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February 21, 2014

Lori Gilbert  
1800 Idaho Street  
Elko, Nevada 89801

Re: Open Meeting Law Complaint / AG File No. 13-036  
Elko county Board of Commissioners

Dear Ms. Gilbert:

**BACKGROUND**

This Open Meeting Law (OML) complaint alleges that four violations of the OML occurred during the Board of County Commissioners (BOCC) for Elko County's in its October 23, 2013 public meeting. We reviewed statements submitted from each commissioner responding to the Complaint and in defense of their discussion of agenda Item VII (C)<sup>1</sup>. We reviewed the minutes of the discussion of item VII (C) and the audio recording of the meeting. Legal Counsel for the BOCC also submitted a response on behalf of the BOCC.

Four issues were raised in the complaint. These allegations implicate the OML's statutory requirement that all agenda items must be a clear and complete statement of the topics scheduled to be considered during the meeting. NRS 241.020(2)(d)(1). The first allegation in the complaint is that the BOCC, upon announcing consideration of agenda item VII(C), engaged in an a discussion that had nothing to do with the agenda item, but rather was focused on a misdemeanor citation issued by a Bureau of Land Management (BLM) Law Enforcement Officer (LEO) to local resident Brad Nelson and two companions for illegal wood cutting in a Wilderness Study Area in Elko County.<sup>2</sup>

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<sup>1</sup> VII (C) Discussion and consideration of issues related to law enforcement activities by BLM Law Enforcement Officers (LEOs) in Elko County. Discussion may include concern regarding BLM Enforcement of Nevada State Law that would require a ticketed person to go to Federal Court in Reno or Las Vegas instead of a local Court.

<sup>2</sup> The charges against each citizen were dropped by the government before trial.

The second issue alleged is that Mr. Nelson played to the BOCC an audio recording of telephone dialog between one of his companions (also cited by the LEO) that had been recorded during the litigation of the misdemeanor citation in federal court. It is alleged the recording was part of a prepared presentation not made available to the public prior to the meeting.

The third and fourth alleged violations in the Complaint concerned Commissioner Grant Gerber's alleged failure to disclose his legal representation of Mr. Nelson and that BOCC questions for Mr. Nelson appeared to have been prepared prior to the meeting, but had not been made available to the public prior to the meeting.<sup>3</sup>

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.

### FACTS

When the agenda item was called, Commissioner Gerber stated he had heard complaints and "thought it should be on the agenda." He introduced Mr. Brad Nelson to the Board who then described his contact with BLM LEO Brad Sones that resulted in a misdemeanor citation.<sup>4</sup> Brad Nelson, a resident of Elko County, complained to the BOCC about alleged abusive treatment from Brad Sones, a BLM LEO, who cited him on October 20, 2012 for illegal wood cutting in the Pequop Wilderness Study Area (WSA). His comments tried to explain why he thought the issuance of a citation was unfair and abusive.

Mr. Nelson explained to the BOCC that he and two friends had cut firewood on Spruce Mountain and were headed back to town when they encountered BLM Law Enforcement officer Brad Sones. Officer Sones wrote three tickets (\$275 fine for two citations and \$245 for one citation) to the driver of vehicles carrying firewood. Mr. Nelson told the BOCC that he had a map indicating their location. Mr. Nelson told the BOCC that the map showed that Spruce Mountain was six miles south of the South Pequop Wilderness Study Area although he was not sure if he showed Officer Sones the map.

Within a few minutes following Mr. Nelson's statement and some questions from the BOCC, the BLM was called upon to defend itself and its LEO from the allegations made by Mr. Nelson. Dan Love, BLM's Deputy Nevada State Director and a law

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<sup>3</sup> The fact that Commissioner Grant Gerber represented Mr. Brad Nelson at one time is not an OML issue.

<sup>4</sup> Mr. Nelson was accompanied by two friends in separate vehicles. They also received a citation.

enforcement special agent for the Elko County area; Erick Boik, Utah State Chief Ranger; and Jill Silvey, District Manager all made statements in defense of the their LEO's training and competency. Interspersed were questions and statements from the BOCC.

No one else with personal experience with BLM Law Enforcement Officers spoke during the meeting. Other citizens spoke, but they only indicated support in general for Mr. Nelson's right to speak to the BOCC about this matter. They did not speak from personal experience of having received a citation into federal court in Reno from a BLM LEO. Public comment about BLM law enforcement was from individuals with third hand information.

Copies of the citations were not made available. Officer Sones was present and he spoke later in the meeting. His superior officer, Dan Love, Acting State Deputy Director, explained to the BOCC that he had no knowledge of the facts and had not received or reviewed a complaint because no complaint from Mr. Nelson to the BLM had been submitted. Without a complaint or knowledge of the incident, BLM had not conducted an internal review. Mr. Love stated that Mr. Nelson's comments were the first time he had heard about the matter.

At this point in the discussion, BLM District Manager Jill Silvey counseled LEO Sones not to speak in rebuttal to Mr. Nelson's allegations until an internal BLM review had been accomplished. Commissioner Gerber said he had told her (District Manager Silvey) earlier that "there might be people here who were dissatisfied and they might be here." Ms. Silvey replied that when they had spoken she had asked him who would be there and what was the topic. Commissioner Gerber replied that he was not authorized to say who "they" were.

Commissioner Gerber had prepared a list of six questions for Brad Nelson, which he submitted to Commissioners prior to the meeting.<sup>5</sup> Commissioner Gerber encouraged them to use the list when questioning Mr. Nelson.

BOCC's legal counsel, Kristen McQueary, also asked some questions during the discussion of item VII (C), but she stated in her response to the Complaint on behalf of

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<sup>5</sup> The following questions were provided to each member of the BOCC before the meeting by Commissioner Gerber:

1. Were you cutting wood in a BLM Wilderness Study Area?
2. How far were you from the BLM WSA? – seven miles down off of Spruce Mountain from 8500 feet to the valley floor at 5500 feet and then starting up the Pequop Mountains.
3. How did the BLM agent act when you were cited?
4. Was the BLM agent intimidating? - How was he armed?
5. Did the BLM agent say anything about you fighting the citation?
6. Did the BLM agent contact you at your home after he had cited you? What did he say to you? Was that the truth? Did he contact you more than once? What did he say the second time? Was that the truth?

the BOCC that she asked her questions out of "sheer curiosity;" her questions were not pre-planned nor did she know anything about Commissioner Gerber's list until the Complaint had been filed.

### ISSUES

Whether agenda item VII (C) was clear and complete within the meaning of NRS 241.020(2)(d)(1) based on the discussion among the Commissioners and the public.

### DISCUSSIONS

The Open Meeting Law is broadly interpreted by the Nevada Supreme Court so that citizens are not deprived of the opportunity to witness their government in action. The Supreme Court in *Dewey v. The Redevelopment Agency of the City of Reno*, 119, Nev. 87,94, 64 P.3d 1070,1075 (2003), citing an Attorney General's opinion (Op. Nev. Att'y Gen. No. 85-19 (Dec. 17, 1985), said that "a statute promulgated for the public benefit such as a public meeting law, should be liberally construed and broadly interpreted to promote openness in government."

A public body's failure to adhere to agenda requirements will result in an Open Meeting Law violation. *Sandoval v. Board of Regents*, 119 Nev. 148, 155-156, 67 P.3d 902, 906 (2003). If a matter is acted upon which was not clearly and completely described on the agenda, the action is void under NRS 241.036. Attorney General's OML Manual §7.01 (11th Ed. 2012)). BOCC did not take any action during consideration of item VII (C), nor did it take informal action or make any recommendations. Therefore there is no action that we would seek to void.

The *Sandoval* Court analyzed an Attorney General's Office OML case involving the Nevada Board of Regents Campus Environment Committee's discussion of this item: "Review UCCSN, state and federal statutes, regulations, case law, and policies that govern the release of materials, documents, and reports to the public." Because the Committee discussed a Nevada Division of Investigation report on a dormitory raid on the UNLV campus in detail, discussed the impact of drug usage on the campus, and even recommended disarming the campus police. The Attorney General brought suit alleging the discussion of this item exceeded the scope of the agenda item. The *Sandoval* Court acknowledged that in the abstract the Committee could have discussed the NDI report, but it said the discussion was too broad to place the public on notice that the Committee would discuss details of the report or that recommendations would be made and that informal action would be taken.

The *Sandoval* Court also stated that OML's intent is to give the public "clear notice" of the topics to be discussed at public meetings such as matters of special or significant interest to the public. *Sandoval*, 119 Nev. at 154-155, 67 P.3d at 906.

The issue to be decided in this Complaint is only whether the discussion was too broad, so that that discussion exceeded the scope of the item. A generalized discussion of BLM law enforcement activities would have fit within the agenda topic as it appeared on the agenda, but the investigation into the merits of the citation and pre-planned questions from the Commissioners was not a topic for consideration. Therefore, the item was not "clear and complete."

Agenda item VII (C) indicated the BOCC would discuss and consider issues regarding law enforcement activities by the BLM in Elko County. We interpret the words "concern" and "issues" to indicate general discussion without specific focus. However, the BOCC consideration of item VII(C) became an investigation into specific activity – the issuance of a BLM LEO misdemeanor citation to Brad Nelson and his companions while wood cutting in Elko County in an area approximately 45–50 miles southeast of Elko. The agenda did not specify that Brad Nelson would speak about his alleged abusive treatment from a BLM LEO, or that the BOCC would invite the BLM, including the LEO, to respond to Mr. Nelson's allegation of abusive treatment with rebuttal. All of this signifies that the BOCC engaged in an internal review of the merits of Mr. Nelson's claim despite Commissioner Dahl's insistence that the agenda item was not an internal review.

BOCC's consideration of the item exceeded mere discussion of generalized "concerns regarding BLM enforcement of Nevada State law." The public was not put on notice that the BOCC would be reviewing the merits of a specific incident or that the BOCC would question a citizen about a misdemeanor citation from the BLM. These facts, coupled with the pre-planned questions handed to each commissioner before the meeting, indicate that the Commission engaged in a public review of one incident that resulted in a misdemeanor citation.

The inconvenience of a misdemeanor citation that requires appearance in the Reno Federal Court for the purpose of pleading and return trip for trial was indicated in the item, but the Council's investigation ranged much further afield than this notice provided in the agenda item because it concerned a specific case.

The objective of the "clear and complete" statutory requirement is simply to give the public "clear notice" of the topic(s) to be considered by the public body. The item should have indicated that the BOCC would review a misdemeanor citation for illegal wood cutting in a BLM wilderness area, among other issues.

Law enforcement is a matter of significance to the public, whether it is state, local or federal law enforcement. The item's disclosure of the inconvenience experienced by a person cited into federal court to contest charges brought by the BLM LEO did not put the public on notice that the BOCC would review a specific incident and alleged incompetence and abuse by a specific officer.

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**CONCLUSION**

The agenda item did not indicate that the BOCC would review the merits of Brad Nelson's claim of abusive treatment and incompetency from Officer Sones. These are topics of special significance to the public in Elko County and they require more specificity in the agenda. The agenda item was inadequate.

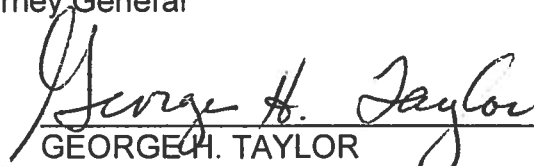
We find a violation of the OML's requirement that all agenda items provide "clear and complete" notice of topics to be discussed. We warn the BOCC to review agenda items to ensure that the public has actual notice of the topics to be considered, and when the topic is of special significance to the public, greater specificity is required.

Because no action was taken, no further action from this office is required in this matter.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:

  
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