

1 **OFFICE OF THE ATTORNEY GENERAL**

2 **STATE OF NEVADA**

3  
4 In the matter of:  
5 NYE COUNTY BOARD OF  
6 COMMISSIONERS; BELMONT TOWN  
7 ADVISORY BOARD

OAG FILE NO.: 13897-268

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

8 **BACKGROUND**

9 Neal Jones filed a complaint (“Complaint”) with the Office of the Attorney General (“OAG”)  
10 alleging violations of the Nevada Open Meeting Law (“OML”) by the Nye County Board of  
11 Commissioners (“Nye County Board”) and the Belmont Town Advisory Board (“Belmont Board”). The  
12 Complaint identifies a number of alleged OML violations, each of which centers around a proposed utility  
13 easement for an on-site sewage disposal system. The violations alleged in the Complaint are as follows:

- 14 1. The Nye County Board violated the OML by failing to provide sufficient notice of items  
15 upon which it planned to take action;
- 16 2. The Nye County Board took action to sell, lease or otherwise dispose of real property  
17 without complying with the requirements of NRS 244.2815;
- 18 3. The Nye County Board took action in violation of NAC 445A.965(1);
- 19 4. The Belmont Board permitted a business owner to act in violation of Nye County Code  
20 § 15.16.091 and NAC 445A;
- 21 5. The Belmont Board violated the OML by taking action without noticing or holding a  
22 public meeting; and
- 23 6. The Belmont Board violated the OML by engaging in serial communications.

24 The OAG has statutory enforcement powers under the OML and the authority to investigate and  
25 prosecute violations of the OML. Nevada Revised Statutes (“NRS”) 241.037; NRS 241.039;  
26 NRS 241.040. The OAG’s investigation of the Complaint included a review of the following: the  
27 Complaint; the Nye County Board of County Commissioners’ Response prepared by the Office of the  
28 Nye County District Attorney; the Belmont Town Advisory Board’s Response prepared by the Office of

1 the Nye County District Attorney; the agenda and audio recording of the Nye County Board’s December  
2 19, 2017 meeting; and the declarations of Nye County Commissioner Lorinda Wichman, Nye County  
3 Employee Lewis Derrell Lacy, Jr., former Belmont Board member Diana Jeppsen, and Belmont Board  
4 members Donna Motis, Anthony Perchetti, Theodore (Tay) Schuff, and Dana Holbrook.

5 The OAG cannot offer an opinion with regard to the allegations of the Complaint numbered 2, 3,  
6 and 4 herein, as those issues are beyond the scope of the OML. The OAG does not have authority under  
7 the OML to investigate compliance with NRS 244.2815, NAC 445A, or Nye County Code § 15.16.091.  
8 After investigating the remaining allegations in the Complaint, the OAG determines that the Nye County  
9 Board violated the OML by failing to strictly adhere to the standard of providing a clear and complete  
10 agenda item. The OAG does not find that the Belmont Board violated the OML.

### 11 FINDINGS OF FACT

12 1. The Nye County Board is a “public body” as defined in NRS 241.015(4) and is subject to  
13 the OML.

14 2. The Belmont Board is a “public body” as defined in NRS 241.015(4) and is subject to  
15 the OML.

16 3. The Nye County Board’s agenda for its December 19, 2017 meeting (“Agenda”) included  
17 the following item:

18 44. For Possible Action – Discussion and deliberation regarding a request to Lease  
19 utility easement for the benefit of APN 04-035-30 on all or part of vacant parcel  
20 APN 04-536-10 owned by Nye County.

21 4. Agenda item 44 erroneously listed the parcel to benefit from the easement as  
22 APN 04-035-30. The correct APN for the benefitting parcel was 04-535-30. Other than the APN, the  
23 Agenda contained no information to identify the parcel which would benefit from the easement.

24 5. Nye County staff was aware as of December 13, 2017 that the parcel to benefit from the  
25 easement was APN 04-535-30 and not APN 04-035-30.

26 6. The Agenda was not amended or revised to reflect the correct APN of the parcel to benefit  
27 from the easement. During the December 19, 2017 meeting (“Meeting”) the fact that an incorrect APN  
28 was listed in the Agenda was not addressed, and the correct APN was not mentioned.



1 “The ±12.96 acre site is located on the east side of South Virginia Street, ±4,000 feet south of South  
2 Meadows Parkway.” *Id.* An OML complaint was filed, alleging that the 13095 S. Virginia address was  
3 incorrect, and that the OML had therefore been violated.

4         There, although the property address may have been incorrect, the property was also identified  
5 by its name and by measurements from specific locations in the city. Additionally, the incorrect address  
6 used by the City of Reno Planning Commission was obtained directly from the county assessor’s records.  
7 As a result, because the agenda sufficiently identified the property and otherwise “clearly and completely  
8 described the amendments to be considered,” the OAG found that “if the address on the agenda was in  
9 error, it was *de minimis* and not substantive.” *Id.* at 3. The OAG concluded that the Reno City Planning  
10 Commission complied with the clear and complete requirement of the OML.

11         Here, in contrast, the Nye County Board Agenda provided no information to identify the parcels  
12 other than the APNs. One of the APNs listed was incorrect. The agenda did not name the business  
13 operating on that parcel, or provide any other information to correctly inform the public of the parcel at  
14 issue. Furthermore, Nye County staff learned that the APN listed in the Agenda was incorrect six days  
15 before the Meeting, but did not amend the Agenda or take any other steps to notify the public of the  
16 correct APN. The public had no way of knowing the correct property at issue in Agenda item 44.  
17 Accordingly, the Agenda was not “clear and complete” so as to provide the public with enough  
18 information to determine whether item 44 was a matter of interest, and Nye County Board therefore  
19 violated the OML.

20         **B.         The Belmont Board Has Not Violated the OML.**

21         Nevada is a “quorum” state, meaning that “[w]hen less than a quorum is present, private  
22 discussions and information gathering do not violate the Open Meeting Law.” *Dewey v. Redevelopment*  
23 *Agency*, 119 Nev. 87, 99 64 P.3d 1070, 1078 (2003). However, Nevada’s OML forbids walking quorums,  
24 or serial communications if used “to accumulate secret consensus or vote of the members of a public  
25 body.” *See NEVADA OPEN MEETING LAW MANUAL*, § 4.08 (12th ed. 2016).

26         The evidence demonstrates that Nye County Commissioner Wichman spoke individually with  
27 each Belmont Board member regarding a potential utility easement, that no quorum of the Belmont Board  
28 was present during any such conversation, that Commissioner Wichman did not disclose details of

1 previous conversations with Belmont Board members during subsequent meetings with other Belmont  
2 Board members, and that no collective deliberation, action, commitment, or promise regarding the public  
3 matter took place. Indeed, the Belmont Board has still not deliberated or taken any action regarding the  
4 utility easement addressed in the Complaint. Therefore, the OAG finds no violation of the OML by the  
5 Belmont Board.

6 **SUMMARY AND INCLUSION OF AGENDA ITEM**

7 If the Attorney General investigates a potential OML violation and makes findings of fact  
8 and conclusions of law that a public body has taken action in violation of the OML, “the public body  
9 must include an item on the next agenda posted for a meeting of the public body which acknowledges  
10 the findings of fact and conclusions of law.” NRS 241.0395. The public body must treat the opinion of  
11 the Attorney General as supporting material for the agenda item in question for the purpose of  
12 NRS 241.020. *Id.*

13 Here, upon investigating the present Complaint, the OAG makes findings of fact and conclusions  
14 of law that in association with its December 19, 2017 meeting, the Nye County Board violated the OML  
15 by failing to make a clear and complete statement of the topics scheduled to be considered in Agenda  
16 item 44, as required by NRS 241.020(2)(c)(1). Therefore, the Nye County Board must place an item on  
17 the agenda of its next meeting in which the Nye County Board acknowledges the present Findings of  
18 Fact and Conclusions of Law (“Opinion”) which results from the OAG investigation in the matter of  
19 Attorney General File no. 13897-268. The Nye County Board must also include the OAG Opinion in the  
20 supporting materials for its next meeting.

21 DATED: June 25, 2018

22 ADAM PAUL LAXALT  
23 Attorney General

24 By: /s/ Joshua M. Woodbury  
25 JOSHUA M. WOODBURY (Bar No. 11326)  
26 Deputy Attorney General  
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