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March 1, 2017

via U.S. Mail

Chris Giunchigliani
Clark County Commissioner
500 South Grand Central Parkway – 6th Floor
Las Vegas, NV 89106

Re: Open Meeting Law Complaint, O.A.G. File No. 13897-222
Las Vegas Stadium Authority Board of Directors

Dear Commissioner Giunchigliani:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging a violation of the Open Meeting Law (OML) by the Las Vegas Stadium Authority Board of Directors (Board). The substance of the complaint is that the Board did not comply with the OML when selecting two public members for election to the Board.

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 audio recordings for both the December 5, 2016, meeting at which the elections were discussed, and the January 12, 2017, meeting at which the elections occurred, together with a response to the complaint from the Clark County District Attorney's Office.

FACTUAL BACKGROUND

The Board is created pursuant to Senate Bill 1 of the 30th (2016) Special Session of the Nevada Legislature (SB 1). The Board is a "public body" as defined in NRS 241.015(4), subject to the OML. Section 22(1)(d) of SB 1 provides that the Board shall include two members representing the

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public who are to be elected by the other members of the Board. Agenda item no. 10 for the Board's December 5, 2016, meeting was identified for possible action and read as follows:

Discussion of Process for Selection of Two Additional Board Members

During the course of discussion and deliberation on agenda item no. 10 at the Board's December 5, 2016, meeting, Chairman Steve Hill indicated that applications from individuals interested in serving as a public member of the Board would be due to Applied Analysis, a contractor providing administrative support services to the Board, by December 19. These applications would then be provided by Applied Analysis directly to the Board members, who would in turn each nominate two applicants for consideration by the Board. The applicants who received the most nominations would be finalists for consideration at the next Board meeting. There was a motion made by Board member Ken Evans to move forward with this selection process. Board member Mike Newcomb seconded the motion. The motion passed unanimously.

On December 30, 2016, Brian Haynes of Applied Analysis notified the Board members by email of the list of applicants and instructed Board members to submit two names for consideration directly to Applied Analysis by January 5, 2017.

Agenda item no. 6 for the Board's January 12, 2017, meeting was identified for possible action and read as follows:

Pursuant to Section 22, Subsection 1(d) of SB 1 of the 2016 Special Session of the Nevada Legislature, approve the selection of one individual to serve as a member of the Las Vegas Stadium Authority Board for an initial term to end on December 31, 2018, and one individual to serve as a member of the Las Vegas Stadium Authority Board for an initial term to end on December 31, 2019, from the following list of applicants: Larry Austin, Melissa Clary, Paul Cornbleth, Lawrence Epstein, Mark Fine, Brenda Fischer, James Gilley, Lee Haney, Michael Jerlecki, Jay Kersting, Roger Lessman, L. John Loomis, Jim Mason, Ralph

McNamara, Ashok Mirchandani, Robert Murname, Kenneth O'Sullivan, Louis Overstreet, Alex Pereszlenyi, Chris Petko, Marc Risman, Jason Rosenberg, Jeffrey Silver, Marilyn Spiegel, Tony Sutter, J. Tito Tiberti, Danielle Walliser, Joseph Wilcock, Shana Wiley, Natasha Williams, and Leonard Yelinek.

The supporting material for agenda item no. 6 consisted of the following compilation of the nominations submitted by each Board member directly to Applied Analysis:

Las Vegas Stadium Authority Board
 Summary of Nominations for At-Large Vacancies

	Tito Tiberti	Lawrence Epstein	Lee Haney	Marilyn Spiegel
Steve Hill	X	X		
Ken Evans	X		X	
Dallas Haun	X	X		
Mike Newcomb	X	X		
Jan Jones Blackhurst			X	X
Bill Hornbuckle	X	X		
Tommy White	X	X		
Total	6	5	2	1

During the course of discussion and deliberation on agenda item no. 6 at the Board's January 12, 2017, meeting, Chairman Steve Hill opened the floor to the Board for nominations and motions and the Board received presentations from nominees. Eventually, Board member Bill Hornbuckle moved to elect Lawrence Epstein to the Board. The motion was seconded by Board members Ken Evans and Tommy White and passed unanimously. Board member Bill Hornbuckle then moved to elect Tito Tiberti to the Board. The motion was seconded by Board member Ken Evans and passed unanimously.

DISCUSSION AND LEGAL ANALYSIS

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”). To the extent the complaint alleges that the Board deliberated outside of a public meeting on the selection of two individuals for election to the Board, 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, the process by which Applied Analysis notified the Board members of the list of applicants and then had each Board member submit two names for consideration directly to Applied Analysis did not constitute serial communications in violation of the OML. The complaint is predicated on a media account that “Epstein and Tiberti received the most nominations in a poll of the seven current board members in advance of their Thursday meeting.”¹ However, this “poll” was conducted by Applied Analysis and did not involve interactive communications among the Board members. In this capacity Applied Analysis was effectively functioning as staff. *See, e.g., Dewey v. Redevelopment Agency*, 119 Nev. 87, 64 P.3d 1070 (2003) (non-quorum private briefings by staff do not violate OML).

The nominations from each Board member were not disclosed to other Board members until the information was compiled and disseminated as the supporting material for agenda item no. 6 in advance of the Board’s January 12, 2017, meeting. This supporting material was made available to the public at the time it was provided to the Board members in compliance with NRS 241.020(7), as evidenced by the news article. There is no evidence that the Board engaged in serial communications outside a public meeting regarding the selection of two individuals for election to the Board. Furthermore, the elections at the Board’s January 12, 2017, meeting were conducted in conformance with the OML.

¹ “Epstein, Tiberti seen getting seats,” LAS VEGAS REVIEW JOURNAL, January 12, 2017, at 8B.

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CONCLUSION

The OAG finds that the Board complied with the OML when selecting two public members for election to the Board. The OAG will be closing its file this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:  _____
Brett Kandt
Chief Deputy Attorney General

WBK/klr

cc: Mary-Anne Miller, Deputy District Attorney
Clark County District Attorney's Office