In the matter of: BELMONT TOWN ADVISORY BOARD

OAG FILE NO.: 13897-235

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

Neil Jones filed a Complaint (Complaint) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Belmont Town Advisory Board (Board). The Complaint alleges that the Board violated the OML as follows:

ALLEGATION NO. 1: The Board failed to include Mr. Jones’s public comment statements into its April 22, 2017 Board Meeting minutes following Mr. Jones’s specific request for their inclusion into the minutes.

ALLEGATION NO. 2: The Board failed to include Chairman Anthony Perchetti’s statements into its April 22, 2017 Board Meeting minutes following Mr. Jones’s specific request for their inclusion into the minutes.

ALLEGATION NO. 3: The Board failed to timely provide Mr. Jones with minutes and audio recordings of its April 22, 2017 and June 24, 2017 meetings.

ALLEGATION NO. 4: The Board failed to include a proposed agenda item from Mr. Jones on its June 24, 2017 Board Meeting agenda, regarding water quality and wells in Belmont, and took action on the issue in violation of the OML.

ALLEGATION NO. 5: The Board fails to properly retain the audio recordings of its board meetings.

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 OAG’s investigation of the Complaint included a review of the following: the
agendas and minutes of the April 22, 2017 board meeting (April Board Meeting), and June 24, 2017 board meeting (June Board Meeting); the video recordings of the April and June board meetings; the Board’s certificates of mailing for the April and June board meeting minutes and audio recordings; and email communications between Mr. Jones and members of the Board.

After investigating the Complaint, the OAG determines that the Board violated the OML by failing to timely provide its April Board Meeting minutes and audio recording to Mr. Jones. The OAG finds that the Board did not violate the OML concerning the remaining claims contained in Mr. Jones’s Complaint.

**FINDINGS OF FACT**

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

2. On April 22, 2017, the Board held a public meeting and provided two public comment periods. The Board restricted public comments to three (3) minutes per speaker during the two periods. The Board also provided a public comment period before Agenda Item #1 of New Business – “Discussion of water/wells in the town of Belmont” (Agenda Item #1). Prior to discussion of Agenda Item #1, Chairman Perchetti explained that the item was included on the agenda for discussion purposes only based on the fact that the Board is an Advisory Board that does not have the authority to take action.

3. Mr. Jones attended the April Board Meeting and provided public comment, in the form of a prepared statement, during the public comment period before Agenda Item #1. Mr. Jones orally requested that his statement be included in the meeting minutes for the April Board Meeting and he provided a copy of his prepared statement to the Board. Mr. Jones made several additional public comments during the Board’s discussion of Agenda Item #1.

4. At the June Board Meeting, the Board approved the minutes of the April Board Meeting. The approved April Board Meeting minutes reference Mr. Jones’s statement during the discussion on Agenda Item #1 as well as Mr. Jones’s complete written
statement which is included as Exhibit “A” of the minutes.

5. During the discussion of Agenda Item #1, Board Chairman Perchetti, Mr. Jones, and other members of the Board addressed the involvement of the Nevada Division of Water Resources (Division) in establishing well drilling sites in Belmont. The Board’s discussion of the Division’s involvement in Belmont is briefly referenced on Page 7 of the April Board Meeting minutes. On June 11, 2017, Mr. Jones emailed Board Member Jeppsen, along with other members of the Board, with his request that Chairman Perchetti’s comments regarding Division’s actions be included in the minutes of the April Board Meeting. The Board did not include Chairman Perchetti’s comments regarding the Division into the April Board Meeting minutes.

6. On June 25, 2017, Mr. Jones submitted a request to the Board for the minutes and audio recordings of the April and June board meetings. On July 13, 2017, Board Member Diana Jeppsen emailed the requested minutes to Mr. Jones. On July 13, 2017, Member Jeppsen also mailed the audio recordings of the April and June board meetings to Mr. Jones.

7. On June 11, 2017, Mr. Jones requested that the Board include a discussion item on its June Board Meeting agenda regarding the drilling of illegal wells in Belmont. The Board did not include the requested item on the agenda of the June Board Meeting.

8. At the June Board Meeting, Mr. Jones inquired about the ability to obtain audio recordings of the Board’s meetings. Board Member Jeppsen explained that the audio recordings are saved on her laptop and that she can provide copies upon request.

LEGAL STANDARDS AND CONCLUSIONS OF LAW

1. The Board’s minutes from the April and June board meetings complied with the OML’s Content Requirements.

Nevada Revised Statute (“NRS”) 241.035 governs public meeting minutes and it provides that each public body shall keep written minutes of each of its meetings, including the following:

...
(a) The date, time and place of the meeting.

(b) Those members of the public body who were present, whether in person or by means of electronic communication, and those who were absent.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) The substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion.

(e) Any other information which any member of the public body requests to be included or reflected in the minutes.

NRS 241.035(1).

Here, Mr. Jones attended the April Board Meeting as a member of the general public. Mr. Jones prepared written remarks to the Board which he read aloud during the April Board Meeting and he provided a copy of his written remarks to the Board for inclusion in the minutes. The OAG's review of the Board's April Board Meeting minutes, which the Board approved during its June Board Meeting, includes Mr. Jones's prepared written statement as Exhibit "A" of the minutes. Therefore, the Board complied with NRS 241.035(1)(d) by properly including Mr. Jones’s public comment statement into the April Board Meeting minutes.

Additionally, Mr. Jones also requested that the comments from Chairman Perchetti, regarding the actions of the Nevada Division of Water Resources, be included in the April Board Meeting minutes. The Board did not include Chairman Perchetti's comments into the minutes. However, the OML does not require a public body to include information into its minutes, at the request of a member of the public, unless the information is the public comment remarks of the member of the public. As such, the Board did not violate the OML by choosing not to include Chairman Perchetti's comments into the minutes. Additionally, the April Board Meeting minutes included the substance of the discussion regarding water quality concerns and wells in Belmont, as well as the other content requirements listed in NRS 241.035(1), and so they satisfy the OML's requirements for meeting minutes.
2. The Board failed to timely provide Mr. Jones with the minutes of its April Board Meeting but it timely provided Mr. Jones with the minutes of June Board Meeting.

NRS 241.035 governs public meeting minutes and it designates meeting minutes as public records which must be available for inspection by the public within 30 working days after adjournment of the meeting. NRS 241.035(2). The OML designates a “working day” as “every day of the week except Saturday, Sunday and any day declared to be a legal holiday pursuant to NRS 236.015.” NRS 241.015(6). Each public body must make a copy of the minutes or audio recording available to a member of the public at no charge. NRS 241.035(2).

Here, the Board’s April Board Meeting took place on April 22, 2017 while its June Board Meeting took place on June 24, 2017. Pursuant to NRS 241.035, the Board was obligated to make the April Board Meeting minutes or audio recording available for inspection by June 5, 2017, and to make the June Board Meeting minutes or recording available for inspection by August 7, 2017, which are thirty (30) working days after adjournment of the respective meetings. Mr. Jones requested a copy of the April and June board meeting minutes and audio recordings on June 25, 2017, but the Board did not provide the minutes or audio recordings to Mr. Jones until July 13, 2017. Notably, Board Member Jeppsne emailed the April Board Meeting minutes to her fellow Board members on May 30, 2017, indicating that the minutes were timely prepared but not provided to Mr. Jones.\(^1\) The Board violated the OML’s requirement to make a copy of the April Board Meeting minutes or audio recordings available to the public within 30 working days of the adjournment of the meeting.

\(^1\) The Board timely provided a copy of the June Board Meeting Minutes and audio recording to Mr. Jones since it provided the records to Mr. Jones on July 13, 2017 and they were not due until August 7, 2017.
3. The Board was not obligated to include an item on the agenda of its June Board Meeting regarding water quality and wells in Belmont and it did not take action on the issue in violation of the OML.

NRS 241.020(2) governs agendas of meetings of public bodies and it provides, in pertinent part, that public bodies must include the following information on items to be considered during a meeting:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term “for possible action” next to the appropriate item or, if the item is placed on the agenda pursuant to NRS 241.0365, by placing the term “for possible corrective action” next to the appropriate item.

(6) Notification that:

(I) Items on the agenda may be taken out of order;

(II) The public body may combine two or more agenda items for consideration; and

(III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

NRS 241.015(1) defines “action” to mean:

(a) A decision made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;

(b) A commitment or promise made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;

(c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present, whether in person or by means of electronic communication, during a meeting of the public body; or

(d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

Here, Mr. Jones alleges that the Board violated the OML by refusing to place the issue of Belmont's water quality and wells on the agenda at his request and by taking unlawful action to determine, as a Board, not to have further discussion on the issue. First, the OML does not require the Board to include items on its agenda at the request of members of the public. Members of the public, including Mr. Jones, have the right to voice their concerns and request action by the Board during public comment. The Board may choose to place an item on its agenda based on requests by members of the public, but is not required to do so. Second, the Board's decision not to place a discussion item on its agenda did not violate the OML because the Board is entitled, pursuant to *Schmidt*, to refuse to consider an agenda item at any time. Finally, the Board did not take action on the issue of Belmont's water quality and wells. As Chairman Perchetti explained during the June Board Meeting, the Board does not have the authority to take any action regarding the water and wells issue and the matter will be taken over by the Nye County Commission. Ultimately, the Board acted in its authority to not reopen the water quality and wells issue by placing it on the June Board Meeting agenda and it did not take action on the issue. Therefore, the Board did not violate the Open Meeting Law.

...
4. The Board did not violate the OML by electronically maintaining Board Meeting audio recordings.

NRS 241.035 governs audio recordings of meetings of public bodies and it requires all public bodies to either record their meetings on audiotape or another means of sound reproduction or to cause the meeting to be transcribed by a certified court reporter. NRS 241.035(4). Public bodies must retain the audio recordings of their meetings for at least one (1) year after the adjournment of the meeting. NRS 241.035(4)(a). Moreover, public bodies must make the audio recordings available for inspection by the public during the time the recording is retained.

Here, Mr. Jones alleges that the Board committed an OML violation because the Board maintains its meeting recordings on the computer of one of its members. Board Member Jeppsen confirmed that she maintained the audio recordings of the Board's meetings on her computer and is able to provide copies at the request of the public. NRS 241.035 requires that the Board retains the audio recordings of its meetings but it does not designate the means through which the Board must retain the recordings. As Board Member Jeppsen was able to provide Mr. Jones with the audio recordings of the Board's April and June Board Meetings upon request, the OAG does not find a violation of the OML.

SUMMARY AND INCLUSION OF AGENDA ITEM

If the Attorney General investigates a potential OML violation and makes findings of fact and conclusions of law that a public body has taken action in violation of the OML, "the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The public body must treat the opinion of the Attorney General as supporting material for the agenda item in question for the purpose of NRS 241.020. Id.

Here, upon investigating the present Complaint, the OAG makes a findings of fact and conclusions of law that the Board committed an OML violation by failing to timely provide Mr. Jones with a copy of its April Board Meeting minutes. Therefore, the Board
must place an item on its next Board Meeting agenda in which the Board acknowledges the present Findings of Fact and Conclusions of Law ("Opinion") which results from the OAG investigation in the matter of Attorney General File No. 13897-235. The Board must also include the OAG Opinion in the supporting materials for its next meeting.


ADAM PAUL LAXALT
Attorney General

By: CAPOLINE BATEMAN
Chief Deputy Attorney General
Boards and Open Government Division