



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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August 22, 2012

Thomas Cutts  
P.O. Box 141  
Silver City, Nevada 89428

Re: Open Meeting Law Complaint / A.G. File No. 12-016  
Silver City Town Advisory Board

Dear Mr. Cutts:

This Office has investigated your Open Meeting Law (OML) complaint (NRS 241.039) that alleged the Silver City Nevada Advisory Board (Board) violated OML voting requirements at its June 5, 2012 public meeting. NRS 241.015(1).<sup>1</sup>

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.

### BACKGROUND

This Office reviewed statements from the Board members and we interviewed the Chairman regarding the Board's conduct of its public meetings.

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<sup>1</sup> **NRS 241.015 Definitions.** As used in this chapter, unless the context otherwise requires:

1. "Action" means:

- (a) A decision made by a majority of the members present during a meeting of a public body;
- (b) A commitment or promise made by a majority of the members present during a meeting of a public body;
- (c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body; or
- (d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

The Board gathered in a town hall setting on June 5, 2012, wherein all residents were invited to attend. Following a lengthy discussion by residents about item 9, the September Ferrari Hill Climb, the Board invited the residents to express their preference in a straw vote on the wording of a possible motion. Later, after even more discussion, the Board then voted unanimously in favor of the aforementioned motion.

The interaction between the Board and the Silver City residents highlights a potential conflict with the OML. NRS Chapter 241.015. In December of 2011, Lyon County adopted Ordinance 555 which sets forth common procedures by which each Lyon County Advisory Board must function. Each Advisory Board must adopt and follow a standard set of bylaws compliant with the OML.

Article V. of the Lyon County Advisory Board bylaws states that a simple majority of the members of the Advisory Board constitutes a quorum for the transaction of business. Transaction of Advisory Board business through actual voting by the residents, who are nonmembers, is prohibited both by the OML and the Lyon County Advisory Board bylaws. But it is a close question whether a straw vote by the residents expressing their approval of the wording of a motion, which ultimately was approved by the Board, constitutes a violation of the OML's definition of action.

The residents did not take action as it is defined in NRS 241.015, although their vote on the wording of a motion is perilously close to "action" within the meaning of the statute. Interest in and participation by Silver City residents in the meeting is laudable, but it should not involve any other activity other than public comment. After public comment, it is the Board members who must formulate the motions upon which they vote so as to avoid entanglement with the OML.

The OML does not comprehend a fluid membership despite the obvious democratic flavor of a vote by all residents attending a public meeting. The Legislature's intent, as expressed in the OML, requires that the public body be created by state or local government and the statute requires that only a majority of the membership, as established by state or local law, may transact business. "Action" means a decision made by a majority of the members of the public body present at the meeting. See fn. 1, above.

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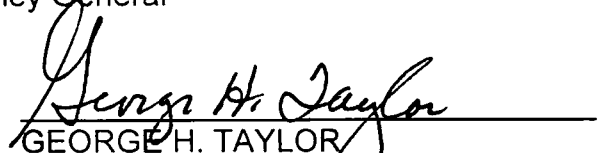
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This Office will only advise the Board that it must ensure compliance with the voting requirements of NRS 241.015(1) and in our opinion votes by the residents, even if only straw votes and even if the residents realize that only the Board members must ultimately vote on Board business, is contrary to legislative intent.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:

  
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GHT/CG

cc: Robert Auer, Lyon County District Attorney  
Board Members:  
Erich Obermayer, Chair  
Lorraine Richmond, Secretary  
Cal Dillon