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Via U.S Mail

Fred Voltz



**Re: Open Meeting Law Complaint, OAG File No. 13897-432
Clark County Advisory Board to Manage Wildlife**

Dear Mr. Voltz:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law (“OML”) by the Clark County Advisory Board to Manage Wildlife (“Board”) regarding its August 3, 2021 meeting and a gathering that occurred on August 31, 2021.

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. The OAG’s investigation of the Complaint included a review of the Complaints and supplement; the response from the Board; the agenda, minutes and recording of the Board’s September 21, 2021 meeting; and interviewed one member of the Board. The OAG attempted but was unable to interview the remaining Board members.

After investigating the Complaints, the OAG determines that there is insufficient evidence to find a violation of the OML as alleged in the complaint.

FACTUAL BACKGROUND

The Board held a public meeting on August 3, 2021. The agenda for the meeting listed a physical location for the meeting and the option to participate via a remote technology system, WebEx. During the meeting, the

link to WebEx did not work. Members and public were able to attend the physical location.

On August 31, 2021, four members of the Board attended an informational gathering at the Wetlands Park for a tour by park officials. The gathering lasted about four hours and consisted of an overview of the Wetlands Park and its purpose, how the park's processes work and why the park had not been open to fishing. The gathering was not noticed as a public meeting and public was not invited.

The Board held a public meeting on September 21, 2021. During the meeting, several Board members discussed their experience at the Wetlands Park and shared their opinions regarding fishing at the park. The gathering was described as a presentation by Wetlands Park officials with an opportunity to ask questions.

Mr. Voltz filed two complaints: the first alleging the Board violated the OML when the WebEx link for the August 3 meeting did not work and the second alleging that the gathering at the Wetlands Park on August 31 constituted a meeting in violation of the OML.

LEGAL ANALYSIS

The Clark County Advisory Board to Manage Wildlife was created pursuant to NRS 501.260 and consists of seven members appointed by the Clark County Commission. Thus, the Board is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

A. The Board did not violate the OML when its remote technology system did not work for its August 3, 2021, meeting.

The OML permits public bodies to use remote technology systems to aid in the conduct of their meetings but does not require them to use such technology. NRS 241.023(1). Where a meeting has a physical location for the public to attend and participate, access to the meeting via electronic means is not required. NRS 241.020(3)(a); 241.023(1). It is undisputed that there was a physical location for the August 3 meeting where public was permitted to attend and participate and where members of the public body attended and participated. It is also undisputed that the remote technology system listed on

the agenda did not work. Because there was no requirement that the Board offer access to a remote technology system, its failure does not violate the OML.

B. There is insufficient evidence of a meeting occurring at the Wetlands Park on August 31, 2021.

The OML was enacted to ensure public access to government as it conducts the people's business. NRS 241.010. It is the intent of the law that the actions and deliberations of public bodies be conducted openly. *Id.* However, the OML is not intended to prohibit every private discussion of a public issue. *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 94 (2003). Instead, the OML only prohibits collective deliberations or actions where a quorum is present. *Id.* at 94-95. The OML defines a "meeting" as:

- (1) The gathering of members of a public body at which a quorum is present, whether in person, by use of a remote technology system or by means of electronic communication, **to deliberate toward a decision or to take action** on any matter over which the public body has supervision, control, jurisdiction or advisory power.

NRS 241.020(3)(a) (emphasis supplied). "Action" is defined as "A decision made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body." NRS 241.015(1)(a). "Deliberate" is defined as "collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision." NRS 241.015(2).

There is no dispute that a quorum of members gathered together at the Wetlands Park on August 31. There is also no dispute that no action occurred during that gathering, no action was taken or announced at the September 21 public meeting and no action had yet been taken regarding fishing at the Wetlands Park at the time of the OAG's investigation. The evidence indicates that the gathering consisted of viewing the Park and presentations by Park officials and asking questions of those officials. During the tour itself, members were separated into different vehicles with no more than two members together at a time. The evidence indicates that it was not until the September 21 public meeting that the members expressed their opinions on

fishing within the Park and other matters within the Board's jurisdiction. Thus, the OAG does not find evidence of deliberation by a quorum of members. Without deliberation or action, the gathering does not meet the definition of a meeting in NRS 241.015(2). As such, the OAG does not find a violation of the OML.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close its file regarding this matter.

Sincerely,

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Attorney General

By: /s/ Rosalie Bordelove
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