STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of

CLARK COUNTY SCHOOL DISTRICT
BOARD OF SCHOOL TRUSTEES

Attorney General File No. 10-010
OMLO 2010-02

I.

BACKGROUND

This office reviewed the Open Meeting Law (OML) complaint submitted by Thomas Mitchell, Editor of the Las Vegas Review-Journal (LVRJ) against the Clark County Board of School Trustees (BST). It is alleged that a quorum of the members of the Superintendent’s Educational Opportunity Advisory Committee (Committee) were appointed by Trustees. Under prevailing interpretation of the OML, the Committee became a public body. If the Committee was a public body, then its failure to provide notice and agenda prior to two meetings in January 2010 is a violation of NRS 241.020(2).

The Clark County School District (District) provided this office with an initial response to the allegation. Superintendent Ruffles provided several documents describing the “Prime 6 Program Review” and steps the District had taken to initiate the Prime 6 program culminating in the creation of the Committee. The District held nine Prime 6 school parent input meetings from early December 2009 through January 12, 2010. We reviewed the Committee’s proposed meeting schedule, three agendas and two “meeting summaries” for Committee meetings in January 2010.

After review of the District’s initial response, we asked for an additional response including a request for an affidavit from each member of the BST to explain his or her involvement in the appointment of community members to the Committee. In addition, if the Committee was the Superintendent’s committee and each member was appointed by the Superintendent, we asked for and received an explanation for the apparent discrepancy indicated on the Committee membership list (a copy had been provided in the District’s initial
response), which indicated nine members were "appointed" by Trustees. Finally, we reviewed legal counsel's response to the allegation.

II.

FACTS

An October 6, 2009 memorandum from Superintendent Rulffes to the BST was the first communication about his intention to create a Committee to analyze Prime 6 issues. In it he asked each Trustee to provide him with names of two or three individuals capable of serving on the Committee. He said he would select one representative for each Trustee from among the names submitted to ensure broad representation on the Committee.

The Superintendent concluded his October 6, 2009 memorandum by stating the Committee would review the information and data it gathered and would "develop long and short term recommendations" to be submitted to the Superintendent in a report no later than February 18, 2010. The Superintendent would review the Committee's report and submit his recommendations to the BST no later than March 31, 2010.

We reviewed a document provided by the District entitled: "Superintendent's Education Opportunities Advisory Committee; Facilitator: Dr. Robert McCord, UNLV." This document is a membership list of the Committee. It contains a column indicating each member's "Affiliation." The column entries indicate that 9 of the 13 members were appointed by BST Trustees. We asked for additional discovery from the District to explain why this document plainly states that nine members were appointed by Trustees if in fact the Superintendent actually appointed them.

The District sent an affidavit from Dale Erquiaga, the Executive Director of Government Affairs, Public Policy, and Strategic Planning for the Clark County School District, which sheds light on the origin and meaning of the "affiliation" column on the Committee membership document.

Mr. Erquiaga's Government Affairs office created the Committee membership list as well as the Committee meeting schedule and Committee topics of discussion. Mr. Erquiaga's
affidavit states he was aware the Superintendent actually made the appointment of each
ing individual on the Committee. He said:

Although the phrase “appointed by Trustee” is used in the listing, I
am aware that the Superintendent had actually made the
appointment of each individual to the committee. The term
“appointed” on the committee membership list, was used simply to
enable interested parties to understand the source of the names on
the committee list, and was not intended to state the method by
which the committee membership was established.


The District sent Trustee affidavits for our review. Each affidavit explained the
Trustee’s role and his or her understanding of the appointment process and whether the
Committee was understood by the Trustees to be a BST committee. Each Trustee stated that
he or she received the Superintendent’s October 6, 2009 memorandum informing the Trustee
that the Superintendent intended to create a committee to analyze issues raised in the Prime
6 report. He informed the Trustees that he wanted to have a representative from each of the
Trustee districts because solutions could have implications for schools in every Trustee
district.

Each affidavit also stated that the Trustee identified one or more nominees and
provided those names to the Superintendent. Each affidavit generally states that only later did
the Trustee learn who had been appointed (if the Trustee submitted more than one name), or
if only one name had been submitted, the Trustee’s affidavit avows it was only because it had
been challenging to identify potential candidates who were able to make the time commitment.
One Trustee was unable to identify potential candidates in her district; we assume the
Superintendent made a selection for her.

III.

ISSUES

1. Whether the Clark County School District Superintendent’s Educational
Opportunity Advisory Committee is a public body subject to the OML.
IV.

DISCUSSION

Resolution of the issue depends in part on how the Committee was formed, its purpose and who appointed the members.

The complaint emphasizes several sections from the OML to suggest how the Committee could be a public body. First, it is noted that any advisory body of the state or local government which advises or makes recommendations to any entity\(^1\) which expends or disburses or is supported in whole or in part by tax revenue, is a public body. NRS 241.015(3). Secondly, § 3.04 of the OML Manual states that formality in appointment is not the sole dispositive factor in what constitutes a public body. Citing OMLO 98-04.

This office considered these opinions taken from the OML Manual; however, the evidence provided by the District supports our conclusion that the Committee was not formed by the BST, it was not formed for the purpose of reporting to the BST, but it was formed to assist only the Superintendent; therefore it is not subject to the OML.

The OML does not define “committee, subcommittee or subsidiary thereof,” but the OML Manual interprets the statute to mean that to the extent 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 OML. See § 3.04 NEVADA OPEN MEETING LAW MANUAL (10th ed. 2005); See OMLO 2002-017 (April 18, 2002) and OMLO 2002-27 (June 11, 2002). NRS 241.015(3). Based on the District’s own document which identifies nine members as having been appointed by Trustees, it seemed reasonable to conclude the Committee may have been formed by the Trustees, but the Trustees’ affidavits, Superintendent Rulffes’ affidavit and Mr. Erquiaga’s explanation of the “affiliation” column on the membership list convinced this office that the Committee was not a BST committee.

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\(^1\) The NEVADA OPEN MEETING LAW MANUAL at § 3.02 interprets the statutory use of the word “entity” to mean a multi-member entity. An entity must be collegial so the OML does not apply to the Governor, or to any other person acting as the sole head of an agency of state or local government. In this case the Superintendent is the sole head of the Clark County School District. He is not an entity subject to the OML.
V.

CONCLUSION

The Superintendent's Educational Opportunity Advisory Committee is not a public body as defined in statute and as interpreted by this office. However, resolution of this question was made more difficult because of the membership document which plainly stated that nine members were "appointed" by the BST. When committees are created, public officers and members of public bodies should exercise more caution to ensure the public is not confused about the creation of committees or subcommittees.

Finally, we had difficulty understanding the District's explanation that the use of the word "appointed" in the Committee's membership document may have been an unintentional use. There was no explanation as to why it was important to connect each Trustee with a name on the Committee, since the Superintendent appointed the Committee and all Trustee districts compose the Superintendent's authority.

Mr. Erquiaga stated in his affidavit that he was aware the Superintendent appointed all the members; the Superintendent in his affidavit states he reserved the right to make the final selection, and in fact, the Trustees all indicate they only provided names to the Superintendent. Trustees only nominated individuals, but did not appoint anyone to a BST committee that would report to the BST.

Based on these facts we must conclude the Committee is not subject to the OML.

DATED this 7th day of April, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By:  

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 7th day of April, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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[Signature]
An Employee of the Office of the Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of
CIVIL BENCH/BAR COMMITTEE (EIGHTH JUDICIAL DISTRICT)  
Attorney General File No. 10-011
OMLO 2010-03

I.

BACKGROUND

This office has reviewed the Open Meeting Law (OML) complaint submitted by KLAS-TV on January 26, 2010 which alleged that the Civil Bench/Bar Committee (Committee), meeting within the Eighth Judicial District, violated the OML when presiding Judge, Elizabeth Gonzales, denied complainant's request to video record the meeting. No one was barred from attending the meeting.

The complaint alleges that "an advisory committee formed by elected officials is subject to the Open Meeting Law." This allegation raises fundamental OML issues. First, there is a factual issue about the origin of the Committee and whether it was formed by elected public officials, and secondly, even if it was formed by elected public officials, did those elected public officials constitute a public body thereby conferring the same status on its committees.

Investigation of Origin of the Bench/Bar Committee

We investigated the origin of the Committee. The only reference we found is the same reference noted in the complaint—Eighth Judicial District Court Local Rule 1.31. Local Rule 1.31 requires presiding Judges to attend every Committee meeting. Local Rule 1.31 recognition of the Committee seems to impart a formal status to the Committee, suggesting that its formation was a formal act. We asked Court staff counsel to investigate the origin of the Committee, how members are appointed and under whose authority.

We could not find a statute or ordinance creating the Committee. When questioned about the origin of the Committee, the Court, through its staff attorney, explained that the Committee is simply an ad hoc open forum for communication between the bench and bar. The committee is not formally appointed or created by any group of elected officials or any
one Judge. The staff attorney this office spoke with maintains all Administrative Orders for the
Clark County Courts. Her review of administrative orders in her possession did not uncover
an Administrative Order creating a Bench/Bar Committee or an order guiding meetings
thereof.

Further, we understand the Committee’s purpose is an exchange of information and
discussion about issues between bench and bar within the Court. For example, issues such
as e-filing, the opening of the Self-Help Center, and discussions/recommendations regarding
the time it takes to go through security, etc., are current issues within the Court.

Judges do not make appointments to a formal committee, but any member of the civil
bar may attend. The Committee does not have advisory, legislative, or executive power; it
does not vote or take action on matters discussed. It is simply an open forum between the
bench and civil bar.

II.

ISSUE

1. Whether the Bench/Bar Committee is a public body.

III.

DISCUSSION

Any “advisory committee formed by elected officials” regardless of whether the elected
officials are Judges or any other state or county elected official, is not subject to the OML,
unless the appointing body of elected officials is itself a public body.

Our prior OML opinions and the NEVADA OPEN MEETING LAW MANUAL defines “public
body” and has consistently reiterated that a committee is a public body only when the
committee is formed by a parent public body for the purpose of giving the parent public body
advice or recommendations. AGO 2000-18 (June 2, 2000).

Furthermore, the OML Manual emphasizes that a public body must be a collegial body,
all members of which have equal voting power. Most importantly for this opinion, a public
body is “...any administrative, advisory, executive or legislative body of the state or a local
government which expends or disburses...tax revenue...” NRS 241.015(3).
This office has always interpreted the requirement that a public body "of the State or a local government" to mean the public body must be created by statute or local ordinance,\(^1\) or if the body was organized to perform a governmental function, then even without formal creation by State or local ordinance, it might be considered a public body under the OML as long as the body is supported in part or whole by tax revenue. Compare Op. Nev. Att'y Gen. No. 2000-18 (June 2, 2000) (committee appointed by the Las Vegas City Clerk to prepare ballot questions was not a public body where it did not expend tax revenue or make any recommendation to a public body), with OMLO 2001-17 (April 12, 2001) (a private non-profit corporation formed at the direction of the County Commission, incorporated by two of the three Commissioners, and which loaned county money, and where the corporation assets reverted to the County in the event of dissolution, was deemed to be public body).

For example, in OMLO 99-05, an opinion which carefully examined the nature of a public body in light of the Legislature's definition, this office examined whether a private non-profit corporation was a public body:

\[
\text{We can find no evidence that EDAWN}^2 \text{ was created by the order of or otherwise owes its existence to any state or local government body. EDAWN is given no authority to act on behalf of any government body. It administers no government programs, passes no legislation or regulations, has no governmental jurisdiction to regulate any activity or impose any taxes. . . . No government body has appointed or asked EDAWN to provide advice on any governmental matter. . . . We can therefore find no evidence that EDAWN was organized to act in an administrative, advisory, executive or legislative capacity. We conclude that [EDAWN corporate functions] are within the dominion of free enterprise, and are not government functions. OMLO 99-05 (January 12, 1999).}
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\(^1\) The definition in NRS 241.015(3) indicates that a public body is an "administrative, advisory, executive or legislative body of the state or a local government," which means that the body 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. In addition, it must expend or disburse or be supported in whole or in part by tax revenue, or it advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue.

\[\text{NEVADA OPEN MEETING LAW MANUAL, } \S\ 3.01 (10th ed. 2005)\]

\(^2\) EDAWN: Economic Development Authority of Western Nevada.
IV.

CONCLUSION

Just because the Committee appears to have been formed by elected officials, even though we could not find any evidence of such formation in the distant past, does not convert it into a public body subject to the OML. Whether one Judge or several Judges appointed a group to advise them on a matter, the resulting group has not been created as a committee that simply meets the definition of a public body simply by virtue of appointment by a Judge.

There is no administrative order, ordinance or statute creating this Committee. Hence there is no definition of any committee duties whether advisory or otherwise. Statutory creation or creation by ordinance is the touchstone to defining a “public body.” The Committee is an open forum between the local bar and the Judges for the purpose of exchanging information about court programs or current issues. The Committee does not maintain an organization. Meeting dates are spread by announcement in the local Clark County Bar Association website of a meeting.

There has been no appointment by the Judges or members of the bar to serve on a committee, but even if there had been, the resulting committee would not be subject to the OML because the Judge or Judges are not themselves a public body subject to the OML and that is a requirement for defining which committees are in fact subject to the OML.

The Bench/Bar Committee is not subject to the OML.

DATED this 12th day of April, 2010.

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 12th day of April, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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Steve Grierson, Executive Officer
Family Court Division
8th Judicial District Court
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Ms. Jillian Prieto
Family Court Division
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[Signature]
An Employee of the Office of the Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of
FERNLEY CITY COUNCIL

Attorney General File No. 10-012
OMLO 2010-04

I.

BACKGROUND

This opinion responds to the Open Meeting Law (OML) complaint filed by Ms. Debbie Skinner on January 27, 2010. Ms. Skinner at a public meeting of the Fernley City Council (Council) tried to comment on recently enacted Fernley City ordinances concerning the transient lodging tax. She asked to read a letter during public comment she had recently sent to the City. Fernley Mayor LeRoy Goodman acknowledged receipt of Ms. Skinner’s Agenda Item Request form for a future meeting and Ms. Skinner’s letter, but he asked Ms. Skinner to choose to either read her letter during public comment, or risk not having the matter appear on a future Council agenda. The last sentence of Ms. Skinner’s complaint asserts she should have been allowed to express her concerns.

This office investigated the allegations in Ms. Skinner’s OML complaint. We required the Fernley City Council (Council) to submit affidavits from each member and a response to the complaint. NRS 241.037

The Council sent us the January 20, 2010 notice and agenda. We were given the Council agenda request form on which Ms. Skinner requested that an agenda item be placed on a future Council agenda. We were also provided with a letter from City Manager Greg Evangelatos addressed to Ms. Skinner dated January 20, 2010; the audio recording of the January 20, 2010 meeting; and verbatim minutes of Ms. Skinner’s public comment under item 19. The Council also provided affidavits from Mayor LeRoy Goodman, City Manager Greg Evangelatos, City Clerk Lena Shumway, and selected item verbatim minutes from six additional meetings beginning in July of 2009. Finally, the Council provided proof of publication and the text of Bills 138 and 142 (transient lodging tax ordinances).
II.

FACTS

A. January 20, 2010 FCC meeting

On January 15, 2010, Ms. Skinner submitted a Council Agenda Item Request Form along with a letter dated January 14, 2010 (two pages) in which Ms. Skinner requested action by the Council to amend or clarify the procedural application of two recently enacted transient lodging tax ordinances to local businesses.

The Council’s response to the complaint provided evidence that submission of the Agenda Item Request form was untimely. City Manager Evangelatos’ Affidavit states the request was untimely because the agenda for the January 20, 2010 meeting had already been finalized and published. (Affidavit of Greg Evangelatos dated February 18, 2010).

Mr. Evangelatos wrote Ms. Skinner on January 20, 2010 acknowledging receipt of the Agenda Item Request form, but he also asked her to meet with him and the City Clerk to “possibly resolve [Ms. Skinner’s concerns] before adding an item to a future City Council agenda.” She was asked to contact Lena Shumway, the City Clerk to set up a meeting.

On January 20, 2010, Ms. Skinner attended the Council meeting and rose to speak during public comment (item #19 on the agenda). Ms. Skinner asked to read a letter about the recently enacted transient room tax ordinances. At this point Mayor Goodman interrupted her. He said that Mr. Evangelatos had a copy of Ms. Skinner’s Agenda Item Request form and her letter. He said Mr. Evangelatos would be meeting with Ms. Skinner to address her concerns. Then he said “... and if we want to put it [Ms. Skinner’s Agenda Item Request] on as an agenda item, we will.” When she asked whether he had the option to put it on the agenda, Mayor Goodman said “yeah, we have the option to put it on the agenda.”

Ms. Skinner returned to her original purpose for rising during public comment and asked if she could encourage the Council to revisit the two recently enacted transient lodging tax ordinances. She said she thought she could speak on it because it was not on the agenda and she was rising during public comment.

1 Apparently, anyone can request that an issue or matter be placed on the Council’s agenda, but ultimately the Mayor, Council and/or the City Manager decides whether to agendize it.
Mayor Goodman then reminded her that she asked to agendize her concerns and they would be on the next agenda. His next comment offered Ms. Skinner a choice — "Now, if you [Ms. Skinner] want to drop that request [to agendize her concerns for a future Council meeting] then go ahead . . . and read it [her January 14th letter]."

Ms. Skinner replied, "I'm not going to drop the request."

Mayor Goodman responded, "Ok, well, then, that's when it will be discussed. Otherwise . . . ."

Ms. Skinner, recognizing that Mayor Goodman had given her a choice, pointedly asked him, " . . . when do we as business owners have a right to express our concern?"

Mayor Goodman's reply is very confusing, even in the context of this dialog. He said, "Where do you want me to answer that, do you?" He then explained that the ordinances were properly adopted by the Council under applicable OML statutes.

In fact, the validity of the ordinances was never in doubt. Ms. Skinner's letter merely asks for reconsideration and action on ordinance procedural application to her as a business owner.

B. Council's Response to the Complaint

Council responded to the complaint with affidavits from both Mayor Goodman and Mr. Evangelatos. After the January 20, 2010 public meeting, both men met with Ms. Skinner at separate times to discuss her concerns about the transient lodging tax ordinances. Both affidavits state that Ms. Skinner did not indicate she desired to have her concerns placed on a future agenda, as requested in her written request of January 15, 2010. However, neither affidavit avers that she was offered a place on a future agenda, or that she turned the request down. Council's response does not indicate whether Ms. Skinner's request was denied, whether she released them from her request, or some other disposition.

Mayor Goodman's affidavit in response to the complaint did not explain the reason for the choice Ms. Skinner had to make. He stated Ms. Skinner did not comment about the proposed ordinances during the Council's lawful consideration of them beginning in July of 2009. He also stated he did not refuse to allow her to speak during public comment on
January 20, 2010, he only “clarified” that the information she wished to present to the Council was the “same information” she had requested be placed on the Council’s agenda. He did not discuss or explain the choice given to her.

III.

ISSUES

1. Whether Debbie Skinner’s right to public comment was denied when Mayor Goodman made her choose between public comment or the chance of a future agenda topic.

IV.

DISCUSSION

Courts recognize a governmental interest in conducting orderly, efficient, effective, and dignified public meetings. Kindt v. Santa Monica Rent Control Bd., 67 P.3d 266, 271 (9th Cir. 1995); OMLO 2001-22, December 17, 2002. Through the OML, the Nevada Legislature has given the public the right to address public bodies. NRS 241.020(2)(c)(3). Once a person is given the right to address a public body, the right may be limited only within constitutional parameters. OMLO 2001-22 citing Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 829 (1995); see White v. City of Norfolk, 900 F.2d. 1421, 1425-27 (9th Cir. 1990); Leventhal v. Vista United School Dist., 973 F. Supp. 951 (S.D. Cal. 1997).

We are mindful that a public body “does not violate the first amendment when it restricts public speakers to the subject at hand,” and that a chair of a meeting may stop a speaker “if his speech becomes irrelevant or repetitious.” Kindt, 67 F.3d at 270 quoting White v. City of Norwalk, 900 F.2d 1421, 1425 (9th Cir. 1990). However, our review of the record of the dialog between Mayor Goodman and Ms. Skinner does not implicate either concern as expressed in Kindt or White decisions. In the context, Ms. Skinner’s request for public comment was not irrelevant or repetitious especially since a future agenda item was only contingent.

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Further insight regarding public comment is found in OMLO 2001-22, p.5:

"The most important purpose of the public comment period is to allow members of the public to comment on action items under consideration by a public body or on topics within the scope of the public body's authority. See NRS 241.020. Further, public comment is necessary to allow citizens to present grievances or concerns to their government so they may receive redress or influence their government's decision-making process."

After review of the Council's response, the affidavits, and careful review of the audio recording of Ms. Skinner's public comment, Ms. Skinner was subjected to an improper choice that effectively prevented her public comment. She did not read her letter because much of her five minutes was taken when the Mayor confronted her with the "choice." She was not able to effectively comment on the concerns expressed in her letter.

We reviewed the Council's notice governing public comment, set forth under Public Input, (item #19), to determine if it supported Mayor Goodman's "either/or" proposition.² It does not. The Mayor's action does not fall within any lawful restriction on public comment mentioned in the Council's notice. There was nothing repetitive or irrelevant about Ms. Skinner's attempt to read her letter in public comment, despite her existing request for a future agenda item. The Mayor did not guarantee a future agenda item. In fact he said it was optional. We cannot find any legal basis to justify his action and therefore conclude his action unnecessarily restricted Ms. Skinner's right to comment.

Essentially, Mayor Goodman offered her a choice to either read the letter during her five minutes of public comment, or risk denial of her request for an agenda item on a future agenda. Review of the audio of the colloquy between Mayor Goodman and Ms. Skinner did not reveal an explanation, factual or legal, for the Mayor's action.

² PUBLIC INPUT. Public comment is limited to five (5) minutes per person. Items not agendized for this meeting cannot be acted upon other than to place them on future agendas. Public input is prohibited regarding comments, which are 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 amounting to personal attacks or interfering with the rights of other speakers.
V.

CONCLUSION

The Council's response did not identify a legal reason for the Mayor's choice offered to Ms. Skinner as she sought to comment on recently adopted ordinances. Nothing in the Mayor's dialog with Ms. Skinner suggests a legitimate basis for denial of her right to comment nor did the Mayor explain his action in his affidavit sent to us in response to the complaint.

Expediency cannot trump the public's right to comment.

The choice given to her, while at the podium during public comment, was an unnecessary restriction on public comment which does not comport with either the letter or spirit of the OML. NEVADA OPEN MEETING LAW MANUAL § 8.04 (10th ed. 2005).

This office issues a warning to the Mayor to avoid unnecessarily burdening the public's right to comment by imposing a restriction that does not comport with constitutional review. The Mayor must understand the importance and breadth of the public's right to comment on matters within the Council's jurisdiction and control. Public comment during a public meeting has been bestowed by statute and once bestowed may only be restricted or limited in a constitutional manner. Under current law, Ms. Skinner's right to comment is only subject to time, place, and manner restrictions. Nothing in the record we reviewed suggested that the Mayor's action was based on constitutionally valid time, place, or manner restrictions.

DATED this 14th day of May, 2010.

CATHERINE CORTEZ MASTO
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By:  

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 18th day of May, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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An Employee of the Office of the Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of
PERSHING GENERAL HOSPITAL AND
NURSING HOME BOARD OF TRUSTEES

Attorney General File No. 10-014
OMLO 2010-01

I.

BACKGROUND

Matt Rees, alleged in his Open Meeting Law complaint received in this office on
February 3, 2010, that agenda item 5(C) on the October 28, 2009 meeting of the Pershing
General Hospital Board of Trustees (Board), was legally insufficient to impart notice to him
that his character and professional competence would be considered by the Board during its
discussion of Item 5(C).

The Office of the Nevada Attorney General has primary jurisdiction to investigate and
prosecute alleged violations of the Open Meeting Law (OML). This office reviewed the
complaint, agenda, and audio recording of the October 28, 2009 Board meeting in drafting
this opinion. Furthermore, we interviewed member Steve Evenson by telephone and solicited
his view of the Board’s discussion of item 5(C) and his role in that discussion. Our letter to
the Board also solicited a response from the Board’s legal counsel to the allegations in the
complaint.

It is alleged that agenda item 5(C) on the October 28, 2009 meeting of the Board was
legally insufficient to impart notice that Matt Rees’ character and professional competence
would be considered by the Board during its discussion of item 5(C).

II.

FACTS

Our investigation of the facts underlying this complaint begins with the Board’s agenda
item 5(C). Item 5(C) is set forth here as it appeared on the agenda:

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5. New Business

(C) Discussion regarding election of CEO to receive contractual bonus based upon FY 08 positive evaluation. Id.

The minutes for the October 28, 2009 meeting show that discussion of this item was very short. The minutes only report that “Discussion regarding whether the CEO taking his bonus was either appropriate or inappropriate ensued.” This was the only sentence summarizing what became a 35-minute discussion/argument.

Review of the audio recording revealed that the first few minutes of the Board’s discussion of item 5(C), CEO Matt Rees’ election to receive his contractual bonus, was led by Mr. Rees as an introduction. Mr. Rees began by stating that he had had talks with Roger Mancebo, Chair of the Board, informing Mr. Mancebo that there was some bonus due under Mr. Rees’ professional contract with the Hospital, but the amount due was unclear. Mr. Rees continued speaking. He said he and Mr. Mancebo were recommending creation of a committee of Board members to review the terms of the professional contract, to go over the time period of the professional evaluation and then bring a final bonus recommendation back to the Board at another meeting for action.

At this point on the audio, after only two minutes, Mr. Evenson moved the tone and the subject matter of the discussion into new and different issues. The next 35 minutes of discussion seemed as though Mr. Rees’ evaluation was being conducted or reopened.

Mr. Evenson began by acknowledging agenda item 5(C) and that the scope of the discussion was what Mr. Rees did (performance?) to decide to elect to take his contractual bonus, but then ominously, he said:

“We’re not there yet. We haven’t discussed that yet. I want to know where it began, who was contacted, what happened, who gave approval and what process was undertaken to get us to the point to where he has already received money without coming to us first. Now maybe that will lead us into yet again another discussion of why things are being done of a financial nature of this magnitude without being brought to us first. . . . I have some ideas. I have

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1 We learn later in this discussion that Mr. Rees’ bonus is contractually tied to his professional evaluation. We also learn that Mr. Rees had elected to take two $500.00 bonus payments and indeed had received them prior to putting this matter on the October 28, 2009 agenda. At least some members of the Board were aware of the election and receipt of bonus.
some information that he already received money, but it’s amazing that when I get an anonymous letter in the mail and I call [Matt Rees] he doesn’t call me back. Once again.”

Mr. Mancebo quickly advised Mr. Evenson not to discuss the letter, but to keep that separate from the discussion at hand. Nevertheless the Board never did come back to the topic at hand which was to discuss the election to receive the bonus. Instead Mr. Evenson led the Board into a discussion of Mr. Rees’ professional problem communicating with the Board.

Mr. Evenson admonished the Board and Mr. Rees by asserting Mr. Rees frequently has been told by the Board to do one thing, or not to do something, yet he does the opposite, or as in this case, he does things without informing the Board. Then Mr. Evenson discussed a “mutiny” going on in Mr. Rees’ own administrative staff, which Mr. Evenson said he heard about on a confidential basis from staff. It is alleged by Mr. Evenson that the “mutiny” or border-line mutiny, was because of “actions [Mr. Rees] continues to take by himself.

Another Trustee, unidentified, spoke up and said that as a county commissioner and businessman, he has not heard any complaints about Mr. Rees nor should an anonymous letter be given any credence.

The 35-minute audio recording of discussion on item 5(C) also reveals that certain members became concerned as the discussion/argument wore on that they were exceeding the scope of the agenda item.

Chairman Roger Mancebo was openly concerned about the legality of the discussion and asked Member Steve Evenson, an attorney and former counsel to the Trustees, whether the discussion was “going beyond where we should be going?”

Mr. Evenson replied:

“I don’t know. I don’t know. How many times have we had to ask that question?”

Jack Riehm, another Trustee, then said to Mr. Evenson:

“You have a lot of opinions here and then you answer, ‘I don’t know.’”
Mr. Evenson heatedly replied:

“Jack [Riehm] I guess my point is this, I’m tired of having to have these discussions. I don’t know if we are violating the Open Meeting Law or not and frankly, for the record, I don’t care. My point in saying this is, I’m tired of having...my point is, why do we have to keep having this discussion.”

Roger Mancebo then said:

“I do care about the Open Meeting Law and if we’re getting into an area where we’re not supposed to be, I don’t want to be there.”

Mr. Evenson concluded this portion of the Trustee’s verbal exchange with each other:

“Well, ok fine. Let’s not be there and the next time that Matt [Rees] does something without telling us, and that he informed us previously that he wasn’t going to do, we’ll just pat him on the head again, and say it’s okay Matt, don’t worry about that. Don’t worry about morale at the hospital, don’t worry about anything else, it’s ok we’ll take care of it later. We’ll just keep doing that, over and over again until we [are] just considered patsies by everyone in the facility, and the county for Matt Rees.”

This exchange among members was an open acknowledgment of their fear that the discussion was in violation of the OML. Their fear was that the OML had been breached. At least Mr. Mancebo was reminding the others to ratchet the discussion back to the agenda item.

Mr. Evenson was still heated and seemed to be warning the other Trustees that this matter should be dealt with firmly and immediately; however, later in the meeting he blamed an earlier remark about the OML on frustration, but he never acknowledged the fact that the Trustee’s discussion had strayed far from the agenda topic. In fact, he openly stated for the record that he did not care if the discussions were in violation of the OML.
The Board continued discussion of item 5(C) for another 12 minutes and revisited issues beyond the agenda item’s scope as well as new ones which were also clearly outside the scope of item 5(C). They revisited Mr. Rees’ evaluation and the fact that the Trustees may have unwittingly put a positive spin on an otherwise neutral evaluation, which would have negated the award of a bonus. They discussed the creation of a committee to review Mr. Rees’ professional contract. They then asked him why he went to the head of the line (for his bonus) when the Hospital had $650,000 outstanding in accounts receivable. Mr. Evenson was critical of Mr. Rees because he is the highest paid employee in the county, yet he gets a bonus without bringing it to the Board first and in spite of “continuing communications issue” reflected in his professional evaluation.

Toward the end of the audio on this item, Mr. Evenson revisits the OML and reminds everyone that when he said earlier that he didn’t care if the OML was being violated he only meant that he was “sick of having these discussions.” After a little more discussion, he said that ultimately the Board must deal with “continuing communication issues” referring to his frustration that the communication issue was continuing. CEO Rees last evaluation had identified a communication issue between the Board and Mr. Rees which Mr. Evenson felt was not being corrected by Mr. Rees or addressed by the Board.

Just before the Board left this item, the Hospital’s Director of Nursing addressed the Board openly sobbing about the severe financial problems her employees were suffering every day because of pay cuts and reduced hours. Mr. Rees was openly chastised and accused of putting himself first in face of poor morale caused by pay cuts and reduced hours and job sharing.

The anonymous letter was again mentioned. Mr. Evenson said he had knowledge that item 5(C) appeared on the agenda only because the anonymous letter had surfaced. Mr. Evenson’s implication was that the bonus money taken by Mr. Rees would have remained secret except for the anonymous letter which apparently disclosed Mr. Rees’ election to take a bonus at all.
III.

ISSUES

1. Whether the Pershing General Hospital Board’s discussion of agenda item 5(c) exceeded the scope of the topic so that no notice to the public was given of the discussion.

2. Whether the Pershing General Hospital Board and each Trustee violated the OML’s requirement to give notice to each person whose character, professional competence, and alleged misconduct will be considered by the Board.

IV.

DISCUSSION

Clear and Complete Rule

The issues we examine are closely related. Exceeding the scope of an agenda item\(^2\) may have led the Board into another violation of the OML – the notice provision in NRS 241.033\(^3\)

\[ /\]

\[ /\]

\(^2\) NRS 241.020(2); Notice must consist of: (c); An agenda consisting of:
(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

\(^3\) NRS 241.033 Meeting to consider character, misconduct, competence or health of person or to consider appeal of results of examination: Written notice to person required; exception; public body required to allow person whose character, misconduct, competence or health is to be considered to attend with representative and to present evidence; attendance of additional persons; copy of record.

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 or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body unless it has:
   (a) Given written notice to that person of the time and place of the meeting; and
   (b) Received proof of service of the notice.

2. The written notice required pursuant to subsection 1:
   (a) Except as otherwise provided in subsection 3, must be:
      (1) Delivered personally to that person at least 5 working days before the meeting; or
      (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.
   (b) May, with respect to a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, professional competence, or physical or mental health of the person.
   (c) Must include:
      (1) A list of the general topics concerning the person that will be considered by the public body during the closed meeting; and
      (2) A statement of the provisions of subsection 4, if applicable.
In 2003, the Nevada Supreme Court in *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003) strictly construed NRS 241.020(2)(c)(1) rejecting a common practice in which public body members discussed matters in detail, matters which deliberately deviated from the agenda topic into related and germane areas.

The *Sandoval* Court held that UCCSN's Board and Campus Environment Committee's detailed discussion of extraneous matters greatly exceeded the scope of the published agenda topic. The Committee discussed details of a Nevada Division of Investigation investigative report, it discussed public criticism of the UNLV police, and it discussed drug use on the UNLV campus. The agenda topic under which these discussions occurred only noticed the public that a review of state and federal law and policies affecting UCCSN's release of materials would be discussed.

The Court made it clear that mere mention of related matters in the abstract will not implicate the OML, but that detailed discussion leads to violation:

> [A]lthough discussion of the NDI report in the abstract may not have violated the Open Meeting Law, the Committee went too far when it discussed details of the report, criticized the UNLV police department, and commented on the impact of drug use on the UNLV campus. Accordingly, we conclude that, as a matter of law, the Committee violated the Open Meeting Law.

*Sandoval* 119 Nev at 155.

The Court stated that NRS 241.020(2)(c)(1) was enacted by the Legislature "to ensure that the public is on notice regarding what will be discussed at public meetings." The court said that no longer could a public body stray into discussion of related or germane topics, instead the law was now interpreted to require strict compliance with legislative intent. The *Sandoval* Court said:

> [T]he Legislature evidently enacted NRS 241.020(2)(c)(1) to ensure that the public is on notice regarding what will be discussed at public meetings. By not requiring strict compliance with agenda

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4 University and Community College System of Nevada.

5 "Review of UCCSN Policies on Reporting," [described in the agenda as:] Review UCCSN [University and Community College System of Nevada], state and federal statutes, regulations, case law, and policies that govern the release of materials, documents, and reports to the public."
requirements, the “clear and complete” standard would be rendered
meaningless because the discussion at a public meeting could
easily exceed the scope of a stated agenda topic, thereby
circumventing the notice requirement. Accordingly, we reject the
“germane standard,” as it is more lenient than the Legislature
intended. Instead, we conclude that the plain language of NRS
241.020(2)(c)(1) requires that discussion at a public meeting cannot
exceed the scope of a clearly and completely stated agenda topic.

Sandoval 119 Nev. at 155.

Relying upon case law from Texas and Nebraska, the Court emphasized the purpose
of Nevada's Law: “Similarly, Nevada’s Open Meeting Law seeks to give the public clear notice
of the topics to be discussed so that the public can attend a meeting when an issue of interest
will be discussed.” Id. at 155.

The Office of the Attorney General has written several opinions on “clear and complete”
Gen. No. 91-6 (May 23, 1991); OMLO 99-01 (January 5, 1999); OMLO 99-02 (January 15,
1999); OMLO 99-03 (January 11, 1999); OMLO 2003-09 (March 4, 2003); OMLO 2003-13
(March 21, 2003); and OMLO 2003-23 (June 24, 2003).

Notice to a Person under NRS 241.033

Written personal notice must be provided to the person whose character, alleged
misconduct, professional competence, or physical or mental health will be considered.
NRS 241.033. Personal notice and return of service is required regardless of whether the
public body meets in closed session or in open session. In addition, a notice of a meeting to
consider a person pursuant to NRS 241.033 should contain the informational statement
regarding administrative action under NRS 241.034. See NEVADA OPEN MEETING LAW MANUAL
§ 6.09 (10th ed. 2005).

Mr. Rees complains that the Board discussed his character and/or his professional
competence during the discussion of item 5(C) on October 28, 2009, without complying with
the OML’s notice requirement in NRS 241.033. We agree.

The OML manual has adopted a definition of “character” to assist us in evaluating
complaints. Character is a broad term consisting of many personal attributes, but it certainly
includes one’s general reputation. It might also include such personal traits as honesty,
loyalty, integrity, reliability, and such other characteristics, good or bad, which make up one's individual personality. See NEVADA OPEN MEETING LAW MANUAL § 9.04 (10th ed. 2005).

In Op. Nev. Att'y Gen. No. 81-A (February 23, 1981), the Office of the Attorney General opined that "character" encompassed that moral predisposition or habit or aggregate of ethical qualities, which is believed to attach to a person on the strength of the common opinion and report concerning him . . . a person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation of which his general reputation for the possession of a character, good or otherwise is obtained.

The Office of the Attorney General also construed the word "competence" to include: . . . duly qualified . . . answering all requirements . . . having sufficient ability or authority. . . . possessing the natural or legal qualifications . . . able . . . adequate . . . suitable . . . sufficient . . . capable . . . legally fit. Also see OMLO 2004-28 (September 9, 2005).

Applying the law and definitions set forth herein to the facts underlying this complaint, we believe both Mr. Rees' character and competence were impermissibly discussed because he had not received notice. Notice is a bright line rule. There can be no exception to this requirement or the public body will have to postpone any discussion of a person's character and/or competence.

Mr. Rees' competence was clearly discussed and even at times heatedly discussed. Among the matters impermissibly discussed were Mr. Rees' "ongoing communication skills" with the Board, Mr. Rees last professional evaluation and its neutral or face value designation by the Board. Mr. Evenson's pointed question about whether the manner Mr. Rees elected to take his bonus was "below board" in contravention to Mr. Rees statement that he wished to have the matter examined by a committee to insure the bonus was "above board" seems to us to call into question Mr. Rees' character trait for honesty and integrity.

Other character issues impermissibly discussed included the insinuation he went to the "head of the line" to take his bonus while his staff suffered financial hardship, reduced hours of employment, and job sharing, more pointed references to Mr. Rees' integrity. Then there was the thinly veiled insinuation that item 5(C) found its way onto the agenda only because an
anonymous letter⁶ "got out," which apparently disclosed Mr. Rees' election to take his bonus. The insinuation was that Mr. Rees was hiding the election from the Board but the anonymous letter forced him to pursue a cover-up by belatedly putting the matter on the Board's agenda. Clearly, this insinuation refers to Mr. Rees integrity, his ethical duty to the Board and the Hospital. It also refers to and denigrates his general reputation before the Board and anyone else who was present at the meeting or who might listen to the audio.

Any discussion of these matters, whether alone or together, is significant and substantive so as to constitute a violation of both the OML's notice requirement and its "clear and complete" rule.

V.

CONCLUSION

The Pershing General Hospital Board of Trustees violated two important requirements of the OML. First, their discussion of item 5(C) greatly exceed the scope of the topic, and secondly, the extraneous discussion of matters beyond the scope of the item constituted a discussion of Mr. Rees character and professional competence as described herein.

DATED this 25th day of February, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: George H. Taylor
Senior Deputy Attorney General
Nevada State Bar No. 3615
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1230

⁶ The anonymous letter was never discussed in detail, and we are left to wonder about its content, purpose, and impact on the entire Board.
CERTIFICATE OF Mailing

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 25th day of February, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Matt Rees, Chief Executive Officer
Pershing General Hospital
& Nursing Home
P.O. Box 661
Lovelock, Nevada 89419

Roger Mancebo, Chair
Board of Trustees
Pershing General Hospital
& Nursing Home
P.O. Box 661
Lovelock, Nevada 89419

Todd A. Plimpton, Esq.
BELANGER & PLIMPTON
P.O. Box 59
Lovelock, Nevada 89419

Nicole M. Harvey, Esq.
HARVEY LAW FIRM
458 Court Street
Reno, Nevada 89501

[Signature]
An Employee of the Office of the Attorney General
CATHERINE CORTEZ MASTO  
Attorney General  
GEORGE H. TAYLOR  
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Attorneys for Defendants  

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY  

CATHARINE CORTEZ MASTO, Attorney  
General of the State of Nevada,  
 Plaintiff,  

vs.  

WHITE PINE COUNTY BOARD OF COUNTY  
COMMISSIONERS: Chair Laurie Carson,  
RaLeene Makley, Richard Carney, Robin Bell,  
Gary Perea, all in their representative capacity  
as Commissioners.  

 Defendants.  

CASE NO. 10 OC 00219 1B  
DEPT. NO. 1  

STIPULATION FOR DISMISSAL  
(Nev. Rules of Civil Procedure:  
41(a)(1))  

Plaintiff, CATHARINE CORTEZ MASTO, Attorney General of the State of Nevada, by  
and through GEORGE H. TAYLOR, Senior Deputy General; and Defendant, WHITE PINE  
COUNTY BOARD OF COUNTY COMMISSIONERS, by and through its attorney THOMAS P.  
BEKO, hereby submits this voluntary Stipulation for Dismissal of this action subject to this  
Court’s entry of the Order Entering a Permanent Injunction (proposed Order attached hereto).  
Plaintiff agreed to dismiss her complaint, which sought to void the action of the White Pine  
County’s city-county negotiating team, upon entry of permanent injunctive relief in the District
Court. Defendants have agreed to entry of injunctive relief limited solely to the city-county negotiating team which heretofore has been a bi-yearly negotiation. See Stipulated Agreement; Consent to Entry of Judgment, paragraph #15.

This Stipulation for Dismissal incorporates three documents which resolve each and every allegation in the State’s complaint: (1) Stipulated Settlement Agreement; Consent to Entry of Judgment; (2) Order Entering Permanent Injunction, and (3) White Pine County Board of Commissioner’s Resolution 2010-42: Resolution To Approve Settlement Agreement With Nevada Attorney General.

The parties to this action hereby stipulate to voluntarily dismiss this action as provided under Nevada Rule of Civil Procedure 41(a)(1) which provides for voluntary dismissal of an action when a stipulation of dismissal signed by all the parties who have appeared in the action is filed. This Stipulation for Dismissal complies with the statutory requirement.

DATED this 6th day of July, 2011.

CATHARINE CORTEZ MASTO
Attorney General

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Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CARSON

CATHERINE CORTEZ MASTO, Attorney  
General of the State of Nevada,  
Plaintiff,  

vs.  

WHITE PINE COUNTY BOARD OF COUNTY  
COMMISSIONERS: Chair Laurie Carson,  
RaLeene Makley, Richard Carney, Robin Bell,  
Gary Perea, all in their representative capacity  
as Commissioners.  

Defendants.

CASE NO. 10 OC 00219 1B  
DEPT. NO. 1  
STIPULATED AGREEMENT;  
CONSENT TO ENTRY OF  
JUDGMENT

COMES NOW Plaintiff, CATHERINE CORTEZ MASTO, Attorney General of the State  
of Nevada, by and through George H. Taylor, Senior Deputy Attorney General; and  
Defendant, WHITE PINE COUNTY BOARD OF COUNTY COMMISSIONERS (BOCC), a duly  
elected body representing White Pine County, a political subdivision of the State of Nevada,  
by and through its attorney Thomas P. Beko, Esq. The parties to this Stipulated Agreement  
and Consent to Entry of Judgment agree and represent that it resolves each and every  
allegation in the State's complaint (attached hereto as Exhibit 1).  

BACKGROUND  

Plaintiff, Catherine Cortez Masto, Nevada Attorney General, filed her complaint on  
June 1, 2010 alleging that Defendant White Pine County Board of County Commissioners and  
its Police/fire interlocal agreement negotiating team, a subcommittee, violated the Open
Meeting Law (OML) provision that proscribes private meetings by public bodies except where specifically authorized by statute. Plaintiff alleged the City-County negotiating team is a public body subject to the OML. Defendant BOCC disagrees with the Plaintiff’s claims in this regard, but nevertheless agrees to conduct itself in accordance with this Settlement Agreement.

Defendant BOCC and Plaintiff stipulate that this Settlement Agreement and Consent to Judgment may be settled without trial and that there is no other bar to entry of judgment herein.

The parties to this stipulated settlement agreement hereby agree as follows:

**STIPULATIONS**

1. This Court has jurisdiction of the subject matter and of the party consenting to the entry of judgment herein.

2. These Stipulations shall apply to and be binding upon the parties to this action until withdrawn by the Court.

3. Under authority of NRS 241.037(1), the Nevada Attorney General has the power and duty to administer and enforce the open meeting laws of the State of Nevada, and to bring this action for the violation alleged herein.

4. NRS 241.037(1) provided that injunctive relief may be issued by this Court without proof of actual damages or proof of irreparable harm by any person preliminary to entry of injunctive relief.

5. The parties agree that full and final settlement of the allegations in the complaint shall be as follows:

6. Defendant BOCC is the governing body of White Pine County in the State of Nevada.

7. White Pine County’s City-County police/fire interlocal agreement negotiating committee was informally formed in conformity with County historical practice, whereby each county commissioner was assigned an area of county government to oversee. The committee was assembled by Commissioner Laurie Carson and White Pine County Finance Director Charles Rodewald. This committee was formed with the knowledge and consent of the
BOCC, the parent public body, for the purpose of negotiating the terms and conditions of a
new police/fire interlocal agreement (Interlocal Cooperation Act: NRS 277.080 -180) between
the City of Ely and White Pine County.

8. In 2008, the Nevada Attorney General investigated an OML complaint about
private meetings by both the County and City negotiating teams during the interlocal police/fire
negotiation process. Both negotiation teams were advised of the plaintiff’s belief that their
negotiations constituted a violation of the OML. The Nevada Attorney General’s office issued
a formal OML opinion which detailed the nature of the violation. The OML opinion was sent to
District Attorney Richard Sears, legal counsel for the BOCC. Board members RaLeene
Makley and Laurie Carson were members of the 2008 BOCC, the remaining defendants in
this matter were not. Members Makley and Carson were never provided with a copy of the
aforementioned Attorney General’s opinion. Members Richard Carney, Robin Bell, and Gary
Perea, also had no knowledge of this opinion.

9. On March 5, 2010, the Attorney General’s Office again warned legal counsel for
both the City of Ely and White Pine County that the negotiation meetings by either team during
the negotiation process could not be private or closed absent specific statutory authority.
None of the named individual county defendants received a copy of the warning nor were they
informed of it prior to a joint City/County negotiating team public meeting on April 1, 2010
meeting.

10. On April 1, 2010, the City of Ely and White Pine County negotiating teams met in
a public meeting which had been properly noticed by White Pine County. After receiving a
financial settlement offer from City of Ely negotiating team, but before agreeing to the
settlement offer, Committee member RaLeene Makley questioned whether the County’s
negotiating team could caucus privately to discuss the offer. Board Member RaLeene Makely
contacted Senior Deputy Attorney General George Taylor but was told he could not provide
her with legal advice, and that she needed to contact her District Attorney. She then
contacted White Pine County District Attorney Richard Sears. The committee then met
privately with Mr. Sears believing that they could legally discuss the matter with their counsel.
They further believed that they could caucus privately so long as all negotiations occurred in the public meeting. A quorum of the Defendant’s City-County negotiating committee met with the White Pine County District Attorney behind closed doors on April 1, 2010. The plaintiff contends that this action constitutes a violation of NRS 241.020(1).

11. White Pine BOCC agrees to take corrective action to avoid litigation of the State’s allegation that the act of accepting the City’s offer tendered on April 1, 2010 was void. Corrective action will consist of rescheduling the April 1, 2010 meeting during which the County negotiating team met privately with the County District Attorney to deliberate and consider the City of Ely’s financial settlement offer. At the rescheduled meeting the County negotiating team will publicly deliberate on the City of Ely’s financial offer made on April 1, 2010. The April 1, 2010 private meeting was the basis for the State’s complaint and allegation of violation of the OML.

12. BOCC consents to the entry of a permanent injunction governing the city-county negotiation process for its police/fire interlocal agreement. Injunctive relief applies only to a negotiation team appointed by the BOCC, or one that is created informally by the BOCC. Where the BOCC authorizes an individual, such as a County staff member, to form a committee to negotiate the terms and conditions of the City-County interlocal agreement, the OML does not apply as long as the committee reports only to the individual staff member. Members of the BOCC may be committee members and the OML will not apply so long as a quorum of the BOCC are not members of the committee. Attorney General v Board of Regents, 114 Nev. 388,400, 956 P.2d 770, 778-779 (1998); Dewey v. Redevelopment Agency of the City of Reno, 119 Nev. 87, 98, 64 P.3d 1070, 1078 (2003). The staff member may then consider the committee’s recommendations before placing the proposed negotiated terms and conditions before the BOCC on its agenda for discussion and action. It is the BOCC’s prerogative to accept or reject any or all proposed terms and conditions proposed by Staff. The BOCC has sole authority to approve terms and conditions of any proposed interlocal agreement.
13. Should the BOCC appoint staff to negotiate proposed terms and conditions of a new interlocal agreement with the City of Ely, the BOCC agrees and consents to conduct negotiations in accordance with the following procedure. The BOCC will formally appoint an individual or County staff member to form a committee to assist with the negotiation process. Thereafter, and after considering the report and recommendations of the committee, the individual or County staff member will provide his recommendation regarding terms and conditions of a new interlocal agreement to the BOCC in a properly noticed public meeting.

14. The BOCC shall formally resolve in public session that it consents to judgment as set forth herein in paragraphs 11, 12 and 13. The Board’s resolution shall authorize the Chair of the BOCC, or other designee, to sign this stipulated agreement on behalf of the entire Board. The Resolution shall be reduced to writing, signed by the entire Board and returned to the office of the Nevada Attorney General. The Board’s executed Resolution agreeing to entry of injunctive relief shall be made part of the Court’s record.

15. The Plaintiff agrees to dismiss her complaint including the claim which sought to void the action of the County’s city-county negotiating team on April 1, 2010 upon entry of permanent injunctive relief in the District Court as specified herein.

DATED this 13 day of October, 2010.

ERICKSON, THORPE & SWAINSTON, LTD.

By: [Signature]
THOMAS P. BEKO
Attorney for Defendants

CATHRINE CORTEZ MASTO
Attorney General

By: [Signature]
GEORGE H. TAYLOR
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Attorneys for Plaintiff

WHITE PINE COUNTY BOARD OF COUNTY COMMISSIONERS

By: [Signature]
CHAIRMAN OF THE BOARD
EXHIBIT 2
IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CARSON

CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada,

Plaintiff,

vs.

WHITE PINE COUNTY BOARD OF COUNTY COMMISSIONERS: Chair Laurie Carson, RaLeene Makley, Richard Carney, Robin Bell, Gary Perea, all in their representative capacity as Commissioners.

Defendants.

CASE NO. 10 OC 00219 1B
DEPT. NO. 1

ORDER ENTERING A PERMANENT INJUNCTION

Pursuant to the Stipulated Settlement Agreement and Consent to Entry of Judgment between the above captioned parties, entered into by and between the Plaintiff, Nevada Attorney General Catherine Cortez Masto, and George H. Taylor, Senior Deputy Attorney General; and Defendant, White Pine County Board of County Commissioners,

IT IS HEREBY ORDERED AS FOLLOWS:

The current White Pine County police/fire city-county negotiating team is permanently enjoined from privately meeting or caucusing for the purpose of negotiating terms or conditions applicable to the next or future biennial police/fire interlocal agreement. The current White Pine County negotiating committee will conduct any further meetings in accordance with Nevada’s Open Meeting Law (OML).

///
In the event White Pine County desires to engage in future contract negotiations relative to an Interlocal Agreement with the City of Ely for police/fire services, the BOCC shall direct an individual, such as a County staff member, to form a committee to negotiate the terms and conditions of the City-County interlocal agreement. Members of the BOCC may be committee members, and the OML will not apply so long as a quorum of the BOCC are not members of the committee. Attorney General v Board of Regents, 114 Nev. 388, 400, 956 P.2d 770, 778–779 (1998); Dewey v. Redevelopment Agency of the City of Reno, 119 Nev. 87, 98, 64 P.3d 1070, 1078 (2003).

IT IS FURTHER ORDERED THAT any newly formed negotiating committee will then report its findings, conclusions, and/or recommendations to the individual staff member who will in turn provide his/her recommendations regarding terms and conditions of a new interlocal agreement to the BOCC in a properly noticed public meeting. It shall be the BOCC’s prerogative to accept or reject any or all proposed terms and conditions proposed by staff. The BOCC has sole authority to approve terms and conditions of any proposed interlocal agreement.

As long as negotiations are conducted in accordance with these provisions, the OML will not apply to the meetings of the committee. The injunctive relief described herein will only apply to a negotiation team that is directly appointed, or informally created by the BOCC.

DATED: ____________________.

DISTRICT JUDGE

Submitted by:

CATHERINE CORTEZ MASTO
Attorney General

By: ________________________

GEORGE H. TAYLOR
Senior Deputy Attorney General
Bar No. 3615
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701
EXHIBIT 3
RESOLUTION 2010-42

RESOLUTION TO APPROVE SETTLEMENT WITH NEVADA ATTORNEY GENERAL

WHEREAS,
On June 1, 2010, the Nevada Attorney General, Catherine Cortez Masto filed an action against the White Pine County Board of Commissioners alleging that a negotiating committee formed by members of the board to negotiate an interlocal agreement with the City of Ely for fire, police and other governmental services constituted a “public body” subject to Nevada’s Open Meeting Laws; and,

WHEREAS,
Historically, as a means of developing a more detailed understanding of the operations of County governmental services, and to maintain a close working relationship with those County employees who provide such services, individual members of the White Pine County Board of Commissioners have been informally assigned an area of governmental service to oversee on behalf of the entire Board; and,

WHEREAS,
In conformity with this historical practice, members of the White Pine Board of Commissioners assisted in the formation of the White Pine County negotiating committee; and,

WHEREAS.
The Nevada Attorney General alleged that on April 1, 2010, a private caucus between members of the White Pine County negotiating team and the White Pine County District Attorney violated Nevada’s Open Meeting laws. The Nevada Attorney General’s opinion was based primarily upon the fact that this committee was formed directly by members of the White Pine County Board of Commissioners; and,

WHEREAS,
The Nevada Attorney General and the White Pine County Board of Commissioners have agreed that in exchange for a dismissal of the aforementioned action, the White Pine County Board of Commissioners will agree to appoint a single individual staff member of White Pine County to form any future negotiating committees, and to take recommendations rendered by that committee directly from the staff member who formed the committee; and,
WHEREAS,
The White Pine County Board of Commissioners have agreed that if more than two members of the White Pine County Board (a quorum) are appointed members of the negotiating team, all meetings of that committee will be conducted in accordance with Nevada’s Open Meeting laws. However, if less than a quorum of the White Pine County Board is present in such a committee meeting, Nevada’s Open Meeting laws shall not apply.

NOW, THEREFORE BE IT RESOLVED,
White Pine County’s interlocal contract negotiating committee is hereby dissolved. White Pine County hereby agrees to conduct future interlocal contract negotiations in accordance with paragraphs 11 through 13 of the Stipulated Agreement; Consent to Entry of Judgment, and Order Entering a Permanent Injunction. The Chairman of the Board is hereby authorized to sign said agreement on behalf of White Pine County.

PASSED AND ADOPTED THIS 13 DAY OF OCTOBER, 2010 BY A VOTE OF:

5 AYES 0 NOS 0 ABSENT

Laurie L. Carson, Chairman
RaLeene Makley, Vice Chairman
Gary Perea, Commissioner
Robin Bell, Commissioner

Approved by Telephone
Richard Carney, Commissioner

ATTEST:
Manzaccio, Deputy
Clerk of Said Board
10/21/10
Date
CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada,  
 Plaintiff,  

vs.  

WHITE PINE COUNTY BOARD OF COUNTY COMMISSIONERS: Chair Laurie Carson, RaLeene Makley, Richard Carney, Robin Bell, Gary Perea, all in their representative capacity as Commissioners.  

Defendants.  

COMES NOW the Plaintiff, Catherine Cortez Masto, Attorney General of the State of Nevada, by and through George H. Taylor, Senior Deputy Attorney General, and hereby complains as follows:  

I. JURISDICTION AND PARTIES  

1. Plaintiff herein, is the duly elected Attorney General of the State of Nevada with her principal office located in Carson City, Nevada.  

2. The Attorney General has statutory authority to investigate and prosecute violations of Nevada's Open Meeting Law (OML). NRS 241.037(1). The Attorney General has statutory authority to seek to void actions taken by public bodies and/or seek injunctive
relief against a public body or person to require compliance with or prevent violations of the provisions of the OML. NRS 241.037(1).

3. This Court has jurisdiction of this civil action pursuant to NRS 241.037(1).

4. Injunctive relief may be issued without proof of actual damage or proof of irreparable harm sustained by any person. NRS 241.037(1)(a).

5. The Attorney General has authority to investigate and prosecute any violation of Chapter 241 of the Nevada Revised Statutes. NRS 241.040(4).

6. At all times relevant to this complaint, the Defendant White Pine County Board of County Commissioners and its City-County Negotiating Team, were public bodies within the meaning of NRS 241.015(3).

7. The allegations in this complaint that Defendants violated various provisions of the OML arose in the County of White Pine, State of Nevada.

8. This Complaint was filed within the applicable limitations period set forth in NRS 241.037(3) for a suit seeking to void an action and seeking injunctive relief.

II.

OPEN MEETING LAW

9. “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.” NRS 241.015(3). (Emphasis added).

10. “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 public bodies. A meeting that is closed pursuant to a specific statute may only be closed to
the extent specified in the statute allowing the meeting to be closed. All other portions of the
meeting must be open and public and the public body must comply with all other provisions of
this chapter to the extent not specifically precluded by the specific statute.” NRS 241.020(1).

11. “There is no statutory exception specifically providing public bodies with the
privilege to meet in private just because they have their attorneys present; hence such
meetings are prohibited.” McKay v. Board of County Commissioners of Douglas County, 103
Nev. 490, 491 (1987). In 2001, the Legislature amended NRS 241.015 creating a narrow
exception to the rule of publicity. This legislative amendment carved out an exception for
private meetings between a public body and its attorney to receive information regarding
litigation or potential litigation. But the amendment did not provide authority for a public body
to deliberate or take action on matters unrelated to the information provided by its attorney
regarding litigation or potential litigation. The OML requires that written notice of all meetings
must be given at least three working days before the meeting. NRS 241.020(2).

12. It would be incongruous for a committee, or the city-county negotiating team, of
either the City Council or the County Commission to negotiate the terms of the police/fire
interlocal agreement in private, when neither the Council nor the Commission can close its
meetings to negotiate the terms of the same agreement. NEVADA OPEN MEETING LAW MANUAL
(10th ed. 2005) citing Arkansas Gazette Co. v. Pickens, 258 Ark. 69, 522 S.W.2d 350, 354
(1975). (“Surely a part of the (board) is not possessed of a prerogative greater than the
whole.”)

III.

FACTUAL ALLEGATIONS

APRIL 1, 2010: negotiating session

13. For years the City of Ely and the Board of County Commissioners have each
created and authorized a negotiating team to negotiate the terms of a new interlocal
agreement under authority of the Interlocal Cooperation Act; NRS 277.080 – 277.180, for the
purpose of jointly sharing police, fire and other governmental services.

///
14. Both the County and the City are represented by their own negotiating team. Each city-county negotiating team is authorized by its parent body to meet with and negotiate terms and conditions of the next two year interlocal agreement with the other team. Each team then makes a recommendation regarding terms and conditions of the new interlocal agreement to its parent public body, which has sole authority to approve terms and conditions of a new agreement.

15. Each negotiating team is a public body subject to the OML. Each Defendant appointed two elected public body members to serve on its city-county negotiation team. Membership on the negotiation teams also included city or county staff and elected officials. Each team consisted of five members, two of which were either elected county commissioners or elected councilmen.

16. The third joint meeting of these two negotiating teams occurred on April 1, 2010. At the public meeting on April 1, 2010, the County team verbally discussed the need to caucus separately from the City’s team in order to consider the City’s most recent financial offer. There was verbal discussion of the OML application to the suggestion of a private caucus from the County team. The Attorney General’s most recent letter (March 5, 2010) to each counsel for each public body was mentioned to County negotiators by the City’s negotiators and the City’s attorney, Kevin Briggs, during the April 1, 2010 meeting. The City’s negotiators explained they had been warned not to meet behind closed doors. County negotiators stated during the meeting they had no knowledge of the letter. In fact, the Attorney General’s March 5, 2010 letter specifically advised both teams not to meet behind closed doors unless a specific exception in the Nevada Revised Statute for such a closed meeting could be identified. See Exhibit 1, attached hereto.

17. The County’s response to the OML complaint did not identify or rely on any statute exempting the meetings between the two negotiating teams from compliance with the OML. NRS 241.020(1)(a meeting may only be closed pursuant to a specific statute and the meeting may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public).
18. White Pine County District Attorney, Rich Sears, who had not been at the meeting, was summoned to the meeting around 4:40 p.m. to advise the County's negotiation team regarding its authority to caucus separately from the City's team. Once he arrived the County's negotiating team rose and exited the meeting, followed by Mr. Sears. Minutes of the meeting state that Mr. Sears "advised that each side could now hold a meeting with their respective attorneys present." No other explanation or authority for their exit was put in the record about the County's purpose for meeting behind closed doors. The City's city-county negotiating team remained in the meeting room. They did not meet privately even though their counsel was present.

19. The City's negotiating team waited patiently in the Senior Center meeting room while the County's negotiating team met with Mr. Sears behind closed doors for approximately 10 to 15 minutes.

20. On April 15, 2010, the Attorney General opened an investigation into the apparent violation of the OML. The Board of County Commissioners was advised of the investigation. This office asked for statements and a response from the Board and from its city-county negotiating team.

21. Pursuant to our investigative request, the County's city-county negotiation team submitted written statements. Statements from the County's team admitted that the team discussed and deliberated in a private closed meeting a counter-offer to the City's most recent offer of financial terms.

22. Accompanied by Mr. Sears, the five members of the County Team met behind closed doors. Mr. Sears advised the team of its legal duty to negotiate with the City. Mr. Sears also said he advised the negotiation team that they could not caucus. He also advised them of their specific legal duties in spending taxpayer money and the tests that apply to their exercise of power. He then left and spoke briefly with Mr. Briggs the City attorney before leaving the meeting. At least one County team member stated that Mr. Sears said the team could not caucus but that they could meet privately with him present. The City's most recent offer was then explained to Mr. Sears and it was stated there was concern
about the addition to the City's offer of animal control coverage and a proposed extension of
fire protection to a five mile radius of the City.

23. Mr. Sears' remarks to the County negotiation team behind closed doors was
unrelated to any exception to the rule of open public meetings found in NRS 241. There was
no mention of litigation or potential litigation from him as indicated from statements from the
negotiation team members. Even if there had been such discussion, the fact that the five
members of the negotiation team met privately and then deliberated on the City's most recent
financial offer and then agreed to make a counter-offer to the City once they returned to the
joint meeting, constituted deliberation and action by a public body. The OML proscribes
closed public meetings absent specific statutory authority.

24. Statements from those in the meeting indicate Mr. Sears was asked whether the
caucus behind closed doors was legal. He replied that they could not caucus but could meet
as long as he was present and if the discussion centered on whether the offer made by the
City was legal, responsible, and whether the County was meeting its fiduciary duty. Sheriff
Dan Watts heard Mr. Sears state that the caucus was legal because it was a business
discussion.

25. During the April 1, 2010 meeting, Raleene Makley, acting chair of the County
city-county negotiating team expressed the desire to "caucus." In the context, it's clear she
simply meant to meet privately with her team to discuss the City's offer and perhaps respond
to it. Literally, "caucus" means any group which meets to further its interests, and it refers to a
meeting of members of a political party to select delegates, or it could mean a meeting of a
faction within a political party meeting to further its own interests. Mr. Sears said he told the
County team they couldn't caucus; however he never explained to them what he meant by
ciaucus. Nevertheless, while he remained with them the team deliberated and agreed upon a
counter-offer. Obviously, the team believed they could discuss and deliberate on the City's
offer regardless of whether it was a "caucus" or a private meeting.

26. Dave Hendrix, the White Pine County Fire Battalion Chief and County
negotiator, asked Mr. Sears whether he had received a warning letter from the Attorney
General warning against holding closed meetings during city-county negotiations. Mr. Sears replied he had received the letter, but he had not disclosed it to the County team.

27. During the closed meeting Raleene Makley and Gary Perea, instructed Finance Director Charlie Rodewald to make a counter-offer to the City. Mr. Rodewald then suggested to the team that they return to the public meeting with an offer to split the difference between what the City had offered and what the County was receiving under the Interlocal agreement currently in effect. Raleene Makley suggested a slight alteration of the final figure. Others then discussed the City's offer of a five mile radius for fire response/protection before returning to the public meeting.

28. Still behind closed doors, the team agreed to return to the open meeting and make the counter offer. Upon return to the open session it became apparent they had agreed upon a counter-offer in the closed caucus. Acting chair Raleene Makley asked County Finance Director Charles Rodewald, negotiating team member, "Charlie, if you want to...?" She did not finish her statement. There was a pause and Mr. Rodewald began his presentation of the County's counter-offer. His presentation of the County's counter-offer, to split the difference between last the amount the City paid the County under the terms of the last Interlocal agreement,$458,000 and the City's current offer of $300,000, took three minutes. Mr. Sears left the building once the team emerged from its meeting behind closed doors.

IV.

CLAIM FOR RELIEF

29. Plaintiff incorporates paragraphs 1 through 28 herein, as though set forth in full herein.

30. City-Council negotiating teams are public bodies as defined in NRS 241.015(3). They are created by the parent public body for the purpose of negotiating the terms and conditions of a new police/fire interlocal agreement between the City and County. The negotiated interlocal agreement would eventually be given to each parent public body with a recommendation for adoption.
31. Neither the OML nor any other statute provides specific authority to allow closure of any portion of this negotiation process, since both parties chose to negotiate the terms and conditions of this agreement using committees or subsidiaries of public bodies.

32. The NRS does not contain an exception for closed meetings of a public body to conduct Interlocal agreement contract negotiations. There is no applicable exception in NRS 241 allowing closure of a public meeting for the purpose of negotiating an Interlocal agreement.

33. A quorum of the County's city-county negotiation team met in a closed meeting on April 1, 2010 to deliberate and take action on proposed terms and conditions of a new Interlocal agreement with the City that would be recommended to its parent body.

34. Defendant County Commission violated the OML by allowing its negotiating team to meet privately in violation of the OML.

35. Defendants were warned in 2008 by formal published opinion (OMLO 2008-014) and on March 5, 2010, by letter addressed to each body's counsel, that closure of any public meeting requires express statutory authority. NRS 241.020(1). See Exhibit 2, copy of memo from counsel for both public bodies agreeing to resolution of complaint in OML 08-014.

36. Defendants have ignored two previous warnings to its city-county negotiating team to comply with the OML.

WHEREFORE, THE PLAINTIFF PRAYS FOR RELIEF AS FOLLOWS:

1. That this Court find that the Defendant White Pine County BOCC, its city-county negotiating team, is a public body within the meaning of NRS 241.015(3);

2. That the Court find that County's city-county negotiating team met in private on April 1, 2010 to deliberate and/or make a decision about its recommendation of settlement of negotiations to the Commission of certain agreed upon terms and conditions arrived at during the April 1, 2010 joint meeting.

3. That these actions were all in violation of the OML and to the extent the County team deliberated and took action on a counter-offer of new terms and conditions for a joint Interlocal agreement, such action must also be declared void;
4. That the County's city-county negotiation team's closed meeting violated the OML's prohibition against closure of public meetings in the absence of specific statutory authority;

5. That this Court permanently enjoin the White Pine County Board of County Commissioners from future closure of any negotiation meeting with the City of Ely's interlocal negotiation team, where Defendant's appoint or otherwise designate a committee, team, or subsidiary by any name, which is tasked with negotiation of proposed terms and conditions of a future agreement, and where Defendants deliberate jointly or separately from the other team, and where it takes action on proposed terms and conditions whether by formal vote or by consensus for the purpose of making a recommendation to the parent public body;

6. That the Defendant's future police/fire interlocal agreement negotiations comply with the OML to the extent that its committee, subcommittee, or other subsidiary of the public body deliberates or makes decisions regarding terms and conditions of a new police/fire interlocal agreement between the County and the City of Ely;

7. That permanent injunctive relief is necessary to prevent future violations of negotiations for police/fire animal control interlocal agreements as the history of these negotiations have been proven to be of a recurring nature; and

8. That this Court otherwise grant Plaintiff reasonable attorney fees, court costs, and such further and other relief as is just and appropriate under the circumstances.

DATED this 1st day of June, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: 

GEORGE H. TAYLOR
Senior Deputy Attorney General
Nevada Bar No. 3615
100 North Carson Street
Carson City, NV 89701
(775) 684-1230
Attorneys for Plaintiff
AFFIRMATION PURSUANT TO NRS 233B.030

The undersigned does hereby affirm that the preceding COMPLAINT UNDER NRS 241.037 filed in the First Judicial District Court of the State of Nevada does not contain the social security number of any person.

Dated this 1st day of June 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: George H. Taylor
Senior Deputy Attorney General
Nevada Bar No. 3615
100 North Carson Street
Carson City, NV 89701
(775) 684-1230
Attorneys for Plaintiff
LIST OF EXHIBITS

Exhibit 1  -  Letter from the Nevada Attorney General dated March 5, 2010.

Exhibit 2  -  Copy of memo from counsel for both public bodies agreeing to resolution of complaint in OML 08-014.
EXHIBIT 1
From: George H. Taylor  
Sent: Friday, March 05, 2010 9:35 AM  
To: 'rwsears@wpceda.org'; 'kbriggs@elycity.com'  
Subject: City/County budget negotiating teams and the OML:  
3.5.10

Gentlemen;

I reviewed this morning’s Ely Times article concerning City/County budget negotiations. It states that the City negotiating team met behind closed doors only to conclude that no further negotiations last evening (3.4.10) were possible. That decision appears to be an OML violation because the closed meeting required both deliberation and action under the OML. In other words the committee made a promise, commitment or an actual vote to cease negotiating that evening, and that meeting behind closed doors constituted a separate meeting during a recess, according to statute, to discuss breaking off negotiations. NRS 241.015(1) and (2). The County team may have met behind closed doors earlier in the week, but that meeting also concluded early, apparently for the same reasons. I understand that today’s session (3.5.10) has been canceled.

This is only a confidential friendly reminder regarding the apparent OML violations. I understand both the City Council and the BOCC appointed their respective negotiating teams, both of which may have a mix of staff and Councilmen/Commissioners.

Any committee appointed by a public body is itself a public body even if less than a quorum of the elected public body serves on the committee. OML Manual §3.04 (to the extent a group is appointed by a public body and given authority to make recommendations or make decisions it is a public body). A Group could be all private citizens and it would still be a committee subject to the OML.

Neither negotiating team can meet behind closed doors, unless there is a specific exception in the NRS for such meeting. For example: NRS 288.220 (exemption for collective bargaining by school districts and teacher’s union). I’m unaware of any
exemption for White Pine County/City of Ely budget negotiations. Perhaps the Legislature could enact a specific exception, but until then, each team must follow the law no matter how painful the process seems to be. It makes no difference that there are only two elected public officials on each team. A public body cannot meet behind closed doors for any purpose, unless a statutory exemption or exception exists for such a meeting.

I’m happy to hear that the process is taking place in public. This is a good step forward. I hope you will take this friendly reminder in the spirit it has been sent.

George H. Taylor
Senior Deputy Attorney General
100 North Carson St.
Carson City, Nv. 89701
775-684-1230 (ph.)
775-684-1108 (fax)
gtaylor@ag.nv.gov

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EXHIBIT 2
From: Kevin Briggs [kbriggs@elycity.com]
Sent: Thursday, July 10, 2008 2:49 PM
To: George H. Taylor
Cc: rwsears@mwpower.net

George, in response to our telephone conversation a few minutes ago, please be advised that both I, representing the City of Ely, and Rich Sears of White Pine County, have both agreed to the resolution in your latest letter. In the future, we will make sure that we both follow the open meeting law provisions when entering into negotiations between the City and County. That may be, as you have suggested, through the use of staff members to negotiate terms and then present those to the respective boards or councils for deliberation and approval in an open meeting. If there are other methods that we come up with, we will ensure that those comply with the open meeting laws of the State. Thank you for your work on this issue. We will have a discussion/action item on our next agenda to address this issue with both the City Council and the Board of County Commissioners.

Kevin Briggs
I.

INTRODUCTION

This Open Meeting Law (OML) complaint alleged that the Clark County Board of School Trustees (BST) frequently but mistakenly informed the public during public meetings that the Board and its members were legally barred from discussing, either among themselves, or with speakers from the public, issues the public raised under the item: PUBLIC HEARINGS ON NON-AGENDA ITEMS.¹

A second allegation is that the BST removed a standing agenda item from its agendas beginning in September of 2009 which had stated: "RESPONSE TO PUBLIC COMMENT: At this time, discussion may be held on issues raised by the public under Public Hearings of Agenda/Non-Agenda Items." The complaint alleged that in subsequent meetings the BST informed the public that Trustees are legally barred from discussing issues raised under public comment. The complaint alleged there has been a pattern of such admonitions since September 2009.

We are asked to determine if the OML (NRS 241.020(2)(c)(3) requires BST, and its standing subcommittees, to include in their agendas, an item entitled BOARD DISCUSSION OF GENERAL PUBLIC COMMENT.

We are also asked if agendas for BST and its standing subcommittees contain clear and concise language informing the public that board discussion of general public comment may be held under the standing agenda items—Public Comment and Public Hearings on Non-Agenda items. (NRS 241.020(2)(c)(1).

¹ The complaint alleged that this or a similar admonition was given by the President before public comment and during public comment at the following BST meetings: 9/24/09; 11/12/09; 12/10/09; 2/23/10; 2/25/10; 4/7/10 4/14/10; and 4/22/10. NRS 241.020(2)(c)(2) does not require any public body to discuss matters with the public, but it does specifically allow discussion of matters raised during public comment.
We reviewed audio recordings of BST meetings referenced in the complaint. We listened to audio admonitions given at the beginning of the public comment period whether it was before a public hearing item or the public comment item for non-agenda items.

II.

FINDINGS OF FACT

Recent BST agendas allow public comment before votes on all public hearing agenda items. These public comment opportunities are in addition to the period of general public comment specifically limited to non-agenda items. Usually it is at the end of meeting agendas.

BST President Terri Janison stated during the BST’s September 24, 2009 meeting that “Board members by law may not discuss items that have not been agendized,” agenda item 9.01, Public Comment. However, earlier in the same meeting, when agenda item 4.01

2 BST stated its long standing policy has been to invite and receive public input on all agenda items whether or not designated as public hearing. The following BST statement, which is relevant to public comment during public hearing for action items, is published at the beginning of each Board agenda:

The Board of School Trustees recognizes that its deliberative process benefits greatly from public input and perspective. Those wishing to address the Board may sign up to speak by calling the Board Office at 799-1072 during regular business hours and at least 3 hours prior to the scheduled start of the meeting. Alternatively, speakers may sign up in person immediately prior to the beginning of the meeting. Prior to each agenda item being voted on, members of the public are allowed to speak on the item after the Board’s discussion and prior to their vote. Since approval of the consent agenda may be approved in one motion, members of the public wishing to speak on a consent agenda item may speak prior to the vote. Customarily, speakers will be called in the order in which they signed up. No person may sign up for another individual. No person may yield his or her time to another person. Generally, a person wishing to speak on agenda items will be allowed 3 minutes to address the Board.

3 The BST adopted a standing agenda item with a public comment guideline. It appears on all agendas at the item for public comment:

Should a member of the public wish to speak on matters not listed on the agenda, they may speak during the Public Comment Period. Speakers will be given 2 minutes to address the Board. The public should be aware that the Board is unable, by law, to deliberate or take action on the items raised during the Public Comment Period. (According to Governance Policy GP-11: Public Hearings).

4 Our review of BST meetings from 2009 are not subject to enforcement action by this office because of statutory limitations periods. These meetings are reviewed simply for historical perspective and because the complainant alleged a pattern of false admonitions.
was called, she said that the “Board, by law, is unable to deliberate or take action on non-agenda items.” Both statements concern non-agenda items, but in her first comment she said the Board could not discuss non-agendized items, then in her second comment, she said the Board could not deliberate or take action on non-agendized items (emphasis added).

At the December 10, 2009 BST meeting, just before item 9.01, President Janison did not give an admonition regarding Board discussion of issues or matters raised by the public. Yet during public comment, she said the Board could not discuss a matter brought up by a speaker because it had not been agendized and there could be no debate because it was a non-agendized matter. She asked Superintendent Rulffes to provide follow up with the speaker immediately following the meeting.

The audio recording of public comment at two meetings in February of 2010, (2/23 and 2/25) revealed the following admonitions prior to public comment for non-agenda items: “The school board cannot comment on non-agenda items” and similarly, at the second meeting, “by law we cannot respond to any items not on the agenda.”

President Janison stated before public comment on non-agenda items during an April 7, 2010 Work Session, that “the Board is not able to respond back by law, that we will be able to help you if possible.” Once again the President misstated both the law and the BST’s own standing agenda item for public comment.

By the April 8, 2010 meeting, the President’s admonition before public comment on non-agenda items had been refined to be consistent with the agenda’s printed standing agenda item. (See n.3, above). On April 8, 2010, the President began public comment with this statement: “We are unable by law to deliberate or take action on items raised during public comment.”

The President did not read the printed admonition before public comment at the April 22, 2010 BST meeting nor did the President give an improper admonition stating the Board could not discuss matters brought up by the public.

We reviewed audio portions of regular BST meetings: April 14, 2010, April 22, 2010, May 13, 2010, May 19, 2010, May 27, 2010 and June 24, 2010. At none of these meetings
did the President or presiding officer tell the public that the Board could not respond to
inquiries from the public. The admonition given, if any was given, adhered to the printed
standing agenda item which appears on every agenda item. See n.3, above.

More recently, during the September 2, 2010 BST meeting, before item 8.01, the
President stated that the “board may not deliberate or take action on items raised during
public comment.” This admonition is consistent with the standing written admonition for every
public comment period. There were five persons signed up for public comment during the
September 2, 2010 meeting. One person read a list of seven questions directed to the
Trustees. Another speaker made a verbal request for public records and a third speaker
accused a Trustee of violating the OML. The President did not discuss any of these matters,
nor did she ask the other Trustees if they wished to comment.

BST Response to Complaint

BST responded to this complaint through legal counsel. It is asserted that the Board
always reads the standing agenda item introducing public comment. (See n.3, above.) BST
admitted that on infrequent occasions a Board member has erroneously stated “we can’t
legally talk about that right now,” but BST argues that this was only in response to legal
counsel’s advice. BST acknowledged that the Board has been directed by legal counsel to
not to share viewpoints with the public as to the pros or cons of the subject matter raised by
the public, nor should they disclose how they might vote on the issue. BST asserted the
Board’s intention, despite the “poorly worded” admonition, has always been to comply with its
legal duty to not deliberate on a matter until such time as it has been properly placed on an
agenda for public notice and participation.

But BST also acknowledged that the OML allows discussion of matters raised by the
public during public comment periods. BST characterized the statutory prohibition against
deliberation and action on the one hand, and the statutory authority to discuss matters with
the public on the other hand, as natural tension between competing public policies. It is

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asserted that the standing agenda admonition printed in each agenda for public comment is
their effort to remind trustees and the public of the statutory boundaries applicable to public
comment.

**Removal of Response to Public Comment**
(a standing agenda item)

The second allegation in the complaint alleged the BST, beginning on September 9,
2009, removed a standing agenda item, "RESPONSE TO PUBLIC COMMENT," from
appearances on future agendas. The complaint seems to infer that the discontinuation of the
standing agenda item was related to subsequent remarks from the President that the BST
was legally barred from discussing issues raised by the public during PUBLIC COMMENT ON
NON-AGENDA ITEMS (a remaining standing agenda item not discontinued).

BST explained that the discontinued agenda item had allowed discussion among BST
members of matters brought up by the public, but it never disallowed discussion between the
BST and the public. BST’s response to the inference that the discontinued item was relevant
to subsequent announcements from BST’s President that the Board “could not legally talk
about that now” was that the RESPONSE TO PUBLIC COMMENT agenda item was
discontinued because certain members of the public regularly signed up to provide comment
under this item, and under several other items including general public comment. Because
the public had several opportunities to speak, this item which was deemed to be “confusing,
time consuming and redundant,” was deleted as a standing agenda item from future agendas.

III.

**ISSUES**

A. Whether BST admonitions prior to public comment, which informed the
public that the Board and its members were legally barred from discussing, either
among themselves, or with speakers from the public, issues the public raised under the
item: PUBLIC HEARINGS ON NON-AGENDA ITEMS, were in violation of the Open
Meeting law?
B. Whether BST's removal of standing agenda item: "RESPONSE TO PUBLIC COMMENT: At this time, discussion may be held on issues raised by the public under Public Hearings of Agenda/Non-Agenda Items," was a violation of NRS 241.020(2)(c)(3)?

C. Whether NRS 241.020(2)(c)(3) requires BST and its standing subcommittees, to include in its agenda, an item entitled BOARD DISCUSSION OF GENERAL PUBLIC COMMENT, or whether the existing BST agenda contains clear and concise language informing the public that board discussion of general public comment may be held under the standing agenda item—PUBLIC COMMENT ON NON-AGENDA ITEMS?

IV.

CONCLUSIONS OF LAW

BST's counsel admitted that the President, occasionally but erroneously, had made statements (admonitions) before a general period of public comment on non-agenda items, which seemed to refuse to engage the public in discussion of their inquiries and issues. Even though the admonition is admitted to be in conflict with NRS 241.020(c)(2)(3), BST argued that no violation occurred because the statute does not require the Board to discuss issues with the public and secondly, the BST only sought to avoid deliberation on matters until properly agendized. However, even at best the erroneous admonitions, admitted to have been given more than once, were clearly in conflict with the statute. But whether the erroneous admonitions were, per se, a violation under NRS 241.020(2)(c)(3), or whether they represented a pattern, so that inferentially BST policy violated the OML, were issues for this investigation. We examined the record to determine if erroneous admonitions created a chilling effect on public comment.
A. Whether BST admonitions prior to public comment, which informed the public that the Board and its members were legally barred from discussing, either among themselves, or with speakers from the public, issues the public raised under the item: PUBLIC HEARINGS ON NON-AGENDA ITEMS, were in violation of the Open Meeting law?

*Legislative History NRS 241.020(2)(3)(c)*

NRS 241.020(2)(c)(3) states in part that every agenda must include: "(3) A period devoted to comments by the general public, if any, and discussion of those comments." [Emphasis added]. On the face of the statute, the OML allows discussion between the public body and the general public, during the public comment period. The Legislature intended to allow public bodies to discuss matters arising during public comment without fear of violating the OML, and that intent is clearly born out after review of legislative history.

A proposal to amend NRS 241.020 arose in the 1991 Legislature at the urging of the Clark County School District. The Board of School Trustees had been advised by counsel that if they engaged in discussion with the public and stated their position, in effect, they would be reaching a consensus and taking a vote. He advised them not to respond to public inquiries during the public comment period.

New counsel for CCBST in 1991 argued that the law should be changed to allow discussion between a public body and the general public because when board members do not respond to the individuals concerned [i.e. the general public], it makes the [public] very antagonistic and upset by the absence of a response.

AB 252, as originally introduced by Assemblyman Bergevin from Douglas County, sought to amend NRS 241.030, but it underwent a complete makeover by the time it emerged from the Assembly. The first amendment in Assembly Committee on Government Affairs would have allowed "...discussion of and deliberation" of public comments. Subsequently, the Bill was amended again to delete the allowance for deliberation. The Bill, as ultimately enrolled, amended NRS 241.020 with language that only allowed discussion of public comments. The Senate made no changes before enrollment.
Legislative history of AB 252 reveals that public bodies were encouraged to engage in
discussion with members of the public. There is nothing in the legislative history to suggest
that discussion between a public body and the general public be limited to matters on the
comments are not allowed during the meeting but are required to be reserved to one period of
public comment, the public body may not limit comments to any particular topic but must allow
comment on any subject within the authority of the public body. The OML Manual at § 8.04
also states that public bodies may impose reasonable rules and regulations on public
comment, including time limitations. For example, a public body may prohibit public comment
if the content of the comment is a topic not relevant to or within the authority of the public body
or the comments are disruptive, etc.

An OML Opinion from 2005 addressed the issue of whether a public body can respond
to public comment. AG File No. 05-033. The President of the public body informed an
individual who had asked to discuss a matter with them that the law did not permit the Board
to respond to public comments. Our Opinion stated that the law does not require the public
body to answer the public’s inquiries; however, neither does it prohibit the public body from
discussing the public’s comments. Our Opinion stated that the President misrepresented the
law, but no violation occurred. OMLO 2005-17 (August 29, 2005). The author of the Opinion
advised the public body to change its policy of informing the public that the law prohibits a
public body from commenting on statements made by the general public.

We find that the erroneous admonition that the Board could not discuss matters with
the public was a violation. However, it appears to be attributed to a misstatement of the
standing printed admonition which appears on every agenda, and a review of the audio of
several meetings did not reveal an implied or unstated policy that would prohibit discussion of
issues with the public. It is urged by the BST that the erroneous admonitions were only
misstatements of the prohibition against deliberation and action of issues raised during public
comment.

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Since April 22, 2010, BST admonitions to the public have not stated nor implied that
discussion of matters raised by the public during public comment period between BST
members and the public are legally barred. We think this fact evidences corrective action
under the OML and awareness by the Board of the necessity of explaining Board policy before
each public comment period.

Of course, the OML’s prohibition against deliberation, or action on matters not properly
agendized remains in effect. The 1991 amendment to the OML merely allows members of
public bodies to discuss public issues even those under the public body’s control or
jurisdiction, but as always an admonition to the public should be given. No deliberation or
action can be taken on any matter not agendized and noticed to the public. If any BST
member, while in discussion with a member of the public during a meeting, feels that the
discussion impinges on the member’s duty not to deliberate, then the member must inform the
public of the risk and, if possible, redirect discussion to allowable comment, or request the
matter to be properly agendized at the next meeting.

B. Whether BST’s removal of standing agenda item: “RESPONSE TO PUBLIC
COMMENT: At this time, discussion may be held on issues raised by the public
under Public Hearings of Agenda/Non-Agenda Items,” was a violation of
NRS 241.020(2)(c)(3)?

There is no evidence that the deletion of a standing agenda item, RESPONSE TO
PUBLIC COMMENT, from future BST agendas was related to subsequent admonitions which
stated or implied that the Board was legally barred from discussing public comment with
members of the public. We did not find that the President’s erroneous admonitions which
misstated Board policy had a chilling effect on public comment or participation in public
comment.

Our review of several meeting minutes and its audio record shows that the public
continued to ask to discuss matters with the BST regardless of the admonition given. We
reviewed the audio of BST’s September 2, 2010 meeting during which five persons signed up
for public comment. One person read a list of seven questions directed to the Trustees and
then asked for responses. Another speaker made a verbal request for public records to the
Trustees and a third speaker accused a Trustee of violating the OML. The President did not
discuss any of these matters nor did she ask the other Trustees if they wished to comment.

Our review of the minutes of other meetings showed a similar result. There was no
shortage of public members waiting to speak during public comment. In summary, we did not
hear any speakers complain that the Trustees were duty bound to discuss their issues or
questions about school business.

C. Whether NRS 241.020(2)(c)(3) requires BST and its standing
subcommittees, to include in its agendas, an item entitled BOARD DISCUSSION OF
GENERAL PUBLIC COMMENT, or whether the existing BST agenda contains clear and
concise language informing the public that BST discussion of general public comment
may be held under the standing agenda item—PUBLIC COMMENT ON NON-AGENDA
ITEMS?

Finally, we are asked to determine if the OML, NRS 241.020(2)(c)(3), requires BST and
its standing subcommittees to include in each and every agenda an agenda item entitled
BOARD DISCUSSION OF GENERAL PUBLIC COMMENT, and we are asked if agendas for
BST and its standing subcommittees contain clear and concise language informing the public
that Board discussion of general public comment may be held under the standing agenda
items Public Comment and Public Hearings on Non-Agenda items. (NRS 241.020(2)(c)(1).

These questions inquire whether the OML requires a public body, not just the BST, but
each public body in Nevada to include in its agenda an item for public body discussion with
the public, or does an existing agenda item clearly inform the public that the public body may
discuss public comment with members of the public. We do not find that this is a
requirement of the OML for public bodies.

When the Legislature amended NRS 241.020 in 1991 to allow public bodies to discuss
public comment, questions, issues, or other matters within the public body’s jurisdiction or
control with members of the public, the Legislature stopped short of mandating discussion or
even requiring a standing informational statement on all agendas alerting the public that public
body members were able to discuss matters with them as long as the public body member(s) did not deliberate or take action on any matter raised in public comment.

V.

CONCLUSION

The BST President’s admonitions prior to public comment on non-agenda items during some BST meetings before April 8, 2010 seemed to indicate that the BST was legally barred from discussion of issues or matters raised by the public during public comment. The BST had been advised by legal counsel not to deliberate or take action on any matter not properly agendized. The fact that there was no uniformity of procedure among several admonitions, nor did it appear they were being read, indicates to us the President simply misstated existing Board policy. BST printed guidelines clearly explain the OML’s requirement that any matter must first be properly agendized before the BST could deliberate or vote on the matter. There is no printed policy prohibiting discussion with the public, but if there was an unstated policy or an implied policy behind the admonitions, the BST has taken corrective action so the public no longer hears that the Board is unable by law to discuss issues with them during public comment.

If the current BST agenda admonition is to be understood and conveyed to the public, it must be read consistently to the public. Members of the BST must understand the legislative intent which led to the amendment of NRS 241.020(2)(c)(3). If members decide discussion with the public is not warranted, no OML violation occurs. OMLO 2003-13 (March 21, 2003). Our opinion in OMLO 2005-17 advised the President of that public body to change its policy by surveying members at the conclusion of public comment period to determine if any member wished to address comments made by the public. We recommend this practice to BST.

Because there have been no similar previous complaints about the BST’s erroneous public comment admonition, we will only warn the BST to carefully inform the public of the requirements under existing law when public comment is offered. If the public asks to discuss issues with the BST, then in keeping with our prior advice to public bodies and legislative
intent, we urge the President to inquire of the other members if they desire to discuss the issue or matter with the public. This recommendation should be followed regarding all future agendas.

DATED this 14th day of October, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: [Signature]

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 19th day of October, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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Carole Howley
An Employee of the Office of the Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of
NYE COUNTY BOARD OF COUNTY COMMISSIONERS

Attorney General File No. 10-038
OMLO No. 2010-05

This office investigated two Open Meeting Law (OML) complaints from Mr. Leslie Stovall, Esq.; each alleged the Nye County Board of County Commissioners (BOCC) violated NRS 241.020 because it may have privately taken action by authorizing the filing of a legal document on its behalf.

During the investigation of these complaints, we received and reviewed affidavits and/or statements from each member of the BOCC, attorney Keith Loomis, and Rick Osborne, Nye County Manager. We reviewed an audio record of the June 1, 2010 BOCC meeting and the June 9, 2010 meeting, and we reviewed all the correspondence sent to us by Mr. Leslie Stovall.

FACTS

On or about May 27, 2010, private attorney Keith Loomis caused an Amended Petition for a Hearing to Consider the Appointment of Special Prosecutor to be filed in the 5th Judicial District Court of the State of Nevada on behalf of the BOCC.¹ It was captioned: In Re: the Matter of Robert Beckett and the Nye County District Attorney’s Office (Petition). Mr. Stovall alleged it was the filing of this document that violated the OML because it appeared the BOCC had not authorized its filing in a public meeting.

Mr. Loomis’ statement to us dated June 11, 2010 and his affidavit attached to his Opposition to a Motion to Dismiss and for Sanctions, filed June 7, 2010 in the same matter, explained why he filed the Amended Petition for a Hearing to Consider the Appointment of Special Prosecutor. He stated he was approached by County Manager, Rick Osborne and Gary Hollis, Chairman of the BOCC, about how to secure appointment of a special prosecutor.

¹ Mr. Loomis stated to the BOCC on June 9 that because Nye County District Attorney Bob Beckett had been arrested, other Assistant District Attorney’s were unable to proceed with the prosecution of the criminal case because of conflict. Therefore, it was necessary to secure a special prosecutor to proceed with the case.
He stated he filed the Petition based on “the approval I had from County Manager Richard Osborne and Chairman of the Board, Gary Hollis.” His June 12, 2010 statement to us explains that he did not poll the other members of the BOCC nor did he ask that they be polled on his behalf with regard to authorization to file the Petition. Mr. Loomis also stated he requested the matter be placed on the next available agenda for ratification and/or approval of the filing of the Petition. He stated this was done at the June 9, 2010 BOCC meeting.

On June 8, 2010, this office received an OML complaint from Leslie Mark Stovall, Esq., which alleged the BOCC violated the Open Meeting Law, specifically NRS 241.020, thus rendering the Amended Petition void pursuant to NRS 241.036.

On June 18, 2010, this office received another OML complaint from Mr. Stovall which added additional allegations to the June 8, 2010 complaint. This complaint alleged the BOCC had filed an opposition to “a motion to dismiss in case CV 30243” captioned: In Re the Matter of Robert Beckett and the Nye County District Attorney’s office, which had been filed in the 5th Judicial District Court of the State of Nevada on or about June 7, 2010. It was alleged the act of filing this document on behalf of BOCC was another violation of NRS 241.020.₂

Following the filing of the BOCC’s Amended Petition for Appointment of Special Prosecutor, Mr. Stovall filed a Motion to Dismiss and for Sanctions in the 5th Judicial District Court of the State of Nevada on June 2, 2010. It alleged that the filing of the Amended Petition by attorney Keith Loomis was a void act under the OML because Mr. Loomis appeared to have no authority to file the BOCC’s Petition prior to a public meeting. In a letter to Mr. Loomis dated May 28, 2010, Mr. Stovall stated he had been informed that the BOCC had not approved the Petition, “unless this [the approval of the Petition] was done in violation of the open meetings law.”

On May 28, 2010, Mr. Stovall received an Order to Show Cause from Judge John P. Davis, 5th Judicial District Court, to answer why a special prosecutor should not be appointed in the matter of In Re Robert Beckett and the Nye County District Attorney’s Office.

₂ Because the subject matter and the allegations of both complaints are related to the same matter, we consolidated them for purposes of this opinion.
Mr. Stovall also received a copy of the BOCC’s agenda for June 1, 2010 wherein item 20(d) appeared to seek authority to petition the District Court to appoint a special prosecutor, but it did not seek to ratify the hiring of Mr. Loomis, or authorize Mr. Loomis’ filing of the Petition in the 5th Judicial District Court.³

On May 30, 2010, Mr. Stovall notified Nye County Deputy District Attorney, Marla Zlotek that the filing of the BOCC’s Petition prior to a “public meeting” violated NRS 241.020. On June 1, 2010, the BOCC met in a regular commission meeting in Tonopah, Nevada, to consider agenda Item 20(d).

During the BOCC’s June 1, 2010 meeting, Gary Hollis, Commission Chair, called Item 20(d) for consideration by the Board. Almost immediately, BOCC counsel, Nye County Deputy District Attorney Marla Zlotek, asked to speak. She quickly informed the BOCC that a Petition to appoint a special prosecutor had been filed in the 5th Judicial District Court on the BOCC’s behalf on or about May 27, 2010. Next, she informed them that the June 1, 2010 agenda needed corrective action. The corrective action she spoke about was the immediate necessity to properly agendize the matter of the filing of the Petition by outside counsel (Keith Loomis, who had filed the Petition to appoint a special prosecutor on or about May 27th). She informed the BOCC that in order to discuss the matter and/or take any action, including ratification of Mr. Loomis’ act of filing the Petition on behalf of the BOCC, the matter must be properly agendized on another agenda.

Ms. Zlotek warned the BOCC that if it took action then, based on the wording of item 20(d), to approve the filing of the Petition in the 5th Judicial District Court by Mr. Loomis, that action would be void because the matter had not been properly agendized. During Ms. Zlotek’s counsel to the BOCC she read portions of §11.02 from NEVADA’S OPEN MEETING LAW MANUAL in support of her position that corrective action was necessary and allowable under the OML Manual.

³ Item 20(d.) from the agenda for the June 1, 2010 BOCC meeting:

Action – Discussion, deliberation, possible decision and possible direction to staff 1) to petition the District Court to appoint a Special Prosecutor; 2) to ratify any appointment already made by the District Court; 3) to authorize the payment for services; and 4) to authorize the execution of the contract which can be funded from Fund 492 Settlement Agreement; in the matter of the Bob Beckett Bad Check Program case.
Following Ms. Zlotek's counsel, Item 20(d.) was removed from consideration by the BOCC's June 1, 2010 agenda and no further action was taken on any part of it.

**ISSUES**

1. Whether the BOCC privately authorized the filing of the Petition for a Hearing to Consider the Appointment of a Special Prosecutor.

2. Whether the BOCC's June 9 Special Meeting ratified or "cured" the alleged violation of NRS 241.020(2)(a)(b) & (c).

**DISCUSSION AND ANALYSIS**

Since it is alleged the BOCC may have privately met to authorize Mr. Loomis to file the Petition, we asked each Board member, and Mr. Osborne, the County Manager, to respond with affidavits explaining each member's knowledge of the matter and whether they participated in authorizing the filing of the Petition.

Mr. Loomis' assertion that he did not poll the other BOCC members nor did he ask that they be polled is supported by the affidavits of the other BOCC members. Chairman Gary Hollis stated in his affidavit that he recalled a telephone conference on May 18, 2010 in which he gave "what authority he had" to Mr. Loomis to file the Petition and that Mr. Loomis then asked the matter be placed on the next BOCC agenda for approval and ratification. Mr. Hollis recalled a subsequent phone conference with Mr. Loomis, but he stated he never had communications with the other BOCC members to obtain their consent for the filing of the Petition for a Hearing to Consider the Appointment of Special Prosecutor.

Review of the affidavits of the other Commissioners confirms the fact that no communications between Chairman Hollis and the other Commissioners regarding the authorization to file the petition on behalf of the BOCC occurred between May 18, 2010 and June 1, 2010 when the matter was first put on a BOCC agenda. The matter was finally agendized for a special BOCC meeting on June 9, 2010. At this meeting the Board took

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action to ratify the act of the filing of the Petition and it also authorized the hiring of attorney
Keith Loomis to represent the BOCC.⁴

Mr. Hollis’ individual act authorizing Mr. Loomis to file the Petition was not an action by
the BOCC, which would have implicated NRS 241.020. Both Mr. Hollis and Mr. Loomis
explicitly acknowledged the BOCC could either ratify the filing of the Petition or reject it.

Because deputies in the District Attorney’s office stated they were conflicted,
preventing anyone from the District Attorney’s office from prosecuting the criminal case
against District Attorney Beckett, there was a void in county government regarding
prosecution of this matter and there were impending criminal procedure deadlines.⁵

While Mr. Hollis, as Chair of the BOCC, might have called an emergency meeting to
handle the matter immediately, his decision to authorize the filing of the Petition cannot now
be challenged under the OML since the BOCC ratified his choice on June 9, 2010. Even if the
OML was implicated with Mr. Hollis’ initial choice, ratification of that choice cured any OML
violation.

⁴ Item No. 3, Special BOCC meeting, June 9, 2010:
3. Action – Discussion, deliberation, possible decision and action to direct staff in the matter
of the Robert Beckett Bad Check Division case and David Boruchowitz prosecution:

   a. To retain Keith Loomis as attorney representing the Board of County Commissioners of
      Nye County for the filing of a petition to appoint a special prosecutor;

   b. Ratify the filing and/or authorize the filing of a petition for the appointment of a special
      prosecutor to review and possibly prosecute criminal charges against Nye County District
      Attorney Robert Beckett and/or against Nye County Sheriff’s Deputy David Boruchowitz;

   c. To authorize the payment for services for a Special Prosecutor which are not budgeted
      but can be funded from Fund 492 Settlement Agreement;

   d. To authorize the execution of a contract with Keith Loomis which is not budgeted but can
      be funded from Fund 492 Settlement Agreement;

   e. To fund the deductible for a civil attorney through PoolPact to represent the Nye County
      Sheriff's Office in the civil suit filed by Robert Beckett against Sheriff Anthony DeMeo and the
      Nye County Sheriff’s Office, which is not budgeted but can be funded from Fund 492 Settlement
      Agreement; and

   f. To authorize the filing of a petition for the appointment of a special prosecutor to review
      and determine prosecution on past, present and future criminal cases that have not been
      adjudicated wherein David Boruchowitz is the assigned investigator.

⁵ NRS 244.165 gives Boards of County Commissioners the jurisdiction and power to control the
prosecution of all suits in which it is a party, but because prosecution of criminal cases within the county directly
affects the county, county commissioners have the authority to employ additional counsel to prosecute criminal
The BOCC properly agendized the matter of the filing of the Petition and the hiring of outside counsel on the agenda for a special meeting on June 9, 2010. It then took appropriate action on June 9 when it voted to ratify the filing of the Petition and authorized funds enabling the County to contract with Mr. Loomis to represent the BOCC in this matter. The BOCC's ratification of Chairman Hollis' decision to hire private attorney Keith Loomis for the limited purpose of filing a Petition in court, complied with the OML.


CONCLUSION

The issues presented in the complaint asserted the BOCC took illegal action when the Petition was filed because it was filed in the name of the BOCC. But, our investigation showed no illegal or serial communications among the BOCC members. Mr. Osborne and Chairman Hollis chose to give the full BOCC the choice to ratify or reject their initial authorization for private attorney Keith Loomis to file the Petition.

Even if we accept the complaint's charge that the filing of the Petition was an illegal act on behalf of the BOCC, the OML does not forbid corrective action to either ratify the action complained of, or to reject the action. In either scenario the BOCC acted properly under the OML when it ratified Mr. Hollis' and Mr. Osborne's earlier decision to authorize Mr. Loomis to file the Petition. It makes no sense to forbid public bodies from correcting what could be construed as illegal actions on matters within its jurisdiction, control, or power as that view is antithetical to the best interest and conduct of the public's business. The OML Manual states that: “Although it may not obliterate the violation, corrective action should be taken so that the
business of government is accomplished in the open. NEVADA OPEN MEETING LAW MANUAL, §11.01 (10th ed. 2005)

DATED this 4th day of August, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By: GEORGE H. TAYLOR
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 24th day of August, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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[Signature]
An Employee of the Office of the Attorney General
June 2, 2010

Keith Munro, Esq.
Office of the Attorney General
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Re: Nye County Commission
Violation of NRS 241.020

Dear Mr. Munro:

I believe that Gary Hollis, Chairman of the Nye County Commission violated NRS 241.040 by causing a petition to appoint a special prosecutor to be filed in the Nye County District Court without compliance with NRS 241.020. I request an investigation and prosecution of the matter pursuant to NRS 241.040(4). I have enclosed the following documents for your review:

3. Order to show cause from Judge Davis filed May 28, 2010.
4. Nye County Commission Agenda of June 1, 2010 (see item 20(d), p. 7).

Your prompt attention to this matter would be appreciated.

Sincerely,

Leslie Mark Stovall, Esq.

LMS: Ip
encl.
cc: Gary Hollis
Chair, Nye County Commission
Marla Zlotek
County Counsel
AMENDED PETITION FOR HEARING TO CONSIDER APPOINTMENT OF SPECIAL PROSECUTOR

The Board of County Commissioners of Nye County through its attorney, Keith Loomis, Esq. hereby petitions this Honorable Court for a hearing to determine whether to disqualify the Nye County District Attorney and his office from reviewing and possible prosecution of cases in which the Nye County District Attorney has a personal interest. The Board further petitions for the appointment of a special prosecutor to review and possibly prosecute any cases in which the Court believes the Nye County District Attorney and/or his office should be disqualified. This Petition is based upon the following allegations.

1.

On information and belief it is alleged that on or about the 5th day of May, 2010, Mr. Beckett was arrested by a Detective David Boruchowitz, a member of the Nye County Sheriff's Office, based upon his belief that there was probable cause to believe that Robert Beckett, had
committed criminal offenses within Nye County, Nevada. Detective Boruchowitz was the principal investigator into the alleged offenses. The charges allegedly arose out of the management of public and private funds maintained in a bad check restitution account by Mr. Beckett as the District Attorney of Nye County and his office. The investigation of the case involved interviews of employees of the Nye County District Attorney’s Office and the service of a search warrant at that office to obtain documents and other evidentiary materials.

2.

Under NRS 245.030 the Board of County Commissioners is charged with causing the prosecution of any county officer who is responsible for any delinquencies in the collection, disbursement, safekeeping, or management of the public revenue.

3.

Robert Beckett is the duly elected District Attorney of Nye County, Nevada, and is the public prosecutor for Nye County. He has charge of the Nye County District Attorney’s Office and its staff.

4.

On information and belief it is alleged that Mr. Beckett’s personal interest in defending himself against criminal charges conflicts with his obligation as the District Attorney of Nye County to prosecute criminal cases. That same conflict of interest affects his stewardship of the office of District Attorney, its officers and employees. The conflict of the District Attorney’s Office is further exacerbated by the fact that employees of the District Attorney’s Office may well be witnesses in any prosecution that may occur of Mr. Bennett
5.

It is therefore alleged the District Attorney of Nye County and his office should be disqualified from prosecuting any possible case against Robert Beckett.

6.

On information and belief it is alleged that the investigation into the alleged criminal conduct of Robert Beckett was conducted by Detective David Boruchowitz of the Nye County Sheriff’s Office. Detective Boruchowitz has conducted investigations into several other cases. A criminal complaint was filed against Detective Boruchowitz in the Justice’s Court of Pahrump Township by an individual describing himself as a special deputy district attorney for Nye County. The complaint alleged that Detective Boruchowitz engaged in criminal conduct during his investigation of other cases. This complaint was subsequently withdrawn by order of the court. It is unknown whether the charges against Detective Boruchowitz contained in the complaint have substance or not. There is a danger, however, that other cases investigated by Deputy Boruchowitz may be affected by the conflict of interests which inheres in the potential prosecution of Mr. Beckett by Mr. Beckett or his office. In particular, the interest in defending himself against criminal charges may cause an incentive on the part of Mr. Beckett and/or his office to discredit the principal officer investigating Mr. Beckett’s case and to do so by handling other cases investigated by Mr. Boruchowitz so that he is discredited.

7.

Under NRS 252.100(1) whenever the district attorney is disqualified from acting in any matter coming before the court, the court may appoint some other person to perform the duties of the district attorney.
WHEREFORE Petitioner requests as follows:

1. That the Court set a date and time for an evidentiary hearing to determine whether the District Attorney and/or his office should be disqualified from evaluating and pursuing a possible prosecution of Mr. Beckett for his handling and/or management of funds within the bad check restitution program.

2. That the Court set a date and a time for an evidentiary hearing to determine whether the District Attorney and/or his office should be disqualified from evaluating and possibly prosecuting other cases investigated by Detective Boruchowitz.

3. That the Court give notice of the time, date and location of the hearing to Robert Beckett and the District Attorney’s Office of Nye County and that all parties be given the opportunity to present evidence to determine whether the prosecutorial function can be carried out impartially by Mr. Beckett and/or his office.

4. That if the Court determines that the District Attorney and his office are disqualified from evaluating and possibly prosecuting the cases, that a special prosecutor be appointed to review and pursue possible prosecution of the cases.

5. That the Court make such other or further provisions as it deems necessary or proper in the circumstances of this case.

DATED this 26th day of May, 2010.

Keith Loomis, No. 1912
Attorney for Petitioner
Board of County Commissioners of Nye County
9468 Double R Blvd. Ste. A
Reno, NV 89511
(775) 853-7222
e-mail keithloomis@earthlink.net
VERIFICATION

Under penalties of perjury, the undersigned declares that he is the attorney for the

Petitioner named in the foregoing, Petition for Hearing to Appoint Special Prosecutor and

knows the contents thereof; that the pleading is true of his own knowledge, except as to matters

set forth in any paragraph which begins with a statement that the paragraph is stated on

information and belief, and that as to such matters he believes them to be true.

Dated this 26th day of May, 2010.

Keith Loomis, Esq
Attorney for Petitioner

This Verification is signed by the attorney for Petitioner because to the best of this attorney's
knowledge there is no officer of employee of the Board of County Commissioners of Nye
County present in the county where this attorney resides, practices law and prepared this
Petition.
IN THE FIFTH JUDICIAL COURT OF STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, AMENDED PETITION FOR HEARING TO CONSIDER APPOINTMENT OF SPECIAL PROSECUTOR, filed in the Matter of Robert Beckett and the Nye County District Attorney's Office:

[XX Document does not contain the social security number of any person.]

OR

Document contains the social security number of a person required by:

A specific state or federal law, to wit: STATE SPECIFIC STATE OR FEDERAL LAW

or

For the administration of a public program

or

For an application for a federal or state grant

or

Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B,055)

Dated this 26th day of May, 2010

LAW OFFICE OF KEITH L. LOOMIS

[Signature]
KEITH L. LOOMIS, ESQ.
Attorney for Defendant
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Offices of Keith Loomis and that on
the 21st day of May, 2010, I served a true and correct copy of the following document,
entitled:

PETITION FOR APPOINTMENT OF SPECIAL PROSECUTOR

addressed as follows:

P.O Box 593
Tonopah, NV 89049

Nye County District Attorney’s Office
P.O. Box 593
Tonopah, NV 89049

Leslie Stovall, Esq.
Stovall & Associates
3250 S. Highway 160 Ste. E
Pahrump, NV 89048

[X] BY U.S. MAIL: I deposited for mailing in the United States mail, with
postage fully prepaid an envelope containing the above-identified document at
Carson City, Nevada, in the ordinary course of business.

[] BY PERSONAL SERVICE: I personally delivered the above-identified
document by hand delivery to the offices of the addressee named above.

[] BY MESSENGER SERVICE: I delivered the above-identified document to
Reno Carson Messenger Service for delivery to the offices of the addressee.

[Signature]
ANGEL RADLEY

-6-
May 28, 2010

Keith Loemia, Esq.
9668 Double R Boulevard
Reno, NV 89521-4808
Fax: 775-833-0860

Dear Mr. Loemia:

I received the petition for hearing to consider appointment of special prosecutor in my office on May 27, 2010. My immediate concern is the allegation that "The Board of County Commissioners of Nye County has approved the petition..." as being false in violation of the open meeting law. I am also concerned that approval of this matter may be on the June 1, 2010 agenda of the Nye County Commission.

I suggest withdrawing your petition as written until Commission approval to avoid a procedural challenge. Further, I believe this petition must be served upon the District Attorney. The form of your petition appears to be ex parte without summons or other opportunity to answer.

Finally, I question whether the petition can be filed in good faith in view of the lack of probable cause for the April 21, 2010 search and seizure or May 4, 2010 arrest of Beckett. I have enclosed a copy of my complaint and petition for return of property and to suppress. These will be served upon the Sheriff's Department. I think you should carefully consider whether any allegation of criminal wrongdoing can be made in light of complete lack of evidence and the unlawful searches which occurred in this case.

Sincerely,

Leslie Mark Stovall, Esq.
(Dated but not initialed)
May 28, 2010

Keith Loomis, Esq.
9468 Double R Boulevard
Reno, NV 89521-4808
Fax: 775-853-0860

Dear Mr. Loomis:

I received the petition for hearing to consider appointment of special prosecutor in my office on May 27, 2010. My immediate concern is the allegation that "The Board of County Commission of Nye County through its attorney, Keith Loomis, Esq. hereby petitions . . . ."

I have been informed that the Nye County Commission has not approved this petition, unless this was done in violation of the open meeting law. I am also informed that approval of this matter may be on the June 1, 2010 agenda of the Nye County Commission.

I suggest withdrawing your petition as written until Commission approval to avoid a procedural challenge. Further, I believe this petition must be served upon the District Attorney. The form of your petition appears to be ex parte without summons or other opportunity to answer.

Finally, I question whether the petition can be filed in good faith in light of the lack of probable cause for the April 21, 2010 search and seizure or May 5, 2010 arrest of Beckett. I have enclosed a copy of my complaint and motion for return of property and to suppress. These will be served upon the Sheriff’s Department. I think you should carefully consider whether any allegation of criminal wrongdoing can be made in light of complete lack of evidence and the unlawful searches which occurred in this case.

Sincerely,

Leslie Mark Stovall, Esq.
(Dictated but not edited)
IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

* * * * *

In Re the Matter of Robert Beckett and the Nye County District Attorney's Office.

PETITION FOR HEARING TO CONSIDER APPOINTMENT OF SPECIAL PROSECUTOR

The Board of County Commissioners of Nye County through its attorney, Keith Loomis, Esq. hereby petitions this Honorable Court for a hearing to determine whether to disqualify the Nye County District Attorney and his office from reviewing and possible prosecution of cases in which the Nye County District Attorney has a personal interest. The Board further petitions for the appointment of a special prosecutor to review and possibly prosecute any cases in which the Court believes the Nye County District Attorney and/or his office should be disqualified. This Petition is based upon the following allegations.

1.

On information and belief it is alleged that on or about the 5th day of May, 2010, Mr. Beckett was arrested by a Detective David Boruchowitz, a member of the Nye County Sheriff's Office, based upon his belief that there was probable cause to believe that Richard Beckett, had
committed criminal offenses within Nye County, Nevada. Detective Boruchowitz was the principal investigator into the alleged offenses. The charges allegedly arose out of the management of public and private funds maintained in a bad check restitution account by Mr. Beckett as the District Attorney of Nye County and his office. The investigation of the case involved interviews of employees of the Nye County District Attorney’s Office and the service of a search warrant at that office to obtain documents and other evidentiary materials.

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Under NRS 245.030 the Board of County Commissioners is charged with causing the prosecution of any county officer who is responsible for any delinquencies in the collection, disbursement, safekeeping, or management of the public revenue.

3.

Robert Beckett is the duly elected District Attorney of Nye County, Nevada, and is the public prosecutor for Nye County. He has charge of the Nye County District Attorney’s Office and its staff.

4.

On information and belief it is alleged that Mr. Beckett’s personal interest in defending himself against criminal charges conflicts with his obligation as the District Attorney of Nye County to prosecute criminal cases. That same conflict of interest affects his stewardship of the office of District Attorney, its officers and employees. The conflict of the District Attorney’s Office is further exacerbated by the fact that employees of the District Attorney’s Office may well be witnesses in any prosecution that may occur of Mr. Bennett.
5.

It is therefore alleged the District Attorney of Nye County and his office should be disqualified from prosecuting any possible case against Robert Beckett.

6.

On information and belief it is alleged that the investigation into the alleged criminal conduct of Robert Beckett was conducted by Detective David Boruchowitz of the Nye County Sheriff's Office. Detective Boruchowitz has conducted investigations into several other cases. A criminal complaint was filed against Detective Boruchowitz in the Justice's Court of Pahrump Township by an individual describing himself as a special deputy district attorney for Nye County. The complaint alleged that Detective Boruchowitz engaged in criminal conduct during his investigation of other cases. This complaint was subsequently withdrawn by order of the court. It is unknown whether the charges against Detective Boruchowitz contained in the complaint have substance or not. There is a danger, however, that other cases investigated by Deputy Boruchowitz may be affected by the conflict of interests which inheres in the potential prosecution of Mr. Beckett by Mr. Beckett or his office. In particular, the interest in defending himself against criminal charges may cause an incentive on the part of Mr. Beckett and/or his office to discredit the principal officer investigating Mr. Beckett's case and to do so by handling other cases investigated by Mr. Boruchowitz so that he is discredited.

7.

Under NRS 252.100(1) whenever the district attorney is disqualified from acting in any matter coming before the court, the court may appoint some other person to perform the duties of the district attorney.
WHEREFORE Petitioner requests as follows:

1. That the Court set a date and time for an evidentiary hearing to determine whether the District Attorney and/or his office should be disqualified from evaluating and pursuing a possible prosecution of Mr. Beckett for his handling and/or management of funds within the bad check restitution program.

2. That the Court set a date and a time for an evidentiary hearing to determine whether the District Attorney and/or his office should be disqualified from evaluating and possibly prosecuting other cases investigated by Detective Boruchowitz.

3. That the Court give notice of the time, date and location of the hearing to Robert Beckett and the District Attorney’s Office of Nye County and that all parties be given the opportunity to present evidence to determine whether the prosecutorial function can be carried out impartially by Mr. Beckett and/or his office.

4. That if the Court determines that the District Attorney and his office are disqualified from evaluating and possibly prosecuting the cases, that a special prosecutor be appointed to review and pursue possible prosecution of the cases.

5. That the Court make such other or further provisions as it deems necessary or proper in the circumstances of this case.

DATED this 25th day of May, 2010.

Keith Loomis, No. 1912
Attorney for Petitioner
Board of County Commissioners of Nye County
9468 Double R Blvd. Ste. A
Reno, NV 89511
(775) 853-7222
e-mail keithloomis@earthlink.net
VERIFICATION

Under penalties of perjury, the undersigned declares that he is the attorney for the

Petitioner named in the foregoing, Petition for Hearing to Appoint Special Prosecutor and

knows the contents thereof; that the pleading is true of his own knowledge, except as to matters
set forth in any paragraph which begins with a statement that the paragraph is stated on
information and belief, and that as to such matters he believes them to be true.

Dated this 25th day of May, 2010.

Keith Loomis, Esq
Attorney for Petitioner

This Verification is signed by the attorney for Petitioner because to the best of this attorney's
knowledge there is no officer of employee of the Board of County Commissioners of Nye
County present in the county where this attorney resides, practices law and prepared this
Petition.
IN THE FIFTH JUDICIAL COURT OF STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, PETITION FOR HEARING TO CONSIDER APPOINTMENT OF SPECIAL PROSECUTOR, filed in the Matter of Robert Beckett and the Nye County District Attorney's Office:

XX Document does not contain the social security number of any person.

OR

Document contains the social security number of a person required by:

A specific state or federal law, to wit: STATE SPECIFIC STATE OR FEDERAL LAW

or

For the administration of a public program

or

For an application for a federal or state grant

or

Confidential Family Court Information Sheet (NRS 125.130, NRS 125.230 and NRS 125B.055)

Dated this 25th day of May, 2010

LAW OFFICE OF KEITH L. LOOMIS

/s/ Keith L. Loomis

KEITH L. LOOMIS, ESQ.
Attorney for Defendant
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Offices of Keith Loomis and that on the 25th day of May, 2010, I served a true and correct copy of the following document, entitled:

PETITION FOR APPOINTMENT OF SPECIAL PROSECUTOR

addressed as follows:

P.O Box 593
Tonopah, NV 89049

Nye County District Attorney’s Office
P.O. Box 593
Tonopah, NV 89049

Leslie Stovall, Esq.
Stovall & Associates
3250 S. Highway 160 Ste. E
Pahrump, NV 89048

[X] BY U.S. MAIL: I deposited for mailing in the United States mail, with postage fully prepaid an envelope containing the above-identified document at Carson City, Nevada, in the ordinary course of business.

[ ] BY PERSONAL SERVICE: I personally delivered the above-identified document by hand delivery to the offices of the addressee named above.

[ ] BY MESSENGER SERVICE: I delivered the above-identified document to Reno Carson Messenger Service for delivery to the offices of the addressee.

Angel Radley
ANGEL RADLEY
IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

IN RE THE MATTER OF ROBERT BECKETT
AND THE NYE COUNTY DISTRICT
ATTORNEY'S OFFICE.

ORDER TO SHOW CAUSE

Whereas, the Board of County Commissioners of Nye County have caused to be filed a verified “Amended Petition for Hearing to Consider the Appointment of a Special Prosecutor” to handle a pending criminal investigation of Robert Beckett's supervision of certain public monies and in other criminal matters pertaining to the prosecution of Detective David Boruchowitz by the Nye County District Attorney's office.

Whereas, all of the above has resulted in considerable confusion and the casting of a black shadow that covers Nye County.

Whereas, the court is the appropriate entity to appoint a special prosecutor in such instances where the office of the District Attorney should be disqualified from cases.

Whereas, the court has inherent powers to enforce the laws of the State and the general supervision of judicial activities within its jurisdiction.

Whereas, the undersigned court being the Judge with the most seniority within the District is the appropriate court to issue an order that is ministerial in nature.
Whereas, the reasons for the seeking of a special prosecutor is in the nature of a criminal matter and the appointment may be required to prevent the continued erosion of the confidence, perceived by the public, in the legal communities ability to respond to allegations of this nature.

The right, if any, of the respondent to continue prosecuting a case against the officer who has filed charges against him is greatly outweighed by the right of the public to have a restoration of some confidence in the judicial system. In determining whether the respondent should be disqualified and a special prosecutor appointed where the respondent is charged with misfeasance or perhaps malfeasance in office, creates a situation where the appointment of an impartial prosecutor to insure justice is done and confidence in the laws of this state restored is a criminal matter.

The court does not sit in a vacuum on a high hill 170 miles from the epicenter of Nye County but is cognizant of the reports in the public media. The sadness with which this case comes to the court and the erosion of the public’s confidence in the legal process and the law within Nye County, has a ripple that extends well beyond the borders of this county. Due process however, requires an opportunity be provided for the respondent to refute these claims and to show why a special prosecutor should not be appointed.

This is a criminal matter and any civil implications are found to be minimal and are greatly outweighed by the public’s right to have confidence and credibility in the legal system restored.

Wherefore, the court enters the following Order:

1. Robert Beckett, the elected District Attorney is ordered to appear
before this court at 10:00 a.m. on the 11th day of June 2010, in the District Court within the county seat, namely Tonopah, Nevada to show cause as to why the appointment of a special prosecutor should not be named.

2. The District Attorney in the interim period shall refrain from any prosecution of any case against Detective David Boruchowitz.

3. That the clerk of this court will provide a copy of this Order to the Sheriff of Nye County. The Sheriff is to see that a copy of this Order and the underlying Petition is served upon the Nye County District Attorney and that a proper certificate of such service be filed in this proceeding.

DATED this 28th day of May 2010.

[Signature]
DISTRICT JUDGE
Board of County Commissioners

Meetings

- 10:00 a.m.
- First and third Tuesday of each month
- Two locations:
  - County Commission Chambers
    101 Radar Rd.
    Tonopah, NV 89049
  - Bob Ruud Community Center
    150 N. Hwy. 160
    Pahrump, NV 89060

Agendas
Agendas are available prior to the meetings
- Most Recent Agenda | View All

Members

District 1
Commissioner Lorinda Wichman
HC 60 Box 61250
Round Mountain, NV 89045
(775) 761-1626 - Cell
(775) 482-8191 - County Fax
Email: lwichman@gmail.com

District 2
Commissioner Joni Eastley
P.O. Box 153
Tonopah, NV 89049
(775) 482-8191
Commissioner's Office
(775) 482-9466 - Home Office
(775) 482-4533 - County Cell
Email: castlej@nett.com

District 3
Commissioner Gary Hollis
Chairman
2101 Calvada Blvd., Ste. 200
Pahrump, NV 89048
(775) 751-7075
Commissioner's Office
(775) 727-1794 - Home
(775) 727-3169 - County Cell
Email: ghollis@pahrump.com

District 4
Commissioner Andrew "Butch" Borasky - Vice-Chair
2101 Calvada Blvd., Ste. 200
Pahrump, NV 89048
(775) 751-7075
Commissioner's Office
(775) 209-3100 - Personal Cell
(775) 751-7093 - County Fax
Email: aborasky@co.nye.nv.us

District 5
Fely Quilevich
2101 Calvada Blvd., Ste. 200
Pahrump, NV 89048
(775) 751-7075
Commissioner's Office
(775) 209-0808 - County Cell
Email: fely@precious-properties.com

District 1: Currant Creek,
Duckwater, Gabbs, Ione,
Manhattan, Mercury, Round
Mountain, Sunnyside, Forty Bar,
Pahrump Precincts 19, 23 & 32,
and Smoky Valley
District 2: Beatty,
Amargosa Valley, Tonopah
Precincts 14 & 15, and Pahrump
Precinct 26
District 3: Pahrump
Precincts 9, 21, 25 & 27
District 4: Pahrump
Precincts 10, 11, 15, 28 & 29
District 5: Pahrump
Precincts 17, 20, 22, 24, 30 & 31

101 Radar Road, P.O. Box 152 • Tonopah, Nevada 89049 • Ph. (775) 482-8191
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NOTE: Items on the agenda without a time designation may not necessarily be considered in the order in which they appear on the agenda. NOTICE: It is anticipated that the items of business before the Board of Commissioners on June 1, 2010 will be fully completed on that date. However, should item(s) not be completed, it is possible item(s) could be carried over and be heard before the Board of Commissioners beginning at 8:30 a.m. on the next day.

Public Comment during the Commission Meeting on June 1, 2010 will be for all matters, both on and off the agenda, and be limited to three minutes per person. Additionally, public comment of three minutes per person will be heard during individual action items. The Commission reserves the right to reduce the time or limit the total time allowed for public comment. The Commission may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the Commission, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering with the rights of other speakers. Persons are invited to submit comments in writing on the agenda items and/or attend and make comment on that item at the Commission meeting. NOTE: You will not be permitted to speak during Public Comment without completing and submitting the appropriate forms. Please fill out a Citizen Inquiry form for a general public comment or a Citizen Input form to comment on a specific agenda item located on the public information table.

Pursuant to NRS 241.020, the Agenda for the Commission Meeting has been posted at the following locations: Tonopah Convention Center, 301 Brougher Avenue, Tonopah, NV; U.S. Post Office, 201 Erie Main St, Tonopah, NV; Commissioners' Meeting Room, 101 Radar Road, Tonopah, NV; District Court, 101 Radar Road, Tonopah, NV; Pahrump Justice Complex, 1520 East Basin Road, Pahrump, NV; Bob Ruud Community Center, 150 North Highway 160, Pahrump, NV; Beatty Community Center, 100 A Avenue South Beatty, NV

Support documentation for the items on the agenda, provided to the Nye County Board of Commissioners is available to members of the public at the County Manager’s Office (101 Radar Road, Tonopah, Nevada & 2101 Calvada Blvd, Suite 200, Pahrump, Nevada) and on the County’s website.

WEBSITE: www.nyeccounty.net
www.co.nye.nv.us

The Nye County Board of Commissioners may take a short break every 1 ½ hours.
NYE COUNTY BOARD OF COMMISSIONERS AGENDA

ITEM #  SUBJECT

Gary Hollis, Chair  Lorinda Wichman, Commissioner
Butch Borasky, Vice-Chair  Fely Quitevis, Commissioner
Joni Eastley, Commissioner  Sandra "Sam" Merlino, Ex-Officio Clerk of the Board

NOTE: All times are approximate except for bid openings, public hearings, and any other items agendized at a specific time. Action may be taken on all items except where otherwise indicated. Items not scheduled for a specific time may be considered at any time and in any order.

Special Note: Any member of the public who is disabled and requires accommodation or assistance at this meeting is requested to notify the Nye County Manager's Office in writing or call 775-482-8191 prior to the meeting.

Please note: Blue text that is underlined indicates items are linked to supporting documentation.

NOTICE OF TIMED AGENDA ITEMS

9:30 a.m.  Recess to attend a presentation of the new GE Proteus Radiology Suite (X-Ray machine) located at 825 Erie Main St. Tonopah, NV 89049.

10:00 a.m.  Timed Agenda Items:

a. Action – Public Hearing, discussion, deliberation and possible decision to adopt, amend and adopt, or reject Nye County Bill No. 2010-10: A Bill proposing to adopt a Development Agreement between the County of Nye and Amargosa Valley Solar 1, LLC, for the proposed development of two 242 MW solar power plants on up to 6,360- acres of land within the Amargosa Town boundary; and other matters properly related thereto.

b. Action – Discussion, deliberation, and possible decision to review any public comments received on US Department of Justice, Bureau of Justice Assistance: Bryne Justice Assistance Grant Application per federal pre-grant requirements. Grant is for 48 months and does not require match, nor do we anticipate one. Grant is for three (3) in car cameras in support of our narcotics highway interdiction team. Total project is $16,000.00 and for 48 months in duration.

10:15 a.m.  Recess to the Nye County Board of Road Commissioners (Agenda Attached)

10:30 a.m.  Recess to the Nye County Licensing and Liquor Board (Agenda Attached)

10:45 a.m  Action – 1) Public Hearing, discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Acknowledgment and Notice of Acceptance of R.S. 2477 Right-of-Way Grant for road number 994810 commonly referred to as Barrel Springs Road; and 2) Discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010 - 25: A Resolution Designating a Minor Road Pursuant to Nevada Revised Statutes 403.170 and R.S. 2477 Right-of-Way.

10:50 a.m.  Action – Discussion, deliberation, and possible decision concerning a request to approve a loan in the amount of $907,000.00 for Educational Programs for the Nye County School District which would be repaid from interest earned on the principal in Fund 494 Education Endowment normally paid to the School District annually.
11:15 a.m.  **Action** – Presentation, discussion, deliberation, and possible decision to approve the Nevada Department of Transportation’s proposed Nye County Fiscal Year 2011-2020 Work Program (WP) and Short and Long Range Elements.

**NYE COUNTY BOARD OF COMMISSIONERS**

1  **Pledge of Allegiance**

2  **Action** - Approval of the Agenda for the Board of County Commissioners' meeting of June 1, 2010.

3  **Action** - Approval of Minutes of the Board of County Commissioners' meeting(s) for – N/A

4  **Awards and Presentations**

5  **Announcements (first)**

6  **GENERAL PUBLIC COMMENT** (Three-minute time limit per person.) **Action** will not be taken on the matters considered during this period until specifically included on an agenda as an action item (first).

7  **Action** - Emergency Items

8  **Action** - Commissioners'/Manager's Comments (This item limited to announcements or topics/issues proposed for future workshops/agendas)

9  **Consent Agenda Items**
   
a. **Action** – Discussion of any item from the Consent Agenda Items that needs review before a decision is made.

b. **Action** – Approval of Elected Official Collection Report

c. **Action** – Approval of Assessor’s Office Change Request

d. **Action** – Approval of Personnel Actions

e. **Action** – Approval to pay one (1) Medical Indigent inpatient hospital bill in excess of $12,500.00 and is budgeted from Fund 231 Dedicated Medical and General Indigent.

f. **Action** – Approval to solicit Nevada radio stations to play the wildfire public service announcements by sending out the attached letter to encourage the Federal Government to take a proactive step in preventing wildfires.
g. Action – Approval of a Professional Services Agreement (PSA) with SRK Consulting to provide engineering services related to the closure of the old Round Mountain and the Amargosa Valley Landfills in accordance with their associated permits and closure applications for a total cost of $8,965 and budgeted from previously approved funds from Fund 611, Landfill Closure and Post Closure, on Project PW 0704.

h. Action – Approval of change Order No. 1 to Ben F. Dotson Construction for the Beatty Ambulance Facility, for an additional beam in the building, in the amount of $5,554.00 which is budgeted from Fund 492 Settlement Agreement, project number PE1002.

i. Action – Approval to enter into an agreement with Nevada Geo Tech to provide soils analysis and site plan for new General Service’s site at 871 Boothill Drive. Total cost is $22,000.00 which has been approved to be funded from Fund 492 Settlement Agreement and later reimbursed by the Pahrump Jail Facility Project bond proceeds.

j. Action – Approval to enter into a Professional Services Contract for Medical Director services for the five (5) Volunteer Ambulance Services in Nye County – Amargosa Valley, Beatty, Gabbs, Tonopah, and Smoky Valley, per NRS, NAC 450B. The contract is for a base rate of $1,000.00 per month and, in addition may be increased at $50.00 per hour for instructing approved classes and for related travel expenses. The contract is budgeted from Fund 225 Ambulance.

k. Action – Approval of a Funds Transfer Agreement with Ceridian for the refundable deposit of $3,500.00 which represents approximately 3.5% of the total participation into a Flexible Spending Account (FSA) as part of the Full Deposit Funding Agreement. This will be funded out of Fund 101 General.

l. Action – Approval to accept the Fiscal Year 2011 State of Nevada Emergency Response Commission (SERC) Planning, Training, Equipment and Operations grant award in the amount of $21,725.00. There is no match required by Nye County. This grant will be administered out of Fund 247 Grants.

m. Action – Approval to apply for the State of Nevada Division of Emergency Management (DEM) Emergency Preparedness Working Group (EPWG) FFY10 Supplemental grant. Funds from this grant come from the National Nuclear Security Administration Nevada Site Office (NNSA/NSO) low-level waste grant program. The total grant request will be approximately $114,000.00 and there is no match required. This grant will be administered out of Fund 247 Grants.

n. Action – Approval for the Nye County Local Emergency Planning Committee (LEPC) to apply for the State of Nevada Emergency Response Commission (SERC), Mid-cycle Hazardous Materials Emergency Preparedness (HMEP) Federal Fiscal Year 2010 grant. The amount applied for shall not be for more than $25,000.00. This grant will be administered out of Fund 247 Grants (by Emergency Services), and there is no match required by Nye County.
o. **Action** – Approval to apply for a Recreation or Public Purposes Application to lease land from Bureau of Land Management to expand the useful footprint of the current Mt. Mariah Cemetery in Manhattan, Nevada.

p. **Action** – Approval to accept the U. S. Department of Energy (DOE) Energy Efficiency and Conservation Block Grant (EECBG), # DE-RW0000170 in the amount of $185,700.00. There is no match required by Nye County and this grant will be administered in Fund 247, Grants.

q. **Action** – Approval to release ballistic vests for destruction that are unusable due to warranty expiration or contaminated. The Nye County Sheriff’s Office has twenty (20) ballistic vests that are out of warranty. Approval is requested to release the vests to “Fiber Brokers International”, a company that specializes in the disposal and recycling of out of warranty ballistic vests and returned to the market in non-ballistic related post consumer products such as gloves, brake pads, boat ropes, tire treads, etc.

r. **Action** – Approval of a letter of support for the State of Nevada’s application in the Federal Race to the Top competition for education innovation.

s. **Action** – Approval of Nye County Resolution No. 2010-59: a Resolution directing the levy of a special assessment at the rate of $1.00 per taxable parcel on all taxable property situated within the confines of the Pahrump Valley Groundwater Basin for Fiscal Year 2010-2011.

t. **Action** – Approval of Nye County Resolution No. 2010-60: a Resolution directing the levy of a special assessment within the confines of the Amargosa Valley Groundwater Basin as prorated and assessed against each water user who has a permit to appropriate water or perfected water right for the Fiscal Year 2010-2011.

u. **Action** – Approval of funding for the purchase and installation of four (4) cameras from Engle Technical Services for the inmate walk-way as stated per the attached scope of work for the Pahrump Justice Facility in the amount of $1,374.00 which has already been approved from Fund 493 Settlement Agreement PE0841.

v. **Action** – Approval of Change Order No. 20 to the contract between Nye County and the Design-Build Team of B & H Construction, Inc. (General Building Contractor) and JVC Architects (Architect) for the design and construction of the Pahrump Justice Facility Addition and Remodel Project in the amount of $1,411.74 to provide additional security screen above pass thru window in lobby area which is budgeted from the approved 10% holdback of Project PE0841 from Fund 493 Capital Projects.

w. **Action** – Approval of Change Order No. 21 to the contract between Nye County and the Design-Build Team of B & H Construction, Inc. (General Building Contractor) and JVC Architects (Architect) for the design and construction of the Pahrump Justice Facility Addition and Remodel Project in the amount of $3,346.50 for added floor box which is budgeted from the approved 10% holdback of Project PE0841 from Fund 493 Capital Projects.
<table>
<thead>
<tr>
<th>ITEM #</th>
<th>SUBJECT</th>
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<tbody>
<tr>
<td>x.</td>
<td><strong>Action</strong> – Approval of Change Order No. 2 to the Nevada Geo-Tech Professional Services Agreement for site construction of the Calvada Eye Administration Building in the amount of $2,225.00 for the off-site utility plan which has already been approved from Fund 492 Settlement Agreement PE0703.</td>
</tr>
<tr>
<td>y.</td>
<td><strong>Action</strong> – Approval to renew a membership with the Nevada Development Authority (NDA) to support continuing growth and economic development in Southern Nevada in the amount of $10,000.00 which has been budgeted from Fund 101 General.</td>
</tr>
<tr>
<td>z.</td>
<td><strong>Action</strong> – Approval of Change Order #1 for the contract between Nye County and SCS Engineers for a no cost extension to December 31, 2010. Contract is for Instruction/Training Services under the Environmental Protection Agency (EPA) Brownfields Job Training program grant, administered in Fund 247 Grants.</td>
</tr>
<tr>
<td>aa.</td>
<td><strong>Action</strong> – Approval of the State of Nevada, Division of Water Resources Budget for water distribution in connection with Duckwater Creek Distribution for the fiscal year July 1, 2010 to June 30, 2011 in the amount of $8,862.08 which can be funded from Contingency.</td>
</tr>
</tbody>
</table>

**PUBLIC OFFICIALS**

10 **Assessor**

| a.    | **Presentation** of projected expenditures of money in the Assessor’s Technology Fund (collections in the 2009-10 fiscal year to be added to previously encumbered or unused balances from fiscal years 2006-07 through 2008-10) |

11 **Board of Commissioners**

| a.    | **Action** – Closure of meeting, pursuant to NRS 288.220 for purposes of conferring with the County’s management representatives regarding labor negotiations, issues and other personnel matters. |
| b.    | Closed meeting, pursuant to NRS 288.220 for purposes of conferring with the County’s management representatives regarding labor negotiations, issues and other personnel matters. |
| c.    | **Action** – Discussion, deliberation, and possible decision on labor negotiations, issues and other personnel matters presented in closed meeting. |
| d.    | **Action** – Closure of meeting, pursuant to NRS 241.015(2)(b)(2) for purposes of conferring with legal counsel regarding potential or current litigation. |
| e.    | Closed meeting, pursuant to NRS 241.015(2)(b)(2) for purposes of conferring with legal counsel regarding potential or current litigation. |
| f.    | **Action** – Discussion, deliberation, and possible decision on conference with legal counsel regarding potential or current litigation presented in closed meeting. |
g. **Action** – Discussion, deliberation and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010-31: A Resolution in support of a bill to provide for the conveyance of certain public land in and around Historic Mining Townsites located in the State of Nevada and other matters properly related thereto.

h. **Action** – Discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010-26: A Resolution for Establishing a County Public Road Pursuant to Nevada Revised Statutes 405.191 and R.S. 2477.

i. **Action** – Discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010-29: A Resolution for Establishing a County Public Road Pursuant to Nevada Revised Statutes 405.191 and R.S. 2477.

j. **Action** – Discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010-34: A Resolution for Establishing a County Public Road Pursuant to Nevada Revised Statutes 405.191 and R.S. 2477.

12 **Clerk**

a. **Action** – Discussion, deliberation, and possible decision to appoint two members to the Pahrump Regional Planning Commission due to two expired terms.

b. **Action** – Discussion, deliberation, and possible decision to appoint two members to the Smoky Valley Library District due to two expired terms.

13 **District Attorney**

14 **Recorder**

15 **Sheriff**

16 **Treasurer**

17 **Justice(s) of the Peace**

18 **District Court**

19 **Juvenile Probation**

**GENERAL NYE COUNTY ADMINISTRATIVE STAFF**
20 County Manager

a. **Action** – Discussion, deliberation, and possible decision to set a date, time, and location for a Public Hearing on Nye County Bill No. 2010-14: a Bill amending Title 17, Chapter 17.04, Section 17.04.890 of the Nye County Code entitled Zoning Ordinance Text Amendment Procedure by clarifying a proposal for a text amendment may be initiated at the direction of the Board of County Commissioners or Regional Planning Commission, providing for the severability, constitutionality, and effective date hereof; and other matters properly relating thereto.

b. **Action** – Discussion, deliberation, possible decision and direction to staff to modify the current practice of fireworks permitting.

c. **Action** - Discussion, deliberation, and possible decision to pay Maintenance Deductible invoices in the amount of $370,339.45 and can be funded from Fund 492 Settlement Agreement. These invoices are deductibles due for legal fees for claims assigned to NPAIP/PACT.

d. **Action** - Discussion, deliberation, possible decision and possible direction to staff 1) to petition the District Court to appoint a Special Prosecutor; 2) to ratify any appointment already made by the District Court; 3) to authorize the payment for services; and 4) to authorize the execution of the contract which can be funded from Fund 492 Settlement Agreement; in the matter of the Bob Beckett Bad Check Program case.

e. **Action** - Discussion, deliberation, and possible decision to set a date, time, and location for a Public Hearing on Nye County Bill No. 2010-15: A Bill proposing to authorize the issuance of the Nye County, General Obligation (Limited Tax) Bonds (Additionally Secured by Pledged Revenues), Series 2010A and the Nye County, General Obligation (Limited Tax) Bonds (Additionally Secured by Pledged Revenues), Series 2010B (Federally Taxable Direct Pay Build America Bonds).

21 Emergency Services

22 Facilities

23 Finance

24 Health & Human Services

25 H/R and Risk Management

a. **Action** – Discussion, deliberation, possible decision and direction to staff to authorize the in-house advertising and filling of the Personnel Technician in the HR department. This position will become vacant June 4, 1010 due the current employee resigning her position. This position is currently budgeted in Fund 101 General.
b. **Action** – Discussion, deliberation, and possible decision and direction to staff to authorize the Sheriff’s Office to fill the following positions:

1. Detention Deputy in Tonopah due to transfer of Deputy to Tonopah Patrol due to PERS Buyout

2. Detention Deputy in Tonopah due to transfer of Deputy to Pahrump Patrol due to PERS Buyout

3. Pahrump Patrol Deputy due to transfer of Deputy to Amargosa Valley Patrol due to PERS Buyout

4. Detention Deputy in Pahrump due to Deputy taking advantage of PERS Buyout offer.

5. Pahrump Patrol Deputy due to termination 4/21/10

6. Pahrump Patrol Deputy due to resignation effective 6/3/10

The positions that are vacant due to transfers or vacancies are not funded in the 2010-2011 Fiscal Year (FY) budget due to the PERS Buyout. The two positions due to a termination or resignation are currently funded from Fund 101 General in the 2010-2011 FY budget.

c. **Action** – Discussion, deliberation, and possible decision and direction to staff to authorize the advertising and filling of 1) two Road Maintenance Workers III’s in Current Creek; and 2) one Office Assistant in the Road (Engineering & Administration) Department due to employees choosing to take advantage of the PERS Buyout offer. These positions will be vacant effective June 30, 2010. These positions are not budgeted in the 2010/2011 Fiscal Year; however they can be absorbed in Fund 205 Road.

d. **Action** – Discussion, deliberation, possible decision and direction to staff to authorize 1) the promotion of Celeste Sandoval Secretary II to Administrative Technical Coordinator; 2) promote Beth McGhee Office Assistant to the Secretary II position; and 3) advertise “in-house” for the vacant office assistant. The Administrative Technical Coordinator position will become vacant due to the employee taking the PERS Buyout Option. These changes can be absorbed in Fund 284 Repository Project Oversight.

e. **Action** – Discussion, deliberation, possible decision and direction to staff to: 1) authorize the fulltime appointment of Darrell Lacy into the position of Director of Community Development this is not funded but would be divided equally between Funds 101 General Fund & 245 Building; and 2) advertise the vacant Director of Nuclear Waste Repository Project Office which can be absorbed from Fund 284 Repository Project Oversight.

f. **Action** – Discussion, deliberation, possible decision and direction to staff to authorize the advertising and filling of one Dispatch employee in the Pahrump Sheriff’s Office from: 1) the existing hiring list; or 2) outside advertising due to the unsuccessful attempts of the “inhouse” advertising. This position became vacant April 9, 2010 due to the current employee resigning. This position is budgeted in fund 101 General.
26 Information Technology
   a. Action – Discussion, deliberation, possible decision and direction to staff to approve the capitalization of expenses relating to the purchase of user licenses for Microsoft System Center Configuration Manager system. The total cost of the licenses was $11,249.55, which is not budgeted but can be funded from Fund 491 Special Capital Projects.

27 Nuclear Waste Repository Project Office

28 Planning/Building
   a. Ex Parte Communications and Conflict of Interest Disclosure Statements

   b. Action – Discussion, deliberation and possible decision on a request for approval of an application for a Final Subdivision Map titled Mountain Vista Manor proposing to divide approximately 6.39 acres into eighteen (18) lots, Marchetti Corp – James R. Marsh, President/Owner, AP #08-261-05 located off Air Force Road in Tonopah (FM-10-0001)

   c. Action – Discussion, deliberation and possible decision on a request for 1) approval of applications for Parcel Maps proposing to divide;

   1).
      a. approximately 40 acres into one 1.76 acre parcel and one 38.49 acre parcel. Raintree Holdings Group Beatty Nevada LLC, Edward S. Ringle, Manager – Owner(s), AP #18-161-05; located in Beatty (PM-09-0009)

      b. approximately 120 acres into one 8.94 acre parcel, one 6.98 acre parcel and one 104.49 acre parcel. Raintree Holdings Group Beatty Nevada LLC, Edward S. Ringle, Manager – Owner(s), AP #18-171-02; located in Beatty (PM-09-0010)

      c. approximately 160 acres into one 18.23 acre parcel, one 7.42 acre parcel and one 134.44 acre parcel. Raintree Holdings Group Beatty Nevada LLC, Edward S. Ringle, Manager – Owner(s), AP #18-171-04; located in Beatty (PM-09-0011)

      d. approximately 8.89 acres into one 4.38 acre parcel and one 4.51 acre parcel. Edward & Rita Ringle – Owner(s), AP #18-201-05; located in Beatty (PM-09-0012); and

   2). the following six waivers associated with the above four parcel map applications PM-09-0009 through PM-09-0012:

      a. waiver of the requirement to provide contour information pursuant to Nye County Code 16.20.115.A.6 (WV-09-0007)

      b. waiver of the requirement that each lot created with a division of land application shall have legal and physical access pursuant to Nye County Code 16.20.180 (WV-09-0008)
NYE COUNTY BOARD OF COMMISSIONERS AGENDA

ITEM # SUBJECT

June 1, 2010

c. waiver of the water rights requirement pursuant to Nye County Code 16.20.190.E.2.A (WV-09-0009)

d. waiver of the requirement to provide utility will serve letters for water and sewage disposal Nye County Code 16.20.190.E.2.B & 16.20.190.F (WV-09-0010)

e. waiver of the requirement to show existing improvements on the parcel map submittal pursuant to Nye County Code 16.20.080.B (WV-09-0011)

f. waiver of the requirement to show existing utilities on the parcel map submittal pursuant to Nye County Code 16.20.115.A.7 (WV-09-0012)

29 Public Administrator

30 Public Works

31 Senior Services

a. Action – Discussion, deliberation, and possible decision to accept a supplemental grant award from the State of Nevada, Aging and Disability Services Division to purchase a new mini-van to be used in the Long Distance Medical Trip program in the amount of $21,250.00. This grant supersedes the grant award dated January 14, 2010 and revised to extend the grant ending date. The matching amount is $3,750.00 which is not budgeted but can be funded from Fund 491 Special Capital.

OTHER BUSINESS

32 Town Boards/Town Advisory Boards

33 Public Petitioners

a. Action – Discussion, deliberation, and possible decision to approve: 1) Nye County Resolution No. 2010-27: A Resolution For Formation of the Unincorporated Town of Beatty; and 2) 2010 Ballot Question Unincorporated Town of Beatty – Formation of Unincorporated Town of Beatty Pursuant to NRS 269.555; and 3) Providing the 2010 Ballot Question Unincorporated Town of Beatty – Formation of Unincorporated Town of Beatty Pursuant to NRS 269.555 to the Nye County Clerk pursuant to NRS 293.481.

34 GENERAL PUBLIC COMMENT (second)

35 ANNOUNCEMENTS (second)

36 ADJOURNMENT
NYE COUNTY BOARD OF COMMISSIONERS AGENDA

ITEM #  SUBJECT

AGENDA

NYE COUNTY BOARD OF ROAD COMMISSIONERS

101 Radar Rd, Tonopah NV 89049
TUESDAY, June 1, 2010

10:15 A.M.

Lorinda Wichman, Chair
Fely Quitevis, Vice-Chair
Joni Eastley, Member

Gary Hollis, Member
Butch Borasky, Member
Sandra "Sam" Merlino, Ex-Officio Clerk of the Board

NOTE: All times are approximate except for public hearings and any other items agendized at a specific time. Action may be taken on all items except where otherwise indicated. Items not scheduled for a specific time may be considered at any time and in any order.

1. Action - Approval of Minutes for the Nye County Board of Road Commissioners’ meeting for – N/A

2. GENERAL PUBLIC COMMENT (Three-minute time limit per person and requested to be limited to items not listed on the agenda. No action will be taken by the Board.)

3. Action - General road report by Public Works Director

4. Action - Discussion, deliberation, and possible decision to set a date, time and location for a Public Hearing on Acknowledgment and Notice of Acceptance of R.S. 2477 grant for road number 974250 commonly referred to as Combination Springs Road.

5. Action - Discussion, deliberation and possible decision to set a date, time and location for a Public Hearing on Acknowledgment and Notice of Acceptance of R.S. 2477 grant for road number 973610 commonly referred to as Morgan Creek Road.

6. Action - Discussion, deliberation and possible decision to set a date, time, and location for a Public Hearing on Acknowledgment and Notice of Acceptance of R.S. 2477 grant for road number 965110 commonly referred to as Longstreet Canyon Road.

7. RS2477 Update

8. Adjourn
AGENDA
NYE COUNTY LICENSING AND LIQUOR BOARD

101 Radar Rd, Tonopah NV 89049
TUESDAY, June 1, 2010

10:30 A.M.

Butch Borasky, Chair
Fely Quitevis, Vice-Chair
Joni Eastley, Member
Gary Hollis, Member

Lorinda Wichman, Member
Tony DeMeo, Member
Sandra "Sam" Merlino, Ex-Officio Clerk of the Board

NOTE: All times are approximate except for public hearings and any other items agendized at a specific time. Action may be taken on all items except where otherwise indicated. Items not scheduled for a specific time may be considered at any time and in any order.

1. Action - Approval of Minutes for the Nye County Licensing and Liquor Board meeting for – N/A

2. GENERAL PUBLIC COMMENT (Three-minute time limit per person and requested to be limited to items not listed on the agenda. No action will be taken by the Board.)

3. Consent Agenda Item

   a. Action – Discussion of any item from the Consent Agenda Items that needs review before a decision is made.

   b. Action – Approval to issue a Special Event Permit for Town of Round Mountain for an aerial Fireworks display on July 4, 2010 in the Hadley Subdivision. Dan Sweeney Applicant.

   c. Action – Approval of E-T-T, Inc. to transfer Terrible's Town Casino and Terrible's Lakeside Casino to Flamingo Paradise Gaming, LLC.

4. Brothel

5. Gaming

6. Licensing

7. Liquor

8. Adjourn
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of
CHURCHILL COUNTY BOARD OF
SCHOOL TRUSTEES

Attorney General File No. 10-045
OMLO 2010-08

I.

INTRODUCTION

This office investigated a complaint which alleged a violation of the "clear and complete rule" in NRS 241.020(2)(c)(1).1 This opinion addresses the requirement of the "clear and complete rule" to provide notice of the topics to be discussed in a public meeting, to Churchill County Board of School Trustee (BST) meetings alleged to have violated the rule.

This office requested a response from the BST and received a comprehensive and detailed reply, including a detailed chronology of events from its counsel, copies of agendas and minutes for each meeting alleged to have violated the Open Meeting Law (OML), and we received audio recordings of these and other meetings. Where supporting materials were relevant, we were also provided with copies of supporting materials for agenda items alleged to be in violation of the OML.

II.

FINDINGS OF FACT

April 13, 2010 and May 6, 2010 BST Meetings

The BST was faced with making severe budget reductions to the school district's 2011 fiscal year budget. BST meetings were well attended by the community. The first meeting to discuss proposed budget reductions occurred on April 13, 2010. An agenda item regarding proposed budget reductions appeared on successive meeting agendas. The April 13, 2010 meeting agenda item regarding budget reductions read:

///

1 NRS 241.020(2) Notice of a public meeting must include:
(c) An agenda consisting of:
(1) A clear and complete statement of the topics scheduled to be discussed during the meeting.
16. UNFINISHED BUSINESS, ACTION ITEMS
   C. Presentation of Information, Discussion and Possible Action
      Regarding Budget Savings Relating to the FY 2011 Budget.

      The BST met next on May 6, 2010. Agenda Item 19.C. concerning budget reductions
      read:

      19. NEW BUSINESS, ACTION ITEMS
          C. District Administration will present information regarding plans for
             budget reductions.

          The complaint alleged these two agenda items were woefully inadequate under the
          "clear and complete rule" to alert the public that a school closure was being considered and
          would be discussed during these two meetings.

          Supporting materials were provided to the public at the April 13, 2010 meeting which
          had been prepared by School District staff. In fact, school closure was the key component in
          one of three scenarios prepared by District staff as supporting material for the April 13, 2010
          agenda item 16.C. Each scenario represented a proposed budget reduction plan based on
          alternatives. Scenario "C" was a budget reduction plan based on school closure. Scenario C
          was entitled:

          SCENARIO C – BUDGET REDUCTION CONSIDERATIONS 2010-2011
          BUDGET YEAR; BOARD COMMUNICATION –WORKING DOCUMENT
          (School closure).

          Scenarios A and B were not based on budget reduction including a school closure.

          Review of the minutes on April 13, 2010 showed that the Trustees discussed and
          approved numerous line item budget reductions. Another document (2010-2011 Budget Year)
          generated by District staff and provided to the BST and the public for item 16.C. provided line
          item recommendations for budget reductions.

          When the BST deliberated on item 16.C. it voted to accept the District’s
          recommendation per scenario C to close one school per line item 104a from the 2010–2011
          Budget Year document. The minutes do not indicate whether the public spoke during
          consideration of this item, but the BST’s response to the complaint indicates that 20 members
          ///
          ///
of the public spoke for more than an hour (mostly about school closure) before the BST voted
on line item reductions, including the motion to accept the recommendation in Scenario C to
close a school.

No specific school was targeted for closure in this meeting. It is asserted by the BST
that Trustees understood, following the approval of the motion to accept the recommendation
in Scenario C (school closure), that administrative staff would be researching possible school
closure and coming back to them with a more specific agenda item.

The school closure idea was conceived by the Assistant Superintendent just two days
before the meeting on April 13, 2010. Assistant Superintendent Scott Meihack explained
during the meeting, that a school closure seemed to him to be the best way to meet the
budget reduction mandate. He prepared the three scenarios for eventual distribution to the
public and the Trustees on April 13, 2010, one of which was based on a school closure, but
even if the budget reduction scenarios were only tentative, and despite the fact that no
specific school was mentioned or targeted for closure, neither the Trustees nor the public
would have been aware that staff would present a proposal to balance the district’s budget
based on the closure of one school.

On May 6, 2010, District staff presented further information regarding budget
reductions, including the issue of school closure, to the BST. But before the BST discussed
item 19.C. BST’s counsel intervened. She explained that agenda item 19.C. did not indicate
that closure of a school would be considered, so the Board could not deliberate nor take
action on school closure as a budget reduction matter. Counsel warned the BST to refrain
from expressing one’s opinion about budget reduction issues to avoid entanglement with the
OML.

There was no deliberation or action taken at this meeting. Public comment was
received, during which 16 individuals spoke for a total of 52 minutes. Staff was directed to
bring back to the BST at its next meeting the school closure issue and other budget reduction
options, in an item that specifically identified matters or issues to be discussed or acted upon.

///
Budget reduction issues appeared on the May 19th agenda, but by this meeting the agenda item had been revised and expanded. It read:

21. NEW BUSINESS, ACTION ITEMS
G. Discussion and Possible Action to Direct Staff Regarding Possible Future Elementary School Closure, After Notice as Required by NRS 393.080, as a Budget Reduction Measure, Including Discussion of Consideration Involved with Closing Specific Schools – President Gent.

Prior to discussion of this agenda item, the BST was informed by Administration’s District Director of Finance that the District had a larger than anticipated opening financial balance. School closure for this budget year was no longer necessary.

During the BST’s discussion of item 21 G, the BST voted to rescind its April 13th action which had approved one of three staff budget reduction recommendations—Scenario C, which had been based on closing a school.

May 6, 2010 – Early Retirement Incentives

The complaint also challenges the sufficiency, under the “clear and complete rule,” of another item on the May 6, 2010 meeting agenda. Item 19.B. was for the purpose of discussing early retirement incentives as a budget reduction measure:

NEW BUSINESS ACTION ITEMS
B. Discussion and Possible Action to Suspend Process Outlined in P4811 for Early Retirement Incentives and Use Instead for This Year Only Another Process as Recommended by Staff.

While the phrase “Early Retirement Incentives” is clear enough to pass muster as a topic under the clear and complete rule, the BST actually went further in the meeting than a mere discussion of a change in the process. The Board approved actual early retirement incentives for specific teachers. The agenda item did not disclose this possible discussion and action.

BST recognized there might have been a lack of compliance with the clear and complete rule. It re-agendized the matter for the May 19, 2010 BST meeting. The new agenda item was reworded to comply with the OML:

///
20. UNFINISHED BUSINESS, ACTION ITEMS
A. Discussion and Possible Action to Approve Early Retirement Incentives under P4811(with modification as to deadlines, Years of Service, and Other Details) Approved at the May 6, 2010 Board Meeting for the Following Employees: Marie Cannata, April Chester, Jaculyn Applegate, Ursula Guisti, Janet Kelly, Vickie Paul, Jane Anderson, Nadine Seevens, Lynn Broyles.

The BST took corrective action revising the prior agenda item so as to inform the public that it might take action at the May 19, 2010 meeting to approve early retirement incentives and it included the names of specific teachers.

June 2, 2010 BST Meeting

The complaint’s last allegation was that BST failed to agendize an Administration report on an important topic of community interest on its June 2, 2010 meeting agenda. Instead, it is alleged the report was delivered to the public during public comment, not as an Administration agenda item. The community was interested in learning how the Administration assigned licensed staff to individual schools. The West End Elementary School Principal had been asked by the Superintendent to give a presentation on teacher assignment and classroom pupil numbers during public comment because it was important community information. But because the agenda for the June 2, 2010 meeting had been posted when the matter of making this report came to her attention, the Superintendent asked the Principal of West End Elementary School to give a report during public comment.

Because the delivery of administration business to the public during public comment might offend the OML, the Administration decided to put the matter of teacher assignments on the next meeting agenda (June 10, 2010):

9. STUDENT ACHIEVEMENT UPDATE
C. Presentation: How Licensed Staff School Assignment Decisions are made.

The West End Elementary School Principal gave the same presentation at this meeting she had given on June 2, 2010.

///

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III.

ISSUES

A. Whether the BST complied with the “clear and complete rule” (NRS 241.020(2)(c)(1) for item 16.C. during the April 13, 2010 meeting and item 19.G. during the May 6, 2010 meeting?

B. Whether a presentation to the BST by an elementary school principal during public comment was made as a spokesperson for the Churchill County School District, which presentation should have been agendized but not delivered during public comment?

C. Whether BST agenda item 19.B. for the BST May 6, 2010 meeting complied with NRS 241.020(2)(c)(1), the “clear and complete rule”?

IV.

DISCUSSION AND ANALYSIS

A. Whether Churchill County Board of School Trustees complied with the “clear and complete rule” (NRS 241.020(2)(c)(1) for item 16.C. during the April 13, 2010 meeting and item 19.G. during the May 6, 2010 meeting.

Three different BST agenda items are challenged under this complaint. The subject matter of each item was of a community-wide interest—school district budget reductions. In each instance the BST took corrective action which shields the BST from action by this office. Corrective action or “cure” ensures that the business of government is accomplished in the open. NEVADA OPEN MEETING LAW MANUAL, § 11.01 (10th ed. 2005).

BST redrafted and re-agendized both the April 13, 2010 and May 6, 2010 agenda items which were arguably not in compliance with the OML. A revised agenda item which did comply with the OML was placed on its May 19, 2010 meeting agenda.

Before BST considered item 19.C. on the May 6, 2010 agenda, counsel intervened and discussed the OML implications of the item and advised them not to discuss or take action on it. She made clear the item was defective because it was not specific about the topics to be discussed. The BST directed Administration to revise budget reduction agenda items and return them at the next meeting in a clear and complete item that specifically noticed the
public about topics to be discussed and perhaps action to be taken.

On May 19, 2010, the BST rescinded its previous action during the April 13, 2010 meeting which had approved a budget reduction scenario based on the closure of a school.

*Sandoval v Board of Regents*

The "clear and complete rule" was explained in detail by the Nevada Supreme Court in *Sandoval v. Board of Regents*. It may be helpful to explore the facts in *Sandoval* in order to further explain the purpose and importance of the "clear and complete rule."

In 2003, the Nevada Supreme Court in *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003) strictly construed NRS 241.020(2)(c)(1) rejecting a common practice in which public body members discussed matters which deliberately deviated from the agenda topic, into related and germane areas. The Court said that mere mention of related matters in the abstract will not implicate the OML, but that detailed discussion leads to violation.

The underlying facts in *Sandoval* involved a discussion, by a standing committee of the Nevada Board of Regents, of a Nevada Division of Investigation report of a dormitory raid by the UNLV police department on the UNLV campus. The committee engaged in an extensive discussion of the report criticizing the UNLV police department, and discussing the impact of drug use on the UNLV campus. This discussion was germane to agenda item's announced topic of laws and policies governing the release of materials, documents and reports to the public, but the actual discussion clearly exceeded the agenda topic. The Court said that "Although discussion of the NDI report in the abstract may not have violated the Open Meeting Law, the Committee went too far when it discussed details of the report, criticized the UNLV police department, and commented on the impact of drug use on the UNLV campus. Accordingly, we conclude that, as a matter of law, the Committee violated the Open Meeting Law." *Sandoval* 119 Nev at 155, 67 P.3d at 906.

The Court unmistakably interpreted Nevada's OML in a manner that requires public bodies to give the public clear notice of the topics to be discussed at public meetings so that

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2 The agenda item was informational only: "Review UCCSN [University and Community College System of Nevada] state and federal statutes, regulations, case law, and policies that govern the release of materials, documents, and reports to the public."
the public can attend a meeting when an issue of interest will be discussed. An agenda must be written to ensure that the public is on notice regarding what will be discussed at public meetings.

In OMLO 2003-23 (June 24, 2003) this office explained that a public body may take corrective action to "cure" an OML violation. The Alamo Power District, a public body, published an agenda item that was not clear and complete. The item stated: "MONTHLY BILLS REVIEWED AND APPROVED." We found this item did not alert the public that a discussion regarding employee insurance allocation would take place at the meeting. Employee insurance allocation was an item of special interest to the public body and to members of the public and should have been specifically set forth as an item on the agenda for consideration.

Although we found that the Alamo Power District's agenda item did not alert the public to the discussion regarding the employee insurance allocation, the public body had "cured" the violation by placing the matter on a future agenda for discussion and action. Further action by this office was not necessary. NEVADA OPEN MEETING LAW MANUAL, §§ 11.01–11.04 (10th ed. 2005).

In § 11.04 of the NEVADA OPEN MEETING LAW MANUAL (10th ed. 2005), this office provides advice regarding corrective action or "cure."

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. Valencia v. Cota, 617 P.2d 63 (Ariz. Ct. App. 1980); Cooper v. Arizona Western College District Governing Board, 610 P.2d 465 (Ariz. Ct. App. 1980); Spokane Education Ass'n v. Barnes, 517 P.2d 1362 (Wash. 1974). However, mere perfunctory approval at an open meeting of a decision made in an illegally closed meeting does not cure any defect of the earlier meeting or relieve any person from criminal prosecution for the same violation. Scott v. Bloomfield, 229 A.2d 667 (N.J. Super. Ct. Law Div. 1967). The matter should be put on an agenda for an open meeting and reheard or discussed.

The Office of the Attorney General has written several opinions on "clear and complete" agenda requirements. See Op. Nev. Att'y Gen. No. 79-8 (March 26, 1979), and Op. Nev. Att'y
V.

CONCLUSION

We find that the BST cured any potential violation prior to this complaint being filed with this office. They did so by redrafting and revising the defective agenda items from its April 13, 2010, May 6, 2010 and June 2, 2010 meetings to future meeting agendas. Revised agenda items were compliant with the OML.

We are confident that there will not be a recurrence of these issues by this BST. The necessity for compliance with the OML was stressed and discussed in several meetings. Corrective action was unhesitatingly taken and approved by the BST, which ensured that the public’s business was accomplished in the open and the public received notice. No further action is necessary.

DATED this 2nd day of November, 2010.

CATHARINE CORTEZ MASTO
Attorney General

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 28th day of November, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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An Employee of the Office of the Attorney General
STATE OF NEVADA
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In the Matter of MINERAL COUNTY BOARD OF COMMISSIONERS

Attorney General File No. 10-049

Mr. Andrew Beach filed an Open Meeting Law (OML) complaint with this office on August 26, 2010 against the Mineral County Board of Commissioners. This complaint against the Mineral County Board of Commissioners alleged that a violation occurred on the agenda for the August 19, 2010 Commission meeting. It is alleged item #3\(^1\) on the August 19, 2010 agenda did not comply with the statutory requirement that every agenda contain a “clear and complete” statement of the topics to be considered during the meeting. NRS 241.020(2)(c)(1).\(^2\) Specifically, the complainant points to the phrase at the end of agenda item #3, (and many other items on the same agenda as well), “...and all matters related thereto” as a violation of the OML because use of the phrase allows the Commissioners to stray into matters not specifically listed in the item.

FACTS

Discussion of agenda item #3 by the Commissioners with Clerk-Treasurer Ms. Cherrie George and attorney Stephen Rye, appearing on behalf of Hawthorne Motel owner, Margie Starr, began with Ms. George’s discussion of the room tax audit performed by auditors Kafoury and Armstrong, earlier in 2010. Ms. George also told the Commissioners that

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\(^1\) Agenda item #3 read: “Cherrie George – Relative to business of the Hawthorne Motel: Room Tax Audit findings of said business; type of business as listed on business license and all matters related thereto.” (Cherrie George, Mineral County Clerk-Treasurer, presented the item to the Commission.)

\(^2\) NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.

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.
Ms. Starr had sent the Clerk-Treasurer a written request for refund of room taxes when she learned her business was exempt because it had been operating as a monthly rental, not as a transient day-to-day motel. She had been notified by the auditors and by a former Mineral County Clerk-Treasurer that her monthly rental business was exempt from room taxes. Ms. George argued that because the business license still showed the business to be operating as a motel, Ms. Starr should not be entitled to a refund of taxes paid.

Ms. Starr's attorney reviewed the Nevada Revised Statutes pertaining to the applicability of the room tax. He stated that Ms. Starr's business was a monthly rental and therefore exempt from room tax under statute. There was discussion of an exchange of letters between Ms. Starr and the Clerk-Treasurer beginning in 2005 regarding the business' true status as a monthly rental. Ms. George disputed whether the business was truly a monthly rental or not. If so, the business license should have been corrected to indicate monthly rental.

There was further discussion of the County Code and whether a refund was practical. Ms. Starr said that she attended a County Commission meeting in 2008 at which she advised the Board she rented monthly. Commissioner Tipton requested review of that meeting's audio.

A motion to approve reimbursement of eight months of room taxes, or $618.30 was made and it carried unanimously.

Following the approval of tax refund, Fire Chief Nixon told the Commission that a change from transient to non-transient business would require compliance with current building and fire codes. Mr. Stroud advised the Commission that building code issues might have to be addressed upon a change in occupancy from transient to non-transient.

Upon hearing the continuing challenge to the business' status as transient or non-transient, the Chair made a motion to rescind his prior motion and Commission approval of a refund in the amount of $618.30 so that the matter could be continued when County legal counsel could be present and the audio of prior meetings could be reviewed to determine whether the status of the business had been disclosed.
ISSUES

1. Whether agenda item #3 for the August 19, 2010 Mineral County Board of Commissioners meeting was “clear and complete” within the meaning of NRS 241.020(2)(c)(1).

2. Whether use of the phrase “...and all matters related thereto” is sufficient to comply with the statutory requirement that all agenda items be clearly and completely stated.

DISCUSSION

Our review of the minutes for this meeting and its audio recording shows that the Commission strayed from the agenda item’s statement of topics to be considered. The agenda item provided notice that the Board would consider the Hawthorne Motel room tax audit findings of the motel, and the type of business as listed on the motel’s business license. However, most of the discussion centered on Ms. Starr’s request for refund of room taxes. The agenda item did not provide notice that the Commission would be considering a written request for refund of room taxes or that it may take action on her request.

Discussion of compliance with fire and building codes was also not noticed on the agenda.

Despite the Board’s assertion that use of the phrase “and all matters related thereto” covers the Board’s consideration of matters not specifically noticed on the agenda, NRS 241.020(2)(c)(2) requires a clear and complete statement of topics to be considered. The Nevada Supreme Court strictly interpreted this requirement to prohibit public bodies from straying into related subject matter.

In Sandoval v. Board of Regents of the U.C.C.S.N., 119 Nev. 148 (2003) the Court rejected the so-called “germane standard” holding that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic. In Sandoval the Court found that the public body exceeded the scope of the clear and complete agenda topic relating to review of law and policies governing the release of materials, documents and reports to the public. Sandoval 119 Nev. at 155. The Sandoval Court found that the failure to

3 The agenda topic at issue in Sandoval stated: “Review of UCCSN, state and federal statutes, regulations, case law, and policies that govern release of materials, documents, and reports to the public.”
state in the agenda item that an NDI investigative report would be discussed, was a violation of the OML's clear and complete rule. NRS 241.020(2)(c)(2).

Sandoval's holding means that use of catch-all phrases such as "and all matters related thereto" does not comply with the statute's requirement that each agenda contain a clear and complete statement of topics. Related matters, should they come up during a meeting, must be agendized for discussion at a future meeting. The phrase "and all matters related thereto" is overly broad to alert the public about the detailed discussion and action the Board took concerning Ms. Starr's written request for refund of room taxes. OPEN MEETING LAW MANUAL § 7.02, 7.03 (10th ed. 2005).

CONCLUSION

The Board's agenda item failed to notice the public that it would be considering Ms. Starr's written request for refund of room taxes. Use of the phrase "and all matters related thereto" does not comply with the statute's requirement that every agenda item contain a clear and complete statement of topics to be considered.

The Board's initial consideration of the written request for refund of room taxes was rescinded before the agenda item concluded, so we will only warn the Board not to stray from specific topics stated in an agenda item. Any matters not listed as a topic should be agendized for a future meeting.

DATED this 17th day of December, 2010.

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 17th day of December, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of
AMARGOSA VALLEY TOWN ADVISORY BOARD

) Attorney General File
) Nos. 10-053 and 10-054

BACKGROUND

Ms. Jan Cameron filed two Open Meeting Law (OML) complaints with this office, both of which alleged various OML violations by certain members of the Amargosa Valley Town Advisory Board (AVTAB).

The first complaint, AG File No. 10-053, alleged several Open Meeting Law (OML) violations during the public comment portion of the September 9, 2010 AVTAB Special Meeting.

The second complaint, AG File No. 10-054, alleged that a quorum of the Board met “serially and collectively” to deliberate and/or take action on any issue arising out of a meeting with Nye County Emergency Services on August 31, 2010.

INVESTIGATION OF AG FILE NOS. 10-053 AND 10-054

This office asked for and received statements from each member of the AVTAB, all of which were written in response to Ms. Cameron’s complaints. We also received a legal statement of defense from the Nye County District Attorney’s office which had gathered statements, reviewed them, and made an argument on their behalf. We also reviewed the audio recording of the September 9, 2010 AVTAB Special Meeting.

AG FILE NO. 10-053

Four of the five members on the AVTAB were appointed during the summer of 2010 to fill unexpired terms. The AVTAB Special Meeting held on September 9, 2010 was only the second or third meeting for the new group of town board members. By their own admission, they were inexperienced in that role. The new Chairman of the AVTAB, Perry Souza, explained his decisions made during the meeting’s public comment by first pointing out that the AVTAB agenda contained this public comment notice:
Public Comment: during the Advisory Board meeting on September 09, 2010 will be for all matters, both on and off the agenda, and be limited to three minutes per person. Additionally, public comment of three minutes per person will be heard during individual action items. The advisory Board reserves the right to reduce the time or limit the total time allowed for public comment. The Advisory Board may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the Advisory Board, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks or interfering with the rights of other speakers. Persons are invited to submit comments in writing on the agenda items and/or attend and make comments on that item at the Advisory Board meeting.

Chairman Souza stated at the beginning of the meeting that he anticipated the meeting would be heated. The local matter that generated so much interest involved Nye County's assumption of control over Amargosa Valley's Volunteer Fire Department, which allegedly resulted in a reduction in employment of certain local firefighters. The purpose of this Special Meeting was to "update members of the community on the condition of the Amargosa Volunteer Fire Department." This matter was agenda item #2.¹ The agenda also showed two periods of general public comment and the agenda also allowed comment during board consideration of individual items.

FACTS

Following a presentation by Brent Jones and Jim Medici, both Nye County Emergency Services employees, about the current employment status of certain Amargosa Valley volunteer firefighters and other matters related to the VFD's legal relation to Nye County, Jan Cameron, the complainant herein, approached the speaker's podium for public comment. She began by stating that in addition to her three minute allotment, she had reserved six more minutes of public comment, if needed, from two individuals in the audience who "ceded" their time to her. The chair did not acknowledge the claim. The agenda notice did not support the claim of additional minutes for public comment based on an informal ceding of time from one member of the public to another. But this issue became irrelevant when Ms. Cameron's comment was stopped before she finished her three minutes.

¹ Information Only – Update to members of the community on the condition of the Amargosa Volunteer Fire Department.
At the beginning of her comment, Ms. Cameron directly asked AVTAB members Linda Bromell and Jon DeLee about a meeting they attended with Nye County Emergency Services director Brent Jones in Pahrump on or about August 31, 2010. She wanted to know whether either member had discussed that meeting with another AVTAB member prior to the meeting. Mr. Jon DeLee told her he didn’t believe so, but couldn’t be sure. Ms. Bromwell disclosed she had emailed both Perry Souza and Jon DeLee to ask which one wanted to go to the meeting. Ms. Cameron then said that Ms. Bromell’s failure to notify the AVTAB’s liaison for the VFD, Joe DeLee, about the meeting she and Jon DeLee had with the County was “two-faced” because of remarks Ms Bromell allegedly made during a June meeting of the AVTAB about always notifying the Board’s liaison about such meetings. Ms. Cameron then said that the Board’s “honeymoon with the OML was over.” The audible tenor of a short dialog between Ms. Cameron and Ms. Bromell became tense. Chairman Souza intervened telling Ms. Cameron that “she was done” meaning her time at the podium was over. Ms. Cameron said she was not done, but Mr. Souza quickly said she was done. The noise in the room from the public increased as Ms. Cameron and Chairman Souza began talking over the other’s remarks. Ms. Cameron continued speaking despite the Chair’s admonition to stop, however she was allowed to finish. She thanked the Board members for their service and apologized for any embarrassment she may have caused, and then she sat down.

Next, Board member Joe DeLee asked the other Board members if any of them knew about the possibility of the meeting Ms. Bromell and Jon DeLee had with Brent Jones on August 31, 2010. Chairman Souza said he did. There was discussion of an email exchange between Perry Souza and Linda Bromell about who would go to the meeting in Pahrump with Brent Jones. Perry Souza said he was not at the meeting.

Mr. Robert Cameron, Jan Cameron’s husband, spoke during public comment. He said in reference to the Amargosa VFD that “I have 20 acres of land. . ., if you guys step foot on my land, I shoot trespassers. I’ll say it again, (here Mr. Cameron’s voice rose), I shoot trespassers”! Mr. Souza said “you’re a little out of order.” Mr. Cameron sat down to applause from the public.
ISSUES

1. Whether the OML was violated because Ms. Cameron had not finished her three minutes of public comment before being stopped.

2. Whether Ms. Cameron’s husband, who also spoke during public comment, violated any rule of public comment when he stated that “I shoot trespassers.”

3. Whether the Nye county Deputy Sheriff’s close proximity to the podium during public comment was a violation of the OML.

4. Whether Chairman “Perry Souza’s yelling over her comments and calling for her removal” violated her right to speak.²

DISCUSSION

AG FILE NO. 10-053

Whether Ms. Cameron was denied her right to comment because Chairman Souza asked her to sit down or asked for her removal is a close question. Ms. Cameron’s public comment began and ended with questions to two members of the AVTAB. Following their answers to her questions she said that Ms. Bromell’s failure to alert AVTAB’s VFD liaison Joe DeLee to the meeting with Brent Jones was “two-faced from my perspective.” These remarks could easily be viewed as inflammatory and as a caustic personal attack on a member of the Board. This statement was not simply a benign “characterization of behavior” as is claimed in the complaint. This comment clearly falls within the parameters of the notice on the agenda that offensive and inflammatory comments amounting to personal attack may be prohibited.³ Following closely on the heels of this comment, Ms. Cameron was allowed to

² Ms. Cameron raised two other matters, which arose out of the same public comment period. One matter sought to complain about the Board’s handling of the public comment of John Bosta, who has filed his own complaint. We address his concerns in our response to his complaint. The other matter – whether two members of the Board told untruths about whether they had contacted another member of the Board prior to meeting Brent Jones – was explained by each member’s response to Ms. Cameron’s question. Mr. DeLee said he didn’t think so (whether he had spoken to another AVTAB member) but couldn’t be sure. Ms. Bromell said that yes, she had emailed Mr. Souza. These answers were not untruths based on their statements to this office and their responses to Ms. Cameron during the meeting’s public comment period.

³ Nevada’s Open Meeting Law Manual (10th ed., 2005), § 8.05 Excluding people who are disruptive: If a person willfully disrupts a meeting to the extent that its orderly conduct is made impractical, the person may be removed from the meeting. NRS 241.030(3)(b). The chair of the public body may, without vote of the body, declare a recess to remove a person who is disrupting the meeting. See AG File No. 00-046 (December 11, 2000).
continue, but then she said that the AVTAB's honeymoon with the OML was over and that the members needed to read their OML manuals. Immediately Ms. Bromell responded by pointedly and sharply asking how do you know we haven't (read the OML manual)? When Ms. Bromell and Ms. Cameron began to talk over the other, Mr. Souza intervened to stop Ms. Cameron's public comment.

The audio recording of the meeting does show that Mr. Souza and Ms. Cameron also kept talking over each other. There was no yelling nor did Mr. Souza call for her removal. Mr. Souza had already told Ms. Cameron to stop even though both continued to speak over the other.

Our review of the audio of this meeting revealed that the tenor of Ms Cameron's "two-faced" remark coupled with her other comments, showed that this portion of the public comment period was bordering on being disruptive. The public audience's murmurs and shouts were audible and rising. We can't say that the Chair's decision to ask Ms. Cameron to stop was a violation of her right to comment. We listened to the audio several times and did not hear the Chair ask that Ms. Cameron be removed. Ms. Cameron thanked the Board and sat down of her own volition. There was no allegation that the Deputy Sheriff escorted her to her chair. While the presence of the Deputy may have been intimidating, the same reaction might be common to others when in the same situation. Moreover, it appears that the Deputy was present because Nye County Emergency Services requested his presence. Mr. Souza stated during our investigation that the AVTAB had not requested his presence. In any event, the deputy's proximity to the podium was not an OML violation.

Finally, we want to correct an assertion in the complaint that Mr. Cameron's statement that he shoots trespassers on his property, did not pose an immediate threat to anyone and therefore did not violate any rules of public comment. Mr. Cameron was not removed from the meeting nor was he forced to sit down. Ms. Cameron stated that Mr. Souza motioned the deputy during Mr. Cameron's comments. In the context of the patent animosity between the Nye County Emergency Services and the community over the County's control of the community's VFD, this comment clearly was intended to be inflammatory and potentially could
have been disruptive. This kind of remark could have triggered an unwanted response; it could have antagonized and even incited others.

Rules that prohibit personal attacks and rules of decorum serve important governmental interest of preventing disruptions to public meetings. OMLO 2001-22 (April 27, 2001). The standard of review of Mr. Cameron’s public comment is not whether the comment “I shoot trespassers” posed an immediate threat to anyone (which would have been grounds for immediate removal) but whether reasonable AVTAB rules governing time, place, and manner of public comment, were violated. Mr. Cameron’s comment clearly violated the posted notice on the agenda.

Our review of the audio recording persuades us that any interruption of the comments from Ms. Cameron and Mr. Cameron were based on legitimate time, place, and manner restrictions, clearly posted on the agenda. None of the speakers were prevented from speaking because of their viewpoint on an important subject.

AG FILE NO. 10-054

FACTS

This complaint alleged a meeting among a quorum of the AVTAB to discuss the County’s control of the VFD. Statements from Ms. Bromell, Mr. DeLee, and Mr. Souza all deny having physically met with each other at the Amargosa Fire Hall parking lot following the meeting with Brent Jones in Pahrump on August 31, 2010. Mr. Souza did appear at the parking lot with Mr. DeLee, but he left when another member of the AVTAB, Vern Gilliland, arrived. He said he left because he wanted to avoid having a quorum present.

Ms. Bromell stated she contacted Mr. Souza prior to the meeting with Brent Jones when she offered to stand aside if Mr. Souza wished to accompany Mr. DeLee to the meeting in Pahrump. Mr. Souza declined to go, but he did email Ms. Bromell several questions he thought should be asked of Nye County Emergency Services director Brent Jones.

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ISSUE

Whether a quorum of the AVTAB met “serially and collectively” to deliberate and/or take action on any issue arising out of a meeting with Nye County Emergency Services on August 31, 2010.

DISCUSSION

There was no evidence to support a claim of serial meeting. There was evidence that Ms. Bromell, Mr. DeLee and Mr. Souza, met and discussed how to get the information from their meeting with Brent Jones before the community in a public forum, but this does not offend the OML. Pre-meeting discussions among members of a public body regarding whether to remove an agenda item does not implicate the OML. Schmidt v. Washoe County, 123 Nev. 128 135 (2007). We believe this authority also extends to placing an item on an agenda as long as the statutory time limits for posting the notice and agenda are met. NRS 241.020(3). Each board member stated that their only discussion about the meeting with Brent Jones was their concern about how to get this information to the community in a board meeting.

CONCLUSION

This office does not find an OML violation under either complaint. We recognize this meeting was for the purpose of discussing an important matter. It engendered many heated comments from members of the public about an important community asset—its Volunteer

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4 NRS 241.015(2), "Meeting": (a) Except as otherwise provided in paragraph (b), means: (1) 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.
Fire Department and community residents who had served as volunteers. We urge the public and the AVTAB to obey the posted agenda notice which encourages civil discourse.

DATED this 13th day of December, 2010.

CATHERINE CORTEZ MASTO
Attorney General

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 13th day of December, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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OFFICE OF THE ATTORNEY GENERAL  

In the Matter of  
AMARGOSA VALLEY TOWN ADVISORY BOARD  

Attorney General File  
Nos. 10-053 and 10-054  

BACKGROUND  
Ms. Jan Cameron filed two Open Meeting Law (OML) complaints with this office, both of which alleged various OML violations by certain members of the Amargosa Valley Town Advisory Board (AVTAB).  
The first complaint, AG File No. 10-053, alleged several Open Meeting Law (OML) violations during the public comment portion of the September 9, 2010 AVTAB Special Meeting.  
The second complaint, AG File No. 10-054, alleged that a quorum of the Board met “serially and collectively” to deliberate and/or take action on any issue arising out of a meeting with Nye County Emergency Services on August 31, 2010.  
INVESTIGATION OF AG FILE NOS. 10-053 AND 10-054  
This office asked for and received statements from each member of the AVTAB, all of which were written in response to Ms. Cameron’s complaints. We also received a legal statement of defense from the Nye County District Attorney’s office which had gathered statements, reviewed them, and made an argument on their behalf. We also reviewed the audio recording of the September 9, 2010 AVTAB Special Meeting.  
AG FILE NO. 10-053  
Four of the five members on the AVTAB were appointed during the summer of 2010 to fill unexpired terms. The AVTAB Special Meeting held on September 9, 2010 was only the second or third meeting for the new group of town board members. By their own admission, they were inexperienced in that role. The new Chairman of the AVTAB, Perry Souza, explained his decisions made during the meeting’s public comment by first pointing out that the AVTAB agenda contained this public comment notice:
Public Comment: during the Advisory Board meeting on September 09, 2010 will be for all matters, both on and off the agenda, and be limited to three minutes per person. Additionally, public comment of three minutes per person will be heard during individual action items. The advisory Board reserves the right to reduce the time or limit the total time allowed for public comment. The Advisory Board may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the Advisory Board, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks or interfering with the rights of other speakers. Persons are invited to submit comments in writing on the agenda items and/or attend and make comments on that item at the Advisory Board meeting.

Chairman Souza stated at the beginning of the meeting that he anticipated the meeting would be heated. The local matter that generated so much interest involved Nye County’s assumption of control over Amargosa Valley's Volunteer Fire Department, which allegedly resulted in a reduction in employment of certain local firefighters. The purpose of this Special Meeting was to “update members of the community on the condition of the Amargosa Volunteer Fire Department.” This matter was agenda item #2. The agenda also showed two periods of general public comment and the agenda also allowed comment during board consideration of individual items.

FACTS

Following a presentation by Brent Jones and Jim Medici, both Nye County Emergency Services employees, about the current employment status of certain Amargosa Valley volunteer firefighters and other matters related to the VFD’s legal relation to Nye County, Jan Cameron, the complainant herein, approached the speaker’s podium for public comment. She began by stating that in addition to her three minute allotment, she had reserved six more minutes of public comment, if needed, from two individuals in the audience who “ceded” their time to her. The chair did not acknowledge the claim. The agenda notice did not support the claim of additional minutes for public comment based on an informal ceding of time from one member of the public to another. But this issue became irrelevant when Ms. Cameron’s comment was stopped before she finished her three minutes.

1 Information Only – Update to members of the community on the condition of the Amargosa Volunteer Fire Department.
At the beginning of her comment, Ms. Cameron directly asked AVTAB members Linda Bromell and Jon DeLee about a meeting they attended with Nye County Emergency Services director Brent Jones in Pahrump on or about August 31, 2010. She wanted to know whether either member had discussed that meeting with another AVTAB member prior to the meeting. Mr. Jon DeLee told her he didn’t believe so, but couldn’t be sure. Ms. Bromwell disclosed she had emailed both Perry Souza and Jon DeLee to ask which one wanted to go to the meeting. Ms. Cameron then said that Ms. Bromell’s failure to notify the AVTAB’s liaison for the VFD, Joe DeLee, about the meeting she and Jon DeLee had with the County was “two-faced” because of remarks Ms Bromell allegedly made during a June meeting of the AVTAB about always notifying the Board’s liaison about such meetings. Ms. Cameron then said that the Board’s “honeymoon with the OML was over.” The audible tenor of a short dialog between Ms. Cameron and Ms. Bromell became tense. Chairman Souza intervened telling Ms. Cameron that “she was done” meaning her time at the podium was over. Ms. Cameron said she was not done, but Mr. Souza quickly said she was done. The noise in the room from the public increased as Ms. Cameron and Chairman Souza began talking over the other’s remarks. Ms. Cameron continued speaking despite the Chair’s admonition to stop, however she was allowed to finish. She thanked the Board members for their service and apologized for any embarrassment she may have caused, and then she sat down.

Next, Board member Joe DeLee asked the other Board members if any of them knew about the possibility of the meeting Ms. Bromell and Jon DeLee had with Brent Jones on August 31, 2010. Chairman Souza said he did. There was discussion of an email exchange between Perry Souza and Linda Bromell about who would go to the meeting in Pahrump with Brent Jones. Perry Souza said he was not at the meeting.

Mr. Robert Cameron, Jan Cameron’s husband, spoke during public comment. He said in reference to the Amargosa VFD that “I have 20 acres of land. . . , if you guys step foot on my land, I shoot trespassers. I’ll say it again, (here Mr. Cameron’s voice rose), I shoot trespassers!” Mr. Souza said “you’re a little out of order.” Mr. Cameron sat down to applause from the public.
ISSUES

1. Whether the OML was violated because Ms. Cameron had not finished her three minutes of public comment before being stopped.

2. Whether Ms. Cameron’s husband, who also spoke during public comment, violated any rule of public comment when he stated that “I shoot trespassers.”

3. Whether the Nye county Deputy Sheriff’s close proximity to the podium during public comment was a violation of the OML.

4. Whether Chairman “Perry Souza’s yelling over her comments and calling for her removal” violated her right to speak.²

DISCUSSION

AG FILE NO. 10-053

Whether Ms. Cameron was denied her right to comment because Chairman Souza asked her to sit down or asked for her removal is a close question. Ms. Cameron’s public comment began and ended with questions to two members of the AVTAB. Following their answers to her questions she said that Ms. Bromell’s failure to alert AVTAB’s VFD liaison Joe DeLee to the meeting with Brent Jones was “two-faced from my perspective.” These remarks could easily be viewed as inflammatory and as a caustic personal attack on a member of the Board. This statement was not simply a benign “characterization of behavior” as is claimed in the complaint. This comment clearly falls within the parameters of the notice on the agenda that offensive and inflammatory comments amounting to personal attack may be prohibited.³ Following closely on the heels of this comment, Ms. Cameron was allowed to

² Ms. Cameron raised two other matters, which arose out of the same public comment period. One matter sought to complain about the Board’s handling of the public comment of John Bosta, who has filed his own complaint. We address his concerns in our response to his complaint. The other matter – whether two members of the Board told untruths about whether they had contacted another member of the Board prior to meeting Brent Jones – was explained by each member’s response to Ms. Cameron’s question. Mr. DeLee said he didn’t think so (whether he had spoken to another AVTAB member) but couldn’t be sure. Ms. Bromell said that yes, she had emailed Mr. Souza. These answers were not untruths based on their statements to this office and their responses to Ms. Cameron during the meeting’s public comment period.

³ Nevada’s Open Meeting Law Manual (10th ed., 2005), § 8.05 Excluding people who are disruptive: If a person willfully disrupts a meeting to the extent that its orderly conduct is made impractical, the person may be removed from the meeting. NRS 241.030(3)(b). The chair of the public body may, without vote of the body, declare a recess to remove a person who is disrupting the meeting. See AG File No. 00-046 (December 11, 2000).
continue, but then she said that the AVTAB’s honeymoon with the OML was over and that the
members needed to read their OML manuals. Immediately Ms. Bromell responded by
pointedly and sharply asking how do you know we haven’t (read the OML manual)? When
Ms. Bromell and Ms. Cameron began to talk over the other, Mr. Souza intervened to stop
Ms. Cameron’s public comment.

The audio recording of the meeting does show that Mr. Souza and Ms. Cameron also
kept talking over each other. There was no yelling nor did Mr. Souza call for her removal.
Mr. Souza had already told Ms. Cameron to stop even though both continued to speak over
the other.

Our review of the audio of this meeting revealed that the tenor of Ms Cameron’s
“two-faced” remark coupled with her other comments, showed that this portion of the public
comment period was bordering on being disruptive. The public audience’s murmurs and
shouts were audible and rising. We can’t say that the Chair’s decision to ask Ms. Cameron to
stop was a violation of her right to comment. We listened to the audio several times and did
not hear the Chair ask that Ms. Cameron be removed. Ms. Cameron thanked the Board and
sat down of her own volition. There was no allegation that the Deputy Sheriff escorted her to
her chair. While the presence of the Deputy may have been intimidating, the same reaction
might be common to others when in the same situation. Moreover, it appears that the Deputy
was present because Nye County Emergency Services requested his presence. Mr. Souza
stated during our investigation that the AVTAB had not requested his presence. In any event,
the deputy’s proximity to the podium was not an OML violation.

Finally, we want to correct an assertion in the complaint that Mr. Cameron’s statement
that he shoots trespassers on his property, did not pose an immediate threat to anyone and
therefore did not violate any rules of public comment. Mr. Cameron was not removed from the
meeting nor was he forced to sit down. Ms. Cameron stated that Mr. Souza motioned the
deputy during Mr. Cameron’s comments. In the context of the patent animosity between the
Nye County Emergency Services and the community over the County’s control of the
community’s VFD, this comment clearly was intended to be inflammatory and potentially could
have been disruptive. This kind of remark could have triggered an unwanted response; it could have antagonized and even incited others.

Rules that prohibit personal attacks and rules of decorum serve important governmental interest of preventing disruptions to public meetings. OMLO 2001-22 (April 27, 2001). The standard of review of Mr. Cameron’s public comment is not whether the comment “I shoot trespassers” posed an immediate threat to anyone (which would have been grounds for immediate removal) but whether reasonable AVTAB rules governing time, place, and manner of public comment, were violated. Mr. Cameron’s comment clearly violated the posted notice on the agenda.

Our review of the audio recording persuades us that any interruption of the comments from Ms. Cameron and Mr. Cameron were based on legitimate time, place, and manner restrictions, clearly posted on the agenda. None of the speakers were prevented from speaking because of their viewpoint on an important subject.

AG FILE NO. 10-054

FACTS

This complaint alleged a meeting among a quorum of the AVTAB to discuss the County’s control of the VFD. Statements from Ms. Bromell, Mr. DeLee, and Mr. Souza all deny having physically met with each other at the Amargosa Fire Hall parking lot following the meeting with Brent Jones in Pahrump on August 31, 2010. Mr. Souza did appear at the parking lot with Mr. DeLee, but he left when another member of the AVTAB, Vern Gilliland, arrived. He said he left because he wanted to avoid having a quorum present.

Ms. Bromell stated she contacted Mr. Souza prior to the meeting with Brent Jones when she offered to stand aside if Mr. Souza wished to accompany Mr. DeLee to the meeting in Pahrump. Mr. Souza declined to go, but he did email Ms. Bromell several questions he thought should be asked of Nye County Emergency Services director Brent Jones.

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ISSUE

Whether a quorum of the AVTAB met "serially and collectively" to deliberate and/or take action on any issue arising out of a meeting with Nye County Emergency Services on August 31, 2010.

DISCUSSION

There was no evidence to support a claim of serial meeting. There was evidence that Ms. Bromell, Mr. DeLee and Mr. Souza, met and discussed how to get the information from their meeting with Brent Jones before the community in a public forum, but this does not offend the OML. Pre-meeting discussions among members of a public body regarding whether to remove an agenda item does not implicate the OML. Schmidt v. Washoe County, 123 Nev. 128 135 (2007). We believe this authority also extends to placing an item on an agenda as long as the statutory time limits for posting the notice and agenda are met. NRS 241.020(3). Each board member stated that their only discussion about the meeting with Brent Jones was their concern about how to get this information to the community in a board meeting.

CONCLUSION

This office does not find an OML violation under either complaint. We recognize this meeting was for the purpose of discussing an important matter. It engendered many heated comments from members of the public about an important community asset—its Volunteer

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4 NRS 241.015(2). "Meeting":
(a) Except as otherwise provided in paragraph (b), means:
(1) 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.
Fire Department and community residents who had served as volunteers. We urge the public and the AVTAB to obey the posted agenda notice which encourages civil discourse.

DATED this 13th day of December, 2010.

CATHERINE CORTEZ MASTO
Attorney General

By:  

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ___ day of December, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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Amargosa Valley, NV 89020

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Amargosa Valley Town Advisory Board
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Amargosa Valley, NV 89020

Perry Souza, Chairman
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Jon DeLee, Recording Secretary
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Carole Horley
An Employee of the Office of the Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of
LYON COUNTY BOARD OF COMMISSIONERS

Attorney General File No. 10-062
OMLO 2011-01

I.

INTRODUCTION

This Open Meeting Law (OML) complaint alleged that a person's character was impermissibly discussed by a member of the Lyon County Board of County Commissioners (BOCC) during a public meeting in violation of the notice requirements of NRS 241.033(1).\(^1\)

Mr. Charles Newness alleged Commissioner Chuck Roberts spoke about his character partially based on the fact that Mr. Newness had previously filed an OML complaint with the Attorney General's office.\(^2\) Mr. Newness's complaint alleged Commissioner Robert's comments during the public meeting impugned his character, effectively calling him a person "of less than truthful character." He alleged he did not receive notice that the BOCC would consider his character during their meeting on December 2, 2010.

II.

FACTS

At least two members of the Lyon County BOCC spoke about Mr. Newness's character during the agenda item to appoint two individuals to the Silver Springs Advisory

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\(^1\) NRS 241.033 Meeting to consider character, misconduct, competence or health of person or to consider appeal of results of examination: Written notice to person required; exception; public body required to allow person whose character, misconduct, competence or health is to be considered to attend with representative and to present evidence; attendance of additional persons; copy of record.

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 or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body unless it has:
   (a) Given written notice to that person of the time and place of the meeting; and
   (b) Received proof of service of the notice.

2. The written notice required pursuant to subsection 1:
   (a) Except as otherwise provided in subsection 3, must be:
      (1) Delivered personally to that person at least 5 working days before the meeting; or
      (2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

\(^2\) See AG File No. 10–044; complaint filed against the BOCC's standing committee—Jail Committee.
Board. Mr. Charles Newness was one of two individuals selected by the Silver Springs Advisory Board and submitted to the BOCC for appointment. It is the BOCC that appoints members to county advisory boards. The relevant portion of the audio of the discussion of the proposed appointments during the December 2, 2010 BOCC meeting, item #12, is set forth below. Chairman Joe Mortensen called item #12 to the floor. Commissioner Roberts was the first Commissioner to speak:

**Commissioner Roberts:** “Mr. Chairman I'm concerned that Charles Newness might have self-serving interests in this appointment and that's based on a complaint that he filed against the County this year. The complaint in itself is certainly reasonable and appropriate but in the verbiage in the complaint there was information that I was privy to that is factual and causes me to believe that he doesn't do all of his homework so I have reservations appointing him at least without some further clarification or an interview.”

**Larry McPherson:** “Well, I don't understand what you are saying is ‘self-serving’...”

**Commissioner Roberts:** “I'm concerned that he might not be a team player and may represent some special interests that aren't apparent to the County.

**Commissioner McPherson:** “Are they apparent to the Board... I wonder.”

**Commissioner Roberts:** “Yeah, I guess you’d have to talk to them. Yeah, I might not have a problem if I were able to talk to him, I don’t take this lightly, I’ve never challenged any appointment to an advisory council, but the verbiage in his complaint was

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3 Agenda item #12: “Appoint Charles Newness and Phil Rutherford to the Silver Springs Advisory Board (effective January 1, 2011), with terms expiring, December 31, 2014.”
erroneous and it was very apparent he failed to do his homework, and I'm very concerned about that."

Commissioner Roberts then stated that he had spoken to Mr. Newness and offered to assist him in finding some information. Commissioner Roberts said Mr. Newness rejected the offer of help. Commissioner Roberts commented that the rejection did not give him a warm and fuzzy feeling that Mr. Newness is somebody he would want advising him on matters representing the citizenry at large.

Commissioner McPherson interjected that based on what he knew of Mr. Newness, he thought "he was a pretty bright man and he might have more to offer than we see."

The Chair asked Commissioner Roberts if he had any documentation to help the other Commissioners understand his comments. Commissioner Roberts said he did not bring anything with him but he could provide something at a later date.

Further discussion among the Commissioners, staff, and the public resulted in tabling the appointment of Mr. Newness subject to an interview by staff. County Manager Jeff Page agreed to conduct interviews and bring the matter back to the Board with a recommendation for appointment.

On December 16, 2010, Mr. Page returned to the BOCC with a recommendation for appointment; however after further discussion with members of the Silver Springs Advisory Board and the individual who had been recommended for appointment, the BOCC decided to return the matter once again to the Advisory Board, so that an election by the citizens, in compliance with its bylaws, could be held in order to select the appointee.

III.

ISSUE

Whether the Lyon County Board of County Commissioners violated NRS 241.033 by discussing the character and/or competence of a person without giving that person statutory notice.

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4 The subject matter of the information Mr. Roberts offered to help with was not explicitly stated, but perhaps it was related to the Lyon County Jail Committee which had been the subject of Mr. Newness's previous OML complaint. Commissioner Roberts served on the Jail Committee before it was dissolved by the BOCC in the fall of 2010.
IV.

DISCUSSION AND ANALYSIS

First we must determine if Mr. Newness's character or competence was the subject of the discussion. The key BOCC discussion of this matter has already been set out in this opinion.

NEVADA'S OPEN MEETING LAW MANUAL § 9.04 (10th ed. 2005), gives a general definition of the word "character" useful for considering this complaint. Character includes such personal traits as honesty, loyalty, integrity, reliability, and such other characteristics, good or bad, which make up one's individual personality. In Op. Nev. Att'y Gen. No. 81–A (February 23, 1981), the Office of the Attorney General opined that the word encompassed that moral predisposition or habit or aggregate of ethical qualities, which is believed to attach to a person on the strength of the common opinion and report concerning him...a person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation of which his general reputation for the possession of a character, good, or otherwise is obtained.

Commissioner Roberts' comments were relevant to Mr. Newness's character. His description of his reservations about Mr. Newness's appointment revolved around Mr. Newness's character. It is clear he felt Mr. Newness's desire for appointment was "self-serving" and that he had failed to "do his homework" on the prior OML complaint. These comments concern personal traits. They are clearly character descriptions of an individual's integrity or reliability. Finally, to insinuate that Mr. Newness's self-serving character did not give him a warm and fuzzy feeling, that Mr. Newness was not someone he wanted to advise him regarding the general citizenry, is a comment about Mr. Newness's reliability and truthfulness. Added to this speculation about Mr. Newness's character was a comment that Mr. Newness might not be a team player.

It matters not that Commissioner Roberts prefaced his remarks with the caution that Mr. Newness's application to the Silver Springs Advisory Board may be self-serving. His comments clearly inserted Mr. Newness's character into the discussion. It caused the BOCC
to table the matter so that personal interviews would have to be conducted. Commissioner
Roberts' comments concerned Mr. Newness's character.

Even though Commissioner Roberts' comments concerned Mr. Newness's character, the OML is not violated unless his comments caused the Board to redirect its agenda item to consider the character of Mr. Newness. NRS 241.033(1); OMLO 2005–10 (May 20, 2005); OMLO 2002–34 (August 2, 2002); accord OMLO 2006–04 (June 22, 2006). What is important for the application of notice requirements of NRS 241.033 is the focus of the meeting itself and review of what was actually discussed or considered by the public body to determine whether the comments were of such a nature that notice would be required under NRS 241.033. See OMLO 2002–24 (May 28, 2003); OMLO 2001–44 (September 18, 2001); OMLO 2003–18 (April 21, 2003); OMLO 2002–24 (May 28, 2003).

V.

CONCLUSION

Our prior opinions, which have considered the application of the notice provisions of NRS 241.033, when taken together and in consideration of the plain language of the statute, lead us to conclude that Commissioner Roberts' comments caused the BOCC to redirect the agenda item so that the focus of the discussion was Mr. Newness's character. This was a violation of NRS 241.033. Commissioner Roberts' initial comments caused the redirection of the BOCC's discussion of the item. The Board deliberated over the character issue eventually tabling the appointment over concern about Mr. Newness's character. The act of tabling the appointment was analogous to an assessment of his character even though the assessment was inconclusive.

The BOCC did not act on the appointment, rather the matter was returned to the Silver Springs Advisory Body for election of two appointees by the citizens. The complainant is satisfied with this process and he is in agreement that no further action by this office is necessary other that this warning. We strongly caution this Board to carefully consider the ramifications of discussion of any person's character even if it is unintentional and even if it suddenly arises during any agenda item. Remember to stick to the agenda. The character of
any name submitted for appointment is relevant to the appointment, but the OML requires personal notice to the person five days before the item is discussed. In an abundance of caution anyone whose name appears on an agenda item, especially if it is subject to an appointment, should receive notice that their character or competence might be discussed. NRS 241.033.

DATED this 29th day of March, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By: 

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of
Nevada, and that on this 9th day of March, 2011, I mailed a copy of the Findings of Fact
and Conclusions of Law, by mailing true copies by U.S. Mail to:

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