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April 25, 2022

Via U.S. Mail & Certified Mail

Eldon DeVere Henderson, PhD

[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-393,
Douglas County Board of County Commissioners**

Dear Dr. Henderson:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Open Meeting Law (OML) by the Douglas County Board of County Commissioners (Board) regarding a public comment during their December 17, 2020 meeting.

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; NRS 241.040. In response to your complaints, the OAG reviewed your complaint; the Board's response; and the agenda, minutes and video recording for the Board's December 17, 2020 meeting.

FACTUAL BACKGROUND

The Board, as a County Commission, is created by statute, is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

The Board held a meeting on December 17, 2020. The meeting had no physical location due to the COVID-19 pandemic. Board members and staff attended the meeting via videoconferencing software, while public could view the meeting via a live stream on YouTube. A link to the live stream was listed on the public notice agenda. The agenda listed two methods for public to submit written public comment, instructions on making public comment via telephone, and a phone number for the County Manager's office where public could obtain help in making public comment. The

live stream for the meeting included a statement on how public comments could be made in addition to listing the public comment phone number. The agenda and supporting material for the meeting was posted to the Board's website and to Nevada's notice website on the evening of December 11, 2020.

At the outset of the first public comment period of the December 17 meeting, Commissioner John Engels made comments stating his belief that the format of the meeting and noticing was in violation of the OML. Public comment messages were then played, lasting 16 minutes. Board Chair Barry Penzel addressed Commissioner Engel's comments and requested an opinion from the Board's counsel regarding the legality of the meeting. Board Counsel, Chief Civil Deputy District Attorney Douglas Ritchie, gave detail to the Board regarding current law and requirements and stated that the Board could continue with the meeting. The Board voted to approve the agenda and continue the meeting.

Your Complaint alleges that the Board (1) conducted the meeting in violation of NRS 241.023, (2) violated the OML by only posting its agenda to the internet, and (3) did not provide supporting material far enough in advance of the meeting.

DISCUSSION AND LEGAL ANALYSIS

The legislative intent of the OML is that actions of public bodies "be taken openly, and that their deliberations be conducted openly." NRS 241.010(1); *see also McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit and policy behind NRS chapter 241 favors open meetings"). The OML requires public bodies to issue a public notice agenda for their meetings at least 3 working days prior to their meetings and include periods devoted to comments by the general public during their meetings. NRS 241.020(3)-(4).

At the time of the December 17, 2020, meeting, the OML required that a physical location be designated for where members of the public would be permitted to attend and participate. NRS 241.023(1)(b).¹ However, due to the COVID-19 pandemic, the Governor of Nevada issued an emergency directive suspending the physical requirements for public meetings. Declaration of Emergency Directive 006, available at [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22 - COVID-19 Declaration of Emergency Directive 006/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22_-_COVID-19_Declaration_of_Emergency_Directive_006/).² Directive 006 specified that public bodies were still required to post their agendas to their website and Nevada's notice website. *Id.* It further required that a public body holding a virtual meeting post its supporting material to the public body's website. *Id.*

¹ NRS 241.023 was amended by Assembly Bill 253 during the 2021 Legislative Session to allow for virtual meetings in certain circumstances.

² Directive 006 expired on May 31, 2021.

You allege that the meeting was held in violation of NRS 241.023 because there was no physical location for the meeting. Because Directive 006 suspended the physical location requirement and multiple virtual options were given for public participation, the OAG does not find a violation of the OML.

To notice the meeting, the Board posted the agenda to its website and Nevada's notice website but did not post to any physical locations. Directive 006 suspended the physical agenda posting requirements of the OML. Thus, the OAG does not find a violation of the OML with respect to the Board's use of internet posting.

Lastly, you allege that the Board's posting of supporting material to its website three working days prior to the meeting did not allow the public sufficient time to review prior to the meeting. Directive 006 did not address when supporting material was required to be posted to a public body's website. However, the OML requires that supporting material be available to the public at the same time it is provided to members of the public body. NRS 241.020(8). You have not alleged that Board members received the supporting material prior to it being posted to the Board's website. In fact, Commissioner Engels stated during the meeting that he had received the material at the same time. Thus, the OAG finds that posting of the supporting material to the Board's website three working days prior to the meeting did not violate the OML.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close the file regarding this matter.

Sincerely,

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Attorney General

By: /s/ Rosalie Bordelove
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