OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of:                         OAG FILE NO.: 13897-247
CHURCHILL COUNTY BOARD OF
COUNTY COMMISSIONERS               FINDINGS OF FACT AND
CONCLUSIONS OF LAW

BACKGROUND

Carl Erquiaga and Patti Lingenfelter filed Complaints (Complaints) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Churchill County Board of County Commissioners (Board). The Complaint alleges that the Board violated the OML as follows:

ALLEGATION: During its September 20, 2017 Meeting, the Board took action on an item that was not properly noticed on the meeting agenda.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG’s investigation of the Complaint included a review of the following: the Complaints; the Response to the Complaints from the Churchill County District Attorney’s Office; and the Board’s agendas and video recordings from its meetings on September 20, 2017, and October 18, 2017.

After investigating the Complaints, the OAG determines that the Board violated the OML by taking action, during its September 20, 2017 meeting, without properly noticing the item on the meeting agenda. However, the OAG finds that the Board took appropriate corrective action on the item during its October 18, 2017 meeting.

FINDINGS OF FACT

1. The Board is a “public body” as defined in NRS 241.015(4) and is subject to
the OML.
2. On September 20, 2017, the Board held a public meeting.
3. The Board’s agenda for its September 20, 2017 meeting included the following item under New Business:

“A. Consideration and possible action re: Request from Alan Kalt to participate in the county’s Retirement Incentive Plan and the county’s payment of approximately $66,000 for PERS credit.”

4. During the September 20, 2017 meeting, the Board approved Mr. Kalt’s request to participate in the county’s Retirement Incentive Plan and it approved Churchill County’s payment of approximately $66,000 to Mr. Kalt for PERS credit.

5. Following the approval of Mr. Kalt’s request to participate in Churchill County’s Retirement Incentive Plan, the Board considered a request by Mr. Kalt and County staff to waive limitations, as established through Churchill County Ordinance (CCO) 3.40.010, on Mr. Kalt’s accrual of vacation leave and ability to carryover vacation leave in excess of 240 hours into the following calendar year. Following deliberation, the Board approved Mr. Kalt’s request to waive the CCO limitation on accrual of vacation leave and to allow him to carry over vacation leave in excess of 240 hours into the 2018 calendar year (Waiver Request).

6. The Board did not include Mr. Kalt’s Waiver Request on the agenda of its September 20, 2017 meeting.

7. On October 18, 2017, the Board held a public meeting.

8. The Board’s agenda for its October 18, 2017 meeting included the following item under Old Business:

“A. Consideration and possible corrective action: It is alleged that a violation of the Open Meeting Law occurred at the Churchill County Commission meeting held on September 20, 2017. At the meeting on the 20th, the board took two actions related to the early retirement application of employee Alan Kalt (New Business – A). One of the actions related to that Agenda item approved a waiver of provisions in Title 3 of the Churchill County Code. It is alleged that this action was not clearly stated on the Agenda. In this Agenda item, Alan Kalt is asking the board to waive a
provision in Title 3 which limits the number of leave hours an employee may carry into the following year so that he may carry over in excess of 240 hours with the stipulation that the leave be used within the following calendar year."

9. During the Board’s October 18, 2017 meeting, the Board invited public comment on Agenda Item A of Old Business, deliberated on the matter, and voted to deny Mr. Kalt’s Waiver Request.

LEGAL STANDARDS AND CONCLUSIONS OF LAW

1. The Board violated the OML during its September 20, 2017 Meeting by taking action on Mr. Kalt’s Waiver Request without including the Item on the Agenda or denoting that the Board may take Action on the Waiver Request.

Nevada Revised Statute (NRS) 241.020 governs the notice of public meetings and it mandates that public bodies must, amongst other requirements, provide written notice of meetings that includes an agenda with “a list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term ‘for possible action’ next to the appropriate item...” NRS 241.020(2)(d)(1).

An agenda for a meeting of a public body must also include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” Sandoval v. Bd. of Regents of Univ., 119 Nev. 148, 154 (2003). As such, a public body may not engage in discussion during a public meeting that exceeds the scope of a clearly and completely stated agenda topic. Id.

Here, the Board failed to include an item on the agenda of its September 20, 2017 meeting describing Mr. Kalt’s Waiver Request or designating the matter as a possible action item. Although the supporting materials for the meeting, as contained in the Board’s agenda packet, included a memorandum from the Churchill County Human Resources Director requesting the Board’s approval of Mr. Kalt’s Waiver Request, the agenda for the
September 20, 2017 meeting failed to mention the request or indicate that the Board may take possible action on the request. As such, the Board violated the OML's notice requirements for its meeting by failing to include Mr. Kalt's Waiver Request on the agenda and for failing to designate the Waiver Request as a possible action item.

Moreover, the Board failed to comply with the OML's clear and complete statement requirement relating to Mr. Kalt's Waiver Request. In its Response to Complaint ("Response"), the Board claims that it complied with the clear and complete statement requirement because Mr. Kalt's Waiver Request "was a major and necessary component of the employee's application to participate in the early retirement program" and Mr. Kalt's application was properly noticed on the agenda of the September 20, 2017 meeting. The Response further states that Mr. Kalt's application to participate in Churchill County's Retirement Incentive Plan included a timeline for the effective date of his retirement and that the retirement could only take place with approval of the Waiver Request. Finally, the Response states that a review of the supporting materials "clearly showed that there were two motions for consideration as part of the principle topic" and therefore provided proper notice to the public regarding Mr. Kalt's Waiver Request. The Board's reliance on its supporting materials to reinforce its claim that Mr. Kalt's Waiver Request was properly noticed to the public is misplaced. Although supporting materials may provide additional information on an agenda item, the OML requires agendas of public meetings to clearly and completely state all of the topics to be discussed by the public body. Here, the Board's agenda is void of any reference to Mr. Kalt's Waiver Request. The public was not apprised of the Board's intent to engage in a discussion and possibly take action regarding Mr. Kalt's Waiver Request that would cause it to seek additional information through the supporting...
2. During its October 18, 2017 Meeting, the Board Properly took Action to Correct the OML Violation from its September 20, 2017 Meeting.

NRS 241.0365 governs actions taken by a public body to correct violations of the OML and it provides that the Attorney General may decide not to commence prosecution of an alleged OML violation if the public body takes action to correct the alleged violation and the Attorney General determines that foregoing prosecution is in the best interest of the public. NRS 241.0365(1). Prior to taking action to correct an alleged OML violation, a public body must include an item on the agenda of the meeting at which the body intends to take corrective action indicating the intended action. NRS 241.0365(2). To correct an alleged OML violation, a public body must take action within 30 days of the alleged violation. NRS 241.0365(1).

Here, the Board properly took corrective action, within 30 days, to correct the OML violation from its September 20, 2017 Meeting. The Board’s October 18, 2017 meeting agenda included a clear and complete statement of Mr. Kalt’s waiver request for possible corrective action: “In this Agenda item, Alan Kalt is asking the board to waive a provision in Title 3 which limits the number of leave hours an employee may carry into the following year so that he may carry over in excess of 240 hours with the stipulation that the leave be used within the following calendar year.” During the October 18, 2017 meeting, the Board

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1 To support its claim that the Board’s supporting materials for its September 20, 2017 meeting included Mr. Kalt’s Waiver Request and thus satisfied the OML’s clear and complete standard, the Board cites to Schmidt v. Washoe Cty, 123 Nev. 128 (2007), abrogated by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224 (2008) and the OAG’s OML Opinion dated March 19, 1998 involving the Humboldt County Commission. The Board’s reliance on the two cases is misplaced given that both Washoe County and Humboldt County included a clear statement of the topics to be discussed during their meetings, bill draft requests and claims approvals respectively, and then included more specific information on the topics in the supporting materials for the meetings. The present matter is clearly distinguishable from both cases in that the Board failed to include any references to a possible waiver of the CCO’s vacation leave accrual requirements that would encourage the public to review the supporting materials for more specific information.
deliberated on Mr. Kalt's waiver request and voted to deny the request. The Board properly noticed its intent to take corrective action regarding the OML violation and subsequently took action to correct the violation.

CONCLUSION

Although the Board violated the OML's notice requirements regarding its agenda, it took proper action to correct the violation. Foregoing prosecution in this matter is in the best interest of the public and so the OAG will close its file on this matter.


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