OFFICE OF THE ATTORNEY GENERAL  
STATE OF NEVADA  

In the Matter of:  
The Nevada Board of Examiners for Social Workers.  

A.G. File No. 13897-212  

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  

Joelle Gutman ("Complainant") filed a Complaint ("Complaint") with the Office of the Attorney General ("OAG") alleging two violations of the Nevada Open Meeting Law ("OML") by the Nevada Board of Examiners for Social Workers ("Board"). The Complaint alleges that the Board did not comply with the OML at its October 21, 2016, meeting in the following respects:  

ALLEGATION NO. 1:  The Board failed to provide a copy of the supporting material for the meeting upon the request of the Complainant at the meeting.  

ALLEGATION NO. 2:  The Board failed to take public comment at the beginning of the meeting in accordance with the meeting agenda.  

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 investigation of the Complaint included OAG review of the public notice and agenda, supporting material, minutes and audio recording for the Board's October 21, 2016, meeting, together with a written response to the Complaint from Kim Frakes, the Board's Executive Director.  

LEGAL STANDARD  

The legislative intent of the OML is that the actions of public bodies "be taken openly, and that their deliberations be conducted openly." NRS 241.020(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"). To facilitate open government, NRS 241.020(6) requires that agendas and supporting material for public meetings be made available to the public by providing in pertinent part:
Upon any request, a public body shall provide, at no charge, at least one copy of:
(a) An agenda for a public meeting;
(b) A proposed ordinance or regulation which will be discussed at the public meeting; and
(c) Subject to the provisions of subsection 7 or 8, as applicable, any other supporting material provided to the members of the public body for an item on the agenda, except materials:
(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;
(2) Pertaining to the closed portion of such a meeting of the public body; or
(3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

The public body shall make at least one copy of the documents described in paragraphs (a), (b) and (c) available to the public at the meeting to which the documents pertain. As used in this subsection, "proprietary information" has the meaning ascribed to it in NRS 332.025. [Emphasis supplied.]

NRS 241.020(7) further states:

7. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 6 must be:
(a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or
(b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

"As a minimum, [public bodies] must make agenda supporting material immediately available for pick up at the counter at the time it is sent out to the Board members, and copies should also be made available at the meeting." OMLO 98-01 (January 21, 1998).

NRS 241.020(2)(d)(3) requires that meetings include periods devoted to public comment, which at a minimum must be taken at the beginning and again before the adjournment of the meeting; or, alternatively, after each item on the agenda on which action may be taken is discussed, but before any is taken on the item.

FINDINGS OF FACT

1. The Board was created by NRS 641B.100.

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

3. The Board’s October 21, 2016, meeting was held in the office complex where
the Board’s offices are located, at 4600 Kietzke Lane in Reno, Nevada.

4. The supporting material for the Board’s October 21, 2016, meeting was not
available to the public prior to the date of the meeting.

5. Only one copy of the supporting material was made available to the public at
the Board’s October 21, 2016, meeting.

6. The Complainant, a member of the public, requested a copy of the supporting
material on October 21, 2016, in advance of the start of the Board meeting, and was told
by the Board’s Executive Director, Kim Frakes, that the only public copy had already
been provided to another member of the public, but that the Complainant could share a
Board member’s copy of the supporting material.

7. The agenda for the Board’s October 21, 2016, meeting reflects periods
devoted to public comment at the beginning under agenda item no. 2, and again before
the adjournment of the meeting under agenda item no. 10.

8. The audio recording of the October 21, 2016, meeting establishes that the
Board President invited public comment at the beginning of the meeting under agenda
item no. 2 and again before adjournment of the meeting under agenda item 10.

CONCLUSIONS OF LAW

1. The Board violated NRS 241.020(6)(c) and NRS 241.020(7) by not providing
the supporting material for the Board’s October 21, 2016, meeting to Complainant upon
request.

2. NRS 241.020(6)(c) sets forth a minimum requirement that “at least” one copy
of the supporting material be made available to the public at a meeting; the responsibility
of a public body to provide additional copies if requested by members of the public at a
meeting turns upon 1) the extent to which the supporting material was made available
prior to the meeting, 2) the extent to which it was foreseeable that members of the public
would request supporting material at the meeting, and 3) the extent to which providing
additional copies will disrupt the meeting.

3. The supporting material was not made available to the public prior to the
October 21, 2016, meeting. Therefore, the only opportunity for the public to obtain a copy
of the supporting material was at the meeting.

4. Because the supporting material was not made available to the public prior
to the October 21, 2016, meeting, it was foreseeable that members of the public would
request supporting material at the meeting.

5. Even if the supporting material had been made available to the public prior
to the meeting, the Board's denial of the Complainant's request would have been a
violation under the circumstances, because there is no evidence that providing the
Complainant a copy of the supporting material would have unreasonably disrupted the
meeting.¹ The Complainant's request necessitated making only one additional copy of the
supporting material, and the meeting was being held in the same office complex where
the Board's offices are located, where a copier was presumably available.

6. The Board complied with NRS 241.020(2)(d)(3)(I) by taking public comment
at the beginning and again before the adjournment of the October 21, 2016, meeting.

**SUMMARY**

Because the OAG finds that the Board has committed a 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 the meeting. The agenda item must
acknowledge these Findings of Fact and Conclusions of Law to be the result of the OAG

¹ In OMLO 2000-36 (October 3, 2000), the OAG opined:

To mitigate the potential for unreasonable disruption of a meeting, it is the position
of this office that if supporting material is made available at the time the agenda
must be posted for the upcoming meeting, a public body can satisfy the Open
Meeting Law requirement of providing the supporting materials "upon any request"
by having one "public" copy of the supporting materials available for review at the
meeting.

To the extent OMLO 2000-36 conflicts with this opinion, OMLO 2000-36 is overruled.
investigation in the matter of Attorney General File No. General File No. 13897-212, and
that they have been placed on the agenda as a requirement of NRS 241.0395.

DATED this 6th day of January, 2017.

ADAM PAUL LAXALT
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By:  

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on this 6th day of January, 2017, I served a copy of the FINDINGS OF FACT AND CONCLUSIONS OF LAW by depositing for mailing at Carson City, Nevada, a true and correct copy in U.S. First Class Mail, postage prepaid, addressed as follows:

Ms. Joelle H. Gutman  
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Reno, Nevada 89509  

State of Nevada Board of  
Examiners for Social Workers  
Kim Frakes, Executive Director  
4600 Kietzke Lane – C121  
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[Signature]

An Employee of the State of Nevada  
Office of the Attorney General