

**OPEN MEETING LAW OPINIONS OF THE  
OFFICE OF THE ATTORNEY GENERAL**

OMLO 98-01 Open Meeting Law: Requirement to provide copies of agenda supporting material pursuant to NRS 241.020(4)—Requests to provide agenda supporting material under NRS 241.020(4) may be treated separately from standing requests to mail notices of meetings under NRS 241.020(3)(b). Agenda supporting material need not be mailed, but must be made available over the counter when the material is ready and has been distributed to members of the public body, and at the meeting.

*(This opinion was rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150).*

Carson City, January 21, 1998

Karen Bramwell, Las Vegas-Clark County Library District, 833 Las Vegas Boulevard North, Las Vegas, Nevada 89101

Dear Ms. Bramwell:

As you know, a complaint was filed with this office alleging that the Library Board (Board) is not providing agenda supporting materials to citizens in the manner required by the Open Meeting Law.

**FACTS AND SUMMARY CONCLUSION**

The complainant asked to be placed on your mailing list for notices and agendas of meetings, which you agreed to do and with the correct disclosure required by NRS 241.020(3)(b). The complainant also asked you to send along with the notice and agenda any supporting material which must be provided under NRS 241.020(4). You responded in a letter to the complainant "[W]e will make available to you, at the day of the Board Meeting, the supporting materials provided to the Board Members. If this material is not picked up the day of the Board Meeting, you will need to request again your desire to receive copies of the supporting materials."

In response to a letter from this office, you also indicated that as a matter of policy, agenda supporting materials are made available to the public "at the time of each meeting," but that you "do not mail out agenda support materials to anyone."

For the reasons explained below, we conclude that you are not required to mail agenda supporting material to citizens, but you must provide the material upon request, and you may not wait until the day of the meeting if the material is available beforehand. If it is your practice to hold agenda supporting material and make it available to the public only on the date of the meeting or at the meeting, that practice would violate the Open Meeting Law.

#### ANALYSIS

NRS 241.020(3)(b) (requiring notice and agenda to be mailed out three days before a meeting to those who request notices of meetings) was added to the Open Meeting Law in 1977, and NRS 241.020(4) (requiring that agendas and supporting material be provided upon request) was added to the Open Meeting Law in 1995. According to the rules of statutory construction, they are different subsections enacted at different times to address different subjects. Had the Legislature wanted to require that the agenda supporting material must be mailed out with the notice and agenda, it would have amended NRS 241.020(3)(b), rather than add a new subsection to the statute, or at least would have cross-referenced the two when it enacted NRS 241.020(4) in 1995. Thus we infer that the Legislature intended the two matters to be treated independently, and a request for notice and agenda may be treated differently than a request for agenda supporting material if your Board chooses to do so.

Further, the two statutory subsections are significantly different in the requirements for distribution of the material. NRS 241.020(3) provides specifically that notices and agendas must be mailed and posted. But NRS 241.020(4) only requires that agenda supporting material be "provided" upon request. We cannot find any judicial authority in Nevada which says "provide" means "mail." The dictionary definition of "provide" means to furnish, make available, prepare, or supply, which does not imply transporting to another location. Thus we are constrained to conclude that the open meeting statute does not require that supporting material be mailed to the person who requests it under NRS 241.020(4), only that it be made available over the counter at the office of the public body or at the meeting.

But, NRS 241.020(4) provides:

4. *Upon any request*, a public body shall provide, at no charge, at least one copy of:
  - (a) An agenda for a public meeting;
  - (b) A proposed ordinance or regulation which will be discussed at the public meeting; and

- (c) Any other supporting material provided to the members of the body for an item on the agenda, except materials:
- (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement;
  - (2) Pertaining to the closed portion of such a meeting of the public body; or
  - (3) Declared confidential by law. [Emphasis supplied.]

The plain meaning and implication of the statute (especially considering the italicized words) is that if a person walks into the office of a public body and requests to be given agenda supporting material which is available (and is not protected by the confidentiality provisions), it should be provided to the citizen at that time. Applying a rule of reason, we can think of some individual circumstances when a short delay may be justified (*e.g.*, photocopier broken, or other circumstances beyond the control of the public body, or there is a question as to confidentiality that needs to be resolved), but to deny citizens the material as a matter of policy until the day of the meeting would be contrary to the requirement that materials be provided "upon any request."

We hereby warn that agenda supporting material must be made available *upon request* as required by the statute. As a minimum, you must make agenda supporting material immediately available for pick up at the counter at the time it is sent out to Board members, and copies should also be made available at the meeting. Failure to do so in the future could result in action by this office.

Hopefully, this guidance will satisfy the questions posed by the complaint and your response. We will be closing our file on this matter with thanks for bringing it to our attention.

FRANKIE SUE DEL PAPA  
Attorney General

By: GREGORY A. SALTER  
Deputy Attorney General

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OMLO 98-02 Open Meeting Law: Drafts of proposed orders of Public Utilities Commission are agenda supporting material under NRS 241.020(4), and copies must be furnished upon request at the time that they are made available to commission members. Public bodies performing a quasi-judicial function are not *per se* exempt from the Open Meeting Law.

*(This opinion was rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150).*

Carson City, March 16, 1998

Michael Melner, Esq., General Counsel, Public Utilities Commission, Capitol Complex, 727 Fairview Drive, Carson City, Nevada 89710

Dear Mr. Melner:

As you know, we have received a complaint from the Las Vegas Review Journal that the Public Utilities Commission (Commission) does not provide copies of draft orders upon request to members of the public as required under NRS 241.020(4).

For the reasons and under the conditions stated below, this office concludes that the draft orders should be produced upon request, and urges the Commission to reconsider its practice.

#### FACTUAL BACKGROUND

With your and the Commission's complete cooperation, we looked into the complaint, and our research and investigation reveals the following.

The Commission arose out of the reorganization of the former Public Service Commission (PSC) under A.B. 366 of the 1997 Legislature. The Commission supervises and regulates the operation of various public utilities, and as such it is a public body under NRS 241.015(3), and therefore must comply with the Open Meeting Law, NRS chapter 241. The Commission is also specifically governed by NRS 703.110(3) (except as provided by statute, all hearings and meetings conducted by the Commission must be open to the public), NRS 703.190 (except as provided by statute, all biennial reports, records, proceedings, papers and files of the Commission must be open at all reasonable times to the public), and NRS 703.330 (regarding keeping and releasing records of hearings before the Commission). We find no significant

statutory exceptions to the open meeting requirement in NRS 703.110(3), but there are some significant exceptions to the open records requirement protecting confidential trade secrets, confidential commercial information, and other information provided to the Commission under an agreement of confidentiality in NRS 703.190, and 703.196. I will refer to these exceptions as the “confidentiality statutes.”

As part of its regulatory function, the Commission makes decisions on applications by or complaints against regulated utilities (cases). The cases often involve complex and important topics such as establishing and adjusting tariffs and rates, fixing service areas, issuing certificates of public convenience, resolving disputes between competing utilities, and the like. The resolution of some of the cases by the Commission may have a tremendous impact on the financial condition or operations of the affected utilities, and Commission orders may trigger speculation and trading in the stocks and bonds of the affected utilities.

When a case comes in, it is given a docket number and assigned to a commissioner who acts as a “presiding officer” over the case. Acting in many ways the same as a judge, the presiding officer will control the proceedings of the case, hold public hearings, study the materials submitted and arguments adduced at the hearings, and make proposed findings of fact, conclusions of law and orders for the whole Commission to approve. Commissioners do not attend the hearings presided over by other commissioners, but the transcripts, records and documents are made available to all commissioners who want to see them. The transcripts, records of the hearings, and documents produced (except confidential information protected by the confidentiality statutes) are also made available to the public, and copies are provided upon request, although there may be some delay due to the logistics of making copies of the voluminous material.

In some cases, the proposed findings of fact, conclusions of law, and orders are incredibly complex and voluminous, and during the formulation process, the presiding officer may circulate preliminary drafts to staff and commissioners. However, due to the constraints of the Open Meeting Law, commissioners do not discuss the preliminary drafts amongst themselves.<sup>1</sup>

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<sup>1</sup> There are three commissioners. Two commissioners constitute a quorum, and therefore if any two commissioners meet to deliberate over or take action on a preliminary draft, they would have to do so in an open meeting. NRS 241.020. Due to the very sensitive nature of the formulation process and the possibility of uncontrolled rumors and stock and bond speculation, presiding officers feel it would be harmful to publicly reveal their thoughts before making up their minds what to recommend.

At some point, the case is put on an agenda for consideration by the full commission, and the draft order is finalized by the presiding officer and distributed to all the commissioners. As stated before, some drafts are incredibly complex and require meticulous attention and care and are often changed up to the last minute. At the full Commission meeting, the presiding officer will read the draft to the other commissioners, who read along with their copies. A motion is made and for the first time the commissioners get to deliberate on the draft and decide the issue.

The Commission does not make drafts available to the public (even as they are being read at the meeting) but makes the final orders available.<sup>2</sup>

The undersigned attended a meeting of the Commission on March 5, 1998, and observed that it is impossible for a lay person to comprehend and follow the deliberations of the Commission without having a copy of the draft order in hand, especially when commissioners refer to material by paragraph number in their discussions. It is a dumbfounding experience to hear a stream of thousands of esoteric words rapidly read and vanish and then try to remember them and comprehend what is going on as commissioners discuss matters by paragraph number. The practice of not providing a copy of drafts while they were being read by the presiding officer frustrated for this observer any meaningful participation in the open meeting process.

### ANALYSIS

The complainant contends that the draft orders are “supporting material provided to the members of the body for an item on the agenda” and should be provided upon request under NRS 241.020(4).

NRS 241.020(4) states:

Upon any request, a public body shall provide, at no charge, at least one copy of:

- (a) An agenda for a public meeting;
- (b) A proposed ordinance or regulation which will be discussed at the public meeting; and
- (c) Any other supporting material provided to the members of the body for an item on the agenda, except materials:
  - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement;

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<sup>2</sup> This office is still waiting for a copy of a final order requested on March 5, 1998.

- (2) Pertaining to the closed portion of such a meeting of the public body; or
- (3) Declared confidential by law.

Clearly, the drafts which are provided to the commissioners after the agenda is set and which are read at the meeting fit within the definition in NRS 241.020(4)(c). We were told that the drafts do not contain information protected by the confidentiality statutes, so there does not seem to be a basis for nondisclosure under exceptions (c)(1) or (c)(3), and since the meeting is not closed, there is no basis for application of the exception in (c)(2).

In response to the complaint, you, as have previous counsels, emphasize that Commission proceedings are quasi-judicial, that drafts of orders are subject to change and that their premature release could trigger rumors, harmful speculation and insider trading of the securities of public utilities. In a letter to the complainant, you reasoned:

[P]ublic policy would appear to lend itself to the protection of such draft orders in that the commission regulates large, publicly-traded corporations whose rates and tariffs are affected by the final orders of the Commission. Just as a Judge's briefing memo or draft order, if released prematurely, could affect the public trading or insider advance trading on shares of a publicly held corporation, so can such a memo or draft, if prematurely released, inappropriately affect the trading of a publicly-held corporation. A draft order is just that, a draft. It is not a final order until the Commission acts and its release could confuse and therefore have a detrimental effect on the marketplace. The character of the Commission's activity as a quasi-judicial body needs to be recognized.

You further point out that NRS 241.030 exempts "judicial proceedings" from the Open Meeting Law, and contend that while Nevada law has not defined what a quasi-judicial body is, other states exempt quasi judicial proceedings, citing to an Arizona statute and *Common Cause v. Utah Pub. Serv. Comm'n*, 598 P.2d 1312 (Utah 1979), and a law review article *Common Cause v. Public Services Commission – the Applicability of Open Meeting Law to Quasi Judicial Bodies*, UTAH LAW REVIEW 787, 829 (1980).<sup>3</sup>

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<sup>3</sup> The decision in the *Common Cause* case held that deliberations of the Utah PSC could be held in private, and the law review article severely criticizes it as "result-oriented jurisprudence" where the court "ignores the concept of stare decisis in order to accomplish the unwarranted goal

We agree that several other states exempt deliberations during quasi-judicial proceedings from their open meeting laws. A cursory search by this office shows at least 15 states do so either by statute or judicial declaration. We understand that quasi-judicial bodies hear facts and legal arguments and resolve controversies involving the personal and property rights of parties in a way similar to what judges do, and the rationale for allowing the deciding officials to deliberate in private (after a public hearing) is to provide an atmosphere that assures freedom of expression to each deciding official and encourages a free discussion and exchange of views which is so essential to frank and impartial deliberation. See the cases and discussion in § 4.04 of NEVADA OPEN MEETING LAW MANUAL (7<sup>th</sup> ed. 1998), published by this office, and the *Common Cause* case cited above. Cf. *Canney v. Board of Public Instruction*, 278 So. 2d 260 (Fla. 1973).

But Nevada has not adopted an exemption from its Open Meeting Law for quasi-judicial bodies or their deliberative proceedings. You point out that NRS 241.030(3)(a) exempts “judicial proceedings” from the Open Meeting Law, but there is no Nevada authority declaring that *judicial* proceedings includes quasi-judicial proceedings. The only Nevada Supreme Court decision which construed NRS 241.030(3)(a) is *Goldberg v. Eighth Judicial Dist. Court*, 93 Nev. 614, 572 P.2d 521 (1977) which holds that under the separation of powers doctrine, the Open Meeting Law could not extend into rulemaking and administrative decisions made by Nevada courts.

As we explained in § 4.04 of our NEVADA OPEN MEETING LAW MANUAL, *supra*, while Nevada law may not be settled on the point, this office believes that quasi judicial bodies are not *per se* exempt from the Open Meeting Law and must fully comply absent a specific statute to the contrary. Looking to the specific statutes governing the Commission identified above, we see no exemption, and looking to the history of A.B. 366, it would appear that the Legislature intended to have the Commission fully comply with the Open Meeting Law. As A.B. 366 was being considered by the Senate, a provision was added that would have amended NRS 703.110(3) to allow two or more commissioners to meet in private upon the completion of a contested case only to discuss issues concerning any proposed order or opinion of the Commission relating to that contested case. See A.B. 366, Third Reprint, April 15, 1997, Section 10(3). Testimony before the Senate Committee on Commerce and Labor indicates that the provision was intended to create a “partial exemption” from the Open Meeting Law, and it was discussed in that context. See Minutes of Senate Committee on Commerce and Labor, 4-5 (June 18, 1997). The  
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of judicial legislation,” and that it “took a statute with language demanding a broad application and imposed restrictions and limitations on the statute that the legislature did not intend.”

measure passed the Senate, and went back to the Assembly where Commissioner Timothy Hay testified before the Assembly Committee on Government Affairs that the reason behind the provision was that since the PSC operated as a “*quasi-judicial*” body in making its determinations, it was impossible to construct an order without having discussions between commissioners. *See* Minutes of Assembly Committee on Government Affairs, 10 (July 1, 1987). But the provision was subsequently removed from A.B. 366, which is a pretty clear indicator to this office that the Legislature did not intend for the Commission to enjoy any exemptions, quasi-judicial or otherwise, from the Open Meeting Law.<sup>4</sup> We are left with the explicit provisions of the Commission statutes as well as the Open Meeting Law, and given the legislative intent expressed in NRS 241.010<sup>5</sup> and the standards of interpretation of the Open Meeting Law discussed in § 12.03 of NEVADA OPEN MEETING LAW MANUAL, *supra*, we think that they both require the Commission to conduct its deliberations and actions in public. When a case has been set on an agenda for consideration by the Commission, and the presiding officer finalizes preliminary drafts into a final draft which he or she intends to discuss at the Commission meeting and actually distributes that draft to the other commissioners, the deliberative process begins, and becomes public. Accordingly, NRS 241.020(4) requires that the draft order be provided upon request.

Your concern about rumors and financial speculation may be well taken, but when establishing the public policy of open meetings for the Commission, the Legislature must be presumed to have considered the consequences that public deliberations may have in the financial markets. If this proves to be a problem, perhaps the matter should be taken up again with the Legislature. Clearly marking the draft opinions as drafts may be helpful, and making sure that copies are at least available at commission meetings may help eliminate the errors that could arise when the public tries to follow the Commission’s deliberations orally.

## CONCLUSION

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<sup>4</sup> In this regard, the Legislature seems consistent over the years. In 1977, a bill was introduced which, among other things, would have completely exempted the PSC (predecessor to this Commission) from the Open Meeting Law. The portion of the bill that exempted the PSC from the open meeting law did not pass. *See* the legislative history behind 1977 Nev. Stat. 1098 (A.B. 437).

<sup>5</sup> NRS 241.010 states “[I]n enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.”

We conclude that when a case has been set on an agenda which has been distributed under NRS 241.020(3), and a draft order which the presiding officer intends to have discussed at the meeting has been circulated to other commissioners, the draft becomes agenda supporting material under NRS 241.020(4), and must be provided in accordance therewith.

We urge the Commission to reconsider its practice accordingly. We note that the Commission has been acting in the past on long-standing and reasoned advice of counsel, and considering all the circumstances, if the Commission agrees with our conclusion, we are prepared to close our file on the matter.

FRANKIE SUE DEL PAPA  
Attorney General

By: GREGORY A. SALTER  
Deputy Attorney General

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OMLO 98-03 Open Meeting Law: Washoe County School District Board of Trustees (Board) violated Open Meeting Law, (1) when it considered and formed a consensus (even though no formal vote was taken) on matters which were not listed on the meeting agenda, in violation of NRS 241.020(2)(c)(1); (2) the minutes for the meeting did not reflect the discussion of the matters in violation of NRS 241.035(1)(c); and (3) when a subcommittee informally appointed by the Board president conducted meetings without complying with the Open Meeting Law. Even though the subcommittee was not formally appointed, its members shared equal voting power and formed a consensus to speak to the Board with one voice, the Board knew of its existence and treated it as a Board subcommittee, thereby making it a public body as defined in NRS 241.015(3).

*(This opinion was rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150).*

Carson City, July 7, 1998

Jeffrey S. Blanck, Esq., District Counsel, Washoe County School District 425  
East Ninth Street, Reno, Nevada, 89520

Dear Mr. Blanck:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

As you know, this office received a complaint from the Reno Gazette Journal alleging that the Board violated the Open Meeting Law at its March 31, 1998, meeting in that it took action on a matter that was not on the agenda.

With the complete cooperation of your office and school district trustees and personnel, we have completed our investigation of the complaint, and conclude:

1. That the Board violated the Open Meeting Law on March 31, 1998, by considering and taking action on matters which were not listed on the agenda for the meeting.
2. That the minutes of the meeting of March 31, 1998, do not reflect all matters discussed or decided at the meeting.

3. A Board subcommittee has never complied with the Open Meeting Law, which must be stopped immediately.

Considering all of the circumstances (as explained below), this office believes that while injunctive relief would be justified, a better approach would be to provide guidance and serve warning that future transgressions of the nature described in this letter will be met with legal action. This letter serves as a formal warning.

#### FACTS AND FINDINGS

Based on our review of selected documents, minutes, and tapes of various meetings of the Board, and interviews with Board President Marilyn Fendelander, Board Trustees Dan Coppa and Bob Bentley, and Mr. Fred Boyd, we find the following facts.

In January of this year, Dr. Mary Nebgen announced that she would be leaving as superintendent of the school district, and the Board began to set up a process for selecting a replacement.

President Fendelander appointed a subcommittee to study and make recommendations to the Board regarding the selection process. This subcommittee was referred to by President Fendelander as a "Board Subcommittee regarding the process for selection of Superintendent/Chief Executive Officer for the Washoe County School District."<sup>1</sup> President Fendelander stated in her interview with this office that she discussed the formation of the subcommittee at a Board meeting in late January. The minutes for the January 27 meeting do not reflect any discussion about or formal appointment of the subcommittee by the Board.<sup>2</sup> The subcommittee

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<sup>1</sup> See Proposal submitted to the Board by President Fendelander on February 5, 1998, for Board meeting on February 10, 1998.

<sup>2</sup> District regulation 9150 provides that:

[a]t the request of a majority of the members of the Board of Trustees, the President may appoint a temporary committee comprised of less than the full membership for special purposes. These committees shall be discharged on completion of their assignment. The President of the Board of Trustees shall, if he or she desires, be an ex officio member of such committees. Temporary committees may only serve to investigate or advise on a specific matter. They may not take any official action for the Board of Trustees.

We cannot find evidence that the subcommittee was appointed at the request of a majority of the Board.

included President Fendelander, Trustee Bob Bentley (who was later replaced by Trustee Dan Coppa), and Trustee Ann Loring.

Individuals on the subcommittee researched certain aspects of selection methodology, and the subcommittee met a few times to discuss and formulate a proposal which was written up and presented to the Board by President Fendelander on February 10, 1998. None of the subcommittee meetings regarding the proposal were conducted in accordance with the Open Meeting Law.

At the February 10 meeting, President Fendelander presented the subcommittee's proposal. The proposal included a three step process for the selection of a superintendent: (1) establish a job description at a Board workshop with a facilitator; (2) establish a taskforce to locate potential candidates and select the best prospects (including a specific recommendation of who should be represented on the task force); and (3) final selection by the Board. After discussion, subcommittee member Ann Loring moved, subcommittee member Dan Coppa seconded, and the Board approved a motion "that the Board of Trustees approve the recommendations of the Board Subcommittee regarding process for selection of Superintendent/Chief Executive Officer for the Washoe County School district" with some changes. One of the changes was that "the committee" (presumably the task force set up under item 2) use professional expertise in recruiting, designing the job description, determining interview questions, and conducting background checks on applicants.<sup>3</sup>

The task force contemplated in step 2 of the proposal became known as the "Blue Ribbon Screening Committee." To establish that Committee, invitation letters were sent to the organizations approved by the Board, each of whom nominated a representative. Mr. Fred Boyd was selected as the chair. There is no dispute that the Blue Ribbon Screening Committee (Committee) is covered by the Open Meeting Law,<sup>4</sup> and the agendas for that committee's meetings appear to comply with the law.<sup>5</sup>

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<sup>3</sup> See Board Minutes, February 10, 1998, 12.

<sup>4</sup> Dr. Nebgen obtained an opinion from the law firm of Walther, Key, Maupin, Oats, Cox, Klaich and LeGoy on January 28, 1998, regarding how the open meeting and public records laws would apply to the selection process. Among other things, the firm opined that a screening committee involved in the selection process would be a "public body" under the Open Meeting Law, and would have to comply with the requirements of the law. The opinion was distributed to the Board as a part of the subcommittee's proposal on February 10.

<sup>5</sup> Other than to look at a couple of agendas in connection with other questions, we did not look into any activities of the Committee.

President Fendelander next set out to locate a firm to fulfill the Board's mandate that the Blue Ribbon Selection Committee "use professional expertise in recruiting, designing the job description, determining interview questions, and conducting background checks." She interpreted "professional expertise" to mean a search firm, and also interpreted the Board's motion as giving her final authority to locate and negotiate a contract with a professional search firm, although she was to consult with the chair of the Committee. Mr. Boyd also understood that his job was to research the candidates and make a recommendation to President Fendelander.<sup>6</sup>

To locate a search firm, President Fendelander sent invitation letters out to search firms used in the past, and Mr. Boyd obtained the names of other firms and sent out invitations to them. Mr. Boyd screened and did background checks on those who responded, and discussed his results with President Fendelander and the two of them agreed that the firm of Hazard, Young and Attea should be selected.<sup>7</sup> President Fendelander called Dr. Bill Attea, a principal in the firm, and invited him to attend the March 31, 1998, Board meeting. Dr. Attea agreed to attend the meeting.

The agenda items for the March 31 meeting were:

CALL TO ORDER - 5:00 p.m.  
ROLL CALL  
DISCUSSION ITEM  
A. BOARD DISCUSSION OF QUALIFICATIONS/  
QUALITIES FOR SUPERINTENDENT OF WASHOE  
COUNTY SCHOOL DISTRICT

Presenter: Marilyn Fendelander, President, Board of  
Trustees

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<sup>6</sup> The proposal, on 3, provided that the Board president "in collaboration with the chairman" [of the task force] would appoint a non-voting "facilitator" to participate in the task force. A question arose whether the President and chair would be considered as a "committee" of the Board. We interpret the language of the proposal to vest the final decision with the Board President, as opposed to creating a collegial body. Thus we do not think that a committee was intended by the Board. *See* NEVADA OPEN MEETING LAW MANUAL §§ 3.01-3.02 (7<sup>th</sup> ed. 1998).

<sup>7</sup> Mr. Boyd prepared a chart indicating the criteria used in the selection process and his impressions as to how each applicant rated. He indicated in his interview that he discussed the chart with President Fendelander, and President Fendelander indicated in her interview that the chart was distributed to Board members.

B. DISCUSSION OF POSSIBLE APPOINTMENT OF AN INTERIM SUPERINTENDENT.

PUBLIC COMMENT

*Comments from the public are invited at this time on topics not specifically addressed elsewhere in the agenda. A yellow "Citizens Request to Speak" card must be filled out and submitted to the Board President before speaking during the Public Comment section. Once the Board President has called for public comment cards, no additional cards will be accepted for that point on the agenda.*

ADJOURNMENT.

At the meeting,<sup>8</sup> President Fendelander turned the meeting over to Mr. Boyd who discussed the process used to find a search firm (including meetings with President Fendelander), and indicated that of the 11 firms that responded to invitations, he was recommending that the Board proceed with the Hazard, Young and Attea Firm. He said that he had invited Dr. Attea to attend the Board meeting that night because he felt it was important for President Fendelander and the Board to meet, talk to, and ask questions regarding his recommendation before an agreement is established, and further to facilitate the workshop discussions that the Board was doing that night regarding qualifications and qualities of a superintendent. There followed lengthy discussion, facilitated by Dr. Attea, including public comments, about the desired qualities and qualifications of a superintendent. Dr. Attea's comments throughout the discussion revealed his considerable expertise in selecting school superintendents, and the Board members' comments and questions revealed that they were impressed with and liked him.

Then a member of the Board asked President Fendelander if there was anything on the agenda to vote for a search firm. President Fendelander said it was a workshop discussion so they could not vote on anything. But then she asked if the Board wanted Dr. Attea to go through a schedule or a plan, and the Board agreed that it would be helpful. So Dr. Attea handed out some written material he had brought with him and began talking about the process that could be used for the selection of a superintendent. He discussed the duties and responsibilities of the Board and how the Board had delegated tasks to the Committee, how planning should be accomplished, the development of a time

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<sup>8</sup> The following account of the meeting is based on a review of the tapes of the meeting. It is intended only as a paraphrasing and summary to show what the subjects discussed and general nature of the flow of the discussion. Except for those words in quotations, it is not verbatim, and in no case should it be viewed as a complete record of all remarks made.

line, how his firm would meet with teachers, administrators, Board members, and committees to discuss what kind of superintendent is desired, what reports his firm would prepare, how search publicity should be prepared (he handed out some samples) and what the costs would be. Dr. Attea recommended that advertising should begin immediately, and then said that his firm was going to be at the National School Board Association (NSBA) conference that weekend in New Orleans where he would be listing the searches his firm is working on, and if the Board would give him the authorization to advertise, he would be happy to advertise the Washoe County position with "no strings attached." If he got any inquiries, he would refer them to any search firm the Board hires; but he would not advertise the position without authorization from the Board, and he had to know that night in order to get things set up.

There was no audible response to that invitation, and the conversation moved back to the general recruiting and selection process, and Dr. Attea indicated that his firm would prepare the advertising and clear it through the Committee or the Board as desired, and would recruit extensively, talking to at least 40 people out of which he would ask about five (more if desired) to become candidates based on the profiles given by the Board. He stressed the contacts his firm would use, and that his firm would handle all the paperwork, and tailor the process as desired by the Board. He then described how the field of applicants would be narrowed down and interviewed, including background checks, and when the names of the final round applicants would become public. He said his firm would assist in interview logistics, preparing interview questions, and advising the Board to keep in compliance with laws. His firm would also help draft the contract with the selected superintendent. He discussed possible ways to handle interviews and the relationship between the Committee and the Board. He recommended that the salary parameters for the job not be discussed in public (noting that it may not be permitted under state law), but that his firm should be told the top salary that the district would be willing to pay, and explained how his firm would handle salary negotiations.

A Board member asked what should be included in the compensation offered, and asked for comparable data. There followed discussion between Board members and Dr. Attea about the tax and retirement benefits that would make the job attractive. Dr. Attea then moved the discussion into the form of contract that could be used between the Board and his firm. He said they could enter into a letter of understanding, or a contract, and then suggested that he could leave a copy of his contract form with the Board to review, or perhaps they could sign something that night.

A Board member responded that this was only a discussion item on the agenda, and not an action item, but she thought it would be a positive move to

get the word out at the NSBA conference and if someone was interested, a name could be taken. Dr. Attea again emphasized that if given the authority to advertise and if he were not selected to be the search firm, he would turn any names collected over to the chosen search firm. The Board member said she thought that the Board president could authorize Dr. Attea to do the advertising, and then said she agreed with many of Dr. Attea's suggestions. President Fendelander commented that the selection process to be used would depend, in part, on how the term of interim superintendent is set up, and that further discussion is necessary about some of the issues raised by Dr. Attea (e.g. confidentiality). Another Board member agreed, and asked Dr. Attea about timing, and there was more discussion about the selection process.

Fred Boyd then asked for a little "direction" from the Board, indicating that he did not want the process to slow down. While he believed that the Board had authorized the Board president and the chair of the Committee to make the selection, he wanted to build a "*consensus*" from the Board about his recommendation of Dr. Attea's firm so that the process can move forward. One Board member said that there was an issue about the President's authority to sign contracts over a certain amount without Board approval, and that Dr. Attea's fees exceeded that amount. Another Board member expressed a similar concern. Mr. Boyd then said he wanted to know if there was a "comfort level" by the Board where he could proceed. One Board member said she was comfortable, and others began to speak.

Counsel for the Board then interrupted, stating that the motion before the Board was not identical with the discussion they were engaged in, and further pointed out that the previous motion (presumably the one on February 10) did not give definitive authority and suggested that it would be best to put the matter as an action item on the next agenda. One Board member asked if it could be put on the consent calendar, and a couple of Board members agreed that it would be reasonable to do that, and one member joked that if someone wanted to pull it off the consent calendar, we will "beat them up." President Fendelander then said that it would appear that at least the members present appear to be "*somewhat in consensus*," and another member quipped "are you trying to understate everything?" while another said "we can't vote on it" to which President Fendelander agreed and said that was why she was trying to "understate it." Another Board member said it would be a good idea to place the hiring of a search firm on the next agenda, and someone suggested that the wording on the agenda should give the president the authority to negotiate a contract. Dr. Attea wished the Board luck "whichever way you go," and then said if he were asked by the Board do anything at NSBA, he would need to know that night. A Board member said "yes" and then added "well, that is up to our president."

Dr. Attea then began talking about preparing a brief prospectus sheet to have available for interested persons to take with them, and one Board member said "OK" and another said "great" and President Fendelander suggested that information about Lake Tahoe should be included in the material. Another Board member said she would fax Dr. Attea some material, and counsel for the Board again interjected and admonished the Board that it should not be discussing what goes into the brochure. The meeting was adjourned shortly thereafter.

The discussion about the selection process, the selection of a search firm, and advertising at the NASB conference lasted 43 minutes. None of it was reported in the minutes for the meeting.

The consent calendar on the agenda for the April 7 meeting included "Search Firm for Superintendent Search." However, at the meeting, the item was removed from the consent calendar, and, according to the minutes, there was some discussion about whether the Board was following the procedures set out at the February 10 meeting. Then the Board approved a motion "that the Board of Trustees retain the search firm of Hazard, Young, Attea and Associates to facilitate discussions with the Board regarding various options and concerns with respect to the superintendent search and provide contract alternatives to meet the objectives of the Board."<sup>9</sup>

On April 23, 1998, the Board again discussed the selection of the Hazard, Young, Attea and Associates firm and passed a motion "that the Board of Trustees approve the search firm on Hazard, Young, Attea and Association Ltd., to conduct the superintendent search to include the Board workshop and retreat."

The subcommittee of President Fendelander, and Trustees Coppa and Loring later met with Mr. Boyd to provide guidance regarding the advertising brochure, and further met from time to time to discuss and formulate a recommendation to the Board regarding the selection process for an interim superintendent. None of the subcommittee's meetings have been conducted in accordance with the Open Meeting Law.

## ANALYSIS

### A. The March 31 meeting

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<sup>9</sup> Board Minutes, April 7, 1998, 5.

NRS 241.020(2)(c) requires that an agenda must consist of (1) a clear and complete statement of the topics scheduled to be considered during the meeting, and (2) a list describing the items on which action may be taken and clearly denoting that action may be taken on those items.

There is nothing on the agenda for the March 31 meeting indicating that the Board was going to *consider* the selection process, the hiring of a search firm, or whether Dr. Attea's firm should be given the authority to advertise at the NSBA conference, yet the Board spent a significant amount of time doing just that.

There is nothing on the agenda which indicates that the Board would take *action* regarding the selection of a search firm or authorizing Dr. Attea's firm to advertise at the NSBA conference. NRS 241.015(1) defines "action" to include a decision, commitment, or promise made by a majority of the members, and we think a majority of the Board made a decision that night on the selection of the Attea firm, and further authorized the firm to advertise at the NSBA conference, even though it stopped short of a formal vote.

Judging from the comments of Board members and the momentum of the meeting, President Fendelander probably was understating it (as she indicated) when she said Board members were "somewhat in consensus" about the selection of Dr. Attea's firm. Mr. Boyd asked for and got the "direction" and "comfort" he wanted. The formality of a vote would be handled at the next meeting without further discussion as the Board unanimously suggested that the matter be put on the consent calendar. Dr. Attea also got the authority to advertise at the NSBA conference and even got some guidance about what to put in the advertisement before counsel could stop the Board.

Accordingly, it is our conclusion that the Board violated the Open Meeting Law by considering and making decisions on matters that were not on the agenda. Under NRS 241.036, the decisions made that night would be void, and under NRS 241.037, this office would be authorized to pursue injunctive relief to correct violations and prevent them from occurring again. But the decision to hire Dr. Attea's firm was placed on the agenda for the April 7 meeting, taken off his consent calendar, and was discussed and made again in an open meeting. Further, the selection of the firm was again discussed and decided in an open meeting on April 23, 1998. Thus while a violation has occurred, its severity is somewhat mitigated by the fact that the Board dealt with the matter in two subsequent open meetings, and we think that is significant in fashioning the proper remedy in this case.

B. The Minutes of the March 31, 1998, meeting

NRS 241.035(1)(c) requires each public body to keep written minutes of each of its meetings, including “The substance of all matters proposed, *discussed or decided . . .*” [Emphasis supplied.]

The Board spent 43 minutes (about one-third of the meeting) discussing the selection process, and, in the opinion of this office, deciding on the selection of the Dr. Attea’s firm and giving it the authority to advertise at the NSBA conference in New Orleans, yet the minutes are completely silent about the substance of the discussion.

Under NRS 241.037(1), this office is authorized to seek injunctive relief to correct the violation by asking for a court order that the minutes be amended. President Fendeland has agreed to have the minutes amended, which makes injunctive relief unnecessary.

#### C. The Subcommittee

NRS 241.020(1) requires that all meetings<sup>10</sup> of “public bodies” must be open and public, and NRS 241.015(3) defines a “public body” to include:<sup>11</sup>

[Any] administrative, *advisory*, executive or legislative body of the state or a local government 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 subsidiary thereof* . . . . [Emphasis added.]

This office concludes that the "Board Subcommittee regarding the process for selection of Superintendent/Chief Executive Officer for the Washoe County School District" fits within that definition as an “advisory . . . body of a local government . . . which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including any . . . committee, subcommittee, or subsidiary thereof . . . .” NRS 241.015(3). It was appointed to and did in fact provide advice or recommendations to the Board on at least one occasion.

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<sup>10</sup> Except as otherwise provided by specific statute. There is no specific statute which is applicable in this case.

<sup>11</sup> The sole exception to the definition contained NRS 241.015(3) (the Legislature) obviously does not apply to the subcommittee.

We understand that the subcommittee included only three trustees, which is less than a quorum of the full Board. Regardless of the number of trustees, it became a public body in its own right when the subcommittee was formed to provide advice and recommendations to the Board. Notice that the Blue Ribbon Screening Committee has *no* trustees on it and it is still a public body because it was appointed to provide advice or recommendations to the Board. As implied by the definition in NRS 241.015(3), the number of trustees serving on a committee or subcommittee is not important. It is the intended function of the committee in determining whether or not a public body is being created.

We also understand that the subcommittee was informally appointed, and informally conducts its meetings and reaches its decisions through discussion rather than motions and votes. Nevertheless, the subcommittee is actually advising the Board, and the Board treats it like a subcommittee. It includes trustees who share equal voting power and form a consensus to speak to the Board with one voice as a subcommittee. It acts like and is treated like a subcommittee of the Board. It would be incongruous to argue that it is not really a “committee, subcommittee or subsidiary” of the Board under the Open Meeting Law because of the lack of formality in appointment. Otherwise, public bodies would be encouraged to break up into little unofficial groups and do business in the shadows, stepping into the sunshine to perfunctorily approve what has already been decided, which would be completely contrary to the intent expressed in NRS 241.010 that public bodies take their actions and conduct their deliberations in the open.<sup>12</sup>

The subcommittee did not hold open meetings, and the public did not get to see what went into the recommendations, what alternatives were considered, what was said about the alternatives, what alternatives were left out of the recommendations and why, and how the individual trustees felt.

The subcommittee met in violation of the Open Meeting Law, and the violation is serious enough to warrant injunctive relief under NRS 241.037. Based on our investigation of this case and what we learned in another case involving a "School Safety Subcommittee" of the Board, it appears to be a long standing practice of the Board to use committees and subcommittees, and there appears to be an honest misunderstanding about the reach of the Open Meeting

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<sup>12</sup> For further discussion of the principles used in determining what is a "public body," see sections of the NEVADA OPEN MEETING LAW MANUAL 3.01, 3.04, 12.02 and 12.03 (7<sup>th</sup> ed. 1998), published by this office, and a discussion of how those principles applied to another "subcommittee" of the Board in a letter dated today, regarding a complaint by the Washoe County Police Officers Association.

Law to them. We believe that the misunderstanding is best resolved by agreement and that injunctive relief is unnecessary.

Although cumbersome at times, compliance with the Open Meeting Law fosters credible democracy, and that is something which must never be compromised. This letter stands as a warning that the Washoe County School District Board of Trustees must consider or take action only on items that are clearly listed on its meeting agendas, must assure that its minutes reflect the substance of all matters discussed or decided, and must assure that all of its committees and subcommittees comply with the Open Meeting Law, or this office will take legal action.

FRANKIE SUE DEL PAPA  
Attorney General

By: GREGORY A. SALTER  
Deputy Attorney General

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OMLO 98-04 Open Meeting Law: While self-appointed and initially acting as individuals, two members of the Washoe County School District Board of Trustees (Board) became a public body as defined in NRS 241.015(3) when the Board began recognizing them as a subcommittee and encouraging them to meet with staff to formulate a school safety proposal to be presented to the Board, after which they met as a collegial body with staff to form a proposal which was formally presented to the Board in the name of the "School Safety Subcommittee." Formality in appointment is not the sole dispositive factor in determining what constitutes a public body under the Open Meeting Law, and informality in appointment should not be an escape from it. To hold otherwise would encourage circumvention of the Open Meeting Law through the use of unofficial committees.

*(This opinion was rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150).*

Carson City, July 7, 1998

Jeffrey S. Blanck, Esq., District Counsel, Washoe County School District  
425 East Ninth Street, Reno, Nevada, 89520

Dear Mr. Blanck:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

As you know, this office received a complaint from the Washoe County School Police Officer's Association alleging that a subcommittee consisting of Trustees Bob Bentley and Dan Coppa of the Board which was studying a school safety proposal held several meetings in violation of the Open Meeting Law.

With the complete cooperation of your office and Board trustees and personnel, we have completed our investigation and conclude that while Trustees Bentley and Coppa were well intended and commenced their work as individual factfinders, there was a point when they became a "public body" under the Open Meeting Law and should have opened their meetings to the public. In connection with another case, we released a letter today warning the Board to assure that all of its committees and subcommittees comply with the Open Meeting Law, and considering all the circumstances (as explained below), we believe that the warning provides ample remedy for this case.

## FACTS AND FINDINGS

Based on our review of relevant documents, meeting minutes, tapes, and interviews with Board President Marilyn Fendelander, Trustees Dan Coppa and Bob Bentley, and Assistant Superintendent Ken Grien, we find as follows.

In May 1997, KPMG Peat Marwick completed an audit of the school district and made a recommendation (among many others) that the district "civilianize" the school police program, reduce staff, convert campus police officers to "campus Safety Supervisors," and transfer sworn investigators to attendance program staff positions.<sup>1</sup>

At the time, Mr. Bentley was the Board President and wanted to look into the comments made in the management audit about the district police program.<sup>2</sup> He solicited the help of Trustee Coppa, who had a law enforcement background, and the two of them set out to gather facts and see what alternatives may be available for consideration by the Board. It has long been the practice to encourage trustees to become personally involved in important issues, and neither Mr. Bentley nor Mr. Coppa felt there was anything wrong with doing some fact-finding and discussing the issues with the district staff or perhaps the Board if necessary.

Although they later became known as the "School Safety Subcommittee" there appears to be no evidence of a formal appointment of the two as a committee or subcommittee of the Board, either by the Board or by the Board President under district regulations.<sup>3</sup>

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<sup>1</sup> Apparently, this idea is not new to the District. In 1995, a "Contractual Services Committee" (Committee) was established to look into the possibility of contracting with a local law enforcement agency to provide police services to the district. The Committee included Board Trustee Dan Coppa, and nondistrict employees or members of the community. The Committee apparently did not comply with the Open Meeting Law, but this office did not look into who appointed it or whether it was required to comply. We are told that a proposal was never made to the Board by that Committee because negotiations fell apart with the sheriff over whether deputies assigned to school duty would be allowed to carry weapons on school premises.

<sup>2</sup> His term expired in December 1997.

<sup>3</sup> District Regulation 9150 "Temporary Board Committees" says:

"[A]t the request of a majority of the members of the Board of Trustees, the President may appoint temporary committees comprised of less than the full membership for special purposes. These committees shall be discharged on completion of their assignment. The President of the Board of Trustees shall, if he or she so desires, be an ex officio member of such committees.

There is some difference in recollections about who met with whom and when, but a synthesis of the interviews reveals that Trustees Bentley and Coppa met individually with a large number of people outside the district to obtain facts and opinions, including officials of other school districts in and outside Nevada, county officials, members of the academic community, lawyers, and members of the community. Either individually or jointly, they met with the county sheriff, and the chiefs of police for Reno and Sparks. Dr. Mary Nebgen, the School Superintendent, participated in some of those meetings, and Mr. Grein (who had been appointed by Dr. Nebgen to put together a school safety proposal or response to the KMPG audit) also participated in at least one of the meetings. There were also some discussions with school teachers and administrators. All of those meetings were to explore for facts and opinions. Memorializing one of those meetings was a letter by Sheriff Richard Kirkland to Trustee Bentley dated January 12, 1998. The letter indicated that the meeting occurred on October 15, 1997, "to discuss the service level that the Sheriff's office provides to the School District and to ask for our assistance and guidance in the event that the School Board elected to disband the existing police force," and then provided a detailed analysis of the issues discussed. Sheriff Kirkland's letter was appended to the final school safety proposal that was presented to the Board.<sup>4</sup> By comparing the contents of Sheriff Kirkland's letter to the actual contents of the proposal one can easily conclude that no deals or decisions were made at that meeting with the Sheriff.

Trustees Coppa and Bentley also conversed with one another from time to time to coordinate their efforts, discuss what they had found, and exchange opinions. They had different opinions. For example, Trustee Coppa preferred to suggest the use of a security force, while Trustee Bentley was thinking about suggesting the use of armed peace officers. Trustee Bentley wanted to explore all options and present them all to staff, while Trustee Coppa was a little more focused. They seemed to share common beliefs on a few details but they never reached a consensus on a unified position to present to staff, preferring to stick with their individual views.

On a few occasions, Trustees Coppa and Bentley individually and jointly met with district staff. Those meetings were primarily with Mr. Grein. Dr. Nebgen attended some of the meetings, and there may have been another

(..continued)

Temporary committees may only serve to investigate or advise on a specific matter. They may not take any official action for the Board of Trustees.

<sup>4</sup> The letter, dated January 12, 1998, was included as Appendix A to the proposal given to the Board.

staff member in attendance from time to time. Trustee Bentley characterized the meetings as "brainstorming" sessions to generally work through all the information and opinions gathered, and pare down a few of the issues. Trustee Coppa recalls discussing several topics and he gave his opinions and views, and that was it. Mr. Grein recalls that there was a fair amount of debate between Trustees Bentley and Coppa about some details, but that they seemed to share the overall belief that the district would be well advised to get out of the police business. Mr. Grein said, however, that he knew some Board members would probably disagree with the opinions of Trustees Coppa and Bentley, and accordingly did not feel that they were speaking for the entire Board. He listened to their views and incorporated some of them into the proposal, but it was Mr. Grein who researched and prepared the final proposal. There were no motions, votes, polls, or development of a unified position at the staff meetings.

In addition to the overall theme of the proposal, Mr. Grein specifically recalls input from Trustees Bentley and Coppa regarding the following topics which appear in the proposal: 1) Discussions with Reno and Sparks Police; 2)

Uniforms for the proposed safety specialists; 3) The number of deputies and safety specialists to be assigned to specific schools; 4) Reassigning sworn investigators to administrative positions, and 5) How to treat existing personnel.

Trustees Coppa and Bentley also discussed their findings and views with the Board during one or more executive sessions. The executive sessions were being conducted to discuss ongoing negotiations with representatives of the school police officers. Sheriff Kirkland attended one of the executive sessions to give input along the lines expressed in his letter discussed above.<sup>5</sup> Trustee Bentley recalls answering one or two questions of a Board member or two, and Trustee Coppa may have had a casual conversation with a Board member. Accordingly, the Board was aware of the efforts of Trustees Bentley and Coppa.

Mr. Grein prepared the School Safety Proposal based in part on the brainstorming sessions, and in part on his own research and information given to him by staff personnel. He also used some of the work in a previous subcommittee that had been assembled to study the school police issue in 1995. *See* endnote 1 for a discussion of that subcommittee. While they had seen

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<sup>5</sup> We are told that the executive sessions were to meet with its management representative regarding police officer negotiations or matters. If so, they would have been exempt from the Open Meeting Law under NRS 288.220. As our investigation was focused on "subcommittee" matters, we did not explore the executive sessions other than to ascertain the facts mentioned.

parts of preliminary drafts during the brainstorming sessions, neither Trustee Bentley nor Trustee Coppa saw the final proposal until it was given to them in their packets for the May 26 meeting of the Board.

In his transmittal memo of the proposal to the Board, Mr. Grein wrote:

[F]ollowing the recommendations in the KPMG Management Audit in 1997, regarding our School Police Program, a School Safety Subcommittee of the Board of Trustees was formed to gather information on alternative means of providing for the safety of students on our campuses. The attached proposal presents a summary of the information and sets forth an enhanced campus safety program which would improve campus safety through interagency cooperation.<sup>6</sup>

At the May 26 meeting of the Board, Mr. Grein presented and discussed the proposal. He opened by stating, as he did in the transmittal memo, that a "School Safety Subcommittee of the Board of Trustees was formed to gather information on alternative means of providing for the safety of students on our campuses." He discussed the proposal in detail, and at the end of his presentation, public comment was heard from approximately 68 persons. Most of the comments attacked the merits of the proposal, but a couple of persons complained that they felt the process used to develop it did not involve the public or the "stakeholders" in the proposal. At the conclusion of the public comment, a Board member (believed to be Trustee Pullman) (apparently responding to criticism about the lack of public involvement in the drafting of the proposal) commented that she didn't think it was very fair to criticize "the members of the subcommittee who have worked really hard on this" and pointed out that the public process was taking place that night. She later thanked "the Board members who were on the subcommittee and spent all their time on this and brought it forward in a very difficult situation." Trustee Dermody indicated that she heard about the subcommittee in August 1997, but she never heard about it when the subcommittee meetings were held. Following more comments by the Board (including some comments about the lack of public involvement in the development of the proposal), Trustee Coppa made a motion for staff to proceed with the proposal and prepare agreements for approval. Trustee Bentley seconded it, and, following some more comments by Board members, the motion was approved with dissenting votes being cast by Trustees Dermody and Moss. After the vote and during the

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<sup>6</sup> See cover memo submitted to the Board of Trustees on May 18, 1998, by Ken Grein, Assistant Superintendent, regarding the School Safety Proposal.

public comment section of the agenda, Virginia Duran of the Washoe County Teachers Association testified that she was concerned about the use of a subcommittee that does not have to comply with the Open Meeting Law to formulate the proposal. She said she had met with Sheriff Kirkland who told her about the proposal before it was written.

Since the motion passed, Trustee Bentley participated in one meeting regarding the implementation of the proposal, but otherwise has stayed out of the process. Trustee Coppa did not attend the meeting, and apparently has not been involved. The two have not met regarding the school safety proposal since May 26.

Based on comments at the May 26 meeting about the nature of Mr. Coppa's motion, and based on interviews with those directly involved, it does not appear that the proposal is a "done deal." There still is an opportunity for public scrutiny and involvement. The formulation of "focus groups" to further look into the proposal were discussed at the May 26 meeting, and are being considered at this time.

Even though he used the term "School Safety Subcommittee," Mr. Grein does not know how that name came about. Trustee Bentley does not know how the name came about and emphasizes that he did not view himself and Trustee Coppa as a subcommittee of the Board, although he knows the term was used and he probably used it himself. He explained that, historically the term was used when Board members and staff worked together on issues, and if members of the community also got involved, the term "committee" was used. But rarely have either the "subcommittees" or "committees" been formally appointed. Trustee Coppa emphasizes that he decided on his own to take the initiative and get involved and did not consider himself to be a member of a real subcommittee. He did some legwork and expressed his personal opinion and left it at that. Trustee Bentley said the same thing.

## ANALYSIS

Under NRS 241.020, "Except as otherwise provided by specific statute all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies."<sup>7</sup> The open meeting statute lists specific notice and record keeping requirements for such meetings, and it is admitted that none of those requirements were observed by Trustees Coppa and Bentley when they met together to discuss the school safety proposal, or when they met with staff.

The Open Meeting Law only applies to "public bodies" and the real question here is whether Trustees Bentley and Coppa constituted a public body.

NRS 241.015(3) defines what a public body is. It says:

Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the state or a local government 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. "Public body" does not include the legislature of the State of Nevada.

The name "School Safety Subcommittee" and repeated use of the word "subcommittee" by Board members and staff in referring to the activities of Trustees Bentley and Coppa suggests that they are covered because the statute specifically includes the word subcommittee in its definition. But names can sometimes be incorrectly chosen, so our analysis should proceed further into the actual formulation and functions of the group. *See NEVADA OPEN MEETING LAW MANUAL* § 3.04 (7<sup>th</sup> ed. 1998), published by this office.

In § 3.01 of the manual, we delineate the factors we use to determine whether a group is a public body. We analyze (1) whether the group is a

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<sup>7</sup> As discussed above, NRS 288.220 would be a specific statute relevant to our inquiry, but there appears to be no other specific statutes that would apply.

"collegial body," (2) whether it is an administrative, advisory, executive or legislative body of the state or local government, and (3) whether it expends or disburses or is supported in whole or in part by tax revenues or advises or makes recommendations to another entity which does so. As explained in §§ 12.02 and 12.03 of the manual, we are guided by the legislative intent expressed in NRS 241.010 (the legislature finds and declares that public bodies exist to aid in the conduct of the people's business and it is the intent of the law that their actions be taken openly and that their deliberations be conducted openly) as well as the following standards of interpretation. A statute enacted for the public benefit such as a sunshine or public meeting law should be construed liberally in favor of the public, even though it contains a penal provision. *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971); *Laman v. McCord*, 432 S.W.2d 753 (Ark. 1968). The meaning of words used in a statute may be determined by examining the context and spirit of the law or causes which induced the Legislature to enact it. Open meetings are the rule in Nevada, so the statute which states exceptions must be strictly construed. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986). A construction which frustrates all evasive devices is preferred for an Open Meeting Law. *Florida Parole & Probation Comm'n v. Thomas*, 364 So. 2d 480 (Fla. Dist. Ct. App. 1978). See also a discussion in Op. Nev. Att'y Gen No 85-19 (December 17, 1985). It is the nature of the act performed by the board or committee, not its makeup or proximity to the final decision, which determines whether an advisory committee is subject to the Sunshine Law. *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983); *News-Press Publishing Company Inc., v. Carlson*, 410 So. 2d 546 (Fla. 2d DCA 1982).

Taking up the first point of analysis, a "collegial body" is one where the power or authority is vested equally in a number of colleagues. Initially, when Trustees Bentley and Coppa took it upon themselves to individually go out and meet with people to find facts, gather up opinions, and see what options were available, they were acting as individuals. Had they merely reported their individual findings to the Board, they would not have been a public body. But when they came together and began "brainstorming" amongst themselves and with Dr. Nebgen and Mr. Grein to sort through their findings, compare opinions, and pare down the issues to begin formulating a proposal, a collective "body" was formed. And because Trustees Bentley and Coppa shared equal power to influence the outcome of the collective effort, it was a "collegial body." Reasonable people may disagree with our conclusion because Mr. Grein actually wrote the final proposal and made some of his own decisions without discussing the final proposal with the trustees. Nevertheless, he correctly characterized the proposal as the result of a collective effort, and on balance, we believe that Trustees Bentley and Coppa were participating on a collegial basis.

But were they an "administrative, advisory, executive or legislative body of the state or a local government?" Had they been formally appointed by the Board or the President under district regulations, there would be no question. But they were not, so we must evaluate the substance of their group. As explained in § 3.01 of the NEVADA OPEN MEETING MANUAL, *supra*, we evaluate whether the group (1) owes its existence to and has some relationship with a state or local government, (2) is organized to act in an administrative, advisory, executive or legislative capacity, and (3) performs a government function. The outcome of the last two tests is obvious. Trustees Bentley and Coppa came together to provide advice and recommendations to the Board about the government function of policing the district. But were they a "subcommittee" of the Board? Trustees Coppa and Bentley say they spontaneously took it upon themselves to go out and look into the school safety matter. However, as Trustee Dermody pointed out, Board members were aware of the formation of a "subcommittee" back in August 1997. There were also discussions about the school police program during executive sessions, and the Board seemed content in allowing Trustees Bentley and Coppa to continue working with staff to come up with a proposal to be brought before the Board. Something had to be done about formulating a Board response to the KPMG audit, and the Board did not assign the task to anyone else. Further, we must be mindful that there were no objections or questions by Board members to the use of the term "School Safety Subcommittee," and that Board members repeatedly referred to the efforts of its "subcommittee." It would be inconsistent for the Board to now say that Trustees Bentley and Coppa were not working for the Board in an advisory capacity.

NRS 241.015(3) speaks with sweeping words as it defines a public body as "any . . . advisory . . . body of . . . a local government . . . including but not limited to any board, committee, subcommittee or other subsidiary thereof" and the School Safety Subcommittee could fit in that definition either as a committee, a subcommittee, or as an "other subsidiary" of the Board.

Formality in appointment does not seem to be a dispositive factor in the statutory definition, and we believe that informality should not be an escape from it. To hold otherwise is to encourage circumvention of the Open Meeting Law through the use of unofficial committees. In *Jones v. Tanzler*, 238 So. 2d 91 (Fla. 1970) the Florida Supreme Court said:

The right of the public to be present and to be heard should not be circumvented by having secret meetings of various committees composed of members of the Council and vested with authority to make recommendations to the Council.

....

Following this reasoning, any Council could divide itself into groups of small committees and each councilman would have an opportunity to commit himself on some matter on which foreseeable action will be taken by expressing himself at a secret committee meeting in the absence of the public and without giving the public an opportunity to be heard. The ultimate action of the entire Council in public meeting would merely be an affirmation of the various secret committee meetings held in violation of the Government in the Sunshine Law.

That court also held that open meeting statutes should be interpreted so as to frustrate evasion. *Florida Parole & Probation Comm'n v. Thomas*, 364 So. 2d 480 (Fla. Dist. Ct. App. 1978).

Given the standards of interpretation by which we are guided, we conclude that during the brainstorming sessions that lead to the School Safety Proposal, Trustees Bentley and Coppa were acting as an advisory body of the Board.

Since the Board expends tax revenues, the third element of the test for a public body is met.

#### CONCLUSION AND RECOMMENDATIONS

We conclude that the brainstorming sessions between Trustees Bentley and Coppa and staff should have been open to the public.

We find no evidence of "secret deals" being made. We find no evidence of intentional violations of the Open Meeting Law, and we appreciate that there may be some disagreement with our conclusions. The School Safety Proposal was discussed and acted upon by the Board in an open meeting with extensive public comment and will be the subject of more public involvement.

There was no action taken during the brainstorming sessions, so nothing is void under NRS 241.036. The only remedy available to this office would be to seek injunctive relief under NRS 241.037 against Trustees Bentley and Coppa to enjoin them to obey the Open Meeting Law in the future, which is absolutely unnecessary.

In another letter issued today, dealing with another subcommittee case, we warned the Board that it must assure that all of its committees and

subcommittees comply with the Open Meeting Law, and, considering all the factors mentioned above, we feel that this case can be included as a part of that warning.

We thank the Washoe County School Police Officers Association for bringing this matter to our attention because it raised a very important issue that is now resolved.

FRANKIE SUE DEL PAPA  
Attorney General

By: GREGORY A. SALTER  
Deputy Attorney General

\_\_\_\_\_

OMLO 98-05 Open Meeting Law: The Office of the Attorney General has long-standing policy of reserving opinions regarding open meeting complaints that are in litigation, even though NRS 241.040(4) gives the Office of the Attorney General investigative and prosecutorial powers.

*(This opinion was rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150).*

Carson City, September 21, 1998

Mr. Thomas Mitchell, Editor, Las Vegas Review Journal, Post Office Box 70,  
Las Vegas, Nevada 89125-0070

Dear Mr. Mitchell:

Our investigation on the above-referenced complaint is nearing completion. However, we have just today been told that a lawsuit is to be filed in the Clark County District Court by Aladdin Gaming, L.L.C, a Nevada Limited Liability Company. Counsel for the Aladdin represented that the Aladdin has been denied a right under the Open Meeting Law, which would give the Aladdin the same right to file a lawsuit as this office has under NRS 241.037(2). The issues being raised by counsel for the Aladdin include the issues raised in your complaint, and there is a strong likelihood that there will be a judicial resolution. We will follow the court proceedings closely.

This office has a long-standing policy of reserving opinions regarding matters in litigation. *See* Op. Nev. Att’y Gen. No. 123 (March 27, 1924), and Op. Nev. Att’y Gen. No. 195 (March 27, 1945). Even though this office is charged with investigating and prosecuting complaints, our opinions regarding open meeting law issues are neither binding nor entitled to deference in courts of law. *See Tahoe Regional Planning Agency v. McKay*, 590 F. Supp. 1071, 1074 (D.C. Nev. 1984) *aff’d* in *Tahoe Regional Planning Agency v. McKay*, 769 F. 2d 534, 539 (9<sup>th</sup> Cir. Nev. 1985). So that we do not interfere with the judicial process, we will reserve giving an opinion on the matter at this time.

Thank you for bringing this to our attention.

FRANKIE SUE DEL PAPA  
Attorney General

By: GREGORY A. SALTER  
Deputy Attorney General

OMLO 98-06 Open Meeting Law: Drafts of minutes of previous meeting to be approved at upcoming meeting must be provided upon request under NRS 241.020 (4).

*(This opinion was rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150).*

Carson City, October 19, 1998

Mr. O. Kent Maher, Humboldt County District Attorney, Post Office Box 909,  
Winnemucca, Nevada 89446

Dear Mr. Maher:

Thank you for your response to my letter regarding a complaint alleging that the Humboldt County Commission (Commission) refuses to provide copies of draft Commission meeting minutes to citizens upon request under NRS 241.020(4). A citizen sought to review a copy of draft minutes which had been distributed to county commissioners as a part of their Board packet, and her request was refused by the clerk. It is my understanding that such refusals have been the ongoing practice of the Commission for years.

In your letter to this office, you express the opinion that draft minutes of Commission meetings which are submitted to Commissioners with their agendas are not covered by NRS 241.020(4), and need not be produced upon request. You gave three reasons.

First, you believe that because the approval of minutes is so perfunctory, citizen input is inappropriate and there is no need to provide advance copies of the minutes. You add that if members of the public want to see the approval of the minutes, they can attend the meeting. We don't see anything in NRS 241.020(4) which permits any balancing analysis or gives the Commission the right to select which supporting material can be released and which supporting material cannot be released (except confidential material as set out directly in the statute). Even if the public has nothing to say about what goes in the minutes, the public is entitled to see what its servants are going to approve.

Second, you believe that since the approval of minutes is purely an administrative action, the drafts of those minutes presented for approval are not agenda supporting material under NRS 241.020(4). We do not see any exemption under NRS 241.020(4) for matters which are in draft form or are decided as administrative matters rather than legislative or executive matters.

Further, we note that almost all of the material submitted to the Commission is in draft form. To hold that the public is not entitled to view anything until it is approved, printed, and sealed is not within the spirit of the Open Meeting Law. The public is entitled to see the process of approval which includes seeing what is proposed and how it is amended.

You finally argue that agenda "supporting material" is defined as material that is "explanatory materials, background information or letters relating to reasons a matter is on the agenda or some detail about what the matter is about," and that draft minutes do not fall within that definition. Under your analysis, copies of the agenda items themselves need not be disclosed, only the explanatory material. That would mean, for example, if the Commission is going to consider its annual budget at an upcoming meeting and copies of a proposed budget are circulated to the Commissioners before the meeting, copies of the proposed budget may be withheld from the public because the budget is not explanatory material for the agenda item, unless, of course, the budget explains why the budget is an item on the agenda. The same would go for any proposed resolutions, any vouchers, any zoning maps or land use plans, any building permit applications, any program documents or staff proposals. Statutes must be interpreted in a way to avoid absurd results, and it would seem absurd to hold that items to be approved at a meeting need not be disclosed pursuant to an NRS 241.020(4) request.

NRS 241.020(4) clearly states:

Upon any request, a public body shall provide, at no charge, at least one copy of:

- (a) An agenda for a public meeting;
- (b) A proposed ordinance or regulation which will be discussed at the public meeting; and
- (c) Any other supporting material provided to the members of the body for an item on the agenda, except materials
  - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement;
  - (2) Pertaining to the closed portion of such a meeting of the public body; or
  - (3) Declared confidential by law.

It is the opinion of this office that if there is an item on an upcoming agenda for approval of Commission minutes, and a copy of the proposed minutes has been provided to the Commissioners, and a citizen asks for a copy of the minutes under NRS 241.020(4), the law requires that a copy be furnished at no

charge, unless one of the three confidentiality exceptions applies. We urge the Commission to reconsider its position.

The Commission should be advised that any future refusal to honor requests for draft minutes under NRS 241.020(4) will be civilly prosecuted by this office under NRS 241.037 as a violation of the Open Meeting Law.

FRANKIE SUE DEL PAPA  
Attorney General

By: GREGORY A. SALTER  
Deputy Attorney General

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OMLO 98-07 Open Meeting Law; In order for gathering to be a meeting covered by the Open Meeting Law, the participants must deliberate toward a decision or take action on a matter over which the public body has supervision, control, jurisdiction or advisory power. NRS 241.015(1) defines "action" to include voting, making a decision, or making a commitment or promise by the majority of the public body.

*(This opinion was rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150).*

Carson City, October 19, 1998

Board of County Commissioners of Washoe County, c/o Madelyn Shipman, Esq., Assistant District Attorney, 75 Court Street, Post Office Box 11130, Reno, Nevada 89520-0027

Dear Ms. Shipman:

As you know, this office has primary jurisdiction for investigating complaints regarding violations of the Open Meeting Law, NRS chapter 241. On July 24, 1998, Mr. Robert Anglen of the Reno Gazette Journal filed a complaint with this office expressing a belief that members of the Board of Commissioners (Board) deliberated out of public view in the selection of a new county manager, Katy Simon, and asked us to investigate.

We investigated the complaint by interviewing all of the county commissioners and selected county staff personnel, reviewing minutes of meetings and other relevant documents including newspaper articles. Your office, as well as all county staff personnel and members of the Board, were very cooperative and candid, which we appreciate.

Our investigation revealed that serial conversations occurred between Board Chairwoman Joanne Bond and at least three other commissioners before the Board met on July 14 to appoint Ms. Simon as the new county manager. However, the serial conversations did not constitute conducting deliberations or taking action on Ms. Simon's appointment, and therefore did not violate the Open Meeting Law. The law regarding serial communications of a public body is developing in Nevada, and we take this opportunity to provide an update and appropriate caution.

## FACTS

In May 1998, County Manager John MacIntyre left county government and the Board appointed Katy Simon as interim county manager and began the process of selecting a new county manager.<sup>1</sup> The Board started by considering the use of an executive search firm to recruit and screen candidates for the position. Following discussions with Chairwoman Joanne Bond, county staff prepared a memorandum listing five possible search firms and asking the Board for guidance as to how to proceed with the selection process. Staff's request for guidance in the selection of a search firm was scheduled for discussion and possible action on the agenda for the June 16 meeting of the Board. At the meeting, Commissioner Mouliot commented that using a search firm would take too long and suggested that the Board consider appointing Ms. Simon to the position. He made a motion to continue the matter to a workshop to be held with Ms. Simon. His motion was seconded by Commissioner Sue Camp, and was approved 4-0 (Commissioner Jim Shaw was not present at the meeting). We find no evidence that Commissioner Mouliot had discussed his motion with any other commissioners before the meeting. In fact, his motion surprised the other commissioners as well as Ms. Simon. During his interview with this office, Commissioner Mouliot said he had no idea how the vote would come out on his motion, but when he saw the unanimous vote to abandon the use of a selection firm and consider hiring Ms. Simon, and when he saw the demeanor of the other commissioners, he concluded in his own mind that it was a "done deal" that the Board would approve Ms. Simon<sup>2</sup>. However, our interviews with other commissioners revealed that it was not a done deal in their minds at that time. Indeed, they were all familiar with Ms. Simon and her work over the past two and one half years for the county, and over the past few weeks had already seen some examples of how she would perform in the job. However, most of the commissioners wanted more information and input and wanted to think about the appointment and the process being used.

After the June 16 meeting, each commissioner individually had a discussion with Ms. Simon. Two discussions were unscheduled, and the remaining three were scheduled in advance. While she did not fill out an application for the job, Ms. Simon prepared a curriculum vitae, and made it available to Board members. During each of the discussions, Ms. Simon did not ask and no commissioner offered how he or she would vote on the appointment, nor did

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<sup>1</sup> Ms. Simon was the deputy county manager at the time and had served as assistant county manager for finance for two years before being appointed as deputy county manager.

<sup>2</sup> Commissioner Mouliot asked staff to order a name plaque for Ms. Simon so it could be presented to her upon appointment. We obtained a copy of the purchase order which was dated July 10, and apparently indicates that the plaque was delivered on July 13, the day before the meeting where she was appointed.

any commissioner indicate if he or she knew how other commissioners would vote.

Commissioners were getting a fair amount of public input on the selection of Ms. Simon, and Chairwoman Bond decided to put the matter on the agenda for the July 14 meeting. She chose to put it on the agenda for a regular meeting rather than a workshop because she felt the Board could obtain more public input at a regular meeting. After putting the item on the agenda, she canvassed at least three other commissioners by having short one-on-one conversations either by telephone or in person.<sup>3</sup> Her intentions were to inform the other commissioners that she had put the matter on the agenda for the July 14 meeting and to encourage the commissioners to work out any concerns they might have with Ms. Simon before then in order to avoid unnecessary embarrassment for Ms. Simon at the meeting. Recollections of the conversations are, naturally, a little diverse but the recollections of the subjects of those conversations unanimously reveal that in no conversation did anyone discuss any pros or cons of appointing Ms. Simon or how anyone was going to vote. Three commissioners recall supporting Chairwoman Bond's decision to put the matter on a regular meeting agenda rather than a workshop. One commissioner (Sue Camp) told Chairwoman Bond that she had a concern about Ms. Simon and would discuss it with Ms. Simon, which she did over breakfast a few days later. None of the commissioners had any further conversations with any other commissioners about Ms. Simon's appointment before the July 14 meeting.

On July 2, 1998, Chairwoman Bond had a memo drafted to the other commissioners which was included in the Board books distributed to the commissioners for the July 14 meeting.<sup>4</sup> In the memo, she wrote "[I]t is recommended that the Board of County Commissioners offer Katy Simon the position of County Manager, at the current salary of \$125,798.40, to be effective upon the negotiation of an employment contract to be approved by the Board. It is further recommended that the Chairman be authorized to conduct said negotiations" and, after discussing Ms. Simon's qualifications, observed "Ms. Simon is a known entity, with a proven track record in Washoe County, as recognized by Board members at the meeting of the 16<sup>th</sup>. The appointment of Ms. Simon will provide the County with certainty and stability in the difficult

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<sup>3</sup> During her interview with this office, Chairwoman Bond said she believed that she had talked with all the commissioners. However, Commissioner Galloway did not recall having a discussion with Chairwoman Bond.

<sup>4</sup> The first draft was dated June 25, 1998. The deadline for submitting materials for the July 14 agenda was July 2.

financial times ahead, as well as provide the necessary skills to implement changes the Board has identified.”

Public input continued as the meeting approached. There were two editorials in the Reno Gazette Journal encouraging the Board to abandon the nationwide search and select Ms. Simon. The Reno Gazette Journal also polled all commissioners and published an article on July 11, 1998, reporting that four commissioners were in favor of Ms. Simon, while one (Commissioner Galloway) was still thinking it over.

At the meeting on July 14, according to the minutes, following short comments by each commissioner, and with no public comment, Commissioner Mouliot moved that Ms. Simon be appointed and Commissioner Camp seconded the motion and it carried unanimously. A contract was negotiated and the Board of Commissioners approved the contract at its July 23 meeting.

#### DISCUSSION

The intent of the Open Meeting Law is set out in NRS 241.010 which says: “In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their *actions* be taken openly and that their *deliberations* be conducted openly.” [Emphasis supplied.]

With that intent in mind, the Legislature crafted the boundaries and details of the Open Meeting Law. It declared that all *meetings* of public bodies would fall within the law, and defined “meetings” in NRS 241.015(2) as “the gathering of members of a public body at which a quorum is present to *deliberate* toward a decision or to take *action* on any matter over which the public body has supervision, control, jurisdiction or advisory power.”

Our investigation reveals no evidence of any gathering where a quorum of three commissioners was present to deliberate or take action on the appointment of Ms. Simon before the July 14 meeting.

There was, however, a series of gatherings of two commissioners when Chairwoman Bond conversed with each commissioner. We are concerned about those serial conversations. As we pointed out in § 5.08 of the *Nevada Open Meeting Law Manual*, (7<sup>th</sup> ed. 1998), published by this office in January 1998, serial communications invite abuse to the Open Meeting Law if they are used to accumulate a secret consensus or vote of the members of a public body, or to set up what is sometimes referred to as a “walking quorum.”

In April 1998, the Nevada Supreme Court ruled in *Del Papa vs. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998) that electronic serial communications conducted for the purpose of polling a quorum of the members of a public body violates the Open Meeting Law. In that case, the chairman of the Board of Regents drafted a press advisory and disseminated it by fax to ten Board members. The press advisory purported to state the feelings of the members of the Board, so the chairman wanted their input, and stated that he would not release the advisory unless the other members approved. Members of the board called or faxed in comments and the chairman decided not to release the advisory. This office brought suit and the Regents argued, among other things, that the communications did not constitute a "meeting" under the Open Meeting Law because a quorum of the Board was not physically present. After an exhaustive analysis of the legislative intent of the Open Meeting Law and case authorities, the Court said:

Based on the foregoing legislative history and case law, we hold that a quorum of a public body using serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory power violates the Open Meeting Law. That is not to say that in the absence of a quorum, members of a public body cannot privately discuss public issues or even lobby for votes. However, if a quorum is present, or is gathered by serial electronic communications, the body must deliberate and actually vote on the matter in a public meeting.

*Id.*, 956 P.2d at 778.

While the *Board of Regents* case dealt with electronic serial communications, courts in other states have held that face-to-face serial communications violate their open meeting laws. See *Stockton Newspapers, Inc. v. Redevelopment Agency*, 171 Cal. App 3d 95, 103, 214 Cal. Rptr. 561 (1985) (series of nonpublic discussions between attorney and members of the redevelopment agency for the purpose of obtaining a collective commitment or promise by a majority violated California's Open Meeting Law), *Booth Newspapers Inc., v. Wyoming City Council*, 168 Mich. App 459, 425 N.W..2d 695, 701 (1988) (two "mini meetings" between lawyer and council members to get a sense from the individual council members as to how to proceed in negotiations violated Michigan's open meeting law). Further, this office issued an opinion in 1985 that serial polling by mail would violate the Open Meeting Law. Our opinion was cited with approval by the Nevada Supreme Court in

the *Board of Regents* decision. See Op. Nev. Att'y Gen. No. 85-19 (December 18, 1985), and *Board of Regents*, 956 P.2d at 775.

The cases are clear that serial communications can constitute a gathering of the members of a public body, and the evidence is clear in this case that a quorum was gathered through the serial conversations with Chairwoman Bond. But the statutes and cases are equally clear that in order for the gathering to be a *meeting* covered by the Open Meeting Law, the participants must deliberate toward a decision or take action on a matter over which the public body has supervision, control jurisdiction or advisory power. NRS 241.015(1) defines "action" to include voting, making a decision, or making a commitment or promise by the majority of the public body. The statute does not define "deliberate" but a California appellate court defined it as "... to examine, weigh and reflect upon the reasons for or against the choice . . . . Deliberation thus connotes not only collective discussion, but the collective acquisition or the exchange of facts preliminary to the ultimate decision." *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 263 Cal. App. 2d 41, 69 Cal. Rptr. 480 (Cal. App. 1968).

We found no evidence that the short conversations between Chairwoman Bond constituted deliberation or taking of action. Before she started those conversations, she had already set up the matter for public deliberation and public vote in a duly noticed public meeting, and she merely informed the commissioners that she had done so and suggested that they resolve any concerns they have with Ms. Simon before the meeting. During those conversations, no decisions were made, no votes were cast, and no commitments or promises were made. Further, we found no evidence that during those conversations anyone examined, weighed, or reflected upon the reasons for or against choosing Ms. Simon, or collectively acquired or exchanged facts regarding her.

We conclude, therefore, that while a quorum of the Board of Commissioners was gathered through a series of communications, there was no violation of the Open Meeting Law because their conversations did not constitute deliberations or the taking of action over the selection of Ms. Simon.

We provide this detailed analysis to you because we want to emphasize the danger of engaging in serial communications with a quorum of a public body. What starts as an innocent chat can easily turn into a deliberation between two people, and under our law as it is unfolding, a series of such deliberations can easily turn into a meeting which is covered by the Open Meeting Law and should have been open and public.

We hope this letter is helpful in providing some guidance regarding a changing area of the Open Meeting Law.

FRANKIE SUE DEL PAPA  
Attorney General

By: GREGORY A. SALTER  
Deputy Attorney General

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STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
Attorney General

NIELSEN

BROOKE A.

Assistant Attorney General

January 13, 1998

Gary Pullium, Esq.  
Nye County District Attorney's Office  
Post Office Box 593  
Tonopah, Nevada 89049

Re: Amargosa Valley Library District

Dear Mr. Pulliam:

This letter follows up on our conversation late last month regarding the open meeting law complaint filed against the Board of Trustees of the Amargosa Valley Library District by Michelle DeLee, and employee of the library. As you know, the complaint centers primarily around the procedures used by the board to conduct performance reviews of Mrs. DeLee in June and August of 1997. The complaint was filed with this office in mid September of 1997, and the material I requested was sent to me in October.

Based on my review of the agendas, minutes, and tapes you have sent me as well as the information given to me by Mrs. DeLee, this office observes and concludes the following.

Meeting of June 13, 1997.

The agenda for the board meeting indicates that the board will be giving an "annual employee review" but does not indicate the name of the employee. The item is not indicated as an action item. Nor does the agenda indicate that it will be a closed session. As a result, the agenda does not contain a "clear and complete statement of the topics to be considered at the meeting" in violation of NRS 241.020 (2) (c) (1) and does not list items on which action may be taken and clearly denote that actions may be taken as is required by NRS 241.020 (2) (c) (2).

The board did not provide Mrs. DeLee with the notice required by NRS 241.033 (1).

At the meeting, a motion was made to go into executive session "for completion of evaluation form." Prior to going into closed session, the board did not obtain proof of service of the notice required by NRS 241.033 (1). There was discussion during the closed session about

character (e.g. maturity and attitude, and whether she was a “people” person) and professional competence (her education and experience as qualifications for library director) but the bulk of the discussion was more along the line of her job understanding, job performance, and productivity, and her relationship with the board and the community, and whether or not she was living up to expectations. Also discussed were library attendance statistics, overall feelings of customers, the salary of Mrs. DeLee, whether or not the library was adequately serving the hispanic population, status of certain shelving projects, summer help, whether or not the library should go back to volunteers, how to identify needs of customers and meet them, lessons learned at workshops (in general), general overall goals of the library, how to do performance reviews and use them, and several other topics that were not in the motion to go into closed session and are not the proper subjects of a closed session. Indeed, the community would have great interest in hearing the board’s views on some of those topics, and to discuss those topics in a closed session violates NRS 241.020 (1).

The minutes for the meeting only reflect that the board went into executive session, and did not report whether or not the board took action in an open meeting after the executive session. This violates NRS 241.035 (1) (c).

#### August 11 Meeting

The board scheduled a “3 Mo. employee performance review (each month)” on its agenda. The agenda did not state who the review was about, nor did it indicate that the review was going to be conducted in a closed session, even though the board knew it was going to use a closed session for the review, again rendering the agenda defective under NRS 241.020 (2) (c) (1). Mrs. DeLee was not given the notice required by NRS 241.033 (1). The board did not receive proof of service of the notice required by NRS 241.033 (1).

In the closed session, the board did consider elements of character and professional competence of Mrs. DeLee, but also discussed job performance topics that were not related to character, competence or misconduct, and other topics not the proper subjects of a closed session, again in violation of NRS 241.020. For example, the board talked about people who attend the board meetings and a person who has a yacky dog that wouldn’t stop barking, and other unrelated matters. Notes were taken during the closed session, and the board went back into open session to take action on her review by voting to adopt the notes.

The minutes for the meeting only indicate that the board went into an executive session and do not indicate that the board went back into open meeting to take action on her review, again in violation of NRS 241.035 (1) (c).

#### Request for Tapes.

Tape recordings were kept of the closed sessions regarding Mrs. DeLee and she has requested to review the tapes, and to this date she has not been given access to them. This is a

continuing violation of NRS 241.033 (3). This office asked for copies of the tapes on September 17, 1997, and received them on October 20, 1997. The tapes I received are marked "copy" which would indicate that the original tapes should have been available for review by Mrs. DeLee.

Apparently, someone on the board told Mrs. DeLee that the open meeting law did not apply to the tapes of the closed sessions because the closed sessions were to discuss a routine employee evaluation, not to consider character, alleged misconduct, or professional competence under NRS 241.030 (1). Since there is no statutory basis for conducting routine employee evaluations in a closed session, that would make the closed sessions illegal, and the tapes could not be protected under NRS 241.033 and 241.035, which would make them public records available to any person who requested them, Mrs. DeLee included. There simply is no legal basis to refuse the tapes to Mrs. DeLee.

Apparently, tapes of meetings are kept at the personal residence of the board secretary, which sometimes makes it difficult for the public to gain access to them. They should be kept at the Library to be made available upon request, with appropriate safeguards for tapes of closed sessions.

This office concludes that several violations of the open meeting law have occurred, and one (failure to provide the tapes to Mrs. DeLee) is a continuing violation if original tapes of the June and August closed sessions are in the possession of library board officials .

To avoid unnecessary litigation, I propose to resolve the matter as follows. If the board will agree as follows, this office will close its file on the matter and take no further action.

1. As the actions of the board in violation of the open meeting law are void under NRS 241.036, the board will rescind the employee evaluations of Mrs. DeLee conducted in June and August.
2. Should the board choose to conduct future employee evaluations, it will do so in an open meeting and under an agenda that indicates the employee's name. As a part of a review process, should the board wish to go into closed session to consider the character, alleged misconduct, professional competence or mental or physical health of a person, it will do so in accordance with the open meeting law, and will limit its discussions to topics authorized by the law for closed sessions.
3. The tapes of the closed sessions requested by Mrs. DeLee will be made available immediately. Should Mrs. DeLee agree under NRS 241.035 (2), the tapes of the closed sessions in June and August will be declared by the board to be public documents and made available to the general public. Tapes of meetings will be kept on the library premises and will be made available to the public consistent with NRS 214.035.

While the tapes are to be made available to Mrs. DeLee immediately, I understand that you will need to discuss this proposal with the board at it's next meeting which is expected to be held sometime next week. Accordingly, please let me know not later than January 30, 1998 if the board agrees to the foregoing. Otherwise, I will have no choice to proceed with appropriate litigation.

Gary Pullium, Esq.  
January 13, 1998  
Page 4

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
Commerce Section  
(702) 687-6426

cc: Michelle DeLee

a:\omlo 98-09.doc



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

FRANKIE SUE DEL PAPA  
*Attorney General*

NIELSEN

BROOKE A.

*Assistant Attorney General*

January 13, 1998

John F. Wiles, Esq.  
Division of Industrial Relations  
2500 W. Washington Avenue, Suite 100  
Las Vegas, Nevada 89106

Re: Open Meeting Law Complaint, October 17, 1996 (J.C. Penny)

Dear Mr. Wiles:

As you know, this office received a complaint from Michael Lindell, Esq., representing J.C. Penny Company, alleging violations of Nevada's open meeting law by the Board for the Administration of the Subsequent Injury Fund for Self-Insured Employers (hereafter the "board") regarding hearings held on October 16, 1997.

This office has reviewed the material submitted by Mr. Lindell, including a copy of the notice and agenda for the meeting, and a transcript of the hearings in claims # C617-001893, and C617-002383 and has discussed the matter with you, and based on the foregoing, we conclude that the board took action on the claims in closed sessions in violation of the open meeting law. However, we note that the board promptly took corrective action by rehearing the cases and taking action in an open meeting on December 18, 1997. As the case would be moot for action by this office, we are closing our file on the matter.

The board administers the Subsequent Injury Fund for Self-Insured Employers and claims are made against the fund under NRS Chapter 616B by employers for reimbursement of expenditures made by employers. Decisions by the board on those claims are based, in part, on the nature and timing of employee injuries, and in deciding those claims, the board must sometimes consider alleged misconduct (e.g. misrepresentations on employment applications) or the physical or mental health of the injured employee. The board is authorized to go into a closed

meeting to consider allegations of misconduct or the physical or mental health of a person under NRS 241.030 (1). But in this case, the board failed to follow the proper procedures and conducted business not authorized in a closed session. This office believes that the violations were so significant that the decisions made in those closed sessions are void under NRS 241.036.

Essentially the same procedure was followed in both cases. The board prepared a notice and agenda under the open meeting law for its meeting on October 16, 1997, and the two cases were identified on the agenda, but the agenda did not indicate that the board would be going into a closed session. At the beginning of the hearing on each case the Chairwoman Walquist described the nature of the proceeding. In Case # C617-002383, her statement was:

“This matter is a contested case and shall be heard by the Board for the Administration of the Subsequent Injury Fund for Self-Insured Employers in a quasi-judicial forum pursuant to Chapter 616B and 233B of Nevada Revised Statutes.

“The hearing in this matter will be transcribed by a certified court reporter. You are further notified that all meetings and contested hearings are open to the public, but deliberations which involve alleged misconduct, professional competence and/or character may be privately conducted. However, any final decisions will be made publicly, all in accordance with Chapter 241 of Nevada Revised Statutes, commonly known as the Nevada Open Meeting Law.”<sup>2</sup>

Evidence and arguments were taken in an open meeting, and then the chairwoman announced that the board would go into a closed session to discuss the evidence heard. There was no motion to go into closed session. No record was made of the closed session. When the board went back into open session, there was no motion, discussion or vote on the cases. The chairwoman merely announced the decision. Upon being asked by counsel for J.C. Penny for a tally of the vote taken during the closed session, the chairwoman gave an accounting of how the votes were cast.

The failure to list the closed session on the agenda is a violation of NRS 241.020(1)(c)(1) (agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting) because the topic of an employee’s health or alleged misconduct was going to be considered by the board, and that was not listed on the agenda. The failure to go into the closed session on a motion is in violation of NRS 241.030 (2) (a public body may close a meeting upon a motion which specifies the nature of the business to be considered). The failure to keep a record of the closed session is in violation of NRS 241.035(5) (records must be kept of closed

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<sup>1</sup> The notice was posted at the principal office of the board and two other places. Under NRS 241.020 (3), it must be posted at the principal office (or place of hearing if the board has no principal office) and three other places. The notice is defective.

<sup>2</sup> Transcript of hearing in case # C617-002383, page 1, lines 10-23

sessions if they are kept of open sessions) and prevents this office from determining whether or not the closed session was authorized in the first place. If there was any discussion of any topic above and beyond the alleged misconduct or the health of the injured employee, there would be another violation of the open meeting law. It would appear from the transcript of case No C617-002383 that the board did exceed the permissible scope of NRS 241.030 (1) as it discussed legal issues and took a vote on an interpretation of the law. Finally, NRS 241.030 (1) only allows the board to go into closed session to consider the alleged misconduct or health of the injured employee, not to take action on any matter. The deliberation and vote on the matter in closed session violates that limitation and the whole principle and spirit of the open meeting law.

In our discussion, you indicated that the board was of the understanding that the proceedings were quasi-judicial and therefore a closed session was authorized for the board deliberations. The understanding of the board that the proceeding was quasi-judicial is reflected in the chairwoman's opening statement, quoted above, but she also indicated that the closed session would be limited to "deliberations which involve alleged misconduct, professional competence and/or character."

At this point, there is no specific statute and there is no judicial decision from a Nevada court which establishes an exemption from our open meeting law for general deliberations of public bodies after administrative hearings conducted under NRS Chapter 233B. It is true that courts in other states have implied exceptions to open meeting laws for quasi-judicial deliberations, but Nevada courts have not spoken.

Rather, NRS 241.020 provides that all meetings of public bodies must be open and public "except as otherwise provided by specific statute," and given that language as well as the language in NRS 241.010 (...all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly), the Nevada Supreme Court is reluctant to imply exceptions to the open meeting law. McKay v. Board of County Commissioners of Douglas County, 103 Nev. 490, 746 P.2d 124 (1987).

Since neither NRS Chapter 616B nor NRS Chapter 233B authorize the board to engage in a closed session to generally deliberate its decisions, the board must conduct its deliberations in an open meeting, although it may go into a closed session under NRS 214.030 (1), but, as discussed above, the board did not follow the proper procedures and exceeded the permissible scope of the closed session.

It has long been the position of this office that when a public body takes an action in violation of the open meeting law, which action is null and void, it is not precluded from taking the same action at another legally called meeting. See Nevada Open Meeting Law Manual, Attorney General of Nevada, Sixth Edition, 1991, Question 42.

January 13, 1998  
John F. Wiles, Esq.  
Page 4

New hearings were conducted in an open meeting environment on December 18, 1997, according to a letter we received from Mr. Lindell on December 31, 1997, who made no complaints about the open meeting procedures. Thus, it would appear that the board has cured the violations, and we caution the board that if it chooses to go into a closed session in the future, it should follow the proper procedures and limit the closed session to that which is authorized by specific statute. This office is publishing a new edition of the Open Meeting Manual this month, and closed meetings are discussed in detail in part 9 of the new manual.

-

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
Commerce Section  
(702) 687-6426

cc: Michael Lindell, Esq.

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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://aq.state.nv.us/>  
E-Mail: [aqinfo@aq.state.nv.us](mailto:aqinfo@aq.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

February 25, 1998

Mr. James F. Clark  
P.O. Box 5596  
Incline Village, Nevada 89450

Re: Open Meeting Law Complaint, Washoe County School District

Dear Mr. Clark:

On February 2, 1998, this office received your material alleging that Washoe County School Board President Bob Bentley may have violated the Open Meeting Law when he called a press conference on October 2, 1997 in response to communications with your group, CARES. You allege that Mr. Bentley called the press conference and "contacted each other WCSD trustee and invited him or her to come to the WCSD administration building at 1:30 p.m. that day to read his news release; that if in agreement with the contents, to stand with him in front of the television cameras as he made the contents public, to show support for his statements." You also allege that two other trustees attended the conference. Even if a quorum of the board was not present at the press conference, you queried whether or not Mr. Bentley engaged in "polling" the other trustees by offering an advance copy of his remarks and then inviting the trustees concerning with him to stand with him as he delivered his speech before cameras.

Unfortunately, your complaint came too late for this office to take action. Under NRS 241.037(3), this office must file a lawsuit within 60 days of the alleged violation in order to void any actions taken or within 120 days of the alleged violations to seek any other injunctive relief for violations of the Open Meeting Law. The 60 day deadline expired on December 1, 1997, and the 120 day deadline expired on January 30, 1998. As mentioned above, your letter to me was received on February 2, 1998.

Accordingly, this office cannot take any action on the matter.

Mr. James F. Clark  
February 25, 1998  
Page 2

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General

cc: Washoe County School District



STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
Attorney General

NIELSEN

BROOKE A.

Assistant Attorney General

February 25, 1998

Mr. Joe Mills  
Consolidated Students, University of Nevada  
4505 South Maryland Parkway  
Las Vegas, Nevada 89154-2009

Re: Open Meeting Law Complaint: CSUN Senate and Impeachment Committee.

Dear Mr. Mills:

On February 12, 1998, I received your complaint alleging that the CSUN Senate violated several provisions of the Open Meeting Law during meetings held in December and January. Unfortunately, I do not believe that this office is the place to seek relief. NRS 241.038 provides that the Board of Regents must impose requirements equivalent to those in NRS Chapter 241 for its student governments, and provide for their enforcement. We interpret this provision to vest jurisdiction over your question with the Board of Regents.

Accordingly, we must invite you to file your complaint with the Board of Regents, and we urge you to do so promptly in light of the short statute limitations imposed by NRS 241.037 if such limitations have been enacted by the Board of Regents.

Very Truly Yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter,  
Deputy Attorney General

cc Tom Ray

(702) 687-6426



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

February 26, 1998

Mr. Ira Hansen  
6500 Spanish Springs Road  
Sparks, Nevada 89436

Re: Washoe County Advisory Board to Manage Wildlife, open meeting complaints

Dear Mr. Hansen:

You have filed two complaints with this office regarding actions taken by members of the Washoe County Advisory Board to Manage Wildlife outside of open meetings. The first complaint concerned meetings in August and September of 1997 when a quorum of the board met with members of a private coalition group steering committee and discussed matters of interest to the board. The second complaint concerned a meeting of an ad hoc committee of the board that met to discuss what to do with a fence on the Sheldon Antelope Range. The actions of the ad hoc committee were discussed at a meeting of the board on November 19, 1997. You and I were both present at that November 19 meeting.

Prior to your first complaint, this office had discussed the August and September coalition meetings with Chairman Fred Church and Madelyn Shipman, attorney for the board. In fact, I was at the November 19 meeting at the invitation of the board to give a presentation on the Open Meeting Law, which included detailed discussion of what constituted a "meeting" under the Open Meeting Law. Since then, Ms. Shipman was asked by the board to provide written advice as to what was permitted under the Open Meeting Law, and she has done so.

I left my file open for a few months to see if there would be any further problems involving members of the board conducting meetings outside the strictures of the Open Meeting Law. I have heard no complaints and therefore believe that the board has learned the lessons and heeded the warnings.

Under these circumstances, I am therefore closing my file on the matter. Thank you.

Mr. Ira Hansen  
February 26, 1998  
Page 2

Very truly yours,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

February 27, 1998

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

Mr. Bus Hedgecorth  
City Councilman  
City of Gabbs, Nevada  
P.O. Box 541  
Gabbs, Nevada 89409

Re: Open Meeting Law complaint: Gabbs City Council

Dear Mr. Hedgecorth:

Earlier this month I received a complaint from you regarding the deficiency of the notice for a meeting held by the Gabbs City Council on January 29, 1998, wherein a new mayor was elected by the city council. I discussed the notice and complaint with the city attorney, Mr. Robert Barengo, and it was agreed that another meeting of the city council should be scheduled with better notice.

I received a notice of a new meeting to be conducted on February 20, 1998, and assume that the meeting occurred. It appears, then, that the deficiency noted in your complaint has been cured with the new notice and meeting, and I am therefore closing my file on the matter.

Thank you for bringing the matter to my attention.

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_

GREGORY A. SALTER  
Deputy Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

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WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

March 2, 1998

Rebecca Howard, Esq.  
Fernley Town Board  
P.O. Box 1624  
Fernley, Nevada 89408

*Via Facsimile to (702) 575-6732*

Re: Fernley Town Board

Dear Rebecca:

As we discussed last Thursday and again today, in investigating two complaints (attached as Exhibits A and B) this office received regarding incidents that happened last November, we became aware of a pattern of events that cause this office great concern. We understand that you do not agree with this office, but we are sending this warning letter in order to provide guidance and an opportunity to prevent possible future litigation by this office.

In investigating the complaints, I have reviewed several months of meeting agendas and minutes of Board and the Parks Committee and have listened to tapes of some meetings. I have also conducted interviews (with more to be scheduled, if necessary) and observed a meeting of the Town Board of February 4, 1998.

The problem centers around meetings by members of the Board as well as a subcommittee of the Parks Committee regarding negotiations with Mr. Rich Cable over a proposed deal involving the construction of an 80-acre park by Fernley Hills Enterprises in exchange for the Board abandoning an application the town has on file with the Bureau of Land Management to acquire 600 acres of land.

On November 4, 1997, a subcommittee was appointed by the Parks Committee to work with Mr. Cable to develop a written agreement regarding the 80-acre park. See Agenda and Minutes of the Parks Committee for meeting dated November 4, 1998. The subcommittee met some time in November and developed a letter that was delivered to Mr. Cable on or about

November 12, 1997. A copy is attached as part of Exhibit A. I can find no evidence that the subcommittee complied with the Open Meeting Law when it met to deliberate over and compose the letter. It appears from minutes of the Parks Committee on November 17, 1997, that the subcommittee met a second time to make a recommendation to the Parks Committee that negotiations with Mr. Cable be terminated since he did not respond to the letter to the subcommittee's satisfaction. I can find no evidence that the subcommittee complied with the Open Meeting Law for that meeting either.

Exhibit A indicates that on November 12, 1997, after a Town Board meeting, three members of the Town board (a quorum) and you gathered together with Michele Taylor, a member of the subcommittee. The Town Board members allegedly present were Mr. David Stix, Mr. Danny Lunsford, and Mr. Vic Hartpence. A second witness corroborates that all of you were together for a time that night. The five of you allegedly discussed the letter, and Mrs. Taylor was told that the letter contained language that was contrary to the intentions of the Board because it appeared to contain an ultimatum rather than an invitation to negotiate. It is alleged in Exhibit A that you instructed Mrs. Taylor (in the presence of Messrs. Stix, Lunsford, and Hartpence) to write an addendum to the letter, including an apology for the tenor of the last paragraph of the letter. A copy of the handwritten addendum worked out that night is attached as part of Exhibit A. I find no evidence that the gathering that evening was conducted in accordance with the Open Meeting Law.

Mrs. Taylor was apparently reluctant to dispatch the addendum because she was not sure she had the authority to do so, and she was instructed by Mr. Lunsford (in your presence) to call the other members on the subcommittee and poll them to get approval for the addendum. As evidenced by the handwriting at the bottom of the proposed addendum, she apparently polled the members of the subcommittee, who apparently voted to leave the letter as it stood. As a collective decision was reached by the subcommittee, action (as defined in NRS 241.015(1)) was being taken and the polling would constitute a meeting of the subcommittee, and we can find no evidence that the meeting was conducted in accordance with the Open Meeting Law.

On December 3, 1997, the Board met and by motion appointed Mr. Stix and Mr. Lunsford (the "Park Liaisons") to negotiate an agreement with Mr. Cable and report back to the Board. *See* Minutes of the December 3, 1997, meeting, item 11. The tapes for the meeting reveal that during the lengthy discussion preceding the vote, the Open Meeting Law was discussed three times. Twice, comments were made that the Open Meeting Law required that only two board members could participate in the negotiations, or, stated another way, if only two board members participated, the meetings with Mr. Cable could be conducted outside the Open Meeting Law. Two board members (Mr. Hartpence and Mr. Larson) commented that the Open Meeting Law was precluding them from observing the negotiations. [Tape 3, Side B @ 116, 256.] Later when it was pointed out that the contract was going to be presented to the whole board for a vote, one citizen (a former government teacher) pointed out that the negotiations were everything in this

Rebecca Howard, Esq.  
March 2, 1998  
Page 3

kind of a deal. [Tape 3, Side B @ 560.] Public interest in the process was repeatedly iterated, and there were several requests or comments that either the Parks Committee (who was originally appointed to do the negotiations and did negotiations for other deals) or the full Board should conduct the negotiations (in which case the Open Meeting Law would have applied).

From comments made at the February 4 meeting, it appears that the Parks Liaison (Board members Stix and Lunsford) did meet with Mr. Cable and engaged in negotiations. I can find no evidence that any such meeting or any meeting conducted between themselves was conducted in accordance with the Open Meeting Law. Further, at the February 4 meeting, upon being questioned by a citizen, Mr. Stix declared that such meetings were closed to the public. You opined that the Open Meeting Law did not apply to the negotiations, and Mr. Stix stated "that's why we have the two of us." When the citizen (Mrs. Taylor) questioned further and tried to read NRS 241.015(3) into the record, you told her "go to law school and then come back and talk to me," and Mr. Stix shouted her down, cut her off, and moved to the next item on the agenda. You apologized for your remark. We think Mrs. Taylor was right.

For the reasons explained below, this office concludes that the subcommittee meetings, the meeting between Mrs. Taylor and a quorum of the Board on November 12, the polling of the subcommittee members, and the meetings between the "Park Liaisons" and Mr. Cable should all have been conducted in compliance with the Open Meeting Law.

The November 12 gathering was a gathering of the members of a public body (Board members) at which a quorum (three) was present, to deliberate toward a decision and take action (express opinions about the tenor of the letter and direct Mrs. Taylor to write an addendum) on a matter over which the Board had supervision, control, and jurisdiction (the negotiations with Mr. Cable regarding a potential city park). As such, it was a "meeting" under NRS 241.015(2) and should have been conducted in accordance with the Open Meeting Law.

The instruction to Mrs. Taylor to call and poll the subcommittee members regarding the addendum could be viewed as a violation of NRS 241.030(4) (electronic communications must not be used to circumvent the spirit or letter of the Open Meeting Law in order to discuss or act on a matter over which the public body has supervision, control, jurisdiction or advisory powers).

The Parks subcommittee is a public body under NRS 241.015(3) because it is an advisory body of a local governmental (duly appointed by the Parks Committee of the Town Board), which is supported in part by tax revenue or makes recommendations to the Board which expends or is supported by tax revenues. Accordingly, its meetings should have been conducted in accordance with the Open Meeting law.

And, finally, this office believes that the "Two Board Member Park Liaison" formally appointed by the Board of December 3 could reasonably be viewed by a court as a public body and should have conducted its meetings in accordance with the Open Meeting Law.

NRS 241.015(3), in relevant parts, defines a public body as "any administrative, advisory, executive . . . body of . . . a local government . . . which . . . is supported in whole or in part by tax revenues or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenues, including but not limited to any board . . . committee, subcommittee or other subsidiary thereof . . . ." In section 3.04 of the *Nevada Open Meeting Law Manual*, Seventh Edition, the Attorney General discusses the application of the Open Meeting Law to committees and subcommittees, stating that "to the extent that a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, it would be covered by the Open Meeting Law." *See also*, the discussion in section 3.03 with case authorities.

The Open Meeting Law is entitled to a broad interpretation to promote openness in government, and any exceptions thereto should be strictly construed. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986). A construction which frustrates all evasive devices is preferred for an open meeting law. *Florida Parole & Probation Comm'n v. Thomas*, 364 So.2d 480 (Fla. App. 1978). *See also* Op. Nev. Att'y Gen. No. 85-19 (December 17, 1985).

Even though the group involves less than a quorum of the Board members, it was formally appointed to act as a group and perform a task (negotiate with Mr. Cable) for the Board and make recommendations to the Board and should be evaluated in its own right as a public body. It appears to be functionally no different than the Parks Committee which also includes less than a quorum of Board members (the same two) and was originally given the job of negotiating with Mr. Cable and making recommendations to the Board. There is no doubt that the Parks Committee is a public body. If both are doing the same thing, this office cannot see why the Open Meeting Law should apply to one but not the other. Both are administrative or advisory bodies to the Board and are supported in whole or part by tax revenues or make recommendations to the Board which expends tax revenues. Both should be treated as public bodies, especially considering the principles in the *McKay* and *Florida Parole & Probation Comm'n* cases discussed above.

We urge the Board to reconsider its process. We recommend that the Board consider the actions of the Parks Liaison to be void under NRS 241.036 and instruct the Parks Liaison to conduct a new meeting in accordance with the Open Meeting Law before making its recommendations to the Board. Mr. Cable should be invited to attend the meeting, but, of course, cannot be compelled to do so, and if he chooses not to attend, we would recommend that the members publicly disclose what happened at the previous meetings, obtain public input, and then vote on a recommendation to the Board. While we agree that it is problematic for other Board

Rebecca Howard, Esq.  
March 2, 1998  
Page 5

members to participate in that meeting, we recommend that tapes be made of the proceeding (as you usually do) so that other Board members could listen to them. We also recommend that subcommittees be instructed to conduct their meetings in compliance with the Open Meeting Law.

In reviewing the agendas, minutes, and meetings of the Board, we note that they are generally well done and that the recordings are superior and that public input is generally encouraged at Board meetings. Given that and the record of the Board with this office, we would consider, under the circumstances, closing our file on the matter if the foregoing is done.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

March 3, 1998

Stewart Bell, Esq.  
Clark County District Attorney  
200 South 3<sup>rd</sup> Street, 7<sup>th</sup> Floor  
Las Vegas, Nevada 89101

***Via Facsimile to (702) 455-2294  
Original by Mail***

Re: Clark County commission meeting notices and agendas.

Dear Mr. Bell:

Thank you for working with this office to resolve the issues regarding mailing notices and agendas for the Clark County Commission. I believe this letter memorializes our agreements and understandings.

It is agreed that effective March 1, 1998, the Commission will mail copies of its written notice of meetings without charge to those who request notice of meetings. The written notice will include all the items required by NRS 241.020(2), including an agenda for the meeting as required by the statute. If a person makes a one-time request, it is not necessary to place that person on a standing mailing list. If, however, a person wishes to be included on a standing mailing list for notice, he or she will be placed on the mailing list, without charge, but at the Commission's discretion, may be informed that the request lapses after six months as provided in NRS 241.020(3)(b). If a person renews a request after the six-month period, he or she will be added to or remain on the list without charge. Notices will be sent to those on the mailing list without charge. Only the written notice (including agenda) described in NRS 241.020(2) need be provided by mail without charge.

As is your current practice, if a person requests copies of agenda support material (as described in NRS 241.020(4)), it will be provided over the counter at the Commission's Central Services office on Third Street without charge. It will not be necessary to provide copies of agenda support material over the counter at other county or Commission offices without charge.

Stewart Bell, Esq.  
March 3, 1998  
Page 2

However, it is agreed that signs will be placed at other offices and personnel at other offices will be instructed to inform citizens where they may obtain free copies of agenda support material. If a person desires to be mailed agenda support material, the Commission may charge a fee to cover the costs of mailing.

If this letter reflects our mutual understanding, please let me know in writing, and we will close our file on the matter.

Very truly yours,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General



STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

March 17, 1998

Michael P. Lindell, Esq.  
Jones and Vargas  
201 West Liberty Street  
Post Office Box 281  
Reno, Nevada 89504-0281

Re: Board for the Administration of the Subsequent Injury Funds for Self-Insured  
Employers

Dear Mr. Lindell:

We have received your letter dated March 9, 1998, and return it to you without action. Based on the information you provided, we do not believe that an investigation is warranted at this time.

If you come across any evidence that counsel discussed the litigation directly with members of the board, please resubmit your letter to us with that information. In the meantime, you are entitled under NRS 241.037 to bring your own action for violation of the Open Meeting Law, and we are returning this letter to you promptly so that you can file before the statutory deadlines.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_

GREGORY A. SALTER  
Deputy Attorney General

cc: John Wiles, Esq.



STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

March 19, 1998

The Honorable Michael McCormick  
Humboldt County District Attorney  
Post Office Box 909  
Winnemucca, Nevada 89446

Re: Open Meeting Law complaints; Humboldt County Commission; McLean

Dear Mike:

Our office has completed the investigation on the above-referenced matter. The following facts and conclusions are presented for your review.

**Fransway's telephone motion and vote on October 6, 1997:**

On October 6, 1997, the Humboldt County Commission (Commission) discussed and acted upon agenda item 2A. That item was described on the agenda as "Discussion and action on Joint County Commission/City Council Resolution and Interlocal Cooperative Agreement with Elko County to allow for acceptance of municipal solid waste from the community of Midas, located in Elko County, at the Humboldt County Regional Landfill."

The minutes for the meeting reflect that the Commission discussed the item with all commission members physically present during an open meeting. The Commission approved the matter in concept and directed that Mrs. Hawkins would prepare a joint resolution for the Commission's action later in the day. The complainant in this matter, Mrs. McLean, was present during this discussion and provided no questions or comments.

The minutes further reflect that one of the three commissioners, Tom Fransway, left the meeting to attend a Reno meeting before the joint resolution on landfill use was presented for Commission action. When the resolution was presented later in the meeting, it was approved by two commissioners with Janet Kubichek abstaining. Commissioner Fransway was contacted by telephone and made a motion to approve the joint resolution over the telephone. He also cast the approving vote during the telephone call.

Honorable Michael McCormick  
March 19, 1998  
Page 2

The complaint alleges that a speakerphone was not used during this motion and vote. As such, persons sitting in the audience could not hear Commissioner Fransway's motion, comments or vote on the item. In response, it is admitted that a speakerphone was not used and that a member of the public could not hear Commissioner Fransway's actions on the item. It appears, however, that Mrs. McLean was the only person in the audience when the vote was taken. You indicated in your letter to our office that there was a second telephone available in the meeting room and that if Mrs. McLean had asked if she could be placed on the second telephone in order to hear Commissioner Fransway's actions.

We do not believe that the open meeting law places the burden on a citizen to ask to hear what is going on during the meeting. The burden is on the public body to conduct its deliberations and actions openly. NRS 241.010. We therefore caution that future meetings involving telephone participation by any or all commission members must be accomplished on a speakerphone or other device allowing the audience to hear what the commission members are saying. We note that in your letter to our office you state that you have already provided this corrective advice to the Commission. Thus, we will refrain from any further action at this time.

**Approval of claims to be paid by the county pursuant to NRS 244.210:**

Upon review, we found no open meeting law violation regarding this matter. Because the amount of claims to be approved by the Commission at each meeting is voluminous, often upwards of 400 items, it would be impractical to describe all of the various claims on the meeting agenda. This is one instance where a member of the public should look to the supporting meeting materials and should examine those documents if there is specific interest in a particular claim made for payment by the county.

Based on the foregoing, we will be closing the file on this matter.

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General

RLA/jf  
cc: Ms. Marla McLean



STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

April 2, 1998

Mr. Tom McGowan  
720 South Casino Center Blvd., #5  
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaint, Southern Nevada Strategic Planning Authority

Dear Mr. McGowan:

This office has looked into your complaint that the Southern Nevada Strategic Planning Authority failed to include an item for "public comment" on its agenda for a meeting of February 12, 1998.

In its response to your complaint, the Authority, by and through the Clark County District Attorney's Office, admitted that a period for public comment was left off the agenda for that meeting through a clerical error. They point out that the Authority has had some 50 meetings over the past few months and the public comment item appears on all of the other agendas, and they assure that the Authority is committed to compliance with the Open Meeting Law. Further, they pointed out, as you agreed, that public comments were actually taken at the February 12, 1998, meeting, and you spoke during that public comment period.

Given all the circumstances, we conclude that no further action is warranted by this office. Thank you for bringing this to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General



**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
Attorney General

NIELSEN

BROOKE A.

Assistant Attorney General

April 3, 1998

Roger Marshall  
5228 Shady Grove  
Las Vegas, Nevada 89130

Re: Open Meeting Law Complaint, Nevada Deer Hunt Task Force

Dear Mr. Marshall:

Following our conversation last month, I did some further investigation as you suggested and learned that public comment was not permitted during the work session of the Nevada Deer Hunt Task Force meeting last November, but was allowed at the beginning and end of the meeting.

Nevertheless, your observation that the agenda for that meeting did not include an item for public comments is well founded. As you can see in the attached letter, there were also some other discrepancies in the agenda, and as I looked into why, I learned that this office may have contributed to the confusion about whether or not the open meeting law even applied to the task force.

Since the Deer Hunt Plan Task Force was disbanded after it concluded its work last December, the only thing this office can do is to correct the misunderstanding by writing to the Board of Wildlife Commissioners explaining that future task forces would be covered by the open meeting law. A copy of our letter to Mr. Don Cavin is attached. I have sent a copy of this letter to the Nevada State Press Association.

Roger Marshall  
April 3, 1998  
Page 2

I thank you for bringing this matter to our attention, and appreciate your comments.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
Commerce Section  
(702) 687-6426

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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

April 3, 1998

Mr. Richard L. Mudgett  
P.O. Box 6213  
Incline Village, Nevada 89450

Re: Incline Village General Improvement District

Dear Mr. Mudgett:

On January 29, 1998, you filed a complaint with this office alleging that the Board of Trustees of the Incline Village General Improvement District conducted an unannounced meeting on January 27, 1998, when four trustees (a quorum of the Board) attended a hearing of the Nevada Legislative Committee to study NRS 218.5388 (SB 253) held in Reno.

We have investigated the matter and conclude that there is no evidence that the trustees conducted a Board meeting at the hearing.

Under NRS 241.015(2), a "meeting" means the gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

There were four Board members at the hearing although two left the hearing after awhile. We confirmed that they drove to the meeting in two separate cars, and that while they sat in general proximity to one another in the room, they did not all four sit together at the meeting. We could not find evidence indicating that they all four gathered together at one time to communicate face to face amongst themselves or with their lawyer or the manager or otherwise deliberate amongst themselves toward a decision or to take action on a matter over which the board has supervision, control, jurisdiction or advisory power.

Mr. Richard L. Mudgett  
April 3, 1998  
Page 2

We are therefore closing our file without further action. Thank you for bringing this matter to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

April 10, 1998

Mr. Richard L. Mudgett  
P.O. Box 6213  
Incline Village, Nevada 89450

Re: Incline Village General Improvement District Board (IVGID)  
Open Meeting Law complaints

Dear Richard:

Our office has completed its investigation of the above-referenced matter. The following findings and conclusions are hereby provided to you.

**Complaint Number 97095:**  
**Adequacy of the IVGID meeting room:**

You assert that at the board's meeting of October 29, 1997, approximately 60 to 70 persons wished to attend the board meeting. You further correctly note that the board's meeting room capacity is approximately 50 persons. While this indeed may be the case, it does not follow that such a circumstance amounts to a violation of the Open Meeting Law.

The board meeting room located at 893 Southwood Boulevard typically accommodates 50 people. There is normally an abundance of seating at this meeting location. On rare occasions there may be five to ten persons in excess of the capacity of this meeting room. On such occasions these persons stand in the adjoining hallway and may listen to the board proceedings through loudspeakers located in the hallway corridor. When a controversial board item is scheduled wherein the board anticipates a large crowd, the meeting location is changed to the Chateau meeting room. This meeting room holds several hundred persons.

Mr. Richard L. Mudgett

April 3, 1998

Page 2

NRS 241.020 sets forth in part: “. . . all meetings of public bodies must be open and public and all persons must be permitted to attend any meeting of these bodies. . .” A very similar provision was interpreted by the courts in the case of *Gutierrez v. City of Albuquerque*, 631 P.2d 304 (N.M. 1981). In *Gutierrez* the court concluded that a *rule of reasonableness* must be applied to the statutory language. Even if the size of the crowd exceeded the capacity of the meeting hall, a valid open meeting would still occur so long as the public body took steps to allow reasonable public access to those persons wishing to attend the proceedings.

We conclude that the IVGID Board does take reasonable steps to provide reasonable public access to its meetings. We therefore found no violation regarding this complaint.

**Complaint Number 98012:**

**Request to include letter and small claims court order in meeting minutes of January 13, 1998:**

The IVGID Board has taken steps to include your letter and the small claims court order entered by Judge McMorris into the board’s meeting minutes of January 13, 1998. The documents will be attached and incorporated into the meeting minutes. Accordingly, we find no violation regarding this complaint.

Based on the foregoing, we are closing the investigation on these complaints. Thank you for allowing our office to review this matter.

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General

RLA:jf

cc: Noel Manoukian, Esq.



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

April 16, 1998

Marla McLean  
7985 S. Jackson Road  
Winnemucca, Nevada 89445

Re: Open Meeting Law Complaint, Mineral County Commission meetings March 23-26, 1998

Dear Ms. McLean:

Thank you for sending in your letter of March 30 and for talking to me at length last week regarding the Humboldt County Commission meeting from March 23 through 26, 1998.

As we discussed, I have reviewed your letter and listened to the tape you sent with it regarding the budget workshops held as a part of that meeting. You indicated that you feel that a violation of the open meeting law may have occurred because you were not allowed to speak during the budget workshops until March 26, which is the time scheduled for public comment on the agenda.

We do not think a violation has occurred based on the fact that the agenda only provided for public comment at the end of the three days of workshops. The workshops were a part of a comprehensive five page agenda covering a commission meeting that was scheduled to last four consecutive days. Given the timing and the nature of the topics discussed (a countywide budget) during the four-day event, we believe that it was intended to be one meeting that lasts four days rather than four meetings of one-day duration. The agenda provided for public comment in two places: at the end of the first day of the meeting, and at the end of the last day of the meeting. NRS 241.020(2)(c) only requires that an agenda contains "a" period of time devoted to public comments, and the statute does not specify when that period must be scheduled within the meeting. Since the commission scheduled two periods for public comment, it would seem that the statute has been doubly satisfied.

Marla McLean  
April 16, 1998  
Page 2

But we are concerned about the wording of the public comment item on the agenda. In both places, the wording is:

“Public Comment: This segment of the agenda is designated to give the general public the opportunity to address the Commission on any subject not appearing on the agenda -- no action may be taken. Public comment will not generally be permitted during discussion of individual agenda items. Public commentary will generally be limited to 5 minutes per person.”

In one sentence, it says that the public cannot speak about agenda items during the public comment period. In another sentence it is said that the public generally cannot speak about agenda items while they are being discussed. So when can the public speak about agenda items?

You indicated to me that you were not permitted to speak about agenda items while they were being discussed throughout the meeting, but that you were permitted to talk about agenda items during the public comment period, so we know that it was the intent of the Commission to allow public comment about agenda items.

But that is not what the agenda says, and it is possible that a person who wants to speak about an agenda item may be discouraged from attending the meeting to speak because of the way the agenda is worded.

I am sending a copy of this letter to Michael McCormick, Humboldt County District Attorney with instructions that the public comment section of future agendas may not be restricted to nonagenda items unless members are allowed to speak to agenda items as they are being discussed throughout the agenda.

Again, thank you for bringing this to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_

Gregory A. Salter  
Deputy Attorney General

cc: Michael McCormick



STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

April 22, 1998

Mr. Kenneth Gushen, Chairman  
North Lyon County Fire Protection District  
Post Office Box 163  
Fernley, Nevada 89408

Re: Open Meeting Law Complaint, Agenda Posting

Dear Mr. Gushen:

As you know, this office received a complaint from Mr. Bill Botelho alleging that the agenda for the April 7, 1998 meeting of the North Lyon County Fire Protection District Board of Directors was insufficient under the Open Meeting Law. Mr. Botelho sent us a copy of an agenda, dated April 1, 1998, which had six items on it, one of which was titled: "Special Meeting with the "E" Board, FVFD." Apparently, one of the purposes of the special meeting with the "E" Board was to discuss comments made by Mr. Botelho in a letter to the editor of the Fernley Leader-Courier where he gave an opinion regarding the condition of the apparatus, equipment and personnel of the District. As the agenda item did not state the purpose or nature of the discussion with the "E" Board, Mr. Botelho was of the opinion that this agenda item did not give a "clear and complete statement of the topics scheduled to be considered during the meeting," as required by NRS 241.020(2)(c). In looking into the matter, I was told that the agenda that Mr. Botelho had sent us was not the correct agenda, and that another agenda had actually been posted and mailed on April 1. On April 8, Mr. Botelho sent me a second agenda which is also dated April 1, 1998, and had seven items on it and described the "E" Board meeting as "Special Meeting with "E" Board, FVFD. Discussion, possible action on letter received from fireman/taxpayer." Apparently, the special meeting was confined to discussions about Mr. Botelho's letter as indicated in the second agenda.

But both agendas indicate that they were posted in only three places: The U.S. Post Office, the Firehouse where the meeting was held, and the Fernley Town Complex. Under NRS 241.020(3)(a), the notice and agenda for a public meeting must be posted in four places, namely:

Marla McLean  
April 16, 1998  
Page 2

“ . . . at the principal office of the public body, or if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body. . . .” Posting at the firehouse would satisfy the first requirement of posting either at the principal office of the body or the place of the meeting, but after that, the agenda was posted at only two other places, according to the certificates signed by you on both agendas.

The lack of adequate posting was not a part of Mr. Botelho’s written complaint to us, but we see the defect and must issue a warning to you to immediately begin posting your notices and agendas in four places as required by NRS 241.020(3)(a). Failure to do so in the future will force this office to take corrective action under NRS 241.037 which may include asking that a court invalidate all actions taken at any meeting where the agenda was not posted as required.

I talked with the Lyon County District Attorney’s office on Monday, and you called me yesterday and we discussed the posting requirement, and you indicated to me that the agendas are now being posted as required by the statute.

Last week, this office prepared and is circulating a sample notice and agenda form with comments indicating how agendas should be prepared and posted under the Open Meeting Law. I enclose a copy of the sample for you to use and hope it is helpful to you. If you have any questions, please call me.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By:

\_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General



STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

April 28, 1998

Kent Lauer  
Nevada Press Association  
Post Office Box 1030  
Carson City, Nevada 89702

Re: Open Meeting Law Complaint, Lincoln County Commission

Dear Kent:

Thank you for calling me earlier this month about a potential violation of the open meeting law by the Lincoln County Commission. A newspaper reporter had noticed that the agenda for the April 6 meeting of the commission included a closed session, which, apparently, was to discuss the alleged misconduct of a company who was a solid waste disposal contractor for the county. Right after you called me, I called the District Attorney who agreed to advise the commission to hold the discussion in an open meeting.

Having heard no further complaints, I assume that the matter was taken up in an open session. Accordingly, I am closing my file on this matter, and thank you again for bringing it to our attention with such promptness so that a violation could be prevented from happening.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_

Gregory A. Salter  
Deputy Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

May 6, 1998

Debbie Brazell  
155 Lyon Drive  
Fernley, Nevada 89408

Re: Application of Open Meeting Law to Citizen's Committee

Dear Debbie:

This letter follows up on our conversation last week regarding a citizens committee you are forming to seek the incorporation of Fernley under NRS Chapter 266. Based on the information you gave me, we believe that the committee is not a "public body" as defined in NRS 241.015(3), and as a result, the Open Meeting Law does not apply to your committee meetings.

You informed me that the committee is being formed under NRS 266.018 to prepare a petition for incorporation and begin the incorporation process for the town of Fernley. You have selected five "qualified electors" (including yourself) from the Fernley area to participate on the committee. No member of your committee is an elected official, and your committee has not been appointed by the Fernley Town Board or any other government body. At first, funding for your committee will come from private donations.

The Open Meeting Law applies only to public bodies, and NRS 241.015(3) defines a public body (in relevant parts) as:

Debbie Brazell

May 6, 1998

Page 2

“ . . .any administrative, advisory, executive or legislative body of the state or a local government 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...”

Based on what you told me, it would not appear that your citizens committee is a body of a local government, nor does it appear to be supported by tax revenue. Thus, it would not appear to fit within the definition of a public body.

As we discussed, depending on how the process goes, your committee could evolve into a public body, so keep your eye on the definition quoted above, and if you have any questions, please call me. Thank you for calling me to discuss this in advance.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_

GREGORY A. SALTER  
Deputy Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

May 13, 1998

Mr. Frank C. Saunders  
Post Office Box 188  
Genoa, Nevada 89411

Re: Open Meeting Law Complaint: Douglas County Redevelopment Citizens Advisory Committee meeting of March 24, 1998, Action on the preliminary redevelopment plan boundaries

Dear Frank:

Our office has conducted an investigation on the above-referenced matter. As part of that investigation, I reviewed the committee's meeting agenda and written minutes for March 24, 1998. I also reviewed the committee's meeting agenda and written minutes for April 9, 1998, as well as an explanatory letter from the Douglas County District Attorney.

In your complaint you assert that the committee violated NRS 241.020 by taking action under an agenda topic that did not sufficiently denote that such action would be taken. NRS 241.020(2)(c) sets forth in part that a meeting notice must include:

An agenda consisting of:

- (1) A clear and complete statement of the topics scheduled to be considered during the meeting.
- (2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items . . . .

At the meeting of March 24<sup>th</sup>, the committee considered the preliminary plan for redevelopment within the county prepared by the consultants. One of the items the committee was reviewing involved the proposed boundaries of land areas within the county which might fall into a redevelopment project. Agenda topics for the March 24<sup>th</sup> meeting included the following language:

Mr. Frank C. Saunders  
May 13, 1998  
Page 2

1. Presentation by the Redevelopment Consultant Team on draft blight report, fiscal analysis, and preliminary boundaries of Project Area.
2. General discussion and direction regarding Preliminary Plan preparation.
3. Public comment and discussion of Evaluation Area No. 1 . . . .

When these agenda topics are read as a whole, I conclude that the committee did provide notice to the public that the March 24<sup>th</sup> meeting was not solely limited to discussion on the preliminary redevelopment project boundaries. The phrase "discussion and direction" indicated that committee action would be taken directing the consultants on the desired format of the preliminary plan.

Because the Open Meeting Law requires public bodies to clearly denote which agenda topics might be acted upon, the Douglas County District Attorney took a further advisory step by encouraging the committee to revisit the issue of the consultant recommended boundaries for the proposed redevelopment project. The committee followed this recommendation and conducted a second meeting on April 9, 1998, concerning this matter. The meeting agenda for April 9, 1998, clearly denoted that discussion and possible action might be taken by the committee in recommending to the planning commission the proposed redevelopment boundaries. All land areas potentially designated for inclusion in the redevelopment project were described with great detail on the April 9<sup>th</sup> agenda.

Based on the foregoing, I conclude that the committee did not violate the Open Meeting Law and has in fact taken additional precautions to fully comply with the letter and the spirit of the law. Thank you for providing our office with the opportunity to investigate and review this matter.

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General  
Board and Commissions Section

RLA:jf  
cc: Scott W. Doyle, Esq.



STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

May 21, 1998

Mr. Fred Church

Washoe County Advisory Board to Manage Wildlife  
904 West Seventh Street, Suite 201  
Reno, Nevada 89503

Via FAX to (702) 323-1916

Re: Meeting of Wildlife Advisory Boards

Dear Fred:

This letter is in response to your inquiry about an upcoming meeting of various wildlife advisory boards. You indicated that the terms of three commissioners on the Nevada Wildlife Commission will be expiring and that Governor Miller invited local advisory boards to submit names or recommendations for replacements or reappointments.

The local advisory boards would like to meet with one another to discuss who to recommend, and you asked this officer how that can be done under the Open Meeting Law. You suggested that each participating advisory board would prepared its own agenda and notice indicating that it would be meeting with other advisory boards at the time and place designated and would post and mail the notice in accordance with the Open Meeting Law. You suggested that the joint meeting would be tape recorded and that each participating board would keep its own minutes.

We think you have the right framework for compliance with the Open Meeting Law and add the following suggestions:

1. Be sure to coordinate the topics to be listed on each agenda so they are the same, and be sure there is sufficient detail. Each board may want to say that it is meeting with the others to deliberate with and take joint action in making recommendations to Governor Miller about reappointment or replacement of wildlife commissioners and whatever other deliberations or action that may occur.

Mr. Fred Church  
May 21, 1998  
Page 2

2. There is no problem from an Open Meeting Law standpoint with the fact that some advisory boards will be traveling out of their respective counties to meet with the others. Just make sure the notices and agendas clearly say when and where the joint meeting will occur and that each participating board posts its notice at its principal office and three other prominent places within the county where the advisory board sits. Because of the unique circumstances, it would be a good idea for each participating board to also post a copy of its notice and agenda at the place of the meeting.

3. The minutes of each board should not only reflect the deliberations and actions taken by the members of the board, but should also reflect the collective actions of the joint group. Perhaps joint minutes may be accomplished if you are going to assemble into one group and run the meeting without each board taking individual votes.

4. The facility to be used for the joint meeting should be ample enough to accommodate members of the public, and public comment must be allowed at the joint meeting.

5. Closed sessions may not be used.

I hope this information is useful to you and appreciate that you have asked for guidance in advance of the meeting.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_

GREGORY A. SALTER  
Deputy Attorney General



STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

May 27, 1998

Marla McLean  
7985 S. Jackson Road  
Winnemucca, Nevada 89445

Re: Open Meeting Law Complaint, Nevada Ethics Commission

Dear Ms. McLean:

In response to your letter to me dated May 21, 1998, it does not appear that the Nevada Ethics Commission violated the Open Meeting Law when it imposed sanctions against you on April 22, 1998.

The agenda for the item said:

\*2) The Commission will hear testimony, receive evidence and immediately thereafter deliberate and potentially decide all issues relating to the following opinion request:

#97-21 submitted by Roger Mears and Marla McLean regarding the conduct of John Milton, Humboldt County Commissioner.

Per NRS 281.511(9), the Commission's deliberation may be conducted in Closed Session.

Since the sanctions apparently arose out of your "opinion request" to the Commission, it would appear that the imposition of sanctions would be safely within the meaning of "all issues relating to the . . . opinion request," and since you and Mr. Mears were named in the agenda as was Mr. Milton, we believe that the agenda satisfies the public notice requirement contemplated by NRS 241.020(c)(1) and (2).

Marla McLean  
May 27, 1998  
Page 2

Thank you for bringing this to our attention and giving us the opportunity to take a look at it.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

FRANKIE SUE DEL PAPA  
*Attorney General*

NIELSEN

BROOKE A.

*Assistant Attorney General*

March 7, 2001

Marla McLean  
7085 S. Jackson Road  
Winnemucca, Nevada 89445

Re: Open Meeting Law Complaint, Humboldt County Commission.

Dear Mrs. McLean:

Following up on our conversation last month, I have just received information that the closed meeting held by the Humboldt County Commission on February 2, 1998 was with Mr. Bob Phibbs of the firm of Becker and Bell Inc. who was acting as a labor negotiator for the county. At the time, the county was involved in negotiations with the Humboldt County Law Enforcement Association and the Humboldt County Employees Association, and the meeting was to discuss those negotiations.

Accordingly, the meeting was exempt from the open meeting law. See NRS 288.220.

We are therefore closing our file on your inquiry as to whether the meeting violated the open meeting law. We appreciate your bringing this matter to our attention so we could look into it. If you have any further questions, please call me.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
Commerce Section

Marla McLean  
March 7, 2001  
Page 2

(702) 687-6426

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**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA*  
*Attorney General*

*NIELSEN*

*BROOKE A.*  
*Assistant Attorney General*

June 12, 1998

Mr. Chuck Gardner, Esq.  
Law Offices of Chuck Gardner  
815 South Third Street  
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaint, Las Vegas Convention and Visitor's Authority.

Dear Mr. Gardner:

We have looked into your complaint dated April 10, 1998, regarding a meeting between the Las Vegas Convention and Visitors Authority and representatives of the Las Vegas Sands.

There was a meeting on May 5, 1998, between staff representatives of the LVCVA, the Las Vegas Sands and R&R Advertising. No members of the LVCVA Board of Directors attended the meeting. Therefore, it was not a "meeting" within the definition of NRS 241.015(2), and would not be covered by the open meeting law. As you can see from that definition, there must be a quorum of the board members present in order to be a covered meeting.

Thank you for bringing this to our attention. We will be closing our file on the matter.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
Commerce Section  
(702) 687-6426

Mr. Chuck Gardner, Esq.  
March 7, 2001  
Page 2

cc: LVCVA

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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

June 16, 1998

Roy Walch, Chairman  
Pahrnagat Valley Fire Protection District  
c/o Marge Davis  
Office of the Justice of the Peace  
Alamo, Nevada

Via FAX to (702) 725-3566

Hon. Thomas A. Dill  
District Attorney  
One Main Street  
Pioche, Nevada 89403

Via FAX to (702) 962-5582

Re: Open Meeting Law Complaint, Pahrnagat Valley fire Protection District

Dear Messrs. Walch and Dill:

As I discussed with Mr. Walch this morning, this office has received a complaint from Jim Perkins alleging that the Fire Protection District Board violated the Open Meeting Law at its meeting on May 5, 1998.

Judging from the minutes and agenda sent to us by Mr. Perkins, we tend to agree that a violation has occurred. In such circumstances, this office has 60 days from the date of the offense to file in district court for relief. That 60 days would expire on July 6, 1998. Because of the deadline, we have prepared a complaint and are ready to file it. A copy of the complaint is attached.

But, the Attorney General would prefer to work something out in order to avoid any litigation. We propose that the Board: (1) acknowledge that the termination of Mr. Perkins is void and reinstate him retroactive to May 5, 1998; and (2) acknowledge that this letter constitutes a warning letter from this office urging the Board to prepare its agendas in accordance with

Roy Walch, Chairman  
Hon. Thomas A. Dill  
June 16, 1998  
Page 2

NRS 241.020 and to give notices under NRS 241.033 when required. If the Board is willing to agree to the foregoing, this office will close its file. If the Board then wishes to take action regarding Mr. Perkins, then it may, of course, go ahead and schedule a new meeting in accordance with our warning.

Please promptly respond to this letter. If we do not hear from you by June 23, we must proceed.

Very truly yours,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General

Attachment: Draft complaint with exhibits



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E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

August 17, 1998

Marla McLean  
7085 South Jackson road  
Winnemucca, Nevada 89445

Re: Open Meeting Law Complaint: Humboldt County Commission

Dear Mrs. McLean:

This office is responsible for investigating complaints regarding violations of the Open Meeting Law under NRS 241.040. You filed a complaint with this office alleging that the Humboldt County Commission abruptly concluded its meeting on April 20, 1998 without calling for public comment as indicated on the meeting agenda for that meeting.

We have looked into the matter and conclude that a violation of the Open Meeting Law did not occur. The agenda for the meeting indicates that it was a two-day meeting scheduled to occur on April 20 and April 23. The April 20 portion of the agenda indicated that public comments would be received after all other matters on the agenda had been completed and before the meeting was to be continued to April 23. It appears from information we received that the Commission had worked its way through all the items on the April 20 agenda except item 2 G "Quarterly Inspection of Humboldt County Detention Facility." The inspection is apparently required by law, and the commissioners apparently take turns in making the quarterly inspections with the whole commission conducting the inspection at least once annually. On April 20, it was Commissioner Fransway's turn to make the inspection, and he left the meeting to do the inspection. The other commissioners inexplicably left the meeting, and when Commissioner Fransway returned, no one was present. Without anyone present, it was not possible to complete the April 20 agenda and call for public comment. However, at the April 23 meeting, the public comment item was taken up, and public comment was received.

Marla McLean  
August 17, 1998  
Page 2

NRS 241.020(2)(c) requires that an agenda for a public meeting include a period devoted to public comment. The April 20-23 agenda did so. However, the statute does not mandate that an agenda be followed exactly in the order presented. It is unfortunate that the commissioners ended the April 20 portion of the meeting without proper announcement of the a continuance to April 23, but we are constrained to conclude that since public comment was properly taken up on April 23, a violation of the Open Meeting Law did not occur.

Thank you for bringing this matter to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
GREGORY A. SALTER  
Deputy Attorney General

cc: Humboldt County District Attorney



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA  
Attorney General*

*BROOKE A. NIELSEN  
Assistant Attorney General*

August 18, 1998

Gwen Bogh Carter, Publisher/Editor  
Lovelock Review-Miner  
P.O. Box 620  
Lovelock, Nevada 89419

Re: Open Meeting Law Complaint: Pershing County Water Conservation District.

Dear Ms. Bogh Carter:

This office has primary jurisdiction to investigate violations of the Nevada Open Meeting Law (NRS Chapter 241), and earlier this year you filed with this office a complaint regarding the Pershing County Water Conservation District. You indicated that the general manager of the district refused to provide your paper with copies of agenda support material regarding the budget worksheets that were approved by the district board.

Shortly after this office became involved, you reported to me that the budget worksheets were provided and that you were assured by counsel for the district that materials would be provided upon request. We have also been advised by counsel for the district that the misunderstanding of the general manager regarding the reach of the open meeting law has been resolved.

You also sent copies of some agendas and minutes for us to review to determine if they complied with the open meeting law. We have reviewed them and conclude that improvements must be made in order to be in complete compliance with the open meeting law, and have advised the district accordingly. A copy of our letter is enclosed.

Thank you for bringing this to our attention.

Very Truly Yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter,  
Deputy Attorney General  
(702) 687-6426



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OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA*  
*Attorney General*

*BROOKE A. NIELSEN*  
*Assistant Attorney General*

August 18, 1998

Mr. Tom McGowan  
720 So. Casino Center Boulevard # 5  
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaints: Southern Nevada Strategic Planning Authority.

Dear Mr. McGowan:

This office has primary jurisdiction for the investigation of complaints regarding violations of the Nevada Open Meeting Law, and over the past three months you have filed eight complaints with this office alleging numerous violations of the open meeting law by the Southern Nevada Strategic Planning Authority.

You and I have had many phone conversations discussing the complaints as well as other matters involving the SNSPA, and, as discussed, we are looking into the matters and plan on meeting with SNSPA officials in Las Vegas. As promised, we will report the results to you.

Upon careful analysis, we note that there are some allegations in your complaints upon which this office cannot act. Given the volume of your complaints and your strong interest in this case, we will discuss those allegations in this letter while we complete our investigation and meetings on the other allegations.

In your second complaint (my file number 98059), you assert that there was a "meeting" between Clark County Commissioner Lance Malone, State Senator Dina Titus, Mr. Mike Dwyer, Director of the Federal BLM office, Mayor James Gibson, Clark County Commission Chairwoman Yvonne Atkinson Gates, and Mayor Michael Montandon to discuss the possible formation of a Public Lands Committee and discuss public land issues of the region. You believe that the group was a "DeFacto Committee" and should have conducted its meetings in accordance with the Open Meeting Law.

The minutes of the April 6 meeting of the SNSPA reflect a presentation by Commissioner Malone to the SNSPA Board proposing the formation of a Public Land Commission (and other matters). The minutes do reflect a series of individual and group discussions between members of various government bodies regarding public land issues and the possible formation of a public land committee. It appears that the meetings were spontaneous and the participants had not been appointed or commissioned by the SNSPA to form together into a collegial body to provide advice to the SNSPA. In interpreting the definition of a "public body" set out in NRS 241.015(3) we have indicated our belief that the suspect group must be a collegial body and must (1) owe its existence to and have some relationship with a state or local government, (2) be organized to act in an administrative, advisory, executive or legislative capacity, and (3) must perform a government function. See *Nevada Open Meeting Law Manual, Seventh Edition* published by this office in January 1998, § 3.01 at page 15. In reviewing the facts of this case, we conclude that spontaneous discussions of various government officials did not reach the degree of organization to form a collegial "body." We also note that the group was not appointed by nor owed its existence to the SNSPA or any other public body, nor was it performing any government function, as it had no jurisdiction over any matter and only came together to discuss an idea. Accordingly, this office concludes that a public body had not been formed, and the open meeting law would not have applied to the individual or group discussions.

In your third complaint, (my file no. 98060), you asserted that the SNSPA has conducted 124 open public meetings, but that the SNSPA has never complied with the "public notice requirement of six month incremental renewal of the public request for mailing receipt of public-pertinent information, including SNSPA meeting agendas, meeting minutes, proceedings, presentations, hand outs, and related material pertinent to and respective of any one or more of all of the SNSPA meetings." We will look into how SNSPA provides public notice, but as discussed with you on the telephone, the SNSPA does not have the duty under NRS 241.020(3) and (4) to honor a standing blanket request to provide you with "all meeting minutes, proceedings, presentations, hand outs, and related material pertinent to and respective of any one or more of all of the SNSPA meetings" as you requested. Under NRS 241.020(3), the SNSPA is required to establish a mailing list for notices of meetings (including agendas) and to allow people to remain on the list for six months at a time. But this office believes that only notices of meetings and agendas are covered by that requirement. The requirement of providing copies of agenda support materials is covered by a different statute, NRS 241.020(4), which is different than the six month mailing list statute. We believe that a public body may require that individual requests be made for those items. Minutes of meetings are covered by NRS 241.035, and the only requirement is that they be made available for public inspection. Citizens who want copies of minutes must make arrangements with the public body for copies, and it is not a requirement of the open meeting law that the public body honor a six month standing request for minutes. Of course, we would encourage the SNSPA to work out something with you, but we cannot share your conclusion that they are "flagrantly violating" the open meeting law if they prefer to provide the material on individual requests rather than on a standing order.

Your sixth complaint (my file number 98068) alleges that the by-laws of the authority violate the open meeting law. We have studied your letter and the by-laws of the SNSPA and must disagree with your legal analysis. You first assert that the by-laws should not refer to or incorporate sections of the open meeting law or SB 383 because "a duly enacted statutory law does not comprise a 'By-Law' of any Government Agency or entity whatsoever, and vice-versa" ...and that it is "presumptuous and redundant." You also assert that various provisions of the by-laws seem inconsistent with SB383.

Upon careful analysis of the by-laws we conclude that no provision in the by-laws is a "flagrant violation" of the open meeting law. The by-laws refer to the open meeting law in several places in a manner which recognizes the obligation of the SNSPA to comply and which delegates specific responsibilities or establishes methods of compliance. We also note that section 1.5(f) provides that the by-laws shall be construed in a manner consistent with all applicable laws. This office does not think that is either presumptuous, redundant or a violation of the open meeting law for by-laws to refer to the open meeting law and mandate obedience.

We note, however, one provision in the by-laws which needs to be clarified in order to be consistent with the open meeting law, which will be discussed with SNSPA officials. Section 3.5 provides that "[U]ntil minutes have been reviewed and approved by the applicable committee, they shall not be distributed to any person who is not a committee member." If draft committee minutes are submitted to committee members as a part of the agenda support material for a meeting, they must be provided upon request to a member of the public under NRS 241.020(4), even if they are only drafts to be approved at the upcoming meeting.

This office has no jurisdiction over whether or not the by-laws comport to SB 383. I will forward your comments to counsel for the SNSPA for his information. Otherwise, upon discussion with appropriate officials about section 3.5 of the by-laws, we will be closing our file regarding the by-laws.

There remain many allegations that we will discuss with SNSPA officials. We appreciate your latest comments that compliance with the open meeting law seems to be improving.

Thank you for bringing all this to our attention.

Very Truly Yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter,  
Deputy Attorney General  
(702) 687-6426



STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
*Attorney General*

BROOKE A. NIELSEN  
*Assistant Attorney General*

August 18, 1998

Ellen Skinner  
Post Office Box 3463  
Hawthorne, Nevada 89415

Re: Open Meeting Law Complaint: Mineral County School Board

Dear Ms. Skinner:

This office has primary jurisdiction to investigate complaints regarding violations of the Nevada Open Meeting Law. This letter is in response to a complaint you filed with us regarding a meeting of the Mineral County School Board on April 27, 1998.

Having discussed the case with you and reviewed the material you submitted, this office concludes that the board did not violate the open meeting law on April 27 with respect to how it handled your contract renewal.

In your complaint, you raised concern about the agenda for that meeting and the action the board took under the agenda when it decided not to renew your contract. The relevant agenda item said:

3.2 Review and Appropriate Action on Superintendent's Administrative Hiring Recommendations for the 1998-99 School Year.

\* \*

2. Ellen Skinner, Principal, Hawthorne Elementary Junior High School (Second Year Probationary NRS 391.3197).

\* \*

You indicated that the Superintendent's recommendation was in your favor, but the Board took action against the recommendation. We do not believe that the agenda violated the open meeting law, nor do we believe that the action taken by the board violated the agenda. The open meeting law only requires that a meeting agenda contain a "clear and complete statement of the topics scheduled to be considered during the meeting" and a "list describing the items on which action may be taken and clearly denoting that action may be taken on those items." NRS 241.020(2)(c)(1) and (2). As the agenda named you and indicated that the board would take "appropriate action" on the Superintendent's hiring recommendations, we believe that the agenda was proper and authorized the action taken.

You had indicated in your complaint that you did not receive any notice for the meeting, although in your subsequent discussion, you indicated that you were present during the meeting. Because we were trying to determine if the failure to give you written notice of the meeting violated NRS 241.033 (public body shall not hold a meeting to consider character, alleged misconduct, professional competence, or physical or mental health of any person without first giving written notice), you indicated that you had a copy of the motion and remarks made by Trustee Chase leading to the action taken by the Board. You sent a handwritten copy of the motion and remarks and said they were the same as was said at the meeting.

We have reviewed the material you sent me and, while it is a close question, are constrained to conclude that the motion and remarks by Mr. Chase did not rise to the level of discussion of your character, alleged misconduct, professional competence, or physical or mental health which would trigger the notice requirements of NRS 241.033. Mr. Chase's motion and remarks broadly stated that he had concerns about "problems" he had seen with "discipline, communications with staff and parents, working relationships with staff and parents and professionalism" and that he felt it was in "the best interests of the students, the teachers, the district and the community as a whole" that you not be offered a contract to work for the district. The remarks are very general and seem to be more about basic job performance rather than your character, alleged misconduct, professional competence, or physical or mental health.

Mr. Chase was very close to the line with his remarks and had he drifted into a more detailed discussion about alleged misconduct, character, or professional competence, he could have pulled the meeting into a violation of the open meeting law for failure to give you the

Ellen Skinner  
August 18, 1998  
Page 3

notice required by NRS 241.033. We are sending a copy of this letter to the school board as a cautionary reminder about the requirements of NRS 241.033, but will otherwise close our file in this matter.

Thank you for bringing this question to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General



STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
*Attorney General*

BROOKE A. NIELSEN  
*Assistant Attorney General*

August 18, 1998

Clark "Danny" Lee  
3190 Casanova Circle  
Las Vegas, Nevada 89120

Re: Open Meeting Law Complaint: Las Vegas-Clark County Library Board  
of Trustees

Dear Mr. Lee:

The Attorney General's Office has primary jurisdiction to investigate alleged violations of the Open Meeting Law (NRS Chapter 241). Earlier this year, you filed a complaint with this office regarding two meetings of the Las Vegas-Clark County Library District Board of Trustees Interim Selection Search Subcommittee (the "subcommittee") held on February 11 and 12, 1998.

In looking into your complaint, we had conversations with you and with Board Chair Gloria Sturman as well as Board Counsel Gerald Welt. We also obtained and reviewed a copy of the agenda for the meeting. Tapes of the meeting were not available. As you probably know, Mary Rowan filed another complaint of similar nature, and it appeared prudent to us to monitor the situation for a while before drawing our conclusions.

You raised two issues about the subcommittee meeting. The first issue was whether or not members of the public were denied the right to record the meetings as allowed by NRS 241.035(3). The open meeting law does not require public bodies to record the meetings, and at the February 11 meeting there was a statement made that there would be no recording of the meeting. While there is a legitimate question about the exact wording of that statement and its implications, it appears that the intent of the statement was that there would be no recording of the meeting by the subcommittee or the board of trustees. No one asked for clarification and there is no evidence that any member of the public actually tried to record the meeting and was

Clark "Danny" Lee  
August 18, 1998  
Page 2

told to stop. It is unfortunate that the statement was so vague that it could have been misconstrued, but we are constrained by the weight of the evidence to conclude that the public was not actually barred from making a recording of the meeting on February 11. We note that you were allowed to and did record the February 12 meeting without objection by the subcommittee.

The second issue that you raised was that the agenda for the February 12 meeting indicated that the subcommittee would be interviewing candidates, which is what the subcommittee did. After the interviews, the subcommittee formed a recommendation to the Board that rather than hiring an interim director, it consider further investigation regarding entering into a contract with a consulting firm for the interim period. You pointed out that the agenda did not indicate that the subcommittee would be forming such a recommendation.

NRS 241.020(2)(c) requires that an agenda include a list describing the items on which action may be taken and clearly denoting that action may be taken on those items. The agenda for the meeting indicates that the subcommittee "will hold a meeting for the purpose of interviewing prospective candidates for the position of Interim Director," and that "NO BOARD ACTION WILL BE TAKEN" (emphasis in the original). Some agendas use some form of symbol or description to differentiate discussion items from action items, but this agenda does not. However, the words clearly indicate that the subcommittee will interview candidates, and we think a member of the public can reasonably infer that some form of report or recommendation would result from the interviews. We therefore conclude that the public was given adequate notice of what was going to happen at the meeting.

Accordingly, we are closing our file on the matter, and thank you for bringing it to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General



**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
*Attorney General*

BROOKE A. NIELSEN  
*Assistant Attorney General*

August 18, 1998

Mary Rowan  
Rainbow Library  
8012 Harbor Oaks Circle  
Las Vegas, Nevada 89128

Re: Open Meeting Law Complaint: Las Vegas-Clark County Library Board  
of Trustees

Dear Ms. Rowan:

This office has primary jurisdiction for investigating complaints of violations of the Nevada Open Meeting Law, NRS Chapter 241. In February, you filed a complaint with this office regarding two meetings of the Las Vegas - Clark County Library District Board of Trustees Interim Selection Search Subcommittee (the "subcommittee") held on February 11 and 12, 1998. You and I had several conversations about your complaint as well as some subsequent problems, and I conversed with Board Chair Gloria Sturman and Board Counsel Gerald Welt. I kept my file open to monitor the situation for a while. It appears that the subsequent problems were dealt with before they became violations as no new complaints have been filed with this office. We are going to close our file with the following observations, which have been discussed with you previously.

You raised two issues about the February 11 and 12 meetings of the subcommittee. The first issue was whether or not members of the public were denied the right to record the meetings as allowed by NRS 241.035(3). The open meeting law does not require public bodies to record the meetings, and at the February 11 meeting there was a statement made that there would be no recording of the meeting. While there is some question about the exact wording of that announcement and its implications, it appears that the intent of the statement was that there would be no recording of the meeting by the subcommittee. No one recalls that the

announcement specifically stated that members of the public would not be allowed to record the meeting, and there is no evidence that a member of the public actually tried to record the meeting and was told to stop. It is unfortunate that the announcement may have been misconstrued, but we are constrained by the weight of evidence before us to conclude that there was a misunderstanding rather than a violation of the open meeting law on February 11. We note that a member of the public did record the February 12 meeting without objection by the subcommittee.

The second issue was the fact that the meetings were noticed and conducted as open meetings of the subcommittee, and yet were attended by a quorum of the full Las Vegas-Clark County Library District Board of Trustees (the "board"). Since a quorum of the full board was present, you inquired as to whether or not the meeting should have been noticed as a full board meeting under the open meeting law. There are ten members on the board. Three of those members were duly appointed as the subcommittee, and were given the task of interviewing candidates for the job of interim director for the library district, and that was the purpose of the February 11 and 12 meetings as shown on the agendas. However, we confirmed your allegation that three other board members also attended the meetings from time to time, and that at times there were six board members in the room. It was also admitted that some of the three board members who were not on the subcommittee asked questions of candidates and made some comments. We are told, however, that at no time did all six directors sit together or engage in collegial consensus building such as through motions, vote taking, debate or significant dialogue. While there may have been some indirect and roundabout communications during the meetings, we are told that the three nonsubcommittee members did not actually participate in the final decision or the vote of the subcommittee. After the interviews, the three members of the subcommittee decided to recommend to the board that rather than hire an interim director, the board should consider entering into a contract with a consulting firm. We also understand that the board of trustees took up the matter and made a decision in a duly noticed open meeting, although one meeting had to be postponed due to open meeting law considerations. However, the public has been given the opportunity to view the whole process from the interviews through the final decision.

Given all the circumstances and the evidence, we do not believe that sufficient grounds exist for this office to seek injunctive relief or otherwise pursue the matter other than to caution the board with regard to future meetings.

Under NRS 241.015(2), a "meeting" of a public body means "the gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take an action on any matter over which the public body has supervision, control, jurisdiction or advisory power. There is no dispute that there was a gathering of a quorum of the board of trustees at some points in the subcommittee meetings, and that the interviews were board business; so the

issue is whether, as you contend, the collective conduct of the six trustees rose to the level of collective deliberations toward a decision or action. Since they did not cast any votes on February

Mary Rowan  
August 18, 1998  
Page 3

11 or 12, it cannot be said that the three visiting trustees took any action. But all six trustees participated in the deliberative process as they asked questions of candidates and all listened to each other's remarks. On balance, this office feels that the conduct of the three visiting trustees falls a little short of deliberating toward a decision collectively with the three members of the subcommittee. Thus, we are constrained to conclude that a meeting of the board did not occur, and it was not necessary to notice it as such.

Nevertheless, these circumstances undermine public confidence in the open meeting process. Having a quorum of the Board gather together at a committee meeting like this should always be avoided, and, depending on the conduct of the board members, may push the meeting into a violation of the open meeting law that could result in actions taken at the meeting being void. NRS 241.036. The meetings of February 11 and 12 provide a good example of how easy it is for visiting trustees to get drawn into deliberations and put a meeting at such a risk.

I am sending a copy of this letter to Mr. Welt for distribution to members of the board with the hope that situations like this are avoided in the future. For further guidance, see *Nevada Open Meeting Law Manual, Seventh Edition* January 1998, § 5.01.

Thank you for bringing this to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General

cc: Gerald Welt, Esq.



**STATE OF NEVADA  
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Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA  
Attorney General*

*BROOKE A. NIELSEN  
Assistant Attorney General*

August 18, 1998

James R. Sanford, Co-Publisher  
Mason Valley News  
41 North Main Street  
P.O. Box 841  
Yerington, NV 89447

Re: Open Meeting Law Complaint: Walker River Basin Water User's Association.

Dear Mr. Sanford:

This office has primary jurisdiction to investigate complaints for violations of the Open Meeting Law (NRS Chapter 241), and earlier this year you filed a complaint regarding possible violations of the open meeting law by the Walker River Basin Water Rights User's Association. I discussed the matter with you and dispatched a letter to Richard Fulstone, president of the association, and have had correspondence and conversations with Mr. Gordon DePaoli, Esq. counsel for the association.

There was a question as to whether the association was a "public body" as defined in NRS 241.015 (3). In February, I asked for information from the association so that I could assist it in reaching a conclusion, but in the meantime was assured that the association would comply with the law.

Several months have gone by and I have not received the information requested, so it appears that the association has resolved to continue complying with the open meeting law. Based on independent information I received during my investigation, it would appear that the association would be well advised to do so. I obtained from the Secretary of State a copy of the organizational documents for the association, and based on a review of those documents, I notice that the structure of the association is such that it is supported in part by tax revenues from at least five public bodies and provides advice and recommendations to them regarding their water rights. The definition of a "public body" under NRS 241.015(3) includes any "administrative, advisory or executive body..."

which 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 revenues..." and it appears from the organizational documents that the association is supported by tax revenues from and provides advice and recommendations to the Walker River Irrigation District, Douglas County, Lyon County, the City of Yerington, the Mason Valley Soil Conservation District, the Smith Valley Conservation District and other government entities.

Having received no further information from the association and having heard no further complaints about violations of the law, it appears that the question of compliance has been resolved, so we are closing our file on this matter. Thank you for bringing this to our attention.

Very Truly Yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter,  
Deputy Attorney General  
(702) 687-6426

cc: Gordon DePaoli



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA*  
*Attorney General*

*BROOKE A. NIELSEN*  
*Assistant Attorney General*

August 18, 1998

Marlene S. Bunch  
P.O. Box 984  
Hawthorne, Nevada

Dear Ms. Bunch:

This office has primary jurisdiction to investigate possible violations of the Nevada Open Meeting Law (NRS Chapter 241). You have expressed to this office your concern that the Mineral County Board of Commissioners may not be following the Open Meeting Law when it meets to approve payment vouchers for the county. You indicated that the Board typically meets at 9:00 a.m. on Thursdays to review and approve the vouchers and that those meetings are not properly reflected on the Board agenda, are not tape recorded, and that "everything is kept very secret from the public."

We have reviewed that material you submitted and sent an investigator from this office to attend a voucher payment session on a random and unannounced basis to observe the proceeding. For the meeting observed by our investigator, the agenda indicated that the business to be conducted at 9:00 a.m. was "Vouchers to be presented to the Board for approval." There was a sign next to the door of the meeting room pointing to the place of the meeting, and the door was propped open. Without announcing who he was, our investigator went in to the room and sat down and was able to observe the complete proceeding. Our investigator felt welcome to be there, and had no problem hearing and understanding what was going on. The business actually conducted conformed to the agenda. Our investigator also observed that the voucher approval portion meeting was audiotaped, and the remainder of the meeting was videotaped.

Based on the results of our investigation, we conclude that the Board appears to be complying with the Open Meeting Law during voucher approval sessions. We hope this information allays your concerns and we thank you for discussing them with us.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
(702) 687-6426



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OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA*  
Attorney General

*BROOKE A. NIELSEN*  
Assistant Attorney General

August 10, 1998

Commissioner Frank Elwell  
Lyon County Commission  
P.O. Box 127  
Wellington, Nevada 89444

Re: Open Meeting Law Complaint: Lyon County Commission

Dear Commissioner Elwell:

This office is responsible for investigating complaints regarding possible violations of the Open Meeting Law (NRS Chapter 241). Shortly after you filed a complaint with this office regarding conduct of the Lyon County Commissioners, our chief investigator from this office, Mr. Robert Pike, contacted you to review the case. Mr. Pike determined that there is insufficient evidence for us to proceed with further investigation.

I have reviewed the matter with Mr. Pike and conclude that we must close our file. But if you discover any further evidence or information that we can pursue, please contact either Mr. Pike or myself.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter,  
Deputy Attorney General  
(702) 687-6426



STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
Attorney General

BROOKE A. NIELSEN  
Assistant Attorney General

August 31, 1998

Charles K. Hauser, Esq.  
General Counsel  
Southern Nevada Water Authority  
1001 South Valley View Boulevard  
Las Vegas, Nevada 89153

Re: Proposed protective agreement in Public Utility Commission Docket  
Number 97-8001 between Nevada Power Company and the Southern  
Nevada Water Authority

Dear Charles:

You have asked our office to review the above-referenced matter.

Southern Nevada Water Authority (SNWA) wants to contract with Nevada Power Company so that it, through its agents and servants, may receive company records. In exchange, SNWA would agree to maintain confidentiality regarding the information received from Nevada Power Company. The proposed protective agreement would shield Nevada Power's trade secret and/or proprietary information while at the same time it would provide SNWA with the information needed to properly prepare for ongoing Public Utility Commission (PUC) docketed proceedings.

NRS 703.196 contains **specific** statutory authority to protect the confidentiality of a public utility's information through the type of protective agreement proposed in this matter. That statute sets forth in part:

Charles K. Hauser, Esq.

August 31, 1998

Page 2

1. Any books, accounts, records, minutes, papers and property of any public utility that are subject to examination pursuant to NRS 703.190 or 703.195 and are made available to the commission, any officer or employee of the commission, the bureau of consumer protection in the office of the attorney general **or any other person** under the condition that the disclosure of such information to the public be withheld or otherwise limited, must not be disclosed to the public unless the commission first determines that the disclosure is justified . . . (emphasis added).

NRS 703.196(1).

Legislative history concerning the enactment of the above-described statutory language supports an interpretation that anyone who obtains access to the types of trade secret or proprietary information of a public utility company must hold that information in a confidential manner unless and until a determination is made by the PUC on the status of the record as being public or non-public. This statutory language provides a mechanism for the commission, the consumer advocate or other interested parties to receive the needed utility company information while conversely protecting the proprietary information of said company.

When the legislature wishes to provide exceptions to the public records law and the open meeting law it does so by creating specific statutory provisions allowing for confidentiality. In the present matter, NRS 703.196(1) provides specific statutory authority for confidentiality and therefore authorizes SNWA and Nevada Power Company to proceed with the protective agreement. Compare *Neal v. Griepentrog*, 108 Nev. 660, 837 P.2d 432 (1992).

I hope that this information has been of assistance.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General  
Boards and Commissions Section

RLS:jf



STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
Attorney General

BROOKE A. NIELSEN  
Assistant Attorney General

September 15, 1998

Mr. Thomas Mitchell  
Las Vegas Review Journal  
Post Office Box 70  
1111 West Bonanza Road  
Las Vegas, Nevada 89125-0070

Re: *Open Meeting Law Complaint - Clark County Health District*

Dear Mr. Mitchell:

This letter is in response to your May 8, 1998, correspondence regarding your efforts to obtain a copy of the audit prepared for the Clark County Health District. According to your June 30, 1998, correspondence to the Attorney General's Office, you received a copy of the requested audit and believe that no further action is necessary on the part of this office. Therefore, we will be closing our file on this matter.

I would like to take this opportunity to thank you for bringing this matter to our attention. Should you have any questions or concerns, please give me a call.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Christine S. Munro  
Deputy Attorney General  
Commerce Section

CSM:kh  
cc: David Rowles, Clark County Health District



STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
Attorney General

BROOKE A. NIELSEN  
Assistant Attorney General

September 15, 1998

Robert W. Hall, M.S.  
Nevada Environmental Coalition  
Post Office Box 270958  
Las Vegas, Nevada 89137-0956

Re: *Open Meeting Law Complaint - Clark County Health District*

Dear Mr. Hall:

Our office has completed the investigation on the above-referenced matter. The following facts and conclusions are presented for your review.

We received a complaint from you on May 28, 1998, against the Clark County Health District ("CCHD") for its alleged failure to provide a copy of Petition #29-98 and questions concerning the Stewart, Archibald & Barney "Air Pollution Control Division Independent Accountant's Report" (hereafter referred to as "report").

In investigating this matter, we obtained information from the CCHD, including copies of posted agendas, minutes of public meetings, the engagement letter of Stewart, Archibald & Barney, as well as other correspondence from the accounting firm to the CCHD, and a written response from the CCHD regarding this matter. We also reviewed tapes of the May 28, 1998, public meeting.

For the reasons explained below, we conclude that the CCHD did not violate the Open Meeting Law requirement of providing support material.

NRS 241.020(3)(b) requires the notice and agenda to be sent to a person who has requested notice of the meetings. This provision was added to the Open Meeting Law in 1977. NRS 241.020(4) states that "[u]pon request, a public body shall provide, at no charge, at least

one copy of: . . . (c) [a]ny other supporting material provided to the members of the body for an item on the agenda . . . .” This provision was added to the Open Meeting Law in 1995. These are different subsections enacted at different times and addressing different subjects. Had the legislature intended to require that the agenda supporting material be mailed out with the notice and agenda, it would have amended NRS 241(3)(b), rather than add a new subsection to the statute. Thus, it is reasonable to infer that the legislature intended the two matters to be treated independently.

Additionally, the two statutory subsections are significantly different in the requirements for distribution of the material. NRS 241.020(3) states that notices and agendas must be mailed and posted. However, NRS 241.020(4) only requires that agenda supporting materials be “provided” upon request. We cannot find any judicial authority in Nevada that says that “provide” means “mail.” Further, the definition of provide means to furnish, make available, prepare, or supply. This does not imply transporting to another location. Therefore, we conclude that the Open Meeting Law does not require that supporting material be mailed to the person who requests it under NRS 241.020(4), only that it be made available at the office of the public body or at the meeting.

Turning to the matter at hand, it appears the CCHD complied with the spirit and intent of NRS 241.020, by making available, as soon as possible, the final report and supplying copies of various petitions on the agenda to the public when requested to do so. It is this Office’s understanding that copies of Petition #29-98 were available for the public, but that the Board ran out of copies and had to make more.

Regarding your concerns about the audit report, in a letter to the CCHD dated May 1, 1998, Stewart, Archibald & Barney requested additional time to complete the report and conduct additional sample testing. Dr. Ravenholt, the Executive Secretary, approved this request on May 4, 1998. Our investigation revealed that on May 27, 1998, at approximately 4:00 p.m., the Stewart, Archibald & Barney final report was received by the Health District. Shortly thereafter it was faxed to members of the District Board of Health, you, the Review Journal, Channel 8, and a copy delivered to the Las Vegas Sun.

Moreover, it appears the final report was not produced to the members of the Board of Health until May 27, 1998. Once received, it was disseminated to those persons asking for the supporting materials. In short, the Health District could not have produced a copy of a report to the public any sooner.

Regarding your concerns involving the first sentence of the report that stated the “procedures [were] agreed to by the Members of the Board of Health,” Stewart, Archibald & Barney clarified this statement in a letter dated May 28, 1998. This letter stated that the agreed upon procedures were authorized by an engagement letter signed by the CCHD’s administrative management.

Further, with respect to your concern regarding the Board authorizing the report, our investigation revealed that at the March 12, 1998, CCHD meeting, the CCHD staff informed the

Robert W. Hall, M.S.  
September 15, 1998  
Page 3

Board that they asked Stewart, Archibald & Barney to conduct a “special procedures audit to cover cash flow and status of credits.” Stewart, Archibald & Barney were selected by the Board as its auditors at the public meeting in March of 1997. The Health District’s agreement with Stewart, Archibald & Barney provides for them to be “available to your staff for general fiscal advisement, consultation, attendance at Board meetings and other services as necessary.” No questions or concerns were raised by the Board members or the public to the staff’s engagement of Stewart, Archibald & Barney for this task. The report was authorized by the CCHD staff, with appropriate notice of this action given to the members of the Board of Health at the March 12, 1998, meeting, which is reflected in the minutes. The agenda for the March 12, 1998, meeting included an item for the “Summary Status Report on Air Pollution Control Division Fees, Penalties and Emission Reduction Credits & Offset Program.” Given these facts, it appears the CCHD complied with the provisions of NRS 241.020 regarding the engagement of Stewart, Archibald & Barney.

Hopefully, this satisfies your inquiry regarding this matter. Therefore, we will be closing our file. Thank you for bringing this matter to our attention. Should you have any questions or comments, please give me a call.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Christine S. Munro  
Deputy Attorney General  
Commerce Section

CSM:kh  
cc: Clark County Health District



STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
Attorney General

BROOKE A. NIELSEN  
Assistant Attorney General

September 15, 1998

Robert W. Hall, M.S.  
Nevada Environmental Coalition  
Post Office Box 270958  
Las Vegas, Nevada 89137-0956

Re: *Open Meeting Law Complaint - Clark County Health District  
June 25, 1998*

Dear Mr. Hall:

Our office has completed the investigation on the above-referenced matter. The following facts and conclusions are presented for your review.

We received a complaint from you on June 25, 1998, against the Clark County Health District ("CCHD"), alleging that the June 25, 1998, agenda was not a clear and complete statement.

In investigating this matter, we obtained information from the CCHD, including a copy of the posted June 25, 1998 agenda, copies of the minutes of the meeting, a copy of Petition 37-98, and a response from the CCHD, which included fax confirmation pages.

Petition 37-98 was removed from the Consent Agenda to the Report/Discussion/Action section of the Agenda, due to public request. The minutes reflect that there was discussion regarding various fees.

From the information acquired by this office, it appears that on June 19, 1998, the CCHD faxed to you the fee schedules for 7/1/97-6/30/98 (Petition 37-98) and 7/1/98-6/30/98 (Petition 38-97), without charge.

Robert W. Hall, M.S.  
September 15, 1998  
Page 2

Although the agenda description of Petition 37-98 "Revision of District Administrative and Medical Services Fee/Reimbursement Schedule" is broad, it is clear that the CCHD was considering the CCHD's administrative and medical services fees, although each fee was not specifically delineated. Further, a member of the public could obtain the supporting materials regarding the fees, if a specific question or concern existed.

NRS 241.020(2) requires that a meeting notice must include the time, place and location of the meeting, a list of locations where the notice has been posted and an agenda consisting of (1) a clear and complete statement of the topics scheduled to be considered during the meeting; (2) a list describing the items on which action may be taken and clearly denoting that action may be taken on those items; and (3) a period devoted to comments by the general public, if any, and discussion of those comments. *See* NRS 241.020(2).

It appears from our investigation that Petition 37-98 was made available to you and the public prior to the June 25, 1998 meeting, although you were not in attendance. Had you attended the meeting, you could have expressed any concerns you had with respect to the proposed fees. It appears you had full and complete copies of Petitions 37-98 and 38-97 prior to the meeting.

With respect to your concerns involving the determination of what "financial data" means in Section VI of the Agenda, these items are informational items, which do not require any formal action by the board. Should you (or the public) request copies of any of the information items referenced in this section, I have been informed by the CCHD that these items will be provided at no charge.

It is our opinion that no violation of the Nevada Open Meeting Law has occurred. Therefore, we will be closing our file on this matter. Thank you for bringing your concerns to our attention. If you have any questions, please give me a call.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Christine S. Munro  
Deputy Attorney General  
Commerce Section

cc: David Rowles, Clark County Health District

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

*Date:* September 18, 1998

*To:* Joe Ward, Deputy Attorney General

*From:* Greg Salter, Deputy Attorney General  
Commerce Section

*Subject:* Application of Open Meeting Law to Prison Psychological Review Panel

---

NRS Chapter 213 (Pardons and Paroles) establishes a psychological review panel, and this office has been asked whether it is governed by the open meeting law. We believe it is.

NRS 213.1214 says:

**NRS 213.1214 Prisoners required to be certified by panel before release on parole; recertification required if prisoner returns to custody; revocation of certification; immunity.**

1. The [state parole] board shall not release on parole a prisoner convicted of an offense listed in subsection 5 unless a panel consisting of:

(a) The administrator of the mental hygiene and mental retardation division of the department of human resources or his designee;

(b) The director of the department of prisons or his designee;

(c) A psychologist licensed to practice in this state or a psychiatrist licensed to practice medicine in this state, certifies that the prisoner was under observation while confined in an institution of the department of prisons and is not a menace to the health, safety or morals of others.

2. A prisoner who has been certified pursuant to subsection 1 and who returns for any reason to the custody of the department of prisons may not be paroled unless a panel recertifies him in the manner set forth in subsection 1.

3. The panel may revoke the certification of a prisoner certified pursuant to subsection 1 at any time.
4. \*\*\*
5. The provisions of this section apply to a prisoner convicted of any of the following offenses:
  - (a) Sexual assault pursuant to NRS 200.366
  - (b) Statutory sexual seduction pursuant to NRS 200.368
  - (c) Battery with intent to commit sexual assault pursuant to NRS 200.400
  - (d) Abuse or neglect of a child pursuant to NRS 200.508
  - (e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive
  - (f) Incest pursuant to NRS 201.180
  - (g) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195
  - (h) Open or gross lewdness pursuant to NRS 201.210
  - (i) Indecent or obscene exposure pursuant to NRS 201.220
  - (j) Lewdness with a child pursuant to NRS 201.230
  - (k) Sexual penetration of a dead human body pursuant to NRS 201.450
  - (l) An attempt to commit an offense listed in paragraphs (a) to (l), inclusive,
  - (m) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

NRS Chapter 213 does not say anything more about the panel.

In determining whether the panel must comply with the open meeting law, we look first to NRS 241.015(3) which defines a "public body" as:

3. Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the state or a local government 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 education foundation as defined in subsection 3 of NRS 388.750 and a university foundation

as defined in subsection 3 of NRS 396.405. "Public body" does not include the legislature of the State of Nevada.

Applying that definition to the panel, we can conclude:

- That it is either an administrative panel (because it makes certifications) or an advisory panel (because it makes its certifications to the state parole board),
- That it is a body of the state, being created by statute,
- That it is supported in whole or in part by tax revenues (administrative expenses are paid by the state) or at least advises an entity which is supported by tax revenues (the parole board), and
- That it meets the other criteria we discussed in the Open Meeting Law Manual
- § 3.01 (e.g., must be a multi-member collegial body, and must perform a government function.)

It seems inescapable that the panel is a public body. I cannot find any statutory exception exempting either it or any of its functions from the open meeting law. Following the reasoning *McKay v. Board of County Supervisors of Douglas County*, 103 Nev. 490 (1987) (When the legislature intends to make exceptions to the rule of publicity it does so specifically by statute. In view of the method which the legislature really meant to include an "attorney-client" exception in the open meeting law but did not get around to it.), I have trouble crafting an exception by opinion.

However, the panel deals with information which must be kept confidential. For example, NRS 213.1075 prohibits the disclosure of information obtained by a parole and probation officer or an employee of the board of parole commissioners in the discharge of his official duties. Further, the panel may deal with information contained in presentencing reports, and NRS 176.156 prohibits the revealing of information contained in such reports except under certain circumstances. Accordingly, it is impossible for the panel to discuss such reports in public or make them a part of their minutes as public records.

I believe that the panel may go into closed session to consider the character, allegations of misconduct or mental health of the subject prisoners. Doing so would afford the confidentiality contemplated by NRS 213.1075 and NRS 176.156.

Therefore, it would be our recommendation that the panel comply with the open meeting law by providing advance notice of its meetings, including an agenda that lists the names of the prisoners being considered and indicates that closed sessions will be held to consider their character, misconduct and mental health. The panel should start with an open session, make a motion to go into closed session under NRS 241.030(2), close the meeting to take evidence and

Joe Ward  
September 18, 1998  
Page 4

consider it, and then go back into open session to cast the votes and make the certifications required by NRS 213.1214, and provide for public comment. Minutes of the open and closed sessions must be kept. To the extent that minutes of the closed sessions contain protected information, the minutes may, at the discretion of the panel, be kept confidential, but must be made available to the subject of the meeting, and this office under NRS 241.035.

The only authority to the contrary that we can find is a 1965 opinion by Attorney General Harvey Dickerson which opined that proceedings of the parole board may be held in private. Since that opinion, statutes have been changed to require that parole board proceedings be open.



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

WEBSITE: <http://www.state.nv.us/ag/>  
E-Mail: [aginfo@govmail.state.nv.us](mailto:aginfo@govmail.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

BROOKE A. NIELSEN  
*Assistant Attorney General*

March 20, 2003

Mr. Tom McGowan  
720 So. Casino Center Drive #105  
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaint: Southern Nevada Strategic Planning Authority Needs Assessment Subcommittee.

Dear Mr. McGowan:

This office has primary jurisdiction for investigating complaints for violation of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes. On September 16, 1998, we received your complaint regarding the conduct by staff personnel during the public comment period of the Needs Assessment Subcommittee of the SNSPA.

You allege that during your presentation of a public comment, Ms. Elizabeth Fretwell and Mr. Doug Powell (neither of whom are members of the committee) engaged in a "nonagendized, distractive and protracted interpersonal 'side bar' conversation", making it extremely difficult for you to concentrate and provide oral articulation of your written commentary. Fortunately, your comments were written and you asked that they be attached to the minutes of the meeting, which was agreed to by the chair of the subcommittee.

While that kind of conduct may be irritating, we don't believe that we can take action on it as a violation of the Open Meeting Law. The Agenda you sent with your complaint indicates that a public comment period was scheduled as required by NRS 241.020(2)(c)(3), and it appears that you were permitted to make your comments orally (albeit with difficulty) and to have your written comments included in the minutes as required by NRS 241.035.

We will send a copy of your complaint to Mr. Tito Tiberti, chair of the subcommittee and hopefully he will try to prevent the same kind of distraction in the future.

Mr. Tom McGowan  
September 22, 1998  
Page 2

Thank you for bringing this to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
Commerce Section  
(702) 687-6426

cc: Mr. Tito Tiberti, Chairman  
SNSPA, Needs Assessment Subcommittee

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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798  
WEBSITE: <http://www.state.nv.us/ag/>  
E-Mail: [aginfo@govmail.state.nv.us](mailto:aginfo@govmail.state.nv.us)

FRANKIE SUE DEL PAPA  
Attorney General

BROOKE A. NIELSEN  
Assistant Attorney General

March 20, 2003

Southern Nevada Strategic Planning Authority  
Post Office Box 11677  
Las Vegas, Nevada 89111-1677

Re: Open Meeting Law Complaint - SNSPA Finance Subcommittee

**THIS LETTER IS A WARNING TO COMPLY WITH THE OPEN MEETING  
LAW OR ACTION WILL BE TAKEN BY THIS OFFICE**

Dear Ladies and Gentlemen:

Yesterday, this office received another complaint regarding late mailing notices of meetings and agendas. The complaint shows that a notice and agenda for the Finance Subcommittee meeting to be held on Wednesday, September 9, 1998, was postmarked on Tuesday September 8, 1998. A copy of the complaint is attached. It is similar to the complaint we received on September 8, 1998, and relayed to you on September 14, 1998, where a notice of a Finance Subcommittee meeting held on July 16, 1998 was postmarked July 14, 1998.

Please respond to the enclosed complaint to this office not later than September 28, 1998.

In light of what may be systematic noncompliance, **you are hereby warned that NRS 241.020(3) (b) requires that notices of meetings (including agendas) must be delivered to the postal service used by your agency not later than 9:00 a.m. on the third working day before the meeting for mailing to those who have requested copies of the notices. Actions taken at meetings conducted in violation of the Open Meeting Law are void. NRS 241.036. The Attorney General's Office, as well as any citizen may bring court action to correct violations of the Open Meeting Law. NRS 241.037. Further failure to comply with the notice requirement may result in action by this office.**

This office is of the opinion that a "postal service" means the entity who is actually going to deliver the notice to the addressee, such as the U.S. Post Office. Delivery to an internal government mailroom by 9:00 a.m. on the third working day before the meeting would satisfy the statutory requirements only if the mailroom is actually delivering the notice to the addressee.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
Commerce Section  
(702) 687-6426

cc: Mr. Rob Warhola, Esq., Deputy District Attorney



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA  
Attorney General*

*BROOKE A. NIELSEN  
Assistant Attorney General*

October 5, 1998

Mr. Thomas McGowan  
720 South Casino Center Boulevard, # 5  
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaint, Southern Nevada Strategic Planning Authority (SNSPA).

Dear Mr. McGowan:

This office has primary jurisdiction for investigating complaints regarding violations of the Nevada Open Meeting Law, and last month you filed two complaints that you did not receive a notices of meeting and agenda for the September 2, and September 9 meetings of the Finance Subcommittee of the SNSPA until after the meetings occurred. Your complaints included copies of postmarks for the notices indicating that they were mailed to you on September 1, and September 8, 1998, clearly after the three day deadline in NRS 241.020(2).

We have investigated your complaints and conclude that violations have occurred. When you and I discussed your complaints on the telephone, you indicated that you had received timely notices in the past and that you suspected that there may have been an error committed by inexperienced personnel working for the subcommittee. Our investigation reveals that you were correct. One of the clerks responsible for sending notices became seriously ill and others (who were inexperienced) had to step in to do the work. The work fell behind, and your notices were admittedly sent late.

While violations have occurred, we concur with you that they were unintentional errors rather than an indication of a practice or policy problem. Having brought the matter to the attention of the subcommittee and received assurances that measures have been implemented to correct the problem, we are closing our file on this matter.

Thank you for bringing this to our attention.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
(702) 687-6426

cc: Mary Ann Miller, Esq.



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA*  
Attorney General

*BROOKE A. NIELSEN*  
Assistant Attorney General

October 5, 1998

Patricia A. Lynch, Esq.  
City Attorney, City of Reno  
P.O. Box 1900  
Reno, Nevada 89505-1900

Re: Reno City Council policies regarding public comments.

Dear Patricia:

Last Thursday I exchanged some ideas and case authorities with you regarding the regulation of public comments during City Council meetings and whether a person could be barred from making comments at future meetings based on conduct at past meetings. Late Friday afternoon, October 2, 1998, you sent to this office a copy of an interoffice memorandum regarding the topic and asked for our approval. As the topic was going to be brought up at a City Council meeting on Tuesday, October 6, 1998, you asked if we could respond before then. Given the time limitations, we cannot present to you a formal analysis or render an opinion on the memorandum, but we can offer the following.

The "Facts" portion of the memorandum mentions an incident involving an individual who frequently attends meetings and, according to your statement, recently became disruptive during the public comment session. We cannot render at this time any opinion regarding the previous or future actions of the City Council with respect to that individual because we are not familiar with all of the facts of the situation. We have not received a complaint or been asked to investigate or render an opinion on the matter.

Your memorandum makes two conclusions. First, it concludes that "[T]he presiding officer has authority to enforce the decorum rules set forth in the Revised City Council Rules and Regulations (the "Council Rules"<sup>1</sup>) during a council meeting. Second, it concludes "[A]lthough enforcement of decorum can be done at each and every meeting, the Council Rules do not specifically provide the Council power to exclude a person from future meetings for past inappropriate behavior."

With respect to the first conclusion, this office believes that reasonable rules and regulations may be placed on the conduct of citizens wishing to express their views during public comment periods. See § 8.04 of the *Nevada Open Meeting Law Manual, Seventh Edition*, published in January 1998 by this office.

We agree with your analysis that the First Amendment of the United States Constitution plays a very important part in determining the reasonableness of rules and regulations on their face and in their application to individual cases regarding public comments to the Council. We agree that the holding in *Jones v. Heyman*, 888 F. 2d 1328 (C.A. 11 (Fla.) 1989) is instructive in evaluating the Council's Decorum Rule, even though the *Jones* case involved the drastic remedy of expelling a citizen from a meeting rather than barring a citizen from "further audience before the Council" as contemplated by the Decorum Rule. But without more information and research, we cannot offer an opinion as to whether the Decorum Rule passes constitutional scrutiny. We note, however, that the ban against "personal" remarks should be evaluated to see if it meets the "content neutral" test in the *Jones* case.

With respect to the second conclusion, we defer to your interpretation of the Decorum Rule and offer that in our research, we have been unable to find any authority supporting a proposition that a person may be barred from speaking at future meetings of a public body based on comments made at a previous meeting.

Your memorandum goes on to list four "options" regarding rules and regulations for public comment.

With respect to the first option, we agree with your suggestion that publishing detailed guidelines regarding time and conduct limitations at Council meetings would be helpful. The sample guidelines listed in Exhibit A to your memorandum would be a good start, although we have some concern about the wording of some of the specific provisions. If the Council wishes to pursue the guidelines, we would be happy to offer some suggestions to you.

---

<sup>1</sup> In your memo, you focus on what you call the "Decorum Rule" which states: " Any person making personal, impertinent, or slanderous remarks, or who becomes boisterous while addressing the Council, or who interferes with the order of business before the Council, and who fails, upon request of the presiding officer to cease such activity, shall be barred from further audience before the Council, unless permission to continue is granted by a majority vote of the council." Council Rules, Section XII - Decorum, p. 6.

With respect to your second option, the statement that "[O]ral presentations shall not be repetitious" should be evaluated to assure it passes the "content neutral" test under the First Amendment as discussed in the *Jones* case.

We agree with your suggestion in the third option that if a citizen is appropriately barred from speaking before the Council, the citizen should be invited to present written remarks to be included in the minutes of the meeting which is a right under NRS 241.035 (1) (d).

With respect to the fourth option regarding having a person arrested under NRS 203.119 (which makes it a misdemeanor to commit any act in a public building which interferes with the peaceful conduct of activities normally carried on in the building or grounds), we suggest that you put cautionary language in to remind the Council (as you pointed out in your analysis) that NRS 203.119 must not be used in a way that would infringe on First Amendment rights, and that under NRS 241.040(2), it would be a misdemeanor (and grounds for removal from office under NRS 283.040(1)(d)) to wrongfully exclude a person from a public meeting.

We have two possible additional options. Under NRS 241.030(3), the Open Meeting Law does not prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical, so ejection from a meeting would be a possible option (with the appropriate cautions listed above). We would also suggest the possible option of obtaining restraining orders when warranted.

I regret that we could not provide a more thorough analysis in the time frame given and hope these comments are helpful.

Very Truly Yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter,  
Deputy Attorney General  
(702) 687-6426



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA*  
Attorney General

*BROOKE A. NIELSEN*  
Assistant Attorney General

October 5, 1998

Fernley Swimming Pool District  
c/o Mr. Stephen B. Rye, Esq.  
Deputy District Attorney  
Lyon County District Attorney's Office  
Courthouse, 31 South Main Street  
Yerington, Nevada 89447

Dear Mr. Rye:

As you know, this office has primary jurisdiction to investigate and prosecute complaints regarding violations of the Nevada Open Meeting Law. NRS 241.040. We have received and investigated a complaint filed by Mr. William Botelho alleging various violations of the law by the Fernley Swimming Pool District Board of Directors.

The complaint alleges that employee Teri Botelho had not been properly served with notice of a closed meeting of the Board to consider her character, alleged misconduct, or professional competence held on June 10, 1998. After the closed session was held, Mrs. Botelho was terminated in open session as the pool manager. The complaint alleges that Mrs. Botelho was personally served with a notice of the meeting at the Fernley swimming pool on June 6, 1998, which is short of the five working day deadline for personal service of notice established in NRS 241.033(1). However, this office has obtained a copy of a letter dated June 1, 1998, informing Mrs. Botelho of the upcoming closed meeting, and a certificate of service filed with the Board Minutes indicating that the notice was served on Mrs. Botelho at 300 Cottonwood Lane on June 2, 1998, which, if true, was before the deadline. We have also obtained a letter written by Mrs. Botelho, dated June 5, 1998, addressed to Betty Henig, Chairman of the Fernley Swimming Pool District, indicating that Mrs. Botelho was aware of the June 10 meeting before June 6. We also note that Mrs. Botelho was present during the closed session on June 10, 1998, and obtained, as requested, a copy of the tape of the closed session. The

evidence remains in dispute but this office believes that it would be unable to prove in a court of law with a preponderance of evidence or with evidence establishing beyond a reasonable doubt that the notice was served on Mrs. Boetlho after the deadline. Therefore, this office declines to further prosecute this aspect of the complaint.

The complaint further alleges that the Board failed to adequately cancel a meeting that had been scheduled for the previous week because there were nine citizens who were present when the meeting was cancelled. We conclude that the complaint is without merit. The Open Meeting Law does not impose any requirements to provide advance notice if a meeting is going to be cancelled.

The complaint further alleges that Mr. William Botelho compared tapes of meetings occurring in 1997 and early 1998 with the minutes for those meetings and broadly concluded that some of the minutes do not accurately reflect the recordings on some of the audio tapes. The complaint lacks specificity upon which this office could focus an investigation and comes too late for this office to adequately investigate and file for injunctive relief within the time limits established in NRS 241.037(3).

We are therefore closing our file on the matter.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
(702) 687-6426

cc: William Botelho



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

FRANKIE SUE DEL PAPA  
Attorney General

BROOKE A. NIELSEN  
Assistant Attorney General

October 5, 1998

Lander County Sewer and Water District # 2  
P.O. Box 144  
Austin, Nevada 89310

Re: Violation of the Nevada Open Meeting Law

Dear Ladies and Gentlemen:

This office has primary jurisdiction to investigate complaints alleging violations of the Nevada Open Meeting Law, and received a complaint in late August, 1998, that a member of your board telephoned two other members, one at a time, to discuss the acquisition of a pick up truck from the State of Nevada. The truck was purchased, and the matter was brought up at a later meeting of the Board and the decision to purchase the pick up was ratified by the Board.

We contacted Mr. Salisbury who fully and honestly cooperated with us and admitted that he had contacted two other members of the board by telephone to discuss the acquisition of the truck. Mr. Salisbury indicated that he erroneously believed that immediate action was necessary in order to secure the truck which was needed by the district. No advance notice was prepared to announce that the telephone conversations would occur, as required by NRS 241.020(2).

NRS 241.030 (4) provides, in part, that electronic communications must not be used to circumvent the spirit and letter of the Open Meeting Law in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory powers. In a recent decision, the Nevada Supreme Court held that that a quorum of a public body using serial electronic communications to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory powers violates the Open Meeting Law. *Del Papa vs. Board of Regents*, --- Adv. Op --- (April, 1998). Under the statute as interpreted by the

Supreme Court, the conduct of Mr. Salisbury and those with whom he communicated clearly violated the Open Meeting Law.

Under NRS 241.036, any action that was taken in violation of the Open Meeting Law is void. Therefore, the decision reached over the telephone would be void under the law, and this office would be authorized to bring a judicial action to declare the decision void and seek injunctive relief from future violations. NRS 241.037. However, since the decision was ratified in a duly noticed and open meeting of the Board, it would not be productive to bring an action to set aside the first decision to acquire the truck. We have discussed the issue with Mr. Salisbury and the Chairman of the Board (who was not involved in the polling), and have obtained assurances that telephone polling will not occur again. We believe the assurances are sincere.

In light of the assurances and considering that this office has not previously received any complaints of violations against the Board, we feel that, under the circumstances, obtaining injunctive relief against the Board would not be an efficient use of enforcement resources at this juncture.

We hereby warn the Board that telephone polling of a quorum of the members of the Board to discuss or take action on matters over which the Board has supervision, control, jurisdiction or advisory powers is illegal (unless a notice and agenda is properly posted in accordance with the law), and if this office receives any further complaints of this nature it will investigate the complaints and prosecute any violations. In addition to civil sanctions available to this office, under certain circumstances, violations of the Open Meeting Law may lead to criminal prosecution and removal from office for all those involved. NRS 241.040 (1), NRS 283.040(1)(d). See §§ 11.10 and 11.11 of the *Nevada Open Meeting Law Manual, Seventh Edition* published in January 1998 by this office for further discussion.

If a copy of this letter is furnished to each member of the Board, and a copy is included in the minutes of the next regularly scheduled meeting of the Board, this office will close its file on the matter and take no further action.

Very truly yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
(702) 687-6426



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA*  
*Attorney General*

*BROOKE A. NIELSEN*  
*Assistant Attorney General*

October 6, 1998

Mr. Thomas McGowan  
720 South Casino Center Drive # 5  
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaint: Southern Nevada Strategic Planning  
Authority (SNSPA)

Dear Mr. McGowan:

This office has primary jurisdiction for investigating complaints regarding violations of the Nevada Open Meeting Law, and last month you filed a complaint alleging that the notice of meeting and agenda for the September 11, 1998, meeting of the SNSPA Executive Council was defective in that it did not contain an adequate address for the meeting. The stated location of the meeting was "4505 South Maryland Parkway" which is the general address for the University of Nevada Las Vegas campus. When we discussed your complaint on the telephone, you indicated that you walked through several buildings on the UNLV campus attempting to locate the meeting and were unable to find it. We agree with you that the notice sent to you was defective in that it did not adequately state the location of the meeting.

We have investigated the circumstances and learned that the meeting was cancelled. Counsel for the SNSPA indicates that the defect had been noticed and that a clarification had been issued before the meeting. But since there was no meeting, the defect in the notice becomes moot, and this office cannot take further action on your complaint.

Thank you for bringing this to our attention.

Very truly yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
(702) 687-6426



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA  
Attorney General*

*BROOKE A. NIELSEN  
Assistant Attorney General*

October 6, 1998

Rev. Chester Richardson  
2617 Sommer Court  
North Las Vegas, Nevada 89030

Re: Open Meeting Law Complaint: Clark County Commission

Dear Rev. Richardson:

This office has primary jurisdiction to investigate violations of the Open Meeting Law, and in August you filed a complaint with us regarding the practice of Clark County Commission charging fees for including you on the mailing list for notices and agendas of Commission meetings.

We contacted the Clark County District Attorney's office who indicated that you should not have been charged the fee and that the problem has been rectified. The county counsel indicated that she personally contacted Mr. Lyus Hyl (who sent you the fee letter) and informed him that fees should not be charged to persons to be put on the mailing list, and instructed Mr. Hyl to put you on the mailing list without charge. If you have any further problems, please contact me.

As I indicated to you on the phone, the County Commission had agreed with this office several months ago not to charge the fees, and apparently Mr. Hyl was not aware of that agreement. We believe the problem was one of communication rather than policy, and will be taking no further action on your complaint.

Thank you for bringing this to our attention.

Very Truly Yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter,  
Deputy Attorney General  
(702) 687-6426

cc: Mary Ann Miller, Esq.



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

October 7, 1998

Ms. Maxine K. Weikel  
Post Office Box 8  
Searchlight, Nevada 89046

Re: Open Meeting Law Complaint; Searchlight Town Board Meeting  
of June 9, 1998; Jane Overy comments

Dear Maxine:

Our office has investigated the above-referenced matter.

Upon review of the meeting agenda, minutes and audiotape of the June 9, 1998 meeting, I conclude that the town board did not violate Nevada's Open Meeting Law (NRS Chapter 241).

Item 6 on the town board's meeting agenda was called: "Community input." This topic is used by the town board to solicit public comment on items not on the agenda as is specifically required under NRS 241.020(2)(c)(3). When this topic was up for board consideration, town board member Jane Overy excused herself from any further participation in the meeting as a board member specifically indicating that she wished to speak in her capacity as a citizen. She thereafter provided a public comment to the town board clarifying that she did not use a pen name to write letters to the editor of a local newspaper and that she always used her own name when writing any editorial letters.

The town board conducted no discussion on Jane Overy's public comments and took no votes on the comments. The town board was in full compliance with NRS 241.020 in the manner in which it handled this matter.

Ms. Maxine K. Weikel

October 7, 1998

Page 2

Based on the foregoing, we will be taking no further action on this complaint. Thank you for providing our office with the opportunity to review this matter.

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General

RLA:jf

cc: Mary-Anne Miller, Esq.

Clark County District Attorney's Office



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798**

*FRANKIE SUE DEL PAPA*  
Attorney General

*BROOKE A. NIELSEN*  
Assistant Attorney General

October 19, 1998

Mr. Tom McGowan  
720 So. Casino Center Boulevard # 5  
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaints: Southern Nevada Strategic Planning Authority.

Dear Mr. McGowan:

Following up on our letter to you on August 18, 1998, we have completed our investigation of the complaints you filed with this office regarding the Southern Nevada Strategic Planning Authority. We have interviewed many of the personnel involved in the complaints and have reviewed those minutes and documents we deemed relevant to our inquiry. Our conclusions are as follows.

You reported to us that at the April 6 meeting of the full Authority, there was discussed a plan where members of the Needs Assessment Committee would individually contact members of the Authority by telephone to provide information regarding topics to be discussed at upcoming meetings. The minutes of that meeting reflect a detailed discussion about the plan. Each member of the Committee would contact no more than five members<sup>1</sup> of the Authority to provide a "heads up" and discuss information on matters to be discussed at upcoming authority meetings. It was expressly stated that the Committee members would not poll the Authority members. They would only provide information and answer questions. The minutes reflect considerable discussion about whether or not the Open Meeting Law would apply to the individual discussions. Our investigation reveals that the plan was never implemented. Less than ten phone calls were attempted (most of which resulted in leaving messages to return the call) and it was

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<sup>1</sup> The Authority consists of 21 members. A quorum of the Authority would be eleven. Thus, no member of the Committee would contact a quorum.

quickly determined that the plan was not practical, so it was abandoned. Having found no evidence of a violation of the Open Meeting Law, we are closing our file # 98058.

In another complaint, you indicated that the termination of the contract of Mr. Tom Weber as a project coordinator was "neither advance public noticed and posted as itemized on any SNSPA Meeting Agenda, nor publicly disclosed and discussed in any SNSPA meeting, nor otherwise made available for public comment either prior to, concurrent with or immediately subsequent to the termination." Counsel for the Authority indicates that he felt that it was not necessary for the Authority to prior approve the termination of Mr. Weber's contract. We defer to counsel's opinion as the interpretation of the contract does not involve an open meeting question. However, a review of the minutes indicates that the termination of Mr. Weber's contract was discussed by the SNSPA at its May 18 meeting. Finding no evidence of a violation of the Open Meeting Law, we are therefore closing our file # 98061 on the matter.

In another complaint, you indicated that there was a meeting on March 25, 1998 between Senator Jon C. Porter, Elizabeth Fretwell, Mayor James Gibson, Mr. Tom Warden with the editorial boards of the Las Vegas Review Journal and the Las Vegas Sun. You felt that the group was a "De Facto Committee" of the SNSPA and the meetings should have been conducted in accordance with the Open Meeting Law. We find no evidence that the individuals were organized as a committee of the SNSPA in such a way as to constitute them as a "public body" under the Open Meeting Law. Finding no evidence of a violation of the Open Meeting Law, we are therefore closing our file # 98062.

In another complaint, you indicated that you had not been furnished with notice and agenda for the Needs Assessment Committee meeting on May 12, 1998. Apparently, your name had not been put on the mailing list for notices and agendas as you had requested. Subsequent to your complaint, we talked on the telephone and you indicated to me that the problem had been solved and that you were receiving notices and agendas for the committee meetings. We have confirmed that you are on the mailing list for the committee to receive notices and agendas. It would appear, therefore, that the problem has been rectified, and we are closing our file # 98069.

In another complaint you indicated that the notice and agenda for the July 16 meeting of the Finance Subcommittee had been mailed after the three working day deadline imposed by NRS 241.020(2). Our investigation reveals that you are correct, and we looked into the reason why the notice was sent late. Due to some staffing problems, some inexperienced persons were sending the notices out and the July 16 notices went out late in error. It happened again in September (as indicated in two complaints you filed with this office), and this office has issued a warning letter to the Finance Subcommittee regarding late notices and agendas. Counsel for the Authority has written us listing specific measures that have been implemented to prevent further occurrence.

We will close our file # 98093 regarding the July mailing, but ask you to notify us if future mailings are late.

The warning letter from this office discussed in the paragraph above was circulated to members of the SNSPA Executive Council by staff at the September 24 meeting, and you filed a complaint with this office contending that it was a violation of the Open Meeting Law for staff to tell the Council about the warning letter because it was not on the agenda for the meeting. Our investigation reveals that the SNSPA Executive Committee neither deliberated nor took action on the warning letter, and therefore did not violate the Open Meeting Law. You further complained that you had not been provided a copy of the warning letter in advance of the meeting pursuant to your standing request for "all SNSPA meeting pertinent presentations, minutes, handouts and related materials." As we have indicated to you on the telephone and in our letter dated August 18, 1998, NRS 241.020(4) does not require a public body to honor standing blanket requests for agenda support material in advance of the meeting. If you have an interest in a particular item on an agenda and would like to look at it before the meeting, we suggest that you make a specific request for the support material before the meeting. We understand that copies of agenda support material are placed on a table at the meeting for members of the public to take, and if the copies run out, staff will make more copies if requested. Having found no violation of the Open Meeting Law, we are closing our file # 98112. We understand that you told the Executive Council that night that the reason you are filing so many complaints with this office is that you are angry about the rule limiting public comments to two minutes.

On October 5, 1998, you filed a complaint with this office alleging that the SNSPA Public Outreach Committee failed to mail the notice and agenda for its October 1 meeting within the three working day deadline set out in NRS 241.020(3)(b). You included the envelope in which the notice was sent to you, and the postmark is September 28, 1998. We calculate the three working day deadline to be September 28, 1998. You speculated in your complaint that the notice could not have been delivered to the U.S. Post Office by 9 a.m. on September 28, 1998, because it was routed through the county mailroom before it was delivered to the post office. We conclude that the notice was timely mailed, and are closing our file # 98113.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
(702) 687-6426

cc: Robert Warhola, Esq.



STATE OF NEVADA  
**OFFICE OF THE ATTORNEY GENERAL**  
100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
Attorney General

BROOKE A. NIELSEN  
Assistant Attorney General

October 19, 1998

Noel E. Manoukian, Esq.  
1466 Highway 395  
Gardnerville, Nevada 89410

Re: *Incline Village General Improvement District (IVGID); Request for legal opinion; Meeting of group with general counsel on August 26, 1998, to give guidance to counsel on the contents of a proposed employment agreement for the IVGID general manager*

Dear Noel:

I have reviewed your letter and supporting materials on the above-referenced matter. While our office is precluded from rendering any formal opinion due to statutory limitations set forth within NRS Chapter 228, I would like to provide my informal thoughts as part of our education and enforcement roles concerning the Open Meeting Law.

The main question to be reviewed in this matter is whether the group of persons, which met informally with you on August 26, constituted a "public body" as defined in NRS 241.015. For the following reasons, I believe that this group did not constitute a public body.

This group was not a governmental body. This group did not expend or disburse tax revenues. This group was not tasked to provide any advice or recommendations to IVGID. The group was designated by the chairperson to provide assistance to the general counsel in the drafting of a proposed employment contract for the new general manager. The general counsel was free to accept, or reject, any of the suggestions provided by this group. Since this group was solely providing advice to the general counsel and not to the IVGID board, it cannot be considered a public body under NRS 241.015.

Noel E. Manoukian, Esq.

October 19, 1998

Page 2

The facts illustrate that the group was not a public body as defined within the law and therefore the August 26 gathering of the group members did not have to be noticed in accordance with NRS Chapter 241. See *People ex rel. Cooper v. Carlson*, 328 N.E.2d 675 (Ill. App. 1975).

I hope that these thoughts have been of some assistance to you.

Sincerely,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General  
Boards and Commissions Section

RLA:jf



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

October 26, 1998

Mr. Tom McGowan  
720 South Casino Center Drive, #105  
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaint; September 30, 1998, meeting of the  
Southern Nevada Strategic Planning Authority

Dear Tom:

This will acknowledge that due to a change in the meeting room, you withdrew the above-referenced complaint. Our office is continuing its investigation of the other matters you have brought to our attention. We will inform you of the results of those investigations once they are completed.

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General

RLA:jf



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OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
*Attorney General*

BROOKE A. NIELSEN  
*Assistant Attorney General*

November 3, 1998

Mr. Rex Steninger  
Editor, Elko Daily Free Press  
3720 Idaho Street  
Elko, Nevada 89801

Re: Open Meeting Complaint: Elko City Council (My File 98111)

Dear Mr. Steninger:

This office has primary jurisdiction for investigating and resolving complaints regarding violations of the Open Meeting Law, and last month we received a complaint from you regarding a closed meeting of the Elko City Council after its regular meeting on September 22, 1998.

Our investigator separately interviewed Mayor Frank Franzioia and City Manager Linda Ritter to determine what went on at that closed meeting. It was between Mayor Franzioia, Ms. Ritter, and Councilmen Glen Guttery, Charley Myers and John Ellison. No notice or agenda for the meeting was posted, and no minutes were kept. The purpose of the meeting and the sole matter discussed at the meeting was the status of the ongoing negotiations between the Firemen's Union and the city. Ms Ritter is a management representative for the city in such negotiations, and sought to inform the council about the status of the negotiations and receive strategy input from the council. No other topics were discussed.

The meeting appears to be exempt from the Open Meeting Law under NRS 288.220 (which is part of the NRS chapter on employee management relations with local government bodies) which says:

**288.220 Certain proceedings not required to be open or public.** The following proceedings, required by or pursuant to this chapter, are not subject to any provision of NRS which requires a meeting to be open or public:

1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.

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Mr. Rex Steninger  
November 3, 1998  
Page 2

2. Any meeting of a mediator with either party or both parties to a negotiation
3. Any meeting or investigation conducted by a factfinder.
4. Any meeting of the governing body of a local government employer with its management representative or representatives.
5. Deliberations of the board toward a decision on a complaint, appeal or petition for declaratory relief.

Our investigation revealed that the meeting was between a local government body and its management representative regarding ongoing negotiations being conducted under the purview of NRS Chapter 288. The meeting would therefore be exempt from the Open Meeting Law under NRS 288.220(4). This is one of the few statutory exemptions from the Open Meeting Law. See § 4.02 of the *Nevada Open Meeting Law Manual, Seventh Edition*, published by this office in January 1998. Since the meeting was not subject to "any provision of NRS which requires a meeting to be open or public" it was not required for the council to prepare a notice and agenda for the meeting, nor is it required to prepare minutes, and, of course, the meeting may be closed to the public. While it is not a requirement of the law, to prevent this kind of misunderstanding in the future, we would recommend that when the council is stepping out of a public meeting to go into an exempt proceeding, it may want to announce the nature of the exempt proceeding and the statutory exemption.

We appreciate your bringing this to our attention and giving us an opportunity to investigate it.

Very truly yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter  
Deputy Attorney General  
(702) 687-6426

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM

*Date:* November 30, 1998

*To:* Frankie Sue Del Papa, Attorney General  
Thomas M. Patton, First Assistant Attorney General  
Jonathan Andrews, Chief Deputy Attorney General

*From:* Greg Salter, Deputy Attorney General  
Commerce Section

*Subject:* Open Meeting Law Problem: Tahoe Douglas Visitors Authority

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A few minutes before lunch today I got a call regarding an "emergency" meeting of the Tahoe Douglas Visitor's Authority (TDVA) to be held today at 6 pm. The call came from one of the Board members of the authority, and it was followed up by a telephone call from Scott Doyle who was strongly of the opinion that the law was being violated.

After talking to Tom Patton about it, I gave counsel for the TDVA (Morgan Baumgartner of Lionel Sawyer & Collins) a call to discuss our concerns. I told her that from what we had been told, we were concerned about whether the TDVA could use the emergency rule under the circumstances. I told her that this was a courtesy call and that we could not render an opinion without conducting an investigation, but I did not think a judge would be persuaded that the emergency rule would work in this circumstance.

Douglas County wants to issue some revenue bonds to complete a county park project. According to Scott Doyle, the county has gone through the required public hearing process, with the final public hearing on October 15, 1998. The County is going to sell the bonds to an underwriter on Thursday, December 3. The bonds will not be actually issued for a couple of weeks.

The TDVA wants to stop the bond issue because bond payments will cut into the TDVA source of funds (room taxes), and, according to Morgan Baumgartner, it did not realize how much the bond issue would cut into its revenues until Tuesday, November 24 when someone received a copy of the Official Statement for the bonds. The TDVA also has some legal questions about whether or not the county can commit all the revenues being committed to pay the bonds.

November 30, 1998

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Apparently, on the advice of Harvey Whittemore, the TDVA scheduled an "emergency" meeting of its governing board to consider filing a lawsuit against the County to obtain an injunction before Thursday. They prepared a meeting agenda and faxed it to a number of persons on Tuesday, November 24. There is a dispute as to whether or not the notice was actually posted. If they had posted and mailed the notice out by 9 am on the 24th, they could have legally held the meeting tomorrow (3 working days). But board members were anxious to talk about it (according to Morgan) and decided to call it an emergency and cut the notice a day short and schedule the meeting for today.

Based on what I have seen so far, I do not believe that either of the two criteria for an emergency meeting apply to this situation. Under NRS 241.020(5), an emergency is ". . . an unforeseen circumstance which requires immediate action. . ."

According to Scott Doyle, the bonds were sized at \$2.2 million in October, and that number was posted and discussed at the October 15 public hearing. The public hearing was held in the same building where TDVA offices are located. Thus, it was foreseeable as of October 15 that the bonds would have a financial impact on TDVA. I do not see how the TDVA can claim "unforeseeable circumstances" in light of the public knowledge and hearings surrounding the bonds. Just because the TDVA did not realize until November 24, 1998, how much the impact would be does not appear to make an "unforeseen circumstance" sufficient to excuse the TDVA from waiting one more day to hold a meeting and do it right under the Open Meeting Law.

Further, there does not appear to be a deadline or other need for "immediate action" that would have prevented waiting one more day to hold a meeting in compliance with the Open Meeting Law. The bonds are going to market on Thursday. The Board could meet on Tuesday or Wednesday and authorize the litigation in time for injunctive relief to stop the sale. In fact, if the TDVA board authorizes to start the lawsuit on Tuesday or Wednesday, a telephone call to Mr. Doyle would stop the market call on Thursday, because Mr. Doyle would be put on actual notice of threatened litigation and would be bound to pull his "no litigation" opinion immediately, which would temporarily stall the deal. Further, since the bonds will not actually be issued for a couple of weeks (there is generally a two-week lag between sale and delivery of bonds), an injunction could be easily obtained before the bonds are actually issued and become binding on the county. The matter could wait one more day without any impact on TDVA.

I emphasized to Morgan Baumgartner that any action taken tonight would be void if a true emergency does not exist. She said that the TDVA substantially complied with the Open Meeting Law and that should be good enough. She thanked me for the courtesy and terminated our conversation.

Do you want me to issue a written warning in this case?



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (702) 687-4170  
Fax (702) 687-5798

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

November 11, 1998

Michael J. Van Zandt, Esq.  
McQuaid, Metzler, McCormick & Van Zandt  
231 Main Street, 16th Floor  
San Francisco, California 94105-1936

Re Open Meeting Law Violations, Truckee Carson Irrigation District.

Dear Mr. Van Zandt:

As you know, this office has primary jurisdiction for investigating and resolving complaints regarding violations of the Open Meeting Law (NRS Chapter 241). On August 18, 1998, this office wrote a letter to Mr. Lyman McConnell, Project Manager, for the Truckee-Carson Irrigation District (TCID) informing him that a complaint had been filed with this office alleging violations of the Open Meeting Law. The letter informed him that an investigator from this office would be contacting him and asked for some information about TCID, namely an organization chart showing the board and committee structure and the names and phone numbers of the directors.

The written complaint received by this office alleged that the TCID board of Directors and some of its committees had conducted meetings without complying with the Open Meeting Law. Our investigators contacted the complainant and learned that the meetings allegedly occurred in 1997 and early 1998. The complaint came too late for us to take judicial action under NRS 241.037, but warranted a review of current practices to see if there might be a misunderstanding as to the application of the Open Meeting Law to TCID subcommittees.

When two investigators visited the TCID office on August 28, 1998, Mr. McConnell cordially refused them access to the board or committee minutes and informed the investigators that he had instructed all district employees not to talk to them. During ensuing conversations with the investigators, Mr. McConnell indicated that it was the policy of TCID to comply with the Open Meeting Law, but he also indicated that some committees comprising of less than a quorum of the Board did not post advance notice of their meetings. When I called Mr. McConnell that day, he indicated to me that he had discussed my August 18 letter with you and believed that TCID was not covered by the Open Meeting Law, and therefore that this office has

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Michale Van Zandt, Esq.

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no jurisdiction to investigate the affairs of the TCID. Mr. McConnell gave me your name and phone number. This office has no subpoena power or power to compel the production of information during Open Meeting Law investigations, so our investigators left after their limited interview with Mr. McConnell.

When I talked to you about the situation, you indicated your belief that the TCID was not covered by the Nevada Open Meeting Law, primarily because it is not supported by tax revenues.

We seriously disagree with that contention<sup>1</sup> and had prepared litigation against TCID for injunctive relief based on the refusal to provide access to the minutes and on Mr. McConnell's statements regarding small committees not posting advance notice of meetings. But before filing our complaint in district court, representatives of this office met with you and Mr. McConnell on September 16, 1998 to discuss our differences of opinion. We emphasized that it is the opinion of this office that TCID is a "public body" covered by the Open Meeting Law, and we discussed with you what would be required to comply with the law and some of the unique circumstances of TCID<sup>2</sup>. There continued to be some disagreement but the meeting was informative and productive, and everyone seemed to agree that litigation was not a very efficient way to resolve our differences. You and Mr. McConnell wanted time to think and consult with the TCID Board.

On September 28, 1998, you wrote this office exploring a settlement agreement<sup>3</sup>. You indicated in the letter that you would be in a jury trial for a few weeks, so we waited until October 15, 1998 to call you to discuss your letter. You apparently were still in trial and you and I traded voicemail messages over the next couple of weeks and from those messages, I believe that we may have reached a meeting of the minds.

If the district agrees to fully comply with all aspects of the Open Meeting Law, this office sees no need to pursue its litigation and will close its file on the complaint. We will also offer any training or assistance you desire to bring the district into compliance.

If the board concurs with the foregoing please inform me in writing.

Very Truly Yours,

FRANKIE SUE DEL PAPA  
Attorney General

By \_\_\_\_\_  
Gregory A. Salter, Deputy  
(702) 687-6426

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<sup>1</sup> The fact that the district is supported in whole or in part by tax revenues is established in NRS Chapter 539 ("Irrigation Districts") from which the district draws its powers and right to exist. The district uses the taxing powers of the state to make its assessments against the land within its boundaries, and its assessments have many of the attributes of property taxes. Under NRS 539.670, assessments may be calculated based on apportionment of benefits "or otherwise," and may be levied and collected for multiple purposes (including the covering of tax delinquencies of other property owners), and may be levied and collected even if landowners do not use any water. *Truckee-Carson Irrigation District ads. McLean*, 49 Nev.278, 245 P. 285. Assessments are levied and collected by the county treasurer as a part of property taxes, constitute a lien upon the land which by statute is made superior to all other liens (except other property tax liens), and can be collected through involuntary sale of the land using the same procedures as a part of or using the same statutory procedures as property taxes. NRS 539.683- 539.700. We note also that the district board of directors also has the power to levy and collect ad valorem taxes under NRS 539.636. The funds collected by the county treasurer under NRS Chapter 539 would appear to be tax revenues. We also note that the county treasurer does not charge the district for its collection services, so the district is further supported by general tax revenues of the county.

<sup>2</sup> We can see the difficulty of reconciling certain aspects of the open meeting law with the need to keep some trade or competitive information confidential. We suggest that you approach the legislature. You might want to look at some of the provisions in the Public Utilities Commission statutes regarding protected commercial and trade information as a starting point, and may also want to consider asking for the right to conduct closed meetings to consider trade or commercial information.

<sup>3</sup> Your letter details what the board would do in order to resolve our differences. We appreciate the thought and effort and we agree that the suggested actions would comply with the Open Meeting Law. However, rather than try to negotiate a comprehensive settlement agreement that attempts to restate the law, we prefer to just enter into a general compliance agreement. We suggest that the board use our Nevada Open Meeting Law Manual ( a copy of which we gave to you at the meeting), and we are always available to provide guidance and answer specific questions about compliance.



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717

Telephone (775) 684-1100

Fax (775) 684-1108

WEBSITE: <http://ag.state.nv.us/>

E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

December 3, 1998

Mr. Paul McKenzie  
Business Representative  
Operating Engineers Local Union No. 3  
1620 South Loop Road  
Alameda, California 94502-7090

Re: Open Meeting Law Complaint/McGill Ruth Water District Board  
Alleged gathering of Board after completion of noticed meeting of  
October 21, 1998

Dear Paul:

Our staff has completed the investigation of the above-referenced matter.

In your letter of complaint it was alleged that following the adjournment of the Board's noticed meeting of October 21, 1998, three Board members gathered with attorney Gary Fairman and discussed matters within the jurisdiction of the Board, including discussions on a pending labor issue.

Our staff interviewed Board members Zakula, Peterson, McCarty and attorney Fairman. These witnesses all stated that no Board business was discussed after the regular meeting of the Board had concluded on October 21st. We also interviewed witnesses Crafts, Perkeri, Feedback and Comings. While all of these witnesses told us that the three Board members were having a discussion with attorney Fairman at the close of the noticed meeting, none of these witnesses could tell us the subject matter of the conversation. None of these witnesses could establish that the Board members were talking with attorney Fairman about a subject within the jurisdiction of the Board. Therefore we cannot establish any evidence to demonstrate the Board violated the Open Meeting Law by conducting an unnoticed meeting on October 21, 1998. We are accordingly closing this investigation.

Mr. Paul McKenzie  
December 3, 1998  
Page 2

Thank you for referring this matter to our office for review.

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General

RLA:jf  
cc: Gary Fairman, Esq.



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson Street  
Carson City, Nevada 89701-4717  
Telephone (775) 684-1100  
Fax (775) 684-1108  
WEBSITE: <http://ag.state.nv.us/>  
E-Mail: [aginfo@ag.state.nv.us](mailto:aginfo@ag.state.nv.us)

FRANKIE SUE DEL PAPA  
*Attorney General*

THOMAS M. PATTON  
*First Assistant Attorney General*

December 10, 1998

Mr. Janet Murphy  
Post Office Box 255  
Zephyr Cove, Nevada 89448

Re: Open Meeting Law Complaint/Round Hill General Improvement District

Dear Janet:

I have received the completed investigative report on the above-referenced matter.

Our investigator informs me that you did receive the agenda supporting material from the November 17, 1998, board meeting which had initially been withheld from you. I will accordingly be closing this investigation since your access moots the present complaint. Our office will continue to monitor the activities of the board's staff to determine that similar problems do not occur in the future.

Thank you for bringing this matter to our attention.

Cordially,

FRANKIE SUE DEL PAPA  
Attorney General

By: \_\_\_\_\_  
ROBERT L. AUER  
Senior Deputy Attorney General

RLA:jf  
cc: Patrick Fagen, Esq.