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February 3, 2023

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Via U.S. Mail

Aaron West



**Re: Open Meeting Law Complaint, OAG File No. 13897-392  
In the matter of Douglas County Board of County  
Commissioners**

Dear Mr. West:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) filed on February 24, 2021 alleging violations of the Open Meeting Law (“OML”) by the Douglas County Board of County Commissioners (“Commission”) related to its February 18, 2021 meeting.

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 OAG’s investigation of the Complaint included a review of the following: the Complaint; the Commission’s response and all attachments thereto, including the Commission’s Public Meeting Notice and Agenda for the February 18, 2021 meeting, Douglas County Resolution 2021R-018, meeting minutes for Agenda Item 14 of the Commission’s February 18, 2021 meeting, and meeting minutes for Closing Public Comment of the Commission’s February 18, 2021 meeting; the video recording of the February 18, 2021 meeting<sup>1</sup>; and prior OML decisions, case law, and portions of the Nevada Revised Statutes relevant to the Complaint.

After investigating the Complaint, the OAG determines that the Commission did not violate the OML, as alleged in the Complaint.

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<sup>1</sup> The OAG reviewed the Commission’s February 18, 2021 meeting at: [http://douglascountynv.iqm2.com/Citizens/Detail\\_Meeting.aspx?ID=3105](http://douglascountynv.iqm2.com/Citizens/Detail_Meeting.aspx?ID=3105).

## FACTUAL BACKGROUND

The Commission held a public meeting on February 18, 2021. Agenda Item No. 14 for the February 18 meeting read as follows:

14. For possible action. Discussion to adopt Resolution 2021R-018 approving the transfer of \$1.1 million from the County's Regional Transportation Fund to the County's General Fund to reverse previous Board action on Resolution 2020R-126 to fund the Muller Parkway design. (Chairman Engels) **FOR PUBLIC COMMENT**

In addition, the agenda for the Commission's February 18 meeting included two specific times for public comment, at the beginning and end of the meeting. As indicated in the Commission's agenda and as reiterated during the meeting, the Commission stated "Additional public comment periods may be allowed on individual agenda items at the discretion of the chairperson. It is requested that members of the public provide public comment on those agenda items when they are considered."

During the first public comment portion but before accepting public comment, the Commission's Chair, Mr. Engels, indicated that the Commission would take public comment on Agenda Items 2, 3, 12, and 14 when called and indicated that 5 minutes would be allotted.

When Agenda Item 14 was called, Chair Engels clarified that the agenda item was not related to the overall design and development of the roads, but rather where the \$1.1 million came from prior to disbursement. Thereafter, Chairman Engels called for public comment but warned that any comments proffered regarding the roads or development would be cut off, as the agenda item was in regard to the \$1.1 million's origin.

Upon calling for public comment, Aaron West spoke, asking for clarification that the agenda item was not an action item but a discussion only item. Mr. West then proceeded with stating his position on how the County entered into an agreement for the design of Muller Parkway but was immediately cut off by Chairman Engels, who clarified that the Commission was not reneging on any contract. At that point, Chairman Engels asked for the next public comment.

The second member of the public to speak was Jim Slade, who provided his comment uninterrupted.

Steve Teshara was the third public member to provide comment. Mr. Teshara attempted to register an objection to his belief that Chairman Engels started Agenda Item 14 by changing the language that was indicated on the agenda. Mr. Teshara then proceeded to state his position that he supported Muller Parkway but was then cut off by Chairman Engels.

The fourth individual to provide public comment was Carlo Luri, who stated that he found it offensive how Chairman Engels treated the two individuals prior. Chairman Engels then instructed the Commission's staff to cut off Mr. Luri's comments.

Finally, Charles Holt provided his public comments uninterrupted.

After receiving public comments, the Commission discussed the agenda item. During the discussion, the Commission's counsel, Doug Ritchie, reiterated that the agenda item was not being changed and that the item before the Commission was the adoption of Resolution 2021R-018, which discusses the transfer of \$1.1 million from the RTC fund back to the General Fund. Ultimately, the Commission voted not to adopt Resolution 2021R-018.

### **LEGAL ANALYSIS**

The Douglas County Board of County Commissioners is comprised of five (5) commissioners and is a "public body" as defined in NRS 241.015(4); therefore, the Commission is subject to the OML.

#### **A. The Commission's Notice and Agenda for its February 18, 2021 meeting complied with the "clear and complete" standard.**

An agenda for a meeting of a public body must include a "clear and complete statement of the topics to be considered during the meeting." NRS 241.020(2)(d)(1). The "clear and complete statement" requirement of the OML stems from the Legislature's belief that "incomplete and poorly written agendas deprive citizens of their right to take part in government' and interferes with the 'press' ability to report the actions of government." *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the "clear and complete" standard for agenda items is required for compliance under the OML. *Id.* The OML "seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed." *Id.* at 155.

Here, Agenda Item 14 noted that the Commission was to consider taking possible action whether to adopt Resolution 2021R-018 approving the transfer

of \$1.1 million from the County's Regional Transportation Fund to the County's General Fund. The agenda item denoted that it related to the transfer of money, not the construction of Muller Parkway. The agenda item also indicated, as Chairman Engels confirmed during the meeting, that the agenda item was not meant for a discussion by the Commission on how the funds were to be spent, it was merely to determine whether the Commission wished to transfer funds from one fund to another.

Accordingly, the OAG finds that there was no violation of the OML's clear and complete standard.

**B. The Commission did not violate the OML for ensuring that comments made by the public were relevant to the particular agenda item.**

When public comment is allowed during the consideration of a specific topic, the chairperson may require public comment to be relevant to the topic, provided the restriction is viewpoint neutral. *See Attorney General Nevada Open Meeting Law Manual*, Section 7.05 Reasonable time, place, and manner restrictions apply to public meetings, Twelfth Ed., January 2016 (updated March 26, 2019). Courts have also ruled that public bodies may be justified in limiting their meetings to discussion of specified agenda items and in imposing reasonable restrictions to preserve the civility and decorum necessary to further the forum's purpose of conducting public business. *Steinburg v. Chesterfield Cnty. Planning Com'n*, 527 F.3d 377, 385 (4th Cir. 2008).

The OAG has also previously found that it is within the authority of the public body to restrict comments that are willfully disruptive, including comments that are irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks or interfering with the rights of other speakers. *In re Regional Transportation Commission*, OMLO 2001-22/AG File No. 00-047 (December 17, 2002). Moreover, the OAG has also found, "The interpretation and the enforcement of rules during public meetings are highly discretionary functions" and that "the point at which speech becomes unduly repetitious or largely irrelevant is not mathematically determinable. The role of a moderator involves a great deal of discretion." *See Attorney General Nevada Open Meeting Law Manual*, Section 7.05 Reasonable time, place, and manner restrictions apply to public meetings, Twelfth Ed., January 2016 (updated March 26, 2019) (*quoting White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990)).

Here, prior to accepting public comment, Chairman Engels reminded members of the public of the topic before the Commission under Agenda Item 14,

namely, whether the Commission would permit the transfer of \$1.1 million from its RTC Fund to the County's General Fund. Chairman Engels repeatedly cautioned that the agenda item was not discussing the contract terms of the Muller Parkway project. Regarding the restrictions on the public comments made by Mr. West and Mr. Teshara, Chairman Engels found that these comments were in no-way addressing the source of the funding, the amount of the transfer, and the appropriateness of the transfer, and therefore felt these comments were irrelevant and off-topic from Agenda Item 14. With regards to Mr. Luri, it did not appear from the record that he had attempted to make a comment regarding the transfer of funds. Instead, Mr. Luri's comments focused on his perceived treatment by the Commission towards Mr. West and Mr. Teshara. Accordingly, because a public body is able to restrict comments that it deems are irrelevant to a specific topic being discussed, the OAG finds that the Commission did not violate the OML in restricting public comment not related to Agenda Item 14.<sup>2</sup>

### CONCLUSION

Upon investigating the present Complaint, the OAG does not find that the Douglas County Board of Commissioners violated the OML. The OAG will close its file on this matter at this time.

Sincerely,

AARON D. FORD  
Attorney General

By: /s/ Rosalie Bordelove  
ROSALIE BORDELOVE  
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<sup>2</sup> It should also be noted that the Commission called for public comment at the end of its meeting to allow public comments on any matter that was not before the Commission but was within the jurisdiction and control of the Commission. The evidence indicates that the individuals whose comments were restricted during the discussion of Agenda Item 14 did not attempt to make any comments at that time.