

1 The OAG also reviewed the agenda and minutes of a Joint Meeting of the Winnemucca City
2 Council and the Humboldt County Board of Commissioners held on March 7, 2016. Kent
3 Maher, City Attorney for the City of Winnemucca, submitted a detailed response to the
4 Complaint on behalf of the Board.² The OAG also telephonically interviewed Steve West,
5 Winnemucca City Manager, and Tom Fransway.

6 **LEGAL STANDARD**

7 NRS 241.020(2)(d)(1) requires a public body to post an agenda consisting of a “clear
8 and complete statement of the topics scheduled to be considered during the meeting.” In
9 *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003), the Nevada Supreme Court
10 interpreted the “clear and complete” requirement to mean that it must provide the public with
11 “clear notice of the topics to be discussed at public meetings, so that the public can attend a
12 meeting when an issue of interest will be discussed.” *Sandoval*, 119 Nev. at 155, 67 P.3d
13 at 906. The Court rejected a so-called “germane standard” because it was too lenient and
14 allowed a public body to stray from its agenda. *Id.* at 154, 67 P.3d at 905.

15 A public body may take action to correct an alleged OML violation. Corrective action
16 requires that the public body engage in an *independent deliberative action* in full compliance
17 with the OML. *De novo* reconsideration of the prior action, or, alternatively, a full, open and
18 independent action in compliance with the OML, is necessary for corrective action. *See, e.g.,*
19 *Page v. MiraCosta Community College Dist.*, 102 Cal. Rptr. 3rd 902, 930 (Cal. Ct. App. 2009);
20 *Colorado Off-Highway Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation*,
21 292 P.3d 1132, 1137–8 (Colo. Ct. App. 2012); *Zorc v. City of Vero Beach*, 722 So. 2d 891,
22 902 (Fla. Dist. Ct. App. 1998); *Pearson v. Selectmen of Longmeadow*, 726 N.E.2d 980, 985
23 (Mass. App. Ct. 2000); *Gronberg v. Teton County Housing Authority*, 247 P.3d 35, 42
24 (Wyo. 2011).

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28 ² The OAG notes that in his response Mr. Maher admits that no audio recording of the meeting was made as
required by NRS 241.035(4).

FINDINGS OF FACT

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1. The Board is a joint board created by the Winnemucca City Council and the Humboldt County Board of Commissioners pursuant to NRS 496.230.

2. The Board is a "public body" as defined in NRS 241.015(4), and subject to the OML.

3. The agenda for the September 21, 2015, meeting of the Board included Agenda Item E(1): "Approval Commercial Activity / Approval Sub Lease / Tract LT-10 / Carwil, LLC-MedX AirOne, LLC." The minutes of the September 21, 2015, Board meeting indicate that Mr. West informed the Board that the proposed action under Agenda Item E(1) included "a) Approving this commercial operation at the airport as required by the Rules and Regulations; b) Approval of the sublease of Lease Tract 10 from CarWil; c) Approval of the helicopter landing site for this operation."

4. The minutes of the September 21, 2015, Board meeting indicate that, without any discussion, Board member Dick Robie moved to "approve this proposed commercial activity at the airport, as required by Section VIII A of the Rules and Regulations," Board member Brad Wigglesworth seconded the motion, and the motion carried unanimously.

5. The September 21, 2015, meeting minutes indicate that subsequently, without any discussion, Board member Mike Owens moved to "approve the sublease of Lease Tract 10 from CarWil pursuant to the lease document requirements," Board member Wayne Smith seconded the motion, and the motion carried unanimously.

6. The September 21, 2015, meeting minutes indicate that immediately after taking this action the Board was informed by Mr. West that the MedX AirOne helicopter would be landing and taking off directly in front of the CarWil hanger, Hanger #10. An extensive debate ensued over allowing the helicopter to land and take off from this location, including legal, technical and safety considerations. Two Board members, Mr. Wigglesworth and Mr. Robie, expressed their opposition to allowing the helicopter to land and take off from this location and stated that the helicopter should utilize an existing helipad.

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1 7. The September 21, 2015, meeting minutes indicate that Mr. Owens then moved
2 to "approve the proposal from MedX AirOne to operate (including landings and takeoffs) from
3 the hangar pad location." Mr. Smith seconded the motion, and the motion carried 3-2, with
4 Mr. Owens, Mr. Smith and Board member Leon Franklin voting in favor of the motion, and
5 Mr. Wigglesworth and Mr. Robie voting against the motion.

6 8. Mr. Fransway was not present at the September 21, 2015, meeting.

7 9. The agenda for the October 19, 2015, meeting of the Board included Agenda
8 Item E(1): "MedXOne helicopter commercial operations proposal / landings / takeoffs from
9 sub-leased Hanger #10 pavement area for helicopter maintenance and inclement weather
10 storage." The minutes of the meeting indicate that the Board deliberated extensively on this
11 agenda item but no action was taken.

12 10. The agenda for the November 16, 2015, meeting of the Board included Agenda
13 Item E(1): "MedXOne helicopter commercial operations proposal / landings and takeoffs from
14 sub-leased Hanger #10 pavement area for helicopter maintenance and inclement weather
15 storage." The minutes of the meeting indicate that the Board deliberated extensively on this
16 agenda item. Mr. Owens then moved to authorize the continued landings and takeoffs from
17 the hangar pad location until the January Board meeting. Mr. Smith seconded the motion,
18 and the motion carried 3-2, with Mr. Owens, Mr. Smith and Mr. Franklin voting in favor of the
19 motion, and Mr. Wigglesworth and Mr. Robie voting against the motion.

20 11. The agenda for the January 11, 2016, meeting of the Board included Agenda
21 Item E(1): "MedXOne helicopter commercial operations proposal / landings and takeoffs from
22 sub-leased Hanger #10 pavement area for helicopter maintenance and inclement weather
23 storage." The minutes of the January 11, 2016, Board meeting indicate that the Board
24 deliberated extensively on this agenda item.

25 12. The January 11, 2016, meeting minutes indicate that Mr. Wigglesworth then
26 moved "to approve the limited landing of the helicopter in front of their hangar when conditions
27 on the ramp are such that it creates a greater hazard than towing the helicopter to the
28 hangar." Mr. Robie seconded the motion, and the motion failed 2-3, with Mr. Wigglesworth

1 and Mr. Robie voting in favor of the motion, and Mr. Owens, Mr. Smith and Mr. Franklin voting
2 against the motion.

3 13. The January 11, 2016, meeting minutes indicate that Mr. Owens subsequently
4 moved "to allow MedXOne to continue landing in front of the hangar at the pilot's discretion."
5 Mr. Smith seconded the motion, and the motion carried 3-2, with Mr. Owens, Mr. Smith and
6 Mr. Franklin voting in favor of the motion, and Mr. Wigglesworth and Mr. Robie voting against
7 the motion.

8 14. The fact that the Board extensively debated the legal, technical and safety
9 considerations of authorizing MedX AirOne to land and take off from the hanger pad location
10 during four separate Board meetings (September 21, 2015; October 19, 2015; November 16,
11 2015 and January 11, 2016) demonstrates that this was a matter of substantial public interest.

12 15. The agenda for the March 7, 2016, meeting of the Humboldt County Board of
13 Commissioners included Agenda Item 8: "Joint Meeting: City of Winnemucca and the
14 Humboldt County Commission – for consideration, discussion and possible action, which may
15 include veto of the January 11, 2016 decision of the Airport Board to authorize helicopter
16 landings by MedX AirOne at pilot's discretion, next to the helicopter services hangar at the
17 Winnemucca Municipal Airport – Discussion and for Possible Action."

18 16. The draft minutes of the March 7, 2016, joint meeting indicate that, pursuant to
19 their authority under NRS 496.230(9), these two public bodies deliberated extensively on this
20 agenda item, with considerable public comment. Commissioner Mike Bell then moved on
21 behalf of the Humboldt County Board of Commissioners not to veto the Airport Board's action,
22 and the motion carried 3-2, with Commissioners Bell, Garley Amos and Ron Cerri in favor of
23 the motion, and Chairman Marlene Brissenden and Commissioner Jim French voting against
24 the motion. The draft minutes indicate that the Winnemucca City Council took no action.

25 17. The fact that the Humboldt County Board of Commissioners and the
26 Winnemucca City Council extensively debated the legal, technical and safety considerations

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1 of authorizing MedX AirOne to land and take off from the hanger pad location during the
2 March 7, 2016, joint meeting further demonstrates that this was a matter of substantial
3 public interest.

4 **CONCLUSIONS OF LAW**

5 1. An agenda item must be sufficiently "clear and complete" to alert the public of
6 any deliberation and possible action on a matter of substantial public interest. "A higher
7 degree of specificity is needed when the subject to be debated is of special or significant
8 interest to the public." *Sandoval*, 119 Nev. at 154–155.

9 2. Agenda Item E(1) for the Board's September 21, 2015, meeting failed to provide
10 notice to the public that the Board would be deliberating and taking action on a matter of
11 substantial public interest with significant safety implications, by departing from precedent to
12 authorize MedX AirOne to land and take off from the hanger pad location in front of the Carwil
13 hanger, Hanger #10, rather than an existing helipad.³

14 3. The Board's action under Agenda Item E(1) to authorize MedX AirOne to land
15 and take off from the hanger pad location at the Board's September 21, 2015, meeting was a
16 violation of the OML.

17 4. The Board's action was not an intentional violation of the OML, as evidenced by
18 the Board's subsequent reconsideration of the action under a clear and complete agenda item
19 at the Board meetings held on October 19, 2015; November 16, 2015 and January 11, 2016.

20 5. The Board engaged in independent deliberative action in compliance with the
21 OML at the Board meetings held on November 16, 2015 and January 11, 2016, when
22 authorizing MedX AirOne to land and take off from the hanger pad location in front of the
23 Carwil hanger, Hanger #10.

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27 ³ The OAG notes that the other action taken by the Board under Agenda Item E(1) was specifically referenced in
28 the agenda item: the approval of commercial activity and the approval of the sub lease of Lease Tract 10 from CarWil.

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SUMMARY

Because the OAG finds that the Winnemucca-Humboldt Airport Board has taken action in violation of the OML, the Board must place on its next meeting agenda these Findings of Fact and Conclusions of Law and include them in the supporting material for that meeting. The agenda item must acknowledge these Findings of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of Attorney General File No. 13897-169, and that it has been placed there as a requirement of NRS 241.0395.

Furthermore, the OAG strongly recommends that the Winnemucca-Humboldt Airport Board members and staff receive training in the OML; the OAG is available to provide OML training upon request.

DATED this 11th day of April, 2016.

ADAM PAUL LAXALT
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By:



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CERTIFICATE OF SERVICE

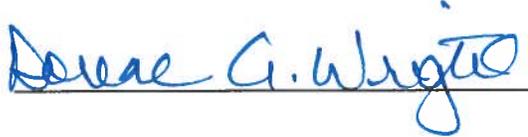
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I certify that I am an employee of the Office of the Attorney General and that on this 11th day of April, 2016, I served a copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, by placing said document in the U.S. Mail, postage prepaid, addressed to:

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