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June 21, 2017

**via US Mail**

Kimberly Maxson-Rushton, Esq.  
Cooper Levenson, P.A.  
1835 Village Center Circle  
Las Vegas, NV 89134

Re: Open Meeting Law Complaint, OAG File No. 13897-227  
Regional Transportation Commission of Southern Nevada

Dear Ms. Maxson-Rushton:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging that the Regional Transportation Commission of Southern Nevada (RTC) violated the Nevada Open Meeting Law (OML) at meetings held in January and February 2017 during consideration of a proposal by Big Bus Tours (BBT).

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 and agenda, supporting material, and minutes for the RTC's January 12 and February 9, 2017, meetings, together with a response to the complaint from RTC Legal Counsel Greg Gilbert. Based on the evidence presented, the OAG concludes that no violation of the OML occurred.<sup>1</sup>

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<sup>1</sup> To the extent the complaint alleges violations of the Nevada Administrative Procedure Act, NRS Chapters 233B, it fails to state a claim under the OML.

## **FACTUAL BACKGROUND**

The RTC has been created pursuant to NRS Chapter 277A.170, is a “public body” as defined in NRS 241.015(4), and is therefore subject to the OML. Agenda item no. 46 on the RTC’s January 12, 2017 meeting agenda was identified for possible action and read as follows:

**RECEIVE A REPORT AND DISCUSS THE IMPACT OF ALLOWING OTHER COMPANIES TO USE RTC BUS STOPS AND TAKE ANY APPROPRIATE ACTION (FOR POSSIBLE ACTION).**

The supporting material for agenda item no. 46 consisted of a one-page staff report, a document entitled “Bus Stop Pilot Study Agreement,” a document entitled “Big Bus and RTC Shared Stop Pilot Project-Scope of Work” authored by UNLV Associate Professor Jaewon Lim, and a PowerPoint presentation entitled “Shared Bus Stops.” The supporting material proposed a six month program “wherein BBT is permitted to utilize certain identified RTC bus stops and turnouts located on Las Vegas Blvd. in Clark County, NV.”<sup>2</sup>

At the RTC’s January 12, 2017 meeting, agenda item no. 46 was considered at length, with extensive testimony from RTC staff and BBT’s counsel. During the course of discussion and deliberation the RTC members considered the proposal in detail. Eventually the RTC Chair, Larry Brown, made a motion for the RTC staff to incorporate suggestions from RTC members into the proposed agreement, and bring the item before the RTC at the February 9, 2017 meeting.<sup>3</sup> The motion passed by a 5 to 3 vote.<sup>4</sup>

Agenda item no. 48 on the RTC’s February 9, 2017 meeting agenda was identified for possible action and read as follows:

**CONDUCT A PUBLIC HEARING ON AND CONSIDER APPROVING THE SHARED BUS STOPS PILOT PROGRAM WITH BIG BUS TOURS (FOR POSSIBLE ACTION).**

The supporting material for agenda item no. 48 consisted of a one-page staff report and the finalized bus stop pilot study agreement with the scope of work.

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<sup>2</sup> See “Shared Bus Stop Agreement” (August 1, 2016).

<sup>3</sup> RTC January 2017 Meeting Minutes at pg. 17 (January 12, 2017).

<sup>4</sup> *Id.*

At the RTC's February 9, 2017, meeting, the RTC agenda item no. 48 was considered at length, with extensive testimony from RTC staff and BBT's counsel. After discussion and deliberation, the RTC took public comment before taking action on agenda item no. 48. Finally, Chair Brown made a motion to approve the pilot program and bring the "remaining items and final items" to the next RTC meeting.<sup>5</sup> The motion failed by a 3 to 4 vote.<sup>6</sup> No further action was taken under the agenda item.

### **DISCUSSION AND LEGAL ANALYSIS**

The complaint generally alleges the following:

1) [T]he process [for consideration of the Bus Stop Pilot Study Agreement] was designed to preclude the RTC members from considering all information applicable to the matter; 2) information was provided to and relied upon by the RTC members in their deliberations was not disclosed to BBT or to the public; 3) RTC staff contacted members of the public and requested that they appear and oppose BBT's request and 4) the February notice was prepared in a manner so as to provide [RTC] Staff with an opportunity to seek reconsideration of the Board's January decision.

(Complaint at pg. 4). Taken individually, the complaint alleges as follows:

First, the draft language for the January 12<sup>th</sup> meeting agenda "was never provided to or discussed with BBT." (Complaint at pg. 2). Similarly, the BBT "was not provided the opportunity to review the meeting notice prior to the February agenda." (Complaint at pg. 3). While NRS 241.020(2) requires a public body to post notice of any meeting together with an agenda consisting of a "clear and complete" statement of the topics scheduled to be considered during the meeting, there is no requirement that a public body obtain prior approval of the language for a particular agenda item from an interested party. Therefore, this allegation is without merit.

Second, with regard to agenda item no. 46, "[n]one of the information provided by counsel or staff was contained in the meeting materials nor were they provided to BBT in

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<sup>5</sup> RTC February 2017 Meeting Minutes at pg. 23 (February 9, 2017).

<sup>6</sup> *Id.*

advance of the hearing.” (Complaint at pg. 2). Supporting material for public meetings must be made available to the public when provided to public body members. NRS 241.020(7). The complainant has not provided any evidence that the RTC members were provided any supporting material that was not make available to the public. Therefore, this allegation is without merit.

Third, BBT “was precluded from making an affirmative presentation in support of its request” during consideration of agenda item no. 46 and “was relegated to answering questions from the Board relative to the use of UNLV to monitor the pilot study.” (Complaint at pg. 2). 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. The agenda for the January 12<sup>th</sup> meeting provided for public comment at the beginning and again before adjournment of the meeting pursuant to NRS 241.020(2)(d)(3)(I) and the record reflects that the RTC complied with this format. The OML did not entitle BBT to make a presentation during consideration of agenda item no. 46. Therefore, this allegation is without merit.

Fourth, agenda item no. 48 for the February 9th meeting was not clear and complete in that it “improperly and in an intentionally unclear manner failed to describe the item before the Board for consideration and action” and “failed to account for the Board’s action in January and instead provided Staff with the opportunity to seek reconsideration of the Board’s prior decision.” (Complaint at pg. 4). The Nevada Supreme Court has interpreted the “clear and complete” requirement of NRS 241.020(2)(d)(1) to mean providing the public with “clear notice of the topics to be discussed at public meetings, so that the public can attend a meeting when an issue of interest will be discussed.” *Sandoval v. Board of Regents*, 119 Nev. 148, 154-55, 67 P.3d 902, 906 (2003). Additionally, the Court noted that “[a] higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Id.*

Agenda item no. 48 for the February 9th meeting is clear and complete on its face. The agenda item complied with the statutory mandate to provide the public clear notice that the RTC would deliberate and potentially take action on a proposal to share bus stops, and identifies the pilot program of BBT. A plain reading of the agenda item establishes that the RTC, in the course of deliberation, might take into account recommendations from RTC staff and take action based upon those recommendations,

independent of any action taken under agenda item no. 46 at the January 12th meeting. Therefore, this allegation is without merit.

Fifth, during the February 9th meeting BBT “was precluded from addressing the Board in response to concerns raised by members of the public” and “not given an opportunity to respond or clarify” statements in response to public comment prior to the RTC taking action. (Complaint at pg. 3). The agenda for the February 9th meeting provided for public comment at the beginning and again before adjournment of the meeting pursuant to NRS 241.020(2)(d)(3)(I) and the record reflects that the RTC complied with this format. In addition, the RTC permitted public comment before taking action on agenda item no. 48. BBT’s counsel was permitted to provide public comment and there is no evidence that counsel’s comments were unreasonably restricted. NRS 241.020(2)(d)(7); *see also Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995); *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990). The OML did not entitle BBT to have the final word before the RTC took action. Therefore, this allegation is without merit.

Finally, to the extent members of the public were encouraged to attend the January 12th and February 9th meetings and provide input, this reflects the spirit and intent of the OML, which exists to ensure that the public is able to meaningfully participate in government. *See* NRS 241.010(1). “Government as a whole, and the deliberative process of public bodies in particular, greatly benefits from public input and perspective.” OMLO 1999-11 (August 26, 1999). The public’s expression of their views on the Bus Stop Pilot Study was integral to the OML’s public participation mandate. Therefore, this allegation is without merit.

## CONCLUSION

The RTC’s consideration of the Bus Stop Pilot Study Agreement at the January 12th and February 9th meetings complied with the OML. The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Kimberly Maxson-Rushton, Esq.  
June 21, 2017  
Page 6

Sincerely,

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