OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

AG FILE NO.: 13897-225

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

BACKGROUND

Frederick L. Gobel filed a complaint (Complaint) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Lander County Board of County Commissioners (BOCC) and the Battle Mountain Livestock Event Center Advisory Board (Livestock Board). The Complaint alleges as follows:

ALLEGATION NO. 1: The complainant poses the question of whether Lander County Commissioner Sean Bakker was ever appointed to the Livestock Board as a nonvoting ex officio member pursuant to Lander County Code 1.08.070(D). This question does not state a claim under the OML and is a question properly directed to the Lander County District Attorney or in the form of a public records requests to Lander County.

ALLEGATION NO. 2: The complainant alleges that the BOCC appointed Charlene Fetterly to the Livestock Board on August 11, 2016, without including her name on that agenda item. This allegation states a claim under the OML and is addressed below.¹

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ALLEGATION NO. 3: The complainant alleges that county commissioners serving on the Livestock Board as nonvoting ex officio members regularly vote at meetings. While this alleges a violation of Lander County Code 1.08.070(D) and raises the issue of whether actions taken by the Livestock Board have any effect, it does not state a claim under the OML.

ALLEGATION NO. 4: The complainant poses the question of whether the Livestock Board is subject to Robert’s Rules of Order. There is no statutory requirement that public bodies follow Robert’s Rules of Order or any other rules of parliamentary procedure, therefore, this does not state a claim under the OML.

ALLEGATION NO. 5: The complainant alleges that Bert Ramos was reappointed by the BOCC to the Livestock Board at the August 11, 2016 meeting without submitting a letter of intent, and has not been allowed to resign from the Livestock Board. There are no such statutory requirements, therefore, this does not state a claim under the OML.

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, recordings and/or minutes of the BOCC meetings held on August 11, 2016, and March 23, 2017, together with a written response to the Complaint from Lander County Chief Deputy District Attorney Hy Forgeron.

LEGAL STANDARD

The legislative intent of the OML is that 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”). Public bodies working on behalf of Nevada citizens must conform to statutory requirements in open meetings under an agenda that provides full notice and disclosure of discussion topics and any possible action. Sandoval v. Board of Regents, 119 Nev. 148, 67 P.3d 902 (2003).

...
NRS 241.020(2) (d) (1) requires that an agenda must include a “clear and complete statement of the topics scheduled to be considered during the meeting” while NRS 241.020(2) (d) (2) requires that an agenda must include a “list describing the items on which action may be taken and clearly denoting that action may be taken on those items.” See Sandoval, 119 Nev. at 154. In addition, if a public body intends to consider whether to take administrative action regarding a person, the name of that person must be included in the agenda. NRS 241.020(2) (d) (5).

Any action taken in violation of the OML is void. NRS 241.036. A public body that takes action in violation of the OML is not forever precluded from taking the same action at a subsequent meeting to ensure any action taken in violation has legal force or binding effect. Valencia v. Cota, 617 P.2d 63, 65 (Ariz. Ct. App. 1980). A public body may take subsequent action to correct an alleged OML violation, which may include taking corrective action pursuant to NRS 241.0365.²


**FINDINGS OF FACT**

1. The BOCC is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

2. The Livestock Board is created pursuant to Lander County Code 1.08.070(E)(2), is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

² Because, corrective action pursuant to NRS 241.0365 must be taken within 30 days after the alleged violation, the requirements of that provision are not applicable in this instance.
3. The BOCC held a public meeting on August 11, 2016, with Chairman Bakker and Commissioners Art Clark III, Doug Mills, Steven Stienmetz and Patsy Waits in attendance.

4. Agenda Item No. 11 for the BOCC’s August 11, 2016 meeting read as follows:

Discussion and possible action regarding appointment or reappointment of three individuals to service on the Battle Mountain Livestock Advisory Board (6 person board, which includes 1 Commissioner/5 vacancies from July 1, 2016 through June 30, 2018, a two year term, and to consider all of the following applicants to include: a) Casey Gunther; b) Rick Gobel; c) Bert Ramos; and all other matter properly related thereto.

5. The August 11, 2016 meeting minutes reflect that under Agenda Item No. 11 Chairman Bakker stated that the applicants to be considered included Fetterly, in addition to Gunther, Gobel, and Ramos. Commissioner Mills moved to appoint Gunther, Gobel, Ramos, and Fetterly to the Livestock Board. The motion was seconded by Commissioner Clark and passed unanimously.

6. The BOCC held a public meeting on March 23, 2017, with Chairman Mills and Commissioners Allan, Bakker, Clark, and Waits in attendance.

7. Agenda Item No. 11 for the BOCC’s March 23, 2017 meeting read as follows:

Discussion and possible action to correct the appointment of Charlene Fetterly to the Battle Mountain Livestock Events Center Advisory Board, and all other matters properly related thereto.

8. The March 23, 2017 meeting minutes reflect that under Agenda Item No. 11 Chairman Mills directed Chief Deputy District Attorney Forgeron to explain the necessity of taking action to remedy an OML violation in the appointment of Fetterly to the Livestock Board on August 11, 2016. Bakker then moved to appoint Fetterly to the Livestock Board. The motion was seconded by Clark and passed unanimously.

...
CONCLUSIONS OF LAW

1. By failing to specify that the possible action was the appointment or reappointment of four individuals and failing to include the name of Fetterly on Agenda Item No. 11 for the August 11, 2016 meeting, the BOCC violated NRS 241.020(2)(d)(1) and (5).

2. The BOCC took action to remedy this violation and effectively appointed Fetterly to the Livestock Board under Agenda Item No. 11 at the March 23, 2017 meeting.

SUMMARY

Because the OAG finds that the Lander County Board of County Commissioners has taken action in violation of the OML, the BOCC 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 investigation in the matter of Attorney General File No. 13897-225, and that it has been placed there as a requirement of NRS 241.0395.

Furthermore, the OAG strongly recommends that the Lander County Board of County Commissioners members and staff receive training in the OML; the OAG is available to provide OML training upon request.

DATED this 13th day of April, 2016.

ADAM PAUL LAXALT
Attorney General

By: [Signature]
BRETT RANDT
Chief Deputy Attorney General
CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on April 13, 2017, I caused to be deposited for mailing, a true and correct copy of the foregoing, FINDINGS OF FACT AND CONCLUSIONS OF LAW, to the following:

Fredrick L. Gobel
P.O. Box 817
Battle Mountain, NV 89820

Lander County District Attorney
P.O. Box 187
Battle Mountain, NV 89820

[Signature]

Marissa Kuckhoff, an employee of the office of the Nevada Attorney General