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November 7, 2016

Via U.S. Mail - First Class

Rex G. Flowers
3280 Sun Cloud Circle
Reno, NV 89506

Re: Open Meeting Law Complaint, A.G. File No. 13897-208
Washoe County Board of County Commissioners

Dear Mr. Flowers:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Nevada Open Meeting Law (OML) by the Washoe County Board of Commissioners (Board). The substance of the complaint is that the Board did not comply with the OML when making appointments to the Washoe County Advisory Board to Manage Wildlife.

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, agenda, supporting material, written minutes and video recording for the August 23, 2016, meeting at which the appointments were made, together with a response to the complaint from the Washoe County District Attorney's Office and sworn affidavits from each of the commissioners.

FACTUAL BACKGROUND

The Board is a “public body” as defined in NRS 241.015(4), subject to the OML. Agenda item No. 14 for the Board’s August 23, 2016 meeting read as follows:

Recommendation to appoint three of nine individuals to fill three vacancies on the Washoe County Advisory Board to Manage Wildlife with terms effective August 23, 2016 through June 30, 2019. Manager. (All Commission Districts.)

The supporting material for Agenda item No. 14 consisted of a staff report identifying nine applicants and the application forms submitted by each applicant.

During the course of discussion and deliberation on the agenda item at the Boards’ August 23, 2016 meeting, Chairwoman Jung invited each commissioner to indicate his or her top three choices, which were as follows:

<u>Herman</u>	<u>Hartung</u>	<u>Lucey</u>	<u>Berkbigler</u>	<u>Jung</u>
Belding	Belding	Pitts	Pitts	Pitts
Kabisch	Rhea	Di Rocco	Kabisch	Di Rocco
Prentice	Syverson	Robinson	Robinson	Robinson

Chairwoman Jung subsequently solicited a motion and Commissioner Lucey moved for the appointment of Mr. Arnold Pitts, Ms. Meghan Di Rocco and Mr. Steve Robinson. The motion was seconded by Commissioner Berkbigler. Prior to a vote public comment was heard from Rex Flowers and Chris Syverson. Commissioners Jung, Lucy, Berkbigler and Herman voted in favor of the motion and Commissioner Hartung voted in opposition.

DISCUSSION AND LEGAL ANALYSIS

The first allegation in the complaint is that the supporting material for agenda item No. 14 contained "numerous inaccuracies." The OML requires that supporting material be made available to the public when provided to the members of a public body. NRS 241.020(6) and (7). However, the OML places no requirements on the accuracy of supporting material. Therefore, the first allegation in the complaint fails to state a claim under the OML.

The second allegation in the complaint is that applicants Pitts and Robinson had communications with unnamed commissioners prior to the August 23, 2016, Board meeting. 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"). However, the OML does not prohibit the commissioners from communicating individually with applicants.

To the extent the complaint infers that a quorum of the Board deliberated outside of a public meeting on the appointments, this would constitute a violation of the OML. *See Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998) (quorum of a public body using serial communications to deliberate toward or make a decision violates the law). However, this inference is questionable given that when Chairwoman Jung invited each commissioner to state his or her top three choices, there was no consensus among the Board. Furthermore, the commissioners each provided a sworn affidavit to the OAG attesting that there was no deliberation, action, commitment, or promise made regarding these appointments in serial meetings. Therefore, the OAG finds that there is no evidence that the Board engaged in serial communications outside a public meeting regarding the appointments.

The third allegation in the complaint is that the process followed by the Board in making the appointments lacked discussion and public input, and that Commissioner Lucey failed to disclose his relationships with the nominees. However, the record reflects, and the complainant acknowledges, that the Board took public comment prior to the vote, in addition to taking

public comment at the beginning of the meeting and again before adjournment, thus exceeding the minimum public comment requirements of NRS 241.020(2)(d)(3). The vote itself was taken in conformance with the OML. To the extent that the complainant takes exception to the process for making the appointments and alleges that Commissioner Lucey failed to disclose his relationships with the nominees pursuant to NRS 281A.420, the third allegation in the complaint fails to state a claim under the OML.


Finally, the fourth and fifth allegations in the complaint are that the appointments violated NRS 501.265 and 501.275. The fourth and fifth allegations in the complaint fail to state a claim under the OML.

CONCLUSION

The OAG finds that there is no evidence to support any allegation that the Commissioners engaged in serial communications outside a public meeting regarding the appointments to the Washoe County Advisory Board to Manage Wildlife, and that the remaining allegations in the complaint fail to state a claim under the OML. The OAG will be closing its file this matter.

Sincerely,

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cc: Paul Lipparelli, Assistant District Attorney,
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