

1 OFFICE OF THE ATTORNEY GENERAL  
2 STATE OF NEVADA

3 In the matter of:  
4 AMARGOSA VALLEY TOWN BOARD

OAG FILE NO.: 13897-416  
**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

7  
8 **BACKGROUND**

9 Claudia Bowker filed two (2) complaints with the Office of the Attorney General  
10 (“OAG”) alleging violations of the Nevada Open Meeting Law (“OML”) by the Amargosa  
11 Valley Town Board (“Board”), stemming from its May 13, 2021, and May 27, 2021,  
12 meetings. Specifically, Ms. Bowker alleges the following OML violations:

13 **ALLEGATION NO. 1:** The Board failed to provide copies of its meeting notices to  
14 members of the public who requested them pursuant to NRS 241.020(4)(c).

15 **ALLEGATION NO. 2:** Board members circumvented the OML by using a third-  
16 party to deliver messages amongst a quorum outside of a public meeting.

17 **ALLEGATION NO. 3:** The Board violated the OML by taking action on an item  
18 not listed as an action item.

19 **ALLEGATION NO. 4:** The Board failed to provide members of the public copies of  
20 supporting materials related to the Board’s proposed budget agenda item.

21 **ALLEGATION NO. 5:** The Board’s May 13, 2021, meeting minutes failed to provide  
22 adequate information regarding the identity of individuals present during the  
23 meeting or a description of what action was taken, and the Board subsequently  
24 approved the minutes without edits or corrections;

25 **ALLEGATION NO. 6:** The Board failed to prepare meeting minutes since its  
26 December 29, 2020, meeting; and



1                   **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

- 2           **1.     The Board violated the OML by failing to provide copies of its**  
3           **meeting notices to members of the public who requested them**  
4           **pursuant to NRS 241.020(4)(c).**

5           The OML requires that a public body provide a copy of a meeting notice to any person  
6           who has requested notice of the meetings of the public body. NRS 241.020(4)(c). Such  
7           request for notice lapses six (6) months after it is made. *Id.* The notice must be delivered  
8           to the postal office not later than 9 a.m. of the third working day before the meeting or, if  
9           the requester has agreed to receive the notice by electronic mail, then transmitted not later  
10          than 9 a.m. of the third working day before the meeting. *Id.*

11          The Complaint notes that since the beginning of 2021, residents who have been on  
12          an e-mail list to receive Board agendas have not received agenda information. The Board,  
13          through its counsel, admitted that the Board has failed to send meeting notices to  
14          individuals on the mailing list since the beginning of 2021. Based on the Board’s admission,  
15          the OAG finds a violation.

16          While the OAG finds a violation, the OAG was not provided any information  
17          regarding whether or when the requests for notices under NRS 241.020(4)(c) lapsed due to  
18          the six-month expiration date enumerated in the statute. Nevertheless, the OAG notes  
19          that the Board is attempting to comply with the OML’s requirements for notice of public  
20          meetings under the statute, as on September 21, 2021, the Board sent approximately 44  
21          emails to recipients who purportedly were on prior email lists advising them that the Board  
22          was “working on the reconstructing [of] the email addresses to send agendas and minutes  
23          again.” This email further directed that if a recipient received an agenda but no longer  
24          wanted to be included in the directory, to let the sender know. In addition, the email also  
25          noted that if a recipient of the email knew of another individual who was left out of the list,  
26          to also let the sender know. Given the Board’s active attempts at complying with the OML,  
27          the OAG will forego additional prosecution on the matter. NRS 241.039.

1           **2. There is insufficient evidence that the Board used a third-party**  
2           **to deliver messages amongst a quorum of Board members**  
3           **outside a public meeting.**

4           The OML forbids constructive or walking quorums. NRS 241.015(3). The OAG has  
5 previously stated that serial communication invites abuse if it is used to accumulate a  
6 secret consensus or vote of the members of a public body, and that any method of meeting  
7 where a quorum of a public body deliberates on public business is a violation of the OML.  
8 *Nevada Open Meeting Law Manual*, Section 4.08 Serial communications, or “walking  
9 quorums”, 12th Ed. (January 2016, Updated March 2019).

10          Here, there were allegations that Board members were using third-party members  
11 of the community as a conduit between themselves in order to circumvent the OML. Upon  
12 review of the documents provided, the OAG finds insufficient evidence that the Board  
13 engaged in such practices or admitted to engaging in such practices. Accordingly, the OAG  
14 finds no violation. However, the OAG cautions that should the Board attempt to use a  
15 third-party to relay deliberations involving a quorum of members over matters which the  
16 Board has supervision, control, jurisdiction, or advisory power, it may result in an OML  
17 violation, if done so outside a public meeting.

18           **3. The Board violated the OML by taking action on an item not**  
19           **listed as “For Possible Action”.**

20          The OML requires that a public body’s agenda include a list describing the items on  
21 which action may be taken and clearly denote that action may be taken on those items by  
22 placing the term “for possible action” next to the appropriate item. NRS 241.020(3)(d)(2).

23          The Complaints asserted that Agenda Item 6 on the Board’s May 13, 2021, meeting  
24 was not agendized as an action item. Upon review of the May 13, 2021, meeting, the OAG  
25 confirmed that Agenda Item 6 was not agendized as an action item and instead provided,  
26 “Presentation of Amargosa Middle School regarding request of funding next school year for  
27 Student Incentive Fund.” Upon review of the video and agenda, the Board moved to  
28 approve funding under Agenda Item 6. The Board’s failure to describe Agenda Item 6 as

1 an action item and the Board’s action during the May 13, 2021, meeting was a violation of  
2 the OML.

3 Nevertheless, the Complaints noted that the Board’s action taken at the May 13,  
4 2021, meeting was subsequently corrected by the Board at its May 27, 2021, meeting.  
5 Accordingly, while the Board violated the OML at its May 13, 2021, meeting, the OAG finds  
6 that the Board’s subsequent corrective action at its May 27, 2021, meeting was sufficient  
7 to address the May 13, 2021, violation. NRS 241.0365(1) (“ . . . [I]f a public body, after  
8 providing notice . . . takes action in conformity with this chapter to correct an alleged  
9 violation of this chapter within 30 days after the alleged violation, the Attorney General  
10 may decide not to commence prosecution of the alleged violation if the Attorney General  
11 determines foregoing prosecution would be in the best interests of the public.”).

12 **4. The Board did not violate the OML by failing to provide**  
13 **members of the public copies of supporting materials related to**  
14 **the Board’s proposed budget items.**

15 The Complaints allege that at the Board’s May 27, 2021, meeting, the supporting  
16 material did not include a list of invoices to be paid. The specific agenda item read, “For  
17 Possible Action – Discussion and Deliberation to approve the Invoices for payment, and  
18 Approval Letters for Signatures”.

19 With regard to supporting materials, the OML generally requires that a copy of  
20 supporting materials must be provided upon request by a member of public body. NRS  
21 241.020(8). The OML does not require that supporting materials be provided to members  
22 of the public automatically, without request. Additionally, the OML provides that if the  
23 supporting materials are provided to members of the public body before the meeting, such  
24 materials must be made available to a requesting party at the time the materials are  
25 provided to members of the public body. NRS 241.020(8)(a). Where the supporting  
26 materials are provided to members of the public body at the meeting, the materials must  
27 be made available at the meeting to the requester at the same time the materials are  
28 provided to members of the public body. NRS 241.020(8)(b). It is also important to note

1 that the OML does not require that a public body have supporting materials for any  
2 particular agenda item.

3 In this case, there were no allegations that members of the Board were provided any  
4 supporting materials that were withheld from members of the public. Accordingly, the  
5 OAG finds no violation has occurred regarding the lack of supporting materials for the  
6 payment of invoices.

7 Additionally, the Complaints allege that at the Board's May 27, 2021, meeting,  
8 copies of the proposed budget were not provided to the Board or members of the public. The  
9 Complaints further state that while copies were then first provided to the Board during the  
10 meeting, there were insufficient copies to be provided to members of the public. However,  
11 Vice Chair Mendyck was then directed to print more copies for the public. Given that the  
12 Complainant concedes that copies of the budget were provided to members of the public  
13 during the meeting, the OAG finds that no violation occurred.

14 **5. The Board violated the OML by failing to draft and maintain**  
15 **meeting minutes.**

16 The OML requires that public bodies prepare and keep written minutes of their  
17 meetings. NRS 241.035. The meeting minutes must include: (1) the date, time, and place  
18 of the meeting; (2) the names of members of the public body who were present and those  
19 who were absent; (3) the substance of all matters proposed, discussed, or decided, and at  
20 the request of any member, a record of each member's vote on any matter decided by vote;  
21 (4) the substance of remarks made by any member of the general public who addressed the  
22 public body, if requested, or if the member of the general public prepared written remarks,  
23 a copy of the prepared remarks if submitted for inclusion; and (5) any other information  
24 which any member of the public body requests to be included or reflected in the minutes.  
25 NRS 241.035(1)(a)-(e). Verbatim minutes are not required under the OML. *Nevada Open*  
26 *Meeting Law Manual*, Section 9.02 Requirement for and content of written minutes, 12th  
27 Ed. (January 2016, Updated March 2019). However, a violation may occur where minutes  
28 are completely silent about the substance of a discussion. *See In re: Washoe County School*

1 *District Board of Trustees*, OMLO 98-03 (July 7, 1998) (OAG found that the public body  
2 violated the OML where the public body spent one-third of the meeting discussing one  
3 particular agenda item, but the minutes did not reflect the substance of that discussion);  
4 *see also In re: Board of Directors of Douglas County Sewer Improvement District No. 1*, OAG  
5 File No. 13897-201(2016).

6 A. The Board did not violate the OML in its failure to identify in its  
7 minutes all members of the public who attended the meeting.

8 The OML requires that meeting minutes include identification of members of the  
9 public body who were present and those who were absent, but does not specifically require  
10 that the minutes reflect the names of members of the public who were also present during  
11 the meeting. NRS 241.035(1)(b). The May 13, 2021, minutes reflect that only one Board  
12 member was absent. While the minutes also attempt to provide a list of members of the  
13 public who were also present, the OML does not require that the minutes reflect attendance  
14 lists for the same. Accordingly, the OAG finds no violation of the OML.

15 B. The Board violated the OML by failing to provide a description of  
16 the substance of the agenda items proposed, discussed, or  
17 decided.

18 The OML requires that meeting minutes include the substance of all matters  
19 proposed, discussed, or decided. NRS 241.035(1)(c).

20 Here, the May 13, 2021, minutes are inadequate in providing insight on the  
21 substance of the matters proposed, discussed, or decided by the Board. For example, the  
22 meeting minutes relative to Agenda Item 6 simply provide:

23 Agenda Item # 6 Presentation by School Principle [sic], Chuck Venim (sp?).  
24 Motion to Approve Denilofs, Second Mendyk Passes 4-0 \$5,000.

25 The minutes do not reflect the substance of the presentation by Mr. Venim, for what action  
26 the motion was made, and for what purpose the \$5,000 referenced in the minutes is allotted  
27 and to whom. Similar violations are present throughout the meeting minutes, including  
28 statements such as “not necessary, no motion” or “Little discussion, Motion by Dolby,

1 Second by Denilofs Passes 4-0” without any detail as to the contents or subject matter of  
2 the discussion and/or motion. Accordingly, the OAG finds that the Board violated the OML  
3 by failing to produce minutes that adequately reflect the substance of all matters proposed,  
4 discussed, or decided during the May 13, 2021 meeting.

5 C. The Board violated the OML for failing to prepare meeting  
6 minutes since December 29, 2020, meeting.

7 The OML requires that public bodies keep written minutes of each of its meetings.  
8 NRS 241.035. Moreover, unless good cause is shown, a public body must approve the  
9 meeting minutes within 45 days after the meeting or at the next meeting of the public body,  
10 whichever occurs later. NRS 241.035(1).

11 In the case at bar, the Complaints assert that there have been no minutes prepared  
12 for several of the Board’s meetings dating back to December 29, 2020. In the Board’s  
13 response, it admits that it has been unable to locate minutes from its January 2021 through  
14 June 2021 meetings, except for the May 13, 2021, meeting minutes. Given the Board’s  
15 admission that it was unable to locate any prepared meeting minutes for its meetings from  
16 January 2021 through June 2021, the OAG finds that the Board violated the OML’s  
17 requirement to prepare and approve meeting minutes pursuant to NRS 241.035.

18 **6. The OML does not prohibit members of a public body from**  
19 **discussing topics raised during public comment, nor does the**  
20 **OML prohibit a member of a public body from providing**  
21 **personally-held public comments to the public body.**

22 The Complaints assert that Member Denilofs responded to a topic raised during  
23 public comment. The OML does not prohibit members of public bodies from discussing  
24 public comment; however, no deliberation or action may be taken on matters introduced in  
25 public comment. NRS 241.020(d)(3); OMLO AG File No. 13897-325. Accordingly, the OAG  
26 finds no violation of the OML has occurred.

27 Moreover, the Complaints also allege that Member Denilofs made comments during  
28 the public comment periods. However, there is no prohibition in the OML that prevents  
members of a public body from addressing the public body during public comment periods.



1 Rather, the OML only requires that the public body agendize periods devoted to comments  
2 by the general public and discussion, if any, of those comments, but that the public body  
3 may not deliberate or take action on such matter until agendized as a future action item.  
4 NRS 241.020(3)(d)(3). Here, the OAG did not receive any evidence that the Board took  
5 action on any matter brought up during Member Denilof's public comment. Therefore, the  
6 OAG finds no violation of the OML occurred when Member Denilofs addressed the Board  
7 with his own opinions during the public comment period.

8 Lastly, the Complaints assert that during the Board's May 27, 2021, meeting,  
9 Member Denilofs distributed a multi-page document entitled "Criminal" to members of the  
10 public present at the meeting and which was unrelated to any item on the agenda. As with  
11 oral public comments made during an open meeting, there is no prohibition in the OML  
12 that prevents members of a public body from addressing the public body during public  
13 comment periods with written materials. Therefore, the OAG finds not violation of the  
14 OML has occurred.

### 15 SUMMARY

16 Upon investigating the present Complaints, the OAG makes findings of fact and  
17 conclusions of law that the Amargosa Valley Town Board violated the OML as described  
18 above.

19 If the Attorney General investigates a potential OML violation and makes findings  
20 of fact and conclusions of law that a public body has taken action in violation of the OML,  
21 "the public body must include an item on the next agenda posted for a meeting of the public  
22 body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The  
23 public body must treat the opinion of the Attorney General as supporting material for the  
24 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board  
25 must place an item on its next meeting agenda in which it acknowledges the present  
26 Findings of Fact and Conclusions of Law ("Opinion") resulting from the OAG's investigation  
27 in this matter. The Board must also include the OAG Opinion in the supporting materials  
28 for its next meeting.



**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of June, 2022, I served the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

Claudia Bowker

[Redacted]  
[Redacted]

**Certified Mail No.:** \_\_\_\_\_ [Redacted] \_\_\_\_\_

Amargosa Valley Town Board  
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/s/ Debra Turman  
An employee of the Office of the  
Nevada Attorney General