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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900  
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July 22, 2020

**Via U.S. Mail**

Ronald W. Kennedy  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Re: Open Meeting Law Complaint, A.G. File No. 13897-328, Lyon County Board of Commissioners**

Dear Mr. Kennedy:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) filed on May 13, 2019, alleging a violation of the Open Meeting Law (“OML”) by the Lyon County Board of Commissioners (“Board”) on April 18, 2019.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (“NRS”) 241.037; NRS 241.039; and NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint, the response from the Board, the supporting materials of the Board’s April 18, 2019, meeting, prior OML decisions, and portions of the Nevada Revised Statutes relevant to the Complaint.

**FACTUAL BACKGROUND**

At the Board’s April 18, 2019 meeting, Vice Chairman Joe Mortensen made a motion under Agenda Item 17.b regarding authorizing the Utility Director to issue an Intent-To-Serve letter for wastewater service to the Desert Wells Preserve PUD. The motion failed for the lack of a second. County Manager Jeff Page stated that the Board could table or continue the item, then have the developer issue the Intent-To-Serve letter. Following a short recess, Mr. Page disclosed that he and staff had met with Chairman Bob Hastings to

discuss how to advance the meeting. Mr. Page recommended that the Board continue the item to the next meeting to allow the Board and staff to review the Intent-To-Serve letter. Vice Chairman Mortensen moved to continue Item 17.b to the next agenda; Commissioner Vida Keller seconded the motion. Following public participation, the motion passed by a vote of 4-1.

## LEGAL ANALYSIS

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OML applies only to a “public body” as defined in MRS 241.015(4). The Board is a public body as defined in NRS 241.015(4).

1. Chairman Hasting’s discussions with staff during a recess regarding how to address an agenda item was not an OML violation.

The Complaint alleges the “Commission Chairman declared a 5 minute recess so they could go to the back room and discuss the issue” and this recess resulted in an OML violation. In *Del Papa v. Bd. of Regents of University and Community College System of Nevada*, 114 Nev. 388, 400, 956 P.2d 770, 778–779 (1988), the Court said: “the constraints of the Open Meeting Law apply only where a quorum of a public body, in its official capacity as a body, deliberates toward a decision or makes a decision.” “Quorum” means a simple majority of the constituent membership of a public body or another proportion established by law. NRS 241.015(4).

The Attorney General Office’s investigation has determined no OML violation occurred. The minutes of the April 18, 2019, meeting indicate that County Manager Jeff Page disclosed he met with the Chairman and staff during the recess to discuss recommendations going forward. Neither Mr. Page nor staff are board members and do not count towards a quorum. The Chairman alone meeting with non-board members is not a quorum and therefore no OML violation occurred during this recess. Additionally, the Nevada Supreme Court has previously ruled private briefings among the staff of a public body and a non-quorum of board members are not public meeting subject to OML. See *Dewey v. Redevelopment Agency of Reno*, 119 Nev. 87, 94, 64 P.3d 1070, 1075 (2003).

2. District Attorney Rye’s discussions with a private attorney and his request that an agenda item be continued, even if true, are not OML violations.

The District Attorney and private attorney do not constitute a public body under Nevada's OML. Even if either or both of the attorneys were members of a public body there would have been no quorum. The District Attorney speaking with a private attorney is not a violation of OML.

3. The Board's decision not to follow Robert's Rules of Order is not an OML violation.

The Complaint alleges that the Board violated the OML by failing to follow Robert's Rules of Order. There is no statutory requirement that public bodies follow Robert's Rules of Order or any other rules of parliamentary procedure, therefore this does not state a claim under the OML.

### CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close its file regarding this matter.

Sincerely,

AARON D. FORD  
Attorney General

By: /s/ Adam D. Honey

ADAM D. HONEY  
Deputy Attorney General

cc: Olga Walther, Walther Law Offices, counsel for Respondent

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### CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage prepared, first place mail, to the following:

Ronald W. Kennedy

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██████████

Olga Walther, Esq.  
15 Main St.  
Dayton, NV 89403

/s/ Debra Turman  
An employee of the State of Nevada  
Office of the Attorney General