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November 7, 2014

Via United States Mail

David Cosner
459 Upper Colony Road
Wellington, Nevada 89444

Re: Open Meeting Law Complaints, AG File No. 14-019, 14-025, and 14-027
Regarding Smith Valley Park & Recreation Board

Dear Mr. Cosner;

This office has reviewed several written complaints about the Smith Valley Park and Recreation Board (Board) non-compliance with the Nevada Open Meeting law (OML). Early in this investigation of the Board, we contacted the Lyon County District Attorney's office which also investigated the Board to determine whether there were problems with OML compliance.

Since we began our investigation, we have routinely reviewed our findings with the Lyon County Deputy D.A. Steve Rye in an effort to more quickly to repair the Board's non-compliance problems. Problems with running Board meetings were identified in the complaints. Generally, they are statutory non-compliance issues of a serious nature. In addition, the complaints alleged sloppy handling of the meetings where people from the audience spoke without identifying themselves and without having been recognized from the Chair. It's alleged persons not on the list of appointees to the Board have voted on action items. The Board's failure to timely produce minutes of meetings, even short meetings, is alleged. The Board's ability to provide timely reports of income and expenses to the public and presumably to the County Manager's office is alleged and it's alleged the Board routinely strayed during discussion of agenda items resulting in confusion about what item the Board was discussing.

FACTS

The Smith Valley Park and Recreation Board is a Lyon County Citizens Advisory Board created in 2011 by County Commission Resolution #11-018, which amended Lyon County Code 3.01. There are five members of the Board appointed by the County Commission.

Counsel for the Board, Deputy District Attorney Stephen Rye discovered and confirmed that the Board has been in non-compliance with the OML. He identified several violations: (1) The Board failed to timely post its agenda in accordance with statute; (2) the Board failed to keep adequate minutes of meetings; (3) Meetings were not recorded.

Beginning with the June 2, 2014 public meeting, the Board failed to comply with the OML time requirements for posting of agendas and providing multiple periods for public comment. The Board also failed to record a meeting and may have not recorded other meetings as well. In addition the Board failed to follow NRS 241.020(2)(d)(2), which requires a public body to list on its agenda action items as "for possible action" to give the public notice of which items could be acted upon by the public body. These failures to comply with the OML are the subject of several Open Meeting law complaints against the Board. We have combined investigation of all the complaints for purposes of this opinion.

ANALYSIS

Since Counsel's reply to this office, following his investigation into the allegations in the complaints, we've learned that Counsel has provided the Board with in-house OML training. The District Attorney's office will prepare a properly formatted for use by the Board. Posting of agendas, recording of meetings and production of minutes will receive advice and scrutiny from the District Attorney's office and the County Manager's office. The County Manager's office is providing additional training to the Board as evidenced by attendance at several recent meetings of Maureen Willis who works with Citizen Advisory Bodies in Lyon County. This attention has resulted in progress. After attending the October 6, 2014, Board public meeting, Complainant remarked that progress was being made by the Board to comply with the OML, especially when the County employee (Ms. Willis) attended to observe and offer guidance.

Each member of the Board has or will receive a copy of Nevada's Open Meeting Law and the Attorney General's Open Meeting Law Manual that provides detailed meeting information. Agendas may be posted on the County's website, but all future agendas must also be posted on the State's official website for public notices. See NRS 232.2175; NRS 241.020(3)(b).

Allegations in the complaints about non-compliance with the Board's Bylaws are not within this office's jurisdiction or control, but have been brought to the attention of the County Manager and Board's Counsel's attention. For example, Board approval of meeting minutes is not required in the Open Meeting law.¹ Lyon County Code 3.01.06 requires Citizen Advisory Boards to keep written minutes of meetings and provide a copy to the County Manager's office within 30 days after adjournment of the meeting at which the minutes were taken. Several months of meeting minutes may not have been provided even in draft form.

While some improvement in conducting meetings has occurred, it appears to us that much more training is necessary. The County Manager's office and Deputy District Attorney Stephen Rye have stepped up to provide much needed training and oversight to the Board. We are confident in the County's ability and determination to ensure the Board functions in compliance with the OML and the County Code applicable to all Citizen Advisory Boards.

CONCLUSION

OML requirements are of fundamental importance for all public bodies whether elected or advisory. We cannot emphasize enough the importance of compliance with fundamental rules of posting, keeping adequate minutes, and recording meetings so that the public has the opportunity to understand what its public body is doing.

While this investigation shows several violations of the OML, we are not seeking sanctions at this time because the County requests time to provide needed training for members. We agree. Violations may not have been intentional, but the conduct of the meetings has been sloppy and too casual which leads to random remarks and discussions beyond the scope of the agenda items. The OML's requirement that multiple periods of public comment be on the agenda has been violated. The OML's requirement that written minutes be kept and made available within 30 days has also been violated. Agendas have not been legally posted and the Board's discussion has strayed from the subject matter of the agenda items.

County and legal counsel have agreed to review and provide advice regarding the Board's agendas. Review and advice must ensure that agendas are correctly written in enough detail to give the public notice of matters to be discussed, and also enforce the County Code's requirement that minutes (even if only in draft form) be sent to the County Manager and made available to the public within 30 days. Multiple periods of public comment will be enforced on the agenda.

¹ This office will be presenting a proposed amendment to the OML for the 2015 Legislative Session that requires approval of meeting minutes within a definite period of time following adjournment of the meeting, but even if the Legislature approves the proposed amendment, it won't be effective until after the session ends next June.

Should further complaints be received we will investigate. After investigation, if similar violations of the OML to those we consider in this opinion have occurred, we will consider enforcement action up to and including penalties allowed under NRS 241.040.

This opinion must be included on the Board's next agenda and the item must comply with NRS 241.0395 as set out below:

NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.

1. If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, 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. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

2. The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief.

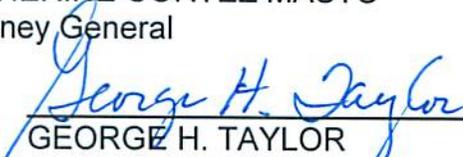
(Added to NRS by 2011, 2384).

Thank you for bringing this matter to our attention.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



GEORGE H. TAYLOR
Senior Deputy Attorney General
Office of the Attorney General
Open Meeting Law Coordinator

Cc: Stephen B. Rye, Assistant District Attorney
Jeffery A. Page, Lyon County Manager
Ron Bromps, Chairman