

1 OFFICE OF THE ATTORNEY GENERAL  
2 STATE OF NEVADA

3  
4 In the matter of:

5 CHURCHILL COUNTY BOARD OF  
6 COUNTY COMMISSIONERS

OAG FILE NO.: 13897-247

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

7  
8 **BACKGROUND**

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

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

15 The OAG has statutory enforcement powers under the OML and the authority to  
16 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS  
17 241.040. The OAG's investigation of the Complaint included a review of the following: the  
18 Complaints; the Response to the Complaints from the Churchill County District Attorney's  
19 Office; and the Board's agendas and video recordings from its meetings on September 20,  
20 2017, and October 18, 2017.

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

25 **FINDINGS OF FACT**

26 1. The Board is a "public body" as defined in NRS 241.015(4) and is subject to  
27 the OML.

28 2. On September 20, 2017, the Board held a public meeting.

1           3.     The Board's agenda for its September 20, 2017 meeting included the following  
2 item under New Business:

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

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

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

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

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

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

23                   “A.     Consideration and possible corrective action: It is alleged  
24                   that a violation of the Open Meeting Law occurred at the  
25                   Churchill County Commission meeting held on September  
26                   20, 2017. At the meeting on the 20<sup>th</sup>, the board took two  
27                   actions related to the early retirement application of  
28                   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

1 provision in Title 3 which limits the number of leave hours  
2 an employee may carry into the following year so that he  
3 may carry over in excess of 240 hours with the stipulation  
4 that the leave be used within the following calendar year.”

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

### 8 LEGAL STANDARDS AND CONCLUSIONS OF LAW

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

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

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

26 Here, the Board failed to include an item on the agenda of its September 20, 2017  
27 meeting describing Mr. Kalt’s Waiver Request or designating the matter as a possible  
28 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

1 September 20, 2017 meeting failed to mention the request or indicate that the Board may  
2 take possible action on the request. As such, the Board violated the OML's notice  
3 requirements for its meeting by failing to include Mr. Kalt's Waiver Request on the agenda  
4 and for failing to designate the Waiver Request as a possible action item.

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

24 ...  
25 ...  
26 ...  
27 ...  
28 ...

1 materials.<sup>1</sup> Therefore, the Board failed to comply with the OML's clear and complete  
2 statement requirement for agenda items.

3 **2. During its October 18, 2017 Meeting, the Board Properly took Action to**  
4 **Correct the OML Violation from its September 20, 2017 Meeting.**

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

14 Here, the Board properly took corrective action, within 30 days, to correct the OML  
15 violation from its September 20, 2017 Meeting. The Board's October 18, 2017 meeting  
16 agenda included a clear and complete statement of Mr. Kalt's waiver request for possible  
17 corrective action: "In this Agenda item, Alan Kalt is asking the board to waive a provision in  
18 Title 3 which limits the number of leave hours an employee may carry into the following year  
19 so that he may carry over in excess of 240 hours with the stipulation that the leave be used  
20 within the following calendar year." During the October 18, 2017 meeting, the Board  
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22 <sup>1</sup> To support its claim that the Board's supporting materials for its September 20, 2017  
23 meeting included Mr. Kalt's Waiver Request and thus satisfied the OML's clear and complete  
24 standard, the Board cites to *Schmidt v. Washoe Cty*, 123 Nev. 128 (2007), *abrogated by Buzz Stew,*  
25 *LLC v. City of N. Las Vegas*, 124 Nev. 224 (2008) and the OAG's OML Opinion dated March 19, 1998  
26 involving the Humboldt County Commission. The Board's reliance on the two cases is misplaced given  
27 that both Washoe County and Humboldt County included a clear statement of the topics to be discussed  
28 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.

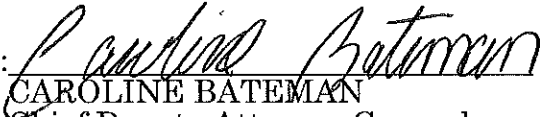
1 deliberated on Mr. Kalt's waiver request and voted to deny the request. The Board properly  
2 noticed its intent to take corrective action regarding the OML violation and subsequently  
3 took action to correct the violation.

4 **CONCLUSION**

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

8 DATED: February 2, 2018.

9  
10 ADAM PAUL LAXALT  
Attorney General

11  
12 By:   
13 CAROLINE BATEMAN  
Chief Deputy Attorney General  
Boards and Open Government Division