

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 LYON COUNTY BOARD OF COUNTY
5 COMMISSIONERS

OAG FILE NO.: 13897-420

6 **FINDINGS OF FACT AND**
7 **CONCLUSIONS OF LAW**

8 **BACKGROUND**

9 Anthony G. Stephenson, on behalf of the Lyon County Democratic Central
10 Committee, filed a complaint with the Office of the Attorney General (“OAG”) alleging
11 violations of the Nevada Open Meeting Law (“OML”) by the Lyon County Board of County
12 Commissioners (“Board”). Specifically, it was alleged that the Board’s standing agenda
13 item to provide direction to staff regarding legislation and legislative issues violates the
14 OML’s clear and complete statement requirement because the Board did not indicate the
15 specific piece of legislation on which the Board would provide direction. This, in turn,
16 resulted in the public being uninformed of such Board deliberation and unable to provide
17 comment prior to the Board instructing staff to take positions on legislation.

18 The OAG has statutory enforcement powers under the OML and the authority to
19 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
20 241.040. The OAG’s investigation of the Complaint included a review of the following:

- 21 1. The Complaint;
- 22 2. The response filed on behalf of the Board and all attachments thereto; and
- 23 3. The agendas, minutes and audio recordings of the Board’s March 4, 2021,
24 March 18, 2021, and May 20, 2021, meetings.

25 After investigating the Complaint, the OAG determines that the Board violated the
26 OML’s clear and complete standard for failing to include reference to the specific legislation
27 or legislative topics or issues upon which the Board took an affirmative position, thereby
28

1 failing to provide notice to members of the public of the topics considered during the
2 meeting.

3 **FINDINGS OF FACT**

4 1. The Board held open meetings on March 4, 2021, March 18, 2021, and May
5 20, 2021.

6 2. As part of each of the three aforementioned meetings, the Board placed on its
7 Agenda the following item:

8 For Possible Action: Discussion and direction to staff and Legislative
9 Coalition Members regarding legislation or legislative issues proposed
10 by legislators or by other entities permitted by the Nevada State
11 Legislature to submit bill draft requests, or such legislative issues that
may impact Lyon County as may be deemed appropriate by the Board
of County Commissioners.¹

12 3. The Complaint asserts that during the aforementioned meetings, the Board
13 did not identify which specific pieces of legislation and/or issues the Board would be
14 discussing, resulting in the public having no way of knowing upon which legislation the
15 Board would take action.

16 4. Specifically, the Complaint asserts that with regards to the Board's March 4,
17 2021, meeting, the Board discussed the Governor's Innovation Zone and ultimately
18 authorized the Board Chair to sign a letter to be sent to the Governor's Legislative
19 Delegation opposing the same. The Board also discussed and approved sending a letter
20 opposing a bill related to Tiny Homes, Bill No. 150.

21 5. Similarly, the Complaint asserts that during the Board's March 18, 2021,
22 meeting, the Board discussed and voted to oppose Assembly Bill 286 in its entirety.

23 6. Lastly, the Complaint asserts that during the Board's May 20, 2021, meeting,
24 the Board discussed provisions in Assembly Bill 286 that were removed and inserted into
25 Senate Bill 452. The Board instructed its County Manager to draft letters to send to the
26 legislature.

27 _____
28 ¹ See Agenda Item 18.c. on the March 4, 2021, Agenda; Agenda Item 17.b. on the March 18,
2021, Agenda; and Agenda Item 18.b. on the May 20, 2021, Agenda.

1 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

2 The Lyon County Board of County Commissioners is a “public body” as defined in
3 NRS 241.015(4) and is subject to the OML.

4 An agenda for a meeting of a public body must include a “clear and complete
5 statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1). The
6 “clear and complete statement” requirement of the OML stems from the Legislature’s belief
7 that “‘incomplete and poorly written agendas deprive citizens of their right to take part in
8 government’ and interferes with the ‘press’ ability to report the actions of government.”
9 *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the
10 “clear and complete” standard for agenda items is required for compliance under the OML.
11 *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public
12 meetings so that the public can attend a meeting when an issue of interest will be
13 discussed.” *Id.* at 155. Further, “a ‘higher degree of specificity is needed when the subject
14 to be debated is of special or significant interest to the public.” *Id.* at 155-56. (*quoting*
15 *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)).

16 The Nevada Supreme Court previously dealt with the issue of whether a public
17 body’s agenda violated the clear and complete standard for failing to list specific legislation
18 it intended to discuss and take action upon at its meetings. *See Schmidt v. Washoe County*,
19 123 Nev. 128, 159 P.3d 1099 (2007). In *Schmidt*, a member of the public complained that
20 the Washoe County Board of Commissioners (“WCBC”) improperly decided to support one
21 legislative bill and oppose another without providing proper notice. There, the agenda item
22 in question provided, “Legislative Update–this item may be discussed at Monday’s Caucus
23 Meeting and/or Tuesday’s Board Meeting and may involve discussion by [WCBC] and
24 direction to staff on various bill draft requests (BDRs).” *Id.* The agenda noted interested
25 parties could obtain a list of specific bills upon which staff would seek direction from the
26 public body on its website, and the public body pledged to post the list of bills at the County
27 Manager’s Office and at other locations where the agenda was posted. *Id.* While the
28 Supreme Court indicated its decision was a “close call”, the Supreme Court found that the

1 WCBC met the clear and complete standard as a matter of law because: (1) it had listed an
2 item on its agenda for discussion of certain BDRs, and (2) because it provided a list of the
3 specific BDRs in question on its website before the meeting. *Id.* Accordingly, the Supreme
4 Court found that the WCBC provided reasonable notice to members of the public in
5 compliance with the OML.

6 In this case, similar to the agenda item in *Schmidt*, the Board's March 4, 2021,
7 March 18, 2021, and May 20, 2021, provided:

8 For Possible Action: Discussion and direction to staff and Legislative Coalition
9 Members regarding legislation or legislative issues proposed by legislators or
10 by other entities permitted by the Nevada State Legislature to submit bill draft
11 requests, or such legislative issues that may impact Lyon County as may be
deemed appropriate by the Board of County Commissioners.

12 However, unlike in *Schmidt*, the Board in the instant matter did not provide a list of
13 specific pieces of legislation on which it intended to take a position either in the agenda or
14 on a separate list referenced in the agenda accessible to the public. Rather, the Board
15 maintained a general and blanket agenda item that it may discuss and direct staff
16 regarding "legislation or legislative issues" that had a potential impact on Lyon County.
17 This general language is insufficient to comport with the OML's clear and complete
18 standard, especially in light of the fact that the Board not only discussed certain legislation,
19 but also took action related to the same.

20 The OAG is cognizant that the Nevada Legislature is exempt from the OML,
21 including the three-working-day notice requirement for meetings. The OAG is also aware
22 that the pace of the legislative session is variable and proposed amendments to legislation
23 may occur at a pace that does not allow a public body to consider and opine on each and
24 every proposed amendment or bill draft requests. To that end, the OAG previously issued
25 guidance during the 2021 Legislative Session noting that hearing scheduling or requests
26 from the Legislature generally do not qualify as an emergency under NRS 241.020(11)
27 allowing for a public meeting on shorter notice. Thus, public bodies should consider
28 delegating authority to a member or staff member to speak on the public body's behalf in

1 advance if they anticipate relevant Legislative hearings may be scheduled. The OAG also
2 recommended that public bodies consider what sort of legislative updates they desired from
3 their staff or delegated members and to schedule their meetings appropriately.

4 In reviewing the materials provided during the investigation of this matter, the
5 Board did not simply receive a legislative update and engage in discussion on various
6 legislation then-currently pending with the Nevada Legislature that affected Lyon County.
7 Rather, the Board went further and took action to either support or oppose such legislation.
8 Had the Board engaged solely in discussion and provided a general legislative update on
9 the legislation brought up during the meetings, it is possible that a violation would not
10 have occurred. Alternatively, had the Board listed the topics or legislative issues the Board
11 intended to take a position on, a violation may not have occurred. However, based on the
12 documents provided to the OAG, it is apparent that the first time that the public was made
13 aware that the Board planned to deliberate and take action on the specific pieces of
14 legislation was at the respective meetings where the matters were brought up by the
15 County Manager or Board Members. Thus, the public was not afforded an opportunity to
16 determine, prior to the Board taking action on the specific legislation, whether it was an
17 issue of interest that warranted their attendance and participation. Accordingly, the OAG
18 finds that the Board violated the OML's clear and complete requirement. Moving forward,
19 the OAG recommends that, to the extent that a public body plans to affirmatively take a
20 position on specific legislation, the public body should list the bill or topic of legislation on
21 its agenda so that the public is aware that possible action may take place. The OAG notes
22 that reference to a specific piece of legislation may not be necessary where the agenda
23 provides sufficient notice regarding the legislative topic or issue that the public body
24 intends to take a position on. Alternatively, a public body may agendize for discussion only
25 a general legislative update if intends only to discuss but not take action on a particular
26 piece of legislation until the item is specifically put on a future agenda.

1 **SUMMARY**

2 Upon investigating the present Complaint, the OAG makes findings of fact and
3 conclusions of law that the Lyon County Board of County Commissioners violated the OML
4 as described above.

5 If the Attorney General investigates a potential OML violation and makes findings
6 of fact and conclusions of law that a public body has taken action in violation of the OML,
7 “the public body must include an item on the next agenda posted for a meeting of the public
8 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
9 public body must treat the opinion of the Attorney General as supporting material for the
10 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board
11 must place an item on its next meeting agenda in which it acknowledges the present
12 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG investigating
13 in this matter. The Board must also include this OAG Opinion in the supporting materials
14 for its next meeting.

15 Dated: January 16, 2023.

16 AARON FORD
17 Attorney General

18 By: /s/ Rosalie Bordelove
19 ROSALIE BORDELOVE
20 Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2023, 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:

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/s/ Debra Turman
An employee of the Office of the
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