



STATE OF NEVADA  
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April 28, 2015

**Via United States Mail**

David T. Cosner  
459 Upper Colony Road  
Wellington, Nevada 89444

Re: Open Meeting Law Complaint, AG File No. 15-138, Smith Valley Park & Recreation Board

Dear Mr. Cosner;

This Open Meeting Law (OML) complaint alleges the Smith Valley Park and Recreation Board (Board) failed to comply with the OML requirement that supporting materials be provided to requesters. It is also alleged the Board has failed to provide Mr. David Cosner a copy of the Board Treasurer's monthly report, and Treasurer's backup material for the Board's meeting of December 8, 2014.

We have contacted the Lyon County District Attorney's office which also investigated this complaint to determine whether there were problems with Board's OML compliance.

The Attorney General has jurisdiction to investigate allegations of violations of NRS Chapter 241, the Open Meeting Law. This office may seek civil remedies against public bodies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty for violations of the OML are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

## **FACTS**

Lyon County District Attorney Stephen Rye's (Mr. Rye) response to the complaint determined that David T. Cosner, petitioner in this matter, had made a proper request for supporting materials under NRS 241.020(6).<sup>1</sup> However, he raised the issue of whether the Treasurer's Report for the meeting, at issue herein, was ever made a part of the Board's supporting material. Mr. Rye noted correctly that the OML does not prescribe the documents which must be included in the Board's supporting materials. A public body may choose not to review supporting materials prior to a meeting, or it may not review any materials. His investigation concluded that the financial report was not made available to board members prior to this meeting.

Mr. Jerry Rosse, the Board's Treasurer, told Mr. Rye that he often does not receive the report until immediately before the meeting and he does not make copies available to any of the board members.

Mr. Rosse orally presented the Board's financial report by reading it to the Board. The Board then discussed his presentation during both the December 8<sup>th</sup> and January 5<sup>th</sup> meetings. The Board's recollection is that at no time did Mr. Cosner specifically request to review the financial document or ask for a copy of it.

There was no evidence that Mr. Rosse made copies of the Treasurer's Report at either the December 8, 2014 or January 5, 2015 meetings for distribution to the public.

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<sup>1</sup> NRS 241.020(5): Upon any request, a public body shall provide, at no charge, at least one copy of:

- (a) An agenda for a public meeting;
- (b) A proposed ordinance or regulation which will be discussed at the public meeting; and
- (c) Subject to the provisions of subsection 6 or 7, as applicable, any other supporting material provided to the members of the public body for an item on the agenda, except materials:
  - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;
  - (2) Pertaining to the closed portion of such a meeting of the public body; or
  - (3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

↪ The public body shall make at least one copy of the documents described in paragraphs (a), (b) and (c) available to the public at the meeting to which the documents pertain. As used in this subsection, "proprietary information" has the meaning ascribed to it in NRS 332.025.

NRS 241.020 (6). A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

- (a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or
  - (b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.
- ↪ If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

## **ANALYSIS AND CONCLUSIONS**

Open Meeting Law is of fundamental importance to all public bodies whether elected or advisory, but compliance with the spirit of the OML is equally important to that of the letter of the law. This office has always stressed the importance of compliance with both the letter and spirit of the OML.

### **THE BOARD'S AGENDA DOES NOT COMPLY WITH IMPORTANT NEW LEGISLATIVE REQUIREMENTS**

The Open Meeting Law now requires that a public body include on every agenda the name and contact information for the person designated by the Board from whom a member of the public may request the supporting material for a public meeting, and a list of the locations where the supporting material is available to the public. NRS 241.020 (2)(c). The Board's agenda for Monday December 8, 2014 was not in compliance with this provision. We urge the Board to immediately correct this omission. Had the agenda complied with this provision, Mr. Cosner may have been able to obtain a copy of the Treasurer's report without having to file a complaint.

An additional issue to the Board's failure to comply with NRS 241.020(2)(c), is that the minutes from the Board's December 8, 2014 meeting state the Board reviewed a letter from the Attorney General's office regarding recent OML complaints and "agreed to follow the law as best they can." This response is completely unacceptable. NRS 241.020 mandates that public bodies must comply with all provisions of the Open Meeting Law. A public body does not have a choice whether to informally comply with OML — strict compliance is required.

### **THE TREASURER'S REPORT IS SUBJECT TO A REQUEST FOR SUPPORTING MATERIALS**

There is no evidence that the financial report to the Board at this meeting was purposefully withheld, but it is admitted Mr. Rosse read aloud from the report without any offer to the public to provide a copy. NRS 241.020(5) requires all public bodies to make available to the public, at the meeting, one copy of the agenda, a proposed ordinance and any other supporting material for items on the agenda. Failure to comply is a violation of the letter and spirit of the law. Providing supporting material to the public is so important that the Nevada Legislature was careful to provide a statutory process in detail mandating all public bodies provide supporting materials to the public at every meeting. (NRS 241.020; See footnote 1 above.) It appears the Board has ignored legislative intent. Strict compliance is required!

The County points out that Mr. Cosner did not ask for or seek a copy of the financial report. They also argue that a public body is not required by statute to put any document or report in supporting materials, but where the Board specifically identified the Treasurer's report as an action item on its agenda and the Treasurer read from it at the meeting, there should be no dispute the report is supporting material.

The Board must provide supporting materials to those citizens who have made requests for supporting materials even if the supporting material is not provided to each Board member, and even if it is provided later after the meeting. NRS 241.020(5) and (6). Mr. Cosner made a proper request for supporting materials. The fact that the financial report may not have been given to each member at the meeting is not as important, for purposes of determining whether the Board complied with the letter of the OML, as the fact the report was read to the Board, discussed by the Board and may have been used to make decisions.

Even if the Treasurer's Report was not physically given to the members of the Board and failure to announce that fact and not offer copies to the public suggests that the Board may have tried to circumvent the law. This would be a serious mistake.

### **PUBLIC BODIES MUST NOT CIRCUMVENT THE OPEN MEETING LAW FOR CONVENIENCE**

The Nevada Supreme Court has been influenced by the Attorney General's opinions and writings which have consistently guarded against a public body's actions and activities that may have been used as a "subterfuge" to avoid compliance with the Open Meeting Law. *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87,96, 64 P. 3d 1070,1076 (2003); *Del Papa v. Board of Regents*, 114 Nev. 388,394, 956 P.2d 770,774-775 (1998); see 85-19 Op. Att'y Gen. 90 (1985).

The Board is an administrative body within Lyon County. It has important duties and cannot be so lax as to only follow statutory requirements "as best as it can."

### **CONCLUSION**

Once again the County has provided leadership following receipt of Mr. Cosner's complaint. This time Mr. Rye provided guidance to the Board's Treasurer and its Chairman instructing them that when a Treasurer's Report is ready, it must be made available to a requester of supporting materials. We suggest that even if the Treasurer's Report was not ready at the time of the meeting, it must be sent to any requester regardless of when it is ready.

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The Board's agenda for December 8, 2014, Item No. 8 informs the public that an action item based on the Treasurer's Report would be discussed. The report was discussed. We suggest that when a matter is identified in an agenda item, at least one copy of the document must be provided to the public at the meeting because it is supporting material. The Board should also orally inquire if anyone wants a copy. It is vitally important that the Board understand the spirit of the OML and cooperate with the public by leading and ensuring that the public feels the Board has acted transparently.

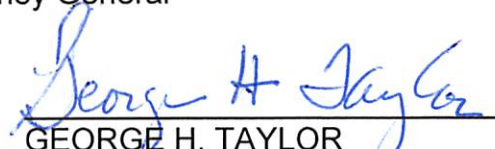
Lyon County has been making a concerted effort to educate the Board regarding legislative intent underlying fundamental requirements of the Open Meeting Law. Because of the County's efforts, and the progress it has made, this office carefully reviewed these facts, but decided not to pursue this issue any further at this time.

We are closing our file on this matter.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By:

  
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Cc: Stephen B. Rye, Lyon County District Attorney  
Jeffery A. Page, Lyon County Manager  
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