the closed meeting must be kept; (5) if the public body records on
18 audiotape or videotape the open portion of the meeting, the closed session must also be so
19 recorded; (6) the public body must discuss only the person's character, alleged misconduct,
20 competence, or health; and (7) the public body must not take action during the closed
21 meeting. OMLO 96-02 (February 16, 1992). Also, remembering that closed sessions are
22 limited to *consideration* of such matters, the confidentiality falls away when the public body is
23 going to take *action* concerning the subject person. Thus, if action is going to be taken, then
24 the agenda must specify the name of the person. OPEN MEETING LAW MANUAL, § 9.07 (9th ed.
25 2001).⁴

26 _____
27 ⁴ NRS 622.320 states, "The provisions of NRS 241.020 do not apply to proceedings relating to an
28 investigation conducted to determine whether to proceed with disciplinary action against a licensee, unless the
licensee requests that the proceedings be conducted pursuant to those provisions." Therefore, this opinion does
not apply to a regulatory body, as defined in NRS 622.060, conducting an "investigation" on whether to proceed
with disciplinary action.

1 1. Did the agenda include a proper item to close the meeting?

2 The agenda item stated, "VIII. CLOSED SESSION PURSUANT TO NRS 241
3 CONCERNING PERSONNEL ISSUE (Possible Action to Follow Adjournment of Closed
4 Session)." NRS 241.020(2)(c)(1) requires all agenda statements to be "clear and complete."
5 OPEN MEETING LAW MANUAL, § 9.06 recommends that the agenda statement for a closed
6 meeting state that the closed meeting is pursuant to "NRS 241.030."

7 Here the agenda statement mentions NRS chapter 241, but does not specify
8 NRS 241.030. Because NRS chapter 241 only allows closed meetings pursuant to
9 NRS 241.030, this is not a violation of the Open Meeting Law. However, this Office advises
10 the Airport Authority to use the following agenda statement, or something similar thereto,
11 "Closed session pursuant to NRS 241.030 to discuss the character, alleged misconduct,
12 professional competence, or physical or mental health of an employee." It is this Office's
13 opinion that such an agenda statement provides a clearer and more complete agenda
14 statement.

15 2. Did the Airport Authority close the meeting by a proper motion?

16 NRS 241.030(2) states, "A public body may close a meeting upon a *motion* which
17 specifies the nature of the business to be considered." [Emphasis added.] The Airport
18 Authority chairperson simply stated that it is time to go into a closed session and a motion
19 was not made. By going into a closed session without a motion, the Airport Authority
20 committed a technical violation of the Open Meeting Law. But, this failure did not deny
21 Mr. Johnston a right conferred by the Open Meeting Law, and thus, this Office advises the
22 Airport Authority at future meetings to make a motion prior to going into a closed meeting.

23 3. Was the proper notice given?

24 NRS 241.033 requires notice to be given to inform a person that he/she will be
25 discussed in the closed meeting. NRS 241.034 requires notice to be given to inform a person
26 that a public body may take administrative action against him/her.

27 Here the Airport Authority provided the proper notice pursuant to NRS 241.033
28 because the notice was timely and stated that pursuant to NRS 241.033 a closed meeting

1 would occur. The notice did not mention NRS 241.034. It did state, however, "Following the
2 closed meeting, the Board will reconvene in the public Board Room to take any action it
3 deems appropriate." As a result, Mr. Johnston received notice that an administrative action
4 may be taken against him. This Office advises, however, that the Airport Authority should
5 provide a clearer notice pursuant to NRS 241.034. For example, "Pursuant to NRS 241.034,
6 this is notice that following the closed meeting, the Board will reconvene in the public Board
7 Room and may take administrative action against you or any other action the Board deems
8 appropriate."

9 4. and 5. Were the proper minutes taken?

10 There are no issues with regard to the minutes of the meetings.

11 6. Did the Airport Authority exceed the permissible topic of discussion for a closed
12 meeting?

13 The Airport Authority discussed the "alleged misconduct" of Mr. Johnston at the
14 meeting and did not exceed the permissible topic of discussion in a closed meeting.

15 7. Did the Airport Authority take action during the closed meeting?

16 The Airport Authority took no action during the closed meeting.

17 8. Did the Airport Authority provide a proper agenda statement for any possible action
18 that may be taken?

19 As previously discussed NRS 241.020(2) requires a "clear and complete" agenda
20 statement of the topics to be discussed at a meeting. "[I]f action is going to be taken, then the
21 agenda must specify the name of the person." OPEN MEETING LAW MANUAL, § 9.07 (9th ed.
22 2001). The agenda statement read, "VIII. CLOSED SESSION PURSUANT TO NRS 241
23 CONCERNING PERSONNEL ISSUE (Possible Action to Follow Adjournment of Closed
24 Session)."

25 Here the Airport Authority knew that after the closed meeting it would either take action
26 to withdraw or affirm Mr. Johnston's reprimand. However, the Airport Authority did not specify
27 Mr. Johnston's name or the type of action that may be taken by the Airport Authority. As a
28 result, the agenda statement is neither clear nor complete under NRS 241.020(2). This

1 action by the Airport Authority is a technical violation of the Open Meeting Law, and this
2 Office advises the Airport Authority that if action is going to be taken against a person, the
3 Airport Authority must specify the name of the person on the agenda. However, in this case
4 Mr. Johnston was fully aware of this meeting, and thus he was not denied a right conferred by
5 the Open Meeting Law.⁵

6 **V.**

7 **CONCLUSION**

8 Although the Airport Authority of Washoe County technically violated the Open Meeting
9 Law, Mr. Johnston was not denied a right conferred by the Open Meeting Law. As a result,
10 the Office of the Nevada Attorney General advises the Airport Authority of Washoe County to
11 conduct its future closed meetings consistent with this opinion.

12 DATED this _____ day of December 2004.

13 BRIAN SANDOVAL
14 Attorney General

15
16 By: _____
17 NEIL A. ROMBARDO
18 Senior Deputy Attorney General
19 Nevada State Bar No. 6800
20 100 North Carson Street
21 Carson City, Nevada 89701-4717
22 (775) 684-1205
23
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⁵ See footnote 4 for regulatory bodies pursuant to NRS 622.060.

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of December, 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ann Morgan, Esq.
Jones Vargas
Twelfth Floor
100 West Liberty Street
Post Office Box 281
Reno, Nevada 89504-0281

Michael Johnston
600 Hillcrest Drive
Reno, Nevada 89509

An Employee of the Office of the
Attorney General

1 Dr. Wendi Hawk, the representative of Nevada State High School Charter. The Board also
2 took a recess during this discussion. The recess was called at 11:05 a.m., and it ended at
3 11:15 a.m.¹ During this recess, some members of the Board discussed Item 6 in one or more
4 separate gatherings, but they did not do so as a quorum nor was there any evidence of an
5 attempt to gather a quorum through serial gatherings.

6 At that same meeting, the Board later considered Item 7(A) of the agenda. The
7 agenda statement for Item 7(A) read, "7. Reports and Recommendations from Board
8 Committees (**Information/Discussion/Action**): A. Subcommittee on Charter Schools –
9 NRS 386.507 - Committee Recommendation. . . ."² While considering Item 7(A) of the
10 agenda, the Board considered the Subcommittee on Charter School's (Subcommittee)
11 recommendation on Silver State High School's application to convert to a full charter school.
12 During the deliberation regarding the Subcommittee's recommendation on Silver State High
13 School's application, the Board received comments from Mr. Knight, CEO of Silver State High
14 School. The Board eventually decided to consider Silver State High School's application for
15 conversion to a full charter school at a future special meeting to be noticed for July 23, 2004.

16 Under that same item, the Board also considered TEAM A's application for full
17 conversion. The Subcommittee brought this application to the Board without a
18 recommendation. A somewhat lengthy deliberation ensued regarding this application. During
19 the deliberations, five of the Board members stated that they would support TEAM A's
20 conversion to a full charter school because the application was "technically" complete. Two of
21 the Board members raised concerns over a lawsuit involving TEAM A. In response to those
22 concerns, Ms. Kroshus, TEAM A's representative, attempted to address the Board. President
23 Waters refused to recognize Ms. Kroshus and told her that she could speak during public

24 ¹ Ms. Kroshus alleges that the recess was 40 minutes long, but interviews with Board staff and the tapes
25 do not indicate that a 40-minute recess occurred. The minutes specifically indicate a recess from 11:05 a.m. to
26 11:15 a.m.

27 ² Although not an issue raised by Ms. Kroshus' complaint, this Office advises the Board to provide more
28 complete agenda statements. For example, a clearer agenda statement would have indicated that the Board
would consider the Subcommittee's recommendations regarding the application of various charter schools, and if
possible, state the schools. This will avoid a future situation where someone might allege they were not given
objective public notice that their particular charter school was going to be considered by the Board.

1 comment. Clerk Myers of the Board asked President Waters to let Ms. Kroshus speak, but
2 President Waters refused. A motion was made to approve the application. Five members
3 voted to support TEAM A's application, and two members voted against TEAM A's
4 application. The motion failed because the Board consists of eleven elected members and
5 Nevada's Open Meeting Law requires an affirmative vote of at least six members for the
6 Board to take action.³

7 The Board, however, did allow Ms. Kroshus to speak under the public comment portion
8 of the meeting, and she was able to address her concerns.

9 **III.**

10 **ISSUES**

11 1. Whether the Board violated the Open Meeting Law by various members'
12 deliberations on Item 6 during the Board's recess.

13 2. Whether the Board violated the Open Meeting Law by refusing to allow Ms. Kroshus
14 to speak during its deliberations of Item 7(A).

15 **IV.**

16 **CONCLUSIONS OF LAW**

17 **ISSUE #1 — Deliberations During Recess**

18 NRS 241.015 states:

19 2. "Meeting":

20 (a) Except as otherwise provided in paragraph (b), means:

21 (1) The gathering of members of a public body at which a quorum
22 is present to deliberate toward a decision or to take action on any
23 matter over which the public body has supervision, control,
24 jurisdiction or advisory power.

25 (2) Any series of gatherings of members of a public body at
26 which:

27 (I) Less than a quorum is present at any individual gathering;

28 (II) The members of the public body attending one or more of the
gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to
avoid the provisions of this chapter.

³ NRS 241.0355 states, "A public body that is required to be composed of elected officials only may not take action by vote unless at least a majority of all the members of the public body vote in favor of the action." The Board is composed of eleven elected members, and therefore, a vote of six members is required for the Board to take action.

1 NRS 241.020 states:

2 1. Except as otherwise provided by specific statute, all meetings
3 of public bodies must be open and public, and all persons must be
4 permitted to attend any meeting of these public bodies. Public
5 officers and employees responsible for these meetings shall make
reasonable efforts to assist and accommodate physically
handicapped persons desiring to attend.

6 In *Del Papa v. Board of Regents of the University and Community College System of*
7 *Nevada*, 114 Nev. 388, 956 P.2d 770 (1998), the Nevada Supreme Court held that serial
8 electronic communications violated the Open Meeting Law. The Court went on to state:

9 This is not to say that in the absence of a quorum, members of a
10 public body cannot privately discuss public issues or even lobby
11 votes. However, if a quorum is present, or is gathered by serial
electronic communications, the body must deliberate and actually
vote on the matter in a public meeting.

12 *Id.* at 400. Therefore, a member of a public body may meet with other members of a public
13 body to discuss a topic as long as a quorum of the public body does not gather or as long as
14 serial gatherings do not create a quorum.

15 In this case the complainant alleges, “[President] Waters individually lobbied members
16 to attempt to secure a favorable outcome.” On its face, this alleged conduct is not improper
17 under the court’s ruling in *Del Papa*. The evidence neither indicates that President Waters
18 met with a quorum of the Board during recess, nor that President Waters used serial
19 communications during the recess to obtain a favorable outcome. The Open Meeting Law
20 does not prohibit President Waters from individually lobbying votes from other Board
21 members, as alleged by the complainant.

22 **ISSUE #2 – Restricting the time period when TEAM A’s Representative could**
23 **Address the Board**

24 NRS 241.020(2)(c)(3) requires a public body to place on its agenda, “A period devoted
25 to comments by the general public, if any, and discussion on those comments. . . .”

26 In OMLO 99-11 (August 26, 1999), this office considered Clark County’s policy that
27 required a person who wanted to speak at a public meeting sign up 3 and ½ hours before the
28 meeting. This office opined, “that any practice or policy that discourages or prevents public

1 comment, even if technically in compliance with the law, may violate the spirit of the Open
2 Meeting Law.” *Id.*

3 In OMLO 2001-30 (May 31, 2001), this Office opined that when public comments are
4 allowed during a specific item on the agenda, the chairperson may limit that discussion to only
5 the specific item on the agenda, provided the limits are viewpoint neutral. If the public body
6 only allows a general public comment period, it may only limit that discussion to subjects
7 within the authority of the public body. See OMLO 2001-22 (December 17, 2002) and
8 NEVADA’S OPEN MEETING LAW MANUAL, § 8.04 (9th ed. 2001).

9 Here the Board permitted both Dr. Hawk and Mr. Knight to speak during specific
10 agenda items.⁴ In fact, Mr. Knight commented during agenda Item 7(A) while the Board
11 deliberated over Silver State High School’s application. President Waters, however, refused
12 to allow Ms. Kroshus to address the Board during the Board’s deliberations on TEAM A’s
13 application, which was also considered during Item 7(A). He told her that she could speak
14 during the public comment period. The Board technically complied with the Open Meeting
15 Law because it held a public comment period and allowed Ms. Kroshus to address the Board
16 at that time. However, it is the position of the Office of the Nevada Attorney General that a
17 public body violates the spirit of the Open Meeting Law if it allows some members of the
18 public to comment on specific agenda items, but refuses to allow other members of the public
19 to similarly comment on specific agenda items that may pertain to them.

20 This is especially true in this case. The audio recording suggests that President
21 Waters did not want to hear from Ms. Kroshus. The Clerk of the Board, Ms. Myers, requested
22 that President Waters allow Ms. Kroshus to speak. President Waters refused and said that
23 he did not have to let her speak, and she could wait until the public comment period.
24 Ms. Myers pointed out that others were allowed to speak during their specific agenda items,
25 but President Waters ignored that fact. Therefore, it appears that President Waters’
26 restriction of Ms. Kroshus’ comments was not viewpoint neutral, was a lawful misuse of his

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28 ⁴ Interviews with the Board’s staff indicated that the Board usually permits the public to speak on specific
agenda items.

1 authority, and was a violation of the spirit of the Open Meeting Law.

2 V.

3 **CONCLUSION**

4 President Waters did not violate the Open Meeting Law by individually lobbying for
5 votes during a recess of the Nevada State Board of Education, and there is no evidence to
6 suggest that the Board deliberated as a quorum during the recess. Therefore, there is no
7 Open Meeting Law violation with regard to the Nevada State Board of Education's conduct
8 during the recess.

9 However, the President of the Nevada State Board of Education violated the spirit of
10 the Open Meeting Law by not allowing Ms. Kroshus to speak during TEAM A's application.
11 The Board should not allow certain members of the public to comment on a specific agenda
12 item, but not allow other members of the public to similarly comment on that same agenda
13 item. This disparate treatment was a violation of the spirit of the Open Meeting Law.
14 However, because the Board allowed Ms. Kroshus to speak during the public comment
15 period, her "legal" right to address the Board was not violated. As a result, the Office of the
16 Nevada Attorney General advises the Nevada State Board of Education to comply with the
17 spirit of the Open Meeting Law and avoid such disparate treatment in the future.

18 DATED this _____ day of December 2004.

19 BRIAN SANDOVAL
20 Attorney General

21 By:

22 _____
23 NEIL A. ROMBARDO
24 Senior Deputy Attorney General
25 Nevada State Bar No. 6800
26 100 North Carson Street
27 Carson City, Nevada 89701-4717
28 (775) 684-1205

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of December, 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Judy Kroshus
1140 Dinah Drive
Fernley, Nevada 89408

Gary Waters
Nevada State Board of Education
1820 E. Sahara Avenue, #205
Las Vegas, Nevada 89104

An Employee of the Office of the
Attorney General

1 took public comment under item 6 on the agenda. However, the Board restricted the public's
2 comments to items not on the agenda.

3 The Board then considered the annexation, but did not allow the public to comment
4 orally. Instead, the Board required the public to write any questions they had down on a piece
5 of paper and submit them to the Board. The Board chose the written question format
6 because of the contentious nature of the annexation issue and the large crowd present at the
7 meeting. The Board also believed this process would avoid an inconveniently long,
8 argumentative meeting. Finally, the Board chose this process because the Board had no
9 authority over the issue and the Reno City Council and Washoe County Commission would
10 decide the issue at the joint meeting on July 21, 2004.¹ During the meeting, the Board
11 successfully responded to over 40 questions, but did not allow any oral public comments on
12 the issue.

13 III.

14 ISSUE

15 Whether the Board violated the Open Meeting Law by only allowing written
16 comments/questions regarding the proposed annexation.

17 IV.

18 CONCLUSIONS OF LAW

19 NRS 241.020(2)(c)(3) states:

20 2. Except in an emergency, written notice of all meetings must
21 be given at least 3 working days before the meeting. The notice
must include:

22 . . .
(c) An agenda consisting of:

23 . . .
(3) A period devoted to *comments* by the general public, if any,
24 and discussion of those comments. No action may be taken upon
25 a matter raised under this item of the agenda until the matter itself
has been specifically included on an agenda as an item upon
which action may be taken pursuant to subparagraph (2).

26 [Emphasis added.]

27 _____
28 ¹ The Office of the Nevada Attorney General does not determine a public body's compliance with the
Open Meeting Law based upon a sliding scale of relative harm to the public. However, it may be relevant to this
Office's exercise of prosecutorial discretion.

1 Section 8.04 of the NEVADA OPEN MEETING LAW MANUAL states:

2 Reasonable rules and regulations that ensure orderly conduct of a
3 public meeting and ensure orderly behavior on the part of those
4 persons attending the meeting may be adopted by a public body,
5 and the Office of the Attorney General believes that reasonable
6 restrictions, including time limits, can be imposed on speakers.
7 However, any rule or regulation that limits or restricts public
8 comment must be clearly articulated on the agenda. See OMLO
9 99-08 (July 8, 1999). . . .

10 Here the Board allowed public comment under item 6 of the agenda. However, the
11 Board limited the public comment period to non-agenda items. OMLO 99-12 (October 14,
12 1999) opined, "Designated public comment period required by NRS 241.020(2)(c)(3) should
13 be content neutral, and not restricted to nonagenda items unless the public is permitted to
14 comment on agenda items as they are heard." During the consideration and deliberation of
15 the annexation, the Board allowed a written-only public comment period. This restriction,
16 which allowed only questions and not general comments on the topic, was not clearly
17 articulated on the agenda. Thus the issue is, did this surprise written-only public comment
18 period comply with the Open Meeting Law?

19 In response to this complaint, the Washoe County District Attorney's Office asserted
20 that the written question format used by the Board allowed the public to comment on the item
21 and, therefore, complied with the Open Meeting Law. The Office of the Nevada Attorney
22 General agrees with the District Attorney's Office that the term "comment" means both oral
23 and written comment. However, the element of surprise combined with the restriction that
24 comments be limited to only "questions" to be answered by the Board stripped the public of its
25 opportunity before this particular public body to express all relevant opinions on the topic.

26 Section 8.04 of the NEVADA OPEN MEETING LAW MANUAL also states, "[T]hat any
27 practice or policy that discourages or prevents public comment, even if technically in
28 compliance with the law, may violate the spirit of the Open Meeting Law." See OMLO 99-11
(August 26, 1999). The Board's technical attempt to comply with the Open Meeting Law was
a clear violation of the spirit of the Open Meeting Law. First, the written-only format
discourages those who cannot write from participating in an open meeting. Second, not all

1 relevant comments can be posed in the form of a question. Third, the element of surprise
2 discourages public comment. Fourth, when the Legislature adopted the language found in
3 NRS 241.020(2)(c)(3), the Legislature discussed that the public comment portion of the
4 meeting would resemble that of a town hall meeting. A town hall meeting connotes the oral
5 exchange of comments and ideas between the members of the public and the public body.²
6 *See Hearing on AB 252 Before the Assembly Committee on Government Affairs, 1991 Leg.,*
7 *66th Sess., 2 (May 10, 1991).* Finally, the written-only restriction imposed in this case
8 unreasonably discourages public comment because it removes the opportunity for a member
9 of the public to ask timely follow-up questions or make timely comments in response to
10 comments made by members of the public or public body. Therefore, this Office discourages
11 the Board from using the written-only format in the future.

12 **V.**

13 **CONCLUSION**

14 Under these circumstances, reasonable time limits for each individual member of the
15 public would be a more acceptable manner to manage the meeting. Another reasonable
16 restraint, under these circumstances, would be to limit members of the public from repeating
17 comments made by previous members of the public. However, the Office of the Nevada
18 Attorney General believes the Cold Springs Citizen Advisory Board's written-only public

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28 ² Please note that the Open Meeting Law does not require members of the public body to comment on the public's comments.

1 ///

2 comment period violates the spirit of the Open Meeting Law and advises the Board to refrain
3 from using that format in the future.

4 DATED this _____ day of December 2004.

5 BRIAN SANDOVAL
6 Attorney General

7
8 By: _____
9 NEIL A. ROMBARDO
10 Senior Deputy Attorney General
11 Nevada State Bar No. 6800
12 100 North Carson Street
13 Carson City, Nevada 89701-4717
14 (775) 684-1205

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of December 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Robert E. Mooney
3580 Dove Circle
Cold Springs Valley, Nevada 89506

Blaine E. Cartlidge
Washoe County Deputy District Attorney
Post Office Box 30083
Reno, Nevada 89520-3083

An Employee of the Office of the
Nevada Attorney General

1 a 120-day contract. During the discussion of the financial report, the Board discussed the
2 demands of both Ms. Kroshus and Ms. Federizo. Neither Ms. Kroshus nor Ms. Federizo
3 received notice that their demands would be discussed at the June 1, 2004 meeting. During
4 this discussion, the Board never considered the “character, alleged misconduct, professional
5 competence, or physical or mental health” of Ms. Kroshus or Ms. Federizo.

6 **III.**

7 **ISSUE**

8 Did the Board violate the Open Meeting Law by failing to notice Ms. Kroshus or
9 Ms. Federizo about the June 1, 2004 meeting?

10 **IV.**

11 **CONCLUSIONS OF LAW**

12 To begin with, NRS 386.550(1)(e) requires charter schools to comply with NRS chapter
13 241, the Open Meeting Law. Therefore, the Board must comply with all requirements of the
14 Open Meeting Law.

15 The Open Meeting Law requires a public body to notice a person only pursuant to
16 NRS 241.033 and 241.034. NRS 241.033(1) states, “1. A public body shall not hold a
17 meeting to consider the character, alleged misconduct, professional competence, or physical
18 or mental health of any person unless it has given written notice to that person of the time and
19 place of the meeting. . . .”

20 NRS 241.034(1) states, “1. A public body shall not consider at a meeting whether to:
21 (a) Take administrative action against a person; or (b) . . . unless the public body has given
22 written notice to that person of the time and place of the meeting.”

23 Here the Board mentioned Ms. Kroshus and Ms. Federizo in their discussion of the
24 agenda topic. However, the Board did not discuss Ms. Kroshus’ or Ms. Federizo’s “character,
25 alleged misconduct, professional competence, or physical or mental health.” The Board also
26 did not consider taking administrative action against either of them. Therefore, the Board was
27 not obligated to notice either person under NRS 241.033 or 241.034.

28 However, the Board’s agenda fell woefully short of the legal requirements found in

1 Nevada's Open Meeting Law. NRS 241.020(2)(c)(1) requires a public body to post an
2 agenda consisting of a "clear and complete statement of the topics scheduled to be
3 considered during the meeting." Section 7.02 of the NEVADA OPEN MEETING LAW MANUAL
4 states, "Always keep in mind the purpose of the agenda is to give the public notice of what its
5 government is doing, has done, or may do." In OMLO 99-03 (January 11, 1999), this Office
6 opined:

7
8 Generic agenda items such as 'President's Report,' 'Committee
9 Reports,' 'New Business,' and 'Old Business' do not provide a
10 clear and complete statement of the topics scheduled to be
11 considered. Such items should not be listed as action items as
12 they do not adequately describe items upon which action is to be
13 taken.

14 NEVADA OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001).

15 Here the Board's agenda included the following agenda statements: "Addition of
16 Board Members," "New Building," "Budget," "Financial Report," and other similarly worded
17 agenda statements. These items failed to clearly and completely describe what the Board
18 considered or deliberated about. For example, the Board deliberated and took action to make
19 a settlement offer to Ms. Kroshus under "Financial Report."² The agenda statement
20 "Financial Report" failed to provide a member of the general public with notice of what the
21 Board was doing, has done, or will do. Therefore, this agenda statement, and the other
22 similarly worded agenda statements, did not meet the "clear and complete" legal requirement
23 of Nevada's Open Meeting Law.

24 NRS 241.020(2)(c)(2) requires a public body to post an agenda consisting of a "list
25 describing the items on which action may be taken and clearly denoting that action may be
26 taken on those items." In this instance, the Board's agenda did not clearly denote any items
27 for action. The agenda merely listed a variety of unclear and incomplete topics, on which the
28 Board, as previously mentioned, took action. As a result, the Board's agenda failed to comply

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² The Board took action on most of the agenda items.

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2 with NRS 241.020(2)(c)(2), and this Office advises the Board to immediately change the
3 format of its agendas to comply with this opinion and all aspects of Nevada's Open Meeting
4 Law.³

5 **V.**

6 **CONCLUSION**

7 The Office of the Nevada Attorney General opines that The Clark County Team
8 Academy Board of Directors was under no obligation to notice either Ms. Kroshus or
9 Ms. Federizo pursuant to the Open Meeting Law. However, this Office also advises The Clark
10 County Team Academy Board of Directors to modify all future agendas to comply with this
11 opinion and Nevada's Open Meeting Law.

12 DATED this _____ day of December 2004.

13 BRIAN SANDOVAL
14 Attorney General

15 By:

16 _____
17 NEIL A. ROMBARDO
18 Senior Deputy Attorney General
19 Nevada State Bar No. 6800
20 100 North Carson Street
21 Carson City, Nevada 89701-4717
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27 ³ An example of an agenda can be found on page 72 of the Ninth Edition of the NEVADA OPEN MEETING
28 LAW MANUAL. The NEVADA OPEN MEETING LAW MANUAL can be downloaded or printed from the Nevada
Department of Justice website, which is www.ag.state.nv.us.

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of December, 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Judy Kroshus
Patricia Federizo
1140 Dinah Drive
Fernley, Nevada 89408

Chris T. Rasmussen, Esq.
Law Offices of Chris Rasmussen Chartered
330 South Third Street, Suite 1010
Las Vegas, Nevada 89101

An Employee of the Office of the
Nevada Attorney General

1 items during the "Special Meeting" and adjourned the meeting. Immediately after the
2 adjournment of the "Special Meeting," the Council held a "Regular Meeting" and devoted two
3 periods of time to public comment.

4 **III.**

5 **ISSUE**

6 Did the Council violate the Open Meeting Law by not allowing public comment during
7 the "Special Meeting?"

8 **IV.**

9 **CONCLUSIONS OF LAW**

10 NRS 241.015(2)(a)(1) defines a "Meeting" as "[t]he gathering of members of a public
11 body at which a quorum is present to deliberate toward a decision or to take action on any
12 matter over which the public body has supervision, control, jurisdiction or advisory power."

13 NRS 241.020(2)(c)(3) states:

14 2. Except in an emergency, written notice of all meetings must be
15 given at least 3 working days before the meeting. The notice must
include:

16
(c) An agenda consisting of:

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(3) A period devoted to comments by the general public, if any,
18 and discussion of those comments. No action may be taken upon a
19 matter raised under this item of the agenda until the matter itself
has been specifically included on an agenda as an item upon which
action may be taken pursuant to subparagraph (2).

20 Section 6.02 of the Nevada Open Meeting Law Manual states that "[a] period devoted to
21 comments by the general public" must be an item on the agenda.

22 Here the Council took action during the "Special Meeting" to approve the canvass of
23 the general election, which is within the Council's "supervision, control, jurisdiction or advisory
24 power." NRS 241.015(2)(a)(1). The Council also treated the "Special Meeting" and "Regular
25 Meeting" as two different meetings. The Council produced two different agendas. The
26 Council kept separate minutes for each meeting. The Council adjourned the "Special
27 Meeting" before proceeding with the "Regular Meeting." Thus the Council conducted two
28 different public meetings pursuant to NRS 241.015(2)(a)(1) and was obligated to comply with

1 the Open Meeting Law at both meetings.

2 The Council failed to take or allow public comment during the "Special Meeting."
3 NRS 241.020(2)(c)(3) is clear on its face that an agenda for a public meeting, even if it is a
4 "Special Meeting" to perform ministerial duties or ceremonial acts,¹ must devote a portion of
5 the agenda to public comments. Since the "Special Meeting" was a separate meeting from
6 the "Regular Meeting," the public comment period during the "Regular Meeting" does not fulfill
7 the Council's legal responsibility to permit "public comment" during the "Special Meeting."
8 Therefore, the Council violated Nevada's Open Meeting Law.

9 However, with regard to what appropriate remedy should be asserted, we observe the
10 Council does not have a history of frequent violations of the Open Meeting Law and their
11 "Special Meeting" violation was a good faith misinterpretation of the law. Further, City
12 Attorney Adams' response to Mr. Dehne's complaint states, "[T]hat on November 22, 2004,
13 the Sparks City Council, by a vote of 5 to 0, considered and ratified all actions of the Sparks
14 City Council taken at the 'Special' and 'Regular' City Council Meetings of November 8, 2004
15 and the City Council Meeting of November 15, 2004." Even if one was to argue that two new
16 Council members were not properly on the Council at the November 22, 2004 meeting, three
17 of the five Council members were from the pre-November 8, 2004 Council. As a result, the
18 Council had the necessary votes of sitting members to approve the actions for the November
19 8, 2004 and November 15, 2004 meetings without recreating the pre-November 8, 2004
20 Council.² Therefore, the action taken by the Council at the November 22, 2004 meeting
21 cured the voidable actions taken during the November 8, 2004 meeting, and as a result, there
22 is no need for this Office to proceed with legal action against the Council.

23 ///

24 _____
25 ¹ City Attorney Adams' response to Mr. Dehne's complaint alleged that because the Council conducted
26 ministerial duties and ceremonial acts during the "Special Meeting" a public comment period was not necessary.
27 The Open Meeting Law does not make such a distinction, and as already indicated, the Council's "Special
28 Meeting" was still a meeting for purposes of the Open Meeting Law.

² Please note that it should not be inferred by this opinion that the new members were not appropriately
sitting on the Council. Such an issue (including the voidable vote regarding the "canvass") is an election law
issue, which goes beyond the scope of this Open Meeting Law Opinion.

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V.

CONCLUSION

The Sparks City Council violated the Open Meeting Law by not permitting public comment at its November 8, 2004 "Special Meeting." The Council, however, cured its resulting voidable "action" at its November 22, 2004 meeting by properly ratifying the actions taken at the November 8, 2004 and November 15, 2004 meetings. The Office of the Nevada Attorney General advises the Sparks City Council to follow all aspects of the Open Meeting Law and to act consistent with this opinion. The Office of the Nevada Attorney General may consider this violation in determining whether to take legal action against the Sparks City Council for future violations of the Open Meeting Law. Therefore, any future violations by the Sparks City Council could lead to legal action by this Office against the Council.

DATED this _____ day of December 2004.

BRIAN SANDOVAL
Attorney General

By: _____
NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1205

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of December 2004, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Shaun Carey, City Manager
City of Sparks
Post Office Box 857
Sparks, Nevada 89432-0857

Chester H. Adams, City Attorney
City of Sparks
Post Office Box 857
Sparks, Nevada 89432-0857

An Employee of the Office of the
Nevada Attorney General