BACKGROUND

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

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

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

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

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

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 Complaint; the Response to the Complaint from the White Pine County District Attorney's Office; the Board's agendas and minutes from its meetings between February 22, 2017 and May 24, 2017; and email communications between Ms. Rivera and representatives of the White Pine County Clerk's Office (Clerk's Office).

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

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

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

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

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

6. On July 26, 2017, the Board included an item on its agenda titled, “Discussion/For Possible Corrective Action pursuant to an Open Meeting Law Complaint that Commission minutes were not made available to the public within 30 days after the adjournment of the meeting and were not approved within 45 days after the meeting.” During the discussion of the OML Complaint, County Clerk Nichole Baldwin explained...
that future meeting minutes would be completed within thirty (30) days of each meeting. Board Chairman Richard Howe found that corrective action had been taken to address the OML violations regarding the Board's meeting minutes.

**LEGAL STANDARDS AND CONCLUSIONS OF LAW**

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

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

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

   NRS 241.035 governs the approval of meeting minutes by public bodies and it provides the following: “unless good cause is shown, a public body shall approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later.” NRS 241.035(1).
Here, the Board failed to timely approve the minutes of its meetings between March 1, 2017 and May 24, 2017. Although the Board held meetings on a weekly or bi-weekly basis during the time between March 1, 2017 and May 24, 2017, it did not approve its meeting minutes within 45 days following the pertinent meetings. Therefore, the Board violated the OML's requirement regarding approval of meeting minutes.

3. The Board’s Meeting Minutes 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, Ms. Rivera alleges that the Board’s meeting minutes, starting with the Board’s May 10, 2017 meeting, only contained excerpts rather than a complete account of the items discussed during the meetings. The OML does not, pursuant to NRS 241.035, require meeting minutes to contain a verbatim transcript of proceedings so long as the public body records the meeting on audiotape or another means of sounds or video reproduction. NRS 241.035(1).

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

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

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

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

**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.

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

3 The OAG notes that the Board has now posted its meeting minutes through August 10, 2017 on its website.
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 OML violations by failing to timely provide Ms. Rivera with the minutes of its April 26, 2017 meeting and by failing to timely approve the minutes of its various meetings between March 1, 2017 and May 10, 2017. 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. 13897-237. The Board must also include the OAG Opinion in the supporting materials for its next meeting.⁴


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⁴ In its response to Ms. Rivera's OML Complaint, the Board, by and through its legal counsel, acknowledges the OML violations regarding approval of minutes and timely providing minutes to Ms. Rivera. The Board explains that it placed the item regarding the OML violations on its July 26, 2017 meeting agenda and took corrective action. However, NRS 241.0365(1) provides that public bodies may take action to correct alleged violations 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.