



STATE OF NEVADA
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September 6, 2012

Gerald A. Lent
5100 West Acoma Road
Reno, Nevada 89511

Re: Open Meeting Law Complaint / AG File No. 12-015
Nevada Board of Wildlife Commissioners

Dear Mr. Lent:

This Office has reviewed your Open Meeting Law (OML) complaint alleging the Nevada Board of Wildlife Commissioners (BWC) privately discussed Nevada Department of Wildlife's (NDOW) proposed hunting quotas for 2012–2013 with intent to reach a decision. The basis for this allegation is an email correspondence sent on May 3, 2012 from the Chair of the BWC to the Chair of each County Advisory Board to Manage Wildlife (CAB).¹ This allegation rests upon the assertion that the Chair's email correspondence "is a deliberation toward a decision outside of a public meeting."

This Office has jurisdiction to investigate OML complaints and to seek civil remedies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty are also authorized relief in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

¹ NRS 501.260 Creation; number of members; officers.

1. There is hereby created a county advisory board to manage wildlife in each of several counties.

2. In a county whose population:

(a) is less than 700,000, each board consists of three or five members, at the discretion of the board of county commissioners.

(b) is 700,000 or more, each board consists of five or seven members, at the discretion of the board of county commissioners.

3. A chair and vice chair must be selected by each board.

[Part 13:101:1947; A 1949, 292; R 1953, 676; added 1953, 676]—(NRS A 1969, 1554; 1977, 1230; 1985, 1350; 1989, 2192; 2005, 457; 2011, 1293)

A single document, written by BWC Chair Mike McBeath, which was emailed to the Chair of each County Advisory Board to Manage Wildlife in Nevada, underlies the entire complaint. No other facts are alleged.² The sole allegation is that BWC Chair Mike McBeath's letter started a debate and serial discussion among commissioners and CABs concerning a matter upon which the BWC would have to take action at its May 11–12 public meeting.³ The complaint alleges McBeath's correspondence was a deliberation, but complainant assumes there must have been serial communications among the commissioners.

We interviewed Mr. Lent in our office asking him for further information underlying his allegation that serial communications among the commissioners occurred following the Chair's release of the May 3, 2012 email letter to the CABs. There are no facts in the complaint or in the interview that might connect the May 3, 2012 letter to deliberation among a quorum of commissioners and although complainant admitted he did not have personal knowledge regarding commissioner communications. We contacted the current commissioners mentioned to us during Mr. Lent's interview. Three current commissioners were mentioned by Mr. Lent, but each commissioner stated to us he did not discuss the letter with any other commissioner. Chairman McBeath submitted an affidavit stating he did not discuss the letter with other commissioners nor did he receive any commissioner correspondence about the letter.

The BWC and the CABs are separate entities, each established under separate statutes. See NRS 501.167 and NRS 501.260. CAB chairmen and CAB members are not connected with the BWC and do not deliberate with or vote on matters that

² During our interview, Mr. Lent alleged that two former commissioners and at least one former Chair of a county CAB were either "chewed out by McBeath" or they were alleged to have stated to Mr. Lent "it [quota decision] was a set up deal." As no current commissioners were implicated during the interview, these allegations were irrelevant.

³ **NRS 241.015 Definitions**

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

ultimately are entrusted to the BWC. NRS 501.181 (duties of BWC members). Therefore, any correspondence sent to them from the BWC Chair does not implicate the OML prohibition against serial or walking quorums. Deliberation is not implicated as the BWC chair and CAB members are not members of the same public body, a statutory requirement before deliberation may take place.

An OML complaint must allege a cognizable violation of the OML. OPEN MEETING LAW MANUAL § 11.12 (11th ed. 2012). Under this standard the Attorney General will not undertake an OML investigation if a complaint containing both factual allegations and legal conclusions is without an arguable basis in either law or in fact to support the claim that an OML violation may have occurred. A cognizable violation is an allegation that a violation occurred which violated clearly defined OML statutory requirements.

In this complaint there was no factual support for the allegation that the commissioners illegally deliberated; the complaint expressed a legal conclusion that a violation must have occurred because the letter Chair McBeath sent was intended to give "talking points" to the CABs, which it is claimed is deliberation toward a decision. See OPEN MEETING LAW MANUAL § 5.01 (11th ed. 2012)(definition of deliberation). But this allegation is only conclusory and it was without an arguable basis in fact.

Nevertheless, we reviewed the letter for even inferential support for the allegation, or other evidence that its stated purpose ran afoul of the definition of "deliberation" as adopted by the Nevada Supreme Court in *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003).⁴ The letter solicited relevant and factually supported recommendations from the CABs which could be used to offer alternative quotas to NDOW's proposed hunt quotas. The letter addressed CAB members, not commissioners. CAB's routinely present information to the BWC regarding issues affecting its members and the nature and quality of the hunt resource in their county. Because CABs and the BWC are independent, Chair McBeath's request did not violate the OML.

Chair McBeath's letter was sent to the chair of each CAB and perhaps distributed to its members, but there are no other facts or statements from anyone else to suggest that a quorum of the commissioners discussed the letter among themselves, nor were there any facts or explanation from complainant as to how the contents of this letter constituted deliberation.

⁴ Deliberation means "to examine, weigh and reflect upon the reasons for or against the choice. Deliberation thus connotes not only collective discussion, but the collective acquisition or the exchange of facts preliminary to the public body's ultimate decision." *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003) and *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 69 Cal. Rptr. 480 (Cal. Ct. App. 1968) discussed in Nevada's Open Meeting Law Manual § 5.02 (11th ed. 2012). OMLO 2010-06 (September 10, 2010)(deliberation occurs only when a quorum of a public body engages in the collective discussion of an issue with the goal of reaching a decision.)

Gerald A. Lent
September 6, 2012
Page 4

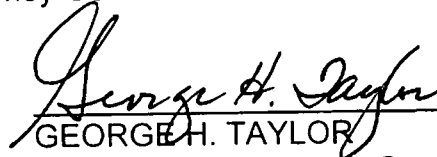
We do not find a violation of the OML by Chair McBeath or the BWC based on the allegation of this complaint.

We are closing our file on this matter.

Sincerely,

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Attorney General

By:



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GHT/CG

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