



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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FRANKIE SUE DEL PAPA
Attorney General

February 18, 2000

THOMAS M. PATTON
First Assistant Attorney General

Robert Hall
Post Office Box 370956
Las Vegas, Nevada 89137-0956

Re: *Open Meeting Law Complaint against the State Board of Health*
OMLO 2000-01/AG File No. 99-037

Dear Mr. Hall:

We are in receipt of the complaint you have filed in the District Court of Clark County, Nevada, against the State Board of Health, et al. In the complaint you bring the same allegations concerning the Open Meeting Law brought in the complaint you lodged with our office on or about December 16, 1999.

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 (9th 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. Please note, however, that our investigation of the complaint filed with our office has revealed no grounds to file a criminal or civil action against the State Board of Health pursuant to NRS 241.040.

Thank you for bringing this matter to our attention.

Robert Hall
February 18, 2000
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Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld
c:\files\olden\oml\99037hall

bcc: Nancy Angres

Robert Hall
February 18, 2000
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FRANKIE SUE DEL PAPA
Attorney General

February 28, 2000

THOMAS M. PATTON
First Assistant Attorney General

VIA FACSIMILE AND U.S. MAIL

Mr. Thomas J. Ray
General Counsel
University and Community College System of Nevada
2601 Enterprise Road
Reno, Nevada 89512

Re: *Complaint against the University and Community College System of
Nevada Board of Regents
OMLO 2002-02/AG File No. 99-036*

Dear Mr. Ray:

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

As you know, this office received a complaint from Regent Tom Kirkpatrick dated December 27, 1999, alleging the Board of Regents (Board) violated their by-laws on June 18, 1999, with the election of Regent Dr. Jill Derby for a third one-year term as Board Chair and on December 19, 1999, relative to the proposed Henderson State College and the selection of Dr. Richard Moore as Founding President, and violated Nevada's Open Meeting Law with regard to the selection of Dr. Jill Derby as Board Chair in June 1999. Regent Kirkpatrick also alleges the Board went beyond their agenda at the December 1, 1999, meeting relative to the proposed Henderson State College, that the Board may have made a collective decision to select Dr. Moore as Founding President prior to his selection at the public Board meeting on December 19, 1999, and that the December 10, 1999, meeting agenda for the "ad hoc Regents' Founding Presidential Search Committee", and the Board agenda for the December 19, 1999 meeting, did not adequately put the public on notice as to the substance of discussion and action taken at the

meetings. Finally, Regent Kirkpatrick alleges the Board violated federal equal opportunity laws as a result of the procedures used to select Dr. Moore.

As we have explained to Regent Kirkpatrick, this office is without jurisdiction to investigate his complaint regarding by-laws and federal equal opportunity laws. In addition, this office is without jurisdiction to investigate the allegations concerning the selection of Dr. Jill Derby as Board Chair on June 18, 1999, because our jurisdiction to prosecute any such violation expired on October 16, 1999, pursuant to NRS 241.037. The following is our determination regarding the remainder of Regent Kirkpatrick's complaint.

FACTS

1. December 1-2 meeting of the Board of Regents

The following was on the agenda for the Board's December 1-2 meeting as an action item:

7. RECOMMENDATIONS FROM LEGISLATIVE ADVISORY COMMITTEE

Request is made for approval of recommendations from the Legislative Advisory Committee to examine locating a 4-year state college in Henderson (AB220-1999).

(Board action to approve recommendation that the committee continue planning for a new institution in Henderson including:

- a) Development of a biennial budget request for operating and capital to be sent to UCCSN for consideration in total budget;
- b) Exploration of partnerships and gifts to support the start-up costs; and
- c) Collaboration with UNLV and CCSN for appropriate partnerships and start-up support.¹

(Board action to approve recommendation that the Board of Regents form a search committee and hire a founding president for the new institution.)

After the first motion was approved (see footnote 1 herein) Regent Wiesner moved that the Board dispense with the appointment of a search committee and appoint Dr. Moore as

¹ The minutes reflect that the Board approved the recommendation that the Advisory Committee continue planning for a new institution in Henderson including: a) development of a biennial budget request for operating and capital to be sent to UCCSN for consideration in total budget; b) exploration of partnerships and gifts to support the start-up costs; and c) collaboration with UNLV and CCSN for appropriate partnerships and start-up support.

founding president to the new institution with action to be taken at the next meeting. Regent Alden seconded, and General Counsel Ray advised it would be more appropriate to handle the matter at a separate meeting. Discussion then ensued on whether to appoint Dr. Moore or perform a search. The Board then voted on the motion, which failed. Discussion again ensued regarding Dr. Moore's qualifications as a founding president. A second motion was made; the minutes read as follows:

Mr. Hill moved approval [sic] of a recommendation that the Board of Regents form a search committee for purposes of: a determination to perform a national search or make a recommendation of appointing Dr. Richard Moore the founding president for the new institution, no later than the January meeting. And further to take the testimony it deems necessary for development of a job description. Ms. Sisolak seconded. Motion carried.

Dr. Kirkpatrick offered a friendly amendment not to limit the consideration to Dr. Moore. Regents Hill and Sisolak accepted the friendly amendment. Motion carried. Mr. Wiesner voted no.

2. *December 10, 1999 meeting of the "ad hoc Regents' Founding Presidential Search Committee"*

The Committee was made up of Board members Alden, Dondero, Gallagher, Hill and Rosenberg. On the agenda for information/action was the following:

3. INTERVIEW

The committee will interview President Richard Moore for consideration for the position of Founding President.

(Possible committee action).

Nowhere does the agenda indicate the matters before the Committee concern the proposed new institution in Henderson.

The Committee proceeded to interview Dr. Moore. Dr. Moore spoke to the Committee regarding his qualifications. Discussion ensued regarding Dr. Moore, and whether to conduct a search for the founding president. The following motion was made:

Dr. Hill moved approval [sic] of the recommendation to the full Board of Regents for the appointment of Dr. Moore as the Founding President of the new institution. Mrs. Dondero seconded.

The motion carried unanimously.

3. ***December 17, 1999 meeting of the Board of Regents***

On the agenda for action at the Board meeting of December 17, 1999, was:

1. **REPORT, PRESIDENTIAL SEARCH COMMITTEE,
HENDERSON STATE COLLEGE**

Chair Mark Alden will report on the ad hoc Founding President Search Committee held on December 10, 1999. Request is made for approval of the committee's recommendations.

(Board action to approve committee recommendations.)

The minutes for the December 17, 1999 meeting reflect a great deal of substantive discussion by Board members on the activities of the Committee and their meeting of December 10, 1999, including the recommendation to select Dr. Moore. The Board also discussed the legislative process for the establishment of the college and related matters. Subsequent to these discussions the minutes state the following occurred:

Counsel Ray stated that the Board was voting to accept the report and what happened at the meeting.

The report was accepted via a roll call vote with Regents Derby, Alden, Dondero, Gallagher, Hill, Rosenberg, Seastrand, and Wiesner voting yes and Regents Kirkpatrick, Phillips and Sisolak voting no.

Regent Alden moved for approval of the appointment of Dr. Moore to Founding President. Regent Hill seconded.

Thereafter, Regent Kirkpatrick moved to table the appointment of a founding president to the next meeting; the motion was seconded but failed. Discourse continued regarding the matter of the appointment of Dr. Moore, and the process to appoint a founding president. Thereafter, the original motion to approve the appointment of Dr. Moore passed 8 to 3.

ANALYSIS AND CONCLUSION

Pursuant to NRS 241.020(2)(c), an agenda must consist of, *inter alia*:

- (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.

1. December 1-2 meeting of the Board of Regents

Pursuant to the Agenda for the December 1 meeting of the Board, the Board was to take action "to approve recommendation that the Board of Regents form a search committee and hire a founding president for the new institution." While discussing whether to form a search committee for the purpose of hiring a founding president for the proposed Henderson college, a motion was made to dispense with a search committee and appoint Dr. Moore as the founding president of the proposed college, with action to be taken at the next meeting. The motion was seconded. General Counsel Ray immediately advised the Board it would be more appropriate to handle the matter at a separate meeting. The Board went on to discuss the motion, which failed when the vote was called.

Notwithstanding that the motion failed, the Board violated the Open Meeting Law by considering and taking action on a matter not listed on its agenda, that is, deciding whether to appoint Dr. Moore as founding president at their next meeting or to recommend a search committee. While recommendation of a search committee was an item on the agenda for action, selecting Dr. Moore as the Founding President was not. The Board would have been wise to adhere to the advice of counsel rather than take the matter to a vote.

While a violation has occurred, we believe legal action to void the act is not warranted, as the motion failed, hence there is nothing to void. Further, while this office would be justified to pursue injunctive relief, we do not believe it necessary as a motion consistent with what was contemplated by the agenda was made and passed subsequent to the violation², and any harm done by considering Dr. Moore as founding president at the December 1 meeting was cured by the acts of the Board on December 17, 1999, whereby they engaged in extensive deliberation regarding the selection of Dr. Moore.

2. December 10, 1999 meeting of the "ad hoc Regents' Founding Presidential Search Committee"

² A second motion was made and passed to recommend that the Board form a search committee for the purposes of "a determination to perform a national search or make a recommendation of appointing Dr. Richard Moore the founding president for the new institution," with an amendment to not limit consideration of a founding president to Dr. Moore.

On the agenda as an information/action item before the Committee on December 10, 1999, was:

3. INTERVIEW

The committee will interview President Richard Moore for consideration for the position of Founding President.³

While the agenda put the public on notice that Dr. Moore would be considered for the position of founding president, nowhere on the agenda does it state that agenda item 3, or the other agenda items before the Committee that day, concern the proposed new institution in Henderson. While the agenda is defective in this respect, as it does not clearly describe what the matter upon which action will be taken relates to, any harm is mitigated by the fact the recommendation made by the Committee to select Dr. Moore was extensively reviewed and discussed by the Board during its December 17, 1999 meeting. Accordingly, we do not believe it necessary to seek injunctive relief, or void the action taken by the Committee to recommend the selection of Dr. Moore as founding president. However, the Board and its committees should take care to insure that their agendas adequately identify and describe the matters to be discussed.

3. *Whether the Board made a collective decision to select Dr. Moore as Founding President prior to his selection at the public Board meeting on December 19, 1999*

Regent Kirkpatrick speculates that the Board made a collective decision to select Dr. Moore as founding president prior to making its decision to appoint Dr. Moore at its public meeting on December 17, 1999. Upon review of the detailed minutes of the December 1 and December 17, 1999, meetings of the Board, and interviews with nine of the eleven Regents, we find no evidence the members had been polled and had reached a collective decision prior to the December 17, 1999, meeting regarding the selection of Dr. Moore.⁴

CONCLUSION

Compliance with the Open Meeting Law is crucial to open government. Our overall investigation of this complaint revealed that the Board needs to be more attentive to the advice of its legal counsel. This letter stands as warning that the Board of Regents must adhere to future agendas, and must properly describe agenda items on the notice and agenda. Failure to do so may result in legal action by this office. Please distribute this determination to the Board and we will close our file on this matter.

³ Regent Kirkpatrick further complains that the Committee failed to consider other candidates as contemplated by the recommendation of the Board at its December 1-2 meeting. While this may be true, we are without jurisdiction to prosecute such conduct.

⁴ Regents Wiesner and Phillips were not available for an interview within the time frame of our investigation. However, because we determined from our interviews of the other nine Regents there was no evidence of polling, it was not necessary to interview Regents Wiesner and Phillips on the issue.

Mr. Thomas J. Ray
February 28, 2000
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We would like to provide to the Board and its legal counsel training on the Nevada Open Meeting Law. Please call at your earliest convenience to schedule such training.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld

cc: Regent Tom Kirkpatrick

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FRANKIE SUE DEL PAPA
Attorney General

March 7, 2000

THOMAS M. PATTON
First Assistant Attorney General

Mr. Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: *Complaint against the Reno City Council*
OMLO 2000-03/AG File No. 00-001

Dear Mr. Dehne:

On or about January 1, 2000, you filed a complaint with this office alleging that on December 20, 1999, the Reno City Council (Council) denied the public an opportunity to comment at a caucus at which a quorum of the Council was present, and that action was taken at the meeting in violation of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes. It is important to note you were not present at the caucus. We have completed our investigation of your complaint and conclude there was no violation of the Open Meeting Law.

On December 20, 1999, a quorum of the Council attended what is commonly referred to as a caucus meeting. The purpose of the meeting is to review agenda items for the public meeting to be held the next day. The review is limited to a brief staff presentation of the issues and may include review of background information and questions to be answered at the regular session. The minutes for the December 20, 1999, caucus meeting provide as follows:

At 11:15 the following City Council members were present: Herndon, Rigdon, Aiazzi and Griffin.

Absent: Council Members Hascheff, Newberg, and Doyle.

Also present: City Attorney Lynch, Deputy City Clerk Jones.

Steve Varela, Director of Public Works, responded to several questions regarding construction testing and inspection services with respect to the Riverwalk Restoration Project.

In response to Councilperson Aiazzi, it was noted that several representatives from the Northern Nevada Soccer League would be present at the December 21, 1999, meeting to respond to security concerns.

Councilperson Aiazzi indicated that he would provide a presentation outlining his requests for funding for the arts at the December 21, 1999, meeting.

Mayor Griffin highlighted his request to further examine the sales tax on items sold at Rosewood Lakes Golf Course.

Ms. Patricia Lynch, City Attorney, noted that because a quorum of the Council is present, a Public Comment section must be observed if there are members of the public present that desire to address the Council.

No one expressed the desire to speak.

MAYOR GRIFFIN ABSENT 11:29 P.M.

The City Attorney, who was present at the caucus, represents that these minutes accurately reflect what occurred at the caucus. There is no evidence that a quorum of the city council deliberated toward a decision or took action on any matter during the caucus.

With regard to public notice of the caucus, the December 21, 1999, notice and agenda for the regularly scheduled City Council Meeting included a notice and agenda of the caucus. The notice and agenda for the December 21, 1999, meeting provided, in relevant part:

An agenda **CAUCUS** Meeting will be held in Room 211, Redevelopment Wing of Reno City Hall (490 South Center Street, Reno) on **Monday, December 20, 1999**, at **11:00 A.M.**, in order to review agenda items for the regular session of the Reno City Council as described in the agenda below. Said review, if requested by the Council, is limited to brief staff presentation of issues and may include review of background information and questions to be answered at the regular session.

Finally, as stated in the minutes of the December 20, 1999, caucus meeting, an opportunity for public comment was provided.

Mr. Sam Dehne
March 7, 2000
Page 3

Based upon the foregoing, we find no violation of the Open Meeting Law with regard to the December 20, 1999, caucus. Accordingly, we are closing our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld
cc: Patricia A. Lynch, Reno City Attorney

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FRANKIE SUE DEL PAPA
Attorney General

March 7, 2000

THOMAS M. PATTON
First Assistant Attorney General

Ms. Madelyn Shipman
Assistant District Attorney, Washoe County
75 Court Street
Post Office Box 11130
Reno, Nevada 89520-0027

Re: *Complaint against the Warm Springs Citizen Advisory Board*
OMLO 2000-04/AG File No. 99-034

Dear Ms. Shipman:

As you know, on December 8, 1999, we received a complaint from Ms. Wanda Wright, then a board member of the Warm Springs Citizen Advisory Board ("Board"), alleging a violation of NRS 241.020(1), specifically, that the location for the December 8, 1999, Board meeting was not accessible to the physically handicapped. We have completed our investigation of the complaint, and issue the following determination.

Pursuant to NRS 241.020(1), public officers and employees responsible for public meetings shall make reasonable efforts to assist and accommodate physically handicapped persons desiring to attend those meetings. The December 8, 1999 agenda for the Board meeting provided, in relevant part:

Facilities in which this meeting is being held are accessible to the disabled. Persons with disabilities who require special accommodations or assistance (e.g., sign language, interpreters or assisted listening devices) at the meeting should notify Washoe County Community Development at 328-3600, prior to the meeting.

Ms. Madelyn Shipman
March 7, 2000
Page 2

The location of the Board meeting was a trailer situated on the site of Truckee Meadows Fire Station #29 at Ironwood Road, Warm Springs, Nevada. Apparently, without some accommodation such as a ramp, the entrance to the trailer was not accessible to Ms. Wright who was temporarily in a wheelchair.

On or about December 2, 1999, Ms. Wright sent a letter by facsimile to Washoe County Commissioner Bond requesting that the location be made accessible for physically handicapped persons wishing to attend the public meetings. Ms. Bond indicated she intended to give the letter to the County Manager for follow up but inadvertently neglected to do so. On December 8, 1999, just prior to the 6:00 p.m. Board meeting, Ms. Wright sent Ms. Bond a second letter by facsimile requesting accessibility to the meeting. However, Commissioner Bond did not read the letter until the following day.

The December 8, 1999, meeting agenda did provide that persons with disabilities requiring accommodation should contact the Washoe County Community Development Department 24 hours prior to the meeting. The Department has a full-time coordinator servicing the needs of the various citizen advisory boards. Unfortunately, Ms. Wright communicated her request to Commissioner Bond rather than the Department, and the request was not communicated to the Department charged with making the location accessible for the physically handicapped.

Prior and subsequent to Ms. Wright's complaint, no inquiries or complaints had been made regarding accessibility to the Board meetings. Based upon the County's review of the location, made subsequent to Ms. Wright's complaint to our office, the County has concluded the trailer is not appropriate for public meetings and advised us it will no longer be used as a location for public meetings.

Because the oversight was unintentional, and the County has taken the necessary steps to eliminate future transgressions of this type, we do not believe enforcement action is warranted in this case. Please circulate this determination to the members of the Board and we will close our file on this matter. We thank Ms. Wright for bringing this matter to our attention.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General

VTO/ld
cc: Wanda Wright
c:\files\olden\oml\99-034shipman



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FRANKIE SUE DEL PAPA
Attorney General

March 7, 2000

THOMAS M. PATTON
First Assistant Attorney General

E. Louis Overstreet, P.E.
3120 Blue Monaco
Las Vegas, Nevada 89117

Re: *Complaint against the Clark County School District Board of Trustees ("Board")*
OMLO 2000-05/AG File No. 00-004

Dear Mr. Overstreet:

We have reviewed your complaint and supporting documentation of January 24, 2000, and additional documentation received February 15, 2000. The jurisdiction of the Attorney General's Office is limited to investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes. Accordingly, this letter will only address your claims concerning the Open Meeting Law. However, with regard to your allegations the Board has failed to comply with other provisions of Nevada law, specifically Chapters 333, 350, 354, 386, 387, 388, and 625 of the Nevada Revised Statutes, I have forwarded your complaint to Keith Rheault, Deputy Superintendent, Instructional Research, and Evaluative Services.

With regard to your complaint concerning the Open Meeting Law, you allege the Board failed to make agenda support material available in October 1998. Pursuant to NRS 241.037, the Attorney General has 120 days from the date of the alleged violation to file an action in District Court for injunctive or declaratory relief. Accordingly, we are without jurisdiction to consider your complaint that you were denied agenda support material in October 1998.

You next claim the Board violated the Open Meeting Law concerning its practices regarding public comment, but have not specified when such alleged violation occurred. You reference a letter you wrote to the Board dated March 11, 1999, requesting they change their policy relative to the public comment period, relying on a letter to you from Deputy Attorney General Greg Salter dated February 25, 1999.¹ As stated in that letter, this office believes that the public body governing the exercise of public comment may impose reasonable rules and

¹ Deputy Attorney General Greg Salter's letter was in response to your inquiry of February 12, 1999, regarding the public comment period.

E. Louis Overstreet, P.E.

March 7, 2000

Page 2

regulations, including time limits. Determining what is reasonable depends on the circumstances of each case. If you believe the Board currently employs a practice governing the public comment period that violates the Open Meeting Law, please inform us of the practice so that we can promptly investigate. A complaint to this office may be in the form of a letter sent to me, describing the practice and the date of the meeting(s) at which it was employed. Please keep in mind the 120-day statutory time limit mentioned above.

Finally, you claim the Board violated the Open Meeting Law by failing to make certain information available to you. Pursuant to NRS 241.020(4), upon any request, a public body shall provide, at no charge, at least one copy of an agenda for a public meeting, a proposed ordinance or regulation which will be discussed at the public meeting, and any other supporting material provided to the member of the body relative to the meeting, except materials submitted to the public body pursuant to a nondisclosure or confidentiality agreement, pertaining to the closed portion of such a meeting of the public body, or declared confidential by law. Copies of the material must be furnished upon request at the time they are made available to the Board members. It is not clear from your complaint whether the materials you requested were required to be provided to you pursuant to NRS 241.020(4). If you believe you were denied material which the Board should have provided to you pursuant to NRS 241.020(4), please provide me with the date of the meeting at which the materials were provided to the Board, the particular support material you requested, and the date you requested it. Again, please keep in mind the 120-day statutory time limit mentioned above. If the material was not required to be provided to you pursuant to the Open Meeting Law, you may still be able to obtain such material, provided it constitutes public record, by submitting a request to the Board.

Thank you for bringing your concerns to our attention. I hope this letter is helpful to you. Please do not hesitate to contact me should you have any questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
Victoria T. Oldenburg
Deputy Attorney General
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(775) 684-1215

VTO/ld

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FRANKIE SUE DEL PAPA
Attorney General

April 3, 2000

THOMAS M. PATTON
First Assistant Attorney General

Mr. Jason May
2109 Idaho Street
Carson City, Nevada 89701

Re: *Carson City Senior Citizens Center*
OMLO 2000-06/AG File No. 99-035

Dear Mr. May:

This is in response to your inquiry as to whether Carson City Senior Citizen Center, Incorporated (Senior Center, Inc.), is a public body required to comply with the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes. In making our determination, we reviewed, *inter alia*, (i) the Articles of Incorporation of Senior Center, Inc. (1976); (ii) the By-Laws of Senior Center, Inc., and the Senior Citizens Center Advisory Council (1991); (iii) the Memorandum of Understanding between the Senior Center, Inc., and the City of Carson (1991); and (iv) the response of counsel for Senior Center, Inc., attorney Mr. Mike Pavlakis (February 14, and March 14, 2000).

NRS 241.015 (3) defines a public body as:

[A]ny 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

The definition in NRS 241.015 (3) indicates that a public body

- is an "administrative, advisory, executive or legislative body of the state or a local government" which means that the body 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; and
- 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.

The Articles of Incorporation provide that Senior Center, Inc. is a non-profit, non-stock association organized for the purpose of promoting and advancing the interests of senior citizens. Senior Center, Inc. does not perform a governmental function, nor does it owe its existence to any state or local governmental entity.¹ Moreover, Senior Center, Inc. does not act in an administrative, advisory, executive or legislative capacity.²

Senior Center, Inc. receives over 75 percent of its funding through state and federal grants, private donations, fund raisers, the operation of a thrift shop, and other activities. Less than 25 percent of its funding comes from the City of Carson.

The facility out of which Senior Center, Inc. operates is owned by the City of Carson. In 1984, the voters of Carson City approved a Senior Ad Valorem Tax Override at the rate of \$.05 per \$100.00 of assessed property valuation to be used for the construction, furnishings, equipment, operation and ongoing maintenance of senior citizen facilities in Carson City. The City is responsible for collecting, administering, and appropriating for spending all funds received from the Tax Override. As explained to our office by counsel for Senior Center, Inc., Mr. Mike Pavlakis, the proceeds of the tax were used by the City to retire bonds which were issued for the construction and operation of the City owned facility. The City made the bond payments directly, and pays from the bond proceeds the utility charges and the salaries of City employees who work on site at the facility. None of the bond or tax money is collected or administered by Senior Center, Inc.. While the tax and bond money benefits Senior Center, Inc.,

¹ The By-Laws of Senior Center, Inc., and the Senior Citizens Center Advisory Council (Advisory Council), provide for a Governing Board consisting of five members, who are the members of the corporation, and also provide for an Advisory Council consisting of eleven members who serve terms of two years, six of whom are elected by the participants in the Nutrition Program, four of whom are appointed by the Governing Board, and one of whom is an appointee of the Carson City Board of Supervisors.

² Contrary to a provision in a Memorandum of Understanding between the City of Carson and Senior Center, Inc. dated November 7, 1991, we are informed that Senior Center, Inc. does not act in an advisory capacity to the Board of Supervisors of Carson City.

Mr. Jason May
April 3, 2000
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by providing a facility from which to operate, Senior Center, Inc. is not directly supported in whole or in part by tax revenue.³

Based upon the foregoing, we conclude that Senior Center, Inc. is not a public body as defined in NRS 241.015(3), and therefore is not required to comply with the Open Meeting Law. We thank you for bringing this important matter to our attention.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld

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³In addition, Senior Center, Inc. may apply to the City for an appropriation of funds on a one-time or on-going basis, but those funds are issued at the *discretion* of the Board of Supervisors of Carson City, and we were informed the funds are issued on the same basis that funds are appropriated to other non-profit entities.



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FRANKIE SUE DEL PAPA
Attorney General

April 3, 2000

THOMAS M. PATTON
First Assistant Attorney General

FINAL WARNING LETTER

Mr. Thomas J. Ray
General Counsel
University and Community College System of Nevada
2601 Enterprise Road
Reno, Nevada 89512

Re: *Complaint against the University and Community College System of
Nevada Board of Regents
OMLO 2000-07/AG File No. 00-003*

Dear Mr. Ray:

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 Regent Steve Sisolak on February 10, 2000, alleging the Board of Regents (Board) violated the Nevada Open Meeting Law during a closed session held on February 10, 2000. We have reviewed the minutes of the closed session, the minutes of the public meeting held on February 10, 2000, and the agenda and supplemental agenda for the February 10-11, 2000 Board meeting. Based upon our review, we conclude the Board violated the spirit and intent of the Nevada Open Meeting Law as set forth in NRS §§ 241.010 and 241.020(1), and violated the agenda requirements of NRS 241.020(2).

FACTS

On February 10-11, 2000, the Board held a public meeting governed by the Nevada Open Meeting Law. The Agenda for the Board's February 10-11, 2000 meeting provided, in pertinent part:

1A. PERSONNEL SESSION INFORMATION/ACTION

1A.1 CLOSED SESSION ACTION

In compliance with NRS 241.030, a closed session will be held for purposes of discussion of the character, alleged misconduct, professional competence, or physical or mental health of persons.

(Board action to move to a closed session.)

1A.2 RETURN TO OPEN SESSION ACTION

The Board will return to open session and determine if any action is warranted.

(Possible Board action to decide personnel matter.)

The minutes of the closed session reflect that the session was held to discuss the character, alleged misconduct, and/or the professional competence of Dr. Richard Moore, Founding President of the Nevada State College at Henderson. During the closed session, in addition to discussing the character, alleged misconduct, or professional competence of Dr. Richard Moore, certain members of the Board discussed additional matters within the supervision, control, jurisdiction, or advisory power of the Board, including, but not limited to, proposed action and/or recommendations concerning Dr. Richard Moore, alleged conduct of Regent Sisolak, and standards relative to the general conduct of Regents.

Upon concluding the closed session, the Board went back into open session and took the following action:

IA.2 Approved Return to Open Session - The Board returned to open session to determine whether any action was warranted.

Mr. Hill moved approval of tabling the item until the afternoon with action to be taken just before item #4 (*Appointment Interim Vice President, DRI*). Mrs. Gallagher seconded.

Mr. Sisolak requested a point of clarification and asked whether the

present motion took precedence over the motion made/discussed in closed session. General Counsel Tom Ray stated that it was inappropriate to discuss anything that was discussed in the closed session. He noted for the record that no motions were made or discussed during the closed session. Mr. Seastrand asked why Mr. Hill wished to table the item. Mr. Hill indicated that he wished to discuss the item in the afternoon. Motion carried.

The following action was taken when Agenda Item 1A2 was heard later that day:

Mr. Hill moved approval of a vote of confidence for Founding President Richard Moore for his performance at CCSN; his unfailing efforts to bring higher education to the citizens of Nevada; his courage and dedication in taking the position as the Founding President of the new college at Henderson, for which there is no future unless provided by him; for his service to UCCSN and the people of the state of Nevada; and for the gentleman that he is. Mrs. Gallagher seconded.

Upon a roll call vote, the motion carried; Regents Dondero, Gallagher, Hill, Phillips, Rosenberg, Seastrand, Wiesner and Derby voted yes. Regent Kirkpatrick voted no. Regents Alden and Sisolak abstained.

ANALYSIS AND CONCLUSION

I. Violation of NRS 241.010 and 241.020(1)

NRS 241.010 states it is the intent of the law that actions and deliberations of public bodies be conducted openly. NRS 241.020 provides, in relevant part:

1. 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.

Pursuant to NRS 241.030, a public body can hold a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

During the closed session on February 10, 2000, rather than limiting the discussion to the character, alleged misconduct, or professional competence of Dr. Richard Moore, certain

members of the Board discussed additional matters within the supervision, control, jurisdiction, or advisory power of the Board, and outside the scope of NRS 241.030, including, but not limited to, proposed action and/or recommendations concerning Dr. Richard Moore, alleged conduct of Regent Sisolak, and standards relative to the general conduct of the Regents. Such comments were made despite admonitions from counsel for the Board, Mr. Tom Ray. Discussing such additional matters in a closed session violated the spirit and intent of the Open Meeting Law as set forth in sections 241.010 and 241.020(1) of the Nevada Open Meeting Law.

II. Violations of NRS 241.020(2)(c)(1)

Pursuant to NRS 241.020(2)(c)(1), an agenda for a meeting of a public body must consist of a clear and complete statement of the topics scheduled to be considered during the meeting. During the closed session, in addition to discussing the character, alleged misconduct, or professional competence of Dr. Richard Moore, members of the Board discussed additional matters within the supervision, control, jurisdiction, or advisory power of the Board, including, but not limited to, proposed action and/or recommendations concerning Dr. Richard Moore, alleged conduct of Regent Sisolak, and standards relative to the general conduct of Regents. However, the Agenda for the Board's meeting of February 10-11, 2000, did not state that the Board would be considering the additional topics it did during the closed session, in violation of the agenda requirements of NRS 241.020(2)(c)(1).

In addition, Agenda Item 1A.1 did not clearly describe the subject of the closed session by failing to include in the description of the agenda item that the session would pertain to Dr. Richard Moore, and/or the Founding President of the Nevada State College at Henderson. The Board's failure to clearly describe the subject of the closed session was a violation of the agenda requirements of NRS 241.020(2)(c)(1). This is especially true given the strong and legitimate public interest in Dr. Richard Moore as the Founding President of the Nevada State College at Henderson.

III. Violations of NRS 241.020(2)(c)(2)

Pursuant to NRS 241.020(2)(c)(2), an agenda for a meeting of a public body must consist of a list describing the items on which action may be taken and clearly denoting that action may be taken on those items. Agenda Item 1A1 did not clearly describe the action to be taken by failing to include in the description of the agenda item that the action to go into the closed session would pertain to Dr. Richard Moore, and/or the Founding President of the Nevada State College at Henderson. Again, this is especially true given the strong and legitimate public interest in Dr. Richard Moore as the Founding President of the Nevada State College at Henderson. The Board's failure to clearly describe the action to be taken relative to the closed session was a violation of the agenda requirements of NRS 241.020(2)(c)(2).

In addition, the Agenda for the February 10-11, 2000 Board meeting, specifically item 1A.2, did not clearly describe the action to be taken. The Agenda provided, in relevant part:

1A.2 RETURN TO OPEN SESSION ACTION

The Board will return to open session and determine if any action is warranted.

(Possible Board action to decide personnel matter.)

Nowhere does the Agenda state that the Board would consider taking a vote of confidence for Founding President Richard Moore for his performance at CCSN; his unfailing efforts to bring higher education to the citizens of Nevada; his courage and dedication in taking the position as the Founding President of the new college at Henderson, for which there is no future unless provided by him; for his service to CCSN and the people of the state of Nevada; and for the gentleman that he is.

The Board's failure to clearly describe the action to be taken under item 1A.2 was a violation of the agenda requirements of NRS 241.020(2)(c)(2).

CONCLUSION

For the second time in a two-month period, the Board of Regents failed to adhere to the letter, spirit, and intent of the Open Meeting Law. This office would be justified in filing a civil action against the Board for violations of the Open Meeting Law. Instead, this office is issuing this Final Warning Letter to the Board. Any future violation of the Open Meeting Law will likely result in a civil action being filed against the Board.

Pursuant to NRS 241.035, minutes of closed meetings become public records when the public body, and the person whose conduct and professional competence was discussed, agree to their disclosure. In keeping with the spirit and intent of the Open Meeting Law, we encourage the Board to seek the consent of Dr. Richard Moore to disclose the minutes of the closed session of February 10, 2000, so the public can know what took place during the session. Further, we

Mr. Thomas J. Ray
April 3, 2000
Page 6

once again recommend that the Board attend the Open Meeting Law courses offered by this office forthwith. Finally, we encourage the Board to consult the Association of Governing Boards (AGB) for additional Board training on appropriate board conduct.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

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FRANKIE SUE DEL PAPA
Attorney General

April 7, 2000

THOMAS M. PATTON
First Assistant Attorney General

Keith A. Weaver, Esq.
Konowiecki & Rank, LLP
633 West Fifth Street, Suite 3500
Los Angeles, California 90071-2007

Re: *Complaint against the Public Employees' Benefit Program Board of
Directors*
OMLO 2000-08/AG File No. 00-015

Dear Mr. Weaver:

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

We have reviewed your complaint of February 11, 2000, with regard to your allegation that the Public Employees' Benefit Program Board (PEBP) violated the Nevada Open Meeting Law. Specifically, you claim that your client, PacifiCare Behavioral Health (PBH), did not receive the meeting notice and agenda for PEBP's February 1, 2000, meeting until January 31, 2000.

We have completed our investigation, and conclude the Board did not violate the Open Meeting Law.

Pursuant to NRS 241.020, written notice of a public meeting, which includes the agenda, must be given at least three working days before the meeting. The law requires that the meeting notice and agenda be posted at the principal office of the public body, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of

Keith A. Weaver, Esq.
April 7, 2000
Page 2

the third working day before the meeting. The law additionally requires that a copy of the meeting notice and agenda be mailed to any person who has requested it, by delivering it to the United States Postal Service (USPS) no later than 9 a.m. of the third working day before the meeting. The Open Meeting Law does not require any other form of notice, such as by telephone, e-mail, or facsimile. Nor does it require that any vendor appearing on the agenda be notified in advance of the three working day requirement.

The Open Meeting Law required that the notice and agenda of the February 1, 2000, meeting be delivered to the USPS no later than 9:00 a.m. on Thursday, January 27, 2000. Shonda L. Pellegrini, Executive Assistant for PEBP, has certified that the notice and agenda (including agenda support material) for the February 1, 2000, meeting was mailed to vendors on January 25, 2000, and to all others on January 26, 2000. Accordingly, the requirements of NRS 241.020(3) were met.

Because we find no violation of the Open Meeting Law, we will be closing our file on this matter. Please do not hesitate to call if you have any questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

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Keith A. Weaver, Esq.
April 7, 2000
Page 3

bcc: Randal Munn



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FRANKIE SUE DEL PAPA
Attorney General

April 7, 2000

THOMAS M. PATTON
First Assistant Attorney General

Guy P. Felton, III
1220 Salem Place #5
Reno, Nevada 89509

Re: *Complaint against the Reno City Council*
OMLO 2000-09/AG File No. 00-012

Dear Mr. Felton:

We are in receipt of your complaint dated April 3, 2000, whereby you allege the Reno City Council, specifically, Mayor Griffin, violated the Nevada Open Meeting Law on November 23, 1999, by wrongfully excluding you from its meeting that day.

You are correct that the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violation of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes. However, the jurisdiction of this office is limited to investigating and prosecuting complaints submitted within 120 days after the action objected to was taken. NRS 241.037. Accordingly, our jurisdiction to investigate your complaint expired on March 22, 2000.

Please do not hesitate to call if you have any questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
Victoria T. Oldenburg
Deputy Attorney General

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

April 19, 2000

VIA FACSIMILE AND U.S. MAIL
(702) 731-1429

Leonard P. Smith, Esq.
Smith & Maurer
2770 South Maryland Parkway
Suite 200
Las Vegas, Nevada 89109

Re: *Open Meeting Law Complaint: Pahrump Town Board*
OMLO 2000-10/AG File No. 00-020

Dear Mr. Smith:

This office has primary jurisdiction to enforce the provisions of Nevada's Open Meeting Law, NRS 241.010 *et seq.* We received a complaint from the Las Vegas Review-Journal alleging the Pahrump Town Board has, and is continuing to violate the Open Meeting Law with regard to the search for a new town manager. I enclose the complaint for your review.

As time is of the essence, please contact me as soon as possible to discuss.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld

Enclosure

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

April 21, 2000

Guy P. Felton, III
1220 Salem Place #5
Reno, Nevada 89509

Re: *Complaint against the Reno City Council*
OMLO 2000-11/AG File Nos. 00-012/00-013

Dear Mr. Felton:

We are in receipt of your complaint dated March 30, 2000, whereby you allege the Reno City Council violated the Nevada Open Meeting Law because the City Attorney was not present when the meeting was called to order. Please be advised that the Open Meeting Law does not require the presence of the attorney for the public body at an open meeting. The short absence of the City Attorney did not render the meeting illegal under the Open Meeting Law.¹ Accordingly, we will be closing our file on this matter.

With regard to your complaint of April 3, 2000, whereby you allege the Reno City Council, specifically, Mayor Griffin, violated the Nevada Open Meeting Law on November 23, 1999, by wrongfully excluding you from its meeting that day, we will further investigate your complaint to determine whether Mayor Griffin violated NRS 241.040(2), and inform you of our results.

¹ You claim the Reno City Charter requires the presence of the City Attorney at all meetings of the City Council. Please be advised we have no jurisdiction to enforce the provisions of the Charter.

Mr. Guy P. Felton III
April 21, 2000
Page 2

To better your understanding of the Open Meeting Law, I enclose for your review the eighth edition of the Nevada Open Meeting Law Manual.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld

Enclosure

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

May 1, 2000

Thomas P. Wright, Esq.
Mineral County District Attorney
P.O. Box 1210
Hawthorne, NV 89415

Re: *Complaint Against Mineral County Board of Commissioners*
OMLO 2000-12/AG File No. 00-005

Dear Mr. Wright:

This office has primary jurisdiction over the investigation and resolution of complaints alleging violations of the Open Meeting Law, NRS chapter 241. We have completed our investigation of a complaint received from Ms. Christine Hoferer, Mineral County Recorder-Auditor, regarding Mineral County Commissioners Arlo Funk and Jackie Wallis. Specifically, Ms. Hoferer alleges Commissioners Funk and Wallis violated the Open Meeting Law by meeting privately to discuss and/or take action on matters within the supervision, control, jurisdiction, or advisory power of the Mineral County Commission (Commission).

Our investigation consisted of interviews with Ms. Hoferer, Commissioner Funk, Commissioner Wallis, Mineral County Clerk-Treasurer Jean Justice, Chief Deputy Recorder and Auditor Deann Jackson, Director of Hawthorne Utilities Ray Abrams, and four Mineral County staff persons. We also reviewed the agendas, minutes, and videotape provided to us by Ms. Hoferer. The following is our conclusion.

ANALYSIS AND CONCLUSION

Pursuant to NRS 241.015, the Open Meeting Law applies to meetings 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.¹ A quorum is defined as a simple majority of the constituent membership of a public body or another proportion established by law. NRS 241.015(4). The Commission is comprised of Commissioners Wallis, Funk, and Dillard. Hence, a quorum of the Commission consists of two members.

Ms. Hoferer's complaint is based upon her sincere belief that on numerous occasions Commissioners Funk and Wallis have met privately to discuss county business. Ms. Hoferer specifically complains of an occasion where Commissioners Funk and Wallis were observed in the office of Commissioner Wallis with the Director of Hawthorne Utilities, Ray Abrams, and were observed later that day in the office of Clerk-Treasurer Jean Justice, along with three staff persons. Based upon this claim, we interviewed Commissioner Funk, Commissioner Wallis, Clerk-Treasurer Jean Justice, Ray Abrams, and the three staff persons. Commissioners Wallis and Funk, the Clerk-Treasurer, and the three staff persons had no recollection of any discussions between the two Commissioners relative to matters within the supervision, control, jurisdiction, or advisory power of the Commission. Ray Abrams recalled that he visited the office of Commissioner Wallis that day to deliver a copy of an ordinance. Mr. Abrams recalled that when he delivered the ordinance to Commissioner Wallis, Commissioner Funk came into the office and the three of them discussed the high school girl's basketball team. Mr. Abrams stated there was no discussion between the two Commissioners on matters within the supervision, control, jurisdiction, or advisory power of the Commission.

When each interviewee was asked whether they had any personal knowledge of any other time in which Commissioners Wallis and Funk deliberated or took action on matters within the supervision, control, jurisdiction, or advisory power of the Commission, with the exception of Chief Deputy Recorder-Auditor Deann Jackson, each replied no. Ms. Jackson recalled she had overheard on at least one occasion Commissioners Funk and Wallis talk about equipment, she believed a bulldozer, but could not recall the substance of the discussion. This evidence alone is not sufficient to conclude that the Commissioners deliberated towards a decision or took action in violation of the Open Meeting Law.

During the interviews with Commissioners Funk and Wallis, and in the presence of yourself, our office provided guidance to the Commissioners on adhering to the letter, spirit, and intent of the Open Meeting Law and in understanding that when two members gather outside a

¹ "Action" is broadly defined to include a decision, commitment, or promise. NRS 241.015(1). "Deliberate" is also broadly defined and includes "to examine, weigh and reflect upon the reasons for or against the choice." See § 5.01 of The Nevada Open Meeting Law Manual, Eighth Edition, February 2000.

Thomas P. Wright, Esq.
July 5, 2002
Page 3

public meeting, they shall not deliberate toward a decision or take action on any matters within the supervision, control, jurisdiction, or advisory power of the Commission.

We thank Ms. Hoferer for bringing this important matter to our attention. Please distribute this determination to the Commissioners, and we will close our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
VICTORIA T. OLDENBURG
Deputy Attorney General
Commerce Section
(775) 684-1215

cc: Ms. Christine Hoferer, Mineral County Recorder-Auditor



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 1, 2000

Guy P. Felton, III
1220 Salem Place #5
Reno, Nevada 89509

Re: *Complaint against Reno City Mayor Jeff Griffin*
OMLO 2000-13/AG File No. 00-012

Dear Mr. Felton:

This is in response to your letter of April 8, 2000, regarding our determination that we have no jurisdiction to investigate your complaint regarding alleged civil violations of the Nevada Open Meeting Law by Reno City Mayor Jeff Griffin on November 23, 1999. In your letter of April 8, 2000, you allege that Mayor Griffin committed a misdemeanor under NRS 241.040 by wrongfully excluding you from a meeting of the Reno City Council on November 23, 1999. We have completed our investigation of your complaint. Based upon the foregoing, we conclude there was no misdemeanor violation, and you were properly excluded from the meeting that day.

Pursuant to NRS 241.040, wrongful exclusion of any person from a meeting is a misdemeanor. However, this provision of 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. *See* NRS 241.030(3)(c).

Guy P. Felton, III
June 1, 2000
Page 2

We reviewed the videotape of the meeting, specifically the public comment period during which you were removed from the meeting. It is our position that your willful conduct, which included interrupting Mayor Griffin (Chairman of the meeting) as he attempted to carry on the meeting, shouting at the council, and the repeated use of profane language was disruptive to the point your removal was justified under NRS 241.030(3)(c).¹ Accordingly, we find no misdemeanor violation by the Mayor, and will be closing our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

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¹ The Mayor warned you that if you continued to use profane language, specifically shouting at the Council the words "corrupt bastards" and "God damn liars" you would not be allowed to continue your presentation and would be removed from the building. You ignored the warning. The rules of decorum the Mayor applied prohibiting such conduct on your part was consistent with a ruling from the Ninth Circuit Court of Appeals. In White v. City of Norwalk, 900 F.2d 1421 (9th Cir. 1990), the Court upheld as constitutional a city ordinance which provided:

Each person who addresses the Council shall not make personal, impertinent, slanderous or profane remarks to any member of the Council, staff or general public. Any person who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any Council meeting shall, at the discretion of the presiding officer or a majority of the Council, be barred from further audience before the Council during that meeting.



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 1, 2000

Ms. Andrea Engleman
News Channel 8
Post Office Box 10000
Reno, Nevada 89510-0005

Re: *Complaint against the Washoe County District Board of Health
OMLO 2000-14/AG File No. 00-007*

Dear Ms. Engleman:

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.

This determination is in response to a complaint you lodged with our office on March 24, 2000. You allege the Washoe County District Board of Health (Board) violated the Open Meeting Law with regard to a closed session held on March 22, 2000. Specifically, you have asked us to investigate the Board's handling of the matter, including the agenda, the recording of the closed portions of the meetings, and whether action was illegally taken during the closed session.

We have completed our investigation of the complaint, which consisted of reviewing the agenda, the audiotapes of the closed session, the written minutes of the closed session and open meeting, and interviewing Ms. Cass Luke. The following are the results of our investigation.

ANALYSIS AND CONCLUSION

The March 22, 2000, meeting agenda for the Board provided, in relevant part:

- 9. Discussions and Possible Closed Session Pursuant to NRS 241.030 Regarding the Professional Competence of the District Health Officer.**
- 10. Possible Action Based Upon Board's Findings Regarding the Professional Competence of the District Health Officer.**

When the agenda item was called, the Board moved to go into closed session, making the following motion:

MOTION: Mr. Hall moved and it was seconded by Mr. Salerno that the District Board of Health adjourn to a Closed Personnel Session to discuss the professional competency of the District Health Officer.
Motion was carried unanimously.

After the closed session, the minutes reflect the following:

BOARD'S FINDINGS REGARDING THE PROFESSIONAL COMPETENCE OF THE DISTRICT HEALTH OFFICER.

Dr. Myles advised that the Board has adjourned from the Closed Personnel Session, and reconvened the March 22, 2000 meeting of the District Board of Health in a general open session. Dr. Myles advised that, as those in attendance are aware, the Board has received numerous hours of testimony in regard to the professional competency of the District Health Officer; that he would call for a motion from the Board.

MOTION: Mr. Salerno moved and it was seconded by Mr. Shaw that the Washoe County District Board of Health terminate its Employment Agreement with Dr. Gregory Carmichael, as the District Health Officer; that Dr. Carmichael be provided with a thirty-day written notification, as required by Section 2, Subsection B of the Employment Agreement. It was further ordered that Dr. Carmichael be placed on paid leave status for the duration of that thirty-day period.
Motion was carried unanimously.

Ms. Andrea Engleman
June 1, 2000
Page 3

The closed session was properly recorded and written minutes produced as required by NRS 241.035(2) and (5). Agenda Item 9 was adequately described, and the motion to go into closed session was properly made. With regard to Agenda Item 10, the Office of the Attorney General has taken the position that to comply with the spirit and intent of the Open Meeting Law, if action is going to be taken with regard to a closed session, then the agenda must specify the name of the person. *See Nevada Open Meeting Law Manual, § 9.07 (Eighth Edition, February, 2000).* However, in this case, since the person was identified as the Washoe County District Health Officer and there is only one District Health Officer, and we understand the Board was attempting to preserve the confidentiality of the matter, we believe the omission was negligible.¹ The actual motion made did include the name of the District Health Officer.

In addition, Agenda Item 10 should have been better described. We understand it can be difficult to properly describe an action item relating to a closed personnel session because one cannot anticipate the outcome of the closed session. However, one can describe on the agenda the parameters of allowable action, by stating “possible action, including but not limited to termination, suspension, demotion, reduction in pay, reprimand, promotion, endorsement, engagement, retention, or ‘no action’.” Because the Board has not been cited in the past with an Open Meeting Law violation, we believe it sufficient to caution the Board to take greater care in describing action items relative to closed sessions.

With regard to your question of whether action was taken during the closed session, to discuss with particularity the substance of the closed session in this determination would be in violation of the Open Meeting Law provisions which provide for confidentiality of the minutes and agenda support material relative to the closed session, specifically NRS 241.035(2) and NRS 241.020(40(c)). However, it is appropriate for us to generally discuss the result of our investigation. In your letter you quote Ms. Cass Luke as stating, with regard to the closed session “There's not much to tell. They deliberated in closed session and reached a decision during the deliberation. Then they came out and Chairman Solerno made the Motion.”

Our investigation revealed that Ms. Cass Luke was not present at any time during the closed session. When questioned regarding the above quote, Ms. Cass Luke stated that she had misspoken. Our review of the audiotapes of the closed session established that the closed session was properly conducted and no action was taken during the session. The attorney for the Board, Ms. Melanie Foster, did an excellent job in keeping the Board within the allowable parameters of the closed session.

¹ If a Board wants to maintain the confidentiality of the closed session, the Board can take the matter up for possible action at a subsequent meeting.

Ms. Andrea Engleman
June 1, 2000
Page 4

In conclusion, although the agenda item describing the action to be taken relative to the closed session should have been better described, all other aspects of the closed session were properly handled and we do not believe a warning letter or civil action is warranted.

Thank you for bringing this important matter to our attention. Please do not hesitate to call if you have any questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld
cc: Melanie Foster
Deputy District Attorney

c:\files\olden\oml\00-007engleman



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 1, 2000

Mr. Gregory J. Barlow
Special Counsel - Caliente
723 South Third Street
Las Vegas, Nevada 89101

Re: *Complaint against the City of Caliente*
OMLO 2000-15/AG File No. 00-006

Dear Mr. Barlow:

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

We have completed our investigation of the complaint filed by acting City Clerk L. Michele Hales, alleging that a member of the Caliente City Council violated the Nevada Open Meeting Law, specifically, NRS 241.033, by discussing Ms. Hale's character, alleged misconduct, and/or professional competence at a meeting on March 16, 2000, without giving her notice pursuant to NRS 241.033. Our investigation included a review of the agenda, written minutes, and the audiotape recording of the March 16, 2000, meeting.

For the reasons set forth below, we conclude there was no violation of the Open Meeting Law.

ANALYSIS AND CONCLUSION

On March 16, 2000, at a public meeting of the Caliente City Council, the minutes reflect the following remarks, *inter alia*, were made by Councilman Kirschner during the designated public comment period:

Councilman Kirschner: ...At the last meeting on Public Comment which is right here and if you read, if you look at it [sic] says right on down the line Bill Revell was the first one to speak Councilman Wallis was the second to speak, which I followed him on the same venue that he was on about the TV District and it's followed by Larry Wissbeck. Notice, none of my comment on there, they are totally eliminated from the minutes of the meeting now its says all public comment. And under public record on section 8.08 (10.03 and 8.08 are included with these minutes from the latest updated edition of "The Open Meeting Law Manual") I am entitled to have my words stated on there, when I mentioned it to Mrs. Hales, she said it was not on the agenda and it was up to her discretion whether it was gonna be published or not, which is wrong, on section 8.08 anything that is said in Public Comment is part of the record and part of the minutes of the meeting, according to the record right here in Nevada Open meeting Law.

Acting City Clerk S. Hales: We have all of that for the public record on tape.

Councilman Kirschner: I'm (Councilman Kirschner is pointing his finger at the Acting City Clerk) That's the next thing, I intend to be a [sic] the City Hall Office tomorrow morning at 9:00, which I will go and review that tape, should there be any discrepancy, that the words I said are not on there, then I fully intend to file charges of altering a public record or destroying a public record. So be warned, I'm going to be there at 9 o'clock, if the tape is lost you better have a good excuse. Thank you.

Minutes of the Regular City Council Meeting, March 16, 2000, Page 1.

Pursuant to NRS 241.033, a public body shall not hold a meeting to consider the character, alleged misconduct, and/or professional competence of a person unless it has given written notice to that person of the time and place of the meeting. While Councilman Kirschner's comments could be interpreted as accusatory towards Ms. Hales, the comments did not result in a discussion by the City Council of Ms. Hales' character, alleged misconduct, and/or professional competence. Accordingly, we find no violation in this regard.

Mr. Gregory J. Barlow
June 1, 2000
Page 3

While we find no violation of the Open Meeting Law, we feel compelled to provide guidance on an Open Meeting Law issue observed while investigating the complaint. It concerns a statement on the written minutes of the March 16, 2000 meeting, which provides:

These minutes are only a summary of the meeting. They are unapproved until signed and dated. *Also, these written minutes are not distributed to the public until approved.*
Minutes of the Regular City Council Meeting, March 16, 2000, Page 7 (emphasis added).

Keep in mind that pursuant to NRS 241.035(2), written minutes must be available for inspection by the public within thirty (30) working days after the adjournment of the meeting at which taken, regardless of whether they have been approved by the public body. If they have not been approved by the public body within the thirty-day period, it is acceptable to provide draft minutes to the public until the minutes are finalized through the approval process.

I have enclosed a copy of the most recent Open Meeting Law Manual. Please feel free to make copies for distribution to the members of the Council. The manual is also available on our website at <http://ag.state.nv.us>.

We thank Ms. Hales for bringing this matter to our attention. Please distribute this determination to the members of the City Council and we will close our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld

Enclosure

cc: L. Michele Hales

c:\files\olden\oml\00-006\barlow



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 2, 2000

Mr. Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: *Complaint against the Reno Sparks Convention and
Visitor's Authority (RSCVA)
OMLO 2000-16/AG File No. 00-002*

Dear Mr. Dehne:

We have completed our investigation of your open meeting law complaint concerning a meeting of the RSCVA Board of Directors (Board) on January 27, 2000. We reviewed the agenda for the January 27, 2000, meeting, and the written minutes and videotape of the meeting. The following is our determination.

ANALYSIS AND CONCLUSION

You allege that on January 27, 2000, the Board violated the Nevada Open Meeting Law by discussing matters not scheduled on the agenda for consideration by the Board. Specifically, you claim that under Agenda Item 6, the Board wrongfully discussed "the creation of a massive Parking structure."

Pursuant to NRS 241.020(2)(c), an agenda must include at a minimum a "clear and complete statement of the topics scheduled to be considered during the meeting."

The Agenda for the January 27, 2000, Board meeting provided, in relevant part:

6. *Agenda Item #04-0127-00 - Discussion/Action on recommendation from Finance Committee to approve the lease/purchase for Harrah's Trust property.¹

The minutes of the January 27, 2000 Board meeting provide, in relevant part:

¹ We recommend that on future agendas the RSCVA list the location of the real property to which the agenda item pertains.

7. Agenda Item #04-0127-00
Discussion/Action on recommendation from Finance Committee to approve the lease/purchase for Harrah's Trust property.

Mr. Boyd advised the Board that the Finance Committee debated all the options available pertaining to the lease with the Harrah's Trust property. The committee agreed that the lack of sufficient parking at the convention center would be remedied with the signing of this lease.

Sam Dehne addressed the board.

Mr. Boyd explained the variance between the appraisal price and the purchase price of the property. Ms. Elliot expanded on the tax penalties the trust will incur and the consequences of market timing. A discussion ensued regarding how the purchase of the property will be financed and how the special use permit will be issued.

Gary Bullis made a MOTION TO GIVE STAFF DIRECTION TO NEGOTIATE OPTION 1 OF THE LEASE/PURCHASE FOR HARRAH'S TRUST PROPERTY ON THE CONDITION THAT INDEPENDENT LEGAL COUNCIL IS RETAINED. Mr. Salerno seconded. Motion carried unanimously.

A review of the videotape of the meeting confirmed that the written minutes regarding Agenda Item 6 are accurate in describing what occurred at the meeting. The only comments made with regard to a potential parking structure on the property should the Board negotiate a purchase of the property were those made by Board Member Boyd when reporting on the recommendation of the Finance Committee (made at a properly notice open meeting a few days earlier) as accurately reflected in the minutes, and comments made by Chairman Griffin. In response to your public comment, Chairman Griffin stated that the Board would be obligated to follow the required public process concerning the application of a special use permit should the property be purchased. There was no substantive discussion or decision by Board members regarding the "creation of a massive parking structure."

Because we find no violation by the RSCVA Board, we will be closing our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
(775) 684-1215

VTO/ld
cc: Michael A.T. Pagni, Esq.



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 8, 2000

Mr. Howard Stimatze
Apprenticeship Coordinator
Grinnell Fire Protection, Reno District
1655 Marietta Way, Suite 105
Sparks, Nevada 89431-6068

Re: Open Meeting Law Complaint/February 10, 2000, meeting of the Nevada State Apprenticeship Council (Council)/New apprenticeship program for Grinnell Fire Protection.
OMLO 2000-17/AG File No. 00-018

Dear Mr. Stimatze:

Our office has investigated the above-referenced matter to determine if any violations of the Open Meeting Law (NRS Chapter 241) occurred. Upon review of the meeting agenda, minutes, and other extrinsic documents, we conclude that the Council did not violate and provisions of NRS Chapter 241.

Our review of the various NRS Chapter 241 issues raised in your letter is set forth below.

A. Public comment was properly taken on the Grinnell agenda topic.

You first claim that it was improper for the Council to allow public comment on agenda topic six.

The Council's meeting agenda for February 10th contained a "public comment" agenda topic as item number twelve. NRS 241.020 (2)(c)(3) requires each meeting agenda to include such a topic. The purpose of the "public comment" agenda topic is to allow citizens to bring matters to a public body's attention when such matters are not already specifically denoted on an agenda. This provision is not designed to prohibit a public body from taking public comment on other specifically denoted agenda topics. See Section 8.04 of the Nevada Open Meeting Law Manual (Eighth Edition). In fact there are a number of instances when other statutes or ordinances mandate a public body to take public comment on a specifically denoted agenda topic. Examples would include situations wherein a State Board is taking public testimony on a proposed regulation or a County Board is considering the appeal on a zoning change.

In the present matter the Council chose to allow public comment on agenda topic six. This agenda topic was denoted as Grinnell's proposed apprenticeship program. Nevada Administrative Code (NAC) 610.355 mandates that the Council provide copies of a proposed program application to the sponsors of similar apprenticeship programs and further mandates that such sponsors should have a reasonable time to comment on the proposed program. Louis Malone appeared at the public hearing on this proposed apprenticeship program representing a sponsor of a similar apprenticeship program. Mr. Malone provided public comment to the Council regarding the propriety of approving the Grinnell program. When the Council chose to receive such public comment on agenda topic six, it made its public meeting more compliant, not less compliant, with the spirit and the letter of the Open meeting Law.

B. The Council solely took action on agenda topics clearly denoted as action items.

You assert that the Council took action on the subject matter of Louis Malone's letter of February 7, 2000. In this letter Mr. Malone raised various concerns about Grinnell including alleged violations of the National Labor Relations Act.

The meeting minutes reflect that the Council took no action on Mr. Malone's letter. The only action taken on agenda topic six was the approval of a motion to table the Grinnell request until the Council's May meeting. The Council decided to table the decision on the new apprenticeship program in order to allow sufficient time for the Council's lawyer to research various legal issues raised by opponents of the Grinnell proposal. While the action to table the Grinnell application may have been prompted by concerns raised by Mr. Malone and others, it certainly was not action on a new matter not appearing on the meeting agenda.

C. The manner in which a public body denotes agenda topics may never be used to force a public body to take action.

You claim that the Council was mandated to act, in favor or against, the Grinnell proposal at its February 10th meeting. Your authority for this proposition is language contained in NRS 610.095.

The provisions of NRS Chapter 241 never force a public body to take action on any agenda topic. These provisions are merely designed to prohibit a public body from taking action on agenda topics if the public has failed to receive sufficient notice that on a particular date action may be taken by such public body.

Mr. Howard Stimatze
June 8, 2000
Page 3

Because this letter solely involves an Open meeting Law review, we render no opinion regarding the alleged violation of NRS 610.095.

D. Written minutes of the February 10th Council meeting have been provided to Grinnell.

You indicate that during the meeting of February 10, 2000, a Grinnell representative requested a copy of that meeting's written minutes. Under NRS 241.035 minutes must be made available for inspection by the public within 30 working days after the meeting at which they were taken.

While you may have failed to receive the meeting minutes as of the drafting of your complaint, the Council's lawyer indicates that the February 10th meeting minutes have subsequently been provided to Grinnell. Thus this issue has been resolved.

Based on the foregoing, we will be closing our investigation on this matter. Thank you for providing our office with the opportunity to review your concerns.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(775) 684-1207

RLA:jf
cc: Dianna Hegeduis, Deputy Attorney General



3

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 16, 2000

Mr. Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: *Open Meeting Law Complaint/ Washoe County Commission Meeting
of March 28, 2000/Real property acquisition by the Reno-Sparks
Convention and Visitor's Authority (RSCVA)
OMLO 2000-18/AG File No. 00-010*

Dear Mr. Dehne:

Our office has investigated the above-referenced matter.

You assert in your complaint that the County Commission failed to provide clear and complete detail on agenda topic 5(C)(1). That topic, as set forth in the March 28th meeting agenda, read as follows:

5. Consent Items...

C. Executive Resolutions.

(1) Approving the acquisition of real property by the Reno-Sparks Convention and Visitors Authority, upon behalf of the County, located at the northwest corner of the intersections of Peckham Lane and Kietzke Lane, and providing other matters properly related thereto.

The County Commission's meeting minutes for March 28th indicate that you appeared and provided public comment on the propriety of this agenda topic. After hearing your concerns, and receiving advice from legal counsel concerning the sufficiency of the agenda topic wording, the County Commission approved a resolution authorizing the acquisition of the property by the RSCVA.

Sam Dehne
June 16, 2000
Page 2

NRS 241.020(2)(c)(1) sets forth that a meeting agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. In Op. Nev. Att'y Gen. No. 91-6 (May 23, 1991) our office described the legislative intent concerning this provision. That intent included a desire to eliminate confusing meeting agendas. The purpose of the agenda detail requirement was to allow members of the public to know when issues were going to be heard by a public body and when action would be taken by a public body.

In the present case this agenda topic cannot be characterized as vague or generic. The topic alerts a member of the public that the County Commission will be taking an action authorizing the RSCVA to purchase a piece of real property. The description thereafter includes the location of the property to be purchased. We believe this is sufficient information to alert a person of reasonable prudence to attend the County Commission meeting if they have a concern on this particular issue.¹

Based on the foregoing, we conclude that the County Commission did not violate the Open Meeting Law by taking action on agenda topic 5 (C) (1). Thank you for providing our office with an opportunity to review this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(775) 684-1207

RLA:srh
cc: Madelyn Shipman, Esq.
Assistant District Attorney

¹ In Op. Nev. Att'y Gen. No. 2000-07 (February 7, 2000), we concluded that action on a specific type of zoning change had not been clearly denoted on a meeting agenda. In that case, the agenda detailed with great specificity a zone change from one particular type of land use to another. The public body thereafter took action approving a different type of zone change allowing for expanded property uses beyond those originally contemplated. In the present case, the action taken by the public body did not expand into a subject matter which would have surprised the ordinary citizen. The action authorizing the RSCVA to purchase property at a specifically described location followed the description of the property listed in the meeting agenda. Thus the agenda detail requirement, as well as the requirement of denoting action, were both met in this case.



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

June 30, 2000

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

Re: *Complaint against the Ethics Commission*
OMLO 2000-19/AG File No. 00-022

Dear Mr. Mitchell:

This is to confirm our recent conversation, whereby you agreed to withdraw your complaint against the Nevada Ethics Commission (Commission) filed with our office on June 1, 2000.

As I stated to you during our conversation, our office discussed your complaint with Mr. Kenneth A. Rohrs, Executive Director, and Ms. Nancy Lee Varnum, Commission Counsel. Our discussion included providing guidance to the Ethics Commission on preparation of its public meeting notice and agenda in light of your concerns.

We thank you for bringing this matter to our attention. Please do not hesitate to call should you have any questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld

cc: Ms. Nancy Lee Varnum, Commission Counsel

c:\files\olden\00-022mitchell



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

July 10, 2000

Ms. Janice King
1025 Barrington Avenue
Elko, Nevada 89801

Re: *Complaint against the Elko County Commission*
OMLO 2000-20/AG File No. 00-011

Dear Ms. King:

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

On March 28, 2000, we received your complaint alleging the Elko County Commission violated the Nevada Open Meeting Law. Specifically, you allege the Commission violated the Open Meeting Law regarding the placement of a large shovel on the lawn of the Elko County Courthouse. You further allege the Open Meeting Law was violated regarding the posting of an agenda for a March 8, 2000, Commission meeting, and allege the Commission took action on a matter not clearly described on the March 8, 2000, agenda.

We have completed our investigation of your complaint, which included a review of the minutes and audio tapes of a February 16, 2000, Commission meeting and the March 8, 2000, Commission meeting, and a review of the May 16, 2000, response of the Elko County District Attorney's Office. We conclude that under the particular facts of this case, the Commission did not violate the Open Meeting Law.

ANALYSIS AND CONCLUSION

I. Placement of a shovel on the Elko County Courthouse Lawn

In early January 2000, a 28-foot tall, 10-foot wide shovel was placed on the lawn of the Elko County Courthouse. The shovel was placed on the lawn to symbolize the county's battle with the federal government over the Jarbidge South Canyon Road. Specifically, you allege "They [the Commission] admitted that they had reached a consensus and informal agreement to

allow the shovel to remain on the lawn while also admitting that they had never placed the issue on the agenda." However, our investigation revealed that although certain members of the Commission expressed individual support for placing the shovel on the lawn, there is no evidence that a quorum of the Commission took action on the matter outside the ambit of the Open Meeting Law. Rather, the decision to place the shovel on the lawn was within the authority and control of the County Manager. Accordingly, we find no violation of the Open Meeting Law in this regard.

II. The Commission meeting of March 8, 2000

You further allege the Open Meeting Law was violated regarding the posting of the March 8, 2000 agenda, and allege the Commission took action on a matter not clearly described on the March 8, 2000, agenda.

On March 3, 2000, a notice and agenda was posted, noticing a special session of the Commission to be held on March 8, 2000. The agenda stated:

Discussion and potential approval of Mediation Agreement.

Later that same day, a second notice and agenda was posted replacing the first, which stated:

Discussion and potential approval of Mediation Agreement,
and other documented items/issues as may apply.

Both notices were timely posted. Accordingly, we find no violation of the Open Meeting law in this regard.

At the March 8, 2000 meeting, the only item agendaized was "Discussion and potential approval of Mediation Agreement, and other documented items/issues as may apply." The mediation agreement concerned the South Canyon Road - Jarbidge Canyon, and the related case *United States vs. Elko County and United States vs. John Carpenter, et al.* Discussion ensued regarding the Mediation Agreement, and a motion was made and passed unanimously to approve the Mediation Agreement. Thereafter, discussion ensued as to whether to remove the District Attorney and hire outside counsel to represent the County in the mediation. Commissioner Roberts made the following motion:

...I move that under the unique circumstances that presently exist we must remove the District Attorney and his staff from representing this Board from any further actions involving South Canyon or any other involving any public land mitigation. Further, we must unfortunately inform those involved in the mediation efforts that we will not be able to participate in this event at this time. Additionally, this Board must take immediate action to obtain legal counsel, at least on matters pertaining to public land problems. Until such time as this legal counsel has been obtained, this county will not consider any further involvement

Ms. Janice King
July 10, 2000
Page 3

with mediation, or any legal activity involving the South Canyon dispute. Commissioner Lloyd seconded the motion for discussion.

Minutes, Elko County Commission meeting of March 8, 2000.

Discussion of the motion ensued. Subsequently, the motion failed.

You allege the Commission went beyond the agendized topic, "Discussion and potential approval of Mediation Agreement, and other documented items/issues as may apply" by taking action on whether to remove the District Attorney as counsel for the County in the mediation. Pursuant to NRS 241.020(2)(c), an agenda must include a list *describing* the items on which action may be taken. The agenda for the March 8, 2000 meeting stated that action might be taken on other items and issues applicable to the Mediation Agreement. Under the particular facts of this case, discussion of whether to remove the District Attorney from representing the county in the mediation was an issue relating to the Mediation Agreement. For that reason, we do not believe the Commission violated the Open Meeting Law. However, we do believe the agenda item could have been described with more particularity. While we have no complaint before us that a member of the public was not aware of the nature of the Mediation Agreement, which is understandable given the great interest and public awareness of the case, we believe that a clear description would include naming the case to which the Mediation Agreement pertained.

We are informed that the District Attorney is working closely with the County Manager to address your concerns and to describe agenda items with greater particularity when possible. In addition, our office will be providing training to the Commission in August of this year that will include guidance on issues relative to the public meeting notice and agenda.

We thank you for bringing this important matter to our attention. Please do not hesitate to call should you have any questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld

cc: Kristin McQueary, Chief Civil Deputy
Elko County District Attorney's Office



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

July 18, 2000

Ms. Shelley Wadsworth
Post Office Box 690
Pioche, Nevada 89043

Re: Open Meeting Law Complaint. Lincoln County Commission's February 22, 2000 meeting.
OMLO 2000-21/AG File No. 00-008

Dear Ms. Wadsworth:

Our office has investigated the above-referenced matter.

You claim that the Commission considered your character and competence at this meeting, thus triggering the personal notice requirement set forth in NRS 241.033.¹ You also note that the Commission provided you with no personal notice in advance of the February 22, 2000 meeting.

The terms "character" and "professional competence" are not defined in NRS Chapter 241. Our office has explored the meaning of these terms, however, through prior open meeting law investigations. In Op. Nev. Att'y Gen. No. 81-A (February 23, 1981) we described the commonly accepted definitions of these terms as follows:

"Competence" means: "Duly qualified; answering all requirements; having sufficient ability or authority; possessing the natural or legal qualifications; able; adequate; suitable; sufficient; capable; legally fit."

"Character" means: "That moral predisposition or habit, or aggregate of ethical qualities, which is believed to attach to a person on the strength of the common opinion and report concerning him. A person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation

¹ NRS 241.033(1) sets forth: "A public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting..."

Ms. Shelley Wadsworth
July 18, 2000
Page 2

of which his general reputation for the possession of a character, good or otherwise, is obtained.” Id. at p. 83.

During the February 22nd meeting you were asked two questions by one Commission member concerning a parcel map. You answered both questions. There was no collective discussion by the entire Commission on this matter.² We do not construe your brief encounter with one Commission member as a Commission attempt to consider your character and professional competence.

Based on the foregoing, we found no open meeting law violation. Thank you for providing our office with the opportunity to review this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:

ROBERT L. AUER
Senior Deputy Attorney General
Boards and Commissions Section
(775) 684-1207

RLA:jf

² The entire colloquy from the February 22nd meeting is as follows:

Commission member: I got a call from W. They had an item on the planning commission agenda last week and it did not get put on the Commissioner’s agenda. Is there a reason for that?

Wadsworth: I had to have it on the agenda the very next day and it didn’t get there in time.

Commission member: Is there anything we can do at all, Phil, to help them?

District Attorney: Unfortunately, it is an action item. It would have to be agendized (sic).

Commission member: This is something we cannot allow to happen Shelly. It is costing these people some money. I got my you know what chewed and I’m going to pass it on to you. So, if there is a reason, we need to know about it. Was the office open?

Wadsworth: Yes.

Commission member: That is all I can do with it Jerry...



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

July 19, 2000

Mr. Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint; Washoe County Airport Authority Board meeting of April 13, 2000, Executive Director Report and Committee Report agenda topics.
OMLO 2000-22/AG File No. 00-019

Dear Mr. Dehne:

Our office has reviewed the above-referenced complaint.

The basis of your complaint is that the Board refused your request to speak on the specific agenda topics listed above. While you were allowed to speak during public comment, the audiotapes for the meeting illustrate that the Chairman explained to you that you were not allowed to speak on these specifically denoted agenda topics.

I have attached a copy of Section 8.04 of the Nevada Open Meeting Law Manual (Eighth Edition) for your review. That provision illustrates that your complaint in this matter is not well founded.

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
Boards and Commissions Section
(775) 684-1207

RLA:jf

cc: Robert H. Ulrich (Airport Authority General Counsel)



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

July 27, 2000

Mr. Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: *Complaint against the Reno Sparks Convention and Visitor's Authority
(RSCVA)
OMLO 2000-23/AG File Nos. 00-009/00-017*

Dear Mr. Dehne:

We have completed our investigation of your open meeting law complaint concerning a meeting of the RSCVA Board of Directors (Board) on March 23, 2000, and a meeting of the Board on April 7, 2000. We reviewed the agendas for the March 23 and April 7, 2000, meetings, and the written minutes and videotapes of the meetings. The following is our determination.

ANALYSIS AND CONCLUSION

I. Meeting of March 23, 2000

You allege that on March 23, 2000, the Board violated the Nevada Open Meeting Law by not properly describing Agenda Item F. The Agenda for the March 23, 2000, Board meeting provided, in relevant part:

F. ***Agenda Item #04-0323-00**-Discussion/Action on the approval of a real estate purchase agreement, lease and option agreement, or lease agreement with Stanharrah, Inc. regarding real property located at the northwest corner of Kietzke and Peckham Lanes.

You claim in order for the matter to have been properly agendized pursuant to the Open Meeting Law, it should have described what the land was going to be used for. Pursuant to NRS 241.020(2)(c), an agenda must include at a minimum a "clear and complete statement of the *topics* scheduled to be considered during the meeting." The topic denoted as Agenda Item F was the discussion and possible approval of a real estate purchase agreement, lease and option agreement, or lease agreement with Stanharrah, Inc., for property located on the corner of Kietzke and Peckham Lanes. The RSCVA Board discussed matters relative to the purchase and/or lease of the property, and stayed within the parameters of the agendized topic at the

Mr. Sam Dehne
July 27, 2000
Page 2

meeting. We do not believe the agenda topic was vague or generic. The item as agendized put the public on notice that the RSCVA would be discussing and possibly taking action on the purchase or lease of the Stanharrah, Inc. property, and noted the location of the property. We believe this is sufficient information to alert a member of the public to attend the RSCVA meeting if he was interested in the topic.

II. Meeting of April 7, 2000

You allege that on April 7, 2000, the Board violated the Nevada Open Meeting Law by not properly describing Agenda Item A. The Agenda for the April 7, 2000, Board meeting provided, in relevant part:

A. ***Agenda Item #01-0407-00-Discussion/Action** and resolution regarding lease, acquisition and/or special use permit issues and letter of understanding regarding real property owned by Stanharrah located at the northwest corner of Kietzke and Peckham Lanes.

You again claim that in order for the matter to be properly agendized pursuant to the Open Meeting Law, it should have described what the land was going to be used for. The topic denoted as Agenda Item A was the discussion and possible approval of a resolution regarding the lease, acquisition and/or special use permit issues and letter of understanding regarding Stanharrah, Inc.'s property located on the corner of Kietzke and Peckham Lanes. The RSCVA Board stayed within the parameters of this topic at the meeting. Again, we do not believe the agenda topic was vague or generic, and that it provided sufficient information to alert a member of the public to attend the RSCVA meeting if he was interested in the topic.

Based upon the foregoing, we conclude that the RSCVA did not violate the Nevada Open Meeting Law with regard to its March 23 or April 7, 2000, meetings.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
(775) 684-1215

VTO/ld

cc: Michael A.T. Pagni, Esq.

c:\files\olden\oml\00-009\00-017dehne



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 9, 2000

Mr. Hy Forgeron
Lander County District Attorney
Post Office Box 187
Battle Mountain, Nevada 89820

Re: Complaint Against the Lander County Commission
OMLO 2000-24/AG OML No. 00-029

Dear Mr. Forgeron:

This acknowledges receipt of a letter dated August 4, 2000, from Deputy District Attorney Allen D. Gibson regarding a complaint that the Lander County Commission violated the Open Meeting Law by holding a meeting on July 17, 2000, without giving the requisite three days' notice as required by NRS 241.020. Mr. Gibson advises that the Commission held a meeting on August 2, 2000, at which time the Commission voted to rescind and declare void the ordinance passed at the July 17 meeting.

Based on my review of the minutes of the meeting held on July 17, 2000, it appears that the Commission declared an emergency pursuant to NRS 241.020(2) to permit the meeting and consideration of the proposed ordinance on less than three working days' notice due to a statutory deadline for submitting ballot questions for the next general election. As used in this statute, an emergency is defined as "an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public." NRS 241.020(5).

In my view, a statutory deadline for action by the Commission to submit a ballot question is not an unforeseen circumstance, and the Commission's inability to act on an ordinance to increase the number of county commissioners from three to five does not impair or threaten to impair the health and safety of the public within the meaning of this statute. It therefore appears that the meeting conducted on July 17, 2000, resulted in a violation of the Open Meeting Law.

Mr. Hy Forgeron
August 9, 2000
Page 2

However, because the Commission has rescinded the only action it took at that meeting, this office has elected to take no further action in this matter.

Thank you for your cooperation.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
DOUGLAS E. WALTHER
Senior Deputy Attorney General
Commerce Section
(775) 684-1213

c: Norm Azevedo, Chief Deputy Attorney General

omlo 2000-24.doc



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 31, 2000

Denise B. Holmes
2201 West Silver Sage
Pahrump, Nevada 89060

Re: Open Meeting Law Complaint: Pahrump Town Board
OMLO 2000-25/AG File No. 00-027

Dear Ms. Holmes:

This office has primary jurisdiction over the investigation and resolution of complaints alleging violations of the Open Meeting Law, NRS Chapter 241. On July 1, 2000, you filed a Complaint with this office alleging the Pahrump Town Board violated the Open Meeting Law by not allowing you to speak during the public comment section and by improperly excluding you from the Board Meeting of June 27, 2000. We have completed our investigation of your Complaint. We have investigated your Complaint by interviewing yourself and the Board's legal counsel, Leonard P. Smith. We have also reviewed the relevant statutes, the minutes of the June 27, 2000 meeting including verbatim minutes of the portion of the meeting which you complain of. Based upon the foregoing, we conclude that there are no Open Meeting Law violations.

Your Complaint relates to agenda item No. 15, placed on the agenda by you, regarding a pending public utility project. Specifically, you allege that during your presentation to the Board, "Mr. Timothy Leavitt, Vice-Chair, acting as Chair, cut my time-off short of 15 minutes, in the middle of due process of law and ordered under-Sheriff, Bill Weldon, to remove me from the building..." Pursuant to NRS 241.040(2), "Wrongful exclusion of any person or persons from a meeting is a misdemeanor." Thus, it appears your are alleging that the Chairman wrongfully excluded you from the Board Meeting on June 27, 2000. Our investigation does not support your claim of wrongful exclusion.

Letter to Denise B. Holmes
August 31, 2000
Page 2

First, the verbatim minutes from this portion of the Board Meeting reflect that you were never excluded from the meeting. Instead, the verbatim minutes reflect that, during your presentation, the Chairman called for a 5-minute recess in the Meeting after several futile attempts to call for order. The verbatim minutes of the meeting further reflect that after the recess, you were allowed to return to the podium and continue with your presentation. The Board minutes also reflect that you were present during the public comment portion of the meeting, held immediately prior to adjournment. Additionally, our interviews of both yourself and Mr. Smith further substantiate that you were not excluded from any portion of the meeting. Accordingly, we find no Open Meeting Law violation here.

You also allege that the Board did not allow you to read “a second Letter of Presentment” during the public comment portion of the meeting, in violation of NRS 241.035(1)(d). Pursuant to NRS 241.035(1)(d) the Board is required to keep minutes of its meetings including a copy of any written remarks prepared by any member of the general public if he/she submits a copy for inclusion. The Board minutes reflect and our interview with you has substantiated that your second Letter of Presentment was circulated among the Board and entered into the minutes. Thus, the Board did what was required of it pursuant to NRS 241.035(1)(d). Accordingly, we find no Open Meeting Law violation here, either.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:

Kurt J. Weinrich
Deputy Attorney General

KJW:krf
c:\files\kurt\pahrumppopinion



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

August 31, 2000

Allen D. Gibson, Esq.
Lander County District Attorney
Post Office Box 187
Battle Mountain, Nevada 89820

Re: Complaint against the Lander County School Board of Trustees
OMLO 2000-36/AG File No. 00-024

Dear Mr. Gibson:

As you know, on June 21, 2000, we received a complaint from Ms. Lorraine Baumann, Editor of the Battle Mountain Bugle, alleging a violation of NRS 241.020(4)(c) by a member of the School Board of Trustees and the administrator of the school district. The alleged violation was the refusal of the Lander County School Board of Trustees to provide copies of the resumes of the persons whom the trustees interviewed for the vacant position of principal of Battle Mountain Junior High School in an open meeting of the board of trustees. The request was made at the time of the meeting on June 15, 2000. The interviews were non-action items. We have completed our investigation of the complaint and issue the following determination.

Pursuant to NRS 241.020(4)(c): "Upon any request, a public body shall provide, at no charge, at least one copy of: (c) Any other supporting material provided to the members of the body for an item on the agenda, . . ." There are certain exceptions to this rule not pertinent in the matter before us. Copies of the resumes were denied on the basis that 1) the interviews could have been in a closed session of the board to discuss the professional competence and character of the applications; 2) the resume of the chosen applicant would become part of the personnel file when hired, and 3) there was a concern that the applicants may suffer ramifications related to

Allen D. Gibson, Esq.
August 31, 2000
Page 2

their current employment if their resumes and presumably their interest in the position were public.

While it is true that the supporting materials for an item that is properly part of a closed meeting of a public body are protected from disclosure, the trustees are mistaken in their belief that this rule protects such materials from disclosure even if the public body chooses to consider the matter in an open meeting rather than the closed meeting. The other two grounds stated by counsel for the board as to the reasons for denying the request are not legal justification for their actions. We are not aware of any statute or regulations that makes resumes of persons who are not yet employees confidential.

Because the trustee and the administrator who withheld copies of the resumes did so in a good faith belief that disclosure was protected under NRS 241.030, their violation of the open meeting law is not willful. To correct their mistake the board of trustees must provide Lorraine Baumann with copies of the resumes immediately.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
MELANIE MEEHAN-CROSSLEY
Deputy Attorney General
Government Affairs Section
(775) 684-1208

MMC:jf
c: Lorraine Baumann



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 5, 2000

Mr. Sam Dehne
297 Smithridge
Reno, NV 89502

Re: *Open Meeting Law Complaint: Airport Authority of Washoe County
OMLO 2000-27/AG File No. 00-028*

Dear Mr. Dehne:

This letter is in response to your complaint against the Airport Authority of Washoe County (AAWC) regarding an alleged violation of the Open Meeting Law, NRS chapter 241. Your July 14, 2000, complaint alleges that during their meeting of July 13, 2000, the AAWC violated the Open Meeting Law by refusing to allow you to speak on a particular agenda item dealing with the election of officers at the time of that agenda item.

This office has reviewed the agenda, the minutes, and the audiotape of the meeting. This review demonstrates that a public comment period was on the agenda and was provided during the meeting. The public was given the opportunity during this public comment period, which preceded the election of officers, to comment on any matter including the election of officers. You were given the opportunity during this period to comment and did so. Except during the public comment period required by NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings. The Open Meeting Law does not require that public comment be allowed during agenda items other than the public comment period.

Mr. Sam Dehne
September 5, 2000
Page 2

The AAWC acted properly and in conformance with the Open Meeting Law by providing a public comment period and allowing you to speak during this period. This office finds no violation of the Open Meeting Law.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
EDWARD T. REED
Deputy Attorney General
Commerce Section
(775) 684-1216

ETR:kh
cc: Robert H. Ulrich, General Counsel, AAWC
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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 7, 2000

Donald A. Lattin, Esq.
Walther, Key, Maupin, Oats,
Cox, Klaich & LeGoy
Post Office Box 30000
Reno, Nevada 89520

Re: *Complaint against the Churchill County School Board of Trustees*
OMLO 2000-28/AG File No. 00-021

Dear Mr. Lattin:

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.

We have completed our investigation of the complaint filed by Anne Pershing, Editor, and Marlene Garcia, Reporter, of the Lahontan Valley News and Fallon Eagle Standard ("complainants"). Specifically, the complainants allege the Churchill County School Board of Trustees ("Board") violated the Nevada Open Meeting Law on April 13 and June 22, 2000, concerning a closed session, and allege that the Board's meeting agendas, including those for April 13 and June 22, do not comply with the requirements of NRS 241.020(1).¹

Our investigation of the complaint consisted of a review of the minutes, tapes, and agendas for the open and closed sessions of the April 13 and June 22 meetings of the Board, as well as the material you provided to us on May 19 and July 28, 2000. With regard to the closed session held on April 13, 2000, we conclude the Board did discuss matters outside those allowed under NRS 241.030. We find no violation with regard to the discussion during the closed session on June 22, 2000. However, we do find that in certain respects the agendas for the April 13 and June 22, 2000 meetings, as well as additional agendas provided to us, do not meet the "clear and complete" requirements of NRS 241.020(1).

¹ Complainants also allege they were not given agenda support material for Item IX-3 on the April 13, 2000 meeting, "Report on Board-Directed Survey of Employees Regarding "Buy-Out" Program, Discussion and Possible Action Related to (District Goals 2 & 8) - *Mr. Lindeman*." However, pursuant to NRS 241.020(4)(c), the Board states that while salaries in general and the number of salaried employees at a particular position on the salary schedule are not confidential, certain portions of the support material are confidential, that is, an individual employee's salary. We understand that the necessary and non-confidential information related to this agenda item was provided to the public. However, we are requesting that the Board provide us with the legal authority for this position, and we will revisit this issue if necessary.

ANALYSIS

I. Board Meeting of April 13, 2000 - Closed Session

Complainants allege that on April 13, 2000, the Board held a closed session regarding the elimination of an assistant superintendent position, and to discuss a list of job applicants, without giving the public notice that these topics would be discussed in closed session. Complainants further allege that before going into closed session there was no motion made which specified the nature of the business to be considered, in violation of NRS 241.030(2), and that the closed session was not limited to discussion of the character, alleged misconduct, professional competence, or physical or mental health of a person.

Pursuant to NRS 241.030, a public body may close a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person upon a motion that specifies the nature of the business to be considered. Only the business identified in the motion may be discussed. To assure compliance with the spirit and intent of the Open Meeting Law, this office has opined that the matter must be indicated on the agenda as a closed session under NRS 241.030(1). The name of the individual being discussed may be stated, but if confidentiality is a consideration, the name may be omitted; however, there should be some general description of the subject of the closed session, such as "an employee," "an applicant," or "a candidate."² It is recommended the public body consider naming the individual if the closed session involves a controversy in which there is a strong and legitimate public interest. While the attributes of an employee may be discussed in closed session, the public body may not form recommendations or decisions concerning an employee or an action to be taken. Those tasks must be done in an open meeting, or delegated to a member to handle. The closed session should be limited to specific discussions about the person. General discussions about general policies or practices may not be held during a closed session.

The Agenda for the April 13, 2000 meeting states, as Agenda Item X, "Executive Session." Under this item, a motion was made to go into closed session for "discussion of personnel matters." The motion made to go into the closed session at the April 13, 2000, Board meeting should have specified the business to be conducted during the closed session. In addition, denoting the closed session as an "Executive Session" does not comply with the spirit and intent of the open meeting law; the matter should have been described as a closed session under NRS 241.030.³

With regard to what occurred during the closed session, unfortunately, counsel for the Board was not present during the closed session to provide guidance and advice to the Board concerning the allowable parameters of the closed session. The tape and minutes of the closed session reveal that discussion was properly had pursuant to NRS 241.030 concerning the

² Keep in mind that closed sessions are limited to consideration of such matters; the confidentiality falls away when the public body is going to take action concerning the subject person. In that case, the agenda must specify the name of the person.

³ The same holds true with all agendas submitted to us by the complainants regarding the denotation of "Executive Session."

professional competency of certain employees.⁴ However, the Board also considered a pending arbitration hearing, and possible administrative changes. If consideration of the arbitration hearing was exempt pursuant to Chapter 288 of the Nevada Revised Statutes, the agenda should have indicated that the Board would go into closed session pursuant to that statute, and a proper motion should have been made. While consideration of the arbitration hearing may have been exempt from the open meeting law pursuant to Chapter 288 of the Nevada Revised Statutes, consideration of possible administrative changes was outside the parameters of NRS 241.030 and should not have been considered by the Board in the closed session.

II. Board Meeting of June 22, 2000 - Closed Session

The Agenda for the June 22, 2000, meeting states, as Agenda Item X, "Executive Session." Under this item, a motion was made to go into closed session for "discussion of personnel matters." The tape and minutes of the closed session on June 22, 2000, reveal that discussion was properly had pursuant to NRS 241.030 concerning the professional competency of certain persons, including candidates for the position of CCHS Principal.⁵ The Board did not reach a consensus or take action regarding Agenda Item IX - 9, "Superintendent's Recommendation Regarding Appointment of CCHS Principal" (District Goals 1 & 2). We do not believe it was a violation of the open meeting law to table Agenda Item IX - 9 until after the closed session to discuss the competency of the candidates. However, the motion made to go into the closed session should have specified the business to be conducted during the closed session. In addition, as with the April 13, 2000 agenda, denoting the closed session as an "Executive Session" does not comply with the spirit and intent of the open meeting law; the matter should have been described as a closed session under NRS 241.030. Finally, Agenda Item IX - 9 should have listed the names of the candidates in order to meet the "clear and complete" requirements of NRS 241.020(2)(c), as more fully discussed below.

III. Description of Agenda Items

Complainants allege the agenda for the above referenced meetings, and other agendas of Board meetings, do not meet the "clear and complete" requirements of NRS 241.020(2), specifically, items listed on these agendas as "Approval of Personnel Action," "Superintendent's Report," and "Additional Possible Action Items."⁶

Pursuant to NRS 241.020(2)(c), an agenda must include at a minimum 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." Agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be addressed by the public body. The degree of specificity that is reasonable for any particular agenda item will vary from item to item depending upon all the relevant circumstances.

⁴ Pursuant to your representation, the individuals discussed were given proper notice.

⁵ Again, pursuant to your representation, the subjects of the closed session were given proper notice.

⁶ In support of this allegation, complainants also submitted agendas for the March 9, March 23, April 27, and June 8, 2000 meetings.

In § 7.02 of the *Nevada Open Meeting Law Manual, Eighth Edition*, published in February 2000 by this office, we discussed the “clear and complete” requirement for agendas. We observed and advised that, among other things,

- Agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body.
- Use a standard of reasonableness in preparing the agenda and keep in mind the spirit and purpose of the Open Meeting Law.
- Always keep in mind that the purpose of the agenda is to give the public notice of what its government is doing, has done, or may do.
- The use of general or vague language as a mere subterfuge is to be avoided.
- An agenda must never be drafted with the intent of creating confusion or uncertainty as to the items to be considered or for the purpose of concealing any matter from receiving public notice.

The “clear and complete” agenda requirement was added to the open meeting law in 1989, and a review of the legislative history of the amending bill (SB 140) affords some guidance that is helpful to our analysis of the Council agenda.

SB 140 was introduced in 1989 by Senator Ann O'Connell. After her bill cleared the Senate with the “clear and complete” agenda language, Senator O'Connell testified before the Assembly Committee on Government Affairs, and when asked about the intended breadth of that language, she gave an example of what her bill was intending to correct. She observed that some public body agendas merely cite to a particular NRS to be considered at a meeting without telling what the statute “relates to.” She said the bill would address that concern so the public would know whether attending the meeting was going to be worth their time, whether it is a subject that they are interested in, and whether they need more information on the subject. See Minutes of the Nevada State Legislature, Assembly Committee on Government Affairs, May 10, 1989, page 4. The Assembly approved the language as it was explained and the “clear and complete” agenda requirement became a part of the open meeting law.

While the usage of language such as “Superintendent's Report” is generally permissible when the item is for discussion only, and it cannot be anticipated what specific matters will be considered, keep in mind that such terms should be used sparingly and carefully. If the report concerns a matter of public interest, it should be scheduled for further discussion at later meetings. However, items such as “Approval of Personnel Action” and “Additional Possible Action Items” are too vague and do not provide the public with notice in fact of what is to be addressed by the public body. Although you state the item “Additional Possible Action Items” is designed to allow the Board to table a matter early in the meeting and to take action later in the meeting on the tabled item, we recommend against its use for that purpose as it creates confusion. Regarding the item “Approval of Personnel Action,” notwithstanding that the public

Donald A. Lattin, Esq.
September 7, 2000
Page 5

is provided with the personnel list indicating the persons whom the Board is considering hiring, the list should be stated on the agenda as well in order to meet the requirements of NRS 241.020(1).

CONCLUSION

Because we do not believe the above occurrences to be intentional, and because the Board has not engaged in prior transgressions of this nature, we will forego enforcement action and warn the Board that future Board agendas denoting closed sessions and motions to go into closed session must comply with the spirit and intent of the open meeting law, and that the Board must not discuss matters during closed session that are not specifically authorized by the NRS 241.030, or other statutory provision. Further, future Board agendas must meet the requirements of NRS 241.020(1). Failure to do so may result in legal action by this office.

Finally, in keeping with the spirit and intent of the Open Meeting Law, we encourage the Board to disclose the portions of the April 13, 2000, closed session that were not properly considered under to NRS 241.030 or other statutory authority. Please circulate this determination to the members of the Board, and we will close our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld
cc: Anne Pershing
Marlene Garcia

c:\files\olden\oml\2000\00-021\lattin



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 13, 2000

Ms. Kathy Keathley
4959 Santa Barbara Avenue
Sparks, Nevada 89436

Re: *Complaint against the Sparks City Council*
OMLO 2000-29/AG File No. 00-016

Dear Ms. Keathley:

We have completed our investigation of your open meeting law complaint against the Sparks City Council (Council). You claim the Council violated the Nevada Open Meeting Law at its March 27, 2000, meeting regarding an agenda item for a tentative map.¹ Specifically, you allege the Council went beyond its agenda by voting on approval of the tentative map.² Our investigation consisted of reviewing the Council meeting agenda and minutes for the February 28 and March 27, 2000 meetings, the meeting agenda and minutes of the City of Sparks Planning Commission's meeting of January 13, 2000, certain agenda support material related to said meetings, and the written response of the Sparks City Attorney's Office, Senior Assistant City Attorney Elizabeth Farley. Based upon the foregoing, we conclude the Council did not violate the Open Meeting Law.

FACTS

On January 13, 2000, before the Planning Commission was the following:³

(9) * P.H. ON A-16-99, Z-13-99, TM990008, ISTRICE/R.G. MOWIS, A DEVELOPMENT SITE OF APPROX. 13 ACRES GENERALLY LOCATED AT THE SOUTHERN TERMINUS OF SANTA BARBARA AVENUE.

¹ While your complaint raises additional issues relative to the process used in adopting the tentative map, our jurisdiction is limited to issues arising under Chapter 241 of the Nevada Revised Statutes, the Nevada Open Meeting Law.

² You rely in part upon the recent Attorney General Opinion issued by our office, specifically AGO 2000-07, which dealt with agendizing a zoning change. The applicability of the standards set forth in that opinion are currently being clarified by this office, and the standard set forth in that opinion is not precedent for this determination.

³ The Planning Commission serves the City Council in an advisory capacity only.

- (9A) A REQUEST TO ANNEX INTO THE CITY OF SPARKS APPROX. 10.13 ACRES.
- (9B) A REQUEST TO CHANGE THE ZONING FROM S (STUDY) TO R1-6 (SINGLE-FAMILY RESIDENTIAL, ONE DWELLING UNIT PER 6000 SQ. FT.) ON APPROX. 10.13 ACRES AND FROM PD (PLANNED DEVELOPMENT) TO R1-6 (SINGLE-FAMILY RESIDENTIAL, ONE DWELLING UNIT PER 6000 SQ. FT.) ON APPROX. 2.87 ACRES FOR A SUM TOTAL OF APPROX. 13 ACRES.
- (9C) A REQUEST FOR APPROVAL OF A TENTATIVE MAP FOR A 63-LOT SINGLE FAMILY SUBDIVISION ON APPROX. 13 ACRES.

The minutes of the public hearing on this item state, in part:

A neighborhood meeting held on December 14, 1999, and two areas of concern were discussed: 1) Traffic access and impact and 2) Design and architecture of homes. There were two set [sic] of opinions on whether Santa Barbara Avenue should connect to Disc Drive. The residents on Disc Drive and Crestside want Santa Barbara to connect to Disc to relieve traffic through their area. The residents on Santa Barbara Avenue do not want the connection to occur to avoid through traffic in their area.

City of Sparks Planning Commission, Minutes, January 13, 2000, page 3.

Several citizens spoke during the public hearing. The main issue raised by the citizens concerned the tentative map, and whether to modify it to extend Santa Barbara Avenue from its current southern terminus to Disc Drive as part of the proposed new development, Silvio Estates.⁴ The Planning Commission recommended approval of the Project, but did not recommend extending Santa Barbara Avenue through to Disc Drive; a motion by Commissioner Kearney to open Santa Barbara Avenue “died for lack of a second.” *City of Sparks Planning Commission, Minutes, January 13, 2000, page 5.*

The item then proceeded to Council on February 28, 2000, where it was designated as the following action item:

- 8.4 P.H. ON TM990008, SILVIO ESTATES, A TENTATIVE MAP FOR A 63-LOT SINGLE-FAMILY SUBDIVISION ON APPROX. 13 ACRES GENERALLY LOCATED AT THE SOUTHERN TERMINUS OF SANTA BARBARA AVENUE.

⁴ TM990008 shows a possible extension of Santa Barbara Avenue from its current southern terminus.

At the February 28 Council meeting, the matter was presented by Planning Manager Margaret Powell, who stated:

Ms. Powell stated the Planning Commission is recommending approval with 16 conditions as outlined in the staff report. She stated there has been a lot of discussion about whether or not Santa Barbara should go through. She stated the Planning Commission recommended that Santa Barbara not go through. It would be an emergency access only....

Discussion ensued among the members as to whether the current traffic study addressed traffic flows relative to Santa Barbara Avenue. As occurred at the earlier hearing of the Planning Commission, several citizens, including you, spoke in favor of or in opposition to modifying TM990008 by extending Santa Barbara Avenue from its current southern terminus to Disc Drive. At the close of the public hearing, the Council voted to continue the item to its meeting of March 27, 2000, in order to obtain a traffic study which addressed the proposed extension of Santa Barbara Avenue.

The results of the study were made available on March 17, 2000. In its report, the city's engineering staff recommended that Santa Barbara Avenue be extended from its current southern terminus to Disc Drive.

At the March 27, 2000, meeting of Council, the matter was again brought forth, and agendaized for action as follows:

- 8.6 P.H ON TM990008, SILVIO ESTATES, A TENTATIVE MAP FOR A 63-LOT SINGLE-FAMILY SUBDIVISION ON APPROX. 13 ACRES LOCATED AT THE SOUTHERN TERMINUS OF SANTA BARBARA AVENUE

Again, several citizens, including you, spoke in favor of or in opposition to modifying TM990008 by extending Santa Barbara Avenue from its current southern terminus to Disc Drive. There was also discussion as to whether to approve the originally proposed straight street configuration (as modified with an extension of Santa Barbara Avenue), or a circular configuration. At the close of the public hearing, the Council voted to approve TM990008 as modified with the extension of Santa Barbara Avenue to Disc Drive, straight street configuration.

ANALYSIS AND CONCLUSION

You first complain that agenda item 8.6 of the March 27, 2000, Council meeting was to discuss the extension of Santa Barbara Avenue and to review the results of the traffic study, not to vote on or approve a street design. You next complain that you were misled by the February 28, 2000, meeting, and the motion to postpone a decision on the proposed tentative map until a traffic study could be complete. You assumed the map would be returned to the Planning Commission to evaluate street configurations if the Council decided to extend Santa Barbara Avenue.

Ms. Kathy Keathley
September 13, 2000
Page 4

Pursuant to NRS 241.020(2)(c), an agenda must include at a minimum 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.” Agenda items must be described with clear and complete detail so that the public will receive notice of what is to be addressed by the public body. The degree of specificity that is reasonable for any particular agenda item will vary from item to item depending upon all the relevant circumstances.

Under the circumstances of this case, we believe the agenda for the March 27, 2000, meeting provided adequate notice to the public that the Council would adopt TM990008, as modified. While the originally proposed tentative map depicted a straight street configuration through the subdivision with an extension of Santa Barbara Avenue only for emergencies and pedestrians, it was clear from the facts of this case that the tentative map could be approved by Council with a modification to extend Santa Barbara Avenue to Disc Drive.⁵ The issue of extending Santa Barbara Avenue as a condition of approval of TM990008 was an issue before the Planning Commission on January 13, 2000, and before the Council on February 28, 2000, prior to its adoption on March 27, 2000. Several members of the public attended the meetings and testified on the issue. Moreover, in reviewing the general approval process regarding a tentative map, it is common for a public body to impose conditions and reasonable modifications to a tentative map at the time the matter is heard and voted upon. Accordingly, we conclude the Council did not deviate from their March 27, 2000, agenda by approving TM990008, and further conclude that the item was properly agendized.

We thank you for bringing this important matter to our attention. Please do not hesitate to call if you have any questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld
c:\files\olden\oml\00-016keathley

⁵ We note that TM990008, as modified, was available for public review at the March 27, 2000, meeting.



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 13, 2000

Craig Paulsen
1350 Monte Vista Drive
Reno, Nevada 89511

Re: Open Meeting Law Complaint
OMLO 2000-30/AG File No. 00-035

Dear Mr. Paulson:

Your letter of August 4, 2000, to Attorney General Frankie Sue Del Papa concerning the proposed relocation of a United States Postal Service (hereinafter USPS) air cargo hub to the Reno/Tahoe International Airport (hereinafter RTIA) and inquiring into possible violations of the Open Meeting Law, has been referred to me for review.

QUESTION

In response to your letter, dated July 17, 2000, this office has conducted an investigation to determine whether or not the RTIA violated the Open Meeting Law, NRS chapter 241.

ANALYSIS

In support of your allegation, you have enclosed a letter dated April 16, 1999, which states that the RTIA and USPS have worked through the RTIA's offer to the USPS to locate its operation for the network referred to as the WNET to Reno. In addition, you have suggested that the RTIA may have violated the Open Meeting Law because members of its staff may have made an agreement or contract with members of USPS's staff without public input or comment. Further, you state that the RTIA made the decision to relocate a USPS facility to Reno with no public input or comment.

The first question is to determine whether the Open Meeting Law applies. Since all public bodies exist to aid in the conduct of the people's business, it was the intent of the Nevada Legislature to require that their actions be taken openly and that their deliberations be conducted openly. See attached, NRS 241.010. Further, NRS 241.020(1) states, "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." A copy of that statute is attached for your review. In this case the critical question is whether staff members of the RTIA are public bodies subject to the Open Meeting Law.

NRS 241.015(3) defines a public body as:

Except as otherwise provided in this subsection, “public body” means any administrative, advisory, executive or legislative body of the state or a local government . . . including, but not limited to, any board, commission, committee, subcommittee or other subsidiary “Public body” does not include the legislature of the State of Nevada.

See attached, NRS 241.015(3).

The Open Meeting Law does not usually apply to typical internal staff meetings where staff members make individual reports and recommendations to a superior, and where decisions are not reached by a vote or consensus. In *People ex rel. Cooper v. Carlson*, 328 N.E.2d 675 (Ill. App. Ct. 1975), a newspaper publisher sued to gain admittance to a meeting between a land developer and the staff of a county development department to discuss a proposed new development. The court held that the Illinois Open Meeting Law (whose definition of “public body” is similar to Nevada’s) did not apply to technical staff meetings of the county development department directors, whose discussions led to recommendations to the county development committee, where no motions or resolutions were presented during such staff meeting; there was no statute, ordinance, or resolution by the county board or the county development committee appointing the technical staff as a public body or subsidiary body; and where such periodic meetings or conferences of the staff were intended to provide more efficient service to the county development committee and to the county board whose meetings were held in compliance with the Open Meeting Law.

In this case, it is our opinion that RTIA’s staff members are not “public bodies.” It is clear that staff members of the RTIA contacted staff members of the USPS to discuss RTIA’s offer to relocate USPS’s WNET hub to Reno. However, because they were staff, and not a public body, they were not required to comply with the Open Meeting Law. Additionally, any agreement RTIA staff members were able to reach with the USPS would have to be discussed and eventually voted on and approved by the Airport Authority of Washoe County, which is the “public body” subject to the requirements of the Open Meeting Law.

In fact this occurred on April 20, 1999, as agenda item #99(04)-32 titled, “United States Postal Service Agreement to Support Hub Operation at Reno/Tahoe International Airport.” There were extensive public comments at this meeting regarding this issue. In addition, this issue was placed on the agenda for discussion on the May 27, 1999, and September 9, 1999, board meetings. Again there was public comment allowed at both meetings.

In addition, NRS 241.037 establishes the statute of limitations on actions brought to compel compliance with Nevada’s Open Meeting Law. *See attached.* Parts 1 and 2 provide that either this office or any person can bring an action in district court to compel compliance with NRS chapter 241. Part 3 states, “Any such suit brought to have an action declared void must be

commenced within 60 days after the action objected to was taken.” Admittedly this is a very short time frame.

In your letter, you complained of an action that occurred on April 16, 1999. Assuming *arguendo* that the Open Meeting Law applied in this case, the statute of limitations for bringing a suit to void actions taken on April 16, 1999, was June 19, 1999. This office received your complaint on July 20, 2000, well past the time frame to bring an action under the Open Meeting Law statute. We do appreciate, however, the fact that you were not able to obtain a copy of the referenced letter of April 16, 1999, until after that deadline had passed.

CONCLUSION

In conclusion, it is our opinion that the actions in question were taken by RTIA’s staff members rather than by public bodies, and are therefore not subject to the Open Meeting Law. Further, if the Open Meeting Law were applicable to such actions, the statute of limitations has run with respect to any actions that led to the April 16, 1999, letter. Accordingly, we conclude there has been no violation of open meeting law provisions, and we will close our file on this matter. Thank you for communicating your questions and concerns to this office. If you have any further question regarding this matter, please contact Norm Azevedo at (775) 684-1222 or Bob Auer at (775) 684-1207.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By: _____

CHARLES T. MEREDITH
Deputy Attorney General
Conservation & Natural Resources
(775) 684-1233

CTM:sg

Enclosures (4)

c: Robert H. Ulrich, General Counsel
Reno/Tahoe International Airport



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 20, 2000

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Reno Planning Commission
OMLO 2000-31/AG File No. 00-023

Dear Mr. Dehne:

On June 21, 2000, this office received a complaint from you alleging that on June 14, 2000, the Reno Planning Commission violated several dictates of the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes.

Specifically, you allege 1) the Chairman unilaterally and wrongfully combined two very critical agenda items without discussion or without a vote by the other Board members; 2) the assistant city attorney wrongfully denied your right to speak as a "group;" and 3) the Board allowed city hall staff members and RSCVA bureaucrats unlimited time to speak. We have completed our investigation of your complaint and conclude there was no violation of the Open Meeting Law.

We will address each of your complaints separately. As to your first complaint, the Open Meeting Law does not address combining agenda items. According to the minutes of the June 14, 2000, meeting of the Reno Planning Commission and by your own admission, the Chair announced that two agenda items would be discussed together. Without this announcement, the public may have been confused as to what was being discussed, but because the announcement was made, there was no confusion in this regard. The minutes of the meeting indicate that you did indeed speak regarding these agenda items. In fact, the minutes reveal that you spoke a total of four times during this meeting.

As to your second complaint, the Open Meeting Law is again silent as to the right of an individual to speak as a "group." The Law requires that members of the public be given an opportunity to speak. NRS 241.020(2)(b)(3). However, the Law does not specify the length of time to be given to individual members of the public.

"Protecting Citizens, Solving Problems, Making Government Work"

As to your third complaint, the Law does not provide that a public body must call upon a member of the public to “provide vital information, give the true answers to their questions, and challenge numerous distortions of the truth” beyond that already explained in this letter. Your having testified four times during this meeting is an example of a public body that complies with the Open Meeting Law during its meetings.

Based upon the foregoing, we find no violation of the Open Meeting Law with regard to the June 14, 2000, meeting of the Reno Planning Commission. Accordingly, we are closing our file on this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By _____
Kateri Cavin
Senior Deputy Attorney General
Civil Division
(775) 684-1218
kcavin@ag.state.nv.us

cc: P. Mark Ghan



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 20, 2000

Jackie Decker
4000 Rewana Way
Reno, Nevada 89502

**Re: Open Meeting Law Complaint: Airport Authority of Washoe County
OMLO 2000-32/AG File No. 00-034**

Dear Ms. Decker:

I have reviewed your letters and supporting materials on the above-referenced matter.¹ This office has primary jurisdiction to investigate violations of the Open Meeting Law pursuant to NRS 241.037. In August, you filed a complaint with this office regarding the actions of the Airport Authority of Washoe County (AAWC). Many of your questions dealt with issues that are not governed by the Open Meeting Law, and this office is precluded from rendering any formal opinion on these issues due to statutory limitations set forth within chapter 228 of the Nevada Revised Statutes. However, two of your questions do deal with issues arising under the Open Meeting Law and this office did investigate these two issues.²

The allegations that fall within the purview of the Open Meeting Law are your belief that a polling of Trustees for the AAWC took place regarding how the Trustees were going to vote in the election of a new chairman, and that two people were denied the opportunity for public comment on specific agenda items. This office investigated the complaint by reviewing the documents you provided, reviewing the AAWC's agenda for the July 13, 2000 meeting, listening to the audiotape of that meeting, and requesting a statement from Trustee D. G. Menchetti, as well as talking to Robert Ulrich, counsel for the AAWC.

Our investigation revealed that how each Trustee was going to vote on electing a new

¹ In response to your question in your letter of August 31, 2000, all deputy attorneys general in the Civil Division of this office are involved in reviewing and responding to open meeting law complaints. Your letter was referred to the undersigned counsel for review and response.

² In response to your request that this office obtain further documentation of actions of the AAWC, those actions appear to be outside the purview of the Open Meeting Law and were not relevant to the analysis of the complaint of an alleged Open Meeting Law violation.

chairman was a matter of common knowledge to those involved with the Board of Trustees, and that a polling of Trustees did not take place. Members of a public body are not prohibited from lobbying for votes, in the absence of a quorum. *See Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998). Mr. Menchetti was lobbied for his vote by Tom Gribbin, and it was at that time that Mr. Gribbin indicated that he thought he had the votes of two other Trustees. Mr. Menchetti was also lobbied by Richard Hill, who indicated that he had the votes of three other Trustees. Based on the information obtained from Mr. Gribbin and Mr. Hill, Mr. Menchetti was able to deduce that if he voted for Mr. Gribbin, and Mr. Hill and Mr. Gribbin each voted for themselves, that the vote for a new chairman was likely to be tied.

While it is true that serial communications could 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,” there is no evidence that this occurred in this instance. Additionally, the vote on the election of a new chairman was taken at the public meeting that was duly noticed and where public comment opportunity was provided. Therefore, it does not appear that there was any violation of the Open Meeting Law on this issue.

Regarding people being denied the opportunity for public comment on specific agenda items, you claim that Mr. Sam Dehne was denied the opportunity to give public comment on a specific item number. A review of the audiotape of the meeting shows that the item on which Mr. Dehne wanted to give comment was item four (4), which was the election of officers. The item on which you claim you were denied the opportunity to give public comment was E #00(07)-85 under item nine (9), which was listed as a consent item on the agenda.

The Open Meeting Law requires that there be a period devoted to comments by the general public. NRS 241.020(2)(c)(3). This office’s review found that a public comment period was on the agenda and was provided during the meeting, and that public comment was allowed on other items on the agenda, other than consent items. The public was given the opportunity during the public comment period noted on the agenda, which preceded the election of officers, to comment on any matter, including the election of officers and any consent item on the agenda. Mr. Dehne was given the opportunity during this general public comment period to comment and he did so, including comment on the election of officers. You were also given the opportunity during this period to comment and you also made comments during this period. Nothing in the Open Meeting Law requires a public comment period on specific agenda items, as long as there is a public comment period as required by NRS 241.020(2)(c)(3). The Open Meeting Law does not mandate that members of the public be allowed to speak during other portions of public meetings. The AAWC is within its authority to not allow public comment on specific agenda items, as long as there is some time during the meeting when public comment opportunity is allowed. Accordingly, our investigation did not reveal that anyone was denied the opportunity to comment during the general public comment period, or to give comment on those specific agenda items where public comment was allowed. Therefore, we do not find a violation of the Open Meeting Law on this issue.

Jackie Decker
September 20, 2000
Page 3

The AAWC acted in conformance with the Open Meeting Law and this office finds no violation of the Open Meeting Law.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
ELAINE S. GUENAGA
Senior Deputy Attorney General
Tax Section
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ESG:jm



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 25, 2000

Thomas Mitchell, Editor
Las Vegas Review-Journal
P.O. Box 70
1111 W. Bonanza Road
Las Vegas, NV 89125-0070

Re: *Open Meeting Law Complaint; Clark County School District,
Board of Trustees Meeting of July 27, 2000
OMLO 2000-33/AG File No. 00-036*

Dear Mr. Mitchell:

Our office has investigated the above-referenced matter to determine if any violations of the Open Meeting Law (Chapter 241 of Nevada Revised Statutes) occurred. Your specific concern is whether the Board of Trustees of the Clark County School District (Board) violated NRS 241.020 by refusing to provide to an employee of the Las Vegas Review-Journal certain documentary material. The material was provided to the Board for its consideration during deliberations. The particular agenda item your employee was interested in concerned the recommendation for an appointment to the position of Assistant Superintendent, Elementary Education and Curriculum Division. The item was not noticed as a closed personnel session and the Board did not go into a closed session to deliberate on this appointment.

The material which your employee was denied has been referred to as a "pink sheet." The pink sheet is essentially a description of the educational history and employment background of a person who is being considered for an administrative position with the Clark County School District. The policy and practice of the Board has been to provide the pink sheet to the Board for its deliberations but to otherwise treat the pink sheet as confidential. The Board keeps it from the public until an appointment has been made, at which time the Board will produce copies of the pink sheet to members of the public.

NRS 241.020(4) provides in relevant part:

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

...

(c) Any other supporting material provided to the members of the body for an item on the agenda, except materials:

...

(3) Declared confidential by law.

NRS 386.365 provides in relevant part:

1. Except as provided in subsection 3, each board of trustees in any county having a population of 100,000 or more shall give 15 days' notice of its intention to adopt, repeal or amend a policy or regulation of the board concerning any of the subjects set forth in subsection 4.

...

4. This section applies to policies and regulations concerning:

...

(g) Personnel, except with respect to dismissals and refusals to reemploy covered by contracts entered into as a result of the Local Government Employee-Management Relations Act, as provided in NRS 391.3116.

NRS 386.365 clearly authorizes the Board to adopt regulations concerning personnel matters. Pursuant to the authority granted under this statute, the Board has adopted a regulation which addresses personnel matters. Clark County School District Regulation 4111 describes the administrative selection and appointment process to be followed in making appointments to the District, providing specifically: "The entire process will be conducted in a confidential manner with sensitivity to all participants." Clark County School District Regulation 4111(I)(A) (last revised 5/14/96).

We believe that this regulation, enacted pursuant to the clear authority set forth in NRS 386.365, is legal authority for the Board to maintain the confidentiality of a pink sheet until an appointment has been made by the Board. In other words, the regulation has declared the Board's appointment process, including the pink sheet, "confidential by law" for purposes of the exception noted in NRS 241.020(4)(c)(3).

Based on the foregoing, we conclude that the Board did not violate the Open Meeting Law by refusing to turn over the subject pink sheet until the appointment to the Assistant Superintendent's position had been accomplished.

Thomas Mitchell, Editor
September 25, 2000
Page 3

Yours truly,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
JAMES T. SPENCER
Sr. Deputy Attorney General
Civil Division
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JTS:srh

cc: William Hoffman, Esq.
(Legal Counsel for the Clark County School District)



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

September 29, 2000

Mr. Richard Barrows
Wilson & Barrows, Ltd.
442 Court Street
Elko, Nevada 89801

Re: *Complaint against the Elko County School District Board of Trustees*
OMLO 2000-34/AG File No. 00-033

Dear Mr. Barrows:

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

As you know, on July 31, 2000, we received a complaint alleging the Elko County School District Board of Trustees (Board) violated the Open Meeting Law by holding a closed session on May 17, 2000, regarding the professional competence of Mr. Michael L. Clemans without giving him written notice as required by NRS 241.033.¹ We have completed our investigation of the complaint, and issue the following determination.

ANALYSIS AND CONCLUSION

Complainant, Mr. Michael L. Clemans, is a principal in the Elko County School District. NRS 391.3127 requires that all school administrators be evaluated at least once each year. On March 22, 2000, pursuant to NRS 241.033, written notice was personally delivered to Complainant informing him that his annual evaluation would be presented to the Board on April 25, 2000. For reasons not relevant to our inquiry, the presentation to the Board of Complainant's evaluation was rescheduled to May 17, 2000. You state that the Superintendent of the School

¹ In his first letter to our office, Complainant alleges the transcript the Board provided to him of the closed session was not complete. However, subsequent correspondence provided to us by Complainant and the Board included a copy of what appeared to be the complete transcript of the closed session as it pertained to Complainant. While the Board may properly redact from the transcript provided to Complainant any dialogue pertaining to other persons discussed during the closed session, all dialogue pertaining to Complainant must be provided to Complainant. While it appears the Board did so, we are requesting that the Board review the portion of the transcript provided to Complainant to ensure it complied with this requirement.

Mr. Richard Barrows
September 29, 2000
Page 2

District, Marcia R. Bandera, met with Complainant on April 27, 2000, and during the meeting verbally informed him his evaluation would be presented to the Board on May 17, 2000. You further state the Superintendent again met with Complainant on May 15, 2000, and verbally informed Complainant his evaluation would be presented to the Board on May 17, 2000. A letter from the Superintendent dated July 31, 2000 independently verifies this fact. However, Complainant alleges he was never notified his evaluation would be brought before the Board on May 17, 2000.

The meeting held May 17, 2000, to discuss Complainant's evaluation was properly agendized as a closed session pursuant to NRS 241.020, and a motion to go into the closed session was properly made. After the closed session, the action of the Board was to re-employ Complainant. Complainant was provided with a copy of the minutes of the closed session.

Pursuant to NRS 241.033, a public body shall not hold a meeting to consider the professional competence of any person unless it has given written notice to that person of the *time* and place of the meeting. The notice must be delivered personally to the person at least 5 working days before the meeting, or sent by certified mail to the last known address of the person at least 21 working days before the meeting. Hence, NRS 241.033 requires that *written notice be personally delivered*; verbal notice is not a substitute. Requiring that a person receive written notice protects both parties in cases such as this where there is a dispute as to whether a person received actual notice.

Accordingly, while the Board did give Complainant written notice pursuant to NRS 241.033 regarding the April 25, 2000, meeting (at which the Board postponed discussion of Complainant), the Board should have given Complainant the same written notice regarding the May 17, 2000 meeting. However, because Complainant was aware that his professional competence would be brought before the Board in the near future through the presentation to the Board of his evaluation, because Complainant had no right under the Nevada Open Meeting Law to be present at the meeting, and because the minutes of the closed session were provided to Complainant, we believe any harm done to Complainant for lack of written notice of the May 17, 2000 meeting was mitigated. Moreover, the omission of the Board appears unintentional, and the Board has never been cited for violations of the Open Meeting Law. For these reasons, we do not believe it necessary to seek judicial relief for the failure to provide written notice of the May 17, 2000 meeting. However, we caution the Board that in the future, it must adhere to the strict letter of the Open Meeting Law, and provide the requisite written notice for each meeting held under NRS 241.033. Please distribute this determination to the Board, and we will close our file on this matter.

Mr. Richard Barrows
September 29, 2000
Page 3

Please do not hesitate to contact me if you have any questions.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:

Victoria T. Oldenburg
Deputy Attorney General
Commerce Section
(775) 684-1215

VTO/ld

cc: Mr. Michael Clemans

c:\files\olden\00-033barrows



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THOMAS M. PATTON
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September 29, 2000

Patricia Lynch
Reno City Attorney
490 S. Center Street
P. O. Box 1900
Reno, NV 89505

Mr. Sam Dehne
297 Smithridge Drive
Reno, NV 89502

Re: *Open Meeting Law Complaint: Reno City Council Meeting of August 1, 2000
OMLO 2000-35/AG File No. 00-037*

Dear Ms. Lynch and Mr. Dehne:

This office has primary jurisdiction to investigate and resolve complaints regarding the Nevada open meeting law. On August 8, 2000, this office received a complaint from Mr. Dehne alleging that he was denied the right to speak on a specific agenda item¹ at the regular meeting of the Reno City Council (Council) on August 1, 2000. In addition, Mr. Dehne contends that this noticed agenda item fails to include a reference to the size of the tax bond under consideration. This failure to notice the size of the bond is alleged to constitute a second open meeting law violation.

I have reviewed the audio tape of the meeting and materials submitted by Mr. Dehne, including a joint statement signed by Guy Felton and Al Hesson which purports to support Mr. Dehne's argument that he intended to submit the request to speak form in a timely manner at the time the vote was taken on the agenda item. I have also discussed the matter with both Mr. Dehne and Mr. Melner, the Chief Deputy City Attorney. Based on the evidence submitted, this office believes that there is no violation of the open meeting law.

¹ Agenda Item 4A deals with the Depressed Trainway Project and a bond to finance it. See footnote 2.

FACTS

The audio tape of the August 1, 2000 meeting reveals that the meeting was called to order, roll call was taken pursuant to the posted agenda for the meeting, and the day's agenda was approved. Before reaching its new business, the Council heard general public comment from certain individuals, including Mr. Dehne. Mr. Dehne commented that the Reno police deserve overtime pay for Hot August Nights and that he and his fellow "nabobs" [presumably a reference to Felton and Hesson] do not create negativity in Reno's city government, they merely report it. Following comments from Hesson, Felton and Dehne, Reno Mayor Griffin announced and explained item 4A. Councilperson Rigdon moved to pass Bill No. 5695 contained in item 4A² and it was seconded by Council person Aiazzi. The motion was passed.

DISCUSSION

Although Mr. Dehne contends that he was attempting to submit a request to speak form which would have permitted him to comment on item 4A as the vote was being taken, there is no evidence that he was denied the right to comment on this item. Rather, it appears, as Mr. Melner has suggested, that Mr. Dehne simply failed to submit his request in a timely matter. Moreover, Mr. Dehne did address the Council at the meeting, although not specifically concerning item 4A.

Nevada Revised Statute (NRS) 241.020(2)(c)(3) requires that public bodies include in their agendas a "period devoted to comments by the general public, if any, and discussion of those comments." Although the open meeting law does not mandate that members of the public be allowed to speak during the meetings on specific agenda items, the agenda for the meeting in question expressly allows for such comments where a request to speak form has been submitted to the city clerk. Reasonable rules and regulations ensuring the orderly conduct of a public meeting may be adopted by a public body as long as such rules are clearly articulated on the agenda. *See*, OMLO 99-08 (July 8, 1999). Certainly, a request to speak submitted as the vote is being taken on the agenda item is not timely.

² Agenda item 4A provides as follows:

Staff Report: Bill No. 5695 Ordinance designated as the "2000 ReTRAC – Reno Transportation Rail Access Corridor Sales and Room Tax Revenue Bond Ordinance;" authorizing the issuance of the "City of Reno, Nevada, ReTRAC – Reno Transportation Rail Access Corridor Sales and Room tax Revenue Bonds, Series 2000" for the purpose of financing the acquisition, establishment, construction or expansion of railroad grade separation projects; and providing the form, terms and conditions of the bonds, the method of their payment and the security therefor, and other details in connection therewith; and providing the effective date hereof. **[Depressed Trainway Project]**

Patricia Lynch
Mr. Sam Dehne
September 29, 2000
Page 3

In the matter under review, the Council did in fact hear Mr. Dehne's general comments. There is no evidence that Mr. Dehne was denied the right to speak on item 4A. It appears from the evidence that Mr. Dehne simply failed to file a request to speak in a timely fashion before the actual vote was taken.

The second element of Mr. Dehne's complaint alleges that the amount of the bond should have been incorporated into the notice. With respect to this claim, we conclude that there is no violation of the open meeting law. NRS 241.020 provides that an agenda should 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." With respect to item 4A, it is clear that the general subject matter of the ordinance is described in sufficient detail to comply with the open meeting law.

Thank you for providing our office with the opportunity to review this matter.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
MARTA A. ADAMS
Sr. Deputy Attorney General
(775) 684-1237

MAA:br



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

October 3, 2000

Ms. Linda Nickerson
Post Office Box 1825
Carson City, Nevada 98702

Re: Complaint Against Lyon County School Board
OMLO 2000-36/AG File No. 00-025

Dear Ms. Nickerson:

On July 6, 2000, you filed a complaint with this office stating that on June 27, 2000, before and during the meeting of the Lyon County School Board (Board), you requested a copy of the supporting material for the current meeting and that the Board failed to provide you with the supporting material at that time. You further state that at the same meeting you requested a copy of the minutes of the previous meeting (June 13, 2000), which were on the agenda to be approved, and that the Board failed to provide you with those minutes.

We have completed our investigation and have concluded that failing to provide the copies as you requested violated the Open Meeting Law. The reasons for this conclusion are explained below.

QUESTION ONE

The first and primary question is whether a public body such as the school district must provide agenda supporting material *immediately* upon request made at a meeting or whether a period of time is allowed thereafter within which to provide the supporting materials.

Ms. Linda Nickerson
October 3, 2000
Page 2

In answering a similar question, this office interpreted NRS 241.020(4) to require that, unless the materials fall within one of the three exceptions, supporting material must be made immediately available over the counter at the office of the public body or at the meeting. *See* OMLO 98-01 (January 21, 1998), copy enclosed. That case did not involve requests made at the meeting. Rather, the questions were whether the supporting material must be mailed if a person requested that the materials be mailed and whether the public body could postpone complying with a request until the day of the meeting. While the precise question you presented was not involved in OMLO 98-01, the analysis of the issues in that case led to the conclusion that while supporting materials do not have to be mailed, the materials must be provided immediately whether requested at the office of the public body or at the meeting. Since the issuance of OMLO 98-01, the Legislature has not amended NRS chapter 241 to override that interpretation of the statutes.

We are aware that typically the requesting member of the public first obtains the agenda, reviews it, and then requests supporting material for those items on the agenda that are of interest. Usually the request is made in advance of the meeting. However, there is nothing in the statutes preventing a request from being made at the meeting, nor is there any provision that allows a public body to delay providing a copy in those instances when the request is made at the meeting. Once a request is made, the public body has a statutory duty to provide a copy immediately. As to those supporting materials that were available to the Board members in advance of the meeting, failing to provide the materials immediately upon request at the meeting violated the law.

We recognize the legitimate concern of public bodies that requests made at a meeting might cause unreasonable disruption of the meeting. We therefore suggest that in order to avoid the risk of delay in making a copy during the meeting, a public body may keep at least one copy of the supporting materials available at the meeting to be shared by all individuals who make requests at the meeting. As another conceivable option, the supporting materials in the possession of a Board member could be provided to the requestor if that member no longer needs the materials.

Failing to have a copy readily available at the meeting creates a risk of delay and disruption during the meeting. Because failure to provide the copy upon request violates the Open Meeting Law, making a copy available for review during the meeting is the only way to avoid a violation. If a copy is not available for the requestor to review, discussion on that item should be delayed as much as necessary to produce the copy for the requestor prior to discussion or action on the matter for which the material provides support.

Ms. Linda Nickerson
October 3, 2000
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It is foreseeable that occasions might arise where a number of individuals make last minute requests at a meeting, requests which, had they been made on the day the agenda was posted, would have enabled each requestor to possess the materials in advance of the meeting. Without suggesting that your request was not within the law, we recognize that similar requests might have the potential to unreasonably disrupt a meeting. We also recognize that last minute requests at a meeting are often the result of the person being unable, for any number of reasons, to obtain the materials earlier.

To mitigate the potential for unreasonable disruption of a meeting, it is the position of this office that if supporting material is made available at the time the agenda must be posted for the upcoming meeting, a public body can satisfy the Open Meeting Law requirement of providing the supporting materials "upon any request" by having one "public" copy of the supporting materials available for review at the meeting. Further, the public body need not delay or disrupt its meeting to provide time for several in-meeting requestors to review the one copy provided at the meeting.

As to materials that were not available on the agenda posting date, a member of the public is justified in asking for such materials at the meeting, and any disruption of the meeting in such a situation is simply the consequence the public body can expect to face if supporting materials are not available when the agenda is posted. In addition to resulting in requests that disrupt a meeting, the absence of the materials on the agenda posting date can potentially create other problems for the public body depending on factors such as the actual time the material was provided to Board members and thus was actually available to the public and the importance of the materials to the item on the agenda.

This office does not interpret the Open Meeting Law to require public bodies to estimate the attendance at the upcoming meeting, to make a number of copies on the speculation that requests will be made, or to interrupt a meeting to make copies of materials that were available at the office of the public body on the date the agenda must be posted. Rather, this office's interpretation of the statute strives to balance the interest of the citizen in obtaining the documents with the interest of the public body in efficiently conducting its business. This interpretation balances the two interests by creating an incentive for the public to request the supporting materials well in advance of the meeting and by creating an incentive for the public body to have all supporting material available on the agenda posting date. In this manner, the public body will suffer delay and disruption in its meeting (if requests are made at the meeting) only if supporting materials were not available on the agenda posting date and were provided to Board members at a later time. As indicated previously, failure to have the supporting material available on the agenda posting date may be problematic for the public body.

QUESTION TWO

Ms. Linda Nickerson
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The second question is whether the school board must provide the minutes of the prior meeting where those minutes are on the agenda for possible action by the Board.

In this case, you requested a copy of the unapproved draft minutes of the June 13, 2000, meeting. NRS 241.035 provides thirty (30) working days for a public body to make minutes available. The recording and the minutes of the meeting of June 27, 2000, show that the draft June 13 minutes were acted upon, which in turn shows that they were available to the Board at that time. Because the unapproved draft minutes were available to the Board, and were part of agenda supporting material, failing to provide them to you immediately upon request at the meeting violated the law.

The discussion by Board members and staff of the draft minutes at the meeting of June 27, 2000, indicates that there may be an incorrect impression that if draft minutes are not yet approved, the public body need not provide them upon request. This office has clearly advised to the contrary, and in the Open Meeting Law Manual, Eighth Edition, February 2000, the following statement is made in Section 6.06: "Drafts of minutes of previous meeting to be approved at upcoming meeting are agenda supporting material under NRS 241.020(4) and must be provided upon request. See OMLO 98-06 (October 19, 1998)." A copy of OMLO 98-06 (October 19, 1998) is enclosed for your reference.

To decide what action is appropriate for this office to take in this case, we have considered that both you and the district have advised us that you have received the items you requested. The district's representative has advised that steps will be taken to timely provide copies of support materials in the future. The district points out that it would be very helpful if persons who are interested in particular agenda items will make their requests as early as possible before the meeting.

Given the fact that you have been provided the materials you requested and given the district's good faith commitment to provide support materials in a timely manner in the future, we have concluded that it is unnecessary to initiate judicial proceedings either to obtain the materials you requested or to make the point about providing supporting materials upon request. We have also concluded that no useful purpose would be served by commencing judicial proceedings to invalidate any of the actions taken at the meeting of June 27, 2000.

By copy of this letter to the district, we hereby warn that, unless the supporting material falls within one of the three statutory exemptions, agenda supporting material must be furnished

Ms. Linda Nickerson
October 3, 2000
Page 5

immediately upon request if the material has been made available to members of the Board. The agenda supporting material must be immediately available at the district office at the time it is sent to the Board members, and a copy must also be made available for review at the meeting in the event requests are made at that time. Failure to provide the materials in this manner could result in action by this office.

Because we believe that this guidance will satisfy the questions posed by the complaint and the response of the district, the file on this matter will be closed. Thank you for bringing the matter to our attention. If we can be of further assistance, please call.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:

GEORGE CAMPBELL
Deputy Attorney General
Commerce Section
(775) 684-1214

GC:kh
encls.

cc/encls.: Lyon County School District, c/o Deputy District Attorney Leon Aberasturi

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

October 3, 2000

Thomas Mitchell
Las Vegas Review Journal
P.O. Box 70
Las Vegas, NV 89125-0070

Re: Open Meeting Law Complaint
OMLO 2000-37/AG File No. 00-045

Dear Mr. Mitchell:

We have received your letter of September 28, 2000, requesting that this office review as a "past violation of the Nevada Open Meeting Law," the August 5, 2000 meeting of the University System's ad hoc Community College of Southern Nevada Search Committee. In your letter you note that, pursuant to its published agenda, on August 5, 2000, the ad hoc Search Committee conducted a closed session to discuss the character, alleged misconduct, professional competence, or physical or mental health of applicants for the position of CCSN President.

As you are aware, the Las Vegas Review Journal, pursuant to the authority set forth in NRS 241.037 subsection 2, initiated a private cause of action on September 28, 2000, requesting that the Eighth Judicial District Court enjoin the ad hoc Search Committee from conducting on September 28 and 29, 2000, identical closed sessions to consider the character, alleged misconduct, professional competence, or physical or mental health of applicants for the position of CCSN President. We are informed that the District Court granted the relief requested by the Las Vegas Review Journal and that the University System intends to appeal that decision.

Because the action complained of in your July 28, 2000 letter involves an issue that is identical to the issue that has now become subject to judicial decision and intervention, and because the issue remains subject to appellate review by the Nevada Supreme Court, this office must defer to the courts in this matter and decline your request to take any action at this time with regard to the referenced meeting of August 5, 2000.

Cordially,

THOMAS M. PATTON
First Assistant Attorney General

TMP:sh

Cc: Thomas J. Ray, General Counsel,
University and Community College System of Nevada



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

October 18, 2000

J. Thomas Susich, Esq.
Crowell, Susich, Owen & Tackes, Ltd.
P. O. Box 1000
Carson City, Nevada 89702

Re: Complaint of Open Meeting Law Violation by Douglas County
School Board
OMLO 2000-38/AG File No. 00-038

Dear Mr. Susich:

This office received a letter from Ms. Veronica Hulsey, dated August 11, 2000, in which she described what she considered to be a number of violations of the State's Open Meeting Law committed by the Douglas County School Board (the Board). I have also received a response from you, dated September 5, 2000, as legal counsel for the Board.

The Board held a meeting on July 6, 2000, at which it took action to extend its contract with the Superintendent, Pendery Clark. Prior to taking that action, at 5:10 p.m., the Board conducted a closed, or "executive," session for the purpose of "conducting the Board's annual review of the Superintendent's performance pursuant to NRS 391.3127 and DCSD Board Policy No. 306." Douglas County School District, Minutes of the Special Meeting of the Board of Trustees, dated July 6, 2000.

At approximately 8:30 p.m., upon motion made and approved, the meeting reconvened in open, or "public," session wherein the action was taken to extend Superintendent Clark's contract for an additional year, subject to the Board's final review and approval of contract language.

VIOLETIONS ALLEGED

By reference to the Attorney General's Open Meeting Law Manual (OML Manual), as described below, Ms. Hulsey alleges specific violations.

1. Notice Posting (Manual, § 6.03).

Ms. Hulsey alleges that there was inadequate posting of the meeting. Pursuant to NRS

241.020(3)(a), meeting notice must be provided by posting “in at least four locations not later than 9 a.m. of the third working day before the meeting.” OML Manual, § 6.03. Therefore, since the Board meeting occurred on July 6, notice for the meeting should have been posted no later than 9 a.m. on June 30, because July 4 was a holiday and July 1 and 2 were Saturday and Sunday, all non-working days.

At the outset we must reject your suggestion that a meeting at which a closed session is conducted, pursuant to NRS 241.030, “could be considered exempt from the notice requirements of NRS 241.020.” This office finds no exception in either the letter or spirit of the law to excuse the posting requirements for closed sessions. The statutory notice requirements apply to “all meetings,” NRS 241.020(2), not just open sessions. *See also* OML Manual, § 9.06. In any event, the statutory requirement that closed sessions commence from an open session, NRS 241.030(2), renders a strictly closed session meeting a legal impossibility. We would therefore strongly advise your continued adherence to notice requirements for all Board meetings.

Reviewing the materials supplied to this office, we conclude that the Board satisfied the statutory posting requirements in this instance. Ms. Hulsey surmised that notice was posted at only three locations, based upon the materials she was provided by the Board in response to her own inquiries. Satisfactory posting certificates were supplied for the Douglas County School District Administrative Services Building and both the Gardnerville and Minden Post Offices. She was also supplied a posting certificate for the Zephyr Cove Post Office, but it showed posting occurred at 10:15 a.m. on June 30 and so is clearly inadequate to count towards the four required postings.

In your response, however, you supplied me with two additional certificates, one for posting at Douglas High School and one for C. C. Meneley Elementary School. In view of these additional certificates, as well as your report that postings occurred at other schools within the jurisdiction of the Board, and in the absence of contrary evidence, it appears the statutory posting requirement was met for a minimum of four postings before 9 a.m. on June 30, 2000.

2. Mailing Notice; Mailing Lists (Manual, § 6.04).

Ms. Hulsey claims a violation occurred because she did not receive personal notice of the July 6 meeting by mail. She states that she previously had requested such notice.

The Open Meeting Law requires all public bodies to mail a copy of meeting notices to “any person who has requested notice.” NRS 241.020(3)(b). The law does not require such request to be in writing. We do not agree with, and find no support for, your statement that the OML Manual “at least implies that the first request for written notice must be in writing.”

By personal communication with her, this office clarified that Ms. Hulsey claims she requested notice of Board meetings by verbal request to Ms. Pat Corbitt sometime during or after May 2000. As proof she made the request and that it was acknowledged, she states she received by mail, on separate dates, attachments 3 through 5 to her letter. Attachments 3, 4, and 5,

respectively, are the cover pages for Board agendas she received for the June 13, July 11, and August 8 meetings of the Board. She reports she did not, however, receive the agenda for the July 6 meeting.

In your letter you indicate that the Board did not receive a request for written notice from Ms. Hulsey. However, the fact that she received agendas for three "regular" meetings of the Board whose dates bracket the July 6 "Executive" meeting could permit a reasonable inference that she was on a list to receive mailed notice of Board meetings. Failure to provide her notice of the July 6 meeting would have been a violation of NRS 241.020(3)(b).

Because there is no written proof that Ms. Hulsey requested mailed notice and because resolution of this issue would ultimately require a fact finder to choose between conflicting statements of witnesses testifying under oath, we are not able at this time to conclude that a violation of the mailed notice provision actually occurred. However, we strongly suggest that the Board review these provisions of law, as well as its own procedures for their implementation, and assiduously adhere to them under all circumstances.

3. Agenda Itemization, and Listing for Action.

Although not specifically alleged by Ms. Hulsey, our review of this matter revealed that the Board acted in violation of the Open Meeting Law by taking action on an item which was not identified for action on its July 6 agenda.

The only substantive item listed on the agenda is item 2, which reads in full:

The meeting will recess to Executive Session for the purpose of conducting the annual review of the Superintendent's performance pursuant to NRS 391.3127 and Douglas County School District Board Policy 306.

This item was not marked for action. Furthermore, it did not provide notice that the Board would consider extension of the Superintendent's contract for another year. Therefore, the action taken to extend the contract was clearly contrary to NRS 241.020(2)(c)(1) and (2).

CONCLUSION

We conclude that a serious violation of the Open Meeting Law occurred at the Board's July 6, 2000, meeting when the Board took action on an item which was not included on its published agenda. Furthermore, there may have been a lapse in the Board's duty to supply mailed notices to persons who had requested notice, although the evidence of this is not conclusive.

It is possible the Board may have relied upon mistaken advice of counsel about the applicability of the Open Meeting Law when conducting a closed session under NRS 241.030.

J. Thomas Susich, Esq.
Crowell, Susich, Owen & Tackes, Ltd.
October 18, 2000
Page 4

Therefore, no action will be filed against the Board at this time. We recommend that the Board re-notice the Superintendent's contract approval in order to ratify the Board's previous action and cure any defect. The Board is warned to strictly adhere to the Open Meeting Law for all future meetings, whether or not involving a closed session. The Board is furthermore urged to correct any inadequacies in its current procedures for compiling and recording names and mailing notice to persons who indicate their desire to receive meeting notices by mail. Finally, the Board is warned that future noncompliance with the Open Meeting Law may result in legal action against the Board by this Office.

Cordially,

FRANKIE SUE DEL PAPA
Attorney General

By:

C. WAYNE HOWLE
Senior Deputy Attorney General
Conservation & Natural Resources
(775) 684-1227

CWH:sg
c: Ms. Veronica Hulsey

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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

December 4, 2000

Mr. Frank Saunders
P.O. Box 188
Genoa, Nevada 89411

Re: Open Meeting Law Complaint: Genoa Historic District Commission;
OMLO 2000-41/AG File No. 00-052

Dear Mr. Saunders:

On November 14, 2000, you filed a complaint with this office alleging that the agenda posted by the Genoa Historic District Commission indicated that public comment would not be permitted at the meeting scheduled for November 17, 2000, and that the agenda failed to notice possible action by the Commission when it considers the ordinance amendments.

On November 15, 2000, I spoke to you and to Douglas County District Attorney Scott Doyle about the matter. Mr. Doyle subsequently met separately with both you and the chairman of the Genoa Historic District Commission. As a result of those conversations, the chairman decided to cancel the meeting for November 17 and to reschedule a meeting for later in the month. As a result of the cancellation of the meeting, your complaint is resolved.

Mr. Doyle is fully aware of the particular concerns you raised with respect to the Open Meeting Law and represented to me that he will advise the Commission to prepare future agendas accordingly. To that end, Mr. Doyle has provided the Commission with a sample format for public meeting agendas and instructions for its use. The sample form is very good, and its use will likely prevent your concerns from arising in the future. Because we believe that the questions posed by the complaint have been resolved, the file on this matter will be closed.

Mr. Frank Saunders
December 17, 2002
Page 2

Thank you for bringing this matter to our attention. If there are future problems that you wish to bring our attention, please do not hesitate to do so.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By:

GEORGE CAMPBELL
Deputy Attorney General
Commerce Section
(775) 684-1214

cc: Douglas County District Attorney Scott Doyle
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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

December 11, 2000

Jackie Wallis
Chairman
Mineral County Commission
P.O. Box. 520
Hawthorne, Nevada 89415

Re: Open Meeting Opinion
OMLO 2000-42/AG File No. 00-049

Dear Ms. Wallis:

You have requested an opinion from this office concerning an alleged violation of the Open Meeting Law, NRS chapter 241.

QUESTION

Does the act of supervising a county employee by a single county Commissioner violate the Open Meeting Law?

ANALYSIS

NRS chapter 241, Nevada's Open Meeting Law, requires meetings of public bodies to be open and public. NRS 241.020. A "meeting" is defined 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." NRS 241.015(2).

Mineral County Commissioner Chairman Jackie Wallis, as the Commission's Liaison to Nuclear Projects Office, has been assigned as the supervisor to Mineral County's Nuclear Project Administrator (NPA). Chairman Wallis acting as a supervisor to the NPA does not constitute a "meeting" as defined by the Open Meeting Law as there is no gathering of members of the Commission. Rather, Chairman Wallis' actions are merely unilateral acts of one member of the Commission. As such, there is no violation of the Open Meeting Law.

CONCLUSION

The supervision of a county employee by a single county Commissioner does not constitute a violation of the Open Meeting Law.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By: _____
SUSAN L. GRAY
Deputy Attorney General
(702) 486-3095



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FRANKIE SUE DEL PAPA
Attorney General

THOMAS M. PATTON
First Assistant Attorney General

December 11, 2000

Mr. Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint against the Airport Authority of Washoe County,
September 14, 2000
OMLO 2000-43/AG File No. 00-046

Dear Mr. Dehne:

This office received two separate complaints from you (September 26, 2000, and October 11, 2000) alleging that actions taken at the September 14, 2000, meeting of the Airport Authority of Washoe County were in violation of the Open Meeting Law. *See* NRS 241.010–241.040. This office has jurisdiction over violations of the Open Meeting Law. If we believe a violation has occurred, following an investigation, we are authorized by statute to bring an action in district court for injunctive or declaratory relief.

In the first complaint you alleged that the chairman wrongfully ordered a recess by “unilaterally” and “dictatorially” gaveling a recess without benefit of parliamentary procedure. In other words you believe he should have received a motion from a member of the Board along with a second from another member and a vote of the Board before declaring a recess. You ask this office to seek to void the actions of the Board based on your complaint that the chairman’s actions were in violation of the Open Meeting Law.

Only actions or decisions made by a majority of the members present (NRS 241.015(1)) taken by a public body in violation of NRS 241.010–241.040 are void. If the chairman acted alone, there is no “action” by the Board that could possibly be void under the statute. We are unable to find any reference to required parliamentary procedure in the statutes, nevertheless the minutes of the September 14, 2000, meeting and the tape-recorded record of the meeting were requested by this office to ascertain under what circumstances the chairman “wrongfully” ordered a recess. The Board’s secretary graciously cooperated with our request.

Upon review of the minutes and the taped record of the meeting, we conclude that no Open Meeting Law violation as alleged in your complaint occurred. The alleged wrongful recess occurred approximately thirty minutes into the meeting according to your complaint. Review of that portion of the recorded tape of the meeting reveals a heated dispute with the chairman who had interrupted a speaker making remarks to the Board to caution you about unacceptable remarks he heard you make from the audience. You did not have the floor, yet the chairman felt compelled to interrupt the speaker to caution you about your "unacceptable" language. In the ensuing minute you disputed the chairman's characterization of the remark attributed to you (but you did not deny saying "spit on it") and loudly demanded that he admit he was wrong about his pejorative characterization of the nature of your remark. The chairman can be heard to ask you to sit down in an effort to restore order. Apparently, instead of complying, you again demanded that he admit he was wrong. Chairman Hill can also be heard warning you that failure to comply with his order would result in your ejection. When you refused to sit and continued to argue with him, he then asked that you be escorted from the meeting. You continued to protest loudly, all the while being escorted from the room. The tape does not disclose the manner of your ejection, but the disturbance created by your exit and sounds of a scuffle can clearly be heard. During the time you were being escorted from the room, other members of the board can be heard advising the chairman to call a recess and the chairman can be heard gaveling a recess. It appears the chairman acted alone and upon his authority as chairman; thus there is no "action" by the Board subject to voidance under NRS 241.036.

Even though the Open Meeting Law statutes do not discuss parliamentary procedure, NRS 241.030(3)(b) says that the Open Meeting Law does not "[p]revent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical." Additionally, *Robert's Rules of Order, Newly Revised*, the volume governing parliamentary procedure adopted by the Board's bylaws, states that:

An assembly has the right to protect itself from annoyance by nonmembers, and its full authority in this regard . . . can be exercised by the chair acting alone. The chair has the power to require nonmembers to leave the hall, or to order their removal, at any time during the meeting; and they have no right of appeal from such an order of the presiding officer.

Thus it appears that the chairman may enforce order during the meeting and upon his own authority remove any person who disrupts a meeting. Your ejection from the meeting is not an "action" by the Board subject to review under the Open Meeting Law.

On October 11, 2000, you submitted a second complaint alleging yet another violation of the Open Meeting Law regarding the same meeting discussed above. In this second complaint, you allege that the Airport Authority of Washoe County's public comment rules regarding the

Mr. Sam Dehne
December 11, 2000
Page 3

recording or electronic taping of meetings by a member of the general public is in conflict with NRS 241.035(3). That statute states that:

All or part of any meeting of a public body may be recorded on audiotape or any other means of sound or video reproduction by a member of the general public if it is a public meeting *so long as this in no way interferes with the conduct of the meeting.*
[Emphasis added.]

The minutes of the meeting reveal that the public comment rules were printed on the back of the Request to Speak forms. These public comment rules prohibit use of electronic devices/instruments without prior permission.

We cannot agree with your assertion that the requirement for approval of these devices by the Board before they can be used in a meeting during the public comment period is illegal and in violation of the Open Meeting Law. The prohibition broadly applies to every kind of electronic device including audio recording devices as well as pagers, cell phones, video cameras, laptop computers, and other devices. NRS 241.035(3) is not an absolute guarantee that a person may record the meeting, or any part of it, by any audio or video device because it gives the Board the discretion to determine whether the use of an electronic device will interfere with the conduct of their meeting and, presumably, the power to forbid such a device's use in appropriate circumstances. Because of this legislatively bestowed discretion upon public bodies, we cannot say that the requirement for prior approval is a violation of the Open Meeting Law based on the facts alleged and our review of the public comment portion on the tape recording of the meeting. In fact, it appears to be a reasoned method to determine beforehand whether or not a device is likely to interfere with the meeting.

From listening to the tape, it does not appear that you asked the Board to use a device during your turn at public comment. You complained about the requirement in a general way, but you made no substantive argument that it diminished your right under NRS 241.035(3). We

Mr. Sam Dehne
December 11, 2000
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are not persuaded that the Board's requirement of prior approval before electronic devices may be used during the public comment period is unreasonable and not in compliance with NRS 241.035(3).

Sincerely,

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Attorney General

By:

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December 18, 2000

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Re: *Complaint against Police and Firemen's Retirement Fund Advisory
Committee Meeting of October 10, 2000*
OMLO 2000-44/AG File No. 00-051

Dear Ms. Trimmer:

We have reviewed your letter dated October 24, 2000 on the above-referenced matter. This office has primary jurisdiction over the investigation and resolution of complaints alleging violations of Nevada's Open Meeting Law, Chapter 241 of the Nevada Revised Statutes (NRS). We have completed our investigation of a complaint from you regarding the Police and Firemen's Retirement Fund Advisory (PFRFA) Committee. Specifically, you have alleged that prior to the commencement of the October 10, 2000 meeting, Dana Bilyeu improperly attempted to persuade two board members of the PFRFA Committee to take a particular position concerning extending the police and firemen's retirement fund to cover Attorney General investigators, that would be voted upon, during the meeting. You also alleged that other individuals were listening to this conversation, and there exists the possibility that those other individuals may have been members of the PFRFA Committee. As a result, you believe that a meeting occurred in violation of the Open Meeting Law.

Pursuant to NRS 241.015, the Open Meeting Law applies to meetings 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. A quorum is defined as a simple majority of the constituent membership of a public body or another proportion established by law. *See* NRS 241.015(4). The PFRFA Committee is comprised of five members, Tom Burns, Raymond McAllister, Fred Galey, Richard Tiran and Bill Loncar. Hence, a quorum of the PFRFA Committee consists of three members.

Our investigation consisted of interviews with the five members of the PFRFA Committee: Tom Burns, Raymond "Rusty" McAllister, Fred Galey, Richard Tiran and Bill Loncar. In addition, we interviewed you and Dana Bilyeu, Operations Officer of the executive staff for the Public Employee Retirement System (PERS). We also reviewed the agenda and minutes of the meeting provided by Ms. Bilyeu.

Our investigation with Mr. Burns revealed that prior to the meeting of October 10, 2000, Mr. Burns, Mr. Galey and Mr. Tiran took a tour of the PERS building. After the tour, Mr. Burns explained that he entered the committee meeting room with Mr. Galey and Mr. Tiran. Mr. Burns stated he did not have a conversation with Ms. Bilyeu, nor did he overhear a conversation between Ms. Bilyeu and other members of the PFRFA Committee concerning the extension of the police and firemen's retirement to cover Attorney General investigators.

Our conversations with Mr. Tiran and Mr. Galey confirmed that they took a tour with Mr. Burns. They also confirmed that upon their return, they did not have a conversation with Ms. Bilyeu, nor did they overhear a conversation between Ms. Bilyeu and other members of the PFRFA Committee concerning the extension of the police and firemen's retirement fund to cover Attorney General investigators. Mr. Tiran and Mr. Galey both noted that the October 10, 2000 PFRFA Committee meeting was the first meeting that they attended as committee members.

In our conversations with Mr. McAllister and Mr. Loncar, they each stated that they did not have a conversation with Ms. Bilyeu concerning the PFRFA Committee's consideration of extending the police and firemen's retirement fund to cover Attorney General investigators, nor did they overhear such a conversation prior to the October 10, 2000 PFRFA Committee meeting.

We also interviewed with Ms. Bilyeu with respect to her actions prior to the commencement of the October 10, 2000 PFRFA Committee meeting. Ms. Bilyeu does not recall having any conversation with any of the five committee members prior to the meeting. She admits that she has spoken at length about the issue of extending the police and firemen's retirement fund to cover Attorney General investigators with many different people and in several different forums. However, she denies advocating her position to committee members prior to the October 10, 2000 PFRFA Committee meeting.

Pursuant to NRS 241.015(3), committees and subcommittees are included within the definition of "public bodies." This office believes that a committee or subcommittee is covered by the Open Meeting Law whenever a quorum of the committee or subcommittee gathers to deliberate or make a decision. *See* § 3.04 of the *Nevada Open Meeting Law Manual, Eighth Edition, February 2000* citing to *Lewiston Daily Sun, Inc. v. City of Auburn*, 544A.2d 335 (Me. 1988); *Arkansas Gazette Co. v. Pickens*, 522 S.W.2d 350 (Ark. 1975). Thus, if a quorum of the members of the PFRFA Committee had gathered to deliberate toward a decision or to take action on a matter over which the board had supervision, control, jurisdiction or advisory power, then that gathering would be a "meeting" under NRS 241.015(2) and would be subject to the Open Meeting Law.

Based upon our investigation of the allegations set forth in your October 24, 2000 complaint, we are unable to confirm that a quorum of PFRFA Committee members discussed the issue of extending the police and firemen's retirement fund to cover Attorney General investigators, in violation of the Open Meeting Law. Thus, there is insufficient evidence to find that a violation of the Open Meeting Law occurred on October 10, 2000.

We thank you for bringing this important matter to our attention.

Sincerely,

FRANKIE SUE DEL PAPA
Attorney General

By : _____
SONIA E. TAGGART
Deputy Attorney General
(775) 684-1224

SET:dy

cc: Robert L. Auer, Senior Deputy Attorney General
Police and Firemen's Retirement Fund Advisory Committee