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August 21, 2013

Alex Kukulus
1841 Catham Lane
Sparks, Nevada 89434

Re: Open Meeting Law Complaint / AG File No. 13-026
Regional Emergency Medical Services Authority (REMSA)

Dear Mr. Kukulus:

You have asked this Office to provide clarification on whether the REMSA Board should be subject to Nevada's Open Meeting Law (OML). NRS Chapter 241. Your letter states that REMSA meetings are not posted and that REMSA provides an advisory role to the District Board of Health.

After review of your question and some research, we discovered that this Office has previously opined on whether REMSA is subject to the OML. The purpose of this letter is not to provide an opinion or even clarification of your question regarding whether REMSA is a public entity. We provide this letter and a copy of our prior opinion to explain why there is no need to revisit it.

The facts in this paragraph were taken from a federal appellate court decision from 1987. *Ambulance Serv. of Reno, Inc., v. Nevada Ambulance Serv., Inc.*, 819 F.2d 910 (9th Cir. 1987). The Nevada Legislature granted authority to each Nevada County and incorporated city to award an exclusive ambulance franchise and to regulate the service. NRS 244.87; NRS 266.295). Legislative authority also allowed

creation of a District Board of Health. NRS 439.370. Washoe County District Board of Health was then created through cooperative agreement between Washoe County, the City of Sparks, and the City of Reno. Interlocal Cooperation Act: NRS 277.080–277.180. The District Board of Health then caused REMSA to be incorporated in 1986 as the exclusive ambulance service within the Washoe County Health District.

This Office previously issued an Opinion, which determined that REMSA is not subject to OML because REMSA is a private non-profit, civic organization. See attached letter Opinion dated October 6, 1987. The Opinion determined that emergency ambulance service is not necessarily performed exclusively by a public entity; ambulance service is not an exclusive, sovereign, or governmental function that would transform it into a public body.¹ The 1987 letter Opinion described a franchise for ambulance service as being more closely analogous to a governmental grant of a special privilege to a power company, gas company, or telephone company. This is similar to the more recent grants of privilege to television cable companies and wireless phone services. These corporate entities are not public entities subject to the OML.

You provided a copy of a revised franchise agreement dated January 21, 2005, which directed the composition and appointment of REMSA. The ambulance service (RASI) is self-supporting and requires no subsidy from local government. Moreover,

¹ 3. Except as otherwise provided in this subsection, "public body" means:

(a) Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive or legislative body is created by:

- (1) The Constitution of this State;
- (2) Any statute of this State;
- (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;
- (4) The Nevada Administrative Code;
- (5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;
- (6) An executive order issued by the Governor; or
- (7) A resolution or an action by the governing body of a political subdivision of this State;

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review of the franchise agreement does not persuade us that REMSA was intended to be an "administrative, legislative, advisory, or executive body of the State or local government." NRS 241.015(3). According to Exhibit A of the January 2005 revised Amended and Restated Franchise agreement, REMSA will meet once a month to "conduct operations and fiscal oversight and to develop, monitor and amend policies and procedures for REMSA in the provision of ambulance services." It seems to us that REMSA's authority does not constitute an advisory function nor does any other language in the 2005-revised Amended and Restated Franchise agreement persuade us that REMSA has an advisory function within the meaning of NRS 241.015(3).

Our Opinion in 1987 is still relevant today and need not be revisited. In 1987, we said, "The sovereign or governmental function is involved only with the decision to grant the franchise and all the deliberations that lead up to that decision. The same [result] is true even if the sovereign monitors the adequacy of performance by the private entity once the franchise has been awarded. The fact that the private entity or corporation is the recipient of a public franchise does not transform the private corporation into a public body for purposes of open meeting legislation." REMSA may monitor and amend policies and procedures for the provision of ambulance services by RASI, but this is not evidence that REMSA is exercising a sovereign function, or decision-making authority, or even an advisory function. The District Board of Health has that authority and it is a public body.

Thank you for bringing this matter to our attention.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



GEORGE H. TAYLOR
Senior Deputy Attorney General
Open Meeting Law
Tele: (775) 684-1230

GHT/rmh
Enclosure

cc: Leslie Admirand, Deputy District Attorney, Washoe County
Bonnie Drinkwater, REMSA Counsel



STATE OF NEVADA
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BRIAN MCKAY
Attorney General

WILLIAM E. ISAEFF
Chief Deputy Attorney General

October 6, 1987

Matt James, News Director
Tony Kovaleski, Assistant News Director
KTVN-Reno
Post Office Box 7220
Reno, NV 89510

Dear Messrs. James and Kovaleski:

By written correspondence you asked our office to evaluate whether the Regional Emergency Medical Services Authority (REMSA) is a public body within the meaning of chapter 241 of the Nevada Revised Statutes and therefore required to comply with all aspects of the Nevada Open Meeting Law. This letter reports the results of our investigation undertaken pursuant to your request. We have reviewed several hundred pages of documents filed with the Nevada Secretary of State's Office, the Washoe County District Board of Health, the United States District Court for the District of Nevada and the United States Court of Appeals for the Ninth Circuit. From our review of this voluminous record, several points are apparent.

First, the Regional Emergency Medical Services Authority (REMSA) is a Nevada charitable corporation formed under the laws of this state and in compliance with certain internal revenue code provisions for the purpose of equipping, operating, and maintaining, as an independent body, an ambulance, central emergency medical dispatch service.

Second, this charitable corporation is responsible for implementing the provisions of a resolution authorizing the Regional Emergency Medical Services Authority to operate ambulance services within the greater Truckee Meadows area and is the recipient of an exclusive franchise granted to REMSA by the Washoe County District Board of Health.

Third, the Washoe County District Board of Health was empowered to grant the exclusive franchise mentioned in the preceding sentence because of certain amendments which were made to the interlocal agreement creating the Washoe County Health District.

Fourth, this interlocal agreement amendment which authorized the district board of health to displace or limit competition in

the grant of any franchise for ambulance services was reviewed by the Attorney General's Office and found to be compatible with the laws of the State of Nevada as required by NRS 277.140.

Fifth, by a resolution properly passed by the Washoe County District Board of Health on October 22, 1986, the board decided that a franchise for emergency medical services should be established through a hospital consortium (a public utility variation), with a emergency medical services operational authority to be responsible for the development of and operation of ambulance services within the greater Truckee Meadows basin. That exclusive franchise was awarded to the charitable corporation commonly known by the acronym REMSA.

Sixth, the true nature of REMSA has been the subject of considerable judicial scrutiny as a result of certain litigation conducted in the United States District Court for the District of Nevada and presently pending in the United States Court of Appeals for the Ninth Circuit. The courts mentioned in the preceding sentence have made the same findings that we have mentioned in this and the five preceding paragraphs.

Based on these factual and legal considerations, we conclude that REMSA is not subject to the Nevada Open Meeting Law. We reach this conclusion because REMSA is a private, nonprofit, civic organization. This type of organization, as a general rule, does not have to comply with the Open Meeting Law. See Nevada Open Meeting Law Manual (4th ed., 1983) pp. 10-11. The corporation is the recipient of an exclusive franchise which grants REMSA the right to provide emergency ambulance service within the Washoe County Health District. The grant of the right to perform this type of function for the benefit of the general public does not transform the charitable corporation into a public body within the meaning of NRS 241.015(2).

In Town of Palm Beach v. Gradison, 296 So.2d 473 (Fla. 1974), the city council appointed a citizens' advisory committee to assist in the formulation of a zoning ordinance. The city contended that the advisory group was not subject to the Florida Sunshine Law because they were not vested with final decision making power. The court rejected this argument stating that fact gathering was an essential component of the public decision making process and that the advisory group was assisting in the decision making process on a traditional governmental function, specifically formulation of zoning ordinances.

In Seghers v. Community Advancement, Inc., 357 So.2d 626 (La. App. 1978), a nonprofit civic organization was delegated the responsibility of administering a government antipoverty program. In this instance, the private corporation became the alter ego of the sovereign for purposes of administering this governmental program.

In Ratton Public Service Co. v. Hobbes, 417 P.2d 32 (N.M. 1966), a private corporation operated a power company for the benefit of the city. In addition, all the assets of the corporation were owned by the city. In that case, the court determined that due to the functional and financial ties that existed between the corporation and the city, the corporate trustees were required to comply with New Mexico's open meeting legislation.


The common theme running through all of these cases is that the private entity is performing a traditional sovereign function and it is the performance of that governmental duty that requires the special committee or private corporation to comply with open meeting legislation.

The Regional Emergency Medical Services Authority is the recipient of an exclusive franchise to provide emergency ambulance service within the Washoe County Health District. Provision of emergency ambulance service which is not something that is necessarily performed exclusively by a public entity. This type of arrangement is analogous to granting a special privilege to a power company, gas company, street transit company, telegraph company, telephone company, television station, or a water company to perform a service for the inhabitants of the service area for which the franchise was given. The sovereign or governmental function is involved only with the decision to grant the franchise and all of the deliberations that lead up to that decision. The same is true even if the sovereign monitors the adequacy of performance by the private entity once the franchise has been awarded. The fact that the private entity or corporation is the recipient of a public franchise, does not transform the private corporation into a public body for purposes of open meeting legislation. It is these considerations which lead us to conclude that REMSA is not required to comply with the provisions of the Nevada Open Meeting Law. However, our conclusion does not mean that REMSA cannot voluntarily adopt the provisions of the Nevada Open Meeting Law as the method by which their meetings will be conducted.

Thank you for referring this matter to our office for investigation. Your interest and support in insuring that Nevada's Open Meeting Law is complied with by public bodies in this state is appreciated.

Sincerely,

BRIAN MCKAY
Attorney General

By: 
Scott W. Doyle
Deputy Attorney General

SWD/cj

cc: Edward Dannan, Esq.
Assistant District Attorney
Washoe County District Attorney's Office