



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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April 18, 2012

Helen Wright, Executive Director
Nevada State Board of Landscape Architecture
P.O. Box 17039
Reno, Nevada 89511

Re: Open Meeting Law Complaint / AG File No. 12-002
Nevada State Board of Landscape Architecture

Dear Ms. Wright:

This office has completed its review of your response to the Open Meeting Law (OML) complaint filed February 8, 2012 with this office. NRS 241.037 and NRS 241.039 gives the Attorney General authority to enforce the OML.

COMPLAINT AND ISSUES

The complaint alleged three different violations of the OML. First, it was alleged your office failed to timely email a copy of the agenda for the February 4, 2012 meeting to the requester—the complainant herein. Secondly, it is alleged the agenda for the February 4, 2012 meeting failed to meet newly enacted changes to the OML regarding multiple public comments. Lastly, with regard to the February 4, 2012 agenda notice regarding the possibility of amendment of future agendas with additional items, the complainant has raised a question of whether such future agendas will comply with the OML.

FINDINGS OF FACT

The Board's response through its Executive Director states that supporting material for the meeting was sent at about 5:42 p.m. on the third day before the meeting. The response did not provide any evidence that the notice and agenda had been sent earlier and separately from supporting material, but it did not deny that the notice and agenda was also sent with supporting material. The complaint alleged receipt of the 5:42 p.m. distribution of supporting material in addition to copies of the notice and agenda.

We find that the notice, agenda, and supporting documents were sent at one time in one email to the requestor at about 5:42 p.m. on the third day before the meeting. NRS 241.020(3)(b)(2)¹ requires that the notice and agenda be transmitted to the requestor not later than 9:00 a.m. of the third working day before the meeting. However, the transmittal of supporting materials to the Board at about 5:42 p.m. on the third working day before the meeting was compliant with the statute. Only the failure to transmit the notice and agenda before 9:00 a.m. on the third working day was in violation of the OML.

The second allegation is that the agenda for the February 4, 2012 meeting failed to meet newly enacted changes to the OML regarding multiple public comment. Board's response statement admitted this omission was an error and asserts it has corrected its future agenda public comment content to comply with the required notice that multiple periods of public comment must appear on the agenda. NRS 241.(2)(c)(3).² Indeed it has, but there is one more matter that must also be incorporated into its "boilerplate" notice under the heading of public comment. That additional matter is notice to the public that the public body must allow general public comment on any matter not included on the agenda at some point before adjournment. This office interprets that to mean the public may comment on any matter within the jurisdiction or control of the public body regardless of whether or not it is planned for a future agenda.

Finally, the complainant's third issue is a rhetorical question/comment. We are confident that the Board seeks to correct its future agenda to comply with the OML; therefore we are closing this matter.

¹ 3. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent **not later than 9 a.m. of the third working day before the meeting.** (Emphasis added).

² (3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

(I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

Regardless of whether a public body takes comments from the general public pursuant to subparagraph (I) or (II), **the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting.** (Emphasis added)

CONCLUSION

The Board has taken adequate steps to bring its agenda into compliance with the OML. Board's response statement indicates that in the past it has accommodated the public's schedule. The public is given deference and allowed to comment even if business is interrupted. Certainly, this practice is to be commended.

No further action by this office is anticipated.

NOTE: The 2011 Legislative amendments require that when this office issues an opinion finding OML violation(s) the public body must place the matter on its next agenda. This opinion, issued by the Office of the Attorney General, must be included as part of supporting material to be made available to the Board and the public at its next regularly scheduled meeting.

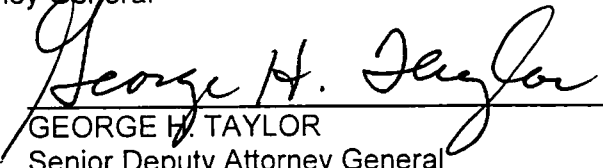
Section 2 of AB 59 amending NRS 241.020 states:

Sec. 2. 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

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


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GHT/CG

cc: Andrea L. Engleman
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