

AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

TERESA BENITEZ-
THOMPSON
Chief of Staff

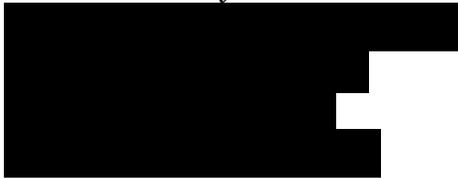
LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

January 8, 2024

Via Electronic and U.S. Mail

Richard Harvey



**Re: Open Meeting Law Complaint, OAG File No. 13897-477,
Emergency Medical Services Advisory Committee**

Dear Mr. Harvey:

The Office of the Attorney General (“OAG”) has received your Complaint alleging that the Emergency Medical Services Advisory Committee (“Committee”) violated Nevada’s Open Meeting Law (“OML”) at its April 15, 2023, open meeting. Your Complaint alleges that the Committee violated the OML’s clear and complete agenda requirement.

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. To investigate the Complaint, the OAG reviewed the Complaint; the response from the Committee; and the agenda, meeting minutes and video recording for the Committee’s April 15, 2023, meeting. After investigating the Complaint, the OAG determines that the Committee did not violate the OML as alleged.

FACTUAL BACKGROUND

On April 14, 2023, at 1:00 p.m., the Advisory Committee held a public meeting. A little over 30 people attended the meeting which lasted for approximately 1 hour and 20 minutes. The meeting, per your Complaint, was held outside of the Committee's regularly scheduled meetings. Agenda item #3 stated:

3. For Possible Action: Discussion and review of Assembly Bill 358 proposed by the 2023 Legislature, regarding revisions to provisions governing emergency medical services, and possible action to authorize staff to send a letter to the Assembly Committee regarding the legislation. Marcus Hirt, Vice Chair.

Assembly Bill 358 ("AB 358") was addressed by community members during Agenda Item #2, public comment. During that period, you stated that the Nevada Fire Chiefs Association should have been invited to the meeting to discuss AB 358. In addition, you and six other community members submitted public comments either in support or opposition to AB 358. After public comment was closed, seven of the Committee members submitted statements regarding AB 358. When the Committee proceeded to discuss Agenda Item #3, Bodie Golla, a member of the Committee, requested the assistance of a Deputy Attorney General ("DAG") to determine if the Committee had the authority to submit a letter in support or opposition of any legislation. After a five-minute recess, Bobbie Sullivan, a member of the Committee, represented she spoke with a DAG and the DAG approved the agenda. The Committee did not have concerns with proceeding with the agenda item. Prior to making a motion, but after public comment, Carl Bottorf, a member of the Committee, inquired if questions could be posed to the fire chief's representative for further insight on the fire chief's position on AB 358. Sullivan stated that such agenda items, like Agenda Item #3, were subject to discussion among the Committee members and response would be provided in public comment.

Without further discussion, Steve Towne, a member of the Committee, made the following motion:

"[M]y motion is that we, as an Advisory Board, write a letter, not supporting AB 358 and the movement of the Office of EMS from the Health Division to the Fire Marshal's Office."

The motion passed 5-1. After the vote took place, Towne made two additional motions for the Committee to (1) draft a letter combining the concerns the community members brought up in public comment as future items for the Committee to address and (2) to form a working group to address concerns related to AB 358. However, Towne withdrew his motions because they were not itemized in the agenda.

The agenda was posted physically at three locations and online at the Nevada Public Notice Website and the Division of Public and Behavioral Health website. It is undisputed that the agenda was posted with the minimum amount of notice required under NRS 241.020(4). Between the time the agenda was posted, and the meeting was held, AB 358 was in a different stage of the legislative process. The Committee also did not give its members any documents related to the matters itemized on the agenda. Any information that the Committee members reviewed prior to and referenced within the meeting was information that was sought and obtained in their personal capacities.

The Complaint, submitted on April 19, 2023, argued (1) that Agenda Item #3 was “uncertain, indefinite, and of unclear character or meaning,” and, therefore, did not provide a clear or complete topic for discussion; (2) that the Committee did not include or provide a copy of the AB 358; (3) that the reference to AB 358 was technically incorrect because the bill was still a draft revision; (4) that the actual intent of the action was to lobby on AB 358; and (5) that the public lacked adequate notice of the meeting. The Committee argues (1) that the agenda topics were clear and concise, (2) the Committee kept its discussion to the description in the agenda, (3) notice was sufficient for attending the meeting, (4) notice was provided for obtaining any supporting material, (5) that the Committee members also did not receive any supporting material, so the Committee was not obligated to provide materials to the public, and (6) that corrective action is not necessary because the agenda was reviewed by counsel and no error was made.

DISCUSSION AND LEGAL ANALYSIS

The Committee, as an administrative body of the State of Nevada under NRS Chapter 450B, is a public body as defined by NRS 241.015(4) and is subject to the OML.

A. Agenda Item #3 Met the Required Standards under NRS 241.020 Because It Informed the Public That the Committee Would Take Possible Action Regarding AB 358.

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(3)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “‘incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” *Sandoval v. Board of Regents of Univ.*, 119 Nev. 148, 154 (2003). The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155. An agenda item is adequate and reasonable if it apprises the public of the items action is intended to be taken as well as the subject matter of discussion. *Nw. Area Residents Ass’n v. City of Las Vegas*, 432 P.3d 191 (Nev. 2018). Further, “a ‘higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Sandoval* at 155-56 (quoting *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)). In *Schmidt v. Washoe County*, where the Washoe County Board of Commissioners held a public meeting to act on bill drafts, the Nevada Supreme Court found the “clear and complete” requirement met because the agenda noted that the board would meet to discuss legislation and listed the specific legislation for discussion. *Schmidt v. Washoe Cnty.*, 123 Nev. 128, 137–38, 159 P.3d 1099, 1106 (2007), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008) (only for the Special Meeting Standard).

Here, the agenda item met the OML’s clear and complete requirement because the agenda specifically stated that the Committee would discuss AB 358 and would possibly take action to authorize staff to submit a letter to the legislature regarding the bill. Like *Schmidt*, the agenda noted specific legislation subject to discussion and noted the specific action (i.e., to write a letter) that the Committee would deliberate and vote on. Additionally, based on the number of attendees and public comments submitted, community members knew that AB358 was subject to the Committee’s action. Thus, the agenda item also met the high degree of specificity needed to meet the clear and complete requirement. Therefore, the Committee did not violate the OML.

B. A Copy of Assembly Bill 358 Was Not Supporting Material as Defined Under the OML Because it Was Not Provided to Members.

“Supporting material” is any material that is provided to at least a quorum of the members of a public body by a member of or staff to the public body and that the members of the public body would reasonably rely on to deliberate or take action on a matter contained in a published agenda. NRS 241.015. Here, the Committee was not required to provide any supporting material to the public because supporting material was not provided to the Committee members. While the topic of AB 358 was subject to discussion, there is no evidence that any materials related to AB 358 were provided to the Committee members in the first place.

Moreover, there is no evidence to suggest that any support material or that a copy of AB 358 was requested. Under NRS 241.020(7), the Committee is only required to provide supporting materials or a copy of the regulation subject to discussion upon request. While supporting materials as defined by statute did not exist for this meeting, the Committee within the agenda instructed community members to contact Sullivan to request information. There is no evidence that Sullivan was contacted for a copy of AB 358. Therefore, the Committee did not violate the OML when they did not provide a copy of AB 358.

C. Referring to AB 358 as Proposed Legislation and Questioning the Specific Recipient Are Irrelevant Under the OML.

In your complaint, you made issue of the Committee referring to AB 358 as being “proposed by the 2023 Legislature” and then explained the bill introduction process. Your complaint also took issue with the agenda’s language as to who would be in receipt of the letter written on behalf of the Committee. AB 358’s origins as outlined in the complaint are irrelevant under the OML. Additionally, while listing the recipient could have repercussions under the OML, that is not the case here. As outlined above, the agenda only needs to give notice to the public of what topics are to be discussed. Based on the evidence presented in this matter, the OAG does not find referring to AB 358 as “proposed by the 2023 Legislature” of having a substantial impact on whether the public received sufficient notice of what was to be discussed. Similarly, the Committee referring to the recipient of the letter as the “Assembly Committee” in the agenda

is also irrelevant. The legislature's pace is unpredictable. However, it was clear that the topic of discussion was to deliberate whether to support or oppose AB

358 and to submit a letter. The fact that AB 358 was at a different stage in the legislative process does not substantially change the topic for discussion. Therefore, references related to AB 358 in the agenda are not a violation of the OML.

D. The Committee Can Send Letters to the Legislature in Opposition to AB 358.

The pace of the legislative session is variable and proposed amendments to legislation may occur at a pace that does not allow a public body to consider and opine on each and every proposed amendment or bill draft request. *See In the Matter of Lyon County Board of County Commissioners*, OMLO 13897-420 at 4 (Jan. 16, 2023). A public body has the ability to delegate authority to a board member or staff member to speak on behalf of the body in anticipation of relevant legislation. *Id.* If a public body deliberates legislation in a meeting, takes a position on legislation, and takes an action to submit a letter based on that deliberation, they must ensure that the topic is clear and complete in the meeting agenda and that it was properly noticed. *Id.* at 5. There is no blanket prohibition on Committee's drafting letters in support or opposition of legislation. As such, the Committee did not violate the OML when they voted to submit a letter in opposition to AB 358.

E. The Meeting Was Properly Noticed.

Under NRS 241.020(3), written notice of all meetings must be given at least 3 working days before the meeting. It is undisputed that notice was given at the minimum deadline. As such, it is undisputed that notice was proper. Therefore, the Committee did not violate the OML.

CONCLUSION

Upon review of your complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close its

Richard Harvey
Page 7
January 8, 2024

file regarding this matter.

Respectfully,
AARON D. FORD
Attorney General

By: Jessica Guerra
JESSICA GUERRA
Deputy Attorney General

cc: Pierron Tackes, Esq., Senior Deputy Attorney General,
Nevada Division of Public and Behavioral Health
ptackes@ag.nv.gov