STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

February 13, 2002

Judy Sturgis
1515 Foothill Road
Gardnerville, NV 89410

Re: Open Meeting law Complaint
Douglas County Board of County Commissioners
OMLO 2002-01/AG file No. 02-001

Dear Ms. Sturgis:

This office has primary jurisdiction for investigating and resolving complaints of violations of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes. We have received the enclosed complaint from you alleging that an ordinance adopted on February 5, 1998, by the Douglas County Board of County Commissioners constituted a change to the Douglas County master plan and that such change was not adequately described in the agenda of that meeting. The complaint also finds fault under the Open Meeting Law with the minutes that describe that agenda item. You have informed us that you first learned of the ordinance adopted on February 5, 1998, at the November 1, 2001, meeting of the Board. NRS 241.037(3) provides that any suit brought against a public body to require compliance with the Open Meeting Law must be commenced within 120 days after the action objected to was taken and any suit to have an action declared void must be commenced within 60 days after the action objected to was taken. Though more that 120 days has passed since the Board took action in 1998, this does not preclude our investigation and guidance to the Douglas County Board of County Commissioners.

Barbara Reed, Douglas County Clerk, has cooperated fully with our investigation and provided copies of the relevant documents and tapes. The Board of Commissioners introduced Ordinance 97- 801 on January 8, 1998, and adopted the ordinance on February 5, 1998. The ordinance change on February 5, 1998, appears to be a basis for the Board's approval of a modified development project at its meeting on November 1, 2001.

For the reasons stated below, we believe that the agenda of the meeting of February 5, 1998, was deficient in its description of the resolution because it does not describe the proposed action in a "clear and complete statement of the topic to be considered …" as required by the Open Meeting Law. We are guided by our previous Open Meeting Law

decision of January 5, 1999, regarding an agenda of the Reno City Council. (OMLO 99-01)

The agenda for the February 5, 1998, meeting of the Board of Douglas County Commissioners included the following item under the heading of "Ordinances, Resolutions, Proclamations":

> "43a. Discussion and possible action on Ordinance 97-801 adopting revisions to Parts I, II and III and Appendix A of Title 20 (second reading) (approx. 20 minutes)"

NRS 241. 020(2)(c)(1) requires that written notices for all meetings covered by the Open Meeting Law must include an agenda consisting of a "clear and complete statement of the topic scheduled to be considered during the meeting and "a list" describing the item on which action may be taken . . . ."

The "clear and complete" requirement was added to the Open Meeting Law in 1989 (SB 140). Our Open Meeting Law letter decision, OMLO 99-01 (January 5, 1999), reviewed the legislative history of that addition and relevant case law. Based on our review we added a further interpretation of what "clear and complete" means with respect to public meeting agendas. When listing a statute, ordinance, regulation, resolution, or rule on an agenda for consideration by a public body the agenda must describe what the statute, ordinance, regulation, resolution, or rule relates to.

The notice for the Board's meeting of February 5, 1998, does not describe what Ordinance 97-801 adopting revisions to Parts II, III, and III, and Appendix A of Title 20 relates to. An examination of Title 20 shows us that Part I of Title 20 is entitled, "GENERALLY APPLICABLE PROVISIONS", and is divided into eight divisions consisting of 47 pages. Part II is entitled "ZONING REGULATIONS" and is divided into four divisions consisting of 144 pages. Part III is entitled "PROCEDURES FOR DIVISION OF LAND" and is divided into two divisions of thirty-two pages. Appendix A consists of thirty-two pages of definitions.

While the description in the agenda identifies the resolution to be considered and, therefore, is not deceptive or misleading, it falls far short of providing the notice contemplated by the "clear and complete" language in NRS 241.020(2)(c)(1). For example, the description of item 43a, which refers to Part II of Title 20, fails to inform the public that Part II relates to changes in zoning regulations, what particular zoning regulation changes are contemplated and that the result could be a change to the county master plan. Evidently, among the changes made by the adoption of Ordinance 97-801, are changes in the residential use of forest range land from clustered development being prohibited to it being permitted by right, a change which impacts the county master plan.

The public must not be sent on a research expedition to fathom what the agenda relates to or the nature of the topic.

Though the Open Meeting Law's requirement of "clear and complete" has been part of the law since 1989, we realize that, at the time of its meeting of February 5, 1998, the Board did not have the benefit of our interpretive letter decision OMLO 99-03 (January 5, 1999). We refer the Board's attention to that letter and to § 7.02 in the Ninth Edition of the Open Meeting Manual published October 2001 by this office, for a full discussion of the "clear and complete" requirement for agendas.

The complaint also focuses on the minutes of the meeting of February 5, 1998, contending they fail to reveal the substance of all matters proposed, discussed, or decided as required by NRS 241. 035(1)(c). The complaint focuses on agenda item 43a, which is on page 15 of the approved minutes of the February 5, 1998, under the heading, "Discussion and possible action on Ordinance 97-801 adopting revision to Parts I.II and III and Appendix A of Title 20 (2nd reading)."

The minutes reflect the discussion and vote on item 43a as follows:

“Chairman Etchegoyhen read the Ordinance by title.

> John Doughty went over the revisions that had been completed at the direction of the Board. He felt that the revisions will streamline the process and provide clarity.
>
> Chairman Etchegoyhen commended all the people involved. He was pleased with the mutual cooperation and felt it was government at its best.
>
> Public Comment
>
> Ray Tomales, President of the Douglas County Building Industry Association, accepted the revisions to the ordinance.
>
> Tim Sheets presented letters to the Board from property owners affected by this ordinance. He supports the position of the Board and feels that the problems have been addressed.
>
> Sandy Cable, Douglas County Business Council congratulated the staff on their ability to work together to produce a solution that the

community can live with.

Public Comment was closed.

MOTION by Miner/Kite to approve Ordinance 97-801 adopting revision to Parts I. II and III and Appendix A of Title 20; carried unanimously."

The minutes of the meeting of February 5, 1999, do not reflect the substance of what was *discussed* or *decided* on item 43a as required by NRS 241. 035(1)(c). From the minutes we know that John Doughty went over the revisions but the substance of those revisions are not expressed in the minutes. The ordinance was read by title no differently than expressed in the agenda. The motion to approve Ordinance 97-801 similarly does not reflect the substance of what the board decided. Without detail on the changes made by the ordinance being reflected in the minutes, the public cannot know from the minutes the substance of the discussion or the decision of the Board. We note that the Clerk was handicapped in preparing the minutes by the paucity of the discussion on the record during the meeting.

We now reach the question, what is the appropriate response of this office to the Board's violations of the Open Meeting Law? These violations appear to be first time offenses for the Board in the context of an ordinance impacting the master plan. We are optimistic that after reviewing this letter, the Board will have a subject matter topical description in their future agendas that will alert the public to the nature of the subject under consideration.

In a previous opinion of this office concerning minutes that failed to reflect the substance of the discussion by the public body we declined to seek injunctive relief when the public body corrected the defective minutes. Similarly, corrective action is the appropriate response in this matter, and by copy of this letter decision we ask the Board of Douglas County Commissioners to correct its minutes of February 5, 1998, to reflect the substance of its discussion and decision. Corrective action will resolve the matter.

Compliance with the Open Meeting Law fosters credible democracy, and that is something that must not be compromised. This letter is a warning to the Douglas County Board of County Commissioners that this office will progressively prosecute future violations of the Open Meeting Law as to its agendas and minutes.

We thank you for bringing this to our attention and thank the Board in advance for its anticipated cooperation.

Very truly yours,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
MELANIE MEEHAN-CROSSLEY
Deputy Attorney General
Government Affairs Section
(775) 684-1208

MMC:dy

ccw/encl: Donald H. Miner, Chair, Douglas County Board of Commissioners
Scott Doyle, Douglas County District Attorney

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THOMAS M. PATTON
First Assistant Attorney General

January 11, 2002

Cristina Hinds
Attorney at Law
525 South 6th street
Las Vegas, Nevada 89101

Re: *Open Meeting Law Complaint*
Pahrump Town Board
OMLO 2002-02/AG File No. 01-060

Dear Ms. Hinds:

On November 26, 2001, Liz Kirby of Informed Citizens for Pahrump, filed an Open Meeting Law complaint with the Office of the Attorney General regarding the October 9, 2001 and June 26, 2001 meetings of the Pahrump Town Board (Board). Pursuant to Chapter 241 of the Nevada Revised Statutes, the Attorney General's Office has primary jurisdiction to investigate and prosecute complaints alleging violations of the Nevada Open Meeting Law. The Board is a public entity governed by Chapter 241 of the NRS.

FACTS

On October 9, 2001, the Board held a public meeting at Bob Rund Community Center, 150 North Highway 160, Pahrump, Nevada. Prior to the meeting, the Board posted a notice of the meeting with the following agenda item: "19. Discussion, action, and decision regarding revisions of agreement for 911 and ambulance transport services, increase of prices, and related matters. Chuck Stidham." This agenda item is the basis for Ms. Kirby's complaint related to the October 9, 2001 meeting. The Board passed a motion on this agenda item after a brief presentation by Mr. Stidham.

ANALYSIS/CONCLUSION

The Open Meeting Law was enacted by the Legislature for the following purpose: "In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." NRS 241.010. *See also McKay v. Board of Supervisors*, 102 Nev. 644, 647, 730 P.2d 438, 441 (1986); *McKay v. Board of County Commissioners,* 103 Nev. 490, 493, 746 P.2d 124, 125 (1897). Further, the Open Meeting Law is entitled to a broad interpretation to promote openness in government, while any exceptions

thereto should be strictly construed. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986); *Wexford County Prosecuting Attorney v. Pranger*, 268 N.W.2d 344 (Mich. Ct. App. 1978). Furthermore, NRS 241.020(1) states, "Except as otherwise provided by specific statute, all meetings of a public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies."

Agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body. NRS 241.020(2)(c) provides, in relevant part, that a notice of hearing must include an agenda consisting of: "(1) a clear and complete statement of the topics scheduled to be considered during the meeting. . . ." I have enclosed a copy of that statute for your review.

The right of citizens to attend open public meetings is greatly diminished if they are not provided with an opportunity to know when the meeting will take place and what subject or subjects will be considered. One of the primary objectives of the Open Meeting Law is to allow members of the public to make their views known to their representatives on issues of general importance to the community. This type of communication would be impossible if the public were denied the opportunity to appear at the meeting through lack of knowledge that a meeting would be held. Thus, a public body's failure to adhere to notice and agenda requirements will result in an Open Meeting Law violation. *Thurston v. Phoenix*, 757 P.2d 619 (Ariz. Ct. App. 1988). Further, if a matter is acted upon which was not clearly denoted on the agenda, the action can be voided under NRS 241.036.

The main issue in this complaint is whether the agenda item 19 for the October 9, 2001 Board meeting was described in sufficient detail so as to give the public notice of the Board's proposed discussion and possible action. The item relating to "revisions of agreement for 911 and ambulance transport services, increase of prices" was discussed and acted upon subsequent to the presentation by Mr. Stidham.

Tape recordings and minutes of the meeting revealed that Mr. Stidham was basically asking the board for the authority to revise existing agreements with two ambulance transport services in order to increase the rates covered by the agreements. The Board voted to approve the rate increases. The minutes are somewhat misleading in that they also show that the agreements were approved by the Board. However, the record of the meeting indicates that only revisions to the existing agreements, consistent with the agenda, were considered.

Subsequent to a review of the record submitted, it is the opinion of this office that Pahrump Town Board did not violate the Open Meeting Law with respect to the notice requirements of NRS 241.020(2)(c).

While it could be argued that the agenda item could have been written with more detail and clarity, the item was adequately described so as to give the public notice of what was going to be discussed by the Board. In addition, the Board only took action to approve revisions of the agreements related to rate increases as specified on the agenda.

In her letter received by this office on November 26, 2001, Ms. Kirby has also complained that the Board violated the Open Meeting Law at a meeting held on June 26, 2001. Pursuant to NRS 241.037(3), this office lacks jurisdiction to investigate that complaint since the notice of the alleged violation given to the Attorney General is untimely.

We thank Ms. Kirby for bringing this matter to our attention. Please distribute this decision to the Board members.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
KEITH D. MARCHER
Senior Deputy Attorney General
Boards and Commissions Section
(775) 684-1201

KDM:br

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

January 21, 2002

Richard G. Barrows
Wilson and Barrows, Ltd.
442 Court Street
Elko, Nevada 89801

Re: *Open Meeting Law Complaint*
Elko County School District Board of Trustees
OMLO 2002-03/AG File No. 01-055

Dear Mr. Barrows:

On November 14, 2001, Assemblyman John Carpenter filed an Open Meeting Law Complaint with the Office of the Attorney General, concerning the November 13, 2001 meeting of the Elko County District Board of Trustees (School Board). Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violation of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

FACTS

Background

In the wake of the September 11, 2001 terrorist attack, Dr. Alan R. Brown, Superintendent, concluded that an emergency existed which necessitated a decision to restrict student travel in the interest of student safety. On October 23, 2001, the School Board held a meeting in Elko, Nevada. Action Item 5 of the agenda was the "Consent Agenda," which included "(c) Receipt and Possible Approval of Out of State Trip Requests." This consent item included several trip requests by various schools. Further, before voting on this item, Dr. Brown informed the School Board that the Owyhee High School and Wells High School trips had been cancelled at the schools' request.

The School Board approved the consent agenda with the exception of the Owyhee High School and Wells High School trip requests. However, there was no motion to approve the Superintendent's out-of-state trip decision, and there was no action on that decision.

On or about October 29, 2001, Dr. Brown sent out a memorandum to all parents and guardians explaining his student safety and budgetary concerns. This memorandum generated some public interest in the Superintendent's student trip decision, and Dr. Brown decided to place this item on the agenda for the next meeting.

On November 13, 2001, the School Board held a meeting at Carlin Combined School, Library Room 552, 8th Street, Carlin, Nevada. Prior to this meeting, the School Board noticed an agenda with the following item: "Discussion and Possible Action on Authority of Superintendent to Temporarily Modify Travel Policy and Procedure for Safety Purposes." This item was listed as an "Action Item" and is the subject of this complaint.

ANALYSIS AND CONCLUSION

The Open Meeting Law was enacted by the Legislature for the following purpose: "In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." NRS 241.010. *See also McKay v. Board of Supervisors*, 102 Nev. 644, 647, 730 P.2d 438, 441 (1986); *McKay v. Board of County Commissioners*, 103 Nev. 490, 493, 746 P.2d 124, 125 (1897). Further, the Open Meeting Law is entitled to a broad interpretation to promote openness in government, while any exceptions thereto should be strictly construed. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986); *Wexford County Prosecuting Attorney v. Pranger*, 268 N.W.2d 344 (Mich. Ct. App. 1978). Furthermore, NRS 241.020(1) states, "Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies. . . ."

Agenda items must be described with clear and complete detail so the public will receive notice in fact of what is to be discussed by the public body. NRS 241.020(2)(c) provides, in relevant part, that a notice of hearing must include an agenda consisting of: "(1) [a] clear and complete statement of the topics scheduled to be considered during the meeting . . . ." I have enclosed a copy of that statute for you review.

The right of citizens to attend open public meetings is greatly diminished if they are not provided with an opportunity to know when the meeting will take place and what subject or subjects will be considered. One of the primary objectives of the Open Meeting Law is to allow members of the public to make their views known to their representatives on issues of general importance to the community. This type of communication would be impossible if the public were denied the opportunity to appear at the meeting through lack of knowledge that a meeting would be held. Thus a public body's failure to adhere to notice and agenda requirements will result in an Open Meeting Law violation. *Thurston v. Phoenix*, 757 P.2d 619 (Ariz. Ct. App. 1988). Further, if a matter is acted upon which was not clearly denoted on the agenda, the action can be voided under NRS 241.036.

In this case, the main issue is whether the Agenda Item 5 for the October 23, 2001, and November 13, 2001, meetings were described in enough detail so the public would receive notice in fact of what was to be discussed by the School Board.

With respect to the October 23, 2001, Action Item 5 - Consent Agenda "(c) Receipt and Possible Approval of Out of State Trip Requests," this item contained several specific trip requests, which identified the school involved, and the date and the location in which they were going. It is the conclusion of this office that the October 23, 2001, Action Item 5 was described with enough detail so that the public would receive sufficient notice that complied with the Open Meeting Law.

During discussion of the October 23, 2001 Action Item 5, Dr. Brown indicated that he had decided to cancel future out-of-state student trips in view of the ongoing threat of terrorism in the wake of the September 11, 2001, terrorist attack. As stated earlier, this caused some concern among members of the public and, as a result, Dr. Brown placed this item on the next meeting agenda.

On November 13, 2001, the School Board noticed an agenda with the following item: "Discussion and Possible Action on Authority of Superintendent to Temporarily Modify Travel Policy and Procedure for Safety Purposes." When this item came up, there were lengthy and heated discussions concerning the student trip restrictions. However, it was the consensus of the School Board that it was not necessary to ratify the Superintendent's student trip decision because he had the authority to make the decision, and the School Board did not wish to repudiate that decision. As a result, the School Board did not take express action in the form of a motion and it did not take a vote. Further, the School Board did not continue the matter to a later meeting and considered the matter closed.

After a careful review of the record submitted, it is the opinion of this office that the School Board did not violate the Open Meeting Law with respect to the notice requirements of NRS 241.020(2)(c). Although the description in Action Item 5 of the November 13, 2001, meeting could have specifically included the fact that it was going to discuss the possibility of authorizing the Superintendent to temporarily modify *student* travel, the item was adequately described with enough detail so that the public received notice of what was to be discussed by the School Board. This is evidenced by the fact that Mr. Carpenter and numerous other members of the public attended this meeting to voice their concerns on this issue.

Lastly, whether Dr. Brown, as Superintendent, has the authority to modify the travel policy within the confines of his employment contract with the School Board is outside the scope of this Open Meeting Law investigation, and this office will not render an opinion on this issue.

We thank Assemblyman Carpenter for bringing these matters to our attention. Please distribute this determination to the School Board members.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
CHARLES T. MEREDITH
Deputy Attorney General
Tax Section
(775) 684-1233

CTM/ms
Enclosure

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

January 25, 2002

Richard G. Barrows
Wilson and Barrows, Ltd.
Legal Counsel to School Board
442 Court Street
Elko, Nevada 89801

Dr. Allen R. Brown, Superintendent
Elko County School District
Board of Trustees
Post Office Box 1012
Elko, Nevada 89803

Re: ***Open Meeting Law Complaint***
Elko County School District Board of Trustees
OMLO 2002-04/AG File No. 01-063

Dear Mr. Barrows:

On November 30, 2001, Assemblyman John Carpenter filed an Open Meeting Law complaint with this office concerning the November 27, 2001 meeting of the Elko County School District Board of Trustees (School Board). Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violation of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes.

FACTS

Background

On November 27, 2001, the School Board held a meeting in the conference room at the Elko County School District office in Elko, Nevada.

There were several agenda items, which were discussed and action taken on, but the complaint was based on only three items, namely, Agenda Item No. 6, "Action Item. Receipt, Review, Discussion, and Possible Approval of Request for Purchase of Retirement Service Credit;" Agenda Item No. 9. "Non-Action Item. Items from the Board Members;" and Agenda Item No. 10. "Non-Action Item. Superintendent's Report. a. Goals and Objectives."

Mr. Carpenter has alleged that these agenda items did not give enough detail so that the public had notice of what the School Board was considering.

ANALYSIS AND CONCLUSION

The Open Meeting Law was enacted by the Legislature for the following purpose: "In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." NRS 241.010. *See also McKay v. Board of County Commissioners*, 103 Nev. 490, 493, 746 P.2d 124, 125 (1987); *McKay v. Board of Supervisors*, 102 Nev. 644, 647, 730 P.2d 438, 441 (1986). Further, the Open Meeting Law is entitled to a broad interpretation to promote openness in government, while any exceptions thereto should be strictly construed. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986); *Wexford County Prosecuting Attorney v. Pranger*, 268 N.W.2d 344 (Mich. Ct. App. 1978). Furthermore, NRS 241.020(1) states, "[e]xcept as otherwise provided by specific statute, all meetings of a public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies."

Agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body. NRS 241.020(2)(c) provides, in relevant part that a notice of hearing must include an agenda consisting of: "a clear and complete statement of the topics scheduled to be considered during the meeting . . . ." Enclosed is a copy of that statute for your review.

The right of citizens to attend open public meetings is greatly diminished if they are not provided with an opportunity to know when the meeting will take place and what subject or subjects will be considered. One of the primary objectives of the Open Meeting Law is to allow members of the public to make their views known to their representatives on issues of general importance to the community. This type of communication would be impossible if the public were denied the opportunity to appear at the meeting through lack of knowledge that a meeting would be held. Thus, a public body's failure to adhere to notice and agenda requirements will result in an Open Meeting Law violation. *Thurston v. Phoenix*, 757 P.2d 619 (Ariz. Ct. App. 1988). Further, if a matter is acted upon which was not clearly denoted on the agenda, the action could be voided under NRS 241.036.

QUESTION 1

Did Item 6 of the Agenda for the School Board's November 27, 2001, meeting violate the

Nevada Open Meeting Law, because the Agenda did not name the employee at issue?

ANSWER TO QUESTION 1

Agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body. Identifying the name of the person or business affected by the School Board's consideration is generally required in order to give the public actual notice and fulfill the clear and complete agenda requirements of NRS 241.020(2)(c). Although NRS 241.020 does not state that the agenda must identify the name of the person upon whom action may be taken, this office has long opined to that effect. *See* Op. Nev. Att'y Gen. No. 79-8 (March 1979); Op. Nev. Att'y Gen. No. 91-6 (May 1991). *See also Nevada Open Meeting Law Manual*, Ninth Ed., October 2001, §§ 7.02, 9.07. For example, merely indicating "Licensing Board" on an agenda without listing the names of the licensees who will be considered is not proper. Further, an agenda item for consideration of business permits should include the name and, where appropriate, the address of the proposed business and/or applicants. *See Nevada Open Meeting Law Manual*, Ninth Ed., October 2001, § 7.02.

In this case, Mr. Carpenter has complained that Agenda Item 6 did not mention the name of the person being considered for the purpose of the retirement credit. A review of the meeting minutes indicate that the School Board did deliberate and take action on this item and a motion to approve the request to purchase service time passed. Further, in your response letter, you have stated that you will be recommending to the Superintendent and the School Board that all future agendas for all future School Board meetings identify the name of the person at issue if the item is designated an as "Action" item.

Unfortunately, it is the conclusion of this office that Agenda Item 6 did not meet the notice requirements of the Open Meeting Law because it failed to identify the employee's name or job title. Agenda Item 6 did not give the public a clear and complete statement so that the public knew what the School Board was considering.

QUESTION 2

Did Items 9 and 10 of the same Agenda violate the Agenda specificity requirements of the Nevada Open Meeting Law because they were "generic" items?

ANSWER TO QUESTION 2

Agenda items should be written in a manner that actually gives notice to the public of the items anticipated to be brought up at the meeting. Generic agenda item such as "President's Report," "Committee Reports," "New Business," and "Old Business" do not provide a clear and complete statement of the topics scheduled to be considered. Such items should not be listed as action items as they do not adequately describe items upon which action is to be taken. *See* OMLO 99-03 (January 11, 1999). Furthermore, generic items such as "reports" or "general Comments by board members" invite trouble because discussions spawned under them may be of great public interest and may lead to deliberations or actions without the benefit of public scrutiny or input. As such, generic items should be used sparingly and carefully, and actual discussions should be tightly controlled. Matters of public interest should be rescheduled for further discussion at later meetings. *See Nevada Open Meeting Law Manual*, Ninth Ed., October 2001, § 7.02.

In this case Agenda Items 9 and 10 were identified as "Non-Action" items and after a review of the minutes, it does not appear that any action was taken by the School Board, nor did the School Board deliberate toward a decision on any issue. Therefore, the School Board did not violate the Open Meeting Law with respect to Agenda Items 9 and 10. However, it is the recommendation of this office that if an issue of substantial public interest is raised during items from Board Members or the Superintendent Report, it would be advisable to place the item as a specific agenda item at a future School Board meeting.

CURATIVE ACTION

The action of any public body taken in violation of the Open Meeting Law is void, i.e., has no legal force or binding effect. NRS 241.036. Further, lawsuits to obtain a judicial declaration that an action is void must be commenced within 60 days after the offending action occurred. NRS 241.037(3). Therefore, a complaint would have to filed by January 28, 2002, to seek a court order voiding the action in violation of the Open Meeting Law. However, if the Board will take curative action on its own at its next meeting regarding Agenda Item 6 and the motion to approve the request for service time such suit will be unnecessary.

In this regard, this office requests that either legal counsel to the Board or the Chairman of the Board provide written assurance to this office that curing the violation regarding Agenda Item 6 will be placed on the agenda for the Board's next meeting, and the Board will act to either ratify the action taken at the November 27, 2001 meeting, or void the action taken at the meeting, in regards to Agenda Item 6. Such written assurance must be received in this office no later than 4:00 p.m., January 28, 2002. A copy of the posted agenda, showing the item is properly noticed and agendized will also need to be received by this office, within three days of giving the written assurance.

We thank Mr. Carpenter for bringing these matters to our attention. Please distribute this determination to the School Board members.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
CHARLES T. MEREDITH
Deputy Attorney General
Tax Section
(775) 684-1233

CTM/jm

Enclosure

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

February 6, 2002

Sean T. McGowan
City Attorney
2200 Civic Center Drive
North Las Vegas, Nevada 89030

Mr. Glen Easter
4715 North 5th Street
North Las Vegas, Nevada 89031

Re: *Open Meeting Law Complaint: City of North Las Vegas City Council*
AG File No. 02-003

Dear Messrs. McGowan and Easter:

This office has primary jurisdiction to investigate and resolve complaints regarding the Nevada Open Meeting Law. By letter dated January 2, 2002, this office received a complaint from Mr. Glen Easter alleging that a change in the City Council's agenda unlawfully restricts his ability to speak.

I have reviewed the agenda and other materials submitted by Mr. Easter and Mr. McGowan. I have also discussed the matter at some length with both individuals. Based on the evidence submitted, this office believes that there is no violation of the Open Meeting Law.

FACTS

Mr. Easter's letter of January 2, 2002, sets forth his claim that various officials of the City of North Las Vegas violated the Open Meeting Law. Mr. Easter complains, in pertinent part, that:

> The violation of NRS 241 occurred on the published North Las Vegas meeting notice and agenda for the January 2, 2002 meeting.

> The the [sic] welcome statement on the meeting notice I received for the 1/2/2002 meeting was changed and appears to restrict and limit my ability to speak on agenda items.

The pertinent language of the January agenda, which causes Mr. Easter concern, can be found on the agenda for the North Las Vegas City Council's meeting of January 2, 2002:

> If you wish to speak, please complete one of the blue cards which are located at the back of the room. Please give the card to the City Clerk. When the Mayor calls upon you to speak, we request that you limit your comments to no more than five minutes, and that you avoid repetition.

By way of comparison, Mr. Easter provides an earlier agenda. In the "welcome" part of the agenda for the City Council's meeting of December 19, 2001, the language reads:

> If you wish to speak *on any agenda item, or in the Public Forum*, please complete one of the blue cards which are located at the back of the room. [Emphasis added.]

The apparent basis for Mr. Easter's complaint is that the words "on any agenda item, or in the Public Forum" have been omitted from the January 2 agenda. In his written response to Mr. Easter's complaint,[1] City Attorney McGowan addresses the language change:

> Deletion of the language Mr. Easter cites was intended to remove an inference that the Public was automatically entitled to address ANY item before it was acted upon. At the December 19, 2001 meeting, one other member of the public expressed some concern that the yet to be deleted language was confusing to him. The other member of the public expressed confusion over whether the ability to comment on ANY items was actually the case. It was a valid observation because there certainly was, in our view, no requirement that the Mayor, in every instance, pull matters off the Consent agenda for discussion by the Council and the general public.

<u>DISCUSSION</u>

A review of the January 2 agenda reveals that there is a public comment period provided for on the agenda. Under the current wording, even with the deletion of the phrase "on any

[1] Letter dated January 17, 2002, from Sean T. McGowan to the Attorney General's office.

agenda item or in the Public Forum," the public is given the opportunity to speak. Except during the public comment period required by Nevada Revised Statute (NRS) 241.020(2)(c)(3), the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings. It has been the position of this office that the Open Meeting Law does not require that public comments must be allowed throughout a meeting and on every agenda item. *See* § 8.04, Open Meeting Law Manual (9th ed. 2001).

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments." Reasonable rules and regulations ensuring the orderly conduct of a public meeting may be adopted by a public body as long as such rules are clearly articulated on the agenda. *See* OMLO 99-08 (July 8, 1999). Accordingly, this office finds no violation of the Open Meeting Law.

Thank you for providing our office with the opportunity to review this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
MARTA A. ADAMS
Senior Deputy Attorney General
Civil Division
(775) 684-1237

MAA:py

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February 8, 2002

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Richard J. McNaughton
105 Bleu De Clair
Sparks, NV 89434

Joanne C. Young
378 Rue De La Mauve
Sparks, NV 89434

Re: *Open Meeting Law Complaint*
Canyon General Improvement District Board of Trustees
OMLO 2002-06/ AG File No. 01-059

Dear Ms. Young and Messrs. Bay and McNaughton:

On November 27, 2001, you filed a complaint with this Office against the Canyon General Improvement District (hereafter "CGID" or the "Board") alleging several violations of the Nevada Open Meeting Law (OML). Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes.

Specifically the complainants allege that the CGID violated the Nevada Open Meeting Law in meetings held on October 17, 2001, and on November 14, 2001, and further violated the Nevada Open Meeting Law by sending out two letters purportedly authorized by the Board. The complaints relative to the October 17, 2001 meeting allege that the agenda was not clear and complete, that the character or fitness of individuals was considered without the proper notice

being given to those individuals required by NRS 241.033, and that a letter was generated by the Board labeling the complainants as "terrorists," without this letter having been properly noticed or considered at an open meeting. The complaint relative to the November 14, 2001 meeting is that the meeting to discuss whether or not to employ a particular attorney was in closed session, in violation of NRS 241.020. The final complaint centers around an October 1, 2001 letter sent to a resident by the accountant for the Board.

We have reviewed the agendas and minutes of the two meetings of the CGID you complain about in your November 27, 2001 letter, as well as the audiotape of the October 17, 2001 meeting. (There was no tape of the November 14, 2001 meeting.) We have also reviewed the response of the CGID to your complaint, submitted by their counsel. We have completed our investigation of the complaint filed by Charles Bay, Richard McNaughton, and Joanne C. Young.

ANALYSIS

I. Board Meeting of October 17, 2001

A. Agenda Items

Your first questions concern the October 17, 2001 meeting of the CGID. You ask whether the agenda, which was posted for the meeting and used at the meeting, was "too generic," or did not contain sufficient detail. After reviewing the agenda and the tape of the meeting, this Office finds that the agenda was generally specific enough to provide sufficient notice of the agenda items. However, one item, number 13, which was labeled "DISCUSSION/ACTION—Correspondence" dealt with a specific memo from Storey County Clerk Doreen Bacus. The memo informed the Board that a recall petition had been filed against the Board members by certain individuals.

This Office finds that since the agenda item did not list the particular correspondence which was to be discussed, which was of great interest to the Board and community in general, this particular agenda item was too general and vague, and therefore a violation of the Open Meeting Law. NRS 241.020(2)(c)(1) requires that an agenda contain "[a] clear and complete statement of the topics scheduled to be considered during the meeting." The use of broad categories such as "correspondence" should only be used for items in which it cannot be anticipated what specific matters will be considered. This correspondence, which was received prior to the meeting by the Board members, should not have been discussed unless the specific memo and a brief description of its contents were listed on the agenda. See Nevada Open Meeting Law Manual, section 7.02

However, since there was no action taken on this item, and the Board has not engaged in prior transgressions of this nature, we will forego enforcement action and warn the Board that agenda items concerning specific correspondence should be specifically listed on the agenda in the future. We refrain from enforcement action only on the condition that the memo from Doreen Bacus be listed as a specific agenda item and reconsidered at the next meeting of the CGID, to give those individuals, who were not aware that this matter would be discussed, the opportunity to attend the discussion by the Board of this issue (unless, in the interim, this correspondence has been properly noticed and discussed at a meeting). The Board must report back to this Office with a copy of the agenda of the meeting in which this item was discussed.

B. Notice to Individuals Whose Character, Misconduct, Professional Competence, or Physical or Mental Health the Board Considers

Your next complaint, dealing with the October 17, 2001 meeting, concerns whether the notice requirements of NRS 241.033(1) were violated. See Nevada Open Meeting Law Manual 6.09. That section states that "[a] public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting." The section goes on to delineate certain time periods in which the notice must take place.

The minutes and the tape of the October 17, 2001 meeting reveal that the Chairman of the CGID, Pat Shannon, under the same "Correspondence" agenda item as discussed above, stated "I'm sorry, but as far as I'm concerned, I'll be very blunt and frank, as far as I'm concerned, they [apparently referring to the complainants Charles Bay, Joanne Young and Richard McNaughton, whom he had previously mentioned] are terrorists. They have done everything they can to destroy this community. Their only goal is to disrupt and destroy this community." No notice had been given to the complainants regarding any consideration of the character of these individuals. While Mr. Shannon spoke about Mr. Bay, Ms. Young and Mr. McNaughton, the gist of his discussion involved what the CGID has attempted to do versus the alleged attempt to derail the CGID's work by the three individuals. Mr. Shannon was the only Board member who spoke on this issue.

Although he was the only Board member who spoke on the issue of the three individuals, the statements of Mr. Shannon on this issue should be considered to be a discussion of the Board as a whole on the character or fitness of these particular individuals. Mr. Shannon was speaking on an agenda item, and the other Board members had a chance to comment but did not. Mr. Shannon did label the complainants as "terrorists," which does constitute consideration of the character or alleged misconduct of these individuals. Therefore, this Office does find an Open Meeting Law violation of NRS 241.033, in that no notice in compliance with NRS 241.033 was given to these individuals prior to considering their character or alleged misconduct.

However, since the only Board member to speak on this issue was Mr. Shannon, his comments on the complainants' character were brief in comparison to the discussion under this agenda item of the work of the CGID as a whole, and there is no record of previous violations of CGID of the Nevada Open Meeting Law, this Office will refrain from enforcement action on this issue, except to warn the Board that any future discussion of the character of specifically-named individuals requires notice pursuant to NRS 241.033.

C. The So-called "Terrorist Letter"

The next issue involving the October 17, 2001 meeting concerns the so-called "terrorist letter." At approximately the time of this meeting, a letter was issued which has as its heading: "TERRORISTS IN RAINBOW BEND." This letter has printed at the bottom "Canyon General Improvement District Board of Trustees." The letter specifically names Charlie Bay, Richard McNaughton, and Joann "Young-Minoli" as the "terrorists." Another similar, although somewhat less, inflammatory letter was written by Marvin Clark, a Canyon General Improvement District Trustee.

NRS 241.020(2)(c)(2) requires that a notice be posted at least 3 days in advance which includes an agenda which lists any items in which action may be taken. "Action" is defined in NRS 241.015(1) as**:**

> (a) A decision made by a majority of the members present during a meeting of a public body;
> (b) A commitment or promise made by a majority of the members present during a meeting of a public body; or
> (c) A vote taken by a majority of the members present during a meeting of a public body.

The minutes of a Board meeting held on November 14, 2001, which is the subject of the next complaint considered in this letter, state that "the Board members sent out the letter in question," referring to the "terrorist letter." The investigator for the Attorney General's Office questioned the Board members who, upon advice of counsel, were not cooperative in revealing whether or not they had seen the letter prior to it going out. The letter was purportedly authored by Chairman Pat Shannon. Because of the entry in the November 14, 2001 minutes of the Board and the print at the bottom of the letter which states "Canyon General Improvement District Board of Trustees," this Office finds, in the absence of evidence to the contrary provided by the Board, that sufficient evidence exists that a quorum of the Board considered and approved this letter going out. Therefore, the issuance of this letter is a violation of the Nevada Open Meeting Law. Consideration and approval of the said letter was not properly noticed, considered or approved in an open meeting, as required by NRS 241.020.

Since this letter has already been disseminated to the Rainbow Bend community, and the letter does not involve action directly affecting Rainbow Bend, we will refrain from any enforcement action. This letter will serve as a warning that any such Board action in the future which is not properly noticed and considered at an open meeting will result in the strongest enforcement action available to this office.

II. The November 14, 2001 Meeting

The next complaint concerns a meeting of the Board on November 14, 2001 in executive session. The complaint is that there was insufficient notice of the items to be considered at the meeting, in violation of NRS 241.020(2)(c)(1), and that it was a closed session. The agenda that was posted merely stated that an executive session meeting was to be held on November 14, 2001, at 5:30 p.m. in Attorney Mark Gunderson's office. The minutes of the closed meeting provided by both the complainants and the CGID through their counsel state that "[t]he Board met to determine if Mark Gunderson should be retained by the Board to defend Pat Shannon against charges of coercion brought by District Attorney Janet Hess. Since the Board members sent out the letter in question, Bob Schnaufer made a motion to back Pat Shannon, and for the Canyon General Improvement District to retain Mark Gunderson to defend Pat Shannon on the coercion charge, second by Dave Cockerton."

The CGID defends this closed meeting by stating that Assembly Bill (AB) 225 (2001), which became effective on October 1, 2001, amended the definition of meeting in NRS 241.015 by adding a provision that states that the definition does not include a gathering of members "[t]o receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both." NRS 241.015(2)(b)(2). This exclusion from the definition of meeting allows a non-meeting "to receive information *from the attorney employed or retained* by the public body regarding potential or existing litigation…" (Emphasis added.)

The minutes of the November 14, 2001 meeting reflect that the Board did not merely receive information from an attorney already retained by the Board. Rather the Board took action and voted to retain this attorney, who had not previously been retained and who ostensibly knew very little information about the case. The action of the Board went well beyond what was contemplated in AB 225, which allows a non-meeting only to receive information on pending litigation from an attorney already retained by a public body. Therefore, the closed session involving the discussion and vote to retain this attorney is a violation of the Open Meeting Law.

Any action taken in violation of the Open Meeting Law is considered void pursuant to NRS 241.036. However, before such action may be legally declared void, NRS 241.037(1) requires the Attorney General's Office to obtain a court order. Since the decision to hire the Gunderson law firm was a violation of the Nevada Open Meeting Law, this Office has grounds to

file an action in a court of competent jurisdiction to declare the contract between the Board and the Gunderson law firm void. If the contract were declared void, then the Gunderson law firm may not do any more work for CGID under this contract and would have to return any compensation received under the terms of the contract for services not actually performed.

The CGID, through their counsel in response to the complaint, stated that this matter would be put on the agenda of the next regular meeting and the decision to hire this law firm would be discussed in an open meeting and voted on again to ratify the decision made in closed session. If this matter is properly noticed and specifically listed on an agenda, discussed in an open meeting, a new vote is taken on this issue, and the Board takes the steps necessary to recognize the original contract as void, then we will not seek a court order declaring this contract to be void or pursue further enforcement action. The void action of hiring the Gunderson law firm may then be properly approved by the Board in compliance with the Open Meeting Law. The Board must report back to this Office with a copy of the agenda of the meeting in which this item was discussed.

This letter will serve as a warning that AB 225 only allows a non-meeting for consideration of advice on pending litigation or through litigation from an attorney already retained by a public body. Any further violation of this provision will result in enforcement action being taken.

III. The October 1, 2001 Letter

Your third complaint involves a letter dated October 1, 2001 to Dennis Johnson from the Canyon General Improvement District. The letter is signed by Connie Lea Butts, Accountant, and states that it is a receipt for payment of certain fees. The letter apparently involves only a ministerial function of the Board, performed by a Board employee. Since this letter is not signed by any member of the Board and there is no evidence that any Board action was involved in this letter, there is no violation of the Open Meeting Law.

CONCLUSION

Having considered the allegations against the CGID regarding violations of the Nevada Open Meeting Law, this Office finds that the CGID violated the Open Meeting Law by failing to properly notice on the agenda for the October 17, 2001 meeting, the memo from County Clerk Doreen Bacus that concerned the recall petition. Because no action was taken, we will not pursue enforcement action and issue only a warning, on the condition that the Board properly notice and consider this item at the next meeting of the Board.

This Office also finds a violation as to the allegation regarding the October 17, 2001 meeting regarding the consideration of the character and fitness of individuals without sufficient notice given to the individuals as required by NRS 241.033. Because the character and fitness of the complainants was not discussed by the Board as a whole, but was discussed only by Chairman Pat Shannon in conjunction with a broader discussion of the performance of the CGID, this Office will refrain from enforcement action. This letter will serve as a warning to properly notice individuals pursuant to NRS 241.033 whose character will be discussed at a meeting.

In addition, this Office finds that the so-called "terrorist letter" was an action of a quorum of the Board, as opposed to the action of only one or two individuals, and therefore does find another violation of the Nevada Open Meeting Law for the terrorist letter. This Office will again warn the Board that any such matters which are the product of Board action must be considered and approved only in accordance with the Nevada Open Meeting Law.

We also find a violation of the Nevada Open Meeting Law for the closed session held to consider whether to retain Attorney Mark Gunderson. We will refrain from any enforcement action as to this violation, if the retention of Mr. Gunderson is discussed in the next meeting of the Board in compliance with the Nevada Open Meeting Law and the Board takes steps to declare the original contract with the Gunderson law firm void.

Finally, we find no violation of the Nevada Open Meeting Law for the October 1, 2001 letter from the Board's accountant, which was of a purely ministerial nature. Should you have any questions concerning the above points, please contact the undersigned.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
EDWARD T. REED
Deputy Attorney General
Commerce Section
(775) 684-1216

ETR/br

cc: Canyon General Improvement District
Mark H. Gunderson, Ltd.

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Attorney General

THOMAS M. PATTON
First Assistant Attorney General

February 15, 2002

Janet Hess
Storey County District Attorney
Post Office Box 496
Virginia City, Nevada 89440

Re: *Open Meeting Law Complaint*
Storey County Board of Commissioners
OMLO 2002-08/AG File No. 01-062

Dear Ms. Hess:

This letter is in response to an Open Meeting Law complaint filed with the Attorney General by Mr. Scott L. Burrell, a small business owner in Virginia City, alleging that the Storey County Commission violated the Open Meeting Law at its meeting on October 16, 2001, by discussing a matter not identified on the agenda. Pursuant to Nevada law, the Attorney General's Office has primary responsibility to investigate and resolve complaints regarding the Nevada Open Meeting Law.

FACTS

In investigating this matter, telephone interviews were conducted with Mr. Burrell, Dean Haymore, head of the Storey County Building Department, and Greg Hess, Storey County Commissioner. Attempts were made to speak with Commissioner Charles Haynes on December 17, 2001, December 20, 2001, and January 2, 2002, but our telephone calls were not returned. We reviewed the agenda and minutes of the October 16, 2001, County Commission meeting and the agenda and minutes of the December 6, 2001, Storey County Planning Commission meeting. This office also reviewed a Storey County Building Department memorandum dated August 31, 2001, a letter from the Storey County Building Department to Scott Burrell dated August 30, 2001, as well as applicable Storey County Code provisions. The Storey County Clerk provided tapes of the October 16, 2001, County Commission meeting, but those tapes were largely unintelligible.

The facts of this case appear to be largely undisputed. On August 30, 2001, the Storey County Building Department notified Scott Burrell that an off-premises sign he had posted to advertise his business was in violation of Storey County Code § 17.48.070 D and asked that he remove it. Mr. Burrell objected to the notice, not because he felt his sign was in compliance with the code, but because the specific code provision was not being equally enforced against other businesses in Virginia City. Mr. Burrell asked that he be placed on the next County Commission meeting agenda, but because of a clerical error, this was not done.

A County Commission meeting was held on October 16, 2001. The agenda for that meeting did not reference Mr. Burrell's complaints, his business, his off-premises sign, or Storey County's sign ordinance. However, during discussion of the item described by the agenda as "Staff Review/Committee Reports," Commissioner Haynes "advised the board there [was] an off premise sign on the north wall of the gas station that [was] in noncompliance with the sign ordinance. He requested public works to remove the sign belonging to Scott Burrell advertising his one hour photo shop on south 'C' street." No vote was taken on this issue, and none of the other commissioners made any comment. That sign was subsequently removed by county employees without further Commission discussion or other legal action.

Mr. Burrell was able to get on the agenda for the December 6, 2001, Storey County Planning Commission meeting to discuss "Storey County's sign ordinance(s)." The ordinances were discussed at the meeting, and Mr. Burrell was informed that he needed to apply to the Planning Commission for a hardship variance. No action was taken by the Planning Commission at that meeting.

According to my conversations with Dean Haymore of the Storey County Building Department, violations of the sign ordinance are usually handled by serving a notice of violation as was done in this case, and if the sign owner refuses to bring his sign into compliance, an action is then filed in a court of competent jurisdiction seeking an order allowing the Building Department to remove the sign. Storey County Code § 17.48.070 D is silent as to the means of its enforcement.

ANALYSIS

Nevada Revised Statute (NRS) 241.020(2) provides in relevant part:

> Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:
>
> . . .
>
> (c) An agenda consisting of:
>
> (1) A clear and complete statement of the topics scheduled to be considered during the meeting.
>
> (2) A list describing the items on which action may be taken

and clearly denoting that action may be taken on those items.

The agenda of the October 16, 2001, meeting did not indicate that Mr. Burrell's sign would be discussed or that any enforcement action might be taken against him.[1] Inclusion of this discussion under the generic item identified as "Staff Review/Committee Reports" does not comply with the letter or the spirit of NRS 241.020(2) and constitutes a violation of the "clear and complete statement" requirement contained in NRS 241.020(2)(c)(1). This office has noted that the use of generic terms to describe agenda items invites problems and should be used sparingly and only under tight control. Nevada Open Meeting Law Manual at 47. Mr. Burrell's complaint exemplifies why such general descriptions should not be used, since the agenda did not put Mr. Burrell or any other interested party on notice that the sign or the ordinance would be discussed.

We further note a probable violation of NRS 241.020(2)(c)(2), requiring clear denotation of items on which action may be taken. Even though the County Commission did not conduct a vote, the Chairman instructed staff to remove Mr. Burrell's sign. It furthermore appears the sign was in fact removed by County personnel without resort to the courts, a departure from the ordinary practice identified by Mr. Haymore. These circumstances may well evidence action by the County Commission, initiated by the Chairman and supported by the tacit assent of the other Commissioners. However, we decline to draw this conclusion on the basis of the limited information in our possession.

CONCLUSION

The agenda for the Storey County Commission's October 16, 2001, meeting failed to include a clear and complete statement of the topics that were considered at the meeting. This constitutes a violation of NRS 241.020(2)(c)(1). We note that we have previously found, by letter to you dated January 11, 2002, a separate Open Meeting Law violation by the County Commission at the same October 16, 2001, meeting. *See* enclosure. We again warn that this office will not hesitate to prosecute future violations of the Open Meeting Law committed by the County Commission.

---

[1] The question of whether the Storey County Commission had authority to enforce the sign ordinance without recourse to the courts is beyond the scope of this investigation and will not be addressed here. The issue of whether Storey County is fairly and equally enforcing its sign ordinance is likewise beyond the scope of this investigation.

We wish to thank Mr. Burrell for bringing this matter to our attention. Please distribute this determination to the Storey County Commissioners.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
MICHAEL L. WOLZ
Deputy Attorney General
Civil Division
(775) 684-1231

MLW:py
Enclosure
c: Scott L. Burrell

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

February 25, 2002

Sean McGowan
City Attorney's Office
City of North Las Vegas
2200 Civic Center Drive
North Las Vegas, Nevada 89030

Re: Open Meeting Law Complaint
City of North Las Vegas City Council
OMLO 2002-09/AG File No. 02-004

Dear Mr. McGowan:

This office has primary jurisdiction to enforce the provisions of Nevada's Open Meeting Law, NRS 241.010 *et seq*. As you know, we received a complaint from Mike Thomas alleging violations of the Open Meeting Law by the North Las Vegas City Council (NLVCC or Council) and the Mayor of North Las Vegas, Mike Montandon. Specifically, Mr. Thomas expressed his opinion that the Council and its Mayor conducted the November 7, 2001, City Council meeting in violation of the State's Open Meeting Law by unnecessarily restricting his right to speak on agenda items as they were heard.

Our investigation of Mr. Thomas' complaint consisted of a review of the audiotapes and minutes of the meetings, the materials submitted to us by your office and Mr. Thomas, and my discussions with you and Mr. Thomas. The following is our determination.

FACTS

The NLVCC conducted a council meeting on November 7, 2001, which was publicly noticed and attended by members of the community. It is the practice of the NLVCC to agendize a designated public comment period to be held at the end of the council meeting. In addition, it is the policy of the Council to permit public comment throughout the meeting as agenda items are heard. If a citizen wishes to speak on an agenda item, the individual is required to fill out a Request to Speak card, indicating, inter alia, the agenda item they wish to speak on. The citizen is required to submit the card(s) to the city clerk, who in turn hands the cards to the presiding officer, in this case, the Mayor of North Las Vegas. The city attorney advises that it is the practice of the Mayor to recognize those who have submitted cards as the respective agenda item is called. As stated in the council agenda, the public is requested to limit their comments to no more than five minutes.

In his complaint to this office, Mr. Thomas represents that prior to the November 7 meeting being called to order, he submitted Request to Speak cards on Agenda Item Nos. 6, 9, 10, 11, 12, 13, 17, 19, 21, 26, 27, 36, and 42, as well as Request to Speak cards for comment during the Public Forum period. Mr. Thomas complains that following completion of Agenda Items 1-5, the Council did not allow him to speak on Agenda Item No. 6 despite the submission of a Request to Speak card on this item. *See* Verbatim Transcript, Remarks By Mike Thomas. The audio tape and transcript reflect that upon the close of the public hearing relating to Agenda Item No. 6, Mr. Thomas asserts a point of order since his request to speak was not acknowledged, and the following exchange occurs:

Mayor Michael L. Montandon:	I'll close the Public Hearing.
Mike Thomas:	Point of order. Point of order Your Honor.
Mayor Montandon:	No, no there's no point of order, I'm not recognizing you.
Mike Thomas:	Uh, I submitted, I submitted a card on this.
Mayor Montandon:	No, no, you submitted all these cards, I'm not recognizing you.
Mike Thomas:	Uh, then I would like to ask on the record by what authority are you violating the Open Meeting Laws, my first amendment rights, in violation of the City Charter?
Mayor Montandon:	By the fact that you made clear to people that heard that your only purpose was to annoy us, so you'd submit a card on every issue, issues that have nothing to do with you, and if your purpose is to annoy us then go find another way, don't do it here.
Mike Thomas:	Your Honor I believe there is somewhat like forty items, I think I submitted, uh,--
Mayor Montandon:	Cards on every item and we – we heard you say it to annoy us. I'm sorry Mr. DellaValle to have – put you through this when you're here to do business. Mr. Thomas you're not welcome.
Mike Thomas:	Your Honor, I don't know who you're speaking of –

Mayor Montandon:	You're out of order.
Mike Thomas:	-- that I spoke to.
Mayor Montandon:	You're out of order.
Mike Thomas:	And you're in violation of ethics, and I will file my complaint shortly and you can fork over another five thousand, fifty thousand, thank you.
Mayor Montandon:	You're out of order.
Mayor Pro Tempore William Robinson:	Your Honor if I may, I would like to make a motion if you didn't – if you have time to close the public.
Mayor Montandon:	I don't recall, I think I closed the Public Hearing, is that not true?
Councilman Eliason:	Well go ahead and close it if you didn't.
Mayor Montandon:	I'll close the Public Hearing.

. . .

Mr. Thomas complains that he was thereafter not recognized to speak on any agenda item upon which he had submitted a Request to Speak card, except for Agenda Item No. 36. During the public forum period, another member of the public criticized the Council for what he perceived to be an unreasonable restriction on public comment during the meeting. *See* Transcript, Public Forum, Remarks by Mike Winne, pages 2-4. In response, the Mayor stated, "I'm letting the people talk, I'm just not letting you and Mike Thomas talk." *See* Transcript, Public Forum, Remarks by Mike Winne, page 3.

Our investigation revealed that the Mayor based his comments and actions toward Mr. Thomas on information he had received prior to commencement of the November 7 meeting to the effect that Mr. Thomas' sole intent in submitting the numerous Request to Speak cards was to disrupt the council meeting and cause delay. Upon Mr. Thomas' inquiry, the Mayor informed Mr. Thomas that he would not permit him to delay the meeting, and therefore restricted Mr. Thomas' comments until the Public Forum period. Mr. Thomas was recognized to speak at the Public Forum period at the conclusion of the council meeting. *See* Verbatim Transcript, Public Forum, Remarks by Mike Thomas.

In your written response to the complaint, you informed us that you were present at the November 7 city council meeting and that Mr. Thomas actually submitted Request to Speak cards on 30 out of the 44 agenda items as well as requesting to speak during the public forum and city council board updates periods. You also informed this office that Mr. Thomas typically requests to speak on 1 to 4 agenda items per meeting. Copies of 36 Request to Speak cards were provided to this office.

ANALYSIS

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments." The statute provides no guidance as to the length, conduct, or structure of the public comment period. Some public bodies choose to hear public comment during individual agenda items, as is the case with the NLVCC, but this is not a requirement of the Open Meeting Law. Nevada Open Meeting Law Manual, § 8.04 (9th ed. 2001).

The Office of the Attorney General has taken the position that "reasonable rules and regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those attending the meeting may be adopted by a public body," and reasonable restrictions can be imposed on speakers. Nevada Open Meeting Law Manual, § 8.04 (9th ed. 2001). However, when the government intentionally creates a public forum, it is bound by the same constitutional standards that apply in a traditional public forum. *Perry Education Assn. v. Perry Local Educators' Assn., et al.*, 460 U.S. 37 (1983). Accordingly, even if a person initially engages in protected speech, the right to continue speaking may be restricted by reasonable limitations. *See White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990) ("A speaker may disrupt a Council meeting by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies"); *see also Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (content-neutral regulation of speech may restrict time, place and manner of protected speech so long as regulation is narrowly tailored to serve significant governmental interest and leaves amply alternative channels for communication); *Kindt v. Santa Monica Rent Control Board*, 67 F.3d 266, 270-71 (9th Cir. 1995) (limitations on speech at meetings of public bodies must be reasonable and viewpoint neutral). As the Ninth Circuit Court of Appeals reasoned in *White*, "[a] meeting is disrupted because the Council is prevented from accomplishing its business in a reasonably efficient manner. Indeed, such conduct may interfere with the rights of other speakers." 900 F.2d at 1426. The court recognized the public body's legitimate interest in conducting an orderly meeting and acknowledged that "the role of the moderator involves a great deal of discretion." *Id.* While the Office of the Attorney General also recognizes these principles, public bodies must be cautioned against acting in a manner which is, or may be, perceived as a premature restriction on the public's right to speak.

Government as a whole and the deliberative process of public bodies in particular, greatly benefits from public input and perspective. We believe that the NLVCC generally recognizes and adheres to these principles. The Council clearly has a legitimate interest in conducting efficient and orderly meetings, but it must do so reasonably, by enforcing content neutral provisions designed to achieve such meetings. Accordingly, we cannot condone a public body expressly restricting an individual's opportunity to speak where there is a lack of clear evidence

leading to such action. In this case, the main responsibility for maintaining order and decorum at council meetings lies with the presiding officer – the Mayor. Due to information gleaned prior to the November 7 meeting, the Mayor, in his discretion, determined that Mr. Thomas would disrupt the orderly conduct of the meeting by being allowed to comment on the numerous agenda items he had requested; therefore, his comments were restricted to the Public Forum period. While the Mayor appears to have had a basis for his decision, we cannot condone the manner in which it was done.

Because the NLVCC allows for public comment during and throughout the council meetings pursuant to citizen requests, unless an individual engages in conduct which reasonably permits the public body to restrict that speech, it is not advisable for the Council to prematurely single out an individual and preclude him from speaking at the time allotted for public comment. Although allowing public comment throughout the course of the meeting is not a requirement under the Open Meeting Law, it is the practice of the Council, thus the application of this practice needs to occur in a reasonable manner and the Council is cautioned against acting prematurely in imposing restrictions on one individual's opportunity to speak.

Clearly, if the comments are of a nature that are redundant, abusive, irrelevant, or exceed the time permitted, then the public body is under no obligation to allow such speech and under certain circumstances, the individual may be removed from the meeting. *See* NRS 241.030(3)(b). The only evidence of disruptive behavior on Mr. Thomas' part came only after he asserted a right to speak. *See* Verbatim Transcript, Remarks by Mike Thomas. In the same vein, however, we have no reason to discount the Mayor's contention that he received information prior to the meeting that led him to believe that he had to curtail Mr. Thomas' comments during the meeting in order to effectively conduct the council meeting. However, under the facts presented here, such action could be perceived as an unreasonable restriction on public comment. Although there was a suspicion that Mr. Thomas would disrupt the meeting with his delay tactics, it is much more onerous for a public body to defend against the perceived impropriety of a premature restriction than to simply allow Mr. Thomas to speak until the need for imposition of reasonable restrictions became evident.

The Office of the Attorney General believes that the public process greatly benefits from public input and perspective; therefore it is not advisable to prematurely deny an individual the opportunity to speak when they have complied with the conditions to reserve this right to comment afforded them under the Open Meeting Law. Such conduct could easily have the effect of discouraging public comment. Mr. Thomas appears to have complied with the reasonable rules of decorum imposed during public meetings, therefore, we cannot condone the Council's action in disregarding each of Mr. Thomas' Request to Speak cards, albeit quite numerous. When presented with this situation, a more prudent course of action would be for the presiding officer to state on the record, at the earliest time practicable, the reasons which justify placing restrictions on an individual's ability to comment during a meeting. In this situation, the Council appears to have been simply attempting to ignore Mr. Thomas and his Request to Speak cards. However, it is the opinion of this office that in dealing with disruptive conduct, a presiding officer must make a clear record that the action taken against the individual is not related to the content of his speech. No comment was made by the Council regarding the treatment of Mr. Thomas until Mr. Thomas himself asserted his right to speak.

Where there is a determination that a violation of the Open Meeting Law has occurred, the Office of the Attorney General may bring a civil suit to have an action taken by a public body declared void, or for an injunction against any public body or person to require compliance with or prevent future violations of the Open Meeting Law. NRS 241.037(3). Lawsuits to obtain a judicial declaration that an action is void must be commenced within 60 days after the offending action occurred. *Id*. The meeting of the NLVCC at issue here occurred on November 7, 2001, thus the 60-day period has lapsed. Moreover, this office does not believe that pursuing legal action against the NLVCC to require compliance with or prevent future violations of the Open Meeting Law would be appropriate. Our investigation has revealed no evidence that the NLVCC continually operates in a manner which violates either the spirit or the letter of the Open Meeting Law, and in this specific situation, the Mayor exercised his discretion in precluding Mr. Thomas from commenting until the Public Forum period due to information he received indicating that Mr. Thomas wished to speak for the sole purpose of disrupting the council meeting that evening. However, in light of the circumstances presented here, the Council's precipitous action may be perceived as a violation of the spirit of the Open Meeting Law.

An additional cause of concern is Mr. Thomas' statement that he submitted Request to Speak cards on behalf of other members of the public who did not wish to speak themselves. If this is in fact the case, denying Mr. Thomas' right to speak on certain agenda items served to unreasonably restrict public comment which violates the spirit of the Open Meeting Law.

CONCLUSION

While we recognize that public comment can be both time-consuming and potentially disruptive, and we understand the valid objectives of the public body to control their meetings and effectively use the time available to them, we also recognize that the intent of the Open Meeting Law is to require meaningful public comment. The greater the opportunity for public input, the greater the chance for informed, effective government. The Office of the Attorney General believes that any practice or policy that discourages or prevents public comment, even if technically in compliance with the law, may violate the spirit of the Open Meeting Law. *Id.*

Accordingly, we recommend that the NLVCC develop and practice the least restrictive procedures possible. Under the facts of this case, although Mr. Thomas was precluded from speaking during the course of the council meeting, he was recognized during the public forum period, and pursuant to NRS 241.020(2)(c), this is all that is required under the Open Meeting Law. Furthermore, the Council's decision to restrict Mr. Thomas' opportunity to speak during the meeting was based, perhaps tenuously, on information that Mr. Thomas intended to cause delay or disruption that evening. However, this letter should serve as a clear reprimand to the NLVCC for their action taken in relation to Mr. Thomas and as a warning that any such future violations may result in prosecution by this office.

Moreover, a public body must bear in mind that while it may restrict public comment, those restrictions must be neutral as to the viewpoint expressed since imposing restrictions which focus on one person or viewpoint may invoke civil rights. *See Brown v. Smythe*, 780 F. Supp. 274, 279-80 (E.D. Pa. 1991) (alleged deliberate and protracted effort to deprive plaintiff of her

ability to use public forum). It is only where the comments are of a topic that is not relevant to

or within the authority of the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounts to personal attacks or interferes with the rights of other speakers, that a public body may prohibit comment. *See* AG File No. 00-047 (April 27, 2001).

Public bodies should also bear in mind that compliance with the intent and spirit of the Open Meeting Law must be taken seriously as criticism may ensue for questionable conduct, and that may in turn have an effect on reelection or reappointment if there is a perceived deliberate or negligent violation of the spirit of the law.

While the intent and spirit of the Open Meeting Law may have been violated by the decision of the NLVCC, we do not believe this violation warrants enforcement action. Again, this letter serves as a warning that future transgressions of this nature may be prosecuted by this office.

Please circulate this determination to the members of the NLVCC. Please feel free to contact me should you have any questions or concerns.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
AIMEE E. BANALES
Deputy Attorney General
Civil Division
(775) 684-1270

AEB/sg
c: Michael Thomas

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

February 27, 2002

Judy Sturgis
1515 Foothill Road
Gardnerville, Nevada 89410

Re: Open Meeting Law Complaint
Douglas County Board of County Commissioners
OMLO 2002-10/AG File No. 02-002

Dear Ms. Sturgis:

On December 29, 2001, this office received your complaint alleging an Open Meeting Law Violation by the Douglas County Board of County Commissioners (Board) at its November 1, 2001 meeting. You allege that the approval of a tentative subdivision map by the Board at its November 1, 2001 meeting violated NRS 241.020 because agenda item #47 was not a clear and complete statement of the topic considered and acted upon by the Board.

This office has primary jurisdiction to investigate violations of the Open Meeting Law pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by requesting a copy of the agenda for November 1, 2001, minutes from that meeting, and a copy of the audiotape of the meeting. Barbara Reed, Douglas County Clerk-Treasurer, has cooperated fully with our investigation and provided copies of the relevant documents and tape.

Agenda item #47 was stated as follows:

47. DISCUSSION AND POSSIBLE ACTION ON LAND DIVISION APPLICATION 01-082 (SOUTHWEST POINTE PARTNERS), A TENTATIVE SUBDIVISION MAP UNDER THE CLUSTERED DEVELOPMENT PROVISIONS OF TITLE 20 ALLOWING THE CREATION OF 121 SINGLE-FAMILY RESIDENTIAL LOTS, THE SMALLEST BEING 2.0 NET ACRES IN AREA, WITHIN THE A-19 (AGRICULTURE, NINETEEN ACRE MINIMUM PARCEL SIZE) AND THE FR-19 (FOREST AND RANGE, NINETEEN ACRE MINIMUM PARCEL SIZE) ZONING DISTRICTS, INCLUDING THE CREATION OF 1,306 ACRES OF OPEN SPACE AND RECREATIONAL USE

(GOLF COURSE) (approx. 1 hour)

The complaint alleges that when the Board came to agenda item #47, the Board considered a different proposal advanced by the project developer. The complaint alleges, and the Board does not deny, that the project developer had a new map and other new information to present to the Board. Additionally, the project developer had provided a new map and certain changes at least three days before the Board meeting to the county planning staff. The minutes of the November 1, 2001 meeting show that the developer's proposal presented to the Board differed from the project approved by the planning commission. The differences included: the total project area changed from 1664 acres to 1573 acres; the "unit base" changed from 87 to 82 units (which with 9 bonus units reduced the total number of units to 91); and the area held in reserve for future development changed from 167 acres to 258 acres.

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. *Id*. The purpose of the clear and complete standard is that the public will receive notice in fact of what is to be discussed by the public body. The question is whether the description of agenda item #47 was clear and complete and sufficient to put members of the public on notice as to what would be discussed and what possible action would be taken.

The only part of the description of agenda item #47 that was different from what was approved by the Board is that 91 single-family residential lots would be allowed to be created, instead of 121. The public was on notice that 121 lots could be approved for creation and development. The fact that it ended up being 91 lots does not mean that the public was not on notice for the 91 lots that were part of the project, as those 91 lots were part of the original 121 lots. The decrease in the number of lots to be created and developed seems to be the type of change that could easily happen during the course of a meeting, and as long as the number is decreasing, not increasing, the public is on notice of the possible creation and development of the entire area, so the fact that the area is decreased does not change the fact that the public was on notice that those particular lots could be approved for creation and development.

Regarding the increase in the area reserved for future development, from 167 acres to 258 acres, this office does not find this change to constitute a violation of the Open Meeting Law, as there was no description of the area reserved for future development in the agenda item description. Furthermore, the fact that the 30 lots that were part of the original proposal were added back into the area reserved for future development would not be a violation of the Open

Meeting Law, as the public was on notice of possible development of these lots when they were originally included in the 121 lots to be created and developed.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
ELAINE S. GUENAGA
Senior Deputy Attorney General
Tax Section
(775) 684-1223

ESG:jm

cc: The Honorable Don Miner
Scott W. Doyle, Douglas County District Attorney

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

February 28, 2002

John and Ruth McCune
Post Office Box 868
Beatty, Nevada 89033

Re: *Open Meeting Law Complaint*
Beatty Town Advisory Board
OMLO 2002-11/AG File No. 01-065

Dear Mr. and Mrs. McCune:

You have asked for an opinion as to whether a meeting of the Beatty Town Advisory Board ("Board") on December 11, 2001, was legal under the Nevada Open Meeting Law. The basis for your request is that a second "Addendum" agenda was posted the day before the meeting and the time for the meeting was changed from 7 p.m. to 5 p.m. This request will be treated as a complaint that the Board violated the Open Meeting Law found in chapter 241 of the Nevada Revised Statutes. Under NRS 241.040(4), the Attorney General's office has jurisdiction to investigate and prosecute complaints alleging violations of the Open Meeting Law.

The Board has provided the agenda, the addendum to the agenda, and the minutes of the meeting. The agenda contains a certification by the Board secretary that it was posted at four named locations on December 5, 2001. We have no evidence that these postings did not occur as stated. Therefore, we conclude that the posting of this agenda complied with the posting requirements of the Open Meeting Law.

The second document which you refer to was entitled "ADDENDUM TO BEATTY TOWN ADVISORY BOARD AGENDA." This document contains a certification by the Board secretary that it was posted at the same four locations on December 10, 2001. The first paragraph of the Addendum states: "The following item comprises an addendum to the Agenda previously posted on December 5, 2001 meeting of the Beatty Town Advisory Board." The second paragraph of the Addendum states: "Due to a time conflict with the Beatty Elementary School Play the Beatty Town Advisory Board will meet at 5:00 P.M." The Addendum did not list any topics for consideration by the Board. In spite of some confusing and mistaken wording, the evident purpose of the Addendum was to announce a change in the time of the meeting from 7 p.m. to 5 p.m.

The question you ask raises the issue of whether the time of a meeting may be lawfully changed by posting the change the day before the meeting. The answer will depend on whether the change will cause the meeting to begin earlier or later in the day. In cases where the time change causes the meeting to begin later in the day, the later starting time must be posted at the place of the meeting no later than the beginning time announced in the original agenda. In that manner the public arriving at the designated time or shortly thereafter will have notice of the postponed meeting time. Also, in addition to posting at the meeting place, posting the new time at the same places the first agenda was posted is permitted, but not required, under the Open Meeting Law, and this office encourages that practice in cases where the meeting is postponed to a later time that day.

However, when the time change causes the meeting to begin earlier in the day than the time announced in the first posted agenda, the Open Meeting Law is violated because the public arriving at the posted meeting time may include persons whose only notice of the meeting's beginning time was what they would have observed on the posted agenda had they read the agenda before the posting of the Addendum. Such persons may miss the meeting because they relied on the first posting. By the time of their arrival, all business may have been conducted, thus, thwarting the intent of the Open Meeting Law, which was designed to prevent secret consideration of the Board's business. Commencing a meeting prior to its noticed meeting time nullifies the purpose of the notice requirements set forth in NRS 241.020(2). *See* the Attorney General's Open Meeting Law Manual, 9th Edition, Part 7.

The second posting, advancing the meeting time, is ineffective to lawfully change the meeting time. A time change that advances the beginning time of the meeting must be posted at least three working days before the meeting. This office has previously decided that a meeting may not begin even a few minutes early. *See* § 7.03 of the Open Meeting Law Manual (9th Ed. 2001). Further, a second posted document such as the Addendum in this case, must comply with all other requirements of an agenda and, therefore, must include, for example, a list of the topics to be considered during the meeting. The Addendum was deficient in this regard.

Under NRS 241.037, actions of the Board taken in violation of the Open Meeting Law can be declared void, and an injunction can be obtained against future violations. Under the circumstances, such a severe response does not seem warranted at this time. Instead, we believe that the guidance and warning provided to the Board by this letter will suffice to prevent a recurrence of this kind of violation. We have spoken to the Board secretary and therefore are satisfied that the change in time was born of what seemed like a good idea at the time to accommodate another community event. Unfortunately, the unintended consequence of that good faith effort was a violation of the Open Meeting Law. However, future violations of a similar nature by the Board may result in legal action by this office. The Board secretary has also promised to correct the minutes to reflect the correct time that the meeting started.

Thank you for bringing this matter to our attention. We are available, as is the Nye County District Attorney, to discuss future questions that you or the Board might have concerning compliance with the Open Meeting Law.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
GEORGE CAMPBELL
Deputy Attorney General
Commerce Section
(775) 684-1214

GC/ld
cc: Beatty Town Advisory Board

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

March 11, 2002

John Nickerson
Post Office Box 1825
Carson City, Nevada 89702

Re: *Open Meeting Law Complaint: Lyon County School District*
OMLO 2002-12/AG File No. 02-005

Dear Mr. Nickerson:

This office received your complaint alleging the Board of Trustees of the Lyon County School District ("Board") violated the Nevada Open Meeting Law during the course of the Board meeting held on November 13, 2001. Under NRS 241.040(4) the Attorney General's Office has jurisdiction to investigate and resolve complaints alleging violations of the Open Meeting Law. To that end, we requested and received the agenda, minutes, and tapes of the meeting in question. The matter was rescheduled for November 27, 2001, and was considered by the Board at that time.

The minutes of the November 27 meeting show that the Board held a closed session as part of an appeal you filed with the Board concerning a disciplinary decision regarding your daughter. The school district discipline appeal panel had issued the decision you appealed. The complaint alleges that during the closed session, the Board discussed matters that may not be discussed in a closed session, specifically, receiving legal advice on the matter. The complaint also alleges that the closed session was not agendized, that you were not noticed and allowed to attend, that no one from the public was allowed to attend, and that the Board made a decision after discussions in the closed meeting.

The complaint alleges that when the Board reconvened in public session you were forced, under duress, to accept an agreement against your will regarding the discipline. In conclusion, the complaint alleges that this is the fourth violation by the Board and that you were told after the last violation that this office would prosecute, implying that you believe the Board should be prosecuted this time.

The closed session.

NRS 241.030(1) permits a public body like the Board to hold "a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person." The disciplinary appeal involved the "character and alleged misconduct" of a person, your daughter. Therefore, the Board could lawfully close the meeting. *See generally*, Part 9 of the Attorney General's Open Meeting Law Manual (9th ed. 2001).

Receiving legal advice in the closed session.

The complaint alleges that the Board received legal advice in the closed session. Neither the minutes nor the tape provide sufficient evidence of that allegation. Further, no lawyer was present to provide such advice.

A public body may discuss all relevant aspects of the allowable subjects for which a meeting can be lawfully closed under the Open Meeting Law. The allowable subjects here included "alleged misconduct." The legal aspects of discipline are relevant to the subject of "alleged misconduct." Therefore, to the extent that the Board discussed the legal aspects of the types of discipline appropriate for the alleged misconduct, the Open Meeting Law permits such discussion.

The agenda item for the closed session.

The agenda of the November 13 meeting does not contain an agenda item that expressly lists as a topic, the "disciplinary appeal of (name of your child)." The appeal was considered and acted upon under Item 33a, which reads: "Student Matters Discussion/Action on request for readmittance (Closed Session may be held)." The question is whether this description of the agenda item was adequate under the Open Meeting Law.

Section 9.06 of the Manual states in part: "It is recommended the matter be indicated on the agenda as a closed session." The description on this agenda complies with that recommendation. While we recommend that an anticipated closed session be noticed as such, the Open Meeting Law does not require such notice. What the Open Meeting Law requires is that a motion be made to go into closed session, stating the reason for closing the session. The law does not require that a "motion to go into closed session" be an action item on the agenda.

Sections 9.06 and 9.07 of the Manual state that if confidentiality is a consideration, the agenda and motions may avoid naming the individual. Section 9.07 states that there should be some general description of the subject, such as "an employee," "an applicant" or the like. The agenda here contained a general description of the subject, your daughter, as "Student Matters" "request for readmittance." These words are an adequate topical description under the Open Meeting Law in the context of a confidential disciplinary appeal to a school board.

Personal notice of the meeting.

There is no evidence in the record that the Board sent you the notice required by NRS 241.033(1). That statute requires either 21 working days advance notice sent to you by certified mail or five working days advance notice by personal service on you. The statute provides: "A public body must receive proof of service of the notice … before such a meeting may be held." Here, the minutes show that the meeting was held on agenda item 33a without the Board having received proof of service of the notice. Therefore, absent an exception to the requirement, the holding of the meeting on Item 33a would violate the Open Meeting Law.

Section 6.09 of the Manual explains that a party may waive the notice. In the event of a waiver, the notice is not required for the meeting to proceed. The question then becomes whether the facts of this case constitute a waiver of the personal notice.

In this case, the person was on the agenda because she or her representatives (parents) requested to be on the agenda. There is no evidence that a lengthy period of time passed between the request and the meeting. A long lapse of time may raise the need for the additional personal notice. In this case, the parents of the minor child who was the subject of the closed session, had actual knowledge that they were to be on this agenda, and both parents were allowed to attend a
significant portion of the closed session to argue their appeal. While in attendance the parents did not object to the Board's consideration of their appeal on the grounds that the Board did not give the additional personal service described in the Open Meeting Law. We find that these facts constitute a waiver of the personal notice requirements of the Open Meeting Law. Therefore, the Board did not violate the Open Meeting Law by not providing the notice described in
NRS 241.033.

We reach the same conclusion with respect to the identical type of notice described in Assembly Bill 225 (Act of June 5, 2001, ch. 378, 2001 Nev. Stat. 1835) (A.B. 225). *See* § 6.10 of the Manual. Paragraph 5(d) of § 6.10 states the position of this office that imposing discipline on a person is an "action against a person" within the meaning of AB 225. However, the additional personal notice of AB 225 is waived under the facts of this case.

<u>Preventing public attendance in the closed session.</u>

The complaint alleges that no one from the public was allowed to attend the closed session. This allegation does not state a violation of the Open Meeting Law because closed sessions are intended to exclude the public. Section 9.06 of the Manual states that the Open Meeting Law is silent about who may attend a closed session and that it is up to the chairperson to decide who will be included in the closed session. Under the Open Meeting Law, the person presiding over the meeting in this case had discretion to exclude the general public for the entire session and to exclude the parents of the subject for a portion of the session.

The decision of the Board.

The complaint alleges that the Board made a decision from the discussions in the secret meeting. The minutes confirm this allegation. However, the minutes show that the decision was not made in the closed session. Rather, the decision was made in the reopened meeting, as the Open Meeting Law requires. *See* § 9.06 of the Manual.

The complaint alleges that you were forced under duress to accept an agreement against your will. The Open Meeting Law does not control or provide for review of the underlying dispute of the parties. Therefore, we will not consider this allegation.

Prosecution.

We find that the Board's actions were consistent with the Open Meeting Law. Consequently, there will be no further action taken by this office.

Thank you for bringing this matter to our attention. We recognize the intense personal interest you have in the underlying disagreement with the school district and the Board, but the Open Meeting Law does not address the substance of underlying disputes. Therefore, we are unable to be of any assistance to you in this regard.

Sincerely,

Frankie Sue Del Papa
Attorney General

By:
GEORGE CAMPBELL
Deputy Attorney General
Commerce Section
(775) 684-1214

GC/ld
cc: Superintendent, Lyon County School District

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

March 22, 2002

Esmeralda County School District Board of Trustees
Rita Gillum, President
Debbie Collier, Vice President
Ludean Hilligoss, Member
Bill Kirby, Member
Ann Matheny, Member
Post Office Box 560
Goldfield, Nevada 89013

Re: Open Meeting Law Complaint
Board of Trustees Esmeralda County School
OMLO 2002-013/AG File No. 02-006

Dear Board of Trustees:

On January 25, 2002, and January 26, 2002, Dr. D. Don Francom, Superintendent of Schools for Esmeralda County School District, and Board Member Ludean Hilligoss, respectively, filed complaints against the Esmeralda County School District Board of Trustees (Board) for possible violations of Nevada's Open Meeting Law resulting from its January 15, 2002, board meeting. The allegations are that the Board placed unwarranted emergency items on its agenda and that serial communications or "polling" had been conducted regarding the issue of Dr. Francom's contract. The complainants also alleged that Board President Rita Gillum often contacted Board members to discuss issues to be decided by the Board and advised them how to vote on those issues.

More specifically, the allegations state that at its January 15, 2002 Board meeting, President Gillum improperly directed the Board to take action on two items which were not noticed on the agenda: approval of the Amended Budget and approval of the NREA Grant. The complainants claim the addition of the items to the agenda was unwarranted as no emergency existed and, as a result, the Open Meeting Law's notice requirements were violated. In addition,

both parties believe members of the Board were "polled" prior to the meeting regarding the renewal of the Dr. Francom's employment contract. Member Hilligoss complained that she "instinctively knew that certain members of the Board had been polled . . . [t]hey had their minds made up, nothing persuaded them differently as to their determination to nonrenew (sic) his contract, not even a room full of supporters." Member Hilligoss also alleged that President Gillum contacted her "on many occasions to tell [her] how to vote on various issues coming before the Board in up-coming board meetings" and had also contacted other Board members for similar purposes. Dr. Francom supported that allegation though no additional evidence was provided as to any specific instances. Based upon these allegations, both complainants believe the Board acted in violation of the Open Meeting Law on January 15, 2002.

This office has primary jurisdiction to investigate violations of the Open Meeting Law, pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by interviewing Dr. Francom, President Gillum, Member Hilligoss, Member Kirby, Member Matheny, former Member Rohlman, and Member Ingram. Vice-President Collier and former Board Member Teresa Cowlings did not respond to our inquiries. President Gillum, Member Kirby, and Superintendent Francom also provided written responses which were reviewed and considered. We also reviewed the agenda and minutes from the January 15, 2002, meeting of the Board.

Our investigation revealed that the Board did, in fact, take action on two emergency items which were added to the agenda during the Board meeting on January 15, 2002. The first involved the approval of the amended budget. Dr. Francom claims no emergency existed, since the only penalty for missing the deadline would have been an admonishment to the Board. The Board members interviewed, however, believed immediate action was necessary based upon the past deadline. During her interview, President Gillum asserted that Dr. Francom should have placed the matter on the agenda and his failure to do so necessitated the emergency item.

The second emergency agenda item complained of was the Board's approval of an NREA grant, which Dr. Francom claims was an unnecessary addition to the agenda since he had been given prior authority to approve the grant. However, when interviewed, all Board Members believed their approval was needed based upon Dr. Francom's comments at the meeting and, since the deadline for submitting the grant was approaching, the Board took action on the item. The minutes reflect the approaching due date and a word of caution by President Gillum against making emergency items "a habit."

The intent of the Open Meeting Law, set forth in NRS 241.010, states that "all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." To further facilitate that intent, NRS 241.020(2) provides that "except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting." NRS 241.020(6) defines an

emergency as "an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public." This office finds that an emergency agenda item may be added during a properly noticed meeting only if the need to discuss or act upon the item is unforeseen at the time the agenda is posted and if the item requires immediate action to protect the public. Moreover, the minutes of the meeting should reflect the nature of the emergency and the circumstances which prevented timely notice.

In both instances cited from the January 15, 2002, Board meeting, this office finds the Board violated the Open Meeting Law by failing to provide the public with notice pursuant to NRS 241.020. We do not find the violations to be intentional, but made with a misunderstanding of the meaning of "emergency." Neither the budget approval nor the NREA grant approval required immediate action to protect the public. Moreover, the investigation indicates that the Board and/or Dr. Francom had knowledge of the matters in sufficient time to provide proper notice. Accordingly, the narrow exception to the Open Meeting Law's notice requirements did not apply to those matters, since they were not true emergencies under the language and intent of NRS 241.020. As a result, the Board's actions in approving both the budget and the NREA grant are void under NRS 241.036. While the actions of the Board violated the spirit and intent of the Open Meeting Law by failing to give notice to the public of the two items at issue, we do not believe those violations warrant enforcement actions so long as corrective measures are taken by the Board. We hereby warn your Board that future violations of this nature will be aggressively prosecuted. If your Board places those items on the next Board meeting agenda for discussion and action, with proper notice to the public, this office will close its file on the complaint with the above warning.

We also recommend holding special meetings for matters which were overlooked or require the Board to take action prior to the next Board meeting. Although the Board members stated that scheduling conflicts and varying locations prevent such meetings, the public is entitled to proper notice and the Board may not utilize the emergency provisions for convenience or to accommodate Board members' schedules. The Board may, instead, hold a properly noticed meeting by teleconference or with a portion of the members present, but enough to constitute a quorum under NRS 241.015(4).

Furthermore, this office invites you to review § 6.08 of the *Nevada Open Meeting Law Manual* (8th ed. 2000), which explains the appropriateness of emergency provisions and how to properly handle an item which may necessitate emergency action. In order to facilitate the Open Meeting Law's goal of serving the public interest and to avoid any problems in the future, this office advises the Board against using the emergency exception to the Open Meeting Law's notice requirements unless the circumstances clearly fall within the description provided by NRS 241.020(5).

Next, this office questions the interviewees regarding the allegation of vote polling by President Gillum. President Gillum admitted she has contacted Board members to discuss items on the agenda, but denied questioning the other members as to their intended votes. She also denied making any attempts to persuade other Board members to change their votes. The Board members interviewed, both past and present, admitted discussions regarding Board issues, but denied any deliberation or consideration of votes. Although accusations were made toward President Gillum and amongst the members, no specific instances of vote polling or serial communications were found. Thus in light of the allegations, this office offers the following summary of the mandates of the Open Meeting Law.

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). A "meeting" is defined as a "gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." NRS 241.015(2)(a)(1). Under NRS 241.015(1), the term "action" includes, not only taking a vote, but also making a decision, or making a promise or commitment by a majority of public body members present during a meeting. However, even deliberating toward a decision, by a quorum, is a violation of the Open Meeting Law. To "deliberate" is to examine, weigh, and reflect upon the reasons for or against the choice. Deliberation thus connotes not only collective discussion, but also the collective acquisition or the exchange of facts preliminary to the ultimate decision. *See Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 69 Cal. Rptr. 480 (Cal. App. 1968). *See also* OML 01-050 (September 28, 2001).

In October 2001, the Legislature added, in pertinent part, to the definition of "meeting" the following language:

> ***(2) Any series of gatherings of members of a public body at which:***
> ***(I) Less than a quorum is present at any individual gathering;***
> ***(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and***
> ***(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.***

NRS 241.015(2). Thus when members of a public body meet or converse with each other or other people, one at a time or in small groups of less than a quorum, and conduct a series of such nonquorum meetings, the "serial communications" issue arises. A violation of the Open Meeting Law will occur if those serial communications take place for the specific purpose of avoiding the "open and public" mandate set forth in NRS chapter 241. Accordingly, while members of the Board may converse outside of an open meeting in less than a quorum, we must caution you that

if a quorum is gathered by the use of serial communications, a violation of the Open Meeting Law may occur. NRS 241.015 and 241.020; *see also Del Papa v. Board of Regents*, 114 Nev. 388, 400, 956 P.2d 770, 778-779 (1998).

The allegation that serial communications were conducted to reach a majority consensus on certain issues before the Board has not been substantiated by our investigation. While it is true that serial communications could invite abuse to the Open Meeting Law if they are used to accumulate a secret consensus or vote of the members of a public body, there is no evidence that a quorum deliberated toward or made a commitment to a certain decision here, including that relating to Dr. Francom's contract renewal. Additionally, the vote on that particular issue was taken at a public meeting that was duly noticed and where public comment opportunity was provided. Therefore, this office finds no specific violation of the Open Meeting Law regarding the January meeting of the Board on the agenda item relating to renewal of the Superintendent's contract.

CONCLUSION

In summation, we advise the Board to properly notice the two emergency items from its January 15, 2002, meeting for discussion and action at its next meeting. This office warns the Board that the emergency exception is not to be used unless the circumstances clearly satisfy the provisions of NRS 241.020 and that every effort should be made to provide notice to the public of all matters before the Board. Also, this office submits this letter as a warning to the Board that the Open Meeting Law prohibits serial communications as set forth above and, if such a violation occurs, this office will take all appropriate legal recourse necessary in the future.

As stated above, if the Board properly places these matters on its next agenda, no further action outside of this letter will be taken at this time. Please forward to my attention, a copy of the agenda and minutes of the meeting at which the emergency agenda items from January 15, 2002, will be publicly noticed and properly acted upon. If you or your counsel have any questions, please do not hesitate to contact me at (702) 486-3785.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________
DARLENE BARRIER
Deputy Attorney General
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DB:krf

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March 22, 2002

Randall K. Edwards
Chief Deputy
Civil Division
Reno City Hall
490 South Center Street, Room 204
Post Office Box 1900
Reno, Nevada 89505-1900

Re: Open Meeting Law Complaint: Reno City Council
OMLO 2002-014/AG File No. 02-007

Dear Mr. Edwards:

Thank you for your response and supporting documentation included in your correspondence dated February 27, 2002, with regard to the above matter. As you may know, pursuant to Nevada law, the Office of the Attorney General has primary jurisdiction for investigating and prosecuting complaints alleging violation of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

FACTS

As you also know, this office received a complaint from Sam Dehne dated February 7, 2002, alleging that the Reno City Council violated the Open Meeting Law at the February 5, 2002, meeting.

We have reviewed the agenda and minutes as well as all other documents provided in your correspondence. The main focus of our inquiry was regarding Agenda Item 6, which was identified as "Request authorization to appeal J.C.3N. et al. v. City of Reno, Case No. CV00-06519 to the Nevada Supreme Court" and the specificity in the notice provided in the agenda to the public regarding that item.

It is my understanding that Agenda Item No. 6 addressed herein was not addressed at the February 5, 2002, meeting but was continued to the February 12, 2002, meeting and subsequently placed on that Agenda as Agenda Item No. 15 as follows: "Authorization to appeal to the Nevada Supreme Court or approval of a settlement of J.C.3N. et al. v. City of Reno, Case No. CV00-06519 **(Wal-Mart).** ***This item was continued from the February 5, 2002 Reno City Council Meeting***."

ANALYSIS

The issue herein is whether the agenda for the February 5, 2002, meeting complied with the Nevada Open Meeting Laws, specifically NRS 241.020. The goal is to ensure that agenda items do not violate the Nevada Open Meeting Laws.

Pursuant to NRS 241.020(2)(c) of Nevada's Open Meeting Law (OML), a notice must include: "[a]n agenda consisting of: (1) A clear and complete statement of the topics scheduled to be considered during the meeting. (2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items."

The agenda must be written in a manner to actually give notice to the public of what is occurring and general or vague language has been considered to be unacceptable. Op. Nev. Att'y Gen. No. 91-6 (May 23, 1991). The purpose of the agenda requirement is so interested parties will know what matters will be considered at a meeting. Public meetings are sparsely attended by the public unless the individual interests will be affected by the considerations and acts of the public body. Therefore, it is imperative that an agenda provide a description that is clear and complete. Op. Nev. Att'y Gen. No. 99-01 (January 5, 1999). Although Agenda Item No. 6 had specific information, it did not identify or include the name "Wal-Mart" which would allow the public to receive notice in fact of what is to be discussed by the public body.

In applying the standards set forth herein, the agenda for the February 5, 2002, meeting provides specific information regarding Agenda Item No. 6; however, inclusion of the name "Wal-Mart" would have more appropriately put the public on notice of the actionable item.

Although the February 5, 2002, meeting agenda should have been more specific, there was no action taken on that item at the time. Therefore, a concern that the action is potentially void able is moot. NRS 241.036 provides that action of any public body taken in violation of any provision of this chapter is void. However, as Agenda Item No. 6 was clarified and moved to the February 12, 2002, meeting, the specific concern has been resolved.

CONCLUSION

It is the recommendation of this office that future agenda items be described with "clear and complete" detail so that the public receives notice in fact of what is to be discussed by the public body. OMLO 99-03 (March 19, 1999). (This opinion was rendered by the attorney general as a guideline for enforcing the open meeting law and not as a written opinion requested pursuant to NRS 228.150.)

This requirement applies essentially to all agenda items in addition to the item listed or addressed specifically herein. It is our opinion that each item and the action being taken must be specifically identified in the agenda in accordance with NRS 241.020.

Although this office finds the above-referenced in violation of the Open Meeting Law, it appears that the violation was unintentional. Accordingly, in lieu of other legal action, we respectfully request that all future agenda items be identified consistent with the contents of this response. Your cooperation and willingness to resolve this matter is appreciated, and we are hopeful that this issue will not occur in the future.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________
GABRIELLE J. CARR
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GJC:mas
cc: Sam Dehne

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FRANKIE SUE DEL PAPA
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THOMAS M. PATTON
First Assistant Attorney General

March 25, 2002

Judy Sturgis
1515 Foothill Road
Gardnerville, Nevada 89410

Re: Open Meeting Law Complaint
Douglas County Board of County Commissioners
OMLO 2002-15/AG File No. 02-009

Dear Ms. Sturgis:

The Attorney General's Office has primary jurisdiction to investigate and prosecute violations of the Open Meeting Law. You have complained about an action taken by the Douglas County Board of County Commissioners (Board) in its February 7, 2002 meeting. Your complaint stems from the fact that the Board had a draft letter in its packet for the February 7 meeting that stated that the Board reviewed certain letters at that meeting and also set forth the Board's position regarding previous Open Meeting Law complaints that you had made against the Board. You apparently are concerned that this violates the Open Meeting Law because the draft letter was prepared prior to the meeting and thus prior to the Board's deliberations and action on these issues. You also have complained about a discussion that the Board had regarding certain letters in its January 17, 2002 meeting. For the reasons set forth below, we find that the Board did not violate the Open Meeting Law.

BACKGROUND

Agenda item number 26 on the January 17, 2002 meeting is a standing agenda topic in which correspondence received after the preparation of the agenda is briefly identified for the Board. The Board members are then given an opportunity to state whether they would like to place that correspondence on a future agenda for possible action. No significant discussion takes place regarding the correspondence and no action is taken until the correspondence is properly

agendized for a future Board meeting. *See* Agenda Item 26 description, January 17, 2002 Board meeting.

At the January 17 meeting, correspondence authored by you regarding Open Meeting Law complaints were briefly referenced. The Board was advised that the correspondence requested a rehearing of a planning item. The Board members were advised that their options were to request that the correspondence be placed on a future agenda for action on the request for rehearing or that they could do nothing. A couple of Board members commented that they had no desire to rehear the item. None of the Board members requested that the item be placed on a future agenda.

Sometime after the January 17 meeting, the District Attorney advised that your correspondence should be placed on the February 7, 2002 agenda as an action item because the correspondence may have been received before the preparation of the January 17, 2002 agenda and thus possibly should not have been brought up under the standing correspondence agenda item. Therefore, four items of correspondence authored by you were placed on the February 7 agenda by date and subject matter description as agenda item number 49. Agenda item number 49 was denoted as an action item.

The Board packets for the February 7, 2002 meeting contained a draft of a letter that was apparently prepared by the District Attorney. The draft letter was addressed to the Attorney General. The draft letter stated that the Board had reviewed the four items of correspondence at the February 7 meeting. The letter goes on to state that its purpose is to advise the Attorney General of the Board's action regarding the four items of correspondence. The letter also presents the Board's position on the alleged Open Meeting Law violations. Apparently your complaint stems from the fact that you believe that the letter should not have been drafted in advance of the meeting because you believe this precluded a fair hearing of the matter.

During the February 7 meeting, the Board engaged in a lengthy and detailed discussion regarding agenda item number 49. You were given ample opportunity to present your position on the agenda topic and you did in fact present your position to the Board. The Board called for public comment on the agenda topic. The Board was advised at length by the District Attorney as to its various options as to possible action and as to the pertinent facts and law. After this lengthy discussion, two motions were made and passed unanimously by the Board. The first motion was to decline to rehear the planning item referenced in your correspondence. The second motion was to send the letter that was included in the packet (with minor typographical errors corrected) to the Attorney General.

ANALYSIS

We offer no opinion as to the brief discussion regarding your correspondence at the January 17 meeting because the correspondence was agendized and discussed at length at the February 7, 2002 meeting. However, we do note that no action was taken at the January 17

meeting regarding your correspondence and that the correspondence was only briefly mentioned under an agenda item denoted as correspondence.

The heart of your complaint apparently goes to the fact that you believe it was not appropriate for the Board to have a draft letter prepared prior to its actual deliberations and actions on the agenda item. Nothing in the Open Meeting Law precludes the preparation of a letter by staff, or by an individual board member, to recommend for Board approval, as long as the board does not approve the letter or direct its preparation outside of an open, public meeting at which the topic is agendized. At the meeting, the Board is free to approve, modify, or reject the proposed letter.

CONCLUSION

We have not been provided with any evidence whatsoever that the Board approved the letter or directed its preparation prior to the February 7 meeting and we do not read your complaint as suggesting that the Board had already taken action in secret. The Board held a lengthy discussion on the agenda topic and was advised by counsel of various options open to it. The Board provided you and other members of the public ample opportunity to address it, and considered your comments, prior to taking action on the letter. The Board was free to modify or reject the letter after having engaged in deliberations. We find that the inclusion of the draft letter in the Board packet for the February 7, 2002 meeting was not a violation of the Open Meeting Law.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________

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TML/br

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THOMAS M. PATTON
First Assistant Attorney General

April 18, 2002

Nancy Lee Varnum
General Counsel
Commission on Ethics
3476 Executive Pointe Way, Suite 16
Carson City, Nevada 89706

Re: Open Meeting Law Complaint
Commission on Ethics
OMLO 2002-17/AG File No. 02-010

Dear Ms. Varnum:

The Office of the Attorney General has primary jurisdiction to investigate and prosecute complaints alleging violations of the Open Meeting Law, Nevada Revised Statutes chapter 241.

As you are aware, we have received an Open Meeting Law complaint alleging that a subcommittee appointed by the Commission on Ethics held a meeting in violation of the Open Meeting Law. With your complete cooperation, we have investigated the complaint. We have reviewed transcripts of the January 10, 2002 meeting of the Commission on Ethics, the January 29, 2002 hearing of the "Special Subcommittee" and the February 7, 2002 meeting of the Commission on Ethics. We have also reviewed supporting documentation for these meetings.

FACTS

During the January 10, 2002 meeting of the Commission on Ethics (Commission), Chairman Russell appointed two commissioners to serve on a subcommittee. The purpose of the subcommittee was to review the requests for waivers or reduction of fines imposed for the late filing of financial disclosure statements by public officials and to make recommendations to the Commission regarding those requests.

On January 29, 2002, Commissioner Hsu, Commissioner Hatcher, and Executive Director Hamilton held a telephonic conference regarding the requests for waivers or reduction of fines. It is undisputed that this conference was not conducted as an open, public meeting. The transcript of this conference is entitled:

BEFORE THE NEVADA COMMISSION OF ETHICS

SPECIAL SUBCOMMITTEE HEARING

REGARDING VARIOUS REQUESTS FOR WAIVERS
OR REDUCTIONS OF FINES

At the subcommittee hearing, Commissioners Hsu and Hatcher reviewed and discussed each request for waiver or reduction of fine. The two Commissioners reached an agreement concerning the recommendation that it would present to the Commission as to each request. For each request, the subcommittee agreed that it would either recommend that the Commission reduce the fine or that it would recommend waiving the fine because the person was not required to file a financial disclosure statement or because the person had experienced personal hardship resulting in the late filing.

The subcommittee's recommendations were presented to the Commission at its February 7, 2002 meeting. The Commission voted to accept the recommendations of the subcommittee in three categories. The first category encompassed a motion to accept the recommendations of the subcommittee regarding waiver for those individuals who were not required to file financial disclosure statements. The second category encompassed three motions to accept the recommendations of the subcommittee regarding waiver for those individuals who had personal hardships. The third category encompassed a motion to accept the recommendations of the subcommittee regarding reduction of fines for the remaining individuals. The Commission approved the recommendations of the subcommittee with regard to each category with no discussion regarding any specific individual, with the exception of disclosures of potential conflicts of interest.[1]

ANALYSIS

NRS 241.020(1) requires all meetings of "public bodies" to be open and public, unless otherwise provided by a specific statute.[2] "Public body" is defined in NRS 241.015(3). It provides:

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[1] The Commission did discuss the circumstances surrounding one request for waiver or reduction, but this was a request that the Commission received after the subcommittee met and therefore was not part of the subcommittee's recommendations.

[2] There is no specific statute which is applicable in this case.

> Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue *or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof* and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. "Public body" does not include the legislature of the State of Nevada. [Emphasis added].

The function of the subcommittee was to review requests for waivers or reductions and to make recommendations to the Commission. We have previously stated that, pursuant to NRS 241.015(3), "to the extent that a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the Open Meeting Law." Nevada Open Meeting Law Manual, § 3.04, Ninth Edition, October 2001. The subcommittee is a public body in its own right and is subject to the Open Meeting Law because it is a subcommittee appointed by the Commission for the purpose of making recommendations to the Commission, which is supported in whole or in part by tax revenue. *See,* OMLO 98-03 (July 7, 1998) and OMLO 98-04 (July 7, 1998).

We have concluded that the subcommittee is a public body for the purposes of the Open Meeting Law. We now must determine if the hearing held by the subcommittee constituted a meeting for the purposes of the Open Meeting Law. In your response to the complaint, you have suggested that the subcommittee did not violate the Open Meeting Law because it did not have any authority to take action on the requests. Therefore, you suggest the subcommittee did not "deliberate toward a decision or take action" at its hearing within the meaning of NRS 241.015(2) and thus a meeting did not take place.

Except for specific statutory exceptions not applicable in this case, NRS 241.015(2)(a)(1) defines a meeting as a "gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." There is no question that a quorum of the subcommittee was present at the hearing because both members of the subcommittee were present.

The mission of the subcommittee was to make specific recommendations to the Commission. The subcommittee deliberated toward, and took action with regard to specific recommendations to the Commission. The subcommittee members discussed and unanimously agreed on recommendations to the Commission for the waiver or reduction of the fine for each and every request received by the Commission. The subcommittee had control over the recommendations that it would make to the Commission and was advisory to the Commission. Therefore, it is our opinion that the subcommittee did in fact deliberate toward a decision and did

take action on matters over which it had supervision, control, jurisdiction or advisory power, i.e. recommendations to the Commission regarding the waiver or reduction of fines. If a subcommittee could hold private meetings to reach recommendations to be made to the public body that appointed it, the language of NRS 241.015(3) defining a public body to include subcommittees which make recommendations to another public body would be meaningless.

The current situation demonstrates the importance of subcommittees appointed to make recommendations to the full public body holding open, public meetings. The only meaningful discussions regarding the specifics of the waiver or reduction for each public official who made such a request occurred at the meeting of the subcommittee. The Commission itself did not discuss the specifics of any waiver or reduction upon which it had a recommendation from the subcommittee and the Commission accepted the recommendations of the subcommittee. Therefore, the discussion of the details regarding this important topic was not held in a public forum. If the law were otherwise and did allow subcommittees to agree on recommendations outside of an open, public meeting, "public bodies would be encouraged to break up into little unofficial groups and do business in the shadows, stepping into the sunshine to perfunctorily approve what has already been decided, which would be completely contrary to the intent expressed in NRS 241.010 that public bodies take their actions and conduct their deliberations in the open." OMLO 98-03 (July 7, 1998).

CONCLUSION AND RECOMMENDATION

For the above-stated reasons, we find that the Commission on Ethics' subcommittee was subject to the Open Meeting Law and held a meeting that did not comply with the requirements of the Open Meeting Law. We believe that legal action is not warranted at this time because we are not aware of any previous Open Meeting Law violations by subcommittees of the Commission or the Commission itself. However, please ensure that in the future all committees and subcommittees of the Commission comply with the Open Meeting Law or this office may take future legal action to ensure compliance with the Open Meeting Law.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ___________________________
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cc: Mr. Thomas Mitchell

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FRANKIE SUE DEL PAPA
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THOMAS M. PATTON
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April 23, 2002

Board of Trustees
Smokey Valley Library District
c/o Jeanne Bleecker, Trustee
Post Office Box 1265
Round Mountain, Nevada 89045

Re: Open Meeting Law Complaint
Smokey Valley Library District Board of Trustees
OMLO 2002-18/AG File No. 02-016

Dear Board:

As you know, a complaint was filed with this office alleging that the Board of Trustees (Board) committed numerous violations of the Nevada Open Meeting Law. The Attorney General has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Open Meeting Law, chapter 241 of Nevada Revised Statutes.

FACTS AND ANALYSIS

The complainant presented us with several summaries of minutes from past Board meetings. For purposes of this opinion, we will assume that all summaries provided by the complainant accurately reflect the minutes of the particular Board meeting. The summaries are categorized in three separate sections headed as follows:

I. Actions, decisions, or otherwise that support our conclusion that Lisa Bryant is being unfairly groomed for position of Library Director.

II. Employee and benefit changes that would directly affect the Library Director position and that would be a conflict of interest if made by someone preparing for that same job.

III. Other items of concern, including violations of Open Meeting Law.

Allegations in Section I

The minute summaries in Section I focus primarily on the complainant's allegations that the Board may have engaged in a conduct known as "pre-selection" of Lisa Bryant (Bryant), a former Board Trustee, for the position of Library Director. Pre-selection is conduct where a hiring authority takes favorable action toward a candidate before the formal selection process in an effort to enhance that candidate's chances of success in gaining an appointment. While pre-selection may be objectionable if it occurred as alleged by the complainant, the Open Meeting Law does not provide a remedy for alleged pre-selection. Accordingly, we find that the references to the Board's minutes of September 10, 2001, October 15, 2001, December 3, 2001, April 17, 2001, and January 7, 2002, do not present us with facts that state a possible violation of the Open Meeting Law. The sole exception in Section I is the complainant's summary of minutes of the January 22, 2002 meeting, which alleges action by the Board on an item that was not on the Board's agenda. This allegation is repeated in Section III and will be addressed in our discussion of the summaries of minutes of Section III.

Further, we note that the summaries of minutes in Section I of Board meetings held in 2001 are outside the jurisdiction of this office to bring a civil action within 120 days following the action. NRS 241.037(3). For this additional reason we must decline to investigate the allegations of Open Meeting Law violations that occurred in 2001 and are therefore outside our jurisdiction to prosecute.

ALLEGATIONS IN SECTION II

The allegations contained in Section II relate to the complainant's concerns that the Board may have, at several Board meetings in 2000 and 2001, made changes in certain benefits that attend the position of Library Director. The complainant states that Bryant was a Board Trustee during the times the Board enhanced the benefits of the Library Director's position. The complainant points out that Bryant may have had a conflict of interest if she voted to enhance the benefits of the position of Library Director while intending to seek appointment to that position. Again, while such conduct may be objectionable or actionable in some other forum, the allegations do not state alleged violations of the Open Meeting Law. Further, all allegations in Section II occurred in 2000 or 2001 and are therefore outside our jurisdiction to prosecute as set forth in NRS 241.037(3). Accordingly, we must decline to investigate the allegations contained in Section II.

ALLEGATIONS IN SECTION III

In Section III, the complainant makes allegations that the Board considered or took action on one item at each of three meetings without having placed the item on the Board's agenda. If true, these actions may be in violation of NRS 241.020(2)(c), which requires that an agenda must consist of: (1) a clear and complete statement of the topics scheduled to be considered during the meeting; and (2) a list describing the items on which action may be taken and clearly denoting that action may be taken on those items. *See also*, discussion at § 7.03 of the NEVADA OPEN MEETING LAW MANUAL (9th ed. 2001). However, we note that two of the Board meetings identified by the complainant in Section III as being in violation of the Open Meeting Law's notice requirement occurred in 2001 and are therefore outside our jurisdiction to prosecute pursuant to NRS 241.037(3). Accordingly, we must decline to investigate the allegations of Open Meeting Law violations that allegedly occurred at the two meetings held in 2001.

THE BOARD'S JANUARY 22, 2002 MEETING

The complainant's final allegation of a violation of the Open Meeting Law concerns Board action at its January 22, 2002 meeting. The complainant alleges that the position for Library Director was advertised in the Reno Gazette-Journal before the Board acted to authorize the advertisement at a properly noticed meeting. In my conversation of April 16, 2002, with Jeanne Bleecker, she candidly offered that the complainant is correct in this allegation. She stated that the advertising of the Library Director position was not placed on the Board's agenda as an action item, but was nonetheless openly discussed by the Board at the January 2002 meeting. Based on this Board discussion and subsequent conversations that Ms. Bleecker had with individual Board Trustees, she understood it was the Board's directive to her to advertise the position. Finally, Ms. Bleecker acknowledged that these actions were a mistake and likely constitute a violation of the Open Meeting Law as a Board deliberation and action that was not placed on a properly noticed agenda. *See,* OMLO 98-03 (July 7, 1998), finding a violation of the Open Meeting Law where:

> There is nothing on the agenda for the March 31 meeting indicating that the Board was going to *consider* the selection process, the hiring of a search firm, or whether Dr. Attea's firm should be given the authority to advertise at the NSBA conference, yet the Board spent a significant amount of time doing just that.

We therefore find that the Board violated the Open Meeting Law at its January 22, 2002, meeting when it discussed the advertising of the Library Director's position when the advertising

of the position had not been placed on the Board's agenda as an action item for that meeting. We note that any action taken in violation of the Open Meeting Law is void. NRS 241.036.

Ms. Bleecker further indicated in our conversation of April 16 that the issue of advertising for the position of Library Director will be placed on the Board's upcoming April 23, 2002, meeting as an action item. If the item is clearly denoted on the Board's agenda as an action item in accordance with NRS 241.020(2)(c), the Board may properly vote on the item, and the Library Director position may then properly be advertised.

Finally, this letter will serve as a warning to the Board to carefully follow the mandates of the Open Meeting Law, and Ms. Bleecker assured us in our conversation that it is clearly the Board's intent to do so. In closing, we thank Ms. Bleecker very much for her cooperation in resolving this issue and for her concern that future violations do not occur.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
JAMES T. SPENCER
Senior Deputy Attorney General
Civil Division
(775) 684-1200

JTS:kh
cc: Dana G. Ioli
k:\agmyweb\openlaw\2002\omlo 2002 18.doc

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First Assistant Attorney General

May 8, 2002

Chairman Don Soderberg
Public Utilities Commission of Nevada
1150 East William Street
Carson City, Nevada 89701-3109

Re: Open Meeting Law Complaint
Public Utilities Commission
OMLO 2002-19/AG File No. 01-054

Dear Chairman Soderberg:

As you know, we have received a complaint from Mr. Thomas Wilson that the Public Utilities Commission took action at an evidentiary hearing that was properly noticed but without publishing an agenda for the hearing in violation of NRS 241.020.

For the reasons stated below, this office concludes that the notice of hearing used meets the requirements of NRS 241.020 for a meeting of a public body, but urges the Commission to post an agenda in the form used for its public meetings, if action may possibly be taken at an evidentiary hearing.

FACTS

A Notice of Hearing was issued on September 6, 2001 by the Public Utility Commission of Nevada ("PUCN"), but due to an error in the name of one of the applicants, a Renotice of Hearing ("Renotice") was issued on September 12, 2001 regarding the applications of Nevada Power Company ("Nevada Power") and Sierra Pacific Power Company ("Sierra"), docket nos. 01-6028, 01-6029, 01-6030, and 01-6031. The Renotice was published in newspapers in general circulation in several counties, posted at the offices of the PUCN in Carson City and Las Vegas and at the Public Safety Building in Carson City and the county courthouses in Reno, Las Vegas and Carson City and mailed to persons on the special notice list. The hearing on the applications was noticed for September 20, 2001 at 10:30 a.m. at the PUCN office in Las Vegas and via

videoconference to the PUCN office in Carson City. An agenda meeting was noticed by a separate Notice of Agenda Meeting for September 20, 2001 at 9:00 a.m., held jointly at the PUCN offices in Las Vegas and Carson City, which included 25 docket items for discussion and or action, by the Commission. The hearing on the applications of Nevada Power and Sierra was held on September 20, 2001 by the three PUC Commissioners, who made a decision and took action to approve the applications following the presentation of evidence. Normally, one Commissioner conducts such hearings and makes recommendations to the full Commission, which it considers at an agenda meeting.

ANALYSIS

The issue raised concerns the form of the Notice of Hearing on the applications at which the PUCN took evidence and took action because the notice of hearing was not presented in the same format as the notice of agenda meeting and does not include the word "Agenda" anywhere on the notice. The issue is whether the Notice of Hearing satisfied the requirements of NRS 241.020.

NRS 241.020 requires notices of meetings of public bodies to include certain information.

NRS 241.020 provides in pertinent part as follows:

> 2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:
> (a) The time, place and location of the meeting.
> (b) A list of the locations where the notice has been posted.
> (c) An agenda consisting of:
> (1) A clear and complete statement of the topics scheduled to be considered during the meeting.
> (2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.
> (3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).
> 3. Minimum public notice is:
> (a) Posting a copy of the notice at the principal office of the public body, or if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public

> body not later than 9 a.m. of the third working day before the meeting; and
>
> (b) Mailing a copy of the notice to any person who has requested notice of the meetings of the body in the same manner in which notice is required to be mailed to a member of the body. . .

NRS 241.020(2) and (3).

The Renotice of Hearing provides, on page 3 of the Renotice, the time the hearing is to take place as "10:30 a.m." and the place and location of the hearing as "Hearing Room A, Public Utilities Commission of Nevada, 1150 East William Street, Carson City, Nevada 89701" and "VIA VIDEOCONFERENCE TO: Hearing Room, Public Utilities Commission of Nevada, 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109." Such information complies with NRS 241.020(2)(a).

The Renotice provides, on page 4, "[t]his Notice has been posted at the offices of the Commission: 1150 East William Street, Carson City, Nevada 89701 and 101 Convention Center Drive, Suite 250, Las Vegas, Nevada 89109; the Public Safety Building, 885 E. Musser Street, Carson City; and the county courthouses located in Reno, Carson City, and Las Vegas." The places the Renotice has been posted consist of the principal offices of the PUCN, as well as at least three other prominent places within the jurisdiction of the PUCN. Such information complies with NRS 241.020(2)(b). Information was provided by the PUCN that evidences the Renotice was posted and mailed to persons requesting special notice as well. The PUCN complied with NRS 241.020(3)(a) and (b).

The Renotice provides that the Commission will hold a hearing on the applications, which are described as follows:

> Sierra Pacific Power Company ("Sierra") filed an applica-tion . . . seeking authority to issue secured or unsecured, long or short term debt in an aggregate amount not to exceed $100,000,000 through the period ending 2002. Sierra states this will be used to finance its deferred energy accounts. This matter has been designated Docket No. 01-6028. Sierra also filed an application on June 19, 2001 seeking to amend the Commission Order issued in Docket No. 00-10014 for authority to issue secured as well as unsecured promissory notes in an aggregate mount not to exceed $250,000,000 payable to banks and purchasers of short-term authorization so that it may issue secured promissory notes in addition to or in lieu of the unsecured promissory notes. This matter has been designated Docket No. 01-6029.

> Nevada Power Company ("Nevada Power") filed an application on June 19, 2001, with the Commission seeking authority to issue secured or unsecured, long or short term debt in an aggregate amount not to exceed $200,000,000 through the period ending 2002. Nevada Power states that this would be used to finance its deferred energy accounts. This matter has been designated Docket No. 01-6030.
>
> Nevada Power also filed an application on June 19, 2001, seeking to amend the Commission Order issued in Docket No. 00-10015 for authority to issue secured as well as unsecured promissory notes in an aggregate amount not to exceed $250,000,000 payable to banks and purchasers of short-term authorization so that it may issue secured promissory notes in addition to or in lieu of the unsecured promissory notes. This matter has been designated Docket No. 01-6031.

(Renotice at pp. 1-2).

The Renotice also provides that,

> The Commission may hear testimony on whether the requests made in the applications are for some lawful object, within the corporate purposes of the applicants and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicants of service as a public utility and which will not impair their ability to perform that service, and is reasonably necessary or appropriate for those purposes. The Commission may also consider other issues related to the provisions of Chapters 703 and 704 of the NRS and NAC as well as make decisions on procedural and substantive issues raised at the hearing. . . .

(Renotice at p. 3).

The applications and the matters that the Commission intended to consider at the hearing are described with specificity as to the subject matter of the application. It is clear from the notice that applicants request approval to incur debt. The type of debt in the form of promissory notes is delineated. The amount of the promissory notes and the duration of the debt are also delineated in the Renotice. The Renotice specifies the issues relating to the approvals that must also be addressed. The matters covered by the applications are clearly and completely stated. Such specificity relating to the applications that are scheduled for hearing meets the requirement

of NRS 241.020(2)(c)(1) to provide a clear and complete statement of the topics scheduled to be considered during the meeting.

The Renotice provides, at page 3, as follows: "Finally, the Commission may discuss and/or act to grant or deny the applications as filed or with modifications, accept or reject any stipulation presented by the parties, and issue the appropriate order." NRS 241.020(2)(c)(2) requires that an agenda consist of a list describing the items on which action may be taken and clearly denoting that action may be taken on those items. Although the applications are not set forth in a "list," the items on which action may be taken are described and they are clearly denoted as matters that action may be taken. The language in the Renotice satisfies the requirements of NRS 241.020(2)(c)(2).

NRS 241.020(2)(c)(3) requires that an agenda consist of "[a] period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2)." The Renotice provides that "[a] period will be devoted to comments by the general public, if any, and discussion of those comments." (Renotice at p. 3). The Renotice clearly includes a period devoted to public comments, however, it does not include any language regarding not being allowed to take any action on any matter raised under this item. It is not clear that such additional language is required by the statute to be contained in the agenda. As long as public comment is *not* delineated as an action item, then it is clear that matters under public comment may not be acted upon. In the Renotice, the public comment period is not denoted as a matter the Commission may act on. The only matters that are denoted as matters that the Commission may act on are "the applications," "any stipulation" relating thereto and "the appropriate order." (Renotice at p. 3). Accordingly, the Renotice satisfies the requirements of NRS 241.020(2)(c)(3) for providing a public comment period.

Based upon a review of the Renotice, the Renotice satisfies all the requirements of NRS 241.020(2) and (3) with the exception of providing an "agenda." The Renotice is entitled "Renotice of Hearing" and contains a caption similar to that found in a court pleading. At a "hearing" on an application, the matter is considered a contested hearing, similar to a court proceeding, at which evidence will be taken. NAC 703.050. When public meetings are noticed, the PUCN prepares a document entitled "Notice of Agenda Meeting" and sets forth therein something more similar to "a list" of items to be considered. At an "agenda meeting," evidence is not normally taken. At a hearing on an application, the full Commission may or may not participate in such hearings. NAC 703.667. If more than one Commissioner participates in the hearing, a quorum would be present and therefore constitute a "meeting" pursuant to NRS 241.015(2). Accordingly, a notice of meeting pursuant to NRS 241.020 is required. Language required by NRS 241.020 has been included in the Notice of Hearing in anticipation of participation by more than one Commission member. An Agenda Meeting is a meeting intended to have full participation by all Commission members.

NRS 241.020 requires that the notice of the public meeting include an agenda, which is required to contain certain information. The Renotice is both a notice and an agenda, although its format is different from that of other "agenda meetings" and does not say anywhere in the document that it is an "agenda."

NRS 241.020 does not define "agenda," except as to the required contents of an agenda as set forth in NRS 241.020(2)(a), (b), and (c). An "agenda" is "a list, outline or plan of things to be considered or done." WEBSTER'S NEW COLLEGIATE DICTIONARY 22 (1979). "Agenda" is also defined as "[m]emorandum of things to be done, as items of business or discussion to be brought up at a meeting; a program consisting of such items." BLACK'S LAW DICTIONARY 58 (5th ed. 1979). The Renotice describes the applications to be considered by the Commission and provides that discussion and/or action will be taken. Such information could be considered a "plan of things to be considered" and thus an "agenda," even though it is not an "agenda" as that term is commonly understood by public bodies, including the PUCN, and used at public meetings. The Renotice is a notice prepared pursuant to NRS 233B.121 and contains information not required by NRS 241.020, however, it meets the requirements of an agenda pursuant to NRS 241.020.

The action by the PUCN was taken at a hearing, not at a meeting. In fact, the agenda meeting was held prior to the hearing. Normally, the practice of the PUCN is to take evidence at a hearing and to take action as a public body at an "agenda meeting." The practice of the PUCN to assign one of its commission members to sit as a hearing officer to take evidence on a contested matter such as an application and to render a recommended decision to the full commission is a long-standing practice. Persons familiar with the practices and procedures of the PUCN would not expect deliberation and action to be taken by the full commission at an evidentiary hearing. Although the form of notice used by the PUCN for many years for such hearings indicates that action may be taken, action is not normally taken. Action is normally taken at an "agenda meeting."

The purpose of the Open Meeting Law is to require actions of public bodies be taken openly and that their deliberations be conducted openly. NRS 241.010. The practice of the PUCN was not to take action at a hearing. When the PUCN took action at the hearing on the applications of Nevada Power and Sierra Pacific, it deviated from its standard practice.

The matter upon which the public was concerned is a matter of significance. The applications approved by the PUCN at a hearing as opposed to an agenda meeting allowed Nevada Power and Sierra to incur debt in the combined amount of up to $800,000,000. Even though the PUCN deviated from their standard practice, the Notice of Hearing complied with the law.

CONCLUSION

In light of the Renotice of Hearing containing all the information required by NRS 241.020 for a notice of a meeting of a public body, the action taken pursuant to the Renotice of Hearing does not constitute a violation of the Open Meeting Law, NRS 241.020, and does not warrant action by this office. The Commission is urged to post an agenda in the form used for its public meetings, if action may possibly taken at an evidentiary hearing.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
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Chief Deputy Attorney General
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NJA:srh
cc: Thomas E. Wilson, President
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First Assistant Attorney General

May 10, 2002

John Doyle, Esq.
530 Melarkey Street, #3
Winnemucca, Nevada 89446

Re: Open Meeting Law Complaint
Humboldt County School District
OMLO 2002-20/AG File No. 02-013

Dear Mr. Doyle:

This office has primary jurisdiction over the investigation and resolution of Open Meeting Law complaints and concerns. Your letter dated March 25, 2002, requests an opinion as to whether a hearing on a grievance filed by the Humboldt County Classroom Teachers Association (HCCTA) pursuant to a collective bargaining agreement with the Humboldt County School District (HCSD) must be conducted in an open session before the Humboldt County School District Board of Trustees (Board of Trustees).

BACKGROUND

On September 6, 2001, the HCCTA filed a grievance pursuant to a collective bargaining agreement with the HSCD. Specifically, that grievance alleged that teachers were not receiving the requisite preparation time provided for in the collective bargaining agreement.

A hearing on the grievance was scheduled for March 12, 2002, before the Board of Trustees (the hearing). The hearing was scheduled and noticed as a discussion and action item to be held in open session. At the time of the hearing, representatives of the HCCTA suggested that the hearing should be held in closed session. Counsel for the Board of Trustees opined that the hearing must be held in open session. The Board of Trustees refused to conduct the hearing in closed session, postponed any further discussion or action on the matter and requested an opinion from this office.

DISCUSSION

Counsel for both the HCSD and the HCCTA have provided this office with letters explaining their respective positions. Neither party disputes that the Open Meeting Law (NRS chapter 241) applies generally to proceedings of the Board of Trustees. The issue is whether the hearing is exempt from the Open Meeting Law.

The Open Meeting Law applies "except as otherwise provided by specific statute." NRS 241.020(1). The HCCTA argues that NRS 288.220(1) is that specific statute. NRS 288.220(1) provides an exception to the Open Meeting Law with respect to "[a]ny negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives."

The HCSD and HCCTA do not dispute their respective status as a "local government employer" and an "employee organization." The sole issue identified by the HCSD and the HCCTA is whether the hearing is a "negotiation or informal discussion." This is an issue of first impression.

Before analyzing whether the hearing is a "negotiation or informal discussion," it is necessary to review some relevant canons of statutory interpretation. As an initial matter, "words in a statute should be given their plain meaning unless this violates the spirit of the act." *McKay v. Bd. Of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441 (1986) (citation omitted). Similarly, the meaning of words in a statute:

> [M]ay be sought by examining the context and by considering the reason or spirit of the law or the causes which induced the legislature to enact it. The entire subject matter and the policy of the law may also be involved to aid in its interpretation, and it should always be construed so as to avoid absurd results.

Advanced Sports Information, Inc., v. Novotnak, 114 Nev. 336, 340, 956 P.2d 806, 808-09 (1998) (citations omitted).

To determine whether the hearing is a "negotiation or informal discussion" it is therefore necessary to consider the legislative intent behind both the Open Meeting Law and NRS 288.220.

The legislative intent of the Open Meeting Law is codified at NRS 241.010 and states: "[i]n enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly."

The legislative intent of NRS 288.220 is not expressly set forth in a statute. However, chapter 288 ("Relations Between Governments and Public Employees") was enacted to encourage bargaining agreements between local governments and public employees in order to avoid employee strikes. *See Hearing on S.B. 87 Before the Senate Committee on Federal, State and Local Governments and the Assembly Committee on Government Affairs*, 1969 Legislative Session, 2-4 (February 25, 1969); *see also* NRS 288.150 (setting forth the government's duty to negotiate a bargaining agreement in good faith and setting forth the areas that should be encompassed in the bargaining process); *see also* OMLO 96-02 (February 16, 1996) (opining that a district attorney's discussion with a county commission regarding the discipline of a former public employee was "not part of an ongoing negotiation to develop terms of a collective bargaining contract for a group of employees as is contemplated under NRS chapter 288.").

Senator Carl Dodge, who introduced S. B. 87 (subsequently adopted as NRS chapter 288), explained the purpose of the bill. Senator Dodge initially noted that an employee organization may express a desire to negotiate with a local government by providing written notice. If the parties are unable to reach an agreement, the matter may be submitted to mediation. If the mediation is unsuccessful, the matter may be submitted to a fact finder. Senator Dodge explained the impact of the Open Meeting Law exception (subsequently NRS 288.220) by stating that "[u]p to the point of the publication of the factfinding report, the proceedings are exempt from the open meeting law."[1] *Hearing on S.B. 87 Before the Senate Committee on Federal, State and Local Governments and the Assembly Committee on Government Affairs*, at 2-4; NRS 288.180-.200. Senator Dodge went on to comment:

> [W]e felt that this [exemption from the Open Meeting Law] is a desirable thing so that people would not hold back because of the public aspect of a meeting about the types of discussions which they could have and air their "dirty linen" so to speak, whatever might be in private upto [sic] the point, as I say, of a public factfinding report.[2]

Id. Senator Dodge's comments demonstrate that NRS 288.220(1) was intended to provide an

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[1] NRS 288.200 no longer requires that a factfinding report be made available to the public.

[2] By way of these comments, Senator Dodge was referring to § 17 of S.B. 87, which was subsequently adopted as NRS 288.220(1),(2), and (3).

exemption from the Open Meeting Law for "negotiations or informal discussions" which occur "up to the point of" the creation of a collective bargaining agreement.

With the above principles in mind, it must be determined whether the hearing is either an "informal discussion" or a "negotiation."

The term "informal discussion" is not defined in chapter 288. However, the terms of the collective bargaining agreement between the HCSD and the HCCTA illustrate the *formality* of a grievance hearing before the Board of Trustees:

> If the Organization is not satisfied with the decision of the Superintendent, the President of the Organization shall, within ten (10) days, file the grievance with the Clerk of the Board. The Board shall hear the grievance during a closed personnel session either during a special meeting or at the next regularly scheduled public meeting following receipt of the grievance appeal. The grievant or grievant's representative or both shall present the case to the Board . . .[3]

Collective Bargaining Agreement, article 27.3. Article 27.3 clearly establishes a formal and regimented procedure by which a hearing is held. To suggest otherwise is contrary to the plain meaning of the words in the statute and would produce an absurd result. Accordingly, the hearing is not an "informal discussion" pursuant to NRS 288.220(1).

The issue is therefore whether the hearing is a "negotiation." The word "negotiation" is not defined in chapter 288. "Negotiation" is commonly defined as the "process of submission and consideration of offers until acceptable offer is made and accepted. The deliberation, discussion, or conference upon the terms of a proposed agreement; the act of settling or arranging the terms and conditions of a bargain, sale, or other business transaction." BLACK'S LAW DICTIONARY 720 (6th ed. Abgd. 1991). Here, the HCSD and the HCCTA are not in the process of creating a collective bargaining agreement; the collective bargaining agreement already exists. The hearing is a proceeding pursuant to the collective bargaining agreement, but it is not part of the proceedings leading up to the creation of the collective bargaining agreement. Accordingly, the plain meaning of the word "negotiation" in NRS 288.220(1) does not encompass the hearing.

[3] As stated earlier, the Open Meeting Law applies "except as otherwise provided by specific statute." NRS 241.020(1). Thus, the language in this article cannot exempt the grievance hearing from the Open Meeting Law.

Regardless, the HCCTA suggests that because the HCSD has a continuing duty to bargain in good faith even after the enactment of a collective bargaining agreement, the hearing is "part and parcel" of the collective bargaining process and is therefore a "negotiation" as contemplated in NRS 288.220(1).

The HCCTA's position is extremely broad and far-reaching. Taken to its logical conclusion, the HCCTA's position would mean that *any* action conducted pursuant to the collective bargaining agreement would be part of the bargaining process and therefore would be a "negotiation." As a result, nearly every such action would be exempt from the Open Meeting Law. That result is contrary to the legislative intent behind the Open Meeting Law. *See Supra 2-3*. More importantly, however, that result is contrary to the legislative intent behind NRS 288.220(1); to exempt the negotiation of a collective bargaining agreement from the Open Meeting Law, but to otherwise have no impact on subsequent proceedings. *See Supra 3.*

Moreover, the Nevada Supreme Court has been reluctant to imply broad exceptions to the Open Meeting Law. *See McKay v. Board of County Commissioners*, 103 Nev. 490, 492-93, 746 P.2d 124, 125-26 (1987) (rejecting an implied exception to the Open Meeting Law based on the attorney-client privilege). Finally, if the Legislature had intended to exempt *all* proceedings undertaken pursuant to a collective bargaining agreement from the Open Meeting Law, it could have clearly done so. *See Estate of Delmue v. Allstate Ins. Co.*, 113 Nev. 414, 418, 936 P.2d 326, 329 (1997) (citations omitted); *see also* NRS 241.030(1) (exempting from the Open Meeting Law a proceeding to "consider the character, alleged misconduct, professional competence, or physical or mental health of a person."). For all of these reasons, the hearing is not a "negotiation" pursuant to NRS 288.220(1).

CONCLUSION

A hearing before the Board of Trustees on the grievance filed by the HCCTA pursuant to a collective bargaining agreement with the HCSD is not a "negotiation or informal discussion" within the meaning of NRS 288.220(1). As such, NRS 288.220(1) does not exempt the hearing from the Open Meeting Law.

Thank you for bringing this matter to our attention. If you have any questions, please feel free to contact the undersigned.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
JOSHUA J. HICKS
Deputy Attorney General
(775) 684-1233

JJH:mas
cc: Francis Flaherty, Esq.

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

May 20, 2002

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint
Airport Authority of Washoe County
OMLO 2002-21/AG File No. 02-019

Dear Mr. Dehne:

This office received your complaint alleging an Open Meeting Law Violation by the Airport Authority of Washoe County (Authority) at an April 16, 2002 meeting. You allege that the Authority violated the Open Meeting Law by having a closed session in conflict with NRS 241.020 and that the agenda was deficient as it did not list a period dedicated to public comment as required by NRS 241.020(2)(c)(2).

This office has primary jurisdiction to investigate violations of the Open Meeting Law, pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by requesting a copy of the agenda, notice, minutes and any tape/video recording of the April 16, 2002 meeting, contacting the Clerk of the Authority's Board of Trustees, and speaking with counsel for the Authority.

DISCUSSION

The agenda for the April 16, 2002 meeting showed only one item, which was "Closed Session to Discuss Personnel and Litigation Issues." Your complaint alleges this is a violation of the Open Meeting Law because a closed session is improper for this purpose. Holding such a closed session would also conflict with the Attorney General's historical opinions, and the lack of a public comment period would also be a violation of the Open Meeting Law.

ANALYSIS

Prior to July 1, 2001, there was no statute that specifically allowed a closed meeting with counsel to discuss litigation, except for NRS 286.150(2), which relates to the Public Employees

Retirement System (PERS). The Nevada Supreme Court expressly declined to find an implied exception to Nevada's Open Meeting Law for attorney-client meetings based on the nature and content of the statute itself as it existed prior to July 1, 2001. Based on the Nevada Supreme Court's ruling, this office had historically opined that meetings of public bodies could not lawfully be closed for the purpose of attorney-client meetings.

However, during the 2001 Nevada Legislative Session, the Nevada Legislature passed Assembly Bill 225 (A.B. 225). This new statute, while not addressing the issue in terms of allowing a *closed* meeting with counsel, exempts meetings with counsel from the definition of "meeting" for the purpose of discussing potential or existing litigation. Therefore, when a public body's counsel meets with the public body for this purpose, it is not considered a "meeting" subject to the requirement that it be open to the public.[1]

CONCLUSION

Our investigation revealed that the April 16, 2001 meeting was held for the purpose of having an attorney-client discussion of potential and existing litigation pursuant to AB 225, now codified at NRS 241.015(2)(b)(2). Therefore, it was not a "meeting" as defined by the Open Meeting Law and did not therefore have to be open to the public. In fact, no agenda was required to be posted and no notice was required to be provided to any member of the public because the event was not a "meeting" subject to the Open Meeting Law. Accordingly, no violation could have occurred regarding the agenda, as such an agenda was not required.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
ELAINE S. GUENAGA
Senior Deputy Attorney General
Civil Division
(775) 684-1223

ESG:jm

cc: Greg Brower, Esq.

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[1] It is assumed that the "personnel" portion of the discussion was related to potential or existing litigation, and this portion was not part of your complaint.

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

May 22, 2002

Ken Lyon
4470 Lynnfield
Reno, NV 89509

Re: *Open Meeting Law Complaint*
Churchill County Commissioners
OMLO 2002-22/AG File No. 02-021

Dear Mr. Lyon:

On April 24, 2002, you filed a complaint with this office against the Churchill County Commissioners (hereafter the "Board"), alleging a violation of the Nevada Open Meeting Law (OML). Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes.

Specifically you allege that at a public meeting of the Board on April 20, 2002, an internal assessment prepared by Cronin Communications was provided to members of the Board for purposes of the proposed agenda, but was not provided to you upon request. We have reviewed the agenda and minutes of the April 24, 2002 meeting of the Board (no audio tape was made), as well as the response to your complaint on behalf of the Board by the Churchill County District Attorney's Office.

NRS 241.020(4) states as follows: "4. Upon any request, a public body shall provide, at no charge, at least one copy of : . . . (c) Any other supporting material provided to the members of the body for an item on the agenda. . ." The response of Mark Feest, Deputy District Attorney for Churchill County, states that the internal assessment discussed at the April 20, 2002 meeting was not, as of the date of the meeting, a final document and, as such, was not distributed to the Board. The minutes of the meeting also support this assertion. The minutes reflect that this internal assessment, which was apparently still in draft form, was discussed at the meeting, but had not yet been distributed. Page 3 of the minutes states: "Tim Owens next switched to a

general discussion of the internal assessment, which had not been made available to the board members as of the date of the retreat."

Since NRS 241.020(4)(c) only requires that members of the public be provided with supporting material actually provided to the members of a body, and this internal assessment had not been provided to the Board members as of the time of the April 20, 2002 meeting, there was no requirement under the Open Meeting Law to provide a copy to members of the public at that meeting. Therefore, there is no violation of the Open Meeting Law by the Churchill County Commissioners for failing to provide you with a copy of the internal assessment. Should you have any questions concerning the above points, please contact the undersigned.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
EDWARD T. REED
Deputy Attorney General
Commerce Section
(775) 684-1216

cc: Churchill County District Attorney
Attention: Mark Feest

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

May 24, 2002

Sean McGowan
City Attorney's Office
City of North Las Vegas
2200 Civic Center Drive
North Las Vegas, Nevada 89030

Re: Open Meeting Law Complaint
North Las Vegas City Council Meeting (3/20/02)
OMLO 2002-23/AG File No. 02-017

Dear Mr. McGowan:

As you know, this office has primary jurisdiction to enforce the provisions of Nevada's Open Meeting Law, NRS 241.010 *et seq*. Following resolution of a complaint filed by Mike Thomas in February of this year, regarding the actions of the North Las Vegas City Council (NLVCC or City Council) we are revisiting this issue with a second complaint filed by Mr. Thomas and received by this office on April 5, 2002. In an effort to avoid being redundant, please refer to the February 25, 2002, letter of the Office of the Attorney General for a more detailed analysis of the application of the Open Meeting Law to the NLVCC and this office's understanding of the NLVCC's customary practice during regular city council meetings.

DISCUSSION

In the complaint filed with our office, Mr. Thomas alleges that the NLVCC violated the State's Open Meeting Law during the March 20, 2002, City Council meeting. Specifically, Mr. Thomas alleges that the City Council interrupted his five minutes of speaking time during the Public Forum period and thereby violated the Open Meeting Law. Our investigation of Mr. Thomas' complaint consisted of a review of the audiotapes and minutes of the meetings and the materials submitted to us by your office and Mr. Thomas. The facts presented do not support a conclusion that a violation of the state's Open Meeting Law occurred. The following is the basis for our determination.

ANALYSIS

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments." Discretion as to the length, conduct, or structure of the public comment period lies with the public body, subject of course to certain legal considerations. With regard to the March 20, 2002, meeting, we conclude that Mr. Thomas was properly afforded five minutes of speaking time, consistent with the policy of the NLVCC. We further conclude that Mr. Thomas' rights were not violated by council members' occasional interjections. The record reflects that the comments at issue here were posited in an attempt to clarify the relevancy of Mr. Thomas' statements and directed at clarifying perceived misrepresentations of facts. This office finds no legal basis to support the contention that such conduct violates the Open Meeting Law.

The Office of the Attorney General has taken the position that "reasonable rules and regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those attending the meeting may be adopted by a public body," and reasonable restrictions can be imposed on speakers. NEVADA OPEN MEETING LAW MANUAL, § 8.04 (9th ed. 2001). There is no evidence revealing that Mr. Thomas was treated any differently than any other member of the public making the same or similar comments. The record reveals that the council did not understand the relevancy of Mr. Thomas' comments and sought to clarify what it deemed inflammatory statements and/or misrepresentations of events. So long as all members of the public are treated equally and Mr. Thomas' comments were not singled out for no apparent reason, then such interjections by the City Council, which Mr. Thomas complains of, are permitted and do not amount to a violation of the Open Meeting Law. Mr. Thomas was permitted to speak on his chosen issues during the public comment period and any interjections by the City Council during Mr. Thomas' five minutes appear to have been made for the legitimate purpose of clarification in order to better understand the nature and purpose of Mr. Thomas' comments.

CONCLUSION

As aforementioned, members of the public do not have an unqualified right to speak during a meeting of a public body. A public body may impose reasonable restrictions on speakers in order to further their legitimate interest in conducting efficient and orderly meetings. There is no indication that the City Council conducted itself in any manner which departed from the lawful application of the State's Open Meeting Law. Mr. Thomas was recognized during the public comment period, was afforded a full five minutes, and pursuant to NRS 241.020(2)(c)(3), this is all that is required under the Open Meeting Law.

Based on the foregoing, we find no Open Meeting Law violation. Please do not hesitate to contact us should you have any questions, or require additional information.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
AIMEE E. BANALES
Deputy Attorney General
Civil Division
(775) 684-1270

AEB/jf
cc: Michael Thomas
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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

May 28, 2002

Arlo K. Funk, Chairman
Board of Mineral County Commissioners
Post Office Box 1450
Hawthorne, Nevada 89415

Re: Open Meeting Law Complaint
Mineral County Commission
OMLO 2002-24/AG File No. 02-018

Dear Mr. Funk:

This letter is written in response to an Open Meeting Law complaint submitted by Robert Weaver (Weaver), the Mineral County Public Administrator, against the Board of Mineral County Commissioners (Board). Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised States (NRS).

DISCUSSION

Weaver's complaint alleges that the Board violated the Open Meeting Law by discussing Weaver's "character" and "duties" (as the Mineral County Public Administrator) during an agendized meeting on March 6, 2002, without first providing Weaver with individual notice of the meeting. Weaver's complaint further alleges that the Board again violated the Open Meeting Law by discussing Weaver's "character" and "job performance" (as the Mineral County Public Administrator) during an agendized meeting on April 3, 2002, without first providing Weaver with individual notice of the meeting. Weaver's complaint further asserts that during these meetings, a member of the Board repeatedly inferred that Weaver handled an estate incorrectly, thereby implying that Weaver failed to competently perform his duties as the Mineral County Public Administrator with respect to the estate.

NRS 241.033 provides in relevant part:

> 1. A public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting. Except as otherwise provided in subsection 2, the written notice must be:
> (a) Delivered personally to that person at least 5 working days before the meeting; or
> (b) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.
> A public body must receive proof of service of the notice required by this subsection before such a meeting may be held.

This office has reviewed the agendas, minutes, and recordings from the meeting dates listed in Weaver's complaint to determine if the Board considered the character, alleged misconduct, or professional competence of Weaver during the agendized meetings without first providing Weaver with the required notice pursuant to NRS 241.033(1).

ANALYSIS

NRS 241.020(2)(c)(1) requires that agendas include a "clear and complete statement of the topics scheduled to be considered during the meeting." The agenda for the March 6, 2002, meeting provides the following agenda item relative to Weaver's complaint: "1:30 p.m. Johnnie A. Gonzales – Discussion and appropriate action on duties of the Mineral County Public Administrator." The agenda for the April 3, 2002, meeting provides the following agenda items relative your complaint: "1:30 p.m. Johnnie & Ricky Gonzales – Discussion of Carmen Gonzales' estate and related matters." Neither of these agenda items provides Weaver with notice that the Board intended to discuss his "character, alleged misconduct, professional competence, or physical or mental health" at its meetings.

A review of the minutes and actual recordings of the meetings also reveals that both agenda items had little to do with what was actually discussed during the meetings. While the agenda items and Board discussion arose out of a complaint by Johnnie Gonzales regarding the estate of Carmen Gonzales, the true focus of the discussions during the meetings was the alleged misconduct of the Mineral County Public Administrator.

During the March 6, 2002 meeting, one Board member questioned Weaver at length about Weaver's conduct as the Mineral County Public Administrator with respect to the handling of the Carmen Gonzales estate. That Board member's questions went beyond mere inquiry and

bordered, if not crossed, the line into the realm of accusation. This is most evident by the Board member's defense of his line of questioning when he stated: "Well Bob I'm not making accusations. I'm trying to get things straight in my mind."

This line of questioning led to further discussion between the Board members with respect to Weaver's alleged misconduct and culminated in this statement by another Board member: "As far as I'm concerned he [Weaver] acted properly. That's all I'm saying." During the April 3, 2002 meeting, one Board member even went so far as to declare, "[t]his has to do with the public administrator. If there were errors in it [administration of the estate] then it falls upon the public administrator. Okay? That's the individual that is responsible for assuming basically control over this and making sure that everything is done in accordance with law . . . ." During that same meeting, another Board member stated that he "wanted to question the public administrator why he acted the way he acted."

The recordings of the meetings reveal that the Board discussed alleged misconduct of Weaver as the Mineral County Public Administrator. Therefore, the Board was required to have provided personal service of the agenda noticing the intent to discuss Weaver's alleged misconduct prior to holding a meeting on that matter pursuant to NRS 241.033(1). In this case, unless Weaver waived service, the Board should have served Weaver with notice 21 days prior to the meeting date if service was made by mail or five days prior to the meeting date if Weaver was personally served. A review of the recordings reveals that Weaver was present with counsel at the March 6, 2002 meeting. Therefore, the question becomes whether the facts of this case constitute a waiver of the personal notice requirement of NRS 241.033(1).

This office contacted the Board by letter dated April 16, 2002, and by telephone on April 25, 2002, seeking proof that the Board served Weaver with notice as required by NRS 241.033(1) before holding the meetings. Commissioner Richard Bryant (Commissioner Bryant) affirmatively confirmed during the telephone conversation that the required notice pursuant to NRS 241.033(1) was not provided to Weaver.

In his complaint, Weaver admitted that he received notice of the agenda item for the March 6, 2002 meeting, that he was present with his attorney, and affirmatively stated that he was not willing to postpone the item. The minutes and recordings of the March 6, 2002, meeting confirm this. Further, the recordings reveal that Weaver and his attorney objected to the Board's jurisdiction over the Office of the Mineral County Public Administrator and asserted that the proper forum for a complaint against the administration of an estate was before a probate court of law. However, while Weaver objected, Weaver himself then initiated and continued questioning regarding this matter that prompted discussion on this matter from the Board. Weaver actively participated in that discussion. Accordingly, this office finds that the facts in this matter constitute a waiver of the personal notice requirement of the Open Meeting Law, NRS 241.033(1), for the March 6, 2002 meeting. *See* OMLO 02-005 (March 11, 2002).

During the March 6, 2002 meeting, the Board made a decision to continue discussion of this matter for two weeks, until March 20, 2002. Weaver was present during the discussion regarding this decision and stated that he wanted to make a statement on March 6, 2002, because it would put undue hardship on him to come back on March 20, 2002. However, the next meeting on this matter was not actually held until April 3, 2002. Weaver was not present at the April 3, 2002 meeting, nor do the minutes or recordings reflect that Weaver waived the notice requirement of the Open Meeting Law, NRS 241.033(1), for the April 3, 2002 meeting. Accordingly, this office finds that the Board violated NRS 241.033(1) for the April 3, 2002 meeting by not serving Weaver with notice before discussing his alleged misconduct in his capacity as the Mineral County Public Administrator.

CONCLUSION

During this office's telephone conversation with the Board on April 25, 2002, Commissioner Bryant informed this office that the Board would strive to correct any errors that the Board may have committed. Commissioner Bryant appeared sincere in his representation. Moreover, the Board never acted or made a decision on any of the discussions regarding this matter at either of the meetings. Therefore, while the Open Meeting Law was violated, this office does not believe the violations stated above warrant enforcement beyond the warning that this office may prosecute future transgressions of the Open Meeting Law.

Please circulate this letter to the members of the Board. Please feel free to contact me with any questions or concerns.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
MARK J. KRUEGER
Deputy Attorney General
Commerce Section
(775) 684-1213
mjkruege@ag.state.nv.us

MJK:kh
cc: Robert E. Weaver, Mineral County Public Administrator
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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

May 29, 2002

Dawn Haviland
Keystone Academy Charter High School
Post Office Box 19155
Jean, Nevada 89109

Re: Open Meeting Law Complaint
Keystone Academy Charter High School
OMLO 2002-25/AG File No. 02-012

Dear Ms. Haviland:

The Office of the Attorney General has primary jurisdiction to investigate and prosecute complaints regarding the Nevada Open Meeting Law. NRS 241.037. Note that NRS 241.037 does not preclude any person denied a right conferred by chapter 241 from bringing their own action. Lucille Thaler, alleging violation of the Open Meeting Law, has lodged a complaint with this office. Ms. Thaler did not indicate when the alleged violation occurred, but did receive notice that she had been terminated from her employment as a teacher at the Keystone Academy Charter School (Charter School). The decision that resulted in her termination first occurred at a meeting of the subcommittee of what served as the governing body of the Charter School. That meeting occurred November 7, 2001, and attempts to ratify the decision were made at two subsequent meetings.

As chair of the governing body, you have been most cooperative in responding to our investigation. You have provided agendas and minutes of the meetings in question and answered our questions candidly. The governing body does not make an audiotape of any of their meetings and the Open Meeting Law does not require it. Our investigation has sorted out the following sequence of events and, in order to understand the sequence of events, it is necessary to know the background of the governing body of the Charter School.

BACKGROUND

A charter school is a public school of a school district granting the charter, but is governed by its own governing body, not the school district's board of trustees. NRS 386.549. The governing body is a public body subject to the requirements of the Open Meeting Law. NRS 386.550(1)(e). Originally, the Charter School did not distinguish between a governing body for the Charter School and the Board of the Sandy-Mesquite Valley Educational Foundation (Foundation Board). The Foundation Board assumed the role and duties of the governing body and there was no other board. The Foundation Board formed a subcommittee of three of its members to make personnel decisions. This committee was called the Personnel and Wage Committee (Committee). Complete authority was delegated to the Committee to make personnel decisions for the Charter School. You were on the Committee and, subsequently, became the chair of the "restructured" governing body.

Until the restructuring that created a governing body distinct from the Foundation Board on November 7, 2001, the body that met to govern the Charter School was the Foundation Board. On November 7, 2001, the following meetings took place at the Charter School in the following order:

A. A closed meeting of the Personnel and Wage Committee of the Sandy-Mesquite Valley Foundation (2:30 p.m. to 2:45 p.m. at the Charter School's Science room). At this meeting, there was no discussion of the character, alleged misconduct, professional competence, or physical or mental health of anyone, and no particular person was discussed at all.

B. An open meeting of the Sandy-Mesquite Valley Educational Foundation (Foundation) was held at 3:40 p.m. There were eight members present, plus three student representatives. At this meeting, the need to establish a governing body separate from the Foundation Board was discussed. Four members indicated they would resign from the Foundation Board in order to seek positions on the Charter School's governing body. Joy Fiore was selected by motion to remain on the Foundation Board and be the Foundation representative on the governing body.

C. First meeting of the newly created governing body of Keystone Academy Charter School (4:15 p.m.) At this open meeting, the governing body elected a chair, established terms of office, set the number of members at nine, elected other officers, and named the members to the body, pending their formal acceptance. They adopted the policy and procedures of the Foundation Board as their own. Other business was conducted.

The next meeting of the governing body of the Charter School was noticed for December 18, 2001**.** Because of the importance of eliminating positions, it was the desire of the Committee to have the new governing body ratify the decision made at the closed meeting on November 7, 2001.

A quorum was not present initially on December 18, 2001, but by 4:00 p.m., a quorum of five was present and the meeting convened. This meeting was not a closed meeting. At least a majority was in favor of the decision of the Committee made at the closed November 7, 2001 meeting to eliminate three full-time teaching positions based on seniority. Termination letters were sent dated January 3, 2002, to two of the teachers, including Ms. Thaler, and an acceptance of the resignation of the third was sent. The third had found another job and resigned.

CLOSED MEETING OF FEBRUARY 5, 2002

An item was placed on the agenda for the February 5, 2002, meeting of the governing body for the purpose of ratifying the decision made November 7, 2001. It was erroneously believed that this agenda item should be discussed in a closed meeting because it was a "personnel" matter. It was noticed for a "Special Closed Personnel Session" following the regular open meeting. Closing the meeting on February 5, 2002, is a violation of the Open Meeting Law. A closed meeting can only be held to discuss the character, alleged misconduct, professional competence, or physical or mental health of a person and only after specific notice has been given to the person. NRS 241.030, NRS 241.033(1). The discussion at the closed meeting focused on the budgetary need to eliminate three full-time positions and that the criteria for eliminating positions should be seniority. At the February 5, 2001 meeting, the discussion also included a caution that the remaining teachers must hold the necessary license endorsements for the subjects they teach. An additional violation of the Open Meeting Law occurred because the governing body took action in the closed meeting. No action may be taken in a closed meeting, even one that is properly closed. *See* NEVADA OPEN MEETING LAW MANUAL § 9.04 (9th ed. 2001).

NRS 241.034, adopted by the 2001 Legislature in A.B. 225, provides for specific notice under certain circumstances not previously required by the Open Meeting Law. Therefore, we must also examine whether the action taken by the governing body at the February 5, 2002 meeting was administrative action "against a person" within the meaning of NRS 241.034. "A public body shall not consider at a meeting whether to: [t]ake administrative action against a person … unless the public body has given written notice to that person of the time and place of the meeting." NRS 241.034 (1)(a) and (b). The specific notice must be delivered personally at least 5 working days before the meeting, or sent by

certified mail at least 21 days before the meeting, with proof of service by mail received before the public body may consider the matter. NRS 241.034(2).

The terms "administrative action" and "against a person" are not defined by chapter 241 or by A.B. 225. The terms "administrative action" and "against a person," if interpreted and defined broadly, would encompass a myriad of actions performed by local governments and state agencies, which common sense indicates were not all intended to be covered by the new notice provision of AB 225. This office has concluded that "[a]ction against a person does not occur unless the matter being acted on is uniquely personal to the individual or entity. . . ." NEVADA OPEN MEETING LAW MANUAL § 6.10(5) (9th ed. 2001). Not all actions that affect a individual are uniquely personal to that individual. The minutes of the closed meeting of February 5, 2002, indicate that "a motion was made by Joy Fiore to ratify the terminations as made by prior poll of the board." The decision made by prior poll of the Foundation Board, beginning with the decision at the meeting of November 7, 2001, and ratified by vote at the meeting of December 18, 2001, was to eliminate three positions based on seniority. Letters of termination were sent January 3, 2002, to Ms. Thaler and one other teacher. The third teacher had found another position and resigned. The matter being acted upon in the February 5, 2002 meeting was not an "action against a person" within the meaning of the Open Meeting Law because the action was not uniquely personal to those affected by the decision. Any teacher on the staff who was among the three last-hired would have received a letter informing him or her of their dismissal. While it is possible in a small charter school to know who is affected by the decision to eliminate the three last-hired employees, this does not make the decision uniquely personal. Specific notice to Ms. Thaler or anyone of the meeting of February 5, 2002, is not required by the Open Meeting Law because (1) there was no discussion of any person's character, alleged misconduct, professional competence, or physical or mental health nor, (2) was the action taken an "administrative action against a person" within the meaning of NRS 241.034. Whether an employee of Charter School has a right of notice related to termination pursuant to collective bargaining agreements or any other source, is not within the purview of this decision.

We next turn our attention to whether the agenda for the February 5, 2002 meeting satisfied the requirements of the Open Meeting Law. Agendas of public bodies must consist of a clear and complete statement of the topic to be considered at the meeting and clearly denote the items in which action may be taken. NRS 241.020(2)(c). The item on the agenda of the February 5, 2002 meeting is merely stated as "Closed Session for Personnel Changes" and is void of an indication that any item on the agenda will be considered for action. The description is not clear and complete and, therefore, is in violation of the Open Meeting Law. In the future, when a matter is proper for a closed meeting, we recommend the chair of the governing body review § 9.04 through § 9.07 of the NEVADA OPEN MEETING LAW MANUAL (9th ed. 2001) for guidance on how to place a closed session on the agenda, handle the

meeting, and preserve confidentiality on the agenda. The governing body is directed to §§ 6 and 7 of the NEVADA OPEN MEETING LAW MANUAL (9th ed. 2001) and sample form 1 for guidance on an adequate notice and agenda.

CONCLUSION

Several violations of the Open Meeting Law occurred at the February 5, 2002 meeting of the governing body of the Charter School. First, it is a violation to close the portion of the meeting that you assumed to be a personnel matter. Second, it is a violation to take action in a closed meeting, even one properly closed to the public. Third, the description of the agenda items for the meeting, both the open and the closed portion, were not clear and complete and, therefore, are in violation of the Open Meeting Law. However, Ms. Thaler was not entitled to specific notice of the February 5, 2002 meeting pursuant to NRS 241. 035 or NRS 241.033(1).

If the governing body will place ratification of the Committee's decision on the next meeting agenda for discussion and action in public, with proper notice to the public, this office will close its file on the complaint. Because the February 5, 2002 meeting did not denote possible action for any item on the agenda, corrective action must also include those items in which action was taken at the meeting.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
MELANIE MEEHAN-CROSSLEY
Deputy Attorney General
Civil Division
(775) 684-1208

MMC:dy

cc: Lucille I. Thaler

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

May 29, 2002

Sean Ryan, Administrative Coordinator
I Can Do Anything Charter High School
1195 Corporate Boulevard, Suite C
Reno, Nevada 89502

Re: Open Meeting Law Complaint
I Can Do Anything Charter High School
OMLO 2002-26/AG File No. 02-015

Dear Mr. Ryan:

On March 28, 2002, this office received your complaint alleging Open Meeting Law violations by the Governing Board of the I Can Do Anything Charter High School (ICDA) at its March 20, 2002 meeting. Pursuant to Nevada law, specifically NRS 241.040(4), the Attorney General's Office has primary jurisdiction to investigate and resolve complaints regarding the Nevada Open Meeting Law. To that end, we requested and reviewed the agenda and minutes of the meeting in question.

Your complaint alleges that:

1. Action Item No. 1, as described on the agenda, does not give adequate notice of the matter discussed, and
2. Action Item No. 7, the performance review of Principal Wells, was not properly noticed to Principal Wells.

COMPLAINT ONE

The Minutes provide the following information:

1. New School location. A presentation of the plot plan for the property on Neil Road as a possible site for a new ICDA school was presented. Jim Clark, developer, discussed his plan for a build-to-

> suit school and how the economics would favor ICDA. The school could be built with no down payment by ICDA and a contract drawn for a monthly lease fee. Jeff Klippenstein, architect, displayed his plans for locating the high school on the acreage along with an elementary school and room for a county library. The board voted to tour the site on April 10, 2002 at 1:30 p.m. The board and ICDA staff will meet in the City Recreation Center at 3925 Neil Road.

The agenda's description of "New ICDA school location – Possible dates for tour of sites – March 27, 2002 or April, 2002," provides the public with notice that the new school location, as well as the date for a site tour would be discussed. The first issue in this complaint is whether that description was "clear and complete" such that the public was on notice of the subject matter to be discussed. NRS 241.020(2)(c)(1) provides that a notice of a hearing must include an agenda consisting of: "[a] clear and complete statement of the topics scheduled to be considered during the meeting." A copy of that statute is included for your review. One purpose of the Open Meeting Law is to allow the public to make their views known on issues of importance in the community. That purpose is thwarted if a matter is not clearly described on the agenda.

Presentations by the developer, Mr. Jim Clark and the architect, Mr. Jeff Klippenstein of the financing and architecture of the proposed school, were not mentioned anywhere on the agenda. The public did not know of the presentations based on the agenda. A more complete description would list the presentations by the developer and architect regarding aspects of the financing and architecture of the proposed school as discussion items. The agenda should have provided more detail regarding the scope of the discussion of the proposed new school.

A matter that is acted upon but not clearly noted on the agenda in violation of NRS 241.020(2)(c) can be voided under NRS 241.036. In this instance, the only action taken by the Board was to set a time and date to tour the proposed school site. That action was clearly noticed on the agenda. Although we find that the ICDA Governing Board (Board) did violate the Open Meeting Law, no action was taken on the offending matter. Since no action was taken, we feel the appropriate response by this office is to point out the error and caution the Board that further violations of the Open Meeting Law could result in sanctions including the voiding of Board actions.

COMPLAINT TWO

On the agenda, Item No. 7 stated "7. Principal Wells performance review and annual contract renewal." No information found on the agenda or minutes refers to notice provided or waiver of notice by Principal Wells. The minutes do indicate Principal Wells was present at the meeting. In his April 17, 2002 letter (Barthel-Crossley), President Barthel stated that there was no proof of service signed by Principal Wells, but the agenda is prepared in collaboration with Principal Wells approximately one week in advance.

NRS 241.020(1) provides that notice of all meetings must be posted at least 3 working

days before the meeting. NRS 241.033(1) provides additional notice requirements to protect persons whose professional competence will be discussed by a public body. The latter statute provides that a public body shall not hold a meeting to consider the professional competence of a person unless it has given that person written notice delivered personally at least 5 working days before the meeting. In this case, the discussion related to Principal Wells' professional competence. The agenda was prepared in part by Principal Wells approximately 7 days before the meeting. Principal Wells has asserted no complaint regarding a lack of notice. Because the affected person has not complained, and in fact, participated in the discussion, we do not find it necessary to make a determination of this complaint.

CONCLUSION

After a careful review of the record submitted, it is our opinion that the Board did violate the Open Meeting Law by failing to provide a "clear and complete" description of the matters discussed. The agenda should have included a description of the two presentations regarding the proposed new school. Since no Board action was taken on the matters not properly noticed, our response is a warning that future agenda items must be described in "clear and complete" detail. We also recommend that the Board seek advice of counsel to ensure compliance with the Open Meeting Law.

By copy of this letter we send the NEVADA OPEN MEETING LAW MANUAL, (9th ed. 2001) to assist the Board in improving their procedures. Should you have questions, please do not hesitate to call me at my number below. Thank you for bringing these matters to our attention.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
DARRELL W. FAIRCLOTH
Deputy Attorney General
Civil Division
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DWF:jht

cc: Trip Barthel, Chairman of the Board
I Can Do Anything Charter High School

Enclosures

STATE OF NEVADA

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THOMAS M. PATTON
First Assistant Attorney General

June 11, 2002

Cathylee James
Storey County Cemetery Board
Post Office Box 1104
Virginia City, Nevada 89440

Re: Open Meeting Law Complaint
Store County Cemetery Board
OMLO 2002-27/AG File No. 02-014

Dear Ms. James:

This office has primary jurisdiction to investigate alleged violations of the Open Meeting Law, NRS chapter 241. This office received a complaint alleging that the Cemetery Advisory Committee (Committee), now known as the Storey County Cemetery Board, held two meetings in violation of the Open Meeting Law.

We have reviewed documentation regarding the Committee that we received from the Storey County District Attorney, the Storey County Clerk, and the Committee. We also interviewed a Committee member. It is our conclusion that the Committee is a public body within the meaning of the Open Meeting Law. Therefore, we hereby advise you that the Committee must comply with the Open Meeting Law.

ANALYSIS

The Committee members were appointed to the Committee by the Storey County Board of County Commissioners (Board) on January 15, 2002. During its March 5, 2002 meeting, the Board had an agenda item regarding the designation of duties and authority of appointed Committee. The Board had a proposal as to the duties and authority of the Board to consider at that time. The Board did not take any action on this item during this meeting. The Board subsequently approved the Committee's scope of work on May 20, 2002. Among other duties

and responsibilities, the Committee makes recommendations to the Board and acts as the Board's liaison with interested parties regarding cemetery issues in Storey County.

The Committee held its first two meetings without following the requirements of the Open Meeting Law. The Committee was not aware that it was required to comply with the Open Meeting Law. We have been informed that the Committee determined that it was subject to the Open Meeting Law after the first two meetings and began conducting its meetings in compliance with the Open Meeting Law.

NRS 241.020(1) requires all meetings of "public bodies" to be open and public, unless otherwise provided by a specific statute. "Public body" is defined in NRS 241.015(3). It provides:

> Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue *or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to any board, commission, committee, subcommittee or subsidiary thereof* and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. "Public body" does not include the legislature of the State of Nevada. [Emphasis added].

Functions of the Committee include making recommendations to the Board and acting as the Board's liaison on cemetery issues. We have previously stated that, pursuant to NRS 241.015(3), "to the extent that a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the Open Meeting Law." NEVADA OPEN MEETING LAW MANUAL, §3.04 (9th ed. 2001). The Committee is a public body in its own right and is subject to the Open Meeting Law because it is a committee formally appointed by the Board for the purpose of making recommendations to the Board, which is supported in whole or in part by tax revenue. *See,* OMLO 98-03 (July 7, 1998), OMLO 98-04 (July 7, 1998).

CONCLUSION AND RECOMMENDATION

For the above-stated reasons, we find that the Committee is subject to the Open Meeting Law. No action is necessary at this time because the Committee began complying with the Open Meeting Law once it became aware that it was subject to the Open Meeting Law. We hereby advise that all future meetings of the Committee must be held in compliance with the Open Meeting Law.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML/br

cc: Mr./Mrs. Smith

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THOMAS M. PATTON
First Assistant Attorney General

June 19, 2002

Hugh Roy Marshall
The Ione Gold Mining Company
146 South "D" Street
Post Office Box 890
Virginia City, Nevada 89440

Re: Open Meeting Law Complaint
Bureau of Land Management and Nye County
OMLO 2002-28/AG File No. 02-025

Dear Mr. Marshall:

This office received your complaint alleging an Open Meeting Law violation by the Bureau of Land Management (BLM) and Nye County at a series of meetings. You allege that these meetings were not conducted under the Nevada Open Meeting Law, as to no signs being posted, no written notice of times, and the locations of the meetings. You also allege that the BLM and Nye County have planned a conveyance of property rights without agreement of the owners or holders of legal claim to the properties at issue.

DISCUSSION

This office has primary jurisdiction to investigate violations of the Open Meeting Law pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by requesting a copy of any agenda(s), notice(s), minutes, and any tape/video recording of the April meetings. A written response was received from Rachel Nicholson, retained counsel, on what is commonly referred to as the "townsites project." Her letter stated that because the Open Meeting Law did not apply, there were no agendas for the meetings, nor were any formal minutes or recordings of the meetings taken or collected. Additionally, this office reviewed copies of the letter from Dr. James Marble, Director, Nye County Office of Natural Resources dated April 18, 2002, the Announcement and Press Release regarding the series of public meetings to be held, and the BLM News Release dated April 15, 2002.

ANALYSIS AND CONCLUSION

Your complaint, the Announcement, the Press Release, the BLM News Release, and the letter from Ms. Nicholson all indicate that these meetings were informational meetings to inform the public about proposed federal legislation. Ms. Nicholson asserts that the meetings were not gatherings of members of any public body and that no quorum of any public body was present at any of the meetings. Instead, one Nye County commissioner was present at some of the meetings as was one Esmeralda County commissioners, but no quorum of commissioners from either Nye or Esmeralda County were present at any of the meetings. A "public body" subject to Nevada's Open Meeting Law must be a body of state or local government. NRS 241.015(3). A federal agency would not be subject to Nevada's Open Meeting Law. Additionally, a "meeting" which must be open to the public must be a gathering, or a series of gatherings, of a quorum of members of the public body, either individually or collectively. NRS 241.015(2). In this instance, no quorum of members of a body of a state or local government were present at these meetings. Therefore, the Open Meeting Law would not apply, and no violation of Nevada's Open Meeting Law could occur.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ____________________________
ELAINE S. GUENAGA
Senior Deputy Attorney General
Civil Division
(775) 684-1223

ESG:ms
cc: Rachel H. Nicholson, Esq.

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 24, 2002

Donald A. Lattin, Esq.
Walther, Key, Maupin, Oats,
Cox & LeGoy
Post Office Box 30000
Reno, Nevada 89520

Re: Open Meeting Law Complaint
Churchill County School District Board of Trustees
OMLO 2002-29/AG File No. 02-020

Dear Mr. Lattin:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, found in chapter 241 of the Nevada Revised Statutes. NRS 241.037.

I. The Current Complaint.

We have completed our investigation of the complaint filed by Anne Pershing, Editor, and Marlene Garcia, Reporter, of the *Lahontan Valley News* and *Fallon Eagle Standard* (complainants). Specifically, the complainants allege that the Churchill County School District Board of Trustees (Board) violated the Nevada Open Meeting Law on February 14, 2002, and April 11, 2002, during closed sessions held to consider "Personnel Matters in Accordance with NRS 241.030."

Complainants allege that the agenda for the February 14, 2002,[1] meeting failed to

[1] Action by this office under NRS 241.037(3) against any Board action taken during the February 14, 2002, meeting is now statutorily time barred.

adequately disclose that one of the items the Board would be voting on (in open session following the closed session) was the purchase of retirement credits for Superintendent of Schools Ron Flores (Superintendent). It is also alleged that the public was unaware of the amount of money being spent to buy retirement credits for six employees, including the Superintendent, because when the matter was voted upon in open session, no names or amounts were mentioned.[2] Complainants also believe that a confidential memo went to the Board with supporting information about the six buyouts and that this memo should be considered supporting material under NRS 241.020(5)(c).

Complainants acknowledge that the Board has responded in part to their request for disclosure of information related to the Board's vote on retirement buyouts on February 14, 2002. In response to their letter dated February 15, 2002, the Superintendent disclosed the total amount of money approved by the Board on February 14, 2002, for the purchase of retirement credits. Complainants assert that a breakdown of the buyout cost for each employee was lacking and should have been disclosed during an open meeting because it is public information.

Complainants further allege the February 14, 2002, closed session violated the Open Meeting Law because the Board discussed matters that were not within the statutory exception from the requirement for open meetings. Specifically, it is alleged the Board discussed two personnel matters, neither of which concerned the character, professional competence, physical or mental health, or alleged misconduct of an employee. NRS 241.030(1).[3]

The complaint also alleges further Open Meeting Law violations at the Board's April 11, 2002, meeting. At closed meetings the Board considered individual vouchers to pay the previously approved retirement buyouts that were the subject of the February 14, 2002, meeting. Two closed sessions were held—one before the open meeting and one immediately following the meeting. It is also alleged that the Board impermissibly discussed the Superintendent's buyout during a closed session, specifically why he had not submitted a letter of resignation in accordance with the Churchill County School District's (District) policy on retirement buyouts. It is contended that this discussion further violated the statutory prohibition against closed meetings. NRS 241.030(1).

II. The District's Response to the Complaint.

By letter from counsel for the Board, the Board generally denied that it was required by the Open Meeting Law to identify the specific amount of money utilized for the purchase of

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[2] Complainants received the Board's separate consent agenda prior to the meeting on February 14, 2002. That document named the six employees being considered for retirement buyout, including the Superintendent.

[3] First, complainants allege the Board discussed a requested extended leave of absence for Dr. Marie Cannata, and second, it is alleged that the Board discussed the abstention of one of the trustees from voting on hiring an assistant baseball coach because he is related to the individual under consideration.

retirement credits for District employees, and the Board defended its decision to not identify those employees for whom retirement credits were to be purchased by asserting confidentiality under the terms of the District's Collective Bargaining Agreement, as well as State personnel statutes.[4]

As to the complaint's allegations of a violation during the April 11, 2002, meeting, the Board's counsel responded by defending the Board's discussion during the closed meeting as falling directly within the exception provided in NRS 241.030(1). Board's counsel characterized the discussion as directly related to the character and competence of the Superintendent and that his character had been put directly in question.

III. The Previous Complaint.

Complainants filed a similar complaint against the Board in April 2000. It alleged supporting materials on employee buyouts were withheld from the public. In both the previous complaint and the current complaint, complainants charge that the Board's agenda fails to give clear notice of who or what will be discussed under "Personnel matters" in closed meetings. Complainants do acknowledge that those persons listed on the consent agenda were given statutory notice that they may be the subject of a closed session.

This office investigated the complainant's April 2000 complaint and concluded there were violations by the Board. It was found that the Board did discuss matters outside those allowed under NRS 241.030(1) and that the agendas did not meet the "clear and complete" requirements of NRS 241.020(1). This office reminded the Board to make sure the matter to be considered is indicated on the agenda as a closed session in order to comply with the letter and spirit of the Open Meeting Law. The name of the individual being discussed should be stated, but where confidentiality is a concern, the agenda should describe the individual as "employee," "an applicant," or some similar designation. Where the individual is to be the subject of action by the Board, the name of the person must be noticed on the agenda.

DISCUSSION

Our investigation of the complaint consisted of a review of the minutes of two regular meetings, the tapes of three closed sessions (one on February 14, 2002, and two on April 11, 2002), and review of supporting documents.[5]

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[4] Because no specific statutes were identified in its response and the Collective Bargaining Agreement has not been provided, counsel for the District was contacted by telephone for a more complete explanation. Counsel identified the Federal Right to Privacy Act, the United States Constitution, the Nevada Constitution, as well as State personnel statutes for authority for not releasing the names of the persons for whom retirement was purchased. Counsel for the District also stated that the Collective Bargaining Agreement between professionally licensed staff and the District required that matters involving personnel be kept confidential.

[5] Supporting documents include minutes and agendas for both regular meetings on February 14, 2002, and

The agenda issues that this office was critical of in 2000 regarding the need for an adequate description of closed sessions seems not to have been adequately remedied by the current Board. While closed sessions are announced and authorized according to statutory authority, the Board utilizes a consent agenda that is in addition to, but separate from, the regular agenda. The consent agenda specifies the names of persons under discussion and the nature of the action that is recommended. Board counsel states that the consent agenda is distributed to all those who have requested copies of the regular agenda, but it is not posted along with the regular agenda according to NRS 241.020(3)(a). We believe the minimum-posting requirement under NRS 241.020(3)(a) is for the consent agenda to be posted at the same time and place as the regular agenda.

The critical issue asserted by the complaint, whether denominated as an Open Meeting Law violation or, alternatively, as a public records law violation,[6] is whether the determination not to disclose during an open meeting the names of the affected District employees and the amount of money being spent to purchase retirement credit for each of them is a violation of the Open Meeting Law.

The spirit and policy behind NRS chapter 241 favors open meetings. Open meetings are the rule in Nevada, so the statute, which also contains the exception, must be strictly construed. *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986). There is one exception to the legislative mandate that all public bodies hold open meetings as an aid in the conduct of the people's business. NRS 241.030(1) states that a public body may close a meeting to "consider the character, alleged misconduct, professional competence, or physical or mental health of a person." No other exceptions are stated in chapter 241.[7] Counsel for the Board has asserted that a closed meeting is necessary to shield District employees because personnel matters are confidential and/or their right to privacy overrides the Open Meeting Law mandate of publicity even when the public's business is being transacted.

April 11, 2002, as well as the consent agenda for the February 14, 2002, meeting. Also reviewed were the Board's response to the complaint; a written summary of items discussed in closed session on February 14, 2002; the letter from the *Lahontan Valley News* dated February 15, 2002, which requested details of the retirement credit buyout; the Superintendent's response to the *Lahontan Valley News* request dated February 25, 2002; and Churchill County School District Policy Early Retirement Incentive Plan, Policy No. 4811, adopted June 23, 1994.

[6] NRS 239.010.

[7] The Legislature, in other NRS chapters, has enacted a series of exceptions to the legislative rule of publicity. *See* NRS 281.511(13), 286.150(2), 288.220, 630.336, 392.467(3). When the Legislature intends to make an exception to the rule of publicity, it does so *specifically by statute.* Exceptions to the rule of publicity will not be implied. *McKay v. Bd. of County Comm'rs*, 103 Nev. 490, 492, 746 P.2d 124, 125 (1987).

In 2001 the Legislature amended NRS 241.015 to redefine "meeting" under the Open Meeting Law to *not* include gatherings of a public body that receives information from its attorney regarding potential or existing litigation. This redefinition is not technically an exception to the Open Meeting Law. Act of June 5, 2001, ch. 378, § 1, 2001 Nev. Stat. 1836.

We believe the District's refusal to identify those employees and the amount of purchase of retirement credits for individual District employees is not properly the subject of a closed meeting. We base our determination upon the legislative declaration that all meetings are to be open and public so as to aid the carrying out of the public's business. NRS 241.010. The lack of any confidentiality provisions in the District's published Policy No. 4811 (Early Retirement Incentive Plan) and a review of relevant Nevada case law construing the Open Meeting Law, especially in the context of individual right to privacy, persuades us that the discussion of the purchase of retirement credits for District employees in closed personnel session is a violation of the Open Meeting Law. To the extent the Board chooses to discuss the purchase of retirement credits, it may not do so in a closed meeting. The following discussion of legal authorities supports our view.

That there is a constitutional right to privacy cannot be denied, yet the Supreme Court has cautioned that the concept remains largely undefined. *Whalen v. Roe,* 429 U.S. 589, 600 (1977). Fundamental personal rights to privacy are founded in the Fourteenth Amendment's concept of personal liberty. *Roe v. Wade*, 410 U.S. 113, 152-53 (1973). But Justice Stewart in a concurring opinion in *Whalen* took pains to carefully point out that:

> In *Katz v. United States*, 389 U.S. 347, the Court made clear that although the Constitution affords protection against certain kinds of government intrusions into personal and private matters, there is no "general constitutional 'right to privacy.' . . . [T]he protection of a person's general right to privacy – his right to be let alone by other people – is, like the protection of his property and of his very life, left largely to the law of the individual States. *Id.,* at 350-351 (footnote omitted).

Whalen v. Roe, 429 U.S. at 608. The issue raised by complainants is, in our judgment, a matter of state law rather than a fundamental right guaranteed by the constitution or a matter of federal law.[8]

In Nevada individual privacy rights of the affected employees must be balanced against

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[8] It is asserted that the Federal Right to Privacy Act (12 U.S.C. §§ 3401—3422) provides protection from disclosure of the amount of money spent to purchase each employee's retirement buyout credit. We disagree that this act is relevant to disclosure of each employee's buyout in an open meeting. The Right to Financial Privacy Act is designed "to protect the customers of financial institutions from unwarranted intrusion into their records while at the same time permitting legitimate law enforcement activity." *Beneficial Consumer Discount Co. v. Poltonowicz,* 47 F.3d 91 (3rd Cir. 1995), *quoting* H.R. Rep. No. 1383, 95th Cong., 2d Sess. 33 (1978). The Federal Right to Privacy Act limits access to financial records by "Government authorities," which are defined as any agency or department of the United States, or any officer, employee, or agency thereof. 12 U.S.C. § 3402 (2002).

the public's interest in disclosure.[9] There is no general or implied exception for "personnel records" under the Open Meeting Law. NRS 239.010 makes disclosure of all public records a matter of legislative mandate. Only records that are made confidential by law may be shielded from disclosure.[10] In a recent decision, the Nevada Supreme Court decided whether the disclosure of phone records and billings of publicly owned cell phones containing public employees' private telephone numbers could be disclosed to the media. *DR Partners v. Bd. of County Commissioners of Clark County*, 116 Nev. Adv. Op. 72, 6 P.3d 465 (2000). The court held that unredacted records must be disclosed because there was no expectation of privacy in the phone billings requested by the media. *Id.* at 19, 6 P.3d at 472.

As has already been pointed out, the names of the employees on whose behalf the Board purchased retirement credits has already been released on the consent agenda that accompanied the February 14, 2002, agenda. The total amount approved by the Board for the purchase of these credits, as well as the Superintendent's yearly salary, was also released to complainants and published in the *Lahontan Valley News*. *See Lahontan Valley News*, Vol. 99 No. 45, February 25, 2002. The disclosure of this information seems to us to militate against the asserted confidentiality of the remaining requested information.

The court in *DR Partners* considered the county commissioners' right to privacy defense on behalf of its employees. The court held that "to the extent that exigent circumstances are shown to justify non-disclosure, a district court reviewing such a claim is required to apply the *Bradshaw* balancing test." *DR Partners*, 116 Nev. Adv. Op. at 20, 6 P.3d at 472.[11] The exigent circumstances alleged by the county in *DR Partners* concerned compromise to the safety and privacy of public officials, police, and others that might result from the release of and publicity to their unlisted telephone numbers. The court rejected the county's arguments because the application of the *Bradshaw* balancing test is designed to address exigent circumstances, and moreover, the county offered no proof to assist the court to balance important privacy concerns

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[9] This office has previously opined on requests for help in determining whether public records are subject to disclosure. In each instance this office advised the requester that resolution turns on a balancing of public interests and private interests. *See* Op. Nev. Att'y Gen. No. 89-18 (November 1989) (application for employment, Reno Housing Authority); Op. Nev. Att'y Gen. No. 90-8 (April 1990) (death certificate); and Op. Nev. Att'y Gen. 90-15 (October 1990) (nurse's files maintained by State Board of Nursing).

[10] The Board has not asserted privilege as a defense to nondisclosure. We examined the relevant statutes regarding privilege but found nothing that provides protection. *See generally* NRS chapter 49. Additionally, we have reviewed the State's personnel regulations to determine if they are relevant to the issue presented. NAC 284.718 defines confidential records; however, it is only applicable to information held by the Department of Personnel or the personnel office of an agency. These regulations clearly do not apply to the District's employees, but even if they did, there is nothing in NAC 284.718 that would shield the Board from disclosure.

[11] In *Donrey of Nevada, Inc. v. Bradshaw*, 106 Nev. 630, 635, 798 P.2d 144, 147 (1990), the court approved a balancing test under which all the interests involved (public and private) must be considered when deciding whether to release records of criminal history pursuant to NRS 179A.100(5).

against the presumption of public disclosure. *Id.* at 20, 6 P.3d at 472. The Board's response to this complaint contained no explanation of exigent circumstances to justify nondisclosure. We understand that the Board feels that this information is simply confidential personnel information that cannot be released, thus there is nothing to balance against the public's interest in disclosure.

On the other hand, complainants assert that the public's interest in disclosure rests upon local concern as expressed in letters and public comment "questioning the amount spent in Churchill County on administrators' salaries as the budget cuts loomed." Application of the *Bradshaw* balancing test is a judicial function (*Donrey v. Bradshaw*, 106 Nev. at 635), but we believe that should a court apply the test to these facts it would support disclosure.

To the extent the Board is defending nondisclosure because the required information is confidential personnel information, we believe the Board has made a fundamental error.[12] Personnel matters may not be discussed in closed session with the exception of NRS 241.030(1). In 1986 the Nevada Supreme Court applied a strict reading of NRS 241.030(1) and held that the Nevada Legislature did not intend to allow an employee termination to be conducted in closed session. *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986). Termination of an employee is one of the most draconian personnel actions a public body can perform, a fortiori, the Board's purchase of retirement credits for individual employees, which is a lesser matter, should also be performed in open meeting.

CONCLUSION AND REQUEST FOR BOARD ACTION

Nevada's Open Meeting Law contains only one specific exception to the legislative mandate that public bodies conduct the people's business in open meetings. However, a public body may meet with its attorney to discuss litigation in a "non-meeting." NRS 241.015(2)(b)(2). The Nevada Supreme Court has narrowly construed that exception. In order to come within the exception a public body's discussion of an employee must specifically concern only the matters listed in NRS 241.030(1). In addition, the public records law makes all documents open to inspection by the public except those documents made confidential by law. We do not believe that public bodies can avoid the legislative mandate through contractual agreements that seek to make matters confidential that would not otherwise be so recognized under law. In fact, there

[12] Not every document or action concerning an employee can be categorized under the blanket designation of personnel record. The Supreme Court of Georgia rejected the University of Georgia's (University) assertion that a report made following an investigation into University academic programs containing candid evaluations of University personnel was a personnel record shielded from disclosure to the press pursuant to a statutory exception contained in Georgia's Open Records Act. It was not a personnel record because the court could find no personnel data such as: birth place, names of parents, addresses of residences, academic records, exam results, and work performance evaluations. *Athens Observer v. Anderson,* 263 S.E.2d 128 (1980). This list is of course a nonexhaustive list and merely illustrates the analysis one court applied. Georgia has a statutory exception for personnel records unlike Nevada, yet the court still declined to accept the University's blanket designation of the report as a personnel record simply because the University sought shelter there. In our view, merely labeling a document or discussion as a personnel record does not automatically shield the matter from the public's view.

are more than 200 entries in the NRS Index under the heading Confidential and Privileged Information, making it clear that the Legislature visits this issue often. Nevertheless, we recognize that other matters including certain personnel matters could be confidential even if not made confidential by statute. The *Bradshaw* balancing test implicitly recognizes that exigent circumstances justify the confidentiality of certain matters not otherwise covered by one of the two hundred or so statutory entries. These determinations can be made on a case-by-case basis. Other confidential matters such as student discipline hearings and teacher license applications are contained in statutes elsewhere.

Our review of the tapes of the closed meetings reveals that the discussion of the Superintendent's retirement buyout on April 11, 2002, was really a discussion of why he had not complied with the Board's policy (No. 4811, Early Retirement Incentive Plan) and submitted a resignation letter at the same time he asked the Board to purchase retirement credits under the policy. We discerned no discussion of matters concerning his character, competence, physical or mental health, or misconduct. We believe the Board should have discussed whether the Superintendent had complied with the policy in open meeting.

Similarly, the discussion of Dr. Maria Cannata's request for an extended leave of absence should not have been the subject of a closed meeting. The basis for her request for an extended leave of absence had nothing to do with her character, competence, alleged misconduct, or physical or mental health. The Board has not provided any basis for keeping such a discussion confidential when weighed against the legislative mandate. Similarly, the short announcement by one of the Board members that he is related to an applicant for the job of assistant baseball coach and would be abstaining from voting should also have been made in an open meeting.

The final issue raised by complainants is whether the Board should disclose the names of individual employees and the amount of money being spent to purchase retirement credits from the Public Employees Retirement System. A companion issue is whether the Board should also disclose any "confidential" memo that went to the Board prior to the closed meeting on February 14, 2002, containing supporting information about the six buyouts. NRS 241.020(5)(c).

We have already determined that the Board disclosed six names in a consent agenda published separately from the open meeting agenda. We believe this agenda should be posted along with the regular agenda in order to meet the minimum posting requirements of NRS 241.020(3).

The Board's vote on these matters, including individual vouchers, should have been in an open meeting, and the individual amounts for each buyout should have been disclosed. Once again, we believe that when the interests of the individual employees are balanced against the public's interest in disclosure, the public's interest in disclosure predominates. In fact, the Board has not presented any "exigent circumstances" supporting its designation of the procedure as

confidential personnel matters.

However, NRS 241.020(5)(c)(1) allows a public body to shield from disclosure supporting materials "submitted to the public body pursuant to a nondisclosure or confidentiality agreement." If the Collective Bargaining Agreement specifically makes the supporting materials related to retirement buyouts confidential, then those supporting materials may remain confidential, but the discussion of the matter and vote should be taken in open meeting.

We respectfully request the Board consider adopting the recommendations made in this letter regarding retirement buyouts and disclosure of the names of the affected employees and amounts being expended. Because of the prior complaint and finding by this office of prior violations of the Open Meeting Law, we ask that the Board adopt, by resolution, the recommendations for administering its Early Retirement Incentive Plan at its next scheduled Board meeting. We intend to hold this matter open pursuant to NRS 241.037 until the Board has had a chance to consider our recommendations.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
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GHT:py
c: Anne Pershing, Editor
Marlene Garcia, Reporter

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 24, 2002

Mr. Jim Slade
589 Leealan Drive
Gardnerville, Nevada 89410

Re: Open Meeting Law Complaint
Douglas County Board of Commissioners
OMLO 2002-30/AG File No. 02-022

Dear Mr. Slade:

This office has primary jurisdiction to enforce the provisions of Nevada's Open Meeting Law, chapter 241 of the Nevada Revised Statutes (NRS). On April 29, 2002, this office received a complaint from you alleging an Open Meeting Law violation by the Douglas County Board of Commissioners (Board) at its March 7, 2002, meeting. Specifically, you allege in your complaint that by voting to reclassify 39.09 acres as described in Agenda Item No. 37 from rural residential to receiving area, the Board violated NRS 241.020 because Agenda Item No. 37 was not a clear and complete statement of the topic considered and acted upon by the Board.

DISCUSSION

This office began its investigation of the complaint by requesting from Barbara Reed, the Douglas County Clerk-Treasurer, copies of the agenda, audiotapes, and minutes from the March 7, 2002, meeting as well as the February 12, 2002, and April 9, 2002, meetings, which you referenced in your complaint. Barbara Reed and her staff commendably provided the requested items as well as additional items relating to Agenda Item No. 37 of the March 7, 2002, meeting and your complaint. This office then contacted Scott Doyle, the Douglas County District Attorney, requesting additional legal information regarding receiving areas as contemplated by the Douglas County Code and Master Plan. Scott Doyle commendably

provided detailed information, legal research, and analysis regarding the same. This office has reviewed the above requested and received items and the law thereto.

Agenda Item No. 37 of the March 7, 2002, meeting states as follows:

> **37.** DISCUSSION AND POSSIBLE ACTION ON DEVELOPMENT APPLICATION 01-175 FOR MARSHA TOMERLIN, A MASTER PLAN MAP AMENDMENT TO RECLASSIFY THE LAND USE DESIGNATION OF APPROXIMATELY 39.09 ACRES (APN 1420-29-801-001) LOCATED AT THE NORTH EAST CORNER OF STEPHANIE WAY AND HEYBOURNE ROAD FROM RURAL RESIDENTIAL TO SINGLE-FAMILY ESTATES AND A ZONING MAP AMENDMENT CHANGING THE ZONING FROM RA-5 (RURAL AGRICULTURAL-FIVE ACRE MINIMUM NET PARCEL SIZE) TO SFR-1 (SINGLE-FAMILY RESIDENTIAL-ONE ACRE MINIMUM NET PARCEL SIZE) (approx. 45 min)

ANALYSIS

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. *Id*. The clear and complete standard is one of reasonableness, keeping in mind the spirit and purpose of the Open Meeting Law. OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001).

The agenda, audiotapes, and minutes of the March 7, 2002, meeting concerning Agenda Item No. 37 reveal that the Board addressed an application for zoning change for a specifically identified piece of real property and took action by designating the area as a "receiving area" under the master plan. Agenda Item No. 37 provided that the Board would be discussing and possibly taking action on a development application for a certain piece of real property under a master plan map amendment. The applicant's name was specifically stated, the application number was specifically stated, and the exact location of the real property was specifically stated. The question therefore becomes whether Agenda Item No. 37 was clear and complete under NRS 241.020 such that the public knew, or reasonably should have known, that action could be taken on a specific piece of real property.

The "clear and complete" agenda requirement was added to the Open Meeting Law in 1989 by the Act of June 6, 1989, ch. 271, § 1, 1989 Nev. Stat. 570 (S.B. 140). The "clear and complete" language of S.B. 140 was introduced by Senator Ann O'Connell and approved as introduced. Senator O'Connell testified before the Assembly Committee on Government Affairs regarding the extensiveness of the "clear and complete" language. Senator O'Connell stated that the language was to provide the public with enough information to allow the public to know whether attending the meeting would be "worth their time, whether it is a subject they are interested in, and whether they would need more information on subject." *Hearing on S.B. 140 Before the Assembly Committee on Government Affairs*, 1989 Legislative Session, 42 (May 10, 1989).

It is clear that the intent and purpose of NRS 241.020 is to provide the general public with notice that discussion and possible action, if relevant, may be had with respect to a particular topic such that the public would know whether attending the meeting would be worth their time, whether it is a subject they are interested in, or whether they need more information on the subject to make those determinations.

In applying the "clear and complete" standard, this office previously adopted the reasoning of *Texas Turnpike Auth. v. City of Fort Worth*, 554 S.W.2d 675 (Tex. 1977), wherein the supreme court of Texas stated: "There is no necessity to post copies of proposed resolutions or to state all of the consequences which may necessarily flow from the consideration of the subject stated." *Id*. at 676.

CONCLUSION

Accordingly, in this instance, the general public was on notice that discussion and possible action would be taken on a certain piece of real property as described in the agenda. The Board discussed an application for a zoning change under the Douglas County master plan for a certain piece of real property as well as alternatively designating that same piece of real property as a receiving area. The Board then took action to designate that property as a receiving area. We note that a review of the county ordinances of Douglas County as presented by Scott Doyle reveals that a "receiving area" is part of the county's code with respect to zoning districts and regulations. Therefore, a designation of the certain real property in Agenda Item No. 37 as a "receiving area" is a consequence that could reasonably and necessarily flow from the consideration of the application for a zoning change under the master plan. That the consequence of designating the property as a receiving area was not specifically stated in Agenda Item No. 37 does not negate the fact that the notice under Agenda Item No. 37 was clear and complete as required by NRS 241.020.

The general public was on notice that there would be discussion and possible action with respect to a specifically stated piece of real property. The general public was provided with the information to know whether attending the meeting would be worth their time, whether it was a subject they would be interested in, or whether they would need more information on the subject to make those determinations.

The holding in *Texas Turnpike Auth.* is consistent with other jurisdictions. *See The State ex rel. Stiller v. Columbiana Exempted Village School Dist. Bd. of Educ.*, 656 N.E.2d 679, 683 (Ohio 1995) (Voting on the adoption of an employee's evaluation is ancillary to the general purpose of voting on the employee's contract for purposes of notice); *Rush v. Elkhart County Plan Comm'n*, 698 N.E.2d 1211, 1216 (Ind. Ct. App. 1998) (Notice is sufficient if it includes a summary of a request/application such that an average reader would have reasonable warning that land may be affected or that the reader should inquire further); *Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 664 N.E.2d 1226, 1232 (N.Y. 1996) (Notice of action with respect to a zoning proposal is satisfactory if it is stated with reasonable precision such that the public is alerted to potential and contemplated actions); *Interlaken Homeowners' Ass'n v. City of Saratoga Springs*, 700 N.Y.S.2d 293, 297 (N.Y. App. Div. 1999) (Notice advising of changes to zoning law is sufficient if it "fairly apprises the public of the fundamental character of the proposed zoning change"); *Chess v. Pima County*, 613 P.2d 1289, 1290 (Ariz. 1980) (Notice is adequate if it "affords an opportunity to any person, by the exercise of reasonable diligence, to determine if his property would be affected and to what extent").

Accordingly, no violation of the Open Meeting Law occurred. Thank you for your interest in the Open Meeting Law.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
MARK J. KRUEGER
Deputy Attorney General
Commerce Section
(775) 684-1213
mjkruege@ag.state.nv.us

MJK:kh
cc: Douglas County Board of Commissioners
Scott Doyle, Douglas County District Attorney

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

July 1, 2002

James Huckaby
Lyon County School Board of Trustees
Post Office Box 402
Fernley, Nevada 89408

Re: Open Meeting Law Complaint
Lyon County School Board of Trustees
OMLO 2002-31/AG File No. 02-024

Dear Mr. Huckaby:

The Office of the Attorney General has primary jurisdiction to investigate and prosecute complaints alleging violations of the Open Meeting Law, Nevada Revised Statutes chapter 241.

Your letter, received May 2, 2002, contains five separate alleged Open Meeting Law violations by the Lyon County School Board of Trustees (Board). This office has jurisdiction to investigate and take action, if appropriate, regarding the alleged Open Meeting Law violations. However, we do not have jurisdiction as to your other concerns, and those are not addressed in this opinion.

This office has reviewed the agendas, minutes, audiotapes of the meetings, and other documents submitted by you, the Lyon County School Board of Trustees, and the Board's counsel.

FACTS

Your complaint alleges violations of the Open Meeting Law that occurred during the November 27, 2001, December 11, 2001, and January 22, 2002, meetings of the Board. These

are time-based allegations and pursuant to NRS 241.037, we no longer have jurisdiction to address these allegations.

During the closed session portion of the April 9, 2002, meeting, discussions were conducted regarding the classified negotiations process that was ongoing between the Board and an employee group. The agenda from the April 9, 2002, meeting of the Board provided in pertinent part:

LYON COUNTY BOARD OF SCHOOL TRUSTEES MEETING
TUESDAY, APRIL 9, 2002, 7:00 PM
SMITH VALLEY SCHOOLS
SMITH, NEVADA

. . . .

32 Personnel

a) Note: Action may be taken on some or all items agendized within this section rather than individually.
b) Action to hold a closed session to discuss character, competence, physical or mental health or alleged misconduct may be held with regard to any or some of the items listed under this topic.

. . . .

4) Other Considerations as required: (closed session may be held)
   a) Labor/Management Discussions/Negotiations Pursuant to NRS 288
   b) Employee(s) Performance
   c) Terminations, Arbitrations
   d) Grievances
   e) Non-Renewal of Contracts
   f) Use of Aversive Intervention

On April 30, 2002, an attempt was made, according to the agenda, to discuss and possibly act regarding a potential Open Meeting/Personnel violation of the Open Meeting Law. Specifically, an attempt was made to discuss an agenda item labeled "Discussion and Possible Action Regarding Potential Open Meeting/Personnel Violation of the Open Meeting Law." However, before any discussion could occur, you stated that you had not received proper notice that the Board would be discussing your character or alleged misconduct. The Lyon County District Attorney agreed that proper notice was not given, and the agenda item was continued to the May 28, 2002, Board meeting.

ANALYSIS

NRS 241.036 provides the action of any public body taken in violation of any provision of this chapter is void.

A review of the April 9, 2002 and April 30, 2002 meetings, and the alleged Open Meeting Law violations reveals the following:

During the April 30, 2002, meeting of the Board, no action was taken by the Board regarding your alleged misconduct. More importantly, no discussion of the agenda item was allowed because of an admitted failure to provide you with proper notice of the agenda item.

Although not a part of this Open Meeting Law opinion, because the events occurred after the Open Meeting Law complaint was filed, at the May 28, 2002 meeting, the Board decided not to pursue the agenda item against you.

No violation of the Open Meeting Law occurred at the April 30, 2002, meeting because any possible violation was avoided when discussion of the agenda item was continued because of lack or proper notice.

Your complaint also alleges that the Board's president improperly allowed the superintendent to introduce information and a request for a salary increase during the closed session of the April 9, 2002, meeting that was not on the agenda.

NRS 241.020(1) requires all meetings of public bodies to be open and public, unless otherwise provided by a specific statute. In this matter, there is a specific statute that exempts the Board from discussing the administrative salary negotiations in an open meeting. Specifically, NRS 288.220 provides in pertinent part:

> The following proceedings, required by or pursuant to this chapter, are not subject to any provision of NRS which requires a meeting to be open or public:
> 1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.

Thus, pursuant to NRS 288.220, the Board was able to conduct the administrative salary negotiations in a closed session.

However, a recent Open Meeting Law Opinion provides the Board must still properly identify the agenda item and indicate that the Board was closing the meeting pursuant to the

NRS 288.220 exception. *See* OMLO 2000-28 (September 7, 2000). A review of the Board's agenda for the April 9, 2002, meeting reveals the agenda did provide a reference to NRS 288, that labor/management negotiations might be discussed, and a closed session was possible. Thus the April 9, 2002, agenda was sufficient notice under the Open Meeting Law, and no violation occurred.

CONCLUSION

For the above stated reasons, we find no violation of the Open Meeting Law.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ____________________________
FREDERICK R. OLMSTEAD
Deputy Attorney General
Civil Division
(775) 688-1815

FRO:mas
cc: Donald A. Lattin, Esq.

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

July 19, 2002

Rusty Kiel, Manager
Lovelock Meadows Water District
Post Office Box 1021
Lovelock, Nevada 89419

Re: Open Meeting Law Complaint
Lovelock Meadows Water District
OMLO 2002-32/AG File No. 02-023

Dear Mr. Kiel:

This office has primary jurisdiction to investigate alleged violations of the Open Meeting Law, NRS chapter 241. We have received a complaint that the Board of the Lovelock Meadows Water District (Board) held two closed meetings to conduct employee negotiations but conducted business other than employee negotiations during those meetings.

We have interviewed members of the Board, staff of the Board, and others present at the two meetings in question. We have also reviewed an agenda of a past Board meeting. Although the recollections of some people present at the meetings differs somewhat from others, we have been able to determine that the following facts did occur.

FACTS

On April 25, 2002, three of the five members of the Board and the manager held a nonagendized, nonposted meeting with the Lovelock Meadows Water District Employees Association (District) for the purpose of contract negotiations. Each of these three members has authority to sign checks. During this meeting, staff for the Board delivered checks and vouchers

for the signature and approval of Board members. The Board members present signed the checks and approved the vouchers.

Generally, for the convenience of staff, checks are signed during Board meetings. Checks require the signature of two Board members. Vouchers are approved by formal Board action during its meetings. However, there are times that checks are signed individually by two Board members outside of a meeting so that the District may timely pay its bills. There are times when the checks are signed prior to the approval of the voucher by the Board. In those cases, the voucher is retroactively approved at the next Board meeting.

On May 14, 2002, the Board had posted a regularly scheduled meeting of the Board. Because of a dispute between Board members, this meeting was adjourned before the Board's business was conducted. Three Board members proceeded to meet with the Board's attorney and the manager in the District manager's office, outside of a public setting. The manager and all the board members present at the meeting stated that the only subject discussed was the status of employee contract negotiations.

ANALYSIS

NRS 241.020(1) requires all meetings of "public bodies" to be open and public, unless otherwise provided by a specific statute. The Board is a public body subject to the Open Meeting Law. NRS 241.015(3). Except in the case of an emergency, NRS 241.020(2) requires a public body to post written notice of its meetings at least three working days before the meeting. The notice must include an agenda consisting of a clear and complete statement of the topics scheduled to be considered during the meeting, a list describing the items on which action may be taken and clearly denoting that action may be taken on those items, and a period for public comment. NRS 241.020(2). The notice must be posted in the principal office of the public body, or if there is no principal office, at the place in which the meeting will be held, and at not less than three other prominent places within the jurisdiction of the public body. NRS 241.020(3).

NRS 288.220 provides an exemption from the Open Meeting Law in certain circumstances. NRS 288.220 provides as follows:

The following proceedings, required by or pursuant to this chapter, are not subject to any provision of NRS which requires a meeting to be open or public:

> 1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.
> 2. Any meeting of a mediator with either party or both parties to a negotiation.
> 3. Any meeting or investigation conducted by a fact finder.

> 4. Any meeting of the governing body of a local government employer with its management representative or representatives.
> 5. Deliberations of the board toward a decision on a complaint, appeal or petition for declaratory relief.

Three members of the Board constitute a quorum. A meeting of the Board occurs if three members gather to deliberate toward a decision or to take action on any matter over which the Board has supervision, control, jurisdiction or advisory power, unless a specific exemption exists.

The April 25, 2002, meeting was exempt from the requirements of the Open Meeting Law to the extent that the meeting consisted of negotiations between the Board and the Lovelock Meadows Water District Employees Association. However, the Board went beyond these negotiations when it approved vouchers for payment. Although the signing of checks did not require or constitute Board action, the approval of vouchers did require and constitute Board action. Three members of the Board were present and thus a quorum existed. A quorum therefore approved the vouchers for payment outside of an open, public meeting. Therefore, we find that the Board violated the Open Meeting Law when it approved vouchers for payment on April 25, 2002.

The meeting on May 14, 2002, in the manager's office apparently constituted a meeting of the governing body with its management representatives pursuant to NRS 288.220(4). Therefore, it was exempt from the Open Meeting Law. We have no evidence that would suggest that the Board strayed from the topic of employee negotiations during this meeting.

CONCLUSION

We conclude that the Board did violate the provisions of the Open Meeting Law when it approved vouchers for payment during a nonpublic meeting on April 25, 2002, but did not violate the Open Meeting Law in holding a nonpublic meeting held on May 14, 2002. We do not believe that legal action is warranted at this time. However, we strongly caution you that when a quorum of the Board is present at a meeting that falls within the provisions of NRS 288.220, the Board must stay strictly on such topic and must not discuss or take action on any matter within

the supervision, control, jurisdiction, or advisory power of the Board. Future violations of this type may warrant legal action to ensure that the Board strictly follows the Open Meeting Law.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML/br
cc: Pershing County District Attorney
Steve Evenson

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

July 25, 2002

Charles S. Zumpft, Esq.
Brooke, Shaw, Plimpton, and Zumpft
1590 Fourth Street, #100
Minden, Nevada 89423

Re: Open Meeting Law Complaint
Town of Gardnerville
OMLO 2002-33/AG File No. 02-028

Dear Mr. Zumpft:

On June 25, 2002, this office received a letter from you dated June 24, 2002, in which you made a complaint with this office alleging that the Board for the Town of Gardnerville (Town Board) had possibly violated the Open Meeting Law at a meeting on June 4, 2002. You allege that the Town Board's agenda did not properly notice the public of the action that might be taken with regard to ballot advisory questions. You also allege that the agenda failed to provide any notice as to the topics for advisory questions on which the Town Board took action and that this violated NRS 241.020 because the agenda item was not a clear and complete statement of the topic considered and acted upon by the Town Board.

DISCUSSION

This office has primary jurisdiction to investigate violations of the Open Meeting Law pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by requesting a copy of the agenda for June 4, 2002 minutes from that meeting and a copy of the audiotapes of the meeting. The requested information was provided, as well as a letter from Michael Smiley Rowe, General Counsel to the Gardnerville Town Board, and an affidavit of James E. Park, Jr., Town Manager of the Town of Gardnerville (Town).

Agenda item No. 24 states, "**TOWN MANAGER** - 24. Discussion and possible action on possible ballot advisory questions (Town) and bill draft requests (NLC sponsored) for the next legislative session. (approx 15 minutes)."

The complaint alleges that the Town Board's agenda did not properly notice the public of the action that might be taken with regard to ballot advisory questions. Specifically, the Town Board acted to place an advisory question on a ballot as to whether the Town should replace the Gardnerville Town Water Company (Water Company) as the provider of water, but no reference to the Water Company appears in the agenda. The complaint further alleges that it was clear from the discussion that took place at the meeting that the issue of the Town becoming the water purveyor was intended all along.

The minutes of the June 4, 2002, meeting and the audiotape indicate that the agenda item was one where the Town Manager presented information on bill draft requests discussed at meetings with the Nevada League of Cities, and also stated the deadline for general election ballot advisory questions. The Chairman then stated that based on comments made at that meeting about the water situation, he would recommend that an advisory question be put on the ballot regarding whether the people of Gardnerville would desire the Town to be the water provider. His recommendation appears to be prompted by comments made by members of the public earlier at the June 4, 2002, meeting. While the Chairman and the Town Manager may have been aware of concerns over the water provider situation prior to the meeting, the record reflects that it was the comments made at the meeting that prompted putting the advisory question on the ballot.

ANALYSIS

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. *Id*. The purpose of the clear and complete standard is that the public will receive notice in fact of what is to be discussed by the public body. The question is whether the description of Agenda Item No. 24 was clear and complete and sufficient to put members of the public on notice as to what would be discussed and what possible action would be taken. The agenda item in this case was of a somewhat broad nature, to encompass possible ballot advisory questions in general. The action taken by the Town Board was specific as to the issue of the Town becoming a water provider.

The issue of whether an agenda item is clear and complete, and whether a particular matter is encompassed within the agenda description, is determined on a case-by-case basis. *See, e.g., Shirley v. Beauregard Parish School Board*, 615 So.2d 17, 19-20 (La. App. 1993). Under Nevada law, an agenda item must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body. A standard of reasonableness should be used and the spirit and purpose of the Open Meeting Law should be kept in mind when preparing the agenda. *See* OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001). The use of general or vague language as a mere subterfuge should be avoided. *Id*. Use of broad or unspecified categories in an agenda should be restricted only to those items in which it

cannot be anticipated what specific matters will be considered. *Id*. In this situation, it appears that the Town Board could have had comments and requests by the public for other advisory questions, ones that could not all have been anticipated by the Town Board. Therefore, a broad description like the one used appears appropriate. Additionally, in this instance, the Town Board acted to go forward with preparing an advisory question to be placed on the general election ballot.

CONCLUSION

The specific advisory questions, and a resolution proposed for the Board to adopt an advisory question, were the subject of a duly and properly noticed meeting conducted on July 2, 2002, and also on July 10, 2002. Therefore, we find no violation of the Open Meeting Law. However, the Town Board is cautioned to be as specific as possible when preparing its agendas and if specific matters are anticipated to be discussed then those matters should be specifically set forth in the agenda.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ____________________________
ELAINE S. GUENAGA
Senior Deputy Attorney General
Civil Division
(775) 684-1223

ESG:jm

cc: Jim Park, President
Town of Gardnerville Board

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 2, 2002

Robert L. Thran
Lyon County School Board of Trustees
Post Office Box 133
Wellington, Nevada 89444

Re: Open Meeting Law Complaint
Lyon County School Board of Trustees
OMLO 2002-34/AG File No. 02-026

Dear Mr. Thran:

The Office of the Attorney General has primary jurisdiction to investigate and prosecute complaints alleging violations of the Open Meeting Law, Nevada Revised Statutes chapter 241.

Your letter, received June 12, 2002, contains two separate alleged Open Meeting Law violations by the Lyon County School Board of Trustees (Board). This office has jurisdiction to investigate and take action, if appropriate, regarding the alleged Open Meeting Law violations.

This office has reviewed the agendas, minutes, audiotapes of the meetings, and other documents submitted by you, the Lyon County School Board of Trustees, and the Board's counsel.

FACTS

Your complaint alleges violations of the Open Meeting Law that occurred during the May 15, 2002, and May 28, 2002 meetings of the Board. Specifically, you allege the character of a person was discussed in closed session without that person first receiving notice that he might be discussed.

During the open session portion of the May 15, 2002, meeting, a former teacher made comments to the Board during the agenda item number 20 labeled Discussion /Action on Teacher Retention. Some of the former teacher's comments were critical of the administration, school programs, and parents.

With the exception of two Board members thanking the former teacher for speaking, the Board did not comment to or about the former teacher in the open session.

During the closed session portion of the May 15, 2002 meeting, several members of the Board made remarks about the former teacher's presentation.

During the closed session portion of the May 28, 2002, meeting, the Board questioned their counsel about the events of the May 15, 2002 meeting. The Board's counsel provided advice to the Board about how to better control public meetings through the use of agendas and time management.

ANALYSIS

NRS 241.033 provides that a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting.

A review of the May 15, 2002, and May 28, 2002 meetings, and the alleged Open Meeting Law violations reveals the following:

During the open session of the May 15, 2002 meeting, under agenda item 20 entitled "Discussion/Action on Teacher Retention" the former teacher made comments and he was thanked for appearing and making those comments. Clearly, no violation of the Open Meeting Law occurred during this part of the May 15, 2002 meeting.

During the properly noticed closed session of the May 15, 2002, meeting, under agenda item 32, entitled "Personnel" several Board members who felt their character and competence had been questioned by the former teacher's comments made remarks about the former teacher. However, the Board was not required by NRS 241.033 to give notice of the time and place of the closed meeting at which the remarks concerning the former teacher were made because the meeting was not held for the purpose of considering, and the Board did not deliberate over, think about seriously and carefully, make any judgments about or otherwise consider the character, alleged misconduct, or professional competence of the former teacher during the closed session. *See* OMLO 1999-22 (April 7, 1999). Therefore, no violation of the Open Meeting Law occurred.

During the properly notice closed session of the May 28, 2002 meeting, under agenda item 32, entitled "Personnel," the Board did not discuss, consider, or deliberate over the former teacher. Instead, the Board asked questions of the Board's counsel about how to avoid a repeat of the situation. In response to the questions, Board counsel provided legal advice. Again, the Board was not required to provide notice to the former teacher because the meeting was not held for the purpose of considering, and the Board did not deliberate over, think about seriously and carefully, make any judgments about or otherwise consider the character, alleged misconduct, or professional competence of the former teacher during the closed session. Therefore, no violation of the Open Meeting Law occurred.

CONCLUSION

For the above stated reasons, we find no violation of the Open Meeting Law.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ____________________________
FREDERICK R. OLMSTEAD
Deputy Attorney General
Civil Division
(775) 688-1815

FRO:mas
cc: Donald A. Lattin, Esq.

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 6, 2002

Kenneth E. Gushen, Chairman
North Lyon County Fire Protection District
195 East Main Street
Fernley, Nevada 89408

Re: Open Meeting Law Complaint
Lyon County Protection District
OMLO 2002-35/AG File No. 02-027

Dear Mr. Gushen:

Thank you for your response and supporting documentation included in your correspondence dated July 3, 2002, with regard to the above matter. As you may know, pursuant to Nevada law, the Office of the Attorney General has primary jurisdiction for investigating and prosecuting complaints alleging violation of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

As you also know, this office received a complaint from Martin Jensen dated June 23, 2002, alleging that the Lyon County Protection District through its Board of Commissioners (Board) violated the Open Meeting Law at or near the June 4, 2002, meeting.

FACTS

We have reviewed the agenda, minutes, tape recorded transcript of the meetings, as well as all other documents provided by Mr. Jensen in order to address his concerns. I have also spoken with you to determine whether or not an Open Meeting Law violation occurred. Specifically, Mr. Jensen appears to be concerned about a potential informal gathering among the

Board that resulted in a change in his job responsibilities in violation of the Open Meeting Law as such decisions are to be made during an open meeting. However, in light of our investigation, we will also address whether the Notice of Reprimand was issued in compliance with the Open Meeting Law.

First, it is my understanding that on or about September 4, 2001, the Board issued Policy Statement 2001-6, which required Mr. Jenson to address payment of invoices by compiling certain information in a particular way. Policy 2001-6 was included on the agenda and addressed during three open meetings and implemented during an open meeting in 2001. In addition, one of the Board members met with Mr. Jenson during that same time period to describe the program to be utilized and to provide a description of how to compile the invoice and payment information.

As of the June 4, 2002 meeting, those procedures were not being implemented by Mr. Jensen, resulting in a Notice of Reprimand served upon Mr. Jensen on or about June 11, 2002. Discussion during the June 4, 2002, hearing did not result in any action but addressed concerns by the Board regarding the accuracy of the information pertaining to invoices as provided by Mr. Jensen. Our investigation did not discover any informal meetings between two or more members of the Board, nor did we find any action taken outside of an open meeting regarding any change in job responsibilities of Mr. Jensen.

Second, Mr. Jensen also makes reference to an inventory he was asked to conduct in accordance with a memorandum from Lyon County Manager Steve Snyder. It is our understanding that the inventory is a job responsibility of Mr. Jensen and has been for more than twenty years. It is unclear whether Mr. Jensen considers the inventory to be an additional job responsibility that was determined to be his responsibility by the Board outside of an open meeting. However, we address this matter to ensure that all issues potentially raised in his complaint are addressed. Our investigation did not reveal any informal meeting adding this responsibility to Mr. Jensen's duties.

Finally, the information provided shows that Mr. Jensen was provided a Notice of Reprimand on or about June 11, 2002, that he apparently refused to sign. The Notice of Reprimand pertained to failure to comply with Policy 2001-6 and requested that the invoice and payment information be compiled consistent with the requirements of 2001-6 within 30 days. The action to issue the Notice of Reprimand was not addressed during a public meeting nor was Mr. Jensen provided notice of said consideration.

ANALYSIS

The issue herein is whether the Board violated the Open Meeting Law by conducting informal meetings outside of an open meeting in an effort to alter the job responsibilities of Mr. Jensen.

Pursuant to NRS 241.015(2)(a)(1) of Nevada's Open Meeting Law (OML), a "meeting" means the "gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power."

Further, the Office of the Attorney General believes that if a majority of the members of a public body should gather, even informally, to deliberate toward a decision or to take any action on any matter over which the public body has supervision, control, jurisdiction, or advisory power, it must comply with the Open Meeting Law. *Cf.* Op. Nev. Att'y Gen. No. 241 (August 24, 1961).

First, with regard to the job responsibility of compiling invoice and payment information in a computer program, our investigation did not reveal any informal meetings among or between the Board involving a change in this particular job responsibility of Mr. Jensen as set forth in Policy 2001-6. An attempt was made to enforce the responsibilities in the Notice of Reprimand. There also does not appear to be any evidence that the job responsibilities of Mr. Jensen were changed during the open meeting held on June 4, 2002. The records reflect a discussion of the accuracy of the records pertaining to invoices and payment thereof.

As set forth above, Policy 2001-6 was properly implemented in 2001 requiring Mr. Jensen to maintain invoice and payment information utilizing a particular program. This job responsibility has not been altered by the Board either in an informal meeting or during an open meeting other than to implement the job duty in 2001 in relation to Policy 2001-6.

Second, our investigation also revealed that the inventory to be conducted pursuant to the request of the Lyon County Manager was and has been a responsibility of Mr. Jensen for many years. That obligation has not been added or changed as a result of any meetings of the Board outside of an open meeting.

Finally, the main concern of this office is action taken by the Board in issuing the Notice of Written Reprimand without complying with open meeting requirements as discussed below.

Under NRS 241.033(1), "a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person *unless* it

has given written notice to that person of the time and place of the meeting." This applies whether the meeting will be open or closed.

It is my understanding that Mr. Bill Clegg issued the Notice of Reprimand without discussion or deliberation with any other Board member and that he issued the Notice because he is responsible for overseeing the financial responsibilities of Mr. Jensen. Although this would not be considered a "meeting" as it involved only one person, our concern is that action was taken against Mr. Jensen to reprimand him without notice and an open meeting. Mr. Clegg took action on behalf of the North Lyon County Fire Protection District, which could be considered action taken on behalf of the Board.

CONCLUSION AND RECOMMENDATION

In applying the standards set forth herein, the Board did not violate the Nevada Open Meeting Law with regard to the job responsibilities of Mr. Jensen. The issuance of the Notice of Reprimand without notice to Mr. Jensen and failure to make the decision during an open meeting would be a violation of the Open Meeting Law.

It is the recommendation of this office that if the Board intends to take action such as a written reprimand against an employee, such action must comply with the Nevada Open Meeting Law as set forth above, which includes, but is not limited to, providing the individual with notice and addressing the matter during an open session.

Although the Board is hereby reprimanded for the above-referenced violation of the Open Meeting Law, it appears that the violation was unintentional. Accordingly, in lieu of other legal action, we respectfully request that all future action taken against an employee be in compliance with the Nevada Open Meeting Law. Your cooperation and willingness to address this matter is appreciated.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ____________________________
GABRIELLE J. CARR
Deputy Attorney General
Civil Division

(775) 688-1958

cc: Martin Jensen
David Guinan, Esq.

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 9, 2002

Esmeralda County Board of Commissioners
Post Office Box 517
Goldfield, Nevada 89013

De Ann Siri
Esmeralda County Clerk and Treasurer
Post Office Box 547
Goldfield, Nevada 89013-0547

Joe Elsea, Chair
Esmeralda County
Employee Management Committee
c/o Office of the District Attorney
Post Office Box 339
Goldfield, Nevada 89013-0339

Re: Open Meeting Law Complaint
Esmeralda County
OMLO 2002-36/AG File No. 02-032

Dear Commissioners, Ms. Siri, and Mr. Elsea:

had agreed that the Committee is entitled to listen to the audiotape.

DISCUSSION

This office has primary jurisdiction to investigate violations of the Open Meeting Law, pursuant to NRS 241.037. As part of those duties, this office investigated the complaint and requested copies of the agenda, notice, minutes, and the audiotape recording of the June 18, 2002 meeting. These items were provided by Ms. Siri and received in our office on August 8, 2002, and the items have been reviewed. Additionally, Mr. Elsea provided copies of documents relating to the personnel dispute and appeal.

Ms. Siri, in providing the documents and tape requested by this office, also provided a letter explaining the basis for not releasing the audiotape of the closed session to the Committee. She bases her position on NRS 241.035(2), which states in pertinent part "[m]inutes of meetings closed pursuant to NRS 241.030 become public records when the body determines that the matters discussed no longer require confidentiality and the person whose character, conduct, competence or health was discussed has consented to their disclosure." Ms. Siri's position is that she needs permission from both the County Commissioners and Mr. Cain to be able to release the information to the Committee. As Ms. Siri did not have permission from the Commissioners, she felt she was unable to lawfully release the tape to the Committee. Ms. Siri also cites to NRS 241.035(2), which states in part that the person who was the subject of a closed session "is entitled to a copy of the minutes upon request whether or not they become public records." Ms. Siri states that Mr. Cain has never been denied the minutes of the meeting and that a copy of the minutes was mailed to Mr. Cain.

ANALYSIS

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). An exception is expressly permitted for a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person. NRS 241.030(1). While the Chair of the Committee and the County Clerk have referred to the requirements for the general rules regarding minutes and records of

record is a public record is more general in nature, and deals with when the records become available to any member of the public, not just the person who was the subject of the closed session.

CONCLUSION

It appears that in this situation there might be a misunderstanding between the parties, and perhaps some clarification is necessary of what is being requested by each party. Mr. Cain is entitled to a copy of any record of the closed session where he was the person who was the subject of discussion, pursuant to NRS 241.033(3). However, there has been no evidence submitted that Mr. Cain requested the audiotape and was denied a copy of the audiotape. Instead, Mr. Cain apparently requested a copy of the minutes and wanted a verbatim transcript of the closed session. He was not denied such a transcript, but was requested to pay a $50 deposit for the cost of the transcription. In the meantime, the Committee requested a copy of the audiotape. There is no express statutory provision requiring the provision of the record of a closed session to anyone other than the subject person, even in the case of that person providing a written waiver allowing the release of the record to a third party or entity. Therefore, we find no violation of the Open Meeting Law in the County Clerk's refusal to provide a copy of the audiotape to the Committee.

As Mr. Cain is the person entitled to the copy of the audiotape, it would be a violation of the Open Meeting Law if the County Clerk refused to provide a copy of the audiotape to Mr. Cain. That copy should be provided to Mr. Cain and if he wishes the Committee to have a copy of the audiotape, Mr. Cain can provide his copy to the Committee for their review. If there is any refusal by the County Clerk to provide the audiotape to Mr. Cain, then a complaint could be filed with this office if that situation were to arise. However, we are hopeful that the provision of the audiotape to Mr. Cain will occur and that will resolve this matter.

Sincerely,

FRANKIE SUE DEL PAPA

Civil Division
(775) 684-1223

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

July 12, 2002

Robert A. Little
761 South Blagg Street
Pahrump, Nevada 89048

Re: Open Meeting Law Complaint
Nye County Board of Commissioners
OMLO 2002-37/AG File No. 02-011

Dear Mr. Little:

Following the February 19, 2002, meeting of the Nye County Board of Commissioners (Board), you wrote a letter to this office alleging that supporting materials were not provided at the public hearing regarding proposed amendments to Nye County Zoning Code 17.04 by the Nye County Department of Planning (Department). Specifically, you allege that the Department's proposed amendment to Nye County Code 17.04, Bill No. 2002-01, Nye County Ordinance No. 250, was not adopted, but another amendment proposed by Bill Barker, a member of the Calvada Homeowners Protective Corporation (CHPC), was adopted. You allege that the problem with the Board's adoption of the CHPC amendment was that the proposed amendment was not made available to the public even though you asked for it during the meeting when you realized that the Board was considering it and, indeed, was about to vote upon it.

In early March 2002, this office requested the tape recordings and minutes from the Board for the February 19, 2002, meeting. When the Board produced no records of the meeting by the end of March, another request was made for the tapes and minutes. By the end of April, the Board still had not produced tapes and minutes for the meeting. Finally, in view of the approaching 60-day deadline for filing enforcement actions under NRS 241.037, this office filed a complaint in district court alleging

an Open Meeting Law violation based upon the statements in your complaint.[1] Had the Board responded timely to our initial requests for copies of tape recordings, minutes, and agenda, initiation of legal action would have been unnecessary and associated expenses avoided. The Board's failure to respond for three months is indefensible and a gross violation of NRS 241.035(2) and (3)(b).

After our complaint was filed but not yet served, I spoke with counsel for the Board,[2] who agreed to send the requested agenda, tapes, and minutes. On June 10, 2002, this office received the requested agenda, tapes, and minutes for the February 19, 2002, meeting.

The minutes and tapes of the relevant portions of the meeting have been reviewed. It is clear from the minutes that a CHPC document had been attached to the handout (the backup materials provided to the Commissioners) for the meeting.[3] The minutes show that the CHPC proposal to amend Nye County Code 17.04 was identified and discussed by the Board and Mr. Ron Williams, the Nye County Director of Planning.[4] Several people testified during the public hearing as to the merits of Bill 2002-01, including several that vigorously opposed any involvement by a homeowners association in county planning functions.

It seems very clear from the tapes and minutes that the CHPC proposal was clearly identified early in the hearing. No one on the tape is heard to complain that they do not have a copy of Bill 2002-01 or the CHPC proposed amendment. In fact, the minutes reflect that you stated to the Board, on rising to address them just after Mr. Williams had discussed the CHPC proposed amendment with them, that "[n]umber 6, [has] just [been] put on. [I] just had the first opportunity to read [it]." Minutes at page 60, lines 13-16. Based on the context (you were the first speaker after Mr. Williams), we can only assume that the "number 6" you referred to is the CHPC's proposed amendment.

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[1] The Board never responded in writing to your complaint or controverted the veracity of your statements in the complaint. Chief Deputy Ron Kent, Nye County District Attorney's Office, told me on the telephone early in June, about the time the tapes and minutes were being sent, that he had an affidavit stating the CHPC proposed amendment was available at the public meeting. He did not provide the affidavit to this office; however, I obtained it from Ron Williams, Director of Planning, Nye County.

[2] Nye County Chief Deputy District Attorney, Civil Division, Ron Kent.

[3] The minutes state that "Mr. Williams [the Director of Nye County Planning Department] stated that there is, on Page 4 under the homeowners association approval, Item 6 on there, we have had some input from the Calvada Homeowners Protective Corporation and Mr. Williams attached that to the back of your handout for this matter." Minutes of Board Meeting, page 54, lines 14-19.

[4] *See* Minutes of the February 19, 2002, meeting, at 54-60. Following the discussion of the CHPC proposal between the Board and Mr. Williams, the Chairman opened the meeting to public hearing on Bill 2002-01.

We believe the CHPC proposed amendment was in fact available at the meeting. To further bolster our belief, the Department Director has submitted an affidavit from an employee of the Department who swears that she placed 30 copies of Bill 2002-01 on a table just inside the entrance to the Bob Rudd Community Center prior to the 11:00 a.m. public hearing. *See* Exhibit 1, attached hereto. Attached to Bill 2002-01 was the CHPC proposed amendment that is at issue in the complaint. We conclude that the CHPC proposed amendment was available prior to the public hearing.

The complaint finds fault with the Board for failing to make the CHPC proposed amendment available at the hearing. It also alleges that you asked for a copy of the CHPC proposed amendment during the meeting but were ignored.[5] Because we find that the CHPC amendment was available at the public hearing, we cannot find any justification for the allegations in the complaint.

We also reviewed prior opinions from this office on similar questions concerning the availability of supporting materials. They support our view that making the CHPC proposed amendment available at the meeting is not a violation of the Open Meeting Law. In OMLO 98-01 (January 21,1998) we opined that a public body is not required to mail agenda supporting materials to citizens, but the public body is required to make the material available upon request. By making the CHPC proposed amendment available at the meeting, the Board did not violate the Open Meeting Law. *See also* OMLO 2000-38 (October 3, 2000) (public body has a statutory duty to provide supporting materials upon request (NRS 241.020(5), even during a meeting and even if it results in delay of the meeting). Because the CHPC proposed amendment was available at the meeting, we can find no violation of the Open Meeting Law with regard to the availability of the CHPC proposed amendment.

CONCLUSION

The tape recording of the public hearing on Bill 2002-01 and the transcribed minutes clearly show that the CHPC proposed amendment was openly identified and discussed by the Board and the Director of Planning just prior to the public hearing. Furthermore, it was available to the public at the public hearing. We do not find a violation of the Open Meeting Law on these facts.

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[5] Our review of the tapes and minutes (which are prepared by a certified court reporter and are comprehensive) does not reveal any such colloquy between you and the Commissioners. Admittedly, the quality of the tape is poor and it is impossible to hear any comments from members of the audience. But while you were at the podium and speaking near a microphone, we could not hear any such request. It is not necessary to follow up on this allegation since we have already determined the CHPC proposed amendment was available at the hearing.

We hope this analysis answers any questions you may have about the conduct of the Nye County Board of Commissioners meeting/public hearing on Bill 2002-01 on February 19, 2002. This office will move the district court to dismiss the complaint it filed in this matter in April.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ________________________________
GEORGE H. TAYLOR
Deputy Attorney General
Civil Division
(775) 684-1230

GHT
Enclosure
c: Jeff Taguchi, Chairman of the Nye County Board of Commissioners
Ron Kent, Chief Deputy District Attorney, Civil Division
Ron Williams, Director of the Nye County Department of Planning

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 9, 2002

Esmeralda County Board of Commissioners
Post Office Box 517
Goldfield, Nevada 89013

De Ann Siri
Esmeralda County Clerk and Treasurer
Post Office Box 547
Goldfield, Nevada 89013-0547

Joe Elsea, Chair
Esmeralda County
Employee Management Committee
c/o Office of the District Attorney
Post Office Box 339
Goldfield, Nevada 89013-0339

Re: Esmeralda County Open Meeting Law Complaint
OMLO 2002-38/AG File No. 02-032

Dear Commissioners, Ms. Siri, and Mr. Elsea:

On June 25, 2002, this office received a letter from Joe Elsea, Chair, Esmeralda County Employee Management Committee (Committee) requesting an investigation of the Esmeralda County Clerk's refusal to release the audiotape of the Closed Personnel Session on Tony Cain, a county employee, held on June 18, 2002. The claim made by Mr. Elsea was that the Committee needed a copy of the audiotape in order to decide whether Mr. Cain's termination was proper. The allegation was that Mr. Cain had executed a waiver to release the records of the closed personnel meeting to the Committee, and a copy of that waiver was provided to this office. Additionally, the allegation was made that De Ann Siri, the Esmeralda County Clerk, refused to give the tape to Mr. Cain so he could give it to the Committee. Mr. Elsea stated that Patricia Cafferata, Esmeralda County District Attorney, had agreed that the Committee is entitled to listen to the audiotape.

DISCUSSION

This office has primary jurisdiction to investigate violations of the Open Meeting Law, pursuant to NRS 241.037. As part of those duties, this office investigated the complaint and requested copies of the agenda, notice, minutes, and the audiotape recording of the June 18, 2002 meeting. These items were provided by Ms. Siri and received in our office on August 8, 2002, and the items have been reviewed. Additionally, Mr. Elsea provided copies of documents relating to the personnel dispute and appeal.

Ms. Siri, in providing the documents and tape requested by this office, also provided a letter explaining the basis for not releasing the audiotape of the closed session to the Committee. She bases her position on NRS 241.035(2), which states in pertinent part "[m]inutes of meetings closed pursuant to NRS 241.030 become public records when the body determines that the matters discussed no longer require confidentiality and the person whose character, conduct, competence or health was discussed has consented to their disclosure." Ms. Siri's position is that she needs permission from both the County Commissioners and Mr. Cain to be able to release the information to the Committee. As Ms. Siri did not have permission from the Commissioners, she felt she was unable to lawfully release the tape to the Committee. Ms. Siri also cites to NRS 241.035(2), which states in part that the person who was the subject of a closed session "is entitled to a copy of the minutes upon request whether or not they become public records." Ms. Siri states that Mr. Cain has never been denied the minutes of the meeting and that a copy of the minutes was mailed to Mr. Cain.

ANALYSIS

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). An exception is expressly permitted for a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person. NRS 241.030(1). While the Chair of the Committee and the County Clerk have referred to the requirements for the general rules regarding minutes and records of meetings, pursuant to NRS 241.035, the provisions in NRS 241.033(3) are particularly relevant. NRS 241.033(3) provides, "[a] public body shall provide a copy of *any* record of a closed meeting prepared pursuant to NRS 241.035, upon the request of any person whose character, alleged misconduct, professional competence, or physical or mental health was considered at the meeting." (Emphasis added.) This requirement is separate from the provisions regarding when the minutes or audiotape of public meetings are considered public records, as set forth in NRS 241.035. The issue of when a record is a public record is more general in nature, and deals with when the records become available to any member of the public, not just the person who was the subject of the closed session.

CONCLUSION

It appears that in this situation there might be a misunderstanding between the parties, and perhaps some clarification is necessary of what is being requested by each party. Mr. Cain is entitled to a copy of any record of the closed session where he was the person who was the subject of discussion, pursuant to NRS 241.033(3). However, there has been no evidence submitted that Mr. Cain requested the audiotape and was denied a copy of the audiotape. Instead, Mr. Cain apparently requested a copy of the minutes and wanted a verbatim transcript of the closed session. He was not denied such a transcript, but was requested to pay a $50 deposit for the cost of the transcription. In the meantime, the Committee requested a copy of the audiotape. There is no express statutory provision requiring the provision of the record of a closed session to anyone other than the subject person, even in the case of that person providing a written waiver allowing the release of the record to a third party or entity. Therefore, we find no violation of the Open Meeting Law in the County Clerk's refusal to provide a copy of the audiotape to the Committee.

As Mr. Cain is the person entitled to the copy of the audiotape, it would be a violation of the Open Meeting Law if the County Clerk refused to provide a copy of the audiotape to Mr. Cain. That copy should be provided to Mr. Cain and if he wishes the Committee to have a copy of the audiotape, Mr. Cain can provide his copy to the Committee for their review. If there is any refusal by the County Clerk to provide the audiotape to Mr. Cain, then a complaint could be filed with this office if that situation were to arise. However, we are hopeful that the provision of the audiotape to Mr. Cain will occur and that will resolve this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 12, 2002

Leonard P. Smith, Esq.
2770 South Maryland Parkway, Suite 200
Las Vegas, Nevada 89109

Re: Open Meeting Law Complaint
Pahrump Hospital Board of Trustees
OMLO 2002-39/AG File No. 02-030

Dear Mr. Smith:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes. NRS 241.037. This office received a complaint from a member of the public alleging that the Pahrump Hospital Board of Trustees (Board) issued a letter to a private group seeking support for their project to put a hospital in Pahrump following an informal telephone poll of the members of the Board. It was alleged the letter of support was not the subject of an agenda item for a regularly scheduled meeting of the Board but was issued between Board meetings. Therefore, there was no opportunity for public input into the process, nor was the public even aware until after the fact that a letter of support had been issued.

DISCUSSION AND ANALYSIS

This office has investigated the allegations and has confirmed the substance of the allegations after talking with Board counsel. Calls were initiated by two Board members to other members of the Board in an effort to comply with the private group's request for a quick letter of support. This is a matter over which the Board has supervision and control. There is no doubt

the acquisition of a hospital project for the town of Pahrump is a matter of the highest importance; nevertheless, there is no exception for this kind of action by the Board regardless of the Board's assessment of a pressing need for the letter.

The legislative rule in Nevada is that public bodies must hold their meetings in an open and public manner. The only exception to this rule is found in NRS 241.030, but that exception does not apply to these facts. NRS 241.030(4) states "[t]he exception provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers."

Section 5.06 of the Nevada Open Meeting Law Manual (9th ed. 2001) interprets NRS 241.030(4) to apply to telephone polls and polls by facsimile or E-mail. The Attorney General prosecuted a case to the Nevada Supreme Court on facts substantially similar to these facts. In *Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998), the court held that "a quorum of a public body using serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory power violates the Open Meeting Law." *Id.* at 400. In that case the Board of Regents was found by the court to have violated the Open Meeting Law because it participated in an informal telephone poll that was used to decide whether to release a "media advisory" to counter what was perceived to be unbalanced media coverage of the process used to select the presidents of the colleges under the Regents' control. The court examined the legislative history of the Open Meeting Law before concluding that the "legislature intended to prohibit public bodies from making decisions via serial electronic communications." *Id.* at 397.[1]

CONCLUSION

In discussions with Board counsel, it was apparent that the Board was responding to their assessment of the urgency of the request from the private group, and they acknowledge that they acted without benefit of counsel. We do not mean to minimize the significance of the Board's action as the Legislature has made it clear that the public's business must be conducted in public meetings. Based on the facts, we believe it is appropriate to issue a warning to the Board that the issuance of the letter of support approved by the members of the Board, via serial telephone

[1] The Court's decision in *Del Papa* does not prohibit any board from holding a duly noticed public meeting via telephone conference as long as the requirements of the Open Meeting Law are met. OPEN MEETING LAW MANUAL, § 5.05 (9th ed. 2001).

conferences, violated the Open Meeting Law. Furthermore, we request that this matter be agendized for discussion at a future Board meeting when counsel for the Board can provide further analysis. If the Board acknowledges this warning in a public meeting, this office will take no further action.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
GEORGE H. TAYLOR
Deputy Attorney General
Civil Division
(775) 684-1230

GHT:py
c: Johnny Walker
Henry Brean, *Pahrump Valley Times*

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 22, 2002

Hazel Gonzalez
Chairperson
Lander County Hospital District Board of Trustees
535 South Humboldt Street
Battle Mountain, Nevada 89820

Della Casias
206 East Antelope Drive
Battle Mountain, Nevada 89820

Re: Open Meeting Law Complaint:
Lander County Hospital District Board of Trustees
OMLO 2002-40/AG File No. 02-031

Dear Ms. Gonzalez and Ms. Casias:

On July 15, 2002, this office received a complaint alleging an Open Meeting Law violation by Hazel Gonzalez, Chairperson of the Lander County Hospital District Board of Trustees (Board). The allegation was that Ms. Gonzalez attempted to restrict Della Casias from attending a public meeting of the Board and attempted to prevent Ms. Casias from speaking during the public comment portion of the agenda.

DISCUSSION

This office has primary jurisdiction to investigate violations of the Open Meeting Law pursuant to NRS 241.037. As part of those duties, on July 16, 2002, this office requested copies of the agenda, notice, minutes, and any tape/video recording of the above-mentioned meeting. Additionally, Ms. Gonzalez was given the opportunity to respond to the complaint. On August 6, 2002, this office received the requested information as well as a letter from Ms. Gonzalez. In her

letter, Ms. Gonzalez acknowledges that she did inadvertently violate the Open Meeting Law when she restricted Ms. Casias from making statements under the public comment portion of the agenda at the June 27, 2002 Board meeting. Ms. Gonzalez also states her reasons for her actions, admits that she was wrong, and states that she has written Ms. Casias a letter of apology. She also states that she invited Ms. Casias to attend a Board meeting scheduled on July 25, 2002, but that the July 25 meeting had to be canceled due to a lack of a quorum.

ANALYSIS AND CONCLUSION

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). NRS 241.020(2) requires that the public be afforded the right to address a public body at every meeting of that public body. Members of the public are allowed to raise any topic that is within the scope of the public body's jurisdiction or business during the public comment section. While governments have a legitimate interest in conducting orderly, efficient, and dignified public meetings, governments are constitutionally restricted to enforcing any provisions designed to serve that purpose in a content neutral manner. *See Kindt v. Santa Monica Rent Control Board,* 67 F.3d 273, 278-85 (2d Cir. 1997); *City of Madison, Joint School District v. Wisconsin Employment Relations Comm'n,* 429 U.S. 167, 175 (1976).

In this instance, the attempt to restrict Ms. Casias' attendance and comment at the June 27, 2002 meeting was a violation of the Open Meeting Law, as it was an attempt to restrict a comment based on the content of that comment. The violation has already been admitted and acknowledged by Chairperson Gonzalez. We do warn the Board and Chairperson Gonzalez that preventing or attempting to prevent anyone from attending a meeting or speaking during public comment on a particular topic is a violation of the Open Meeting Law. However, as Chairperson Gonzalez has stated in writing that the violation was inadvertent, she has apologized and attempted to remedy the situation, and she has stated that she and the Board now more fully understand the Open Meeting Law and such actions will not be repeated, this office will take no

further action other than issuing this warning letter. However, if this type of violation of the Open Meeting Law becomes repetitious, this office will take all appropriate legal recourse necessary in the future.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
ELAINE S. GUENAGA
Senior Deputy Attorney General
Civil Division
(775) 684-1223

ESG:jm

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 17, 2002

Sharon Croom
Post Office Box 1038
Incline Village, Nevada 89448-1038

Re: Open Meeting Law Complaint
Tahoe Regional Planning Agency
OMLO 2002-41/AG File No. 02-035

Dear Ms. Croom:

We have received your complaint regarding the nonconsideration of an agenda item, IX.A.B.4 Design and Shorezone Scenic Review Guidelines, listed on the agenda for the July 24, 2002 meeting of the Tahoe Regional Planning Agency (TRPA). You indicated that Chairman Dean Heller removed this agenda item, postponed its consideration, and further decided not to take citizen input at that time, despite the presence of a number of interested persons who had come and waited to make comments regarding this issue.

NRS 241.020(2)(c) requires an agenda to include, "[A] clear and complete statement of the topics *scheduled to be considered* during the meeting." We do not believe that the statute requires the TRPA Governing Board to actually consider everything scheduled on an agenda. Circumstances change and public bodies always have the right to (and frequently do) table or postpone matters on their agendas. In short, the provisions of NRS chapter 241 never force a public body to take action on any agenda topic. These provisions are merely designed to prohibit a public body from taking action on agenda topics if the public has failed to receive sufficient notice that on a particular date that action may be taken by such public body.

Based on the foregoing, we will be closing our investigation of this matter. Thank you for providing our office with the opportunity to review your concerns.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ________________________________
SHANE CHESNEY
Deputy Attorney General
Government Affairs
(775) 684-1215

SC:dy
cc: Dean Heller, Chairman, Tahoe Regional Planning Agency

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 17, 2002

Sharlene Stenmoevernes
P.O. Box 142
Eureka, Nevada 89316

Re: Open Meeting Law Complaint
Community Development Corporation (CDC)
OMLO 2002-42/AG File No. 02-036

Dear Ms. Stenmoevernes:

On August 20, 2002, this office received your letter regarding the Community Development Corporation (CDC) in Eureka, County. This office issued an opinion on April 12, 2001, that the CDC was a "public body" as defined in the Open Meeting Law, and was thus subject to the Open Meeting Law. The requirements of the Open Meeting Law are set forth in chapter 241 of the Nevada Revised Statutes.

Your complaint deals with the fact that the CDC has not submitted an audit for fiscal year 2000-2001 to the Eureka County Commissioners. The submission of the audit is outside the jurisdiction of the Open Meeting Law, and therefore would not fall within this office's jurisdiction under that law. This office is precluded, pursuant to statutory limitations set forth within chapter 288 of the Nevada Revised Statutes, from rendering any formal opinion on the issues raised in your letter as they are outside the scope of the Open Meeting Law.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
ELAINE S. GUENAGA

Senior Deputy Attorney General
Civil Division
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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

October 9, 2002

Henry Kilmer, Superintendent
Storey County School District
Post Office Box C
Virginia City, Nevada 89440

Re: Open Meeting Law Complaint
Storey County School District
OMLO 2002-43/AG File No. 02-033

Dear Mr. Kilmer:

By letter dated July 29, 2002, Ms. Connie Carlson, filed a complaint against the Storey County School District, Board of Trustees (Board), for possible violations of Nevada's Open Meeting Law resulting from its July 17, 2002, and July 19, 2002 Board meetings. Under NRS 241.040(4), the Attorney General's Office has jurisdiction to investigate and resolve complaints alleging violations of the Open Meeting Law. To that end, we requested and received agendas, minutes, and tapes of the meetings in question, as well as investigated the facilities where the Board meetings were held. In summary, Ms. Carlson expressed concerns that the meetings were improperly noticed, public comments were not allowed, the meetings were not taped, and the facilities for the meetings were insufficient to accommodate the public for the meetings held on July 17, 2002, and July 19, 2002.

BACKGROUND AND ANALYSIS

As to the issue of an Open Meeting Law violation on July 17, 2002, we are unable to confirm that a meeting of the Board was held on this date. Therefore, this office finds no violation of the Open Meeting Law on July 17, 2002. However, there was a special meeting held on July 19, 2002, primarily for the purpose of hiring staff and accepting a carpet bid. Additionally, on July 24, 2002, the Board held another meeting. One of the items voted upon at this meeting was the approval of the hiring of two staff members that were previously approved at the July 19, 2002 meeting.

Notice Requirements

In Ms. Carlson's letter of July 29, 2002, she alleges that the July 19, 2002 Board meeting was posted and held on the same day. Pursuant to NRS 241.020(3)(1), minimum public notice requires the posting of a copy of the notice at the principal office of the public body and at not less than three other separate prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting.

Upon review of the Certificate of Posting, it appears that a copy of the notice was properly posted in four places. However, the Certificate of Posting indicates that the posting occurred on July 16, 2002, at the following times: 9:00 a.m., 9:05 a.m., 9:08 a.m., and 9:12 a.m. Although the notice was posted three working days before the meeting, the posting did not comply with the requirement that the postings occur prior to 9:00 a.m. in all places. Additionally, the notice misrepresents where it was actually posted. The notice states that it was posted at the U.S. Post Office in Virginia City, the Storey County School District, and four Storey County Schools. However, based upon the Certificate of Posting for the July 19, 2002 meeting, it does not appear that the notice was posted at the U.S. Post Office in Virginia City.

Additionally, NRS 241.020(2)(a) requires that the notice must include the time, place, and location of the meeting. The description for the location of the meeting on the notice for the Board meeting of July 19, 2002, indicates "Storey County School District Office." Although this description identifies the place of the meeting, that is, the Storey County School District Office, it fails to identify the location of the meeting. The location of a meeting should include a physical address including street number, street name, room number or name, city, and state where the meeting will be held. Accordingly, the failure to include the location of the meeting is a violation of the Open Meeting Law.

Agenda Requirements

The agenda must include a clear and complete statement of the topics to be considered during the meeting. NRS 241.020(2)(c)(1). The purpose of the clear and complete standard is that the public will receive notice in fact of what is to be discussed by the public body. This office has advised that an

agenda item must not be so vague and generic as to defeat the purpose of putting the public on notice as to what will be heard and acted upon at the meeting. *See* OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001). The agenda items for the July 19, 2002 meeting were as follows:

1.	Approve Agenda	Action
2.	Approve Warrants	Action
3.	Staff Hiring	Discussion/Action
4.	Accept High School/Middle School Carpet Bid	Discussion/Action
5.	Approve next meeting, date, time and location	Discussion/Action
6.	Adjournment	Action

Of particular concern is item number three of the agenda entitled "Staff Hiring." The description "Staff Hiring" does not provide sufficient information to the public about which staffing positions or how many staff positions were being considered for hiring. The public was not on notice that the hiring of a principal for Hugh Gallagher Elementary School and a full time music teacher could be approved.

Although these same staff hiring decisions were again revoted upon and approved at its July 24, 2002 meeting, the description of "Staff Hiring" on the July 24, 2002, agenda was similarly deficient in providing a clear and complete statement of the topics to be considered. As a result, all staff hiring decisions voted upon at the Board's July 19, 2002, and July 24, 2002 meetings are in violation of the Open Meeting Law, and any action taken in violation of the Open Meeting Law is void. NRS 241.036.

Taping Requirements

It is not a requirement of the Open Meeting Law that meetings be taped. Any meeting of a public body may, at the body's discretion, be recorded on audiotape or any other means of sound or video reproduction. The Board's meeting of July 19, 2002, was recorded on tape; however, the July 24, 2002 meeting was not recorded. The failure to tape the July 24, 2002 meeting was not a violation of the Open Meeting Law.

Public Comment

NRS 241.020 sets forth the requirements to be included in the agenda for a public meeting. One topic that must be included on each meeting agenda is a period devoted to comments from the public. NRS 241.020(2)(c)(3). The Board's meeting agenda for July 19, 2002, did not include a public comment topic, nor was a period for public comment provided at the meeting. The failure to include a public comment is a clear violation of the Open Meeting Law.

Facility Requirements

Public meetings should be held in facilities that are reasonably large enough to accommodate attendance by members of the public. The meeting of July 19, 2002, was held at the Storey County School District Office, inside the office of the school Superintendent, Henry Kilmer. Mr. Kilmer's office is located on the second story of the district office and is described as two ten by ten foot sections. According to our investigation, the door to Mr. Kilmer's office was left open and a few chairs were brought inside the office prior to the meeting. There is no evidence that the facility was not reasonably large enough to accommodate members of the public who may have attended the July 19, 2002 meeting. However, in the future, if more than a few members of the public are expected to attend a meeting, the Board should consider holding the meeting at a larger facility.

The Office of the Attorney General is also of the opinion that public bodies should avoid holding public meetings in places to which the general public does not feel free to enter, such as a restaurant, a private home, or a club. While Mr. Kilmer's office is not a private location because it is located at a public building, we would encourage the Board to ensure that future meetings held in Mr. Kilmer's office have clearly marked signs advising the public how to locate his office and that the meeting is open to the public.

CONCLUSION

We conclude that the Board did violate the provisions of the Open Meeting Law when it failed to properly notice its meeting, when it failed to provide a clear and complete statement of agenda item number 3 "Staff Hiring," and when it failed to provide public comment at its July 19, 2002 meeting. However, it is important to note that a public body that takes action in violation of the Open Meeting Law, which action is null and void, is not forever precluded from taking the same action at another legally called meeting. *See* OPEN MEETING LAW MANUAL, § 11.04 (9th ed. 2001). To remedy such violations, this office recommends that the items heard and discussed at the July 19, 2002 meeting be placed upon a future agenda for an open meeting and reheard or discussed. *Id.* While we do not believe that legal action is warranted at this time, we respectfully request that all future action taken be in compliance with the Nevada Open

Meeting Law. Your cooperation and willingness to address the matters set forth herein are appreciated. Furthermore, we caution the Board that future violations may warrant legal action to ensure that the Board strictly follows the Open Meeting Law.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________

SONIA E. TAGGART
Senior Deputy Attorney General
Civil Division
(775) 684-1224

SET:kh
cc: Connie Carlson
c:\documents and settings\pcuser\files\taggart\omlos\omlo 02-033.doc

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

October 9, 2002

Board of Trustees
Topaz Ranch Estates General Improvement District
3920 Carter Way.
Wellington, Nevada 89444

Re: Open Meeting Law Complaint
Against the Topaz Ranch Estates General Improvement District
OMLO 2002-44/AG File No. 02-034

Dear Board Members:

On August 21, 2002, this office received a written complaint from Fritz Rubins, dated August 20, 2002, in which he alleged that the Board of Trustees for the Topaz Ranch Estates General Improvement District (Board) had possibly violated the Open Meeting Law at a meeting on August 14, 2002. The allegations were that the actions taken on agenda items 3 and 6[1] exceeded the scope of the description of the item on the agenda.

This office has primary jurisdiction to investigate violations of the Open Meeting Law pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by requesting a copy of the agenda for the August 14, 2002 meeting, minutes from that meeting, and a copy of the audiotape of the meeting. The requested information was provided, as well as a letter from Stephen Sanders, Chairman.

ANALYSIS

Agenda item #3 was stated as follows:

[1] In your complaint you refer to agenda item #4, but the description of the item and your further discussion of the item actually refers to agenda item #6.

Approval of pay increase for road employees Frank Hoke and Bill Scott. Action Item

The complaint alleges that the Board's agenda did not properly notice the public of the action that might be taken with regard to this item, because the Board voted to make the pay increase retroactive. The complaint alleges the retroactivity of the pay increase exceeded the scope of the description of this agenda item.

The description of agenda item #3 addresses a pay increase. It does not state an effective date. However, it does put the public on notice that a pay increase will be discussed and possible action taken. Possible action on this item would have included an effective date, and it is not outside the scope of the agenda item description that the effective date voted on was one dating before the August 14, 2002 meeting. Therefore, no violation of the Open Meeting Law occurred in the action taken on agenda item #3.

Agenda Item #6 was stated as follows:

Change the Policy and Procedures for the Operations Manager to assign responsibility for oversight of roads, flow lines, road equipment, snow removal to the Vice-Chairman. Action Item

Included with the minutes and audiotape of the August 14, 2002 meeting were supporting documents. These documents included an "Old" Standing Rule #3, which was a listing of the Vice-President of the District/Vice-Chairman of the Board's responsibilities, and a "New" Standing Rule #3. Also included was an "Old" Standing Rule #5, which was a listing of the Operations Manager's responsibilities and a "New" Standing Rule #5.

The difference between "Old" Standing Rule #3 and "New" Standing Rule #3 is that the responsibilities set forth at numbers 5 and 6 were removed. Number 5 on the "Old" Standing Rule #3 stated:

Performs Administrative functions including:
a. ensuring adequacy and currency of documentation.
b. preparation of recommended documentation, changes and updates.
c. promulgation of approved documentation, changes and updates.
d. personnel.

Number 6 on the "Old" Standing Rule #3 stated:

Has signature authority as described in the Policy and Procedure for Signature Authority (Standing Rule #17).

The other difference is that a new number 5 and a new number 6 were added to the "New" Standing Rule #3. The new number 5 states:

Exercises oversight responsibility of District's road work reporting to the Board on the Annual Road plan, progress on maintenance and improvement of roads, flow lines, flood ditches and street and traffic signs.

The new number 6 states:

Oversight of safety of roads during inclement weather conditions.

The difference between the "Old" Standing Rule #5 and the "New" Standing Rule #5 is that the following items of responsibility were removed:

2. Periodically, (about every 7-10 days) inspects the condition of the roads, flow lines, flood ditches, easements and street and traffic signs for which the GID is responsible.
3. Maintains a log of his inspections and records items requiring corrective action. Reports those items at meetings.
6. Performs final inspection and sign-off of work authorized under an Encroachment Permit.
7. Determines when snow removal is appropriate.
8. Acts in concert with other Board members during emergency situations such as flooding.
9. Takes appropriate action when unauthorized work is discovered or reported.
10. Performs final approval and authorization for payment for contract or time and material work performed in accordance with Board approved projects.
11. Directs and supervises non-clerical hourly employees.
12. Submits recommended Annual Road Work Plan.
13. Has signature authority as described in the Policy and Procedure for Signature Authority (Standing Rule #17).

The agenda item description indicates that the oversight responsibilities for roads, flow lines, road equipment, and snow removal were reassigned from the Operations Manager to the Vice-Chairman. Such a reassignment would indicate that those items removed from the Operations Manager's responsibilities, as set forth in "Old" Standing Rule #5, would be included in the responsibilities under numbers 5 and 6 in the New listing of Responsibilities for the Vice-President of the District/Vice-Chairman of the Board. This would mean that those responsibilities set forth in item numbers 2-3, and 6-12 in the "Old" Standing Rule #5 would be included in the new item numbers 5 and

6 in the Vice-President/Vice-Chairman's responsibilities. It appears that it could be reasonably interpreted that these items are included in the broad statement of oversight of the District's road work, etc., and oversight of safety of roads during inclement weather conditions.

However, certain administrative responsibilities of the Vice-President/Vice-Chairman were removed, and one administrative responsibility of the Operations Manager was removed. The removal of those items was not part of the description of this agenda item. Accordingly, the removal of items 5 and 6 from the "Old" Standing Rule #3 and the removal of item 13 from the "Old" Standing Rule #5 were outside of the scope of the description of Agenda Item #6, and that action was a violation of the Open Meeting Law.

CURATIVE ACTION

The action of any public body taken in violation of any provision of this chapter is void. NRS 241.036. This office has authority to bring an action in court to have such actions declared void or obtain an injunction to require compliance with or prevent violations of the provisions of the Open Meeting Law. However, a public body may take action to cure a violation. The same action may be taken at another legally called meeting. *See* OPEN MEETING LAW MANUAL, § 11.04 (9th ed. 2001). To remedy such a violation, this office recommends that the changes made to Standing Rules 3 and 5 be placed upon a future agenda for an open meeting, with a clear and complete description of the changes, and have the changes reheard or discussed. While we do not believe that legal action is warranted at this time, we respectfully request that all future action taken be in compliance with the Nevada Open Meeting Law. Your cooperation and willingness to address the matters set forth herein are appreciated. Furthermore, we caution the Board that future violations may warrant legal action to ensure that the Board strictly follows the Open Meeting Law.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ____________________________
ELAINE S. GUENAGA
Senior Deputy Attorney General
Civil Division
(775) 684-1223

ESG:jm

cc: Fritz Rubins

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

October 9, 2002

Mrs. Trudi Lytle
4705 Aladdin Lane
Las Vegas, Nevada 89102

Re: Open Meeting Law Complaint
Clark County School District
OMLO 2002-45/AG File No. 02-037

Dear Mrs. Lytle:

This office received your complaint alleging an Open Meeting Law violation by the Clark County School District (District) on August 22, 2002. You alleged that the District violated the Open Meeting Law by hiring Kathy Banke as outside counsel in the case of *Lytle v. Clark County School District, et al*. without taking a public vote as to the hiring of Ms. Banke and her law firm.

DISCUSSION

This office has primary jurisdiction to investigate violations of the Open Meeting Law, pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by requesting information from the District as to when and how the District made a decision to employ Ms. Banke and her law firm. A response was received from C.W. Hoffman, Jr., General Counsel to the District, on September 30, 2002.

The response from Mr. Hoffman indicated that the Clark County Board of School Trustees (Board) approved the District's Legal Office budget, which includes "Purchased Professional Legal Services." Mr. Hoffman went on to state that Ms. Banke has been retained, from time to time, to consult with District counsel on appellate issues in appropriate cases, and that under District Regulation 3130, Mr. Hoffman had the authority, as the District's General Counsel, to authorize payment for those

consulting services.

A subsequent letter was received from Mr. Hoffman on October 3, 2002. In this letter, Mr. Hoffman states that he has learned that the District's outside counsel filed an association of attorney for Kathy Banke for purposes of the upcoming appeal in the above-referenced lawsuit, and that an agenda item will be presented to the Board for consideration pursuant to the provisions of NRS 41.0344.

ANALYSIS

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). A "meeting" is defined as a "gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." NRS 241.015(2)(a)(1). Under NRS 241.015(1) the term "action" includes not only taking a vote, but also making a decision, or making a promise or commitment by a majority of public body members present during a meeting.

CONCLUSION

However, in this instance, there is no evidence that the Board has yet taken "action" to approve the hiring of Ms. Banke. Instead, former decisions to use her services were made by general counsel, and now outside counsel has associated with her. Therefore, we do not find a violation of the Open Meeting Law by the Board. Furthermore, it appears that the hiring of Ms. Banke for the specific purpose of assisting with the appeal in the above-referenced lawsuit will be placed as an agenda item for approval by the Board, and hopefully this will address your concerns and give you the opportunity to comment, if you so wish, upon the hiring of Ms. Banke.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
ELAINE S. GUENAGA
Senior Deputy Attorney General

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ESG:jm

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

November 4, 2002

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Complaints
Reno City Council Meetings (September 24, 2002 and October 1, 2002)
Redevelopment Agency Board Meetings (September 24, 2002 and October 1, 2002)
OMLO 2002-46/AG File No. 02-038

Dear Mr. Dehne:

On September 27, 2002 and October 2, 2002, this office received complaints from you alleging violations of the dictates of the Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

You allege that your requests to speak on specific agenda items were denied at two Reno City Council Meetings and at two Redevelopment Agency Board meetings on September 24, 2002 and October 1, 2002, while others were permitted to speak. You also allege that time limits on speaking are not strictly enforced. Further, you allege that the Reno City Council's written policy limiting item discussion is illegal.

FACTS

At the Redevelopment Agency Board ("Board") meeting on September 24, 2002, the chairperson announced that no members of the public would be allowed to speak on specific agenda items other than public comment because the items were staff related. You were allowed to make public comments for the allotted three minutes during the public comment period on the agenda. Later in the meeting, public comment was reopened so that Doug Smith, who was overlooked during the public comment section, could comment on items 3 and 4. A representative of Grand American, Inc. was asked questions during an agenda item regarding contract negotiations with Grand American, Inc. Board members and the representative were the only people permitted to speak.

At the Board meeting of October 1, 2002, a public comment section was placed on the agenda, and comments were limited to no more than three minutes. The Board recognized each person requesting to speak, including you. The only possible exception was item 7D: "Potential direction to staff regarding the special use permit for Home Depot at N. McCarran Blvd. and Northtowne Lane." This was an ongoing five-year problem with noise, hour of operation violations, graffiti clean up, and retaining wall erosion. The Board decided to make an ongoing staff involvement with inspections and not just a one-time inspection. Chris Oberg lives next to this store and has complained for five years about the Home Depot. After the Board formulated the motion directing staff to continue inspecting the store, Mr. Oberg was asked if anything else should be included in the motion. He was allowed to answer for that specific purpose. No other person from the public was called on by the Board to answer questions.

At the Reno City Council meeting on September 24, 2002, you were allowed to speak during public comment and on item 12A, which was an appeal of the denial of Sasha Mills' privileged cabaret dancer license. Ms. Mills requested you to speak on her behalf at the close of her case. You presented no relevant information about the case and were properly limited in speaking by city attorney, Patricia Lynch. Other items, except those noticed for public hearing on which you did not wish to speak, were limited to those persons specifically identified in the agenda.

DISCUSSION

This office has reviewed the agendas, minutes, audiotapes, and videotapes of the meetings complained of. A portion of the videotape for the Reno City Council's meeting of September 24, 2002 was incomplete. Audiotapes were reviewed to supplement our investigation.

Our review finds that a public comment period was on each agenda and was provided during the meetings, and the public was given the opportunity to speak during each public comment period. You were given the opportunity during this period at each meeting to comment and did so. Except during the public comment period required by NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings. The Open Meeting Law does not require that public comment be allowed during agenda items other than the public comment period.

ANALYSIS

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments." Discretion as to the length, conduct, or structure of the public comment period lies with the public body, subject of course to certain legal considerations. With regard to the Reno City Council meetings on September 24, 2002 and October 1, 2002, we conclude that you were properly afforded three minutes of speaking time, consistent with the policy of the Reno City Council's Rules and Regulations (Fifth Revision April 27, 1999). With regard to the Redevelopment Agency Board meetings of September 24, 2002 and October 1, 2002, we conclude that you were properly afforded three minutes of speaking time consistent with the written notice on each agenda. This office finds no legal basis to support the contention that such conduct violates the Open Meeting Law.

The Office of the Attorney General has taken the position that "[r]easonable rules and regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those attending the meeting may be adopted by a public body. . .," and reasonable restrictions can be imposed on speakers. NEVADA OPEN MEETING LAW MANUAL, § 8.04 (9th ed. 2001). There is no evidence revealing that you were treated any differently than any other member of the public making the same or similar comments.

We have reviewed your complaints regarding oral communications and public comment rules and regulations for conducting a Reno City Council meeting (Fifth Revision April 27, 1999). These rules appear to be proper and were followed at meetings we reviewed. If you wish to comment at the Reno City Council meetings on a specific agenda item and can meet the legal requirement of being an interested party, you can use the written communications provisions on page 6 of the Reno City Council Rules and Regulations (Fifth Revision April 27, 1999).

This office finds that you were permitted to speak on your chosen issues during the public comment period, and thus no violations of the Open Meeting Law occurred at the meetings referred to in your complaints.

CONCLUSION

Members of the public do not have an unqualified right to speak during a meeting of a public body. A public body may impose reasonable restrictions on speakers in order to further their legitimate interest in conducting efficient and orderly meetings. There is no indication that the Reno City Council or the Redevelopment Agency Board conducted their meetings in any manner that departed from the lawful application of the Open Meeting Law. You were allowed to speak during the public comment period for the full three minutes, which is in conformance with NRS 241.020(2)(c)(3) under the Open Meeting Law.

Because we find no violation by the Redevelopment Agency Board or the Reno City Council during the September 24, 2002 and October 1, 2002 meetings, we are closing our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
JANET HESS
Deputy Attorney General
Commerce Section
(775) 684-1195

JH/ld
cc: Patricia A. Lynch,
Reno City Attorney

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OFFICE OF THE ATTORNEY GENERAL

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

November 4, 2002

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Complaint
Reno City Council Meeting (October 8, 2002)
OMLO 2002-47/AG File No. 02-041

Dear Mr. Dehne:

On October 11, 2002, this office received a complaint from you alleging violations of the dictates of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes. You allege that violations occurred on October 8, 2002, at a Reno City Council ("Council") meeting.

FACTS

You indicated to me in our telephone conversation that you wanted to speak on Agenda Items 9E., 10A., 12A., and 13D., and the city clerk would not allow you to speak. These items will be addressed separately.

Agenda Item 9E., "Staff Report, Eight Resolutions of Condemnation for the Acquisition of properties in the Downtown Events Center Block." Our investigation indicates that individual condemned property owners spoke as well as the condemnation attorney and a representative from Property Specialist. The condemnation attorney and the Property Specialist representative are both under contract with the City of Reno. The Council asked these individuals questions and they responded.

Agenda Item 10A., "Staff Report: Approval of Purchase Agreement with El Dorado Resorts, LLC for a ± 35,000 square foot parcel of land to be used for the Downtown Events Center." This item was continued from several other meetings and was discussed only by Council members.

Agenda Item 12A., "Staff Report: Consideration of recommendations for modifications to existing noise ordinances." This item was continued to the next Council meeting.

Agenda Item 13D., "Status of Property Acquisition and Relocation for Downtown Events Center - Oral Report from Property Specialists, Inc." Our investigation indicates that only a representative from Property Specialists, Inc. spoke on this item.

DISCUSSION

This office has reviewed the agenda, the minutes, and videotape of the meeting. We find that a public comment period on the agenda items was provided during the meetings. The public was given the opportunity to speak during this public comment period. You were given the opportunity during this period to comment and did so. Except during the public comment period required by NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings. The Open Meeting Law does not require that public comment be allowed during agenda items other than the public comment period.

ANALYSIS

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments." Discretion as to the length, conduct, or structure of the public comment period lies with the public body, subject of course to certain legal considerations. With regard to the Council meeting on October 8 2002, we conclude that you were properly afforded three minutes of speaking time, consistent with the policy of the Reno City Council Rules and Regulations (Fifth Revision April 27, 1999). This office finds no legal basis to support the contention that such conduct violates the Open Meeting Law.

The Office of the Attorney General has taken the position that "[r]easonable rules and regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those persons attending the meeting may be adopted by a public body," and reasonable restrictions can be imposed on speakers. NEVADA OPEN MEETING LAW MANUAL, § 8.04 (9th ed. 2001). There is no evidence that you were treated any differently than any other member of the public making the same or similar comments.

You were permitted to speak on your chosen issues during the public comment period, and we find no violation of the Open Meeting Law at the meeting of October 8, 2002.

CONCLUSION

As aforementioned, members of the public do not have an unqualified right to speak during a meeting of a public body. A public body may impose reasonable restrictions on speakers in order to further their legitimate interest in conducting efficient and orderly meetings. There is no indication that the Reno City Council conducted itself in any manner that departed from the lawful application of the Open Meeting Law. You spoke during the public comment period for the full three minutes, and pursuant to NRS 241.020(2)(c)(3), this is all that is required under the Open Meeting Law.

Because we find no violation by the Reno City Council during the October 8, 2002 meeting, we are closing our file on this matter.

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
JANET HESS
Deputy Attorney General
Commerce Section
(775) 684-1195

JH/ld
cc: Patricia A. Lynch,
Reno City Attorney

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THOMAS M. PATTON
First Assistant Attorney General

November 6, 2002

David Doyle
5170 Tamarack Avenue
Silver Springs, Nevada 89429

Re: Open Meeting Law Complaint
Lyon County School District Board of Trustees
OMLO 2002-48/AG File No. 02-044

Dear Mr. Doyle:

On October 10, 2002, this office received a letter from you dated October 7, 2002, in which you made a complaint with this office alleging that the Lyon County School District Board of Trustees (Board) had possibly violated the Open Meeting Law at its July 9, 2002 meeting. You allege that the Board's agenda did not properly notice the public of the action that might be taken with regard to a pay raise for the superintendent as well as other top school district administrative personnel. Your complaint also refers to other agendas that show Superintendent Evaluation as an agenda item and agendas that also show Superintendent Contract Renewal and Salary Adjustment as an agenda item.

DISCUSSION

This office has primary jurisdiction to investigate violations of the Open Meeting Law pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by reviewing the agenda for the July 9, 2002 meeting, and requesting the minutes and copies of the audiotapes of the July 9, 2002 meeting, including the closed session. The requested information was provided and was reviewed by this office.

The agenda for the July 9, 2002 meeting had the following agenda items:

20.[1] Discussion/Action on Salary Adjustments for Supervisors and District Level Administrators

* * *

32. Personnel

* * *

4) Other Considerations as required: (closed session may be held)
a) Labor Management Discussions/Negotiations Pursuant to NRS 288

* * *

5) Superintendent's Evaluation, Contract Renewal and Salary Adjustment

The complaint alleges that the Board's agendas did not clearly let the public know when the pay raise for the Superintendent, as well as other top school district administrative personnel, was going to be actually completed because the Superintendent's Evaluation, Contract Renewal and Salary Adjustment were listed on agendas for several meetings as an item for possible action, and that none of the agendas ever mentioned pay raises for other top school district administrative personnel.

ANALYSIS

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. *Id*. The purpose of the clear and complete standard is that the public will receive notice in fact of what is to be discussed by the public body. The question is whether there was an agenda item, with a clear and complete description, that was sufficient to put members of the public on notice as to what would be discussed and what possible action would be taken.

A review of the agenda for the July 9, 2002 meeting shows that there was an agenda item that would have covered salary adjustments for the Associate Superintendents, Controller, Special Education Director, and the MIS Supervisor. The first three positions are those of district level administrators, and the last position is a supervisor position. Agenda item 20 clearly describes discussion and action on salary adjustments for district level administrators and supervisors. Therefore, we find no violation of the Open Meeting Law for the action of approving pay raises for these positions.

Regarding the evaluation and pay raise for the Superintendent, this also was clearly an agenda item on the July 9, 2002 agenda, at item 32(5). While we agree that the presence of the same item description on several agendas is confusing and does create a burden on the public to attend every

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[1] Although this item is numbered 20, there were actually two items numbered 20. As this was the second item with that number, it appears that it should have been numbered as 21, and that is how this item is referred to in the minutes of the meeting.

meeting if they are interested in this item, there is no requirement that a public body discuss, deliberate on, or take action on every item on its agenda. NRS 241.020(2)(c) requires an agenda to include "a clear and complete statement of the topics *scheduled to be considered* during the meeting." (Emphasis added.) We do not believe that the statute requires the Board to actually consider everything scheduled on an agenda. Circumstances change and public bodies always have the right to (and frequently do) table or postpone matters on their agendas. In short, the provisions of NRS chapter 241 never force a public body to take action on any agenda topic. These provisions are merely designed to prohibit a public body from taking action on agenda topics if the public has failed to receive sufficient notice that on a particular date that action may be taken by such public body. Therefore, the listing of an agenda item repeatedly where no action is taken on that item at successive meetings is not a violation of the Open Meeting Law.

However, a standard of reasonableness should be used and the spirit and purpose of the Open Meeting Law should be kept in mind when preparing the agenda. *See* OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001). Certain practices that are a mere subterfuge are to be avoided. *Id.* Agendas should be written in a manner that actually gives notice to the public of the items anticipated to be brought up at the meeting. *Id.* Additionally, an agenda must never be drafted with the intent of creating confusion or uncertainty as to the items actually to be considered or for the purpose of concealing any matter from receiving public notice. While we do not find an intent by the Board to attempt to evade or contravene the Open Meeting Law, we do caution them to draft their agendas in the future in a manner that avoids confusion and uncertainty and to only list those items which are actually anticipated to be discussed and acted upon at the meeting for which the agenda is drafted. A copy of this letter will be sent to the Board.

CONCLUSION

Based on the foregoing, and the finding of no violation, we will be closing our investigation of this matter. Thank you for providing our office with the opportunity to review your concerns.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________

ELAINE S. GUENAGA
Senior Deputy Attorney General
Civil Division
(775) 684-1223

ESG:ms

cc: Lyon County School District
Board of Trustees

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FRANKIE SUE DEL PAPA
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THOMAS M. PATTON
First Assistant Attorney General

November 19, 2002

Trip Barthel
Chairman of the Board
I Can Do Anything Charter High School
1195 Corporate Boulevard, #C
Reno, Nevada 89502

Re: Open Meeting Law Complaint
I Can Do Anything Charter High School
OMLO 2002-49/AG File No. 02-043

Dear Mr. Barthel:

On October 7, 2002, this office received two complaints alleging Open Meeting Law (OML) violations by the governing board (Board) of the I Can Do Anything Charter High School (ICDA). The complaints allege that violations of the OML occurred in conjunction with the August 14, 2002, and September 18, 2002, meetings of the ICDA Board.

Pursuant to Nevada law, NRS 241.040(4), the Attorney General's Office has jurisdiction to investigate and resolve complaints regarding the OML. To that end, we requested from the Board the agenda(s), notice(s), minutes, and any tape/video recordings of the meetings and invited the Board to respond. The agenda and minutes of the meetings were provided as well as a response by Board member Bonnie Drinkwater. The agenda and minutes for both meetings were reviewed. I will respond to each complaint separately.

As an initial matter, I note that by letter of May 29, 2002, this office advised the Board it had previously failed to provide a "clear and complete" description of agenda items. The importance of the "clear and complete" standard cannot be minimized, and the Board should take immediate steps to address this apparently persistent problem. While a brief description may be adequate in some cases, taking the time to provide a more detailed description should prevent future violations.

COMPLAINT ONE – AUGUST 14, 2002

The first complaint regards the Board meeting of August 14, 2002, and alleges:

1. The agenda stated the incorrect location of the meeting, and;
2. The agenda item "Adoption of Organizational Chart for ICDA" did not provide clear and complete detail" as to the action taken.

The agenda states the location of the meeting as 1295 Corporate Way. This was an incorrect location. The meeting was apparently held at 1195 Corporate Way, which is the address of ICDA and this address was also on the agenda. The correct address of the meeting is critical to providing the public with an opportunity to attend and participate in the meeting. While in this particular case the location of the meeting could be guessed, the purpose of the notice and the agenda is to take the guess work out of participating in the "people's business." *See* NRS 241.010.

The second allegation in the complaint concerns the first action item on the agenda. The item is listed as "B. Adoption of Organizational Chart for ICDA." The plain language of this item indicates simply that a chart is to be approved. This item does not indicate that any other action will occur. Instead this item was used to "leave two *new* positions available" and to eliminate the "administrative coordinator position." It is impossible to conclude from the agenda that adoption of an organizational chart would result in any change in anyone's employment status.

The agenda must be written in a manner to actually give notice to the public of what is occurring. General or vague language is unacceptable. The purpose of the agenda requirement is to inform interested parties of the matters to be considered at a meeting.

In response to this complaint, the Board states, "the organizational structure was an agenda item." In fact "organizational structure" was not an agenda item. The agenda item was "Adoption of Organizational Chart for ICDA." To be clear, if the agenda had stated "organizational structure," the violation still would have occurred. There is no way of telling from either phrase that two new positions would be created and another eliminated. The Board's response also notes that the principal of ICDA notified Mr. Sean Ryan, complainant, of the purpose of the agenda item. While this provided Mr. Ryan with actual knowledge of the purpose of the agenda item, it also serves to highlight the underlying problem with the agenda. The average person would have no way to know from the posted agenda what was occurring unless they too received additional information from the principal. The purpose of the clear and complete description of an agenda item is to take the burden off citizens to track down additional information necessary to ascertain what the agenda really means.

This is a serious violation of the OML. The agenda must be written to provide a clear and complete statement of the topics to be discussed. The purpose of the clear and complete standard is to provide the public with notice in fact of what is to be discussed by the public body.

The notice in fact standard is abrogated when the Board relies on the school principal to provide an interpretation of the agenda to members of the public. Further, the agenda simply fails in that it never mentions that jobs could be eliminated or created. The August agenda could have said something to the effect that there was a proposed change to the organizational structure for the school and that this proposal could include or did include creating or eliminating positions.

COMPLAINT TWO- SEPTEMBER 18, 2002

The second complaint regards the Board meeting of September 18, 2002, and alleges:

1. The agenda item “Sean Ryan, Grievance” did not give clear and complete detail as to which of two pending grievances were to be discussed, and;
2. In acting on this agenda item, the Board was going to consider the professional competence of Sean Ryan, and therefore the grievant should have been so notified.

A review of the September 18, 2002, minutes reveals that as to agenda item “A. Sean Ryan grievance-. . . No action was taken.” Since no action was taken, I must conclude that this complaint is moot. However, the Board should provide clarity as to which grievance is being acted on in the future. The Board can easily identify which grievance is on the agenda. A suggestion would be to refer to the date the grievance was filed.

Pursuant to NRS 241.033, a public body shall not hold a meeting to consider the professional competence of any person unless it has given written notice to that person of the time and place of the meeting. The notice must be delivered personally to the person at least 5 working days before the meeting or sent by certified mail to the last known address of the person at least 21 working days before the meeting. Hence, NRS 241.033 requires that a written notice be personally delivered; a verbal notice is not a substitute. However, as previously noted, no action was taken, and therefore the complaint is moot.

A review of the agenda for the September 18 meeting reveals that it was defective. The law plainly requires an agenda item for public comment. “The notice [of a public meeting] must include . . . [a]n agenda consisting of . . . [a] period devoted to comments by the general public . . . . ” NRS 241.020(2)(c)(3). The agenda reveals that no such opportunity was offered to the public. In the future the Board should always include a public comment period on the agenda.

CONCLUSION

The agendas for both the August and September meetings are noteworthy for the paucity of detail provided. Both agendas are written as if there is a shortage of words, and information is supplied begrudgingly. However, these violations can be corrected, and I am requesting the Board to address the problems with its agenda. I have included a sample agenda used by the Nevada State Environmental Commission earlier this year. This document could be used as a

template to create future Board agendas. However, I believe the real problem is that someone must take the time to draft a few sentences to describe what the agenda items really mean. The goal must be to convey to the public what is being discussed and acted on.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
WILLIAM J. FREY
Deputy Attorney General
Conservation and Natural Resources
(775) 684-1229

WJF:jf
Enclosure
cc: Sean Ryan w/o enclosure
Washoe County School District w/o enclosure

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FRANKIE SUE DEL PAPA
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THOMAS M. PATTON
First Assistant Attorney General

November 20, 2002

Chris Munhall
Clark County Rural Town Liaison
Indian Springs Sewer and Water Task Force
500 South Grand Central Parkway, 6th Floor
Las Vegas, Nevada 89155-1712

Re: Open Meeting Law Complaint
Indian Springs Sewer and Water Task Force
OMLO 2002-50/AG File No. 02-040

Dear Mr. Munhall and Task Force Members:

This letter is in response to a written request for an opinion from Indian Springs Sewer and Water Task Force (Task Force) member Ann Brauer regarding the Task Force and its compliance with Nevada's Open Meeting Law. The Office of the Attorney General has primary jurisdiction to investigate and enforce violations of the Open Meeting Law pursuant to NRS 241.037. Accordingly, upon receipt of the complaint, this office conducted an investigation, which consisted of the following: telephone interviews with Chris Munhall, Clark County Rural Town Liaison; Barbara Strahl, employee of the Clark County Neighborhood Justice Center; and Mrs. Brauer; review of various Task Force documents; and review of a video tape recording of the Task Force's meeting held on September 17, 2002.

The scope of the investigation was to gather facts in order to answer two questions. First, is the Task Force subject to the Open Meeting Law? Second, if so, has the Task Force violated the law? After a careful review of both the facts and the law, this office has determined that the answer to both of these questions is yes—the Task Force is subject to the Open Meeting Law and it has violated this law. Each question will be discussed separately.

QUESTION ONE

Is the Task Force subject to the Open Meeting Law?

STATEMENT OF THE FACTS

Jack and Wanda Oliver are the private owners of the Indian Springs Sewer and Water Company—a sewer and water facility located in Indian Springs, Nevada, which is located in Clark County. At some point, an issue arose as to the future ownership and operation of the utility. Clark County Commissioner Chip Maxfield requested that the Task Force be created to explore the situation. The direct responsibility of creating the Task Force was delegated to Mr. Munhall, who informally recruited 13 citizens of the community to serve on the Task Force, including Mr. and Mrs. Oliver. Ms. Strahl was asked by Mr. Munhall to serve as a facilitator for the Task Force.

The first meeting of the Task Force was held on December 4, 2001. At this meeting, dinner was provided to Task Force members at the Indian Springs Community Center. During the Task Force's second meeting on January 15, 2002, and with the assistance of Ms. Strahl, the Task Force adopted a mission statement, purpose and outcome document, and agreements.

The Task Force's mission statement provided in part that the Task Force was "[t]o thoroughly evaluate all of the facts, issues, options and implications involved in the possible sale of the Indian Springs Sewer and Water Company . . . ."

The purpose and outcome document stated that the Task Force's purpose was "to bring together a diverse group of local citizens in an effort to explore and understand its sewer and water infrastructure." This document proceeded to list the following issues that the Task Force would consider in completing its task: current condition of the sewer and water delivery system; capital improvements needed to keep the facility safe, efficient, and dependable; current market value; local, state, and federal requirements for a public versus a privately owned facility; alternative ownership structures; grant and loan opportunities; impact to well and water rights; affect upon user rates based on various purchase and funding scenarios; and Clark County's role in a community owned utility. The overall purpose of the Task Force was stated as two-fold:

> [f]irst, to have a task force that is fully informed of the challenges, realities and implications involved with the Indian Springs utility and its future. Second, to have the task force make a formal, non-binding recommendation to Commissioner Maxfield and the Indian Springs Town Advisory Board relative to the utility owners' desire to sell the utility.

The Task Force also drafted nine agreements to govern the conduct of members during meetings. These agreements included such things as openness, courtesy, honesty, and the use of consensus for making decisions. The Task Force had no chairperson, secretary, or other designated leader.

Task Force meetings were held at the Indian Springs Community Center and generally occurred between 7:00 p.m. and 9:00 p.m. Refreshments, such as cookies and beverages, were provided by Mr. Munhall, who estimates that the county spent an approximate total of $80 purchasing these refreshments. Mr. Munhall and Ms. Strahl also provided photocopied materials and notebooks for the Task Force. Both Mr. Munhall and Ms. Strahl were present at the Task Force meetings and were being paid for their services as county employees. Mr. Munhall drove a county car from Las Vegas to the meetings.

After these first meetings, the Task Force met on six additional occasions: February 5, 2002, March 5, 2002, March 19, 2002, April 9, 2002, May 21, 2002, and September 17, 2002. Thereafter, on October 3, 2002, this office received Mrs. Brauer's written request for an opinion regarding the Task Force and its compliance with the Open Meeting Law and began an investigation.

ANALYSIS

NRS 241.020(1) provides that "all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies." The public policy behind this statute is that the Nevada State Legislature has found that "all public bodies exist to aid in the conduct of the people's business" and it is therefore "the intent of the law that their actions be taken openly and that their deliberations be conducted openly." NRS 241.010. Therefore, the threshold issue to be addressed is whether the Task Force is a public body.

NRS 241.015(3) defines a public body as

> [A]ny administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof . . . .

This statute requires two elements to be satisfied before an entity may be considered a public body. Op. Nev. Att'y Gen. No. 2002-19, 2 (May 2, 2002). First, the entity must be an "administrative, advisory, executive or legislative body of the state or a local government." *Id.* (quoting NRS 241.015(3)). To satisfy this first element, "the entity must: (1) owe its existence to and have some relationship with a state or local government; (2) be organized to act in an administrative, advisory, executive or legislative capacity; and (3) must perform a government function." *Id.* (citing OPEN MEETING LAW MANUAL, § 3.01 (9th ed. 2001)). Second, the entity must "expend or disburse or be supported in whole or in part by tax revenue, or advise or make recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue." *Id.*

As stated above, the first element that must be satisfied in determining whether the Task Force is a public body subject to the Open Meeting Law is whether it is an "administrative, advisory, executive or legislative body of the state or a local government." NRS 241.015(3). The analysis of this first element requires an examination of the following three sub-parts.

1. Does the Task Force owe its existence to and have some relationship with a state or local government?

The Task Force was appointed at the request of Clark County Commissioner Chip Maxfield, an elected public official, and was organized by Mr. Munhall, the Clark County Rural Town Liaison, and facilitated by Ms. Strahl, an employee of the Clark County Neighborhood Justice Center. Both Mr. Munhall and Ms. Strahl were acting in their official capacity as employees of Clark County in organizing and facilitating Task Force meetings. Therefore, the Task Force owes its existence and has a relationship with Clark County—a local government entity.

2. Is the Task Force organized to act in an administrative, advisory, executive or legislative capacity?

One of the purposes of the Task Force was to formulate a non binding recommendation to be given to Commissioner Maxfield and the Indian Springs Town Advisory Board regarding the future of the Indian Springs Sewer and Water Company. The Task Force membership was designed to represent a broad range of views, as it is comprised of thirteen diverse citizens of Indian Springs. A recommendation is a form of advice. The Task Force was therefore organized to act in an advisory capacity.

3. Does the Task Force perform a government function?

The Task Force was formed to explore and consider various options regarding the potential sale of the Indian Springs Sewer and Water Facility. This exploration involved analyzing the sewer and water system and needs of the Indian Springs area, as well as the role Clark County should play in the utility's future. Thereafter, the Task Force was to make a recommendation directly to Commissioner Maxfield (and in so doing, indirectly to the Board of County Commissioners) and the Indian Springs Town Advisory Board. This recommendation was for the purpose of assisting the members of these boards in making the best possible decision regarding the future of the utility.

Such gathering of information and fact finding regarding proposed regional economic and planning decisions is generally considered a government function. As the subject of this exploration involved the future of the community sewer and water utility, it is properly viewed as "necessary to advance and protect the health and welfare of the citizens of the State of Nevada." Op. Nev. Att'y Gen. No. 2002-19, 5 (May 2, 2002). As such, the Task Force was performing a government function contemplated by the policy of the Open Meeting Law. Given the above

analysis, this office concludes that the Task Force is an advisory body of a local government and therefore the first element for being considered a public body is satisfied.

The second element that must be satisfied in determining whether the Task Force is a public body subject to the Open Meeting Law is whether it "expends or disburses or is supported in whole or in part by tax revenue or . . . advises or makes recommendations to an entity which expends or disburses or is supported in whole or in part by tax revenue . . . ." NRS 241.015(3).

The Task Force clearly does not expend or disburse any money and, therefore, cannot be said to disburse or expend any tax revenue. However, the question as to whether the Task Force is supported in whole or in part by such revenue requires further analysis. This is because the concept of tax revenue is broadly construed, so as to not only include direct funding, but also support given by another government entity through property and services, which are funded by tax revenues. Op. Nev. Att'y Gen. No. 2002-19, 14 (May 2, 2002) (citing *Stevens v. Geduig*, 719 P.2d 1001, 1009-10 (Cal. 1986)).

Commissioner Maxfield's appointment letter to Mrs. Brauer stated, "Clark County staff is committed to providing you all of the resources you need." Both Mr. Munhall and Ms. Strahl organized and facilitated the Task Force meetings and were acting in their official capacities as employees for Clark County in doing so. Mr. Munhall used a county vehicle for transportation from Las Vegas to Indian Springs to attend the meetings. This office has previously opined that merely because State employees serve on a committee does not necessarily mean that the committee is funded by tax revenue. *See* Op. Nev. Att'y Gen. 2002-06, 2 (February 8, 2002). Unlike that case, however, Mr. Munhall and Ms. Strahl were not members of the Task Force itself and were organizing and facilitating the Task Force's administration as paid Clark County employees providing their official services.

Moreover, Mr. Munhall purchased approximately $80 worth of refreshments for Task Force meetings by using a general purchase order. Dinner was provided to Task Force members at the initial meeting. Meetings were held at the Indian Springs Community Center. Photocopies of documents and the disbursement of notebooks for the Task Force were also provided by the county. Each of the above accommodations and services were provided in the administration of the Task Force and were financed by tax revenue.

Although much of the property and services provided by the county to the Task Force may arguably be construed as relatively incidental in terms of actual tax revenue expenditures, the services provided to the group that were funded by these expenditures were nonetheless fundamental to the Task Force's existence and continued operation. Therefore, the Task Force was funded at least in part by tax revenue, satisfying the second element for the Task Force to be considered a public body.

Furthermore, the second element is also satisfied if the entity advises or makes recommendations to an entity supported in whole or in part by tax revenue. Op. Nev. Att'y Gen.

2002-19, 2 (May 2, 2002). Here the purpose of the Task Force is to make recommendations to Commissioner Maxfield and the Indian Springs Town Advisory Board. Although this office has recently opined that the entity must be multi-member, *see* Op. Nev. Att'y Gen. 2002-06, 2 (February 8, 2002), and Commissioner Maxfield is not a multi-member entity—he is an individual, the Indian Springs Town Advisory Board is a multi-member entity which is supported in whole or part by tax revenue. Therefore, the second element of the public body analysis is also satisfied.

CONCLUSION

In light of the above analysis, this office concludes that the Task Force is a public body as contemplated under NRS 241.015(3) and is subject to the Open Meeting Law.

Having determined that the Task Force is subject to the Open Meeting Law, it must now be discussed whether the Task Force has violated that law. Since NRS 241.037(3) provides that a suit brought to have an action taken in violation of the Open Meeting Law declared void must be brought within 60 days after the action, the only relevant Task Force meeting to be analyzed is the meeting on September 17, 2002.

QUESTION TWO

Did the Task Force violate the Open Meeting Law on September 17, 2002?

STATEMENT OF THE FACTS

It is unknown exactly when and where any notices for the September 17, 2002, Task Force meetings were placed, or whether any were placed at all. According to Mr. Munhall, some attempt was made to give public notice of Task Force meetings, but the task of placing the notices was delegated to three Clark County Parks and Recreation employees. Mr. Munhall was unsure whether these employees were properly doings their jobs, as notices were not always placed in a timely manner or in appropriate locations.

The following agenda was distributed for the September 17, 2002, meeting:

Task Force Meeting
September 17, 2002
Indian Springs Community Center
7:00 P.M.

Agenda

I. Approval of May 21, 2002 Meeting Summary
II. Review of Past Meeting and Dissemination of New Material

III. Resource Updates
IV. Open Issues/Questions
V. Analysis of Options and Formulation of Recommendation
VI. Set Next Meeting Date and Time
VII. Public Comment
VIII. Adjournment

The meeting took place without any formal record being made, either by handwritten minutes, a court reporter, or electronic recording. The only record of Task Force meetings was made by a member of the public, Mr. Brauer, who informally video taped the meeting held on September 17, 2002.

Mr. Munhall and Ms. Strahl were both present and facilitated the September 17, 2002 meeting. At the beginning of the meeting, a recent report prepared by the Nevada Division of Environmental Protection (NDEP) was distributed to Task Force members and there was some discussion of this report. Thereafter, the Task Force engaged in a discussion, attempting to reach a final recommendation regarding the sewer and water utility.

The September 17, 2002, meeting lasted approximately two hours and thirty-five minutes. Although approximately forty minutes of the meeting were unavailable on the video, there was no apparent public comment period during the meeting. Considerable debate and discussion on a final recommendation on the utility occurred during this meeting; however, the Task Force was unable to reach a consensus on the recommendation and agreed to meet again on November 7, 2002.

During this investigation, Mr. Munhall stated that he had some familiarity with the Open Meeting Law as it applied to town advisory boards, but he was unaware that it may apply to the Task Force. Ms. Strahl stated during a telephone conversation that she was not familiar with the Open Meeting Law. Both Mr. Munhall and Ms. Strahl stated that no legal advice has ever been sought or given regarding whether the Task Force is subject to the Open Meeting Law.

On November 1, 2002, this office contacted Mr. Munhall to inform him that a letter opinion regarding this matter was forthcoming but may not reach the Task Force before November 7, 2002. The November 7, 2002, meeting was anticipated to be the Task Force's final meeting. To save the Task Force from potentially violating the Open Meeting Law and making a wasted effort on November 7, 2002, this office advised Mr. Munhall that it may be in the Task Force's best interest to reschedule the November 7, 2002, meeting until after receipt of this letter. On November 4, 2002, Mr. Munhall notified this office that the November 7, 2002, meeting will be rescheduled for a later date.

ANALYSIS

A review of the September 17, 2002, Task Force meeting reveals numerous violations of the Open Meeting Law had occurred. Some of the more notable violations include the following: failure to properly post written notice of the meeting, OPEN MEETING LAW MANUAL, § 6.03 (9th ed. 2001); failure to provide a clear and complete description of all items on the agenda, OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001); failure to stick to the agenda in that the NDEP report was not mentioned on the agenda, OPEN MEETING LAW MANUAL § 7.03 (9th ed. 2001); failure to have a public comment period at the end of the meeting, OPEN MEETING LAW MANUAL, § 8.04 (9th ed. 2001); failure to use a voting process on the final recommendation, OPEN MEETING LAW MANUAL, § 8.07 (9th ed. 2001); and, failure to formally record and retain meeting minutes, OPEN MEETING LAW MANUAL, §§ 10.02—10.03 (9th ed. 2001).

However, given that the Task Force did not take an action, as defined by NRS 241.015(1), and did not reach a final recommendation at the meeting held on September 17, 2002, it is unnecessary for this office to take any legal action to remedy these violations. As such, the facts surrounding these violations will not be discussed in greater detail.

CONCLUSION

This letter is to serve as a warning—the Task Force is on notice that it is to comply with the Open Meeting Law. The failure of the Task Force to comply with the Open Meeting Law as discussed above appears unintentional and the result of a misunderstanding as to the law's applicability to the Task Force. Any future failure by the Task Force to comply with the law, however, will be taken seriously by this office.

Please provide this office with a written assurance within five days of the date of this letter that the Task Force is committed to comply with the Open Meeting Law and will take any action necessary to remedy any violation of the law that may have occurred at any meetings held by the Task Force since September 17, 2002.

With this being stated, the cooperation of Mrs. Brauer, Mr. Munhall, and Ms. Strahl with this investigation is noteworthy and has been greatly appreciated. Moreover, the volunteer time and energy given by the Task Force members in undertaking this project exemplifies their belief in the democratic decision making process and is commendable indeed. This office has recognized in previous matters that compliance with the Open Meeting Law can be "cumbersome at times." OMLO 98-03, 9 (July 7, 1998). However, the law was designed to "foster[s] credible democracy, and that is something which must never be compromised." *Id.*

Enclosed is a copy of the Nevada Open Meeting Law Manual for future reference. Additional copies of this manual may be downloaded from the Office of the Attorney General website at http://www.ag.state.nv.us.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
JOE REYNOLDS
Deputy Attorney General
Civil Division
(775) 684-1243

JCR:jf
Enclosure
cc: Ann Brauer w/o enclosure

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

November 20, 2002

Gary E. DiGrazia, Esq.
Goicochea, DiGrazia, Coyle & Stanton, Ltd.
Post Office Box 1358
Elko, Nevada 89803

Re: Request for Clarification of Open Meeting Law Opinion
Finding the Community Development Corporation (CDC)
In Eureka County a Public Body as Defined by the Open Meeting Law
OMLO 2002-51/AG File No. 02-042

Dear Mr. DiGrazia:

On September 24, 2002, you sent this office a letter stating you represent the Community Development Corporation (CDC) in Eureka, County. Your letter requested clarification of an Open Meeting Law opinion issued by this office on April 12, 2001, in which this office opined that the CDC was a "public body" as defined in the Open Meeting Law.

Your letter sets forth issues raised by CDC being declared to be a public body for purposes of the Open Meeting Law, and asks whether certain provisions of the Open Meeting Law would apply to CDC. As it is the opinion of this office that CDC is a public body as defined by the Open Meeting Law, all of the provisions of the Open Meeting Law would apply to CDC, unless clearly stated otherwise.[1] In the complaint filed with this office in 2001, the main substance of the complaint was that CDC meetings were not open to the public. In a letter to CDC, which was dated April 12, 2001, and in which the April 12, 2001 opinion was enclosed, CDC was advised that it was a public body subject to the Open Meeting Law and that it must follow the requirements of the Open Meeting Law regarding making its meetings open to the public and giving sufficient notice to the public of the time, place and agenda for such meetings, pursuant to NRS 241.020. This letter clarifies that the CDC is subject to all of the provisions of the Open Meeting Law set forth in NRS chapter 241, including those that state what documents do and do not have to be copied for members of the public, as stated in NRS

[1] For example, the reference to the Nevada Athletic Commission in NRS 241.033(2) clearly would not apply to CDC.

241.020(5)(c)(1).

If you wish for a written opinion of this office as to the interpretation of certain provisions of the Open Meeting Law as applied to specific factual situations involving CDC, such a request must be submitted by the appropriate entity, pursuant to chapter 228 of the Nevada Revised Statutes, which sets forth those persons who may request legal opinions from this office.

You also question whether CDC is a "governmental entity" under the Public Records Law. The definition of a "public body" under the provisions of the Open Meeting Law differs from the definition of a "governmental entity" pursuant to the Public Records Law in chapter 239 of the Nevada Revised Statutes. Therefore, just because an entity is a "public body" subject to the Open Meeting Law does not mean it automatically also fits within the definition of a "governmental entity" under the Public Records Law. Again, if you wish for a written opinion from this office as to whether the CDC should be considered a governmental entity subject to the Public Records Law, a request should be submitted from the appropriate person. However, please keep in mind that some provisions of the Open Meeting Law deem certain documents to be public records regardless of whether the "public body" is a "governmental entity." *See, e.g.*, NRS 241.035(2), which states that minutes of public meetings are public records.

We hope that this letter has helped to clarify the application of the Open Meeting Law to CDC. If you wish further clarification, we can direct you to the appropriate person who can request a legal opinion from this office.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
ELAINE S. GUENAGA
Senior Deputy Attorney General
Civil Division
(775) 684-1223

ESG:jm

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

November 22, 2002

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint
Reno City Council Meeting October 22, 2002
OMLO 2002-52/AG File No. 02-046

Dear Mr. Dehne:

This office has received a complaint from you alleging violations of the Open Meeting Law by the Reno City Council (Council) at its meeting on October 22, 2002. You allege that the Reno City Council did not allow you to comment on certain items, that you did not know in advance which agenda items you would be allowed to comment on, and that you were threatened with removal from the meeting. We have reviewed the agenda for the meeting, the videotapes of the meeting, and all requests to speak made by members of the public for this meeting.

FACTS

The Council requires those who wish to speak at its meeting to complete attendance cards, including designation of the agenda item upon which the person wishes to speak. For specific agenda items (excluding the public comment section), the Council does not take public comment unless the Council votes to allow such comment as each specific item comes up.

For the October 22, 2002 meeting, you completed eight attendance cards, specifying the following agenda items: Agenda item 5 (public comment), agenda item 6K, agenda item 16C, agenda item 14C, agenda item 13B, agenda item 11A, agenda item 8H, and agenda item 8A. You actually addressed the Council on eight different occasions during the meeting on the following agenda items (in order of presentation at the meeting): Agenda item 5, agenda item 11A, agenda item 6K, agenda item 16C, agenda item 13A, agenda item 13B, agenda item 8A, and agenda item 8H.

You and a number of speakers spoke during the public comment section. You were not restricted in any manner in your comments. You and a number of other speakers were afforded an opportunity to speak on agenda item 11. You took advantage of that opportunity and your comments were not restricted by the Council.

The Council voted to allow public comment on agenda item 6K. You were the only person who had requested to speak on this agenda item and you, in fact, were allowed public comment on this agenda item. Agenda item 16C was designated as a public hearing. You were allowed to provide comment on this item, and your comments were not restricted.

The next item that you gave public comment on was agenda item 13A. You had not completed an attendance card for this item. You were next allowed public comment on agenda item 13B. The Council did not vote to allow public comment on this item. However, the other people who spoke on this item were interested parties in the subject matter of the agenda item.

The Council voted to allow public comment on agenda items 8A and 8H. You were allowed public comment on each of these agenda items. For a number of the agenda items in which the Council voted to allow public comment and for which you were allowed public comment, you were the only member of the public who had requested to speak on those agenda items. In addition, there was no evidence on the videotapes that any member of the Council attempted to exclude or remove you from the meeting.

ANALYSIS

Except during the public comment period required by NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings. The Open Meeting Law does not require that public comment be allowed during agenda items other that the public comment period.

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments." Discretion as to the length, conduct, or structure of the public comment period lies with the public body, subject to certain legal considerations. With regard to the Council meeting on October 22, 2002, we conclude that you were properly afforded public comment during the agenda item for public comment and those comments were not restricted. This is all that the Open Meeting Law requires. In addition to the public comment section, you were also afforded public comment on seven other agenda items.

It appears that there was one agenda item for which you filled out an attendance card, but for which no public comment was taken. We do not find this to be a violation of the Open Meeting Law because the public body is not required to allow public comment on specific agenda items other than the public comment section. The Council did not treat you any differently than other member of the public, and it did not appear that you were restricted in any manner from commenting on any subject during the public comment period. In addition, there were several other agenda items for which you did not complete an attendance card where the Council also did not take public comment.

You also have complained about the fact that public comment was taken on some items for which no vote was taken to allow such comment. We note that some of these items were designated as public hearings, and thus the object of the agenda item was to receive public input. For other items, it appeared that the Council allowed public comment by an informal consensus rather than formal vote. This is not a violation of the public comment requirements of the Open Meeting Law under the circumstances of this complaint, because no particular member of the public was treated any differently than any other member of the public, and it appears that all members of the public were afforded ample opportunity to make public comment on any topic during the meeting. We also note that there were a number of agenda items in which you were the only member of the public who wished to speak, and the Council voted to allow public comment on those items. Therefore, we do not believe that the Council was applying its rules in a manner to treat you any differently than any other member of the public or to restrict you from commenting on any particular issue.

The Office of the Attorney General has taken the position that "[r]easonable rules and regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those persons attending the meeting may be adopted by a public body, . . ." and reasonable restriction can be imposed on speakers. Nevada Open Meeting Law Manual, § 8.04 (9th ed. 2001). There is no evidence that you were treated any differently than any other member of the public wishing to make comment at the meeting. In addition, you were given ample opportunity to make public comment on any subject that you wished.

This office finds that you were permitted to speak on your chosen issues during the public comment section and throughout the meeting. Therefore, the Council did not violate the Open Meeting Law as you have alleged. We make no particular finding as to the specific Council rules that you have complained about, because we find that the manner in which public comment was taken at this meeting did not violate the Open Meeting Law.

CONCLUSION

Members of the public do not have an unqualified right to speak during a meeting of a public body. A public body may impose reasonable restrictions on speakers in order to further their legitimate

interest in conducting efficient and orderly meetings. There is no indication that the Reno City Council violated the Open Meeting Law with regard to public comment during its October 22, 2002 meeting. You were allowed to speak during the public comment period without restriction and you were allowed to speak on seven other agenda items. Because we find no violation of the Open Meeting Law as alleged in your complaint, we are closing our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML:srh
cc: Patricia Lynch
Reno City Attorney

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

December 9, 2002

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint
Reno City Council Meeting (October 15, 2002)
AG File No. 02-045

Dear Mr. Dehne:

On October 18, 2002, this office received a complaint from you alleging violations of the dictates of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes. You allege that violations occurred on October 15, 2002, at a Reno City Council (Council) meeting. You further allege in your complaint that you were wrongfully removed from the Reno City Council Meeting of October 15, 2002, and that after your removal you were wrongfully denied the right to speak on several agenda items for which you filled out attendance cards.

FACTS

This office has reviewed the agenda, draft minutes, audio tapes, and videotapes of the meeting complained of. Our review finds that a public comment period was on the agenda and was provided near the beginning of the meeting, and the public was given the opportunity to speak during the public comment period. You were given the opportunity during this period at this meeting to comment and did so. The videotape of the meeting shows that you concluded your remarks at the public comment period and left the podium. The Council then started a brief discussion on a matter which you brought up during your public comment relating to members of the public speaking on individual agenda items. You then returned to the podium, without authorization by the Council or Mayor to do so.

You then interrupted the City Attorney, who was explaining to the Council the Council's rules on public comment, and started shouting at the Council by stating: "You're talking about

my issue." You continued in a very loud voice, without interruption, for at least 30 seconds speaking on this issue, despite the Mayor saying repeatedly to you: "Mr. Dehne, sit down." You further stated in a very loud voice: "I know the rules, Mr. Griffin. You want to remove me, then you can have me removed, because you are wrong." Just prior to finally again leaving the podium after the Mayor had repeatedly told you to sit down you ended with: "You are a craven coward, Griffin."

The tape then demonstrates that just a few moments later you then returned to the podium a second time, again without being called up or permitted to do so by the Mayor, and again started speaking in a very loud voice. At this, the Mayor signaled to a uniformed police officer to go to the podium to have you removed from the Council chambers and meeting. The clear evidence of the meeting demonstrates that you continually interrupted the City Attorney and Mayor in a loud voice and that you completely disregarded the Mayor's directives to you to sit down and leave the podium. You were willfully disruptive of the meeting, such that it could not practically be continued in an orderly manner at that time. Therefore, the Mayor was entirely justified in having you ejected from the meeting.

DISCUSSION

NRS 241.030(3)(b) allows a person to be removed from a public meeting if that person is disruptive of a meeting such that its orderly conduct is made impractical. This office, in reviewing the videotape of the meeting, finds sufficient evidence that your removal was justified pursuant to this section. Since you were justifiably removed from the remainder of the meeting of the Council on October 15, you had no right to speak on any further agenda item, regardless of whether or not members of the public were permitted to do so. For the following reasons, there can be no violation of the Open Meeting Law.

CONCLUSION

This office finds no merit to your complaint that you were unjustifiably removed from the Council meeting of October 15, 2002, and that you were thereafter unlawfully denied the right to speak on individual agenda items. The videotape of the meeting demonstrates that you were sufficiently disruptive to warrant the Mayor removing you from the meeting, which is permitted pursuant to NRS 241.030(3)(b). Since you were justifiably removed, you had no right to speak

on any further agenda items at that meeting. Because we find no violation by the Reno City Council during the October 15, 2002 meeting, we are closing our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
EDWARD T. REED
Deputy Attorney General
Civil Division
(775) 684-1216

ETR:srh
cc: Patricia Lynch, Reno City Attorney

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

December 16, 2002

Mr. Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint
Reno City Council (Meeting of 11/5/02)
OMLO 2002-54/AG File No. 02-048

Dear Mr. Dehne:

This letter is in response to your Open Meeting Law complaint dated November 7, 2002. You allege that the Reno City Council (Council) has violated Nevada's Open Meeting Law[1] by "voting on whether Sam Dehne was going to be allowed to perform his duty of scrutinizing Action taken by Reno's government on issues of Public Concern that were on the official Agenda."

DISCUSSION

We have reviewed the agenda and the video tape of the November 5, 2002, meeting of the Council to try to understand the substance of your complaint. How the Council violated the Open Meeting Law within the meaning of your claim of a "duty of scrutinizing Action taken by Reno's government" was not apparent until we viewed the tape. The tape reveals that before the Council's consideration of agenda items 6H, 6I, and 6K, the Mayor, seeing that Request to Speak Forms on these items had been received, called for a vote on whether to receive public comment *on those items*. The Council voted to allow public comment on items 6H, 6I, and 6K. You took advantage of the opportunity to speak and were given the full three minutes to comment that was also allowed to others who submitted a Request to Speak Form. These actions by the Council followed item 4, general public comment, which is, of course, mandated by the Open Meeting Law and which was scrupulously observed by the Council.

[1] NRS 241.010—.040.

During the mandatory general public comment you received the same allotment of time that other speakers received. You were not treated any differently than anyone else.

ANALYSIS

Recently this office has issued two Open Meeting Law opinions on precisely the same issue you have raised in this complaint. A.G. File No. 02-041 and A.G. File No. 02-038 both dated November 4, 2002. In fact, it appears there are at least four other complaints on this same issue being considered in this office, all of which have been submitted by you. In the opinions already issued, this office found no violation of the Open Meeting Law by either the Reno City Council or the Redevelopment Agency Board for voting on whether to accept public comment for agenda items subsequent to the general comment period. You were also informed in A.G. File No. 02-038 that written communications provisions on Page 6 of the Reno City Council Rules and Regulations (Fifth Revision April 27, 1999) are available to you to comment upon any specific agenda item if you meet the legal requirement of being an interested party to that item.

Your claim that you have an unfettered right to "publicly scrutinize and speak about agenda items" at any time during a public meeting, especially during the time the public body is considering the item, finds no support in the law. Quite to the contrary, the law recognizes that public bodies may impose reasonable restrictions on speakers in order to further their legitimate interest in conducting efficient and orderly meetings. Open Meeting Law Manual, § 8.04 (9th ed. 2001). This power in the public body to restrict speakers also means, by extension, that the public body has the power to refuse public comment during their consideration of agenda items.

The Open Meeting Law was never meant to be an unfettered and unqualified right to participate in public body deliberations. There is no constitutional right to participate in open sessions of public bodies in the United States Constitution. *Minnesota State Board for Community Colleges v. Knight,* 465 U.S. 271, 283 (1984) ("The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy."). Similarly, there is no constitutional right in Nevada's constitution giving the public a right to be heard in meetings of public bodies. The Nevada Legislature declared that public bodies exist to aid in the conduct of the people's business and that their actions and deliberations be conducted openly. NRS 241.010. NRS 241.020 only requires that all persons must be allowed to attend public body meetings and that a period of public comment must be included on each agenda. The requirement of a period of public comment does not mean that you or any other member of the public may insist on speaking during the public body's deliberation on any agenda item. The statute only requires *one* period of public comment during any meeting, thus there is no unfettered right to speak to the public body during their deliberations on other agenda items. A leading treatise on Open Meeting Law states that "[w]hether a public body is entitled to deny citizens the right to address the public body depends principally on the statutes and rules governing the public body." Ann T. Schwing, Open Meeting Law 2d*,* § 5.94 (2000). In Nevada we believe that the Open Meeting Law is designed to foster public awareness not public

participation in government. *See also* Ann T. Schwing, Open Meeting Law 2d, §5.94 n.446 (2000) (additional citations from other states that also share the view that the public is entitled to attend public meetings but not to participate).

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments." We think that the public body retains discretion to determine the length, conduct, and structure of public comment periods. The Office of the Attorney General has taken the position that "[r]easonable rules and regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those persons attending the meeting may be adopted by a public body . . . ." OPEN MEETING LAW MANUAL, § 8.04 (9th ed. 2001).

CONCLUSION

The video tape reveals that you were permitted to speak to the Council during the general public comment period about any issue you chose to speak on. The Open Meeting Law does not mandate that members of the public be allowed to speak at any time other than the agendized public comment period. There was no evidence that the Council departed from the lawful application of the Open Meeting Law when it voted on whether to allow public comment during agendized items subject to vote by the Council. Your allegation that a vote by the Council to determine if public comment would be allowed is somehow a subterfuge to prevent you from performing your "duty" to scrutinize action taken by the Council is just simply not borne out by the facts revealed in the video.

We find no violation of the Open Meeting Law by the Council during its properly noticed meeting of November 5, 2002.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:
GEORGE H. TAYLOR
Deputy Attorney General
Civil Division
(775) 684-1230

GHT:py
c: Reno City Council

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FRANKIE SUE DEL PAPA
Attorney General

ANN P. WILKINSON
First Assistant Attorney General

December 31, 2002

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint
Reno City Council Meeting (November 12, 2002)
OMLO 2002-55/AG File No. 02-051

Dear Mr. Dehne:

This office has received a complaint from you alleging violations of the Open Meeting Law by the Reno City Council (Council) at its meeting on November 12, 2002. You allege that the Council passed over the public comment section of the agenda. You also allege that, because the public comment section was passed over, all further actions at the meeting, including the swearing in of city officials, were in violation of the Open Meeting Law. We have reviewed the agenda, videotapes, draft minutes, and all requests to speak made by members of the public for this meeting.

FACTS

The agenda for the November 12, 2002 meeting of the Council included a period for public comment as agenda item 4. Agenda item 3B was approval of the agenda. The first page of the agenda states, in bold, that "[a]genda items may be considered out of order."

At the November 12, 2002 meeting, the Council proceeded with agenda items 1—3. The agenda was approved unanimously. The Council then passed over agenda item 4 and proceeded to agenda items 5—8. From the audience, you advised the Council that it had passed over agenda item 4. Mayor Jeff Griffin cautioned you not to disrupt the meeting and threatened to have you removed if you further disrupted the meeting. Mayor Griffin stated that the Council was taking only those agenda items that had to be considered by the Council's current membership before the swearing in of the new Council members. Councilman David Aiazzi remarked that public comment would be allowed later in the meeting.

Agenda item 8 was the swearing in of the newly elected officials. This item was taken

next and was followed by a recess of the meeting for the purpose of holding a short reception. This break for the reception was set forth on the agenda. After the reception, the Council meeting was reconvened with the new Council members. The Council then took agenda item 4, public comment. You spoke during this agenda item as did three other members of the public. You also were afforded public comment on agenda items 10A, 10B, and 10C. During each of the four times that you were allowed comment during the meeting, you were not restricted in anyway.

ANALYSIS

Our office has previously stated that if agenda items may be considered out of order, it should be so stated in the agenda. Nevada Open Meeting Law Manual, § 6.02 (9th ed. 2001). The agenda for the November 12, 2002 meeting, clearly stated on the first page that agenda items may be considered out of order. The Council ratified the agenda, including that statement on the agenda. Therefore, it was permissible for the Council to consider agenda items out of order.

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments. . . ." Discretion as to the length, conduct, or structure of the public comment period lies with the public body, subject to certain legal considerations. With regard to the Council meeting on November 12, 2002, we conclude that you were properly afforded public comment during the agenda item for public comment, and those comments were not restricted. This is all that the Open Meeting Law requires. In addition to the public comment section, you were also afforded public comment on three other agenda items. As noted above, it was permissible for the Council to take agenda items out of order. The Council was not required to take public comment on the fourth item of the agenda as long as the Council did return to this agenda item later in the meeting and allowed members of the public to comment. Because we found no violation of the Open Meeting Law with regard to public comment, we necessarily find no violation regarding action taken on agenda items after agenda item 4 was allegedly passed over.

CONCLUSION

Members of the public do not have an unqualified right to speak during a meeting of a public body. A public body may impose reasonable restrictions on speakers in order to further their legitimate interest in conducting efficient and orderly meetings. In addition, a public body may consider agenda items out of order if the agenda so states. There is no indication that the Reno City Council violated the Open Meeting Law with regard to public comment during its November 12, 2002 meeting. You were allowed to speak during the public comment period without restriction, and you were allowed to speak on three other agenda items. Because we find no violation of the Open Meeting Law as alleged in your complaint, we are closing our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: ______________________________
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML/br
cc: Patricia Lynch, Reno City Attorney