



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

June 19, 1997

Mr. Robert Anglen
Reno Gazette-Journal
Post Office Box 2000
Reno, Nevada 89520

Honorable Bruce Breslow
Mayor, City of Sparks
City Hall
Sparks, Nevada 89431

Re: *Open meeting law violation during meeting of Sparks City Council meeting on March 24, 1997.*

Dear Gentlemen:

Mr. Anglen wrote this office a letter expressing concerns about possible open meeting law violations by the Sparks City Council during its March 24, 1997 meeting.

In looking into the matter, we reviewed the video and audio tapes of the March 24 meeting, and the audio tapes of the April 7 study session and April 14 council meeting. We interviewed each member of the Sparks City Council. We reviewed the minutes of the March 17 study session, the March 24 meeting, the April 7 study session, and the April 14 council meeting. We also reviewed the material presented to the council by the city staff. During this process, city councilmembers and staff personnel were helpful, open and frank with us, which we appreciate.

In his letter to us, Mr. Anglen questioned two possible violations of the open meeting law.

Mr. Robert Anglen
Honorable Bruce. Breslow
June 19, 1997
Page 2

The questions center around the council's consideration of item 6.6 on the council agenda for the March 24 meeting which was the reallocation of \$200,000 in federal community development block grant (CDBG) funding to local charities or entities.

First, he questioned Councilwoman Henderson's remark at the opening of discussion of item 6.6 that she had talked to several members of the council before the March 24 meeting. Her remark warrants inquiry because it could imply that there might have been a deliberation by a quorum of the councilmembers outside of a public meeting which would be a violation of the open meeting law. See NRS 241.020 (1) (all meetings of public bodies must be open and public), 241.015 (2) (. . . a meeting is a 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), and 241.015 (4) (... a quorum means a simple majority of the constituent membership of the public body, or other proportion established by law). There are six constituent members of the council, so a quorum would be four. If Councilwoman Henderson had privately discussed the matter with three other councilmembers in a way that constituted a "gathering... to deliberate", a violation would have occurred.

Our investigation reveals that Councilwoman Henderson had separate conversations with only two other constituent members of the council regarding the agenda item. Since a total of three persons were involved in the conversations, a quorum was not achieved. Further, it does not appear that the two conversations were a polling or otherwise had sufficient connections to constitute a gathering to deliberate. Thus, a violation of the open meeting law did not occur in this regard.

The second question was whether or not the council violated the open meeting law by considering a matter that was not on the agenda for that night. Our review of the tapes of the meeting indicate that they did consider a matter that was not on the agenda.

Under NRS 241.020 (2), written notice of all meetings must be given three days in advance, and must include an agenda consisting of "a clear and complete statement of the topics to be considered during the meeting." (Emphasis added).

Agenda item 6.6 for the March 24 meeting was stated as:

**RECOMMENDATION TO APPROVE AMENDMENT TO ANNUAL PLAN
BY REALLOCATION OF \$200,000 OF COMMUNITY DEVELOPMENT
BLOCK GRANT FUNDS FOR CONSTRUCTION PURPOSES.**

Mr. Robert Anglen
Honorable Bruce. Breslow
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Page 3

But as the council discussed the reallocation of the \$200,000 in CDBG funds, it also discussed how to allocate another \$375,000 in CDBG funds next fiscal year which was not on the agenda for that night, but was going to be considered at a later meeting.

Despite being cautioned by the city staff, the council discussed the second \$375,000 several times during the meeting, and at one point, the mayor summarized what appeared to be a consensus of the council regarding how to allocate a portion of that \$375,000 when he stated:

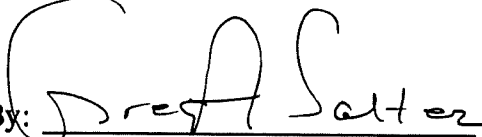
"And then at the April 14th meeting, the allocation of the \$375,000 will come before the city council for distribution, and the recommendations today were to allocate the money in that that was pointed to the Boys and Girls Club of \$125,000 approximately, give \$100,000 to the Y, Sparks YMCA, and the remaining money from that to Sagewinds if they have a plan to locate."

As a result, we believe that an open meeting violation occurred when the council went off its agenda on March 24, 1997 to consider the allocation of the \$375,000 in CDBG funds.

The effect of the violation is somewhat mitigated by the fact that the council agendized and discussed the \$375,000 in CDBG grants again on April 7 and April 14, affording an opportunity for public scrutiny and input. Our records indicate that this is our first open meeting complaint involving the Sparks City Council and considering all the circumstances surrounding this case, this office believes that the most appropriate remedy would be to discuss our conclusions with the council and caution the council that it must carefully adhere to its agendas in the future or it could face sanctions for violations of the open meeting law.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By: 
GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426

cc: Members, Sparks City Council
Chet Adams, Sparks City Attorney



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Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

June 20, 1997

Mr. George Chachas
110 Avenue G
Ely, Nevada 89301

Re: *Open meeting question regarding veto by Mayor Jack Smith*

Dear Mr. Chachas:

This letter is in response to our conversation and the letter you FAXed to me on May 27, 1997.

You indicated that on May 22, 1997, the Ely City Council met in an open meeting and passed a resolution to hire an outside attorney for the City of Ely. Mayor Jack Smith was at the council meeting, but did not vote on the resolution, nor did he indicate that he would veto it. On or about May 23, 1997, Mayor Smith vetoed that resolution which he explained in a memo to the city council dated May 27, 1997. You indicate that after the council meeting, Mayor Smith may have discussed the matter with staff members and neither those discussions with staff nor his veto of the resolution occurred in an open meeting. Your question was whether or not a violation of Nevada's open meeting law had occurred. For purposes of this letter, we assume the foregoing facts as true and assume the absence of any indication that the mayor met with other city council members to discuss the veto. We have not made further inquiry.

Under the circumstances, we do not believe that the open meeting law applied to Mayor Smith either when he discussed the veto with his staff or when he exercised his right to veto.

Nevada's open meeting law provides that "...all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies." NRS 241.020 (1) (emphasis supplied). NRS 241.015 (3) defines a "public body" as

Mr. George Chachas
June 20, 1997

"...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 any part by tax revenue, including but not limited to , any board, commission, committee, subcommittee or other subsidiary thereof and includes an education foundation as defined in subsection 3 of NRS 388.750" (emphasis supplied)


It has long been the opinion of this office that the open meeting law only applies to multimember bodies. See Nevada Open Meeting Law Manual, Sixth Edition, July 1991, Office of the Attorney General, page 8 (Question 1). Further, we do not believe that the open meeting law applies to an executive officer when acting solely in that capacity. See Nevada Open Meeting Manual, infra, page 10 (Question 4). See also AGO 241 dated August 24, 1961 (open meeting law does not apply to governor when acting in executive capacity).

Under NRS 266.165, Mayor Smith is the chief executive of the city. When he exercises his veto power, he would be doing so under his executive powers. When acting alone as chief executive officer, Mayor Smith is not a multimember public body, so the open meeting law would not apply to meetings with his staff or to the exercise of his veto power.

Thus, we conclude that it does not appear that Mayor Smith violated the open meeting law based on the facts you have communicated to us. Thank you for your letter, and we appreciate the reason for your inquiry and concern, and we hope this answers your question. If you have any further questions, please call me.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By: 

GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426



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FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

June 17, 1997

Mr. Erik Pappa
Planning Editor
KLAS - TV
3228 Channel 8 Drive
Las Vegas, Nevada 89109

Re: Clark County Child Death Review Team

Dear Mr. Pappa:

This letter is in response to your letter regarding the Clark County Child Death Review Team. You indicated in your letter that the team was going to meet to review a case involving the death of 14 month old Kierra Harrison and possibly amend come agency procedures as a result of that death and that there was disagreement between you and the team co-chair as to whether or not that meeting was subject to Nevada's open meeting law, Chapter 241 of the Nevada Revised Statutes. You asked this office for an opinion as to whether the open meeting law applied to the team.

We have interviewed certain team members and reviewed public information about the team to ascertain the following facts about the team and its work. We have also studied the relevant statutes and law and note that while it is a close call, we believe that the team's meetings are not subject to the open meeting law for the following reasons.

Facts

Even though the Clark County Child Death Review Team (the "Team") was established a few months before enactment of the statute, it presently operates under NRS 432B.405, which says:

432.405 Child death review teams.

1. an agency which provides protective services:

(a) May organize one or more multidisciplinary teams to review the death of a child; and

(b) Shall organize one or more multidisciplinary teams to review the death of a child upon receiving a written request from an adult related to the child within the third degree of consanguinity, if the request is received by the agency within 1 year after the date of death of the child.¹

2. Members of a team organized pursuant to subsection 1 serve at the invitation of the agency and must include representatives of other organizations concerned with education, law enforcement or physical or mental health.

3. Each organization represented on such a team may share with the other members of the team information in its possession concerning the child who is the subject of the review, siblings of the child, any person who was responsible for the welfare of this child and any other information deemed by the organization to be pertinent to the review.

4. Before establishing any child death review team, an agency shall adopt a written protocol

¹ One team member who has been with the team since its inception indicates that to the best of her knowledge, no such request has been made, and that the team was organized under subsection (a) above. We believe that there are circumstances where teams organized under this subsection may be subject to the open meeting law, depending on their powers and purposes.

describing its objectives and the structure of such a team.

The Team was established by the Clark County Child Protective Services Agency. Approximately 28 members from various state and local agencies participate.

The Team's "statement of purpose" appearing in its 1994-1995 annual report says:

The team includes members from different disciplines and professions. The experience and knowledge of the diverse professionals all play a part in understanding the causes and circumstances of child deaths. Exploration of potential shortcomings of the system, recognition of safety hazards, and the observation of child abuse and neglect risks are among the challenges of the panel's review.

The objectives of Clark County's Death Review Team are as follows:

- To act as the data repository for child deaths in Clark County and to review cases of death of children under the age of six.
- To identify causes of death of children and circumstances surrounding and contributing to preventable/suspicious deaths;
- To identify new maltreatment patters which may respond to government intervention;
- To propose needed changes in legislation, policy and practice in order to prevent future deaths through quality enhancement of services, programs, and systems;
- To assist coordination and integration efforts of the respective agencies involved with the protection of children;
- To evaluate service delivery systems;

- To determine any statistically significant trends in child abuse and child deaths; and
- To prepare an annual written report on the activities, findings and recommendations of the team.

Based on interviews with co-chairpersons and two other persons currently serving on the Team, we observe the following additional facts.

- The team has no budget and no staff. It generates no revenue and makes no assessments or dues to individual participating agencies. It pays no fees or expenses to its members for attending meetings and is not authorized to incur any expenses. The cost of publishing the annual reports is absorbed by individual agencies on a voluntary basis.
- The team is loosely organized and entirely voluntary. No written appointments are made by any government agency. Agencies are invited but not compelled to send representatives and the list of participants is fluid. Members come to meetings as they wish and rarely do all of the Team members attend all of the meetings.
- At the meetings, no motions are made and no votes are taken on any issues. The Team does not take actions as a collective body.
- Individual exchanges may occur between Team members to share information and ideas to improve service among their respective agencies.
- The team studies individual death reports to evaluate causes and circumstances of death and glean information which is tabulated in a database, but the Team does not issue any findings of fact, determinations of guilt or recommendations in individual cases by name.

- It uses the diverse expertise of its participants to review the death reports and database information to identify possible trends and their prevention.

- Each year, an annual report is prepared by the two co-chairpersons (not a quorum) of the Team. A Team meeting is not held to discuss or approve the report. The report includes statistics, general observations and recommendations intended for the general public and all government agencies who want to use it. It is a public document and is often announced by a press conference. The report contains no discussions of individual cases by name.

- The team has no regulatory, advisory or investigative powers.

- The team does not report to any board, commission or committee. Any advice it gives would appear in the annual report as a general recommendation.

- No individual citizen's liberties are affected by Team decisions.

- While the team may make general recommendations from time to time about how government agencies could improve services, the Team makes no budget recommendations.

- The vast majority of the information the Team reviews is confidential and protected by NRS 432B.280. It would be a misdemeanor crime for any member of the Team to reveal the contents of individual reports it reviews, and Team members are required to sign written acknowledgements of the statutory restrictions. Additionally, the Team may review cases that are still under investigation by law enforcement agencies. If the meetings were public, participating law enforcement agencies may be reluctant to discuss information and Team members may be reluctant to

exchange views, information or ideas that could be useful to ongoing investigations.

- To evaluate child deaths for purposes of compiling statistics and observing trends, the Team sometimes invites physicians or other professionals to its meetings to educate the Team or discuss professional opinions or observations, but attendance at the meetings by such professionals is entirely unpaid and voluntary, and the Team promises confidentiality. For various reasons, the professionals would probably not attend any meeting to discuss sensitive information if the meeting was open to the public or even if the public knew that they were present to discuss an individual case with the Team.

Analysis

The open meeting law applies to meetings of public bodies, and NRS 241.015 defines a "public body" (in relevant parts) as:

"...any administrative, advisory, executive ...body of ...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 revenues, including but not limited to any ...committee ...or subsidiary thereof..."

Applying that definition to the facts before us, we first analyze whether or not the Team is the type of "body" generally covered by the open meeting law, and then we analyze the extent to which the Team expends or is supported by tax revenues.

Generally, open meeting laws apply to public, collegial deliberative bodies, that is, bodies that meet as a group for deliberation and decision making. Advertiser Co. v. Wallis, 493 So.2d 1365, 1369 (Ala 1986). The public bodies subject to open meeting requirements are entities which act collectively, as collegial bodies, rather than individuals acting separately and individually. Graham

County Electric Cooperative, Inc. v. Town of Safford, 95 Ariz. 174 (1963), People ex rel. Jones v. Carver, 5 Colo. App 156, 38 P. 332, 334 (1894).

Looking to the above facts, we see that while the Team is authorized by statute, neither the statute nor the processes and protocols developed under the statute give the Team any administrative, advisory or executive powers. The Team does not regulate any activity, nor does it administer any governmental program or set any public policy. It reports to and directly advises no governmental entity. Any observations or recommendations made are published in its annual report which is a public document.

The import and value of the Team comes from its ability to pull information which may otherwise remain locked up in confidential child death reports and put that information to good public use (without compromising privacy) by processing it through multidisciplinary analysis to extract and tabulate lessons about why children die and hopefully identify what, if anything, people or their government can do to prevent child abuse.

The Team operates as an interdisciplinary think tank, not a regulator. Team participants come from different agencies and practice different disciplines. They assemble as staff members from various agencies to discuss and pitch in thoughts and opinions and tabulate data. Sometimes they discuss among themselves ways to coordinate and improve their agency services. But no motions are made, no votes are taken, no collective decisions are achieved, and no resolutions are passed. The statistics used in the annual report are prepared by the co-chairpersons and are not reviewed by the Team before being published.

The meetings appear to be functionally equivalent to interdepartmental staff meetings of government agencies.

We have previously opined that the open meeting law does not apply to internal agency staff meetings where typically staff members make individual reports and recommendations to a superior, the technical requirements of a quorum do not apply, and decisions are not reached by a vote or consensus. Nor does the open meeting law usually apply to committees composed exclusively of staff

personnel. See Nevada Open Meeting Manual, Sixth Edition, July 1991, page 9, Question # 2.

In the manual, we cited People ex rel. Cooper v. Carlson, 328 N.E.2d 675 (Ill App. 1975) and Bennett v. Warden, 333 So.2d 97 (Fla. App. 1976). In Cooper, supra, it was held that the open meeting law did not apply to technical staff meetings of county department directors whose discussions led to recommendations to a county development committee, where (1) no motions or resolutions were presented during such staff meetings, (2) there was no statute, ordinance or resolution by county board or by development committee appointing technical staff as a public body, and (3) where such periodic meetings were intended to provide more efficient service to the development committee. From the foregoing facts, it appears that the Team operates under similar circumstances.

It therefore does not appear that the Team has sufficient collegial or deliberative characteristics to bring it within the first part of the definition of a public body.

Nor does it appear that the Team has a sufficient nexus with tax revenues to bring it within the intended ambit of the second part of the definition of a public body. As an entity, the Team neither receives nor expends public money. Individual agencies absorb the small amount of administrative expenses the same way as they would under any interdepartmental staff consortium. Moreover, the Team does not advise any public body which is responsible for spending public money except to the incidental extent that a public body may occasionally benefit from the general recommendations that appear in the annual reports.

Therefore, we do not believe that the Team is a public body within the meaning of NRS 241.015, and as a result, we conclude that the Team is not required to comply with the notice and other requirements of the open meeting law. Our opinion is limited to the facts mentioned above, and we caution that another child death review team organized under NRS 432B could be subject to the open meeting law depending on the powers and duties given to it.

As a postscript, we note that there may be legitimate public curiosity about individual child death reports reviewed by the Team such as the one regarding the death of Kierra Harrison in Las Vegas which is the subject of your letter. And the team may very well review and discuss that report and extract its lessons and it may combine those lessons with lessons from other reports to make overall observations and perhaps recommendations based on those observations in its annual report. But under NRS 432B.280 the Team is prohibited by law from making any public disclosures about the contents of any specific report. If the Team's discussions regarding the confidential reports were subject to the open meeting law, we don't see how the Team could comply with the open meeting law without violating the confidentiality law. One would think that the Team could consider the confidential reports in closed meetings under NRS 241.033, but certain provisions of that statute could force violations of NRS 432B.280 and 432B.490. As a result, without some legislative relief, the Team would probably have to abandon considering confidential reports, which frustrates the whole purpose of the Team. We do not believe that the legislature intended such results.

And finally we note that the Team does not have the power to amend any agency processes or procedures as you suggest in your letter, which, as pointed out above, is part of the reason that we believe that it is not a public body.

We respect your comments and observations in your letter, and hope this letter is responsive to your questions.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By 

Gregory A. Salter
Deputy Attorney General
(702) 687-6426



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FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

September 9, 1997

Mr. Thomas Mitchell
Editor, Las Vegas Review Journal
P.O. Box 70 -
Las Vegas, Nevada 89125-0070

Dear Mr. Mitchell:

On September 2, 1997, I received by mail (not by fax as indicated) an unsigned letter on Las Vegas Review Journal stationary dated August 19, 1997, asking this office to find out why your paper was not "alerted to the scheduling" of a meeting of the "internal Force Review Board" of the North Las Vegas Police Department. The letter also alleges that reporters of your paper were told they could not attend the meeting.

The letter does not specify the date of the meeting, nor does it give the names of the reporters who were told they could not attend the meeting, nor does it indicate who told them so.

I need some help here. If that was your letter, could you please at least identify the reporters and tell me who it was that they talked to? Also, if you have any information that would indicate that the internal review team is a "public body" as defined in the open meeting law, I would appreciate that information. Thank you.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By: 

GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426

"Protecting citizens, solving problems, making government work"

97-062

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Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

September 9, 1997

Mr. Clyde Biglieri
Post Office Box 911
Reno, Nevada 89504

Re: *Agenda, August 6, 1997, Board of Trustees, Washoe County Senior Services.*

Dear Mr. Biglieri:

This letter is in response to your FAX transmission to me the other day regarding on the above mentioned agenda. Thank you for sending it in. You raise valid questions.

With respect to your first question, I find nothing legally wrong with including "public input" more than once on the agenda. NRS 241.020 requires that an agenda have a period devoted to comments by the general public, and that no action may be taken on a matter raised under this item until the matter is specifically listed on an agenda for a future meeting. Here we have two periods of public input, which may be unnecessary, but not illegal.

With respect to your second question regarding item 6B of the agenda "Discussion and Possible Recommendation Regarding Items Contained in the Mailed Director's Report", can you tell me what those "items" were? Do you know if any action was taken on any of those "items" at the meeting?

Under NRS 241.020 (4) as well as NRS Chapter 239, you are entitled to a copy of the director's report. If you haven't asked for one, please do and let me know if you get one.

I would also like to know if there were any "Emergency Items" actually discussed under Item 11 of the agenda.

97-061

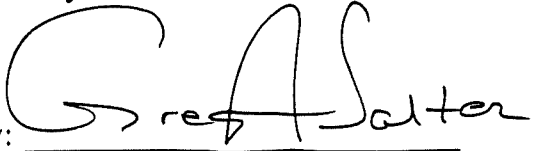
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(O)-3352C

Clyde Biglieri
September 9, 1997
Page 2

Please let me know what happened, and I can finish my response to you.

FRANKIE SUE DEL PAPA
Attorney General

By: 

GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426

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"Protecting citizens, solving problems, making government work"

1 Case No. 97-00630A

2 Dept. No. I

3
4
5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY AND STOREY COUNTY
8

9 FRANKIE SUE DEL PAPA,
10 ATTORNEY GENERAL OF THE
STATE OF NEVADA,

11 Plaintiff,

12 v.

13 VIRGINIA CITY CONVENTION
14 AND TOURISM AUTHORITY, BOARD
OF DIRECTORS, VIRGINIA CITY
15 CONVENTION AND TOURISM
AUTHORITY,

16 Defendants.

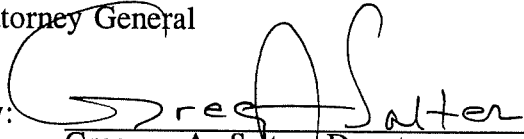
NOTICE OF ENTRY

17
18 TO: Virginia City Convention and Tourism Authority and its Board of Directors, c/o Storey
County District Attorney's office, Terrance Shea, Esq., Deputy District Attorney, P.O.
19 Box 496, "B" Street Courthouse, Virginia City, Nevada 89440.

20 PLEASE TAKE NOTICE that the attached Permanent Injunction and Order Dismissing
21 Case was entered on October 7, 1997 by the Court in the above captioned case.

22 Dated this 14th day of October, 1997.

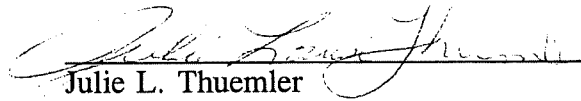
23 FRANKIE SUE DEL PAPA
Attorney General

24 By: 
25 Gregory A. Salter, Deputy
26 100 North Carson Street
27 Carson City, NV 89701-4717
28 (702) 687-6426

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the State of Nevada; that on the 17th
day of October, 1997, I served a copy of the foregoing **NOTICE OF ENTRY**,
in Case No. 97-00630A, by mailing a true copy, properly addressed, postage prepaid, via
United States Mail, to the following:

Terrance Shea, Deputy District Attorney
c/o Storey County District Attorney's Office
Post Office Box 496
Virginia City, Nevada 89440


Julie L. Thuemler

Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

1 Case No. 97-00630A

2 Dept. No. I

RECEIVED
OCT - 7 1997
'97 OCT -7 P4:20
ALAN B. EVERETT
D. ROBERTS
ATTORNEY GENERAL
CARSON CITY, NEVADA

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5
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR CARSON CITY AND ~~STOREY COUNTY~~ *on*

8 FRANKIE SUE DEL PAPA,)
9 ATTORNEY GENERAL OF THE)
10 STATE OF NEVADA,)

11 Plaintiff)

12 v.)

PERMANENT INJUNCTION
and ORDER DISMISSING CASE

13 VIRGINIA CITY CONVENTION)
14 AND TOURISM AUTHORITY, BOARD)
15 OF DIRECTORS, VIRGINIA CITY)
16 CONVENTION AND TOURISM)
17 AUTHORITY,)

18 Defendants)

19 Based on the pleadings on file herein and the stipulation of the parties, good cause
20 appearing, the Court finds and orders as follows.

21 Findings of Fact and Conclusions of Law.

22 1. As attorney general, Plaintiff is authorized under NRS 241.037 to proceed against a
23 public body for injunctive relief to require compliance with and to prevent violations of Nevada's
24 Open Meeting Law, Chapter 241 of the Nevada Revised Statutes.

25 2. Defendant Virginia City Convention and Tourism Authority, (hereafter, "VCCTA") is
26 located in Virginia City, Nevada and is organized pursuant to NRS 244A.597 et seq., and has the
27 authority to sue and be sued as a body pursuant to NRS 244A.619 (10). Therefore, under NRS

28

1 12.105 Plaintiff is authorized to sue the VCCTA without naming the individual members of its
2 board.

3 3. The VCCTA is a "public body" as defined in NRS 241.015. As a result, meetings,
4 deliberations and actions of its board of directors must be conducted in accordance with the open
5 meeting law, NRS Chapter 241.

6 4. On February 20, 1997, the board of directors of the VCCTA (hereafter the "board") held
7 a meeting in or near Virginia City, Nevada.

8 5. During that meeting the board held two closed sessions. During those closed sessions,
9 the board discussed the character, alleged misconduct, and professional competence of Mr. Richard
10 Ponto, who was the director of the VCCTA.

11 6. The board did not give Mr. Ponto the notice required by NRS 241.033 (1), nor did it
12 receive proof of service of the required notice before it held the closed meetings.

13 7. The board went into each closed session without a motion stating the nature of the
14 business to be considered in the closed session, as required by NRS 241.030 (2).

15 8. Tape recordings were made of the open portion of the meeting, but the tape recorder was
16 shut off and no tape recordings were made of the closed sessions as required by NRS 241.035 (5).

17 9. Written material regarding Mr. Ponto was prepared and distributed to members of the
18 board before the meeting occurred. The written material was discussed during the closed sessions.

19 10. Minutes were not kept of the closed sessions as required by NRS 241.035 (1).

20 11. Following the second closed session, the board went into open meeting and had a
21 discussion with Mr. Ponto regarding alleged misconduct.

22 12. A motion was made and approved to immediately terminate a contract whereunder Mr.
23 Ponto was serving as director of VCCTA.

24 13. Neither the discussion regarding misconduct of Mr. Ponto nor the intended action on
25
26
27
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1 the contract were listed on the public notice and agenda for the meeting as required by NRS
2 241.020 (2).

3 14. At the meeting, Mr. Ponts requested a copy of the tapes of the meeting, and the
4 material identified in paragraph 10 above. He later followed up with a written request on or about
5 February 24, 1997. The tapes and written material requested were not furnished to him until after
6 the complaint herein was filed by the attorney general.

7 15. Subsequent to the filing of this action, the board cooperated with the attorney
8 general's office, paid Mr. Ponts as if his contract had not been terminated on February 20, and took
9 up consideration of the contract at a subsequent meeting. The board has agreed to implement
10 measures to prevent future violations of the open meeting law and has stipulated to injunctive relief.

11 16. Under NRS 241.036 the actions of any public body taken in violation of any provision
12 of the open meeting law is void.

13 17. Under NRS 241.037 (1) an injunction may issue from this Court against Defendant as
14 a body to require compliance with or prevent future violations of the open meeting law, without
15 proof of actual damage or other irreparable harm. By virtue of the foregoing violations of law,
16 good reason exists for injunctive relief.

17 18. Plaintiff brought this action within the sixty days required under NRS 241.037 (2) to
18 have the actions of Defendant declared void, and within the 120 days required for injunctive relief.

19
20
21 **Judgment and Permanent Injunction**

22 NOW THEREFORE, it is ORDERED that as a result of the foregoing,

23 1. The action taken by the board of directors of the Virginia City Convention and Tourism
24 Authority on February 20, 1997 to terminate the contract with Mr. Ponts is VOID, without
25 prejudice to action subsequently taken on the contract.

26 2. The board of directors of the Virginia City Convention and Tourism Authority is hereby
27 permanently ENJOINED:
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a. from conducting a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person without first giving the required notice and receiving proof of service as required by NRS 241.033;

b. from going into any closed meeting without proper motion as required by NRS 241.030 (2);

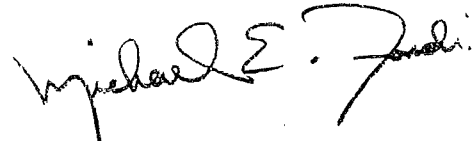
c. from refusing or failing to keep minutes or tape recordings of any closed meeting and from refusing or failing to provide such records as required by NRS 241.035; and

d. from taking action on items at its meetings without first giving public notice as required by NRS 241.020.

Dismissal of Case

The case is hereby DISMISSED, with prejudice, with each party to bear its own costs and attorneys fees.

ORDERED this 7th day of October, 1997.



District Judge

Gray Satter



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 20, 1997

Hollie Donner
6130 West Tropicana Avenue, Apt. 170
Las Vegas, Nevada 89103

Re: Open Meeting Law Complaint / State Board of Nursing / request for closed meeting transcript and request for review of open meeting tapes.

Dear Hollie:

I have completed the evaluation of your complaint in the above-referenced matter.

You indicated that the Board conducted a closed meeting on June 6, 1997, to discuss your character, competence, alleged misconduct and/or health. This closed session was recorded by a court reporter. You have requested a copy of the closed meeting transcript as is your right under NRS 241.035(2). I have this date received assurance from the Board that a copy of the closed meeting transcript will be ordered by the Board and one copy will be provided to you at no cost as soon as the court reporter has completed the transcription.

You also indicated that you made a request of Board personnel to permit you to inspect the audiotapes of all open Board meetings for the past year. If a Board chooses to audiotape its meetings it must retain those tapes for a minimum period of one year. Those audiotapes are public records and may be inspected by members of the public. NRS 241.035(2). I have this date received notice from the board that you will indeed be permitted to review the open meeting tapes as of this Friday.

You also indicated a desire to be placed on the Board's mailing list in order to receive the agenda and notice for upcoming Board meetings. Once such a request is made, the public body must mail notice to such a person for a period of six months. Thereafter the request for notice must be renewed by the requesting party. NRS 241.020(3)(b). I have received an assurance from the Board's legal counsel this date that you will be placed on the Board mailing list in order to receive meeting notices.

97-079

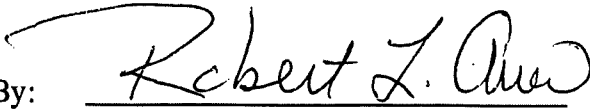
DMLO 97-07

Ms. Hollie Donner
October 20, 1997
Page 2

Based on the foregoing, I conclude that the Board will be complying with all Open Meeting Laws in its dealings with you on this matter. I am accordingly closing this investigation with no further action being contemplated. Thank you for bringing your concerns to the attention of our office.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: 

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf

cc: Keith Marcher, Esq.
Greg Salter, Esq. ✓
Kathy Apple



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710

Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 22, 1997

Kellyanne Taylor
26 Avenida Picasso
Henderson, Nevada 89014

Re: Open Meeting Law Complaint / Nevada State Board of Nursing.

Dear Kellyanne:

Our office has completed its review of the above-referenced matter.

At its meeting of June 6, 1997, the Board conducted a closed session to discuss your character, professional competence, alleged misconduct and/or health pursuant to NRS 241.030. That closed proceeding was recorded by means of a court reporting device. As part of your complaint, you noted that you had been required to pay for a copy of that court transcript. NRS 241.033(3) sets forth that a public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035 upon the request of any person who was discussed during the closed proceeding.

By a letter dated October 15, 1997, the Board has now provided notice that it will provide a refund to you for the actual documented costs you incurred in obtaining a copy of the closed meeting transcript.

You had also asked to inspect the audiotapes from past Board meetings. The Board is required to retain such open meeting audiotapes for a period of one year. NRS 241.035(4). It is my understanding that the Board has made sufficient arrangements to allow you to inspect these public records.

Based on the foregoing, I will be closing the file on this investigation. Thank you for bringing your concerns to our attention.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

Handwritten signature of Robert L. Auer in black ink.

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf

cc: Deputy Attorney General Keith Marcher
Kathy Apple

97-065

01110 97-08 (0)-3352C



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street
Carson City, Nevada 89701-4717

Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 22, 1997

Judy Sheldrew
Public Utilities Commission
727 Fairview Drive
Carson City, Nevada 89710

Re: April 4, 1997, letter on the Open Meeting Law / Public Service
Commission of Nevada.

Dear Judy:

I wanted to notify you that our office has closed the investigative file on the
above-referenced matter.

We believe that when the Legislature reorganized the public body known as the
Public Service Commission into the Public Utilities Commission and the Transportation
Services Authority it mooted any possible enforcement action which could be brought
against the Public Service Commission. Since the Public Service Commission no
longer exists as a "public body," we will be taking no further action on the Open
Meeting Law concerns raised in your letter.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:


ROBERT L. AUER

Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street
Carson City, Nevada 89701-4717

Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 22, 1997

Nancy Price
P. O. Box 3759
North Las Vegas, Nevada 89030

Re: Open Meeting Law / UCCSN Board of Regents / Attachment of written
remarks to the meeting minutes of January 30-31, 1997.

Dear Nancy:

I have reviewed the investigative file on the above-referenced matter.

NRS 241.035(1) sets forth in part that a public body shall keep written minutes of each of its meetings. One of the items listed for mandatory inclusion in the written minutes is: "(e) Any other information which any member of the body requests to be included or reflected in the minutes..."

At the January Board meeting you presented a written document for inclusion or reflection in the minutes. The document was attached at the end of the minutes for the meeting of January 30, 31, 1997. Thereafter the Board approved the January meeting minutes in this form over your objection. You had requested that your written remarks should be typed into the body of the January meeting minutes rather than being attached as a separate exhibit in the written form originally submitted by you during the January meeting.

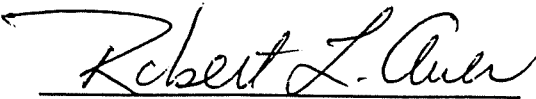
Based upon these facts I found no Open Meeting Law violation regarding this matter. Attachments to meeting minutes are routinely considered to be part of the meeting minutes. When the Board approved the January meeting minutes, including your written remarks as an attachment, the Board had your written comments reflected in the minutes. This approach is analogous to attaching the written comments made by a member of the general public to the meeting minutes if such a person specifically requested that written comments be included in the minutes. NRS 241.035(1)(d).

Nancy Price
October 22, 1997
Page 2

Based on the foregoing I have closed the investigation this date. Thank you for providing our office with the opportunity to review this matter.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: 
ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf
cc: Tom Ray, Esq.



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 22, 1997

Scott W. Doyle, Esq.
Douglas County District Attorney
P. O. Box 218
Minden, Nevada 89423

Re: Open Meeting Law Complaint / March 27, 1997, budget meeting of the
Douglas County Commission.

Dear Scott:

Our office has investigated the above-referenced matter.

The evidence gathered was insufficient to move forward with civil enforcement concerning the issue of whether the Board members discussed matters within the supervision, control, jurisdiction or advisory power of the county commission during a brief encounter just prior to the March 27th meeting. Thank you for providing our office with the opportunity to conduct this review.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

A handwritten signature in cursive script that reads "Robert L. Auer".

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf

97-025

DMLD 97-11



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street
Carson City, Nevada 89701-4717

Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 22, 1997

Lon L. Harter, D.C.
628 East John #3
Carson City, Nevada 89706

Re: Open Meeting Law Complaint / State Board of Chiropractic Examiners /
Closed sessions during the February and April, 1997 meetings.

Dear Dr. Harter:

Our office has investigated the above-referenced matter. Materials reviewed included the meeting notices, open and closed meeting minutes, and audiotapes.

I found that all procedural and substantive legal requirements were adhered to by the Board in conducting the closed sessions under NRS 241.030 on the dates in question. The Board did not violate the Open Meeting Law in any respect regarding these closed sessions.

Thank you for referring this matter to our office for review.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

A handwritten signature in cursive script that reads "Robert L. Auer". The signature is written in black ink and is positioned above a horizontal line.

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf

cc: Deputy Attorney General Ronda Moore



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 22, 1997

George Toto
P. O. Box 7473
Incline Village, Nevada 89452

Re: Open Meeting Law Complaint / Incline Village General Improvement District
Board / Meeting of April 30, 1997.

Dear George:

Our office has reviewed the above-referenced matter.

In this case you complained that the Board Chairman limited your ability to speak on a specific agenda topic concerning the Tahoe Boulevard bike path. I found no Open Meeting Law violation concerning this limitation. Whether a person is allowed to speak on a specific agenda topic, and the allocation of time thereon, are matters falling within the Board's discretion. The Open Meeting Law allows a person the right to attend, but not necessarily the right to participate, during a board's consideration of specific agenda topics. NRS 241.020.

A member of the public may address a public body during the public comment agenda topic on matters which do not fall within the specifically listed agenda topics. NRS 241.020(2)(c)(3).

Thank you for allowing our office to review this matter.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

A handwritten signature in cursive script that reads "Robert L. Auer".

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf

cc: Noel Manoukian, Esq.

97-041

8/11/0 97-13

(0)-3352C



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street
Carson City, Nevada 89701-4717

Telephone (702) 687-4170

Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 22, 1997

Assemblyman Wendell P. Williams
2200 Canary Way
Las Vegas, Nevada 89106

Re: Open Meeting Law Complaint / State Board of Education.

Dear Assemblyman Williams:

Our office has reviewed the above-referenced matter.

On May 9, 1997, four members of the State Board of Education had lunch together. During the lunch there was a discussion conducted by these four Board members regarding the possibility of revoking your teaching license. The State Board of Education consists of eleven members. See NRS385.021.

The Open Meeting Law only applies to "meetings" of public bodies. A meeting is defined as : "...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..." In the present matter there was less than a quorum of the Board gathered for lunch on May 9, 1997. This group had no power to act on behalf of the Board and conducted no meeting within the statutory definition of that term during this luncheon gathering.

Based on the foregoing, we will be closing our investigation on this matter. Thank you for allowing our office to review your concerns.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

A handwritten signature in cursive script that reads "Robert L. Auer".

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf

cc: Deputy Attorney General Melanie Meehan-Crossley



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710

Telephone (702) 687-4170

Fax (702) 687-5798

October 23, 1997

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

Ms. Wanda Wright
W Ranch
16500 Pyramid Way
Reno, Nevada 89510

Louis Test, Esquire
Hoffman, Test & Guinan
Post Office Box 187
Reno, Nevada 89504
Counsel to Palomino General Improvement District

Re: *Open Meeting Law complaint against the Palomino Valley General Improvement District at its April 15, 1997 meeting.*

Dear Ms. Wright and Mr. Test:

Ms. Wright sent a written complaint to this office alleging, among other things, that at the April 15 meeting of the board of directors of the Palomino Valley General Improvement District, Mr. and Mrs. Tom Rice were told by the chairman of the improvement district to "get the hell out of my meeting" in violation of NRS 241.040 (2).

I have listened to the tape and reviewed the agenda and minutes of that meeting. I have also discussed the matter with Ms. Wright, Mrs. Sidley, and Mr. Test.

Mr. and Mrs. Rice were at the meeting to ask the board to exclude their property from the improvement district. The tapes and minutes reflect that their request was discussed under agenda item 6¹ and that there was considerable discussion regarding whether the Rices' property should be excluded. Mrs. Rice discussed, without interruption or mistreatment, her position and members of the board and members of the public also had comments.

¹ Even though the request was specifically listed on the agenda as an action item, the tape and minutes reflect that it was discussed under Item 6 ("Public Comment"), which is a non-action item. This appears to be inadvertent. We recommend that in the future, the chairperson makes sure to distinguish action agenda items from the public comment item.

Ms. Wanda Wright
Louis Test, Esq.
October 23, 1997
Page 2

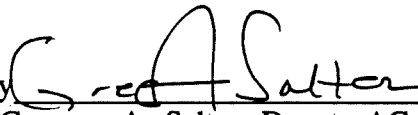
Maps were presented and reviewed by the board. Mr. Test explained the law of the case and the responsibilities of the board in making its determination. Up until the end, the discussion was cordial, and it does not appear that any person was denied the right to speak.

A motion was made and seconded to approve the request, subject to some provisions, and, following further discussion, the chairman called for a vote which turned out in a deadlock 2 - 2 vote with one abstention. Mr. Test opined that the deadlock amounted to no action being taken on the matter. Mrs. Rice then asked whether it would be necessary for her to obtain an attorney, and someone said that she could do whatever she wanted. Mr. Rice then made an angry comment about the board including a statement that it had not done its homework. Chairman John Claypool retorted, "One of these days I will show you my paycheck for sitting here and taking all this bullshit, get the hell out of here" in a somewhat raised voice. There followed a short discussion about board pay, and then Mrs. Rice thanked the board very much for its consideration, and it appears that the Rices left the meeting. Mr. Claypool said, "Sorry about the outburst, folks, I didn't need that" and the meeting continued. There is no indication that the Rices were forced to leave the meeting under physical threat or intimidation, and, given the nature of Mr. Claypool's apology, it would appear that had the Rices elected to stay and observe further proceedings, he would not have done anything about it.

NRS 241.040 (2) makes "wrongful exclusion of any person or persons from a meeting" a misdemeanor crime. Based on the foregoing, I conclude that the outburst by Mr. Claypool, while unfortunate, is not a violation of NRS 241.040 (2). The Rices were permitted to present and discuss their request, and it was discussed and voted upon before Mr. Claypool made his remark, and there is no evidence that Mr. Claypool intended the remark to cause an involuntary expulsion from the meeting.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By 

Gregory A. Salter, Deputy AG
(702) 687-6426

cc: Mr. & Mrs. Rice

c:\files\salter\wrig1023.ltr



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 28, 1997

Thomas Mitchell, Editor
Las Vegas Review Journal
P. O. Box 70
Las Vegas, Nevada 89125-0070

Re: Open Meeting Law Complaint / January 23, 1997, Public Service Commission Meeting / Failure to release proposed order as part of meeting materials.

Dear Tom:

I wanted to notify you that our office has closed the investigation on the above-referenced matter.

We believe that when the Legislature reorganized the public body known as the Public Service Commission into the Public Utilities Commission and the Transportation Services Authority it mooted any possible enforcement action which could be brought against the Public Service Commission. Since the Public Service Commission no longer exists as a "public body," we will be taking no further action on the Open Meeting Law concerns raised in your letter. We cannot obtain an injunction against the Public Service Commission since that body has now disbanded and we must wait to see how these new public bodies handle their proposed orders.

Should you have any complaints regarding the operation of either the Public Utilities Commission or the Transportation Services Authority, please feel free to contact Deputy Attorney General Greg Salter.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

Handwritten signature of Robert L. Auer in black ink.

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf
cc: Michael Melner, Esq.

97-024

DMLO 97-116



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 28, 1997

Marla McLean
7085 South Jackson Road
Winnemucca, Nevada 89445

Re: Open Meeting Law Complaint / Humboldt County Commission / Closed meeting
on County Administrator conducted at July 21, 1997, Meeting.

Dear Marla:

Our office has reviewed the above-referenced matter.

In this case the Commission detailed an agenda topic called: "Annual merit increase for County Administrator" The Commission went into a closed session, upon a motion, in order to discuss the character and professional competence of the administrator in conjunction with this agenda topic. The agenda did not note that a closed session might occur.

NRS 241.030 sets forth in part that nothing contained within NRS Chapter 241 prevents a public body from holding a closed session to discuss the character, professional competence, alleged misconduct or health of a person. While the preferred practice would involve the public body designating any possible closed sessions on its meeting notices on such matters, we cannot conclude that the omission of that designation in this particular instance amounts to an Open Meeting Law violation.

Thank you for bringing this matter to our attention.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

A handwritten signature in cursive script that reads "Robert L. Auer".

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf

cc: Michael McCormick, Esq.



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

November 6, 1997

Mr. John Ellison
Post Office Box 6161
Reno, Nevada 89513

Re: *Washoe County School Board of Trustees*

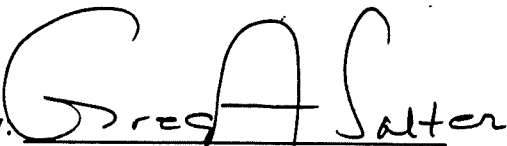
Dear Mr. Ellison:

This letter follows up on our conversation today indicating that you have received a copy of the minutes of the January and February, 1997, meetings of the Washoe County School Board. You are correct in your understanding that the minutes should have been prepared within 30 days after the adjournment of the meetings, under NRS 241.035 and this office has reminded the school district of that obligation.

We will be closing our file on this matter with a copy of this letter to be sent to the district as an additional reminder. Thank you for bringing this to our attention.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By: 
GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NII
Assistant Attorney General

November 6, 1997

Brian T. Kunzi, Esq.
Mineral County District Attorney
Post Office Box 1210
Hawthorne, Nevada 89415

Re: *Open Meeting Law violation, Mineral County School Board, July 7, 1997*

Dear Mr. Kunzi:

As you know, an open meeting law complaint was filed with this office against the Mineral County School Board regarding its actions at its July 7, 1997 meeting.

Based on our review of relevant documents, the agenda and tapes of the open session of the meeting, we conclude that a violation of the open meeting law has occurred.

On July 7, the school board voted to accept the rescission of a letter of resignation by Mr. Hugh Qualls, an elementary school principal.

Nowhere on the agenda for that meeting is that listed as an item to be considered by the board. The matter was taken up under an agenda item vaguely entitled "Motions Following Closed Session."

An agenda must include a clear and complete statement of the topics to be considered during a meeting. NRS 241.020 (2) (c) (1). This office has consistently held that names must be included in agendas for action items. See Op. Nev. Att'y Gen. No 79-8 (March 26, 1979) (names and addresses of applicants for building permits should be included on an agenda), and Op. Nev. Att'y Gen. No 91-6 (May 23, 1991) (using "Licensing Board" on an agenda without listing the names of the licensees being considered is improper).

In this case, the agenda was neither clear nor complete, because it did not address what was going to be considered and did not name the person involved. The agenda should have reflected that the board was scheduled to consider a request by Mr. Qualls to rescind a letter of resignation he had written.

The board had gone into closed session to consider allegations of misconduct, character and professional competence of Mr. Qualls, and there was question about whether the closed session was properly indicated on the agenda. The agenda clearly indicates that a closed session was scheduled under NRS 241.030 (1) and (2) to consider "the misconduct, character, and professional competence.... of an employee." A closed session is authorized for that purpose and, while we think it should be used sparingly in the case of public employees accused of misconduct, if a public body desires to preserve the confidentiality of the closed session, we have suggested that the motion for going into the closed session may be fairly broad, such as "I move we recess to executive session to consider the alleged misconduct of a school district employee." See Nevada Open Meeting Law Manual, Sixth Edition, Question 30, page 30. We think the same protection can be afforded on an agenda, as the board did in this case.

Shortly after the meeting occurred, and before the complaint came in, you and I had a discussion about what had occurred, and you wrote this office a letter asking for advice on how to balance the need to protect the confidentiality of matters to be discussed in a closed session with the need for the public to be informed. This office believes that when action is going to be taken regarding a public employee, the balance must tip in favor of the public. As indicated above, some confidentiality may be afforded for a closed sessions, but the confidentiality contemplated by such sessions extends only to the consideration of misconduct, character, professional competence, and physical or mental health. Once a public body is set to take action on such matters it must do so in an open meeting in accordance with the open meeting law, and the agenda must be clear and complete.

Considering the record of the Mineral County School board and the total circumstances of this case, we believe that the appropriate remedy for the violation is to provide this guidance and issue a warning that in future meetings the agenda must clearly and completely list all matters scheduled to be considered during the meeting, and include the names of employees upon whom action is to be taken.

A copy of this letter is being sent to the complaintant, and we are closing our file on this matter.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By:



GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

November 6, 1997

Mr. Charles Hill, Esq.
2180 East Warm Springs Road, Suite 2187
Las Vegas, Nevada 89119

Re: *Esmeralda County Commission meeting August 22, 1997*

Dear Mr. Hill:

This office has looked into your complaint alleging possible violations of the open meeting law by the Esmeralda County Commission at its meeting on August 22, 1997. The purpose of the meeting was to interview and select an acting district attorney. You indicated that the agenda specified that the interviews for district attorney would be conducted in a closed session, but that the interviews were conducted in an open session.

We have reviewed the agenda, draft minutes, and tapes of the meeting and conclude that while the agenda for the meeting was flawed, the proper corrective action was taken by the commission. The agenda did indicate that the interviews would be in closed session, but also indicated that the actual selection of the district attorney would take place in an open session. When the commission was informed at the very beginning of the meeting that the interviews could not be held in closed session (NRS 241.031), it did the right thing by opening up the entire process.

November 6, 1997

Page 2

We therefore are closing our file on this matter without further action. Thank you for bringing this important question to our attention.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By: 

GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426

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OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

November 6, 1997

Kiersten Y. Meyer
13750 Edmands Drive
Reno, Nevada 89511

Re: *Open Meeting Question, Washoe County Airport Authority*

Dear Ms. Mayer:

Upon your request, this office has looked into the circumstances of a meeting conducted by staff members and a consultant of the Washoe County Airport Authority on May 21, 1997, to see if the meeting was subject to the Nevada open meeting law.

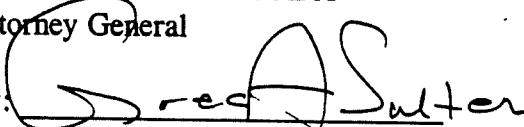
We have reviewed advertisements for the meeting as well as information about who attended and what was presented at the meeting, and conclude that the meeting was not governed by the open meeting law. It was an informational meeting for the public presented by staff employees of the authority, and was not attended by a quorum of the airport authority board. As a result, it does not fall within the definition of a "meeting" under NRS 241.015 (2).

Thank you for bringing the question to our attention.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By:


GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

November 17, 1997

Mr. Thomas Mitchell,
Editor,
Las Vegas Review Journal
P.O. Box 70
Las Vegas, Nevada 89125- 0070

By FAX to (702) 383-4676

Re: Application of NRS 241.020 (3) (b) to mailing of supporting material.

Dear Mr. Mitchell:

Thank you for your letter to the Attorney General and myself dated November 13, 1997 following up on your open meeting law complaint against the Clark County School District regarding the release of agenda supporting material (a memo) to your reporter. You felt that the school board was required by NRS 241.020 (3) (b) to mail the memo to your reporter at the same time it mailed the memo to its members. We had looked at that, and concluded that the statute applies only to the mailing of notice and agenda (the "minimum notice" items), and not to supporting material. I apologize for not mentioning that in my letter to you of November 6, 1997.

The relevant parts of NRS 241.020 are:

241.020 Meetings to be open and public; notice of meetings; copy of materials; exceptions.

1. ***
2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:
 - (a) The time, place and location of the meeting
 - (b) A list of the locations where the notice has been posted.
 - (c) An agenda consisting of: ***

3. Minimum public notice is:

(a) ***

(b) Mailing a copy of the notice to any person who has requested notice of the meetings of the body in the same manner in which notice is required to be mailed to a member of the body. *** The notice must be delivered to the postal service used by the body not later than 9 a.m. of the third working day before the meeting.

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

(a) ***

(b) ***

(c) Any other supporting material provided to the members of the public body, 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.

Subsections 2 and 3 set out an absolute time rule for providing “minimum notice” for a public meeting. Subsection 2 requires that written notice must be given three working days in advance of a meeting and describes what must go into that written notice. Subsection 3 sets the “minimum notice” rules for posting and mailing “the notice” described in subparagraph 2, and includes the requirement that if a person has requested notice of the meetings, the written notice must be mailed to him in the same manner as it is mailed to members of the public body. The two subsections make it clear that a meeting cannot occur without that three day minimum notice (except in an emergency, which is not relevant to this case). But the two subsections stop there and do not address anything beyond minimum notice requirements.

Subsection 4 embarked on a new subject and set out the rules about providing copies of supporting material upon request. It contains no absolute time limit as did subsections 2 and 3, and expressed no intention that the provisions of subsections 2 and 3 were to apply. In writing subsection 4, perhaps the legislature was undecided about timing, or perhaps it acknowledged that supporting material sometimes does not become finalized or available until the last minute and it would not be efficient to hold up meetings for three days after supporting material becomes available. Whatever the reason, the legislature left the details of timing open, and did not impose the same time requirements on providing supporting material that it did for providing minimum notice.

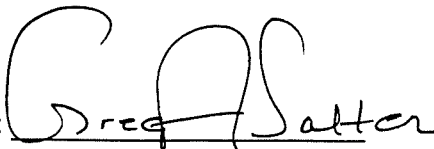
November 17, 1997

Page 3

The timing requirement for providing supporting material is an area which may be best addressed by the legislature. I hope this clarifies the legal requirements of the open meeting law in this regard. Please feel free to call me should you have any further questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: 
Gregory A. Salter
Deputy Attorney General
(702) 687-6426

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSE
Assistant Attorney General

November 6, 1997

Mr. Thomas Mitchell
Editor, Las Vegas Review-Journal
Post Office Box 70
Las Vegas, Nevada 891250070

Re: *Open meeting complaint: Clark County School District*

Dear Mr. Mitchell:

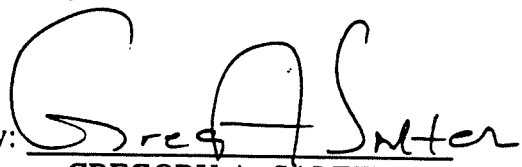
On October 7, you sent a letter to this office asking us to look into whether the Clark County School Board was withholding agenda supporting material in violation of NRS 241.020 (4) (c).

This office has looked into it and is informed that the material was made public on or about October 8, 1997.

Thank you for bringing this matter to our attention.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By: 
GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426



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OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

December 22, 1997

Mr. Gary Hollis
P.O. Box 1847
Pahrump, Nevada 89041

Re: Open Meeting Law Complaint, Nye County Commission

Dear Mr. Hollis:

Back in August, you asked us to look into the circumstances surrounding a telephonic meeting of the Nye County Commission in the afternoon of June 11, 1997 at the Nye County Courthouse in Tonopah, Nevada. Based on a review of this matter including the detailed minutes of that meeting that we received only last month, this office concludes that the meeting was not governed by Nevada's open meeting law, and, therefore, the commission did not violate the law.

The purpose was to meet with management representatives who were negotiating with Nye County Employees Association regarding a matter covered by NRS Chapter 288 (Relations Between Governments and Public Employees). The representatives informed the commission of a counter proposal received from the employees association regarding a potential freeze in salaries and benefits. Judging from the minutes of the meeting, the meeting stayed within topics germane to the ongoing negotiations.

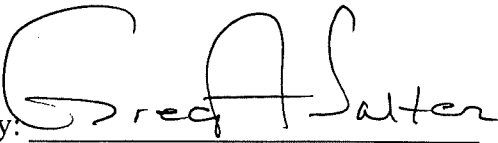
Accordingly, under NRS 288.220 (4), the meeting was not governed by Nevada's open meeting law. It was therefore not necessary to provide notice or an agenda for the meeting, nor was it necessary to open the meeting to the public. We note that the commissioners repeatedly sought advice from deputy district attorney Gary Pulliam that the meeting was not governed by the open meeting law, and we agree with his advice.

Mr. Gary Hollis
December 22, 1997
Page 2

Thank you for bringing the meeting to our attention .

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: 

Gregory A. Salter
Deputy Attorney General
Commerce Section
(702) 687-6426

cc: Gary Pulliam, Deputy District Attorney
Rich Thurlow, Pahrump Valley News

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

December 30, 1997

Mr. Rex Steninger
Elko Daily Free Press
3720 Idaho Street
Elko, Nevada 89801

Re: Open Meeting Law Complaint: Elko County School District, July 22 and August 12, 1997.

Dear Mr. Steninger:

Last month I received the minutes and other relevant documents from the school board, and over the past few days I have thoroughly reviewed with counsel for the Elko County School Board the circumstances and actions of the board back in July and August, 1997, upholding the termination of a school district employee, and it is agreed that the school board's procedures need to be adjusted with respect to board actions on employee grievance matters.

In April of 1997, a school bus driver for the district was terminated. She appealed, and in May a "Step II" hearing was held before a hearing officer pursuant to the school board's written grievance policy. The hearing officer supported the termination, and the employee appealed to the school board under "Step III" of the grievance policy. The board scheduled the matter for its meeting on July 22, 1997, and the agenda for that meeting included the following items:

14. Action Item Motion to Move into Closed Personnel Session Per NRS 231.030 for Purposes of Level III Grievance Hearing.
15. Non Action Item Closed Session Per NRS 231.030 for Purpose of Level III Grievance Hearing
16. Action Item Any Action Deemed Necessary Pertaining to Closed Session.

According to the minutes, a motion was approved to go into closed session. After it reviewed the evidence and heard the arguments, the board discussed the matter further in a closed session and then went back into an open meeting to make its decision and take its action. The board unanimously upheld the decision of the hearing officer. The board directed its counsel, Mr. Richard Barrows, to prepare a written decision for the board to approve at its next meeting. The agenda for the board's meeting on August 12, 1997, included the following item:

8. Action Item Adoption of Confidential, Written Decision Memorializing Board Decision at July 22, 1997, Closed, Level III Grievance Hearing.

and the minutes reflect that the "confidential written decision memorializing the Board decision at the July 22, 1997, closed, level III grievance hearing" was approved unanimously in an open meeting.

While it appears that the board properly used the closed meeting process and made its decisions in open meetings, the employee's name was not revealed on any agendas, motions, or minutes. Mr. Barrows explains that this is due to the board's written policy covering the grievance procedures which says: "All complaints and decisions shall be kept confidential unless requested to be sent to the employee organization by the complainant. If requested by the complainant, the Principal or the Superintendent shall forward copies of all their decisions to the president of the employee organization or his designee."

Insofar as actions or decisions by the board of trustees is concerned, it is the opinion of this office that the confidentiality policy cannot stand. NRS 241.020 clearly requires that, except as otherwise provided by statute, all meetings of public bodies must be open and public, and that the agenda for such meetings must contain a "clear and complete statement of the topics scheduled to be considered during the meeting." NRS 241.035 requires that written minutes must be kept of all meetings including the "substance of all matters...decided..." However, NRS 241.030 (1) provides a statutory exception to the general rules as it allows a public body to hold a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, but the exception is limited to considering such matters, and does not apply to taking action on such matters.

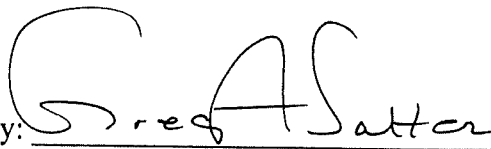
As Mr. Barrows correctly pointed out in our discussions, this office has interpreted NRS 241.030 to contemplate some degree of confidentiality in closed sessions and opined that motions to go into closed sessions may be broadly stated without naming the person to be considered. See Nevada Open Meeting Law Manual, Sixth Edition, Question 15, page 30. We also agree with Mr. Barrows' further reasoning that the confidentiality contemplated by the statute can extend to the agenda for a closed session, and that the person being considered in a closed session under NRS 241.030 need not be named in the agenda. But since the legislature did not authorize actions to be taken in closed sessions, we believe that the confidentiality contemplated by the legislature also falls away at that point. Thus, the agenda for an action item must give the name of the person about whom action is going to be taken, and the action must be taken in an open meeting upon a motion that gives the name of the person, and the action must

be reflected in minutes that also gives the name of the employee. There simply is no other way for the public to view the process and judge its servants. We note that even with these adjustments, the process established by the school board still provides an employee with a way to confidentially grieve spurious decisions by supervisors through Level II.

Mr. Barrows has proposed and is working on some procedural changes along the above lines that he will suggest to the board. We have some comments that we will handle in a separate letter, a copy of which we will send to you. Based on my conversations with Mr. Barrows and the record, it is clear that the board was acting on reasoned advice of counsel and had no intention of violating the open meeting law. Under those circumstances, we feel the appropriate remedy is to caution the board to adjust its grievance policies to assure that actions taken by the board are done openly. We very much appreciate your bringing this to our attention.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:  _____

Gregory A. Salter
Deputy Attorney General
Commerce Section
(702) 687-6426

cc: Richard Barrows, Esq.

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 N. Carson Street
Carson City, Nevada 89701-4717
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

December 30, 1997

Mr. Eric Pappas
Channel 8 News
3228 Channel 8 Drive
Las Vegas, Nevada 89109

Thomas Mitchell, Editor
Las Vegas Review Journal
P.O. Box 70
Las Vegas, Nevada 89125-0070

Re: The Growing Together Forum, August 18, 1997

Dear Gentlemen:

Both of you expressed concern to this office about an event that occurred in Las Vegas on August 18, 1997 known as the "Growing Together Forum." The forum was attended by elected officials from Clark County, Las Vegas, North Las Vegas, Henderson and Boulder City. Mr. Pappas contacted us before the meeting with a concern that portions of it may be closed to the public and press. That matter was cleared up, and members of the public and press did attend the forum, but Mr. Mitchell feels that the forum violated the open meeting law because forum organizers did not prepare and post an agenda in accordance with NRS 241.020 (including the requirement for public comment) and did not prepare minutes in accordance with NRS 241.035.

This matter took some significant time to review due to the parameters of the investigation and the number of persons contacted. We also received the last of the documents we were looking for only a few days ago. We have interviewed the elected officials from all the participating governments who were represented by a quorum, as well as event officials, county officials, and journalists (including the Las Vegas Review Journal reporter and Mr. Pappas) who attended the event. News and other footage of the event was reviewed. We reviewed lists of who was there, and the program material, including questions asked and answers received during the "brainstorming" session and the "resolution" signed at the event. We found no violations of the open meeting law.

Even though the expenses of the meeting were paid by participating governments, based on the circumstances of the August 18 event, we conclude that the forum itself was not covered by the open meeting law because it is not a "public body" within the definition of NRS 241.015 (3). The open meeting law (including the notice and recordkeeping requirements) applies only to meetings of "public bodies" which are defined as:

3. 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 other 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 supplied]

The definition has several elements, including the element of being supported in whole or in part by tax revenues as Mr. Mitchell points out, but the underlined part of the definition also states that in order to be a public body covered by the open meeting law, an entity must: (1) be a "body," and (2) must be "of the state or a local government." There is no evidence that the forum intended to be or actually conducted itself as a body. At the time of the meeting, it had no articles, constitution, or other document or any informal arrangement or understanding establishing it as a stand alone entity. There was no "membership" roster, and there was no allocation of voting powers or other membership rights. There was no governing board from which a quorum could be obtained or through which the forum could speak with one voice. At the meeting, there was no attempt to act as a collegial body; there were no motions, resolutions, votes, or any attempts to take any collective action, or to arrive at any collective decisions or unified positions as a body.

Nor was there any evidence that the forum was intended to become a new entity of the state or a local government. The resolutions previously passed by the participating governments and ceremoniously signed at the forum meeting indicated only that the participating governments recognized that growth poses challenges to all governments in the area and they should "initiate an intergovernmental collaborative planning effort to meet these challenges." The resolutions clearly indicate that forum was intended only to provide a place to meet, not create a new government entity. The resolutions do not appoint the forum to do anything, do not yield any jurisdiction, do not bestow any powers or even ask the forum to meet and make collective decisions or provide unified advice. The forum is devoid of any power and authority to do anything such as recommend or make master plans or commitments binding on any government.

Thus, as the circumstances existed in August, the forum itself was not a "public body" and had no independent responsibility to comply with the open meeting law. It was not necessary for an agenda to be prepared and minutes kept by forum officials. However, should the forum later take on the attributes of a public body at subsequent meetings, it will be required to comply with the open meeting law.

But the participating governments are public bodies, and the greater question is whether they conducted any "meetings" at the forum that are subject to the open meeting law. We found no evidence that they did.

When members of a public body merely attend a convention or seminar, the open meeting law is not automatically triggered, even when there is a quorum of the members attending. See Open Meeting Law Manual, Sixth Edition, Question 11, page 15. But if members of a public body show up at an event and a majority of them gathers around to deliberate toward a decision or take action on a matter over which their body has jurisdiction, control, or advisory power, then that gathering becomes a meeting of the public body within the ambit of the open meeting law. NRS 241.015 (2). Since people cannot deliberate unless they communicate, the gathering must involve some form of intracommunicative exchange amongst the quorum of the members of the public body in order to constitute a covered meeting. Merely having members of a public body sit in a large room facing forward or talking to other people in unconnected conversations spread out over the far reaches of the room lacks the intracommunicative exchange and therefore does not constitute a meeting between the members of the public body.

We found no evidence of deliberative intracommunication amongst a quorum of members of each participating government body. Neither did any of the journalists attending the event whom we interviewed. From our review of the program material and our interviews of the persons who actually attended the event, we find that the event organizers avoided the congregation of a quorum of the members of any one public body at any one brainstorming table. Participants were given color coded badges and announcements were made to make sure of that. The aim appeared to be to mix them up, not match them up, and we could not find any instance of a quorum of any public body gathering together to deliberate or take action on a matter over which their public body had jurisdiction.

While we conclude that a violation of the open meeting law did not occur in August, we share your concern that events such as this can sometimes get out of hand and become meetings that include deliberation and actions that are covered by the open meeting law. We will send a

copy of this letter to counsel for the participating governments so that they may provide appropriate advice. We trust that future forums will remain open to the public and the press to allay our concerns. Thank you for bringing the forum to our attention.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

Ry: 

GREGORY A. SALTER
Deputy Attorney General
(702) 687-6426

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

January 16, 1997

Mr. Geoff Schumacher
City Editor
Las Vegas Sun
Post Office Box 4275
Las Vegas, Nevada 89127-4411

Re: Open Meeting Law Complaint / Las Vegas City Council, Clark County
Commission / Groups discussing tax equity issues.

Dear Geoff:

By a letter dated December 16, 1996, you requested an investigation on the above-referenced matter. Our staff has completed the investigation and I now report our findings and legal conclusions.

As part of our investigation, staff interviewed Las Vegas Mayor Jan Jones, Councilman Matt Callister, Clark County Commission Chairwoman Yvonne Atkinson Gates and County Commissioner Bruce Woodbury. Those interviewed provided the following facts.

On December 12, 1996, two members of the Las Vegas City Council and two members of the Clark County Commission met privately at Bruce Woodbury's law office to discuss existing disputes between the city and the county on property tax rates. Other persons attended this gathering, including some city and county staff members, officials from other governmental jurisdictions and members of the business community.

The first issue I examined was whether this gathering was an improper private meeting of either the Las Vegas City Council or the Clark County Commission. I concluded that there was no "meeting" of the Las Vegas City Council because only two of its five members attended. NRS 241.015. I also concluded that there was no "meeting" of the Clark County Commission because only two of its seven members attended. NRS 241.015. Because Nevada is a quorum state, the gathering of less than a quorum of members of a public body in private is not subject to the Open Meeting Law.

The other issue I examined was whether these groups could be subject to the Open Meeting Law as subcommittees of either the City Council or the County Commission. A

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subcommittee would be subject to the Open Meeting Law as constituting an independent "public body" if the definition as set forth within NRS 241.015(3) applies. That definition is:

3. . . . "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 other subsidiary thereof [Emphasis added.]

In order for a gathering of a group of persons to constitute a "subcommittee" as set forth above, that group must be delegated governmental authority from the parent public body to make decisions, to formulate policy or to provide advice which will come back to the parent public body. This delegation must come from the parent public body. *See Telegraph Herald, Inc. v. City of Dubuque*, 297 N.W.2d 529 (Iowa 1980); *People ex. rel. Cooper v. Carlson*, 328 N.E.2d 675 (Ill. App. 1975); Nevada Open Meeting Law Manual, Sixth Edition, July 1991, Question 3 at p. 10. The group must also be tasked to provide advice or recommendations back to the parent public body. NRS 241.015(3).

In the present case, City Council members Jones and Callister were operating on the tax relief issue on a voluntary basis. The City Council did not officially delegate authority to these members to act on the council's behalf. Further these two members have provided no advice or recommendations to the council on the tax equity issue and have not been tasked to do so by the council.

The same analysis applies to the voluntary actions of County Commission members Atkinson Gates and Woodbury. The County Commission did not officially delegate any authority to these two members to negotiate or act upon tax equity issues. Further these two members had not been tasked to provide advice or recommendations to the commission on the tax relief issue.

Based upon this set of facts as they presently exist, I conclude that the two councilpersons and the two commissioners were not "subcommittees" of the City Council and the County Commission. Accordingly our office has no statutory authority to compel these groups to conduct open meetings on the tax equity issue.

In the future, if these small groups are tasked to carry out parts of the deliberation process on tax issues on behalf of the City Council or County Commission, and if the City Council or County Commission intends to rely on the information obtained by the small groups, then these group meetings should be noticed and conducted in accordance with the Open Meeting Law.

Mr. Geoff Schumacher
January 16, 1997
Page 3

Based on the information gathered to date, we will be taking no further action at this time. Thank you for providing our office with the opportunity to review this matter.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:



ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf

cc: Stewart Bell, Esq., Clark County District Attorney
Bradford R. Jerbic, Esq., City Attorney of Las Vegas



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

January 14, 1997

Mr. Jim Arrendale
2233 Marlboro
Henderson, Nevada 89014

Re: Open Meeting Law investigation / Henderson City Council / November 8th
television news report by Channel 8.

Dear Jim:

On December 10, 1996, our investigator interviewed Henderson City Councilperson Amanda Cyphers on the above-referenced matter. The investigator asked Ms. Cyphers to provide details on the "back room deal" which she had mentioned on a television news report on November 8, 1996.

Ms. Cyphers told our investigator that the meeting she had been invited to, but declined to attend, was scheduled to be a meeting with some city staff persons who were attempting to break an impasse in the City's collective bargaining with its Fire Department. The meeting never took place after Ms. Cyphers declined to attend. If such a meeting had taken place it would have been at most a prohibited collective bargaining practice under NRS 288.270, but would not have been a crime.

Ms. Cyphers made it clear that she was not asked to secretly meet with any other members of the Henderson City Council on this matter or on any other matter.

Based on the information obtained, I conclude that there was no Open Meeting Law violation implicated in the matter described by Ms. Cyphers in her interview with the television reporter. Thank you for bringing this matter to our attention so that we could pursue this investigation.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

Handwritten signature of Robert L. Auer in cursive.

ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf

cc: Shauna Hughes, Esq.



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

January 29, 1997

The Honorable Brian Kunzi
Mineral County District Attorney
Post Office Box 1210
Hawthorne, Nevada 89415

Re: Open Meeting Law Complaint / Mineral County Commission / Alleged
"emergency" topics of October 17, 1996, and November 20, 1996.

Dear Brian:


Our office has investigated the above-referenced matter.

Based upon that investigation, including a review of the agendas and videotapes of both meetings, I conclude that on October 17th and November 20th the Commission violated the Open Meeting Law by acting on topics which were not described with detail nor denoted as action items on the meeting agendas. The facts supporting the violations are set forth in a draft civil complaint attached hereto.

Based upon the county's financial condition, at the direction of the Attorney General our office will refrain from filing the civil lawsuit at this time. Hopefully you will share our concerns with the Commission at a properly noticed meeting and provide needed guidance so that the Commission may avert similar problems in the future.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: 
ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf
cc: Richard Bryant

DMLO 97-28

Case No.

Dept. No.

DRAFT

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF MINERAL

FRANKIE SUE DEL PAPA,
ATTORNEY GENERAL,

Plaintiff,

v.

THE BOARD OF COUNTY
COMMISSIONERS FOR MINERAL
COUNTY,

Defendant.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

COMES NOW the Plaintiff, Attorney General Frankie Sue Del Papa, by and through Deputy Attorney General Robert L. Auer, and hereby complains as follows:

COUNT I

UNNOTICED COMMISSION ACTION ON OCTOBER 17, 1996, CURTAILING COUNTY PURCHASES AND IMPLEMENTING A HIRING FREEZE.

1. That the Plaintiff is the duly elected Attorney General of the State of Nevada with her principal office being located in Carson City, Nevada;
2. That the Plaintiff is authorized under NRS 241.037 to maintain an action in any court of competent jurisdiction seeking injunctive relief against any public body in order to require compliance with or to prevent violations of NRS Chapter 241 (Nevada's Open Meeting Law);
3. That at all times pertinent to this action Defendant, the Board of County

Commissioners for Mineral County (hereinafter Commission), has operated as a "public body" as defined within NRS 241.015;

4. That the Commission held an open and noticed public meeting on October 17, 1996. Further that the Commission had a written agenda for the October 17th meeting containing a description of agenda topics to be considered and acted upon by the Commission. Further that said agenda is attached hereto and incorporated herein as Exhibit 1;

5. That the Commission, during its meeting of October 17, 1996, deliberated and took action, through a formal vote, on a hiring freeze for county employees and on halting all county purchasing on non-recurring expenses which could impact the general fund. Further that said motion and vote is reflected in the Commission minutes attached hereto and incorporated herein as Exhibit 2;

6. That the County's tax revenue shortfall, which prompted the vote described in paragraph 5, was not an unforeseen circumstance which required immediate action and therefore was not an "emergency" as defined within NRS 241.020(5);

7. That the Commission's action on the hiring freeze and the halting of purchases was not described on the October 17, 1996, meeting agenda and was not denoted as an action item as required by NRS 241.020(2)(c). Further that the public and press had no notice that the Commission would be taking such deliberations and actions on October 17, 1996;

8. That the Commission violated NRS 241.020 by its actions as described in paragraphs 1 through 7 above;

COUNT II

UNNOTICED COMMISSION ACTION ON NOVEMBER 20, 1996, AUTHORIZING THE HIRING OF A TEMPORARY DEPUTY ASSESSOR AND FIXING THE SALARY OF THE DEPUTY ASSESSOR.

9. That the Plaintiff realleges all prior allegations as if fully set forth herein;

10. That the Commission has supervision, control, jurisdiction and advisory

power over the hiring of a Deputy Assessor and over the fixing of the salary for a Deputy Assessor;

11. That the Commission held an open and noticed public meeting on November 20, 1996. Further that the Commission had a written agenda for the November 20, 1996, meeting containing a description of the topics to be considered and acted upon on that date. Further that said agenda is attached hereto and incorporated herein as Exhibit 3;

12. That during the November 20, 1996, meeting, the County Assessor asked the Commission for permission to hire a Chief Deputy Assessor. Further that the Assessor had to obtain Commission approval for this hiring request due to the emergency order issued by the Commission on October 17, 1996, wherein the hiring freeze was put into place. The District Attorney advised the Assessor and the Commission that this request was not an "emergency" as defined within NRS 241.020(5). The District Attorney further advised the Assessor and the Commission that the request could not be acted upon because the request was not described with detail on the Commission agenda and was not denoted as an action item;

13. That during the November 20, 1996, meeting, the Commission deliberated and took action, by way of a decision reached by Commission consensus, authorizing the County Assessor to hire a temporary Deputy Assessor, fixing the salary of the Deputy Assessor at grade 11, step 1, and allowing the Assessor to advertise the filling of the permanent position;

14. That the Commission violated NRS 241.020 by its actions as described in paragraphs 9 through 13 above;

WHEREFORE, the Plaintiff prays for:

A. This Court to issue a judgment declaring that the Commission's actions as described in Counts I and II violated NRS 241.020;

B. This Court to issue an injunction requiring the Commission to properly prepare agendas for action items. The injunction should further prohibit the Commission

from taking action on any items where the public notice fails to describe the topic with detail and fails to denote the topic as an action item;

C. For such other and further relief as this Court deems is just and equitable.

DATED this _____ day of _____, 1997.

FRANKIE SUE DEL PAPA
Attorney General

By: _____
ROBERT L. AUER
Deputy Attorney General
Capitol Complex
Carson City, Nevada 89710
(702) 687-3522



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

March 26, 1997

Ms. June E. Polsgrove
Post Office Box 241
Ruth, Nevada 89319

Re: Open Meeting Law Complaint / Ruth Town Council.

Dear June:

Our office has investigated the above-referenced matter.

We interviewed Martin Sorenson and the other members of the Ruth Town Council. The information received reflected that the town council members were not polled on the issue of whether you should have been reappointed as a member of the council.

Based upon the information received, we will be closing this investigation. Thank you for providing our office with the opportunity to review your Open Meeting Law complaint.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

A handwritten signature in cursive script that reads "Robert L. Auer".

ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-6798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

April 24, 1997

Mrs. Nancy Price
Post Office Box 3759
North Las Vegas, Nevada 89030

Re: Open Meeting Law complaint dated February 2, 1997 / UCCSN Board of Regents / Closed meeting of January 31, 1997.

Dear Nancy:

Our office has investigated the above-referenced matter.

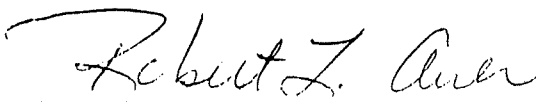
Based upon a review of the closed meeting minutes, as well as independent witness interviews, we found no violation of NRS 241.031 by the Regents on January 31, 1997.

Under NRS 241.035(5), if a public body elects to record a public meeting any portion of that meeting which is closed must also be recorded and retained. In this case the open portion of the meeting was recorded but, through operator error, the closed meeting audiotape did not record. Based upon our investigator's discussions with the tape operator and his review of the recording equipment, we believe that the failure to record was accidental and unintentional.

In light of the above, we are closing this investigation without further intended action. Thank you for providing our office with the opportunity to review this matter.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: 

ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf
cc: UCCSN Legal Counsel

0410 9730



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-6798
April 29, 1997

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

Mr. Richard L. Mudgett
Post Office Box 6213
Incline Village, Nevada 89450

Re: Open Meeting Law Complaint / Incline Village General Improvement District Board / Paid statement on IVGID facts appearing in the February 26, 1997, edition of the North Lake Tahoe Bonanza.

Dear Richard:

Our office has investigated the above-referenced matter.

Based upon that investigation, I found that the Board members did not engage in secret action, by polling or by any other means, on the February 26th fact sheet. Our office found no open meeting law violation regarding this matter.¹

Thank you for providing us with the opportunity to review your complaint and accompanying materials.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: 

ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf
cc: Noel Manoukian, Esq.

¹ The other issues raised within your letter of March 6, 1997, do not fall within the jurisdiction of the Attorney General's Office. Any complaints regarding the legality of "political advertisements" should be made with the Elections Division of the Secretary of State's Office.

04110 97 31



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

May 12, 1997

Mr. Richard Munger
Hospital Administrator
Mt. Grant General Hospital
P. O. Box 1510
First and A Streets
Hawthorne, Nevada 89415

Re: Open Meeting Law Complaint / Mt. Grant Hospital Board / Approval of letter stating opposition against unionization of the hospital staff.

WARNING LETTER

Dear Richard:

Our office received complaints on the above-referenced matter. Based upon our investigation, we conclude the following.

A letter was issued on February 24, 1997, by the Hospital Board of Trustees. The letter was signed by four trustees. In the letter the Board voiced its position that unionization might be detrimental to the operation of the hospital. The complainants felt that this matter had been secretly approved.

Upon reviewing the written meeting minutes for the February 19, 1997, Board meeting, it is clear that the Board did approve the release of this letter during the open meeting. The problem with the Board's open meeting action, however, is that the Board did not denote this issue on its meeting agenda with detail and further did not alert the public that it would be taking action on the letter during the meeting of February 19th. Conducting a vote on the letter regarding unionization under an agenda topic called: "Committee Reports. Trustee of the Month, Tom Erickson" was misleading to the public.

Accordingly, although the Board took action on the release of the letter in an open meeting, in the future the Board should fully comply with the agenda detail requirements of

Mr. Richard Munger
May 12, 1997
Page 2

NRS 241.020(2)(c). Any future violations in this respect will result in more stringent enforcement measures from our office.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:



ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf
cc: Gary Funk



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

June 18, 1997

Dr. Larry Turpen
P. O. Box 11095
Reno, Nevada 89510

Re: Open Meeting Law Complaint / Washoe County Regional Transportation
Commission (RTC) / April 17, 1997, Meeting.

Dear Dr. Turpen:

Our office has investigated the above-referenced matter.

In your complaint you claim that the RTC took action on a matter which was not sufficiently described on the April 17th meeting agenda. The item in question concerned the Tahoe Pyramid Link Citizen's Task Force.

Item 8(b) of the April 17th meeting agenda reflected that the RTC might be taking action on the following topic: "Discussion and possible recommendation regarding the TPL Citizens Task Force Status Report." I have reviewed the audiotapes for this agenda item. Those tapes reveal that the TPL representatives presented a report to the RTC identifying four possible routes as viable options to construct the proposed highway project. After a lengthy discussion, including input from numerous citizens, the RTC acted to accept the TPL recommendations and decided to consider the four proposed routes, as well as a few others, at the RTC's June meeting. The RTC action included an implicit finding that the TPL had sufficiently completed the route identification task which it had been assigned by the RTC. Accordingly there would be no further need for the TPL Citizen's Task Force to operate.

Based upon these facts it appears to me that the RTC acted on the agenda item as described on the meeting agenda. The RTC meeting notice alerted the public that it might take action on the TPL recommendations and the RTC in fact accepted all of the TPL recommendations on April 17th. Accordingly, I found no open meeting law violation concerning this matter.

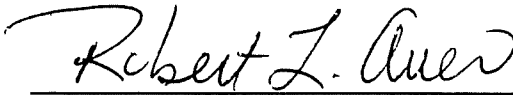
OMLO 97-33

Dr. Larry Turpen
June 18, 1997
Page 2

Thank you for providing this complaint to our office for review.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: 
ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf
cc: Celia G. Kupersmith



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

Capitol Complex
Carson City, Nevada 89710
Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

June 30, 1997

Ms. Mary F. Shope
P. O. Box 61756
Boulder City, Nevada 89006

Re: Open Meeting Law Complaint / Boulder City Council / February 11, 1997,
action rejecting an advisory ballot question on the landfill.

Dear Mary:

Our office has completed an investigation on the above-referenced matter. Based upon that investigation I report the following findings to you.

Issue 1- Agenda Detail:

On November 26, 1996, the Boulder City Council (Council) voted unanimously directing the city attorney to draft an advisory question for the June 3, 1997, election. The ballot question involved whether the voters were in favor of the placement of a municipal landfill in the Eldorado Valley.

On February 11, 1997, the Council voted by a margin of 3 to 2 rejecting the placement of the advisory question on the June 3rd ballot.

The agenda item for this topic on February 11, 1997, read as follows: "9. Resolution No. 2901, Approving the placement of an advisory question which relates to the placing of a landfill in the Eldorado Valley on the June 3, 1997 general election ballot." Language at the top of the meeting agenda reflected that this item would be an "action" item for the February 11th meeting.

You claimed in your complaint that this agenda topic violated the agenda detail requirements of the Open Meeting Law. We cannot agree with that assertion. Pursuant to NRS 241.020(2)(c) the items of a public body's meeting agenda must be described with clear and complete detail so that, in fact, the public will receive notice of what is to be discussed and acted upon. Action items must be clearly denoted as such. See Op. Nev. Att'y Gen. No. 91-6 (May 23, 1991).

DMLO 97-34

Item 9 for the Council's February 11, 1997, agenda clearly detailed the advisory ballot question subject matter. The item was also clearly denoted for action. Members of the public could easily look at this agenda and decide whether they needed to attend the Council meeting to provide opinions on whether the Council should approve or reject this ballot question resolution. The meeting minutes indeed reflect that numerous citizens spoke in favor of Council approval of the ballot question resolution while other citizens opposed such an approval. Given these circumstances, we believe that the agenda detail requirements of the law were fully complied with.

Issue 2- The "landfill committee."

At the February 11, 1997, meeting, Mr. Burris provided the Council with a memorandum in opposition to the placement of the advisory question on the June 3rd election ballot. This memorandum was purportedly from a landfill advisory committee.

You asked whether it would be a violation if this advisory committee had conducted secret meetings in order to formulate the position which it presented to the Council on February 11th. The issue turns on whether this group was actually empowered as an advisory body to the Council which would then turn the advisory group into a "public body" subject to all Open Meeting Law requirements.

In order for a group of persons to constitute an advisory committee that group must be delegated governmental authority from the parent public body to make decisions, to formulate policy or to provide advice which will come back to the parent public body. *See Telegraph Herald, Inc. v. City of Debuque*, 297 N.W.2d 529 (Iowa 1980); Nevada Open Meeting Law Manual, Sixth Edition, July 1991, Question 3 at p. 10. The group must also be tasked to provide advice or recommendations back to the parent public body. NRS 241.015(3).

In the present case, all the Council members told us that the Council did not create a landfill advisory group. Meeting minutes confirmed that the Council never acted to form such an advisory body. The Council did not delegate any tasks to an advisory group and did not solicit advice from an advisory group. The information we received showed that a private citizen created a group on his own initiative and provided information on the landfill ballot question to the Council from the group even though the Council had not specifically requested any such information. The Council members told us that they viewed this information just as information which any individual private citizen could bring to the attention of the Council. Given these circumstances, it appears that this group was not an independent "public body" as defined within the Open Meeting Law and therefore was not subject to the requirements of the law.

Ms. Mary F. Shope
June 30, 1997
Page 3

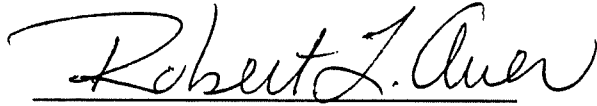
Issue 3- alleged secret decision to reject the ballot question.

When the Council changed its prior position on February 11, 1997, and decided by a 3 to 2 vote to reject a ballot question on the landfill issue, you voiced a concern that such a change of position may have been prearranged. The three Council members who voted in the majority on the issue during the February 11th meeting vigorously deny any such allegation. We have been unable to find any verifiable proof that a majority of the Council prearranged a vote on this matter and therefore we must conclude that no such violation occurred.

Based on the foregoing, we are closing this investigation. Thank you for providing our office with the opportunity to review this complaint.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: 
ROBERT L. AUER
Deputy Attorney General
Boards & Commissions Section
(702) 687-3522

RLA:jf
cc: Bill Andrews, Esq.



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street
Carson City, Nevada 89701-4717

Telephone (702) 687-4170
Fax (702) 687-5798

FRANKIE SUE DEL PAPA
Attorney General

BROOKE A. NIELSEN
Assistant Attorney General

October 22, 1997

Nancy Price
P. O. Box 3759
North Las Vegas, Nevada 89030

Re: Open Meeting Law / UCCSN Board of Regents / Attachment of written remarks to the meeting minutes of January 30-31, 1997.

Dear Nancy:

I have reviewed the investigative file on the above-referenced matter.

NRS 241.035(1) sets forth in part that a public body shall keep written minutes of each of its meetings. One of the items listed for mandatory inclusion in the written minutes is: "(e) Any other information which any member of the body requests to be included or reflected in the minutes..."

At the January Board meeting you presented a written document for inclusion or reflection in the minutes. The document was attached at the end of the minutes for the meeting of January 30, 31, 1997. Thereafter the Board approved the January meeting minutes in this form over your objection. You had requested that your written remarks should be typed into the body of the January meeting minutes rather than being attached as a separate exhibit in the written form originally submitted by you during the January meeting.

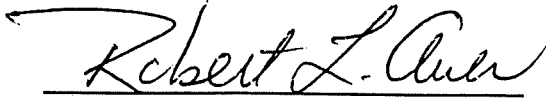
Based upon these facts I found no Open Meeting Law violation regarding this matter. Attachments to meeting minutes are routinely considered to be part of the meeting minutes. When the Board approved the January meeting minutes, including your written remarks as an attachment, the Board had your written comments reflected in the minutes. This approach is analogous to attaching the written comments made by a member of the general public to the meeting minutes if such a person specifically requested that written comments be included in the minutes. NRS 241.035(1)(d).

Nancy Price
October 22, 1997
Page 2

Based on the foregoing I have closed the investigation this date. Thank you for providing our office with the opportunity to review this matter.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: 
ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(702) 687-3522

RLA:jf
cc: Tom Ray, Esq.