

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA
3

4 In the matter of:

5 WHITE PINE COUNTY BOARD OF
6 COUNTY COMMISSIONERS
7

OAG FILE NO.: 13897-237

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

8 **BACKGROUND**

9 Jennifer Rivera filed a Complaint (Complaint) with the Office of the Attorney
10 General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the White
11 Pine County Board of County Commissioners (Board). The Complaint alleges that the
12 Board violated the OML as follows:

13 **ALLEGATION NO. 1:** The Board failed to timely provide Ms. Rivera with minutes
14 of its April 26, 2017 meeting.

15 **ALLEGATION NO. 2:** The Board's meeting minutes from its May 10, 2017 and
16 May 24, 2017 meetings are incomplete.

17 **ALLEGATION NO. 3:** The Board failed to timely approve the minutes from its
18 meetings between February 22, 2017 and May 24, 2017.

19 **ALLEGATION NO. 4:** The Board failed to timely post its meeting minutes on its
20 website.

21 The OAG has statutory enforcement powers under the OML and the authority to
22 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
23 241.040. The OAG's investigation of the Complaint included a review of the following: the
24 Complaint; the Response to the Complaint from the White Pine County District Attorney's
25 Office; the Board's agendas and minutes from its meetings between February 22, 2017 and
26 May 24, 2017; and email communications between Ms. Rivera and representatives of the
27 White Pine County Clerk's Office (Clerk's Office).

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1 After investigating the Complaint, the OAG determines that the Board violated the
2 OML by failing to timely provide its April 26, 2017 Board Meeting minutes to Ms. Rivera
3 and by failing to timely approve the minutes of its March 1, 8, 22, and 29 2017 meetings,
4 its April 12 and 26, 2017 meetings, and its May 3, 10, and 24, 2017 meetings The OAG
5 finds that the Board did not violate the OML by including summaries containing the
6 substance of the agenda items into its meeting minutes and by choosing not to post its
7 meeting minutes on its website.

8 FINDINGS OF FACT

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

11 2. On June 12, 2017, Ms. Rivera contacted the Clerk’s Office and requested the
12 Board’s minutes from its meetings between February 27, 2017 and May 24, 2017.

13 3. On June 13, 2017, the Clerk’s office provided Ms. Rivera with the requested
14 minutes except for the minutes of the April 26, 2017 and May 24, 2017 Board meetings.

15 4. On June 15, 2017, the Clerk’s Office provided the April 26, 2017 Board meeting
16 minutes to Ms. Rivera.

17 5. The Board approved the minutes of its meetings between March 1, 2017 and
18 June 6, 2017 according to the following time frames: March 1, 2017 meeting – 56 days post-
19 meeting; March 8, 2017 meeting – 49 days post-meeting; March 22, 2017 meeting – 63 days
20 post-meeting; March 29, 2017 meeting – 56 days post-meeting; April 12, 2017 meeting – 61
21 days post-meeting; April 26, 2017 meeting – 77 days post-meeting; May 3, 2017 meeting –
22 56 days post-meeting; May 10, 2017 meeting – 63 days post-meeting; May 24, 2017 meeting
23 – 49 days post-meeting; June 6, 2017 meeting – 50 days post-meeting.

24 6. On July 26, 2017, the Board included an item on its agenda titled,
25 “Discussion/For Possible Corrective Action pursuant to an Open Meeting Law Complaint
26 that Commission minutes were not made available to the public within 30 days after the
27 adjournment of the meeting and were not approved within 45 days after the meeting.”
28 During the discussion of the OML Complaint, County Clerk Nichole Baldwin explained

1 that future meeting minutes would be completed within thirty (30) days of each meeting.
2 Board Chairman Richard Howe found that corrective action had been taken to address the
3 OML violations regarding the Board's meeting minutes.

4 LEGAL STANDARDS AND CONCLUSIONS OF LAW

5 **1. The Board Failed to Timely Provide Ms. Rivera with the Minutes of its** 6 **April 26, 2017 Meeting.**

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

14 Here, the Board held a meeting on April 26, 2017. Pursuant to NRS 241.035, the
15 Board was obligated to make the April 26, 2017 meeting minutes or audio recording
16 available for inspection by June 8, 2017, which is thirty (30) working days after
17 adjournment of the meeting. Ms. Rivera requested a copy of the April 27, 2017 Board
18 meeting minutes on June 12, 2017, but the Board, through the County Clerk's Office, did
19 not provide the requested minutes to Ms. Rivera until June 15, 2017. The Board violated
20 the OML's requirement to make a copy of the April 27, 2017 meeting minutes or audio
21 recordings available to the public within 30 working days of the adjournment of the
22 meeting.

23 **2. The Board Failed to Timely Approve its Meeting Minutes Between** 24 **March 1, 2017 and May 24, 2017.**

25 NRS 241.035 governs the approval of meeting minutes by public bodies and it
26 provides the following: "unless good cause is shown, a public body shall approve the minutes
27 of a meeting within 45 days after the meeting or at the next meeting of the public body,
28 whichever occurs later." NRS 241.035(1).

1 Here, the Board failed to timely approve the minutes of its meetings between March
2 1, 2017 and May 24, 2017. Although the Board held meetings on a weekly or bi-weekly
3 basis during the time between March 1, 2017 and May 24, 2017, it did not approve its
4 meeting minutes within 45 days following the pertinent meetings.¹ Therefore, the Board
5 violated the OML's requirement regarding approval of meeting minutes.

6 **3. The Board's Meeting Minutes Complied with the OML's Content**
7 **Requirements**

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

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

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

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

16 (d) The substance of remarks made by any member of the general public
17 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
18 public has prepared written remarks, a copy of the prepared remarks if the
member of the general public submits a copy for inclusion.

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

21 NRS 241.035(1).

22 Here, Ms. Rivera alleges that the Board's meeting minutes, starting with the Board's
23 May 10, 2017 meeting, only contained excerpts rather than a complete account of the items
24 discussed during the meetings. The OML does not, pursuant to NRS 241.035, require
25 meeting minutes to contain a verbatim transcript of proceedings so long as the public body
26 records the meeting on audiotape or another means of sounds or video reproduction. NRS

27 ¹ Although Ms. Rivera also alleges that the Board failed to timely approve the minutes
28 of its February 27, 2017 and February 28, 2017 meetings, a review of the Board's minutes
reveals that the minutes of the respective meetings were approved within 45 days.

1 241.035(4). A review of the minutes from the Board's meetings on May 10, 2017 and May
2 24, 2017 reveal that the minutes contain the following information: 1) the date, time, and
3 place of the meetings; 2) a list of the members present at the meeting²; and 3) the substance
4 of all matters proposed. No Board members or members of the public requested that their
5 remarks, or any other information, be included in the minutes. Notably, a representative
6 of the County Clerk's Office offered Ms. Rivera with the option of reviewing the audio
7 recording of the meeting if she wished to examine a verbatim account of the meetings.
8 Ultimately, the minutes of the Board's May 10, 2017 and May 24, 2017 meetings contained
9 the information required by NRS 241.035(1) and so the Board complied with the OML's
10 requirements for minutes.

11 **4. The Board was not Obligated to Post its Meeting Minutes on its Website.**

12 NRS 241.035(2) governs the production of minutes to the public and it provides that
13 minutes or audio recordings of public meetings are public records that must be made
14 available to members of the public at no charge.

15 Here, Ms. Rivera alleges that the Board violated the OML because it failed to post
16 its 2017 meeting minutes on its website. However, the OML does not require that public
17 bodies post their meeting minutes on their websites. Rather, the OML only requires that
18 public bodies make their meeting minutes or audio recordings available to the public at no
19 charge. The Board provides the written minutes and audio recordings of its meetings upon
20 request by members of the public and so it did not violate the OML by not posting the
21 meeting minutes on its website.³

22 **SUMMARY AND INCLUSION OF AGENDA ITEM**

23 If the Attorney General investigates a potential OML violation and makes findings
24 of fact and conclusions of law that a public body has taken action in violation of the OML,
25 "the public body must include an item on the next agenda posted for a meeting of the public

26 ² All Board members were present for the May 10, 2017 and May 24, 2017 meetings
27 and so there was no designation of members who were absent.


28 ³ The OAG notes that the Board has now posted its meeting minutes through August
10, 2017 on its website.

1 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
2 public body must treat the opinion of the Attorney General as supporting material for the
3 agenda item in question for the purpose of NRS 241.020. *Id.*

4 Here, upon investigating the present Complaint, the OAG makes a findings of fact
5 and conclusions of law that the Board committed OML violations by failing to timely
6 provide Ms. Rivera with the minutes of its April 26, 2017 meeting and by failing to timely
7 approve the minutes of its various meetings between March 1, 2017 and May 10, 2017.
8 Therefore, the Board must place an item on its next Board Meeting agenda in which the
9 Board acknowledges the present Findings of Fact and Conclusions of Law (“Opinion”)
10 which results from the OAG investigation in the matter of Attorney General File No. 13897-
11 237. The Board must also include the OAG Opinion in the supporting materials for its next
12 meeting.⁴

13 DATED: December 13, 2017.

14 ADAM PAUL LAXALT
15 Attorney General

16
17 By: 
18 CAROLINE BATEMAN
19 Chief Deputy Attorney General
20 Boards and Open Government Division
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23 ⁴ In its response to Ms. Rivera’s OML Complaint, the Board, by and through its legal
24 counsel, acknowledges the OML violations regarding approval of minutes and timely
25 providing minutes to Ms. Rivera. The Board explains that it placed the item regarding the
26 OML violations on its July 26, 2017 meeting agenda and took corrective action. However,
27 NRS 241.0365(1) provides that public bodies may take action to correct alleged violations
28 within *30 days* of the alleged violations. In this matter, the Board did not place the
violations involving its approval and dissemination of minutes on its agenda for corrective
action until well after the 30-day deadline provided in NRS 241.0365. As such, the OAG
requires acknowledgment of the findings of fact and conclusions of law on the agenda of its
next meeting in conformity with NRS 241.0395

