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May 19, 2014

**Via First Class Mail**

Frank Wright  
P.O. Box 186  
Crystal Bay, Nevada 89402

Re: Open Meeting Law Complaint, A.G. File No. 14-009  
Washoe County Board of County Commissioners

Dear Mr. Wright:

The allegation in this Open Meeting Law (OML) complaint asserts that the Washoe County Board of County Commissioners (BOCC) approved a land swap in Crystal Bay between the County and a private party and that approval was made through serial communications – not in a public meeting. It is also alleged that Commissioner Berkbigler stated at a public meeting of the Crystal Bay/Incline Village Citizens Advisory Board (CAB) that “all the other Commissioner’s approved this swap.”

Serial communications, which constitute “action” or “deliberation”, violate Nevada’s Open meeting Law. NRS 241.015.

We reviewed the audio and minutes of the CAB meeting and we requested from Washoe County Commissioners Humke, Jung, Weber, and Hartung an affidavit in which each Commissioner addressed the allegation in the complaint.

**FACTS**

Commissioner Marsha Berkbigler spoke to the Crystal Bay/Incline Village Citizens Advisory Board on March 24, 2014. She spoke under Item No. 7a – Commissioner Update on information, actions and discussions by the Washoe Board of County Commissioners.

Commissioner Berkbigler told the public meeting that the "swap" is coming before the Commission and then she offered, "I do believe the Commissioners are in support of it - at least at this state of the game they are - and unless some additional information comes forward I suspect the Commissioners are going to support it."

Complainant then admonished the Commissioner for lack of public input from locally affected residents of Crystal Bay during the planning of the land swap. He did not accuse the Commission of serial communications, or ask whether or how the Commissioners decided to approve the swap during the meeting.

### **ISSUE**

Whether the Washoe County Board of County Commissioners approved a proposed land swap in the Crystal Bay/Incline area of the County by engaging in serial communications outside of public meetings.

### **ANALYSIS**

Decisions or commitments may be made by members of a public body that violate the OML even when members meet in a series of meetings. NRS 241.015(3) defines a "meeting" as a series of gatherings of less than a quorum of the members of a public body, whether in person or by electronic means, with the specific intent to avoid the provisions of the OML. Therefore, the commitments or promises made by members during a series of meetings violates the OML.

After comparing the audio recording of the relevant portion of the meeting with the allegation in the complaint, we cannot conclude that Commissioner Berkbigler stated or even implied that all Washoe County Commissioners had already approved the land swap. During the meeting she said that the matter of the land swap would come before the Commission for a decision.

Furthermore, each of the other Commissioners provided an affidavit that refuted the allegation that the Commission had engaged in serial communications in which they approved the matter of the land swap. Each Commissioner's affidavit denied discussion of the proposed land swap with any of the other four commissioners including Commissioner Berkbigler, and each affidavit also denies knowing about any series of communications among any of the other commissioners that could constitute a discussion or deliberation on the subject.

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**CONCLUSION**

Our investigation rested on review of the meeting audio recording and the Board of County Commissioner's submission of four affidavits, each of which denied discussion or deliberations regarding a proposed land swap in the Crystal Bay area of Washoe County.

Commissioner Berkbigler did not say that the other commissioners had approved the land swap. She said she thought the other commissioners were in support of it, but her words are her opinion and do not rise to the level of evidence of an OML violation. Her words are a far cry from an admission of a violation of the OML. She made no other comments regarding the proposed land swap that insinuated discussions or commitments with other commissioners.

Our investigation did not reveal a violation of the OML.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:



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Members: David Humke, Chairman  
Bonnie Weber, Vice-Chairman/Commissioner  
Marsha Berkbigler, Commissioner  
Kitty Jung, Commissioner  
Vaughn Hartung, Commissioner