



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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November 6, 2012

GREGORY M. SMITH  
*Chief of Staff*

Larry A. Wahrenbrock  
Post Office Box 246  
Silver City, Nevada 89428

Re: Open Meeting Law Complaint / AG File No. 12-031  
Comstock Historic District Commission

Dear Mr. Wahrenbrock:

We have investigated your Open Meeting Law (OML) complaint against the Comstock Historic District Commission (CHDC). This office has jurisdiction to investigate OML complaints and seek civil remedies against public bodies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and monetary penalty are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

The complaint alleges that at its meeting on September 17, 2012, the CHDC (1) wrongfully used agenda asterisks to denote action items; (2) CHDC draft minutes wrongfully described an action item as "approval of previous meeting" when the meeting to be approved had taken place almost three months prior to the September 17, 2012 meeting; and (3) CHDC's notice of meeting was in violation of its adopted Rules and Regulations as it did not provide requisite seven day notice in accordance with NAC 384.130. During consideration of agenda New Business item: TEMPORARY OFFICE STRUCTURE, the CHDC did not provide a copy the applicant's application or other relevant information for the public. CHDC did not provide for public comment during consideration or after taking action on this item and following consideration of this item, CHDC has failed to make appropriate "findings" regarding conformance or non-conformance with CHDC published standards and other relevant standards in the Nevada Administrative Code.

This office has reviewed CHDC's response and other relevant documents.

(1) CHDC admitted that the asterisk method and the currently required use of "for possible action" had been inadvertently intermixed. Both methods appear on the agenda. Even though the agenda form using the asterisk method was used to approve this agenda item, the OML was not violated. The asterisk method provided sufficient notice of possible action. CHDC has agreed to remediate this process for future agendas. We will only warn them to be cognizant of the new requirement for future agenda.

(2) CHDC will include the date of the meeting minutes scheduled for approval in future agendas. This intention corrects and avoids further confusion about which meeting minutes are to be considered for approval. This was not a violation.

(3) The posted agenda for the September 17, 2012 meeting complied with the requirements of the OML. It provided the time, place, and location of the meeting and it met the OML's 3-day notice requirement. This office has no jurisdiction where the type of meeting is at issue or statutory notice periods found in other statutes or regulations are at issue.

(4) CHDC explains that no request for supporting documentation was made prior to or during the September 17, 2012 meeting, thus no violation occurred under NRS 241.020(5) and (6). The Attorney General's OML Manual confirms this result as it simply repeats statutory language that supporting material is available "upon any request". Absent a request, there is no statutory duty to provide supporting material to anyone. Review of the record of the meeting does not show that you made a request for the application and other documents when New Business item was considered. CHDC understands that should a request be made for a copy of the application, it would have been provided to you even if the meeting had to be stopped. AG File No. 00-025 (October 3, 2000).

CHDC was not obligated to accept public comment during consideration of new business item "Temporary office structure". New legislative public comment requirements allow a public body to make a choice as to how and when public comment will be taken. The CHDC agenda met the minimum requirement as it shows it allowed two public comment periods.

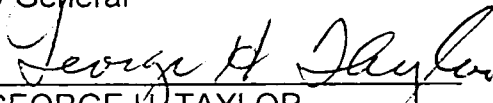
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The OML does not require any public body to make "findings" in conformance with statutory or other related regulations. This allegation does not state an OML issue. The OML is solely about giving notice to the public to listen to and comment on public business, but it does not give this office authority to second guess or review the adequacy of any action taken.

We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:   
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Senior Deputy Attorney General  
(775) 684-1230

GHT/lzd

cc: Kristen Geddes, Commission Counsel  
Bert Bedeau, District Administrator  
Commission Members:  
Robert Kershaw, Chair  
Joseph Curtis, Vice Chair  
Nancy Cleaves  
Karyn de Dufour  
Calvin Dillon  
Dave Dykstra  
Ray Fierro  
Richard Knapp, AIA  
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