

1 STATE OF NEVADA
2 OFFICE OF THE ATTORNEY GENERAL
3

4 In the Matter of)
5 STOREY COUNTY BOARD)
6 OF COMMISSIONERS)

Attorney General File No. 13-001
and
Attorney General File No. 13-012
OMLO No. 2013 - 01

7 I.

8 **BACKGROUND**

9 Five Open Meeting Law (OML) complaints alleged that Bill Sjovangen, Chairman of
10 the Storey County Board of County Commissioners (Board), ejected Mark Joseph Phillips
11 without cause from Board meetings on January 15, 2013, and April 2, 2013.

12 This office reviewed statements from Chairman Sjovangen and members of the
13 Board regarding the Complainants' allegation. We have reviewed the video of these public
14 meetings before rendering this Opinion. We also reviewed the public comment notice
15 published on agendas for Storey County Commission Meetings, January 15, 2013, and
16 April 2, 2013, and we reviewed minutes of the meetings.

17 The Attorney General has jurisdiction to investigate allegations of violations of
18 NRS Chapter 241, the Open Meeting Law. This office may seek civil remedies against
19 public bodies, including injunctive relief, to require compliance with the OML or to prevent
20 violations of the OML. A criminal misdemeanor penalty and a monetary penalty for
21 violations of the OML are also authorized relief against individuals in any court of
22 competent jurisdiction. NRS 241.037; NRS 241.040.

23 II.

24 **FINDING OF FACT**

25 **A. JANUARY 15, 2013, PUBLIC MEETING.**

26 On January 15, 2013, Chairman Bill Sjovangen of the Storey County Board of
27 Commissioners, in just his second meeting as a Commissioner, set some "ground rules" for
28 public comment shortly after he convened the meeting. He began by stating that "there will

1 be no cheering, no jeering, no applause, no foot stomping. Anyone who's out of order, the
2 Sheriff will deal with you." He asked that speakers make their point quickly, then stated,
3 "When I say 'thank you,' you will stop talking and you will sit down immediately, or I will call
4 a recess and the sheriff will take whatever action is appropriate." These admonitions and
5 warnings did not appear on the agenda, but were delivered orally. The public was not
6 advised by Mr. Sjovangen that they would receive a warning before being ejected.

7 It was during the Commissioners' consideration of action Item #8 that Mr. Phillips
8 was ejected. Mr. Phillips rose to offer comment regarding approval of the minutes of the
9 Commissioners' December 4, 2012, public meeting. He began his comment by discussing
10 his interest and his effort to get the 2012 Board of County Commissioners to call a special
11 meeting to approve the December 4, 2012, minutes. Throughout his brief one minute and
12 twenty-six second comment, Mr. Sjovangen can be heard repeatedly interjecting "neither
13 here nor now" — an apparent comment on relevance.

14 Mr. Phillips continued to speak through Mr. Sjovangen's interjections. When
15 Mr. Phillips addressed a possible conflict of interest involving the Commission's approval of
16 a lease, Mr. Sjovangen quickly moved to cut off his comment. He told Mr. Phillips, "thank
17 you Mark, thank you." Mr. Phillips continued to speak; both he and Mr. Sjovangen began
18 talking over each other's words. Mr. Sjovangen spoke softly until he raised his tone on his
19 last "thank you." Even then, Mr. Phillips continued to speak to finish his sentence. Mr.
20 Sjovangen called a recess, at which time Mr. Phillips gathered his papers, and silently left
21 the podium. Mr. Sjovangen was silent as was the rest of the audience in the room; the
22 video recording abruptly ended.¹

23 During the recess, Mr. Sjovangen called upon a deputy sheriff, who was present in
24 the meeting, to eject Mr. Phillips from the Courthouse. Reasons for the ejection were not
25 offered by Mr. Sjovangen when the meeting resumed.

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28 ¹ The Commissioner's response noted that the clerk always turned the video off when a recess
was called so that private conversations were not recorded.

1 **B. APRIL 2, 2013, PUBLIC MEETING.**

2 During the April 2, 2013, Commission meeting, Mr. Phillips was again ejected by
3 Chairman Sjovangen. The meeting began quietly as Mr. Phillips spoke on two items, after
4 which he sat down.

5 Mr. Dale Beach spoke first during Item #6 – Public Comment.² Among the matters
6 he wished to comment on was a general obligation debt comparison among certain
7 Nevada counties, which had been prepared by the State Department of Taxation. In
8 midsentence, as Mr. Beach was about to disclose the result of Taxation's comparison,
9 Mr. Sjovangen stopped Mr. Beach's comment telling him that the Commission was "not
10 interested in any of that stuff." He told Mr. Beach that he was "comparing apples and
11 horseshoes, so have a seat." Mr. Beach said thank you and sat down.

12 Mr. Phillips then rose to speak, but after only one minute and twenty-two seconds,
13 Mr. Sjovangen told him "that's it, sit down." During this time, Mr. Phillips attempted to bring
14 to the Commission's attention an item on the agenda for the Nevada Mining Oversight and
15 Accountability Commission's (MOAC) March 28, 2013, meeting in Carson City. It was an
16 informational item regarding possible degradation of the Virginia City National Historic
17 Landmark as a result of mining operations.³

18 After being told, "that's it, sit down," Mr. Phillips looked to see if he had exhausted
19 his allotted public comment time; he had not. Nevertheless and without argument, he
20 immediately abandoned his effort to comment on the MOAC meeting; instead, he stated
21 that he would offer a copy of the agenda of the MOAC meeting for the minutes. In the
22 meantime, Mr. Sjovangen can be heard telling him to sit down. Mr. Phillips left the podium,
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24 ² The Commission's Agenda Public comment restrictions:

25 Public Comment will be allowed at the beginning of each meeting (this
26 comment should be limited to matters not on the agenda). Public Comment
27 will also be allowed during each item on the agenda (this comment should be
28 limited to the item on the agenda). Time limits on Public Comment will be at
the discretion of the Chairman of the Board. Please limit your comments to
three minutes.

³ The Mining Oversight and Accountability Commission was created in 2011 by SB 493; its duties
are codified in NRS Chapter 362. It consists of seven members appointed by the Governor. It is a public
body.

1 walked to the clerk's desk, and handed her a copy of the MOAC agenda. During that brief
2 time away from the podium, Mr. Sjovangen can be heard telling Mr. Phillips that he was out
3 of order. When Mr. Phillips returned to the podium, Mr. Sjovangen said, "the Commission
4 has no control over MOAC – it's not a topic for discussion." Mr. Phillips replied that Mr.
5 Sjovangen had spoken during the MOAC meeting during public comment in favor of the
6 mining company, but that there had been no one there to represent the public.

7 Mr. Phillips stopped speaking and walked back to his seat in the audience. He was
8 silent, as were the rest of the people present, except for Mr. Sjovangen who said, "there's
9 the door, leave, leave, I want you out of the room. You are here to cause trouble; I want
10 you out right now." Mr. Phillips was not visible in the video, but the deputy sheriff can be
11 seen moving in the aisle apparently intending to remove him following Mr. Sjovangen's
12 statement that he wanted Mr. Phillips out of the room. Although Mr. Phillips could not be
13 seen on video, his voice can be heard speaking with the deputy sheriff saying, "This is
14 wrong." Mr. Sjovangen interjected saying, "Mark, you've pushed the limits here. Out!" Not
15 until this time did Mr. Sjovangen recess the meeting. While Mr. Phillips was being ejected
16 Mr. Sjovangen said, "You just pushed the limits too far, Mr. Phillips."

17 An unidentified member of the audience can be heard on the video asking, "what did
18 he do, what did he do? Explain it to us." Mr. Sjovangen said he would explain after
19 recess. Hearing nothing further from the back of the room, we believe Mr. Phillips had
20 been ejected. Four minutes elapsed from the time Mr. Phillips began his public comment
21 until his ejection; the four minutes included the time of recess.

22 Once back in session, Mr. Sjovangen called for further comment. The first person to
23 speak heatedly castigated Mr. Sjovangen for his "rule of force." She told Mr. Sjovangen
24 that people have a right to be heard regardless of whether that person may be viewed as a
25 pest. After about 40 seconds of continued, heated rebuke, Mr. Sjovangen "zeroed" her
26 time and told the speaker to sit down; she replied she would not sit down. He recessed the
27 meeting then she sat down, after having spoken only one minute and 13 seconds. She
28 was not ejected from the meeting.

1 government has set aside time to hear the views of the public, speakers may not be
2 excluded based on the content of their speech or their viewpoint. When a public body sits
3 in public meetings to conduct public business and hear views of citizens, it may not
4 discriminate between speakers on the basis of employment or the content of their speech.⁹

5 A public body has a significant and legitimate interest in conducting efficient, orderly
6 meetings.¹⁰ The First Amendment is not violated because of subject matter restriction on
7 public speakers during consideration of individual agenda items.¹¹ Restrictions must be
8 "reasonable and viewpoint neutral, but that is all they need to be."¹² Restrictions must be
9 narrowly tailored to serve a significant government interest.¹³

10 Reasonable rules ensure orderly conduct of a public meeting and orderly behavior
11 on the part of persons attending the meeting. Attorney General's Open Meeting Law
12 Manual, § 8.05 (11th Ed. 2012). Public bodies may adopt reasonable restrictions,
13 including a time limit on individual comment; but before adjournment, the public body must
14 allow comment on any matter not specifically included on the agenda as an action item.¹⁴

15 During the April 2, 2013, Commission meeting, Mr. Phillips was not allowed to finish
16 his general public comment regarding the informational item about the Virginia City
17 National Historic Monument, which appeared on the MOAC March 28, 2013, agenda
18 because he was ejected from the meeting.

19 Mr. Sjovangen's explanation, to the audience at the public meeting, for his decision
20 to stop Mr. Phillips comment following Mr. Phillip's ejection was that Mr. Phillips was off-
21 topic. He said, "Storey County has no authority over MOAC," and that Mr. Phillip's
22 comment was a "waste of time because the subject of the Board's April 2nd agenda was
23 the Storey County budget." He added, "Mark was not allowed to speak because he will not

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26 ⁹ *City of Madison*, 429 U.S. at 176, 97 S. Ct. at 426.

27 ¹⁰ *Kindt*, 67 F.3d at 271.

28 ¹¹ *Id.* at 270.

¹² *Id.* at 271.

¹³ *Perry*, 460 U.S. at 45, 103 S. Ct. at 955.

¹⁴ NRS 241.020(2)(c)(3)(II).

1 take no for an answer.” His explanation for the ejection was that Mr. Phillips was causing
2 trouble and that he would not take “no” for an answer.

3 Mr. Sjovangen’s refusal to allow Mr. Phillips to continue his general public comment
4 regarding the Virginia City mining issue on the MOAC agenda was unreasonable because
5 no willful disturbance occurred, and even in the absence of a willful disturbance
6 Mr. Sjovangen did not articulate a legitimate reason for stopping Mr. Phillips comment,
7 after letting him proceed for almost a minute and a half. Additionally, Mr. Phillip’s comment
8 (before he was silenced), indicated he wanted to speak about a debatable public issue. If
9 Mr. Sjovangen had spoken to MOAC in favor of mining in Virginia City, then prohibiting
10 Mr. Phillips view, if indeed he intended to raise one contrary to the pro-mining comment
11 Mr. Sjovangen made to MOAC, is a debatable public issue. The Constitution guarantees
12 that one side of a debatable public question may not have a monopoly in expressing its
13 views to the government.¹⁵

14 Stopping Mr. Phillips speech was an OML violation in the context of general public
15 comment regardless the assertion Mr. Phillips was off-topic. There is a fundamental
16 difference between general public comment and comment offered before the public body
17 votes on an agenda item. The application of a reasonable speech restriction during
18 discussion of an agenda item, requiring the speaker to comment only on the subject at
19 hand, is permissible because it furthers a legitimate State interest in the orderly and
20 efficient conduct of the public body’s business. Mr. Sjovangen’s reason for stopping
21 Mr. Phillips general public comment did not identify a significant governmental interest for
22 the restriction; indeed, Mr. Sjovangen’s proffered reasons missed the mark entirely.¹⁶
23 General public comment (item #6 on the Commission’s April 2, 2013, agenda) is the time
24 for the public to address the Commission about matters of general public interest, and
25 matters not on the agenda.¹⁷

26 ¹⁵ *City of Madison*, 429 U.S. at 175-176, 97 S. Ct. at 426.

27 ¹⁶ *Perry*, 460 U.S. at 46, 103 S. Ct. at 955.

28 ¹⁷ NRS 241.030(5)(b), see also *White v. City of Norwalk*, 900 F.2d 1421, 1425 n.4 (1990) (City of Norwalk ordinance offered citizens two kinds of opportunity to speak. One was on agenda items and the other was a defined separate portion of public meeting known as “Oral Communications,” during which the public

1 We believe Mr. Sjovangen wrongly conflated a reasonable restriction requiring
2 agenda item comment to be confined to an item's subject at hand, with rules for general
3 public comment, for which confinement of comment to the subject at hand does not make
4 sense, as there is no specified subject.

5 One leading Ninth Circuit Court of Appeals case decision succinctly put the
6 importance of public comment this way, "[c]itizens have an enormous first amendment
7 interest in directing speech about public issues to those who govern their city. It is
8 doubtless partly for this reason that such meetings, once opened, have been regarded as
9 public forums, albeit limited ones."¹⁸

10 Reasonable restrictions must be clearly expressed on each agenda and any
11 restriction must be viewpoint neutral.¹⁹ Reasonable rules may restrict public speakers to
12 the agenda item being considered as long as the public speaker has at least one
13 opportunity during the meeting to speak about any matter not included on the agenda.²⁰

14 **B. ACTUAL DISRUPTION REQUIRED PRIOR TO EJECTION.**

15 A public body has wide discretion to allow comments that are off-topic, even though
16 a public body has the authority to require speakers to comment only on the subject at hand
17 regarding specific agenda items. Mr. Sjovangen chose to stop Mr. Phillips; however, the
18 OML does not allow a public body to eject a speaker for simply being off-topic, absent an
19 actual willful disruption caused by the speaker during the meeting, which makes
20 continuation of the meeting impractical. NRS 241.030(5)(b).

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22 could speak to the Council about any topic of their choice subject only to the Council's determination of
23 relevance).

24 ¹⁸ *White*, 900 F.2d at 1425.

25 ¹⁹ NRS 241.020(2)(c)(3)(7); see also *Lamb's Chapel v. Center Moriches Union Free Sch. Dist.*,
508 U.S. 384,392-393, 113 S. Ct. 2141, 2147 (1993) (any restriction on public comment during a public
26 meeting and any restriction on access to a public meeting must be reasonable in light of the purpose served by
the forum; restriction must be viewpoint neutral).

27 ²⁰ NRS 241.020(2)(c)(3); see also *Kindt* at 270-271, citing *City of Madison, Joint Sch. Dist. No. 8 v.*
Wisconsin Emp't Relations Comm'n, 429 U.S. 167, 175 n.8, 97 S. Ct. 421, 426 n.8 (1976) (Plainly, public
28 bodies may confine their meetings on agenda topics to specified subject matter); see *Open Meeting Law*
Manual § 8.05(11th ed. 2012) (public comment may also be prohibited if the comment is willfully disruptive
because it is irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal
attacks or interfering with the rights of other speakers.)

1 The operation of these principles is illustrated by the following decisions. In 2007,
2 Gary Schmidt was removed from a public meeting of the Washoe County Board of
3 Commissioners. Mr. Schmidt sued the County and Commissioner Larkin. The central
4 issue was whether the ejection had been justified. The district court held a two-day bench
5 trial culminating in a finding that Mr. Schmidt had willfully disrupted the meeting to the
6 extent its orderly conduct had been made impractical.²¹

7 Key factual findings made by the district court and upheld by the Nevada Supreme
8 Court were that Mr. Schmidt chose to confront the Board about a non-existent applause
9 rule and he did so in a rude manner. Mr. Schmidt talked over the Chair, raised his voice,
10 and continued to talk about the applause rule even though the Chair told him twice that he
11 was off topic. A recess was called and Mr. Schmidt was removed. The Court said that
12 taken together these facts supported the district court's determination that Mr. Schmidt
13 willfully disrupted the Washoe County Board meeting making its orderly conduct
14 impractical.

15 Other Nevada cases, which decided whether ejection was justified in the context of
16 a Nevada public meeting, were removed to federal court, where they eventually went to
17 trial.²² These cases stand for the principle that ejection of a speaker is appropriate only
18 where a speaker causes an actual disruption making continuation impractical. Another
19 issue arising in these cases is whether ejection occurred because of disagreement with the
20 speaker's views.

21 The Ninth Circuit Court of Appeals case law embraces the principle that even in
22 limited public forums such as a city council meeting, where First Amendment principles
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24 ²¹ *Schmidt v. Larkin*, No. 57342, 2012 WL 444033, at *3 (Nev. S. Ct. Feb. 10, 2012) (unpublished
order, not to be cited as legal authority, Nevada SCR 123).

25 ²² *Dehne v. City of Reno*, 222 Fed. Appx. 560, 562 (9th Cir. 2007) ("removing an individual from a
26 public meeting does not violate the Constitution *provided that* the individual is sufficiently disruptive and is not
removed because of his or her views") (emphasis added); *Felton v. Griffin*, 185 Fed. Appx. 700, 702 (9th Cir.
2006) (City of Reno's decorum ordinance was constitutional on its face if read only to apply where an individual
27 actually disturbs or impedes a meeting; plaintiff did in fact disturb the meeting with foul, repetitive, loud and
abrasive language); *Dehne v. Hill*, 220 Fed. Appx. 730, 731 (9th Cir. 2007) (Plaintiff removed from meeting
28 after warning to refrain from insulting another speaker; record at trial showed the plaintiff routinely heckled
other speakers with whom he did not agree, but that the Chair typically treated Plaintiff with respect).

1 tightly constrain the government's power; speakers may only be removed because of an
2 actual disruption.²³ In addition, the requirement that an actual disruption occur so that the
3 orderly conduct of a meeting is impeded is the equally important First Amendment principle
4 that a public body may not ban or suppress speech because public officials oppose the
5 speaker's view.²⁴ NRS 241.030(5)(b) allows ejection when a person "willfully" disrupts a
6 meeting, which makes orderly conduct of the meeting impractical.

7 Actual and willful disruption must occur to justify ejection; disrespect alone will not
8 suffice. In *Kindt v. Santa Monica Rent Control Board*, the court noted that Mr. Kindt was
9 never denied an opportunity to speak about any subject he wished, as long as he
10 requested to speak during the one period of general public comment, "Requests to Speak
11 to the Board," which was on the Board's agenda at the end of the agenda.²⁵ The court
12 observed that over the course of many appearances before the Board, Mr. Kindt
13 addressed personally derogatory comments to Board members, but he was not silenced.
14 He was only ejected from meetings based on actual disturbances because he yelled and
15 tried to speak when it was not time for general public comment.²⁶

16 The Ninth Circuit, sitting en banc, reversed a district court's dismissal of Robert
17 Norse's § 1983²⁷ First Amendment claim that he had been wrongfully ejected and arrested
18 because he engaged in protected speech at a public meeting.

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22 ²³ *Norse v. City of Santa Cruz*, 629 F.3d 966, 976 (9th Cir. 2010) (Kozinski, J., concurring opinion),
23 citing *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990) (reaffirming principle that ejection of a
24 speaker may only occur where speech disrupts, disturbs or otherwise impedes the orderly conduct of the public
25 meeting).

26 ²⁴ *Perry*, 460 U.S. at 46, 98 S. Ct. at 955. None of the complaints in this matter alleged Mr. Sjovangen
27 stopped Mr. Phillips because he disagreed with his viewpoint.

28 ²⁵ *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266, 271 (9th Cir. 1995).

²⁶ *Id.* at 271.

²⁷ 42 U.S.C.A. § 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or
usage, of any State or Territory or the District of Columbia, subjects, or causes
to be subjected, any citizen of the United States or other person within the
jurisdiction thereof to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress.

1 Robert Norse was ejected from a Santa Cruz, California, City Council meeting, and
2 arrested, after an incident in which he mimicked a silent Nazi salute to the Council.²⁸ The
3 Public comment period had concluded before he made the gesture before the Council.
4 The City argued the public's First Amendment rights ended after public comment
5 concluded. However, the en banc court refused to accept the City's assertion and also
6 refused the City's invitation to re-define "disturbance" under the City's decorum ordinance
7 to include Mr. Norse's act. The Court said an actual disturbance must occur, not a
8 constructive disturbance.²⁹

9 In a concurring opinion in *Norse*, Circuit Judge Kozinski observed that the record
10 showed Mr. Norse's silent Nazi salute was made from the back of the room. It had been
11 momentary and caused no disruption at all. It would have remained unnoticed except that
12 one councilman saw it and interrupted the meeting to take umbrage. The councilman
13 insisted that Mr. Norse be cast out to protect "the dignity of this body and the decorum of
14 this body." Judge Kozinski observed that unlike the Führer, government officials in
15 America occasionally must tolerate offensive and irritating speech.³⁰

16 V.

17 CONCLUSIONS.

18 A. JANUARY 15, 2013, COMMENT AND EJECTION.

19 The ejection of Mr. Phillips from the Storey County Board of Commissioners'
20 January 15, 2013, meeting presents a very close question, but it did not constitute a
21 violation of NRS 241.030(5)(b).

22 Mr. Phillips' comment was off-topic. The agenda item being considered was
23 approval of the Commission minutes for December 4, 2012, but his comment alleged a
24 conflict of interest by a former commissioner regarding a lease with the county.

25 Thus, Chairman Sjovangen did not violate the OML or Mr. Phillips' First Amendment
26 speech rights when he stopped Mr. Phillips' comment. Mr. Phillips clearly was not

27 ²⁸ *Norse v. City of Santa Cruz*, 629 F.3d 966 (9th Cir. 2010),

28 ²⁹ *Norse*, 629 F.3d at 976.

³⁰ *Norse*, 629 F.3d at 979 (Kozinski, J., concurring opinion).

1 addressing the subject at hand. The allegation that a former commissioner had a conflict
2 of interest at the time a lease agreement was entered into with the County and then
3 approved by the Commission in December 2012 was off-topic, inflammatory, and irrelevant
4 to the agenda item calling for approval of the Commission's December 4, 2012, minutes.

5 The video confirmed that an actual disruption, which impeded continuation of the
6 meeting, occurred and resulted in the ejection of Mr. Phillips. Mr. Sjovangen interrupted
7 Mr. Phillips twice during his comment about a possible conflict of interest before he called a
8 recess. Mr. Sjovangen had to raise his voice to interrupt Mr. Phillips, who continued to
9 speak. At one point, they were speaking over each other, which necessitated the call for a
10 recess.

11 **B. APRIL 2, 2013.**

12 **1. Public Comment.**

13 Mr. Phillips was prevented from finishing his public comment when he was ordered
14 to sit down at the April 2, 2013, meeting. The order violated Mr. Phillips protected right to
15 speak pursuant to NRS 241.020(2)(c)(3). No warning had been issued to Mr. Phillips
16 before he was told to sit down. Mr. Sjovangen explained to the audience following ejection
17 that the Commission had no control over the MOAC so it was not a topic for discussion.
18 We disagree.

19 General public comment is the time for speakers to make known to the Commission
20 any matter or subject of general or public interest, unlike restricted comment allowed during
21 discussion of agenda items. Reasonable content-neutral time, place, and manner
22 restrictions still apply to general public comment, but the Legislature has recognized a
23 difference between comment on agenda items and general public comments.
24 NRS 241.020(2)(c)(3) allows the public to offer comment about items of general interest
25 and concern as long as the matter does not appear on the meeting's agenda.

26 The Commission's agenda recognizes a difference between comment on agenda
27 items and general public comment, which makes Mr. Sjovangen's order to Mr. Phillips to
28 stop speaking a violation of the Commission's own notice. The Commission's agenda

1 public comment notice stated that public comment will be allowed at the beginning of each
2 meeting and that this comment should be limited to matters not on the agenda. Mr. Phillips
3 comment concerned a matter not on the agenda. He was in conformance with that part of
4 the notice.

5 The agenda notice also states that time limits on public comment will be at the
6 discretion of the Chairman of the Board, but it asks the public to please limit comments to
7 three minutes. Mr. Phillips spoke for about a minute and a half before being stopped.
8 Discretion of the Chair as used in the notice and within the meaning of the OML, means
9 that a public body may allow a person to finish a sentence or a thought, but it does not
10 mean the speaker can be stopped arbitrarily and without a constitutionally permissible
11 reason. The Chair does not have unbridled discretion to restrict public comment.
12 Restrictions must be reasonable; reasonableness means there must be evidence that the
13 restriction reasonably fulfills a legitimate need.³¹

14 Mr. Phillips had wanted to bring to the attention of the Commission an important
15 topical matter affecting Virginia City – a matter that very well could have been on the
16 agenda. Prohibiting Mr. Phillips' comment, because Mr. Sjovanjen thought the comment
17 may have been off-topic and outside the scope of the Commission's authority, was too
18 narrow a *construction* of NRS 241.020(2)(c)(3). The Chair's restriction, because the
19 comment was off-topic, was not reasonable and it offended Mr. Phillips' First Amendment
20 right to comment on public issues with his elected representatives.

21 NRS 241.020(2)(c)(3) sets one period of general public comment aside for the
22 public to comment on matters not appearing on the meeting agenda. Mr. Phillips'
23 attempted comment is just the kind of comment that fits within the statutory allowance of
24 comment on matters not appearing on the agenda as an action item. Public bodies in
25 Nevada have a significant interest in confining public comment on agenda items to the
26 subject at hand, to preserve efficiency and the orderly conduct of meeting; but the public's
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28 ³¹ See *infra* note 6.

1 right to speak to its elected officials under general public comment must be viewed more
2 expansively to accommodate questions such as the one Mr. Phillips raised.

3 **2. April 2, 2013, Ejection.**

4 The ejection of Mr. Phillips from the April 2, 2013, meeting was wholly unjustified.
5 Our conclusion was made after review of both State and federal decisions which had
6 reviewed the ejection of speakers by public bodies because of willful and actual disruption
7 of a public meeting. Orderly conduct of a public meeting is a significant and legitimate
8 interest of the public body; however, our review of the video of Mr. Phillips' comment and
9 subsequent ejection did not reveal any conduct on Mr. Phillips' part, which willfully
10 disrupted or impeded the meeting.

11 Mr. Phillips stopped speaking as soon as Mr. Sjovangen said "that's it, sit down".
12 As Mr. Phillips stopped speaking, he looked at the time to determine whether he had
13 exhausted his three minutes. He immediately abandoned his attempt to comment on the
14 mining issue related to Virginia City's National Historic Landmark and did not argue with
15 Mr. Sjovangen. Although Mr. Sjovangen's comment to the audience was that Mr. Phillips
16 was there to cause trouble, we did not find any evidence to support the assertion.
17 Mr. Phillips' comment was a matter of debatable public interest concerning a vital Virginia
18 City issue — mining.

19 The meeting was not disrupted when Mr. Phillips left the podium to hand the clerk a
20 copy of the MOAC agenda, even though Mr. Sjovangen said that Mr. Phillips was out of
21 order and that the Commission had no authority over MOAC. No one else spoke until
22 Mr. Phillips returned from the Clerk's desk to his seat. Mr. Phillips stopped to say he had
23 wanted to offer an opposing view to Mr. Sjovangen's MOAC testimony, but that he was not
24 arguing with Mr. Sjovangen; he was not rude, nor did he talk over Mr. Sjovangen.
25 Mr. Phillips never raised his voice, did not contradict Mr. Sjovangen, and did not cause
26 trouble or impede the meeting. Mr. Phillips was not argumentative or even disrespectful at
27 any time during the four minute duration of his comment and ejection.

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1 Mr. Phillips had silently returned to his seat when Mr. Sjovangen stated he wanted
2 Mr. Phillips out of the room. The deputy sheriff can be seen walking in the aisle
3 presumably to remove Mr. Phillips from the room. Mr. Sjovangen then called for a recess
4 as the deputy sheriff removed Mr. Phillips from the room. After Mr. Phillips' ejection,
5 Mr. Sjovangen remarked to the audience that Mr. Phillips was a troublemaker and was
6 there only to create a spectacle. We disagree. There is no evidence to back up his claim
7 and certainly, Mr. Phillips did not deserve to be ejected; he was not willfully disruptive. Any
8 delay in the meeting was entirely the fault of Mr. Sjovangen.

9 **C. "GROUND RULES."**

10 Mr. Sjovangen's "ground rules" were wholly inadequate to provide actual notice of
11 reasonable time, place, and manner restrictions on public comment. Each agenda must
12 provide actual notice to the public of all reasonable restrictions including notice to stay
13 on topic during consideration of agenda items. Oral ground rules are legally insufficient to
14 provide actual notice of restrictions on public comment, whether during agenda items or
15 during general public comment. NRS 241.020(2)(c)(7) requires restrictions on public
16 comment to appear on each agenda. Failure to provide written notice of restrictions on
17 public comment is a violation of the statute. *Id.*

18 **VI.**

19 **WARNING.**

20 We have considered these matters carefully and conclude that resolution of this
21 matter requires a *strong warning* to the Commission that content-based restriction of
22 general public comment solely based on being off-topic is in violation of the OML. The
23 Commission's agenda must provide actual written notice to the public of any reasonable
24 restrictions on public comment, both during agenda items and during general public
25 comment. We also suggest that adoption of written rules of decorum could provide
26 guidance to the Commission and to the public of prohibited conduct constituting willful and
27 actual disruption of a public meeting.

28 ///

Attorney General's Office
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1 NRS 241.0395 requires that, when this office issues an opinion finding OML
2 violation(s), the public body must place the matter on its next agenda for discussion and
3 make this Office's opinion a part of supporting material to be made available to the Board
4 and the public at the same time. NRS 241.0395:

5 1. If the Attorney General makes findings of fact and conclusions
6 of law that a public body has taken action in violation of any
7 provision of this chapter, the public body must include an item on
8 the next agenda posted for a meeting of the public body which
9 acknowledges the findings of fact and conclusions of law. The
10 opinion of the Attorney General must be treated as supporting
11 material for the item on the agenda for the purposes of
12 NRS 241.020.

13 No further action by this office is necessary at this time.

14 DATED this 21st day of June, 2013.

15 CATHERINE CORTEZ MASTO
16 Attorney General

17 By: 
18 _____

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