



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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**via First Class Mail**

Mark Garic  
2895 East Valley Road  
Minden, NV 89423

Re: Open Meeting Law Complaint, A.G. File No. 13897-190  
Douglas County Citizens Flood Control and Roads Task Force

Dear Mr. Garic:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Nevada Open Meeting Law (OML) by the Douglas County Citizens Flood Control and Roads Task Force (Task Force). Jim Nichols, former Douglas County Manager, was directed to form this Task Force by the Douglas County Board of Commissioners (Board) at a public meeting on September 3, 2015. The gravamen of the complaint is that the Task Force did not comply with the OML during its existence.

For the reasons set forth below, the OAG has concluded that while the Task Force may not have violated the strict language of the OML, the failure to hold public meetings violated the policy behind the law. The Board, the Task Force and other similarly situated entities should be mindful of NRS 241.016(4), which states that “[t]he exceptions provided to this chapter . . . must not be used to circumvent the **spirit** or letter of this chapter.” (Emphasis added).

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. In response to the complaint, the OAG reviewed the public notice and agendas, minutes and audio and video recordings of Board meetings held on September 3, 2015, March 10, 2016, and April 7, 2016, together with a response to the complaint from the Douglas County District Attorney’s Office and a statement that Mr. Nichols, who resigned as County Manager in January, submitted at the request of the Douglas County District Attorney’s Office.

## FACTUAL BACKGROUND

The public notice and agenda for the Board's September 3, 2015, meeting included an item for possible action concerning drainage and flood mitigation issues and funding options.<sup>1</sup> At the meeting, the Board, without taking a formal vote, directed Mr. Nichols to form a task force comprised of members of the public to study the matter and report back to the Board.<sup>2</sup> Mr. Nichols selected members for the Task Force without the direction or approval of the Board.

Mark Garic learned of the Task Force and asked to be a member but was not chosen. On October 13, 2015, upon requesting notice of the Task Force meetings, Mr. Garic was informed that the meetings would not be open to the public. The Task Force thereafter met on a number of occasions; public notice was not provided for any of those meetings and none of the meetings were open to the public.

County Engineer Erik Nilssen presented the findings and recommendations of the Task Force to the Board at a public meeting on March 10, 2016.<sup>3</sup> No action was taken on the recommendations at the meeting. Mr. Nilssen again presented the findings and recommendations of the Task Force to the Board at a public meeting on April 7, 2016.<sup>4</sup> The Board formally approved those recommendations by vote.<sup>5</sup>

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<sup>1</sup> Agenda item #7 for the September 3, 2015, Board meeting stated:

7. For possible action. Discussion on funding options to address drainage and flood mitigation and related activities, including approval of a policy to accept maintenance responsibility for private driveway culverts within the County's service areas. (Carl Ruschmeyer) (approximately 60 minutes)

<sup>2</sup> The minutes of the September 3, 2015, Board meeting reflect the following action on agenda item #7:

DIRECTION PROVIDED TO THE COUNTY MANAGER TO ESTABLISH A TASK FORCE AND BRING BACK REPORT IN FEB. 2016.

<sup>3</sup> Agenda item #1 for the March 10, 2016, Board meeting stated:

1. For presentation only. Presentation to the Board of County Commissioners on the draft recommendations from the Flood Control and Roads Task Force. The Task Force will provide an update to the Board on the status of their work and to share their draft recommendations and possible future steps for the Board to identify appropriate levels of protection for residents in flood prone areas. (Erik Nilssen) (2 hours)

<sup>4</sup> Agenda item #12 for the April 7, 2016, Board meeting stated:

12. For possible action. Discussion to approve the recommendations from the County Manager and County Engineer based on feedback provided by the Citizen's Flood Control and Roads Task Force. (Larry Werner and Erik Nilssen) (30 minutes)

<sup>5</sup> The minutes of the April 7, 2016, Board meeting reflect the following action on agenda item #12:

## DISCUSSION AND LEGAL ANALYSIS

The Board is a “public body” as defined in NRS 241.015(4), subject to the OML. The term “public body” includes any “administrative, advisory, executive or legislative body of the State or a local government . . . which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue.” NRS 241.015(4)(a). The statutory definition was amended in 2011 to clarify that the definition includes bodies created by “an action by the governing body of a political subdivision of this State.”<sup>6</sup> NRS 241.015(4)(a)(7). Consistent with this statutory definition, the OAG has previously opined that to the extent a multimember group is appointed by a public body and given the task of making recommendations to that public body, that group is also a “public body” subject to the OML. See § 2.04 NEVADA OPEN MEETING LAW MANUAL (12<sup>th</sup> ed. 2016) (and opinions cited therein).

Conversely, the OAG has previously concluded that the OML did not apply to a citizen’s advisory group that was formed by the Las Vegas City Manager. See OMLO 2007-04 (September 10, 2007). This matter can be distinguished from OMLO 2007-04 in that there was no involvement from the Las Vegas City Council in the formation or mission of the citizen’s advisory group at issue in that case. In this instance, although the Board did not create the Task Force by formal vote or select its members, the Board nevertheless directed that the Task Force be created for the specific purpose of making policy recommendations for the Board’s consideration on a matter of substantial public interest, and then subsequently approved those recommendations by vote.

The legislative intent of the OML is that the actions of public bodies “be taken openly, and that their deliberations be conducted openly.” NRS 241.010(1); see also *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind NRS chapter 241 favors open meetings”). Because the Task Force was created at the direction of the Board and its recommendations directly influenced the decision-making of the Board on a matter of substantial public interest, the Task Force effectively functioned as a “public body.” Therefore, the Task Force’s failure to comply with the OML violated the spirit, if not the letter, of the law.<sup>7</sup>

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MOTION to approve the recommendations from the County Manager and County Engineer based on feedback provided by the Citizen’s Flood Control and Roads Task Force; carried.

<sup>6</sup> Assembly Bill 59, 2011 Leg., 76<sup>th</sup> Sess.

<sup>7</sup> In OMLO 2009-02 (August 12, 2009), the OAG opined that a citizens recruitment committee, formed by the Mayor of Fernley with the authorization of the Fernley City Council to interview and select finalists for the position of city manager for presentation to the Council for a final selection, was not a public body subject to the OML. These cases are factually similar in that the Fernley City Council in that instance also authorized the creation of the citizens recruitment committee for the specific purpose of making

The Task Force should have complied with the OML in order to facilitate open government in furtherance of the Legislature's intent. However, there is no evidence that the Board or the Task Force sought to intentionally evade the OML in this instance; in fact, the decision not to open the Task Force meetings to the public apparently originated from County staff. Public bodies are warned against directing the informal appointment of advisory bodies by staff in a deliberate effort to circumvent the OML; such an action may result in prosecution by the OAG.

CONCLUSION

Although there may not have been an actual violation of the law in this instance, in the interest of open government, the OAG strongly encourages compliance with the OML by citizen's advisory groups providing policy recommendations at the request of public bodies in such circumstances as those presented here. The OAG will be closing its file on this matter.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By: 

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cc: Douglas V. Ritchie, Chief Deputy District Attorney, Douglas County  
Doug N. Johnson, Chairman, Douglas County Board of Commissioners  
Larry Werner, County Manager, Douglas County