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December 13, 2012

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Karen M. Powell
Rural Justice Courts of Clark County
330 S. Third Street, #1020B
Las Vegas, NV 89155

Re: Open Meeting Law Complaint / AG File No. 12-033
Clark County Board of Commissioners

Dear Ms. Powell:

We have investigated your Open Meeting Law (OML) complaint against the Clark County Board of County Commissioners (BOCC). It alleges an OML violation during the BOCC's August 21, 2012 public meeting. The complaint alleges that agenda item 73 "stated only that 6 BDR's were going to be discussed but did not state the specific topics of the BDRs that were going to be discussed." Furthermore, the complaint alleges that BDRs had not been publicly posted on an agenda. We have investigated these allegations and have concluded there was no OML violation.

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 a monetary penalty are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

Agenda Item 73 on the August 21, 2012 BOCC agenda read: "Receive a report on proposals for bill draft requests (BDRs) for the 2013 Nevada State Legislative Session; determine the four (4) BDRs to be included in the County bill package; direct staff to transmit the BDRs to the Legislative Counsel Bureau; and take any action deemed appropriate. (For Possible action)."

Action was taken on agenda item 73 approving three BDR proposals. The motion approved by the BOCC is recorded in the minutes. The motion "approved selection of proposals concerning (1) presumptive eligibility combined with Medicaid reimbursement for dialysis in emergent cases; (2) Justice court travelling circuit; and (3) prevailing wage requirement to allow County enforcement combined with subcontractor

qualifications with direction to staff to determine if Treasurers Association Committee can look at special assessment issue." A fourth BDR proposal was approved separately. It stated: "Approved adding to list [BDR list] placeholder for UMC governance changes."

All four proposals were approved unanimously.

The agenda does not indicate that only six BDRs would be discussed. By statute only four BDRs were allocated to Clark County. The County's response to the complaint admits that agenda item 73 did not specify particular BDR proposals to be discussed or adopted, but the County counters that the "report on bill draft requests" was available to the public, and it would have provided notice of the proposals for discussion. Counsel also informed this office that after the agenda had been posted, but before the meeting, staff distributed the report of possible bill draft requests to the commissioners. It was a document compiling previously discussed issues by the BOCC in public meetings. The issues in the report would be used to form the basis for possible bill draft requests and was intended to facilitate discussion. We reviewed that list. Nine topics were listed on two pages and each topic consisted of no more than two or three sentences. The proposed topics were coupled with reference (on the same page) to prior meeting minutes where the topic had been discussed. One of the proposed topics in the report read: "Consolidate Justice Courts." This topic is clear and complete and need not have specified which Courts were being targeted. A person reading the item would understand that some courts, but not others may be intended targets or that all might be involved. The specificity of the topic is enough to satisfy the requirement of the OML.

The "report on bill draft requests" was properly considered to be supporting material once it was provided to BOCC members. The OML requires a public body to make available supporting materials if a member of the public makes a request to the public body. NRS 241.020(5) and (6). Supporting materials may not be made available to the public unless and until they are provided to the members of the public body. NRS 241.020(6)(a).

Counsel for the BOCC sent us a statement from Sabra Smith Newby, Director of Administrative Services for Clark County. She stated that during the meeting copies of the list were available to the public and the Clark County Clerk's office had also been given a copy of the list. The complaint does not allege that the report was not made available for public review at the County Clerk's office or through Clark County administrative offices.

Agenda item 73 provided sufficient notice to the public of the existence of a "report on bill draft requests." County counsel relies on *Schmidt v. Washoe County*, 123 Nev. 128, 137-138 (2007) for justification of this procedure to provide notice of BDR proposals. Counsel argued that the Clark County BOCC procedure complies with the OML because it is functionally the same as the procedure accepted and approved by the *Schmidt* Court, which found no OML violation on similar facts. In *Schmidt* the

Washoe County BOCC's meeting agenda item merely stated there would be a discussion of "various bill drafts" and that a list of BDRs to be discussed would be made available on its webpage prior to the meeting.

A fair reading of *Schmidt* shows that the facts were similar to the facts alleged herein, but there were distinctions. The agenda item at issue in *Schmidt* instructed interested parties they could obtain a list of specific BDRs by accessing the Washoe County website "at any time after 6 p.m. on the Friday before the Monday Caucus." No such public notice appears in the BOCC's agenda item 73. But, according to Ms. Newby's statement, the report was available at the meeting and the BOCC was prepared to provide copies of the BDR list to anyone who asked for it.

Rural Justice Courts of Clark County does not allege that it requested the "report on proposals for BDR requests" as identified in agenda item 73 on the agenda at any time prior to the meeting. It is alleged the BOCC's failure to post the report violated the OML. But, there is no requirement in the OML for a public body to communicate supporting materials to interested parties absent a request. NRS 241.020(5) has been interpreted by this office to require a member of the public to actually request a copy of supporting materials. OPEN MEETING LAW MANUAL, § 6.06 (11th ed. 2012). Agenda supporting materials need not be mailed but must be made available over the counter when the material is ready and has been distributed to members of the public body and at the meeting. OMLO 98-01 (January 21, 1998); OMLO 2003-06 (February 27, 2003).

It is alleged that Jeff Wells provided a summary of the BDR language which provided some of the proposed revisions to NRS 4.020 just after the August 21, 2012 meeting, yet the OML does not require this kind of detail. The clear and complete standard requires only that topics for discussion be provided to the public. Agenda item 73 complies with that requirement when coupled with availability of the "report on proposals for bill draft requests." We think that the Clark County BOCC's procedure complied with the OML, although if the topics listed in the report were known at the time of posting of the agenda, they should have been included in agenda item 73, so that the public could have decided if any of the known matters were of interest to them. This would have encouraged participation by the public in an important decision by the BOCC.

We are aware that at its previous public meeting on August 21, 2012, BOCC members proposed a "rotational model" for covering court vacancies. The BOCC approved use of a bill draft request (BDR) to the 2013 Legislature that would propose a change in the law to create a "Justice Court travelling circuit" in Clark County. Although, we do not find a violation of the OML in this case for failure to include this topic in agenda item 73 because it was made available separately to the public, and because we do not find that the procedure was used with the intent to avoid compliance with the OML, nevertheless, we urge the BOCC to include known topics in future agenda topics which are of significance to the public. Communication with the public of items of community interest is best done in agendas.

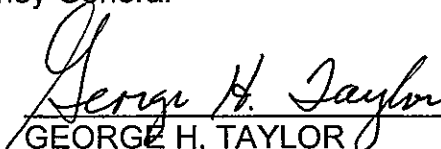
Karen M. Powell
Re: Clark County Board of Commissioners
December 13, 2012
Page 4

There was no violation of the OML based on the allegations in 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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