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September 26, 2012

GREGORY M. SMITH
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Allen Veil, Sheriff
Lyon County
30 Nevin Way
Yerington, Nevada 89447

Re: Open Meeting Law Complaint / AG File No. 12-029
Lyon County Board of Commissioners

Dear Mr. Veil:

We reviewed your Open Meeting Law (OML) complaint alleging the Lyon Board of County Commissioners (BOCC) violated the OML statute governing public comment during its September 6, 2012 meeting.

Specifically, it is alleged that Chairman Roberts did not allow public comment before the BOCC took action on agenda item 28.¹

We reviewed the relevant portions of the BOCC's audio recording of the meeting. When item 28 was called, Chairman Roberts indicated the BOCC had just concluded a

¹ **NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.**

2. (c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.
(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term "for possible action" next to the appropriate item.

(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.

The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-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. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

closed session with its counsel.² He stated that counsel had advised them the demand made upon the County Comptroller was questionably valid and may even be prohibited citing NRS 244.235 and NRS 252.180.

He asked if there was any discussion from the Board members. Hearing none he asked Commissioner Fierro if he had a motion. Commissioner Fierro offered a motion to uphold the Comptroller's denial of the demand for merit pay for positions in the offices of the sheriff, the district attorney, and two justice courts.

Chairman Roberts then asked if there were any further discussion. Then he asked if there was any input from the public. He then called for a vote.

The 2011 Legislature amended the OML provisions governing public comment during public body meetings. NRS 241.020(2)(c)(3); Act of June 16, 2011, Ch. 459, § 1, 2011 Nev. Stat. 2838. These provisions govern the resolution of this complaint.

NRS 241.020(2)(c)(3) requires that public bodies adopt one of two alternative public comment agenda procedures.

First, a public body may comply with the new requirement by agendizing one public comment period before any action items are heard by the public body and later it must hear another period of public comment before adjournment.

The **second** alternative also involves multiple periods of public comment which must be heard after discussion of each agenda action item, but before the public body takes action on the item.

Lyon BOCC agendas state that there will be a period of public comment and that the BOCC will take public comment prior to action on agenda action items.

Regardless of which alternative the Lyon BOCC utilized, the evidence in the record clearly confirmed that Chairman Roberts called for public comment. He called for public comment prior to action by the BOCC on item 28. Commissioner Fierro had already made a motion and it had been seconded. The public was then on notice that a vote was imminent. At this point in the audio, no one in the audience can be heard objecting to the swiftness of the consideration of the agenda item or complaining that their hands had been raised to speak. No one asked for time to make public comment.

There is no statutory requirement that any certain time elapse between the call for public comment and resumption of public body business; nor is there any evidence that the BOCC attempted to stifle public comment. NRS 241.015(2)(b)(2) allows a public body to deliberate in the non-meeting; it does not have to deliberate in open

² If a public body receives information from its legal counsel regarding existing litigation or potential litigation, it is not a meeting within the meaning of the statute. NRS 241.015(2)(b)(2). The statute allows a public body to deliberate in the non-meeting.

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session. There was no deliberation among the BOCC when item 28 was called. Perhaps that is why the item appeared to be decided so quickly.

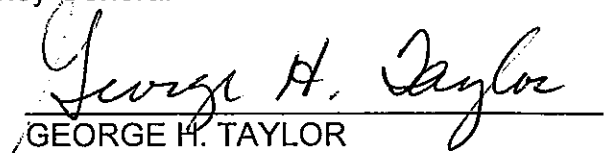
After listening to the audio recording of item 28 we discern nothing amiss.

The BOCC did not violate the public comment requirements of the OML.

Sincerely,

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Attorney General

By:


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GHT/CG

cc: Robert L. Auer, Lyon County D.A.
Jeff Page, Lyon county Manager
Lyon County Commissioners:
Chuck Roberts, Chair
Ray Fierro, Vice Chair
Vida Keller, Member
Joe Mortensen, Member
Virgil Arellano, Member