STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of: CLARK COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES

Attorney General File No. 04-066

I.

INTRODUCTION

In a letter received December 7, 2004, by the Office of the Nevada Attorney General, Ms. Lisa Wilson filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes. In particular, Ms. Wilson alleges that the Clark County School District Board of Trustees (Board) violated the Open Meeting Law by failing to post a notice of the Board’s November 18, 2004 meeting in Moapa Valley.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, minutes, other supporting documents, and tape recordings of the meeting.

II.

FINDINGS OF FACT

On November 18, 2004, the Board held a regular meeting. The Board posted its notices at the West Charleston Library, Green Valley Library, West Las Vegas Library, North Las Vegas Library, Whitney Library, Edward A. Greer Education Center, and the Clark County School District Website (www.ccsd.net). The Board provided this Office “Posting Certificates” and other documentation that indicates that the notice was posted on Wednesday, November 10, 2004. The Board, however, did not post a notice in Moapa Valley.
III.

ISSUE

Did the Board violate the Open Meeting Law by failing to post a notice in Moapa Valley?

IV.

CONCLUSIONS OF LAW

NRS 241.020(3) and (4) states:

3. Minimum public notice is:
   (a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter. [Emphasis added.]

Section 6.05 of the Nevada Open Meeting Law Manual states, “[w]orking days include every day of the week except Saturday, Sunday, and holidays declared by law or proclamation of the President. The actual day of a meeting is not to be considered as one of the three working days referenced in the statute. See OMLO 99-06 (March 19, 1999).”

Because the meeting was on Thursday, November 18, 2004, the Open Meeting Law requires the notice to be posted on the preceding Monday, November 15, 2004, no later than 9:00 a.m. Here the evidence indicates that the Board posted its notice five days prior to Monday, November 15, 2004. Thus the Board posted its notice in a timely manner.

The Open Meeting Law requires the Board to post its notice at its “principal office,” and three other “prominent places within the jurisdiction.” NRS 241.020(3). Also, if the Board maintains a website, the Board must post its notice on the website as well. NRS 241.020(4). The Board posted its agenda at its principal office and at five other prominent places (public
libraries) located within the Board’s jurisdiction, which exceeds the Board’s legal duties under
the Open Meeting Law. The Board also posted the notice on its website, which the Open
Meeting Law required. The Open Meeting Law does not require a public body to post its
agendas throughout its entire jurisdiction. Therefore, the Board not only complied with the
Open Meeting Law’s posting requirements, but exceeded its statutory duties. However,
because of this investigation, the Board, as a courtesy to the rural areas it serves, agreed to
further exceed its statutory duties and post its notices in rural areas as well.

V.

CONCLUSION

Although the Clark County School District Board of Trustees chose not to post its
notice in Moapa Valley and other rural areas of Clark County, the Open Meeting Law does not
require a public body to post its notices throughout the entire jurisdiction. The Open Meeting
Law only requires a public body to post its notices at its principal office, three prominent
locations, and if it maintains a website, on its website, which the Board did. Therefore, the
Board complied with the Open Meeting Law.

DATED this ______ day of January 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar 6800
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of January, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Lisa Wilson
Post Office Box 793
Overton, Nevada  89040

Ann Bersi
Clark County Deputy District Attorney
Post Office Box 552215
Las Vegas, Nevada  89155-2215

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of: SILVER SPRINGS ADVISORY BOARD

Attorney General File No. 04-064

I.
INTRODUCTION

In a letter received November 12, 2004, by the Office of the Nevada Attorney General, Mrs. Win Early McCord filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Mrs. McCord alleges that the Silver Springs Advisory Board (Board) violated the Open Meeting Law by failing to provide her with a mailed notice pursuant to NRS 241.020(3)(b).

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint and supporting documents and conducted interviews of witnesses.

II.
FINDINGS OF FACT

For the last two years, Mrs. McCord requested in writing that she receive through the mail notice of the Board’s monthly meetings. Mrs. McCord made her requests on a month-to-month basis, and she received notice of the Board’s meetings for the past two years. Recently, however, the Board stopped sending Mrs. McCord notice of the Board’s meetings. Andy Quinn, Secretary of the Board, stated that he was unaware of a current “written” request by Mrs. McCord for notice to be mailed to her. Unfortunately, there are no records to indicate when Mrs. McCord made her last request for notice to be mailed to her and what Mrs. McCord stated on that request.
III.

ISSUE

Did the Board violate the Open Meeting Law by failing to notice Mrs. McCord about the meetings?

IV.

CONCLUSIONS OF LAW

The relevant portion of NRS 241.020(3) states:

3. Minimum public notice is:
   . . . .
   (b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:
   (1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or
   (2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

NRS 241.020(3)(b) does not require a member of the public to make a written request to the public body to receive an agenda by mail. In fact, Section 6.04 of the NEVADA OPEN MEETING LAW MANUAL states, “[a] public body should implement internal record keeping procedures to keep track of those who have requested notice.” NEVADA OPEN MEETING LAW MANUAL, § 6.04 (9th ed. 2001). Therefore, it is the responsibility of the public body to maintain records of any request for notice whether the request is made in writing or orally.

For the last two years Mrs. McCord made written requests for notice of Board meetings on a month-to-month basis, and she received the requested notices. However, recently, the Board failed to mail Mrs. McCord the agendas. Mr. Quinn alleges that he was unaware of a "written" request by Mrs. McCord to receive the notices by mail. However, NRS 241.020(3)(b) does not require that the request be made in writing. Therefore, the law permits Mrs. McCord to make the request orally.

NRS 241.020(3)(b) states that a request for notice lapses six months from the date of
the request. Thus the issue becomes when did Mrs. McCord make her last request to receive notice of the Board’s meetings? The Board admits, and the facts support, that Mrs. McCord did make some type of request in the past either in writing or orally. Unfortunately, there is neither a record of when Mrs. McCord’s last request was made, what was stated in her request, nor evidence of the required six-month lapsed notice. It is the responsibility of the public body to maintain these records to ensure compliance with the Open Meeting Law and provide evidence of such compliance. As a result, the Board is unable to defend against the complaint so we are forced to presume Mrs. McCord’s allegations as established and that the Board violated the Open Meeting Law.

However, this Office discussed this complaint with Patrick Geurts, Town Board Chairman, and Mr. Quinn, Secretary of the Board. To their credit, they took this complaint very seriously and agreed that they will provide Mrs. McCord with notice through the mail.

V. CONCLUSION

The Office of the Nevada Attorney General finds that the Silver Springs Advisory Board violated the Open Meeting Law because it failed to maintain records evidencing that Mrs. McCord was provided notice consistent with the Open Meeting Law. This Office advises the Silver Springs Advisory Board to maintain records of any request whether made in writing or orally. Also, this Office advises the Board that pursuant to NRS 241.020(3)(b) it must inform the requestor that her request expires in six months. During the investigation of this issue, the Silver Springs Advisory Board agreed to send the notices of Board meetings to / / /
Mrs. McCord upon her request, and it agreed to inform her that such a request expires in six months. Therefore, the Office of the Nevada Attorney General will forego litigation on this issue, but advises the Silver Springs Advisory Board to act in a manner consistent with this opinion.

DATED this _____ day of February 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada  89701-4717
(775) 684-1205

1 The Board agrees to send the notice to Mrs. McCord upon her request, but it is the responsibility of Mrs. McCord to make such a request.
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _______ day of February, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Win Early McCord
3620 Cypress Street
Silver Springs, Nevada 89429-9390

Patrick Geurts, Town Board Chairman
Silver Springs Advisory Board
Post Office Box 264
Silver Springs, Nevada 89429

Andy Quinn, Board Secretary
Silver Springs Advisory Board
Post Office Box 264
Silver Springs, Nevada 89429

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:  
BOARD OF WILDLIFE COMMISSIONERS  

Attorney General File No. 04-068  
OMLO 2005-03

I.

INTRODUCTION

In a letter received December 16, 2004, by the Office of the Nevada Attorney General, Dr. Gerald Lent filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Dr. Lent alleges that the Board of Wildlife Commissioners (Board) violated the Open Meeting Law at its December 17, 2004 meeting by approving minutes that did not contain Dr. Lent’s statements made at the November 5, 2004 Board meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

FINDINGS OF FACT

The Board held a meeting on November 5, 2004. During that meeting, Dr. Lent made both written and oral statements to the Board. Dr. Lent requested that his statements be included in the minutes. He then stated that he would like the statements included in the record. On December 17, 2004, the Board approved the November 5, 2004 minutes without Dr. Lent’s statements.
III.

ISSUE

Did the Board violate the Open Meeting Law by approving the minutes without including Dr. Lent’s oral comments and written statement?

IV.

CONCLUSIONS OF LAW

NRS 241.035(1)(d) states:

1. Each public body shall keep written minutes of each of its meetings, including:

   (d) The substance of remarks made by any member of the general public who addresses the body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

NRS 241.035(1)(d) only requires the “substance of remarks” be included in the minutes. The plain meaning of “substance” is the essential nature or fundamental or characteristic part or quality of something, which by definition is not verbatim. Therefore, at the request of a member of the public, the law requires the Board to place the substance of his or her oral comments in the minutes, but the law does not require the verbatim of those comments.

NRS 241.035(1)(d) further requires that any “prepared remarks” submitted to the public body for inclusion to the minutes must become a part of the minutes. Thus, the law also requires any prepared remarks be included in the minutes at the request of the member of the public.

Dr. Lent requested that both his oral and written statements be made a part of the minutes. Dr. Lent then requested that his statements be made a part of the record. Terry Crawforth, Secretary to the Board, explained to this Office that the Board treats the record and the minutes differently and thus did not include the substance of Dr. Lent’s statements in the minutes. However, members of the general public cannot be required to anticipate that the Board would treat the terms “record” and “minutes” differently. The average member of the public

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1 The “record” of a public hearing includes, among other media, all written documents, and in this case, the record included Dr. Lent’s written statement.
general public does not understand that a difference exists. Since Dr. Lent specifically
mentioned he wanted his comments in the “minutes” and then stated he wanted them in the
“record,” the confusion for Board staff is understandable, but considering the statute’s
requirements, the more reasonable analysis of these facts is that Dr. Lent wanted the
substance of his comments to be at least included in the minutes pursuant to
NRS 241.035(1)(d), if not both. Therefore, since the Board failed to place the substance of
Dr. Lent’s oral comments and his written statement in the minutes and mistakenly assumed
including his written statement in the record would suffice, the Board violated
NRS 241.035(1)(d) of the Open Meeting Law.

During the investigation of this issue, Mr. Crawforth represented to this Office that he
would urge the Board to reconsider the November 5, 2004 minutes and include Dr. Lent’s
comments in the minutes to cure this violation. On February 4, 2005, the Board reconsidered
the November 5, 2004 minutes and added Dr. Lent’s comments to the minutes. During this
meeting, Mr. Crawforth also explained to the Board the legal requirements for including
comments from the general public in the minutes. Therefore, the Board took the appropriate
action to cure its violation of the Open Meeting Law.

V.

CONCLUSION

Although the Board of Wildlife Commissioners violated the Open Meeting Law by failing
to include the substance of Dr. Lent’s comments and written statement in the minutes, it cured
the violation by reconsidering the minutes and placing such into the minutes. As a result, the
Office of the Nevada Attorney General has no reason to proceed with any legal action, but advises the Board of Wildlife Commissioners to act consistent with this opinion in the future.

DATED this ______ day of March 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar 6800
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of March, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Dr. Gerald A. Lent
Keystone Professional Building
831 Keystone Avenue
Reno, Nevada  89503

Terry R. Crawforth, Secretary
Board of Wildlife Commissioners
1100 Valley Road
Reno, Nevada  89512

An Employee of the Office of the Nevada Attorney General
In the Matter of: BOARD OF MINERAL COUNTY COMMISSIONERS

I.

INTRODUCTION

In a letter received January 4, 2005, by the Office of the Nevada Attorney General, Mr. Horace Carlyle filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Mr. Carlyle alleges that the Board of Mineral County Commissioners (Board) violated the Open Meeting Law at its December 15, 2004 meeting by conducting a closed meeting with its attorney, taking action during the closed meeting, and/or not keeping minutes during the closed meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and interviewed participants of the closed session.

II.

FINDINGS OF FACT

The Board held a properly noticed open meeting on December 15, 2004. For this meeting, the Board noticed on its agenda an item for a presentation and possible action regarding existing litigation, State v. Day Zimmerman Hawthorne Corporation (DZHC) (Supreme Court Case #37725), DZHC v. State, et al. (Fifth Judicial District Court Case #8549), and State Board of Equalization Cases #181 and #183. The Board also noticed a “Closed Session pursuant to NRS 241.015 (2) (b) (2) - To receive information from County Attorney relative to existing litigation involving DZHC.”

The minutes from the December 15, 2004 meeting state, “No need for this item at this time” referring to the presentation and possible action regarding State v. DZHC (Supreme Court Case #37725), DZHC v. State, et al. (Fifth Judicial District Court Case #8549), and State Board of Equalization Cases #181 and #183. Thus the Board did not consider that item.

The Board went into closed session pursuant to NRS 241.015(2)(b)(2) to discuss existing litigation against DZHC with Rachel Nichols, the Board’s attorney. The Board noticed this item on its agenda for approximately 9:00 a.m., but conducted the closed meeting at approximately 10:45 a.m.¹ The Board received information from Ms. Nichols regarding the existing litigation and deliberated about potential strategy on litigating the case. However, the Board did not take any action during the closed meeting.²

III.

ISSUE

Did the Board’s closed meeting pursuant to NRS 241.015(2)(b)(2) violate the Open Meeting Law?

IV.

CONCLUSIONS OF LAW

NRS 241.015(2)(b)(2) states:

2. “Meeting”:
   (b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:
   (2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control,

¹ Mr. Carlyle complained that the closed meeting was held at 10:45 a.m., but the agenda stated that the closed meeting was to be held at 9:00 a.m. The agenda is clear that several items were scheduled to begin at 9:00 a.m., and the items would proceed until completed by the Board. Therefore, it is not necessary to provide legal analysis on this issue, and the Board did not violate the Open Meeting Law.

² This Office interviewed District Attorney Cheri Emm-Smith and Assessor Gloria Hughes regarding the closed session, and they indicated that the Board discussed the status of the litigation with Ms. Nichols and deliberated about potential strategy on how to proceed with the case. The Board did not take any action or reach a decision during the closed session.
jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

Section 5.11 of the NEVADA OPEN MEETING LAW MANUAL states, in part, “The receipt of information from the attorney and the public body’s deliberation can both occur in the equivalent of a ‘closed meeting.’ However, any decision must be made in public at the reopened meeting. . . .” NEVADA OPEN MEETING LAW MANUAL, § 5.11 (9th ed. 2001). Therefore, a public body meeting with its attorney to discuss existing or potential litigation is not a meeting for purposes of the Open Meeting Law.

Since a meeting pursuant to NRS 241.015(2)(b)(2) is not a meeting for purposes of the Open Meeting Law, a public body is not under a strict legal obligation to place this type of legal consultation on an agenda. However, this Office has always advised that when a public body interrupts an open meeting to conduct a “closed meeting” with its attorney that such an interruption should be placed on the agenda. This practice will avoid confusion and meritless allegations of wrongdoing. The Board placed the closed meeting with its attorney on the agenda and, as a result, complied with the Open Meeting Law.

Since a meeting pursuant to NRS 241.015(2)(b)(2) is not a meeting for purposes of the Open Meeting Law, there is no legal requirement for a public body to keep minutes of such a “meeting.” The Board, in this case, did not take minutes, and it was under no legal obligation to take minutes of its “closed meeting” pursuant to NRS 241.015(2)(b)(2).

During the closed portion of the meeting, the Board met with Ms. Nichols to discuss its existing litigation with DZHC. During this discussion, Ms. Nichols briefed the Board about the litigation’s status. NRS 241.015(2)(b)(2) permits the Board to receive a briefing from its attorney regarding existing litigation as well as potential litigation. Thus Ms. Nichols’s briefing regarding existing litigation during a closed meeting did not violate the Open Meeting Law.

NRS 241.015(2)(b)(2) is the only instance in which Nevada’s Open Meeting Law permits a public body to receive information and deliberate towards a decision on the matter in private, and these deliberations may only be about existing or potential litigation. Section 5.01 of the NEVADA OPEN MEETING LAW MANUAL defines “deliberate” as “to examine, weigh and reflect upon the reasons for or against the choice . . . .” NEVADA OPEN MEETING LAW MANUAL,
§ 5.01 (9th ed. 2001) citing from Sacramento Newspaper Guild v. Sacramento County Board of Supervisors, 69 Cal. Rptr. 480 (Cal. Ct. App. 1968). Deliberation thus connotes collective discussion among the members of the public body toward the ultimate decision.

Although this Office has not previously opined upon the term “deliberate” as it is found in NRS 241.015(2)(b)(2), a public body may deliberate with its attorney over strategy decisions regarding potential or existing litigation. These deliberations may include members of the public body providing guidance to its attorney on how each expects the public body to be represented. For example, each member of the public body may express his or her opinion on the amount he or she would be willing to settle a case. However, such deliberations may not result in any action to settle a case or to make or accept an offer of judgment, which action shall only occur in an open meeting. A decision to settle a case or make or accept an offer of judgment would be an action, which is prohibited in any type of closed meeting and would exceed the express language of NRS 241.015(2)(d)(2). The facts here indicate that the Board deliberated over strategy decisions with Ms. Nichols, but did not reach or make any decision regarding the existing litigation. Thus the Board conducted itself within the legal requirements of Nevada’s Open Meeting Law.

V.

CONCLUSION

The Board of Mineral County Commissioners complied with the Open Meeting Law when it conducted a closed meeting to receive information from its attorney regarding existing litigation and deliberated about potential strategy in order to manage the litigation. Because such a consultation with legal counsel is not a “meeting” under the Open Meeting Law, the Board was not required to keep minutes under NRS 241.035. The Board also interrupted its open meeting to conduct the “closed meeting” with its attorney; the Board noticed this meeting and, by doing so, complied with the Nevada Attorney General’s advice in the NEVADA OPEN MEETING LAW MANUAL. NEVADA OPEN MEETING LAW MANUAL, § 5.11 (9th ed. 2001). Therefore, the Office of the Nevada Attorney General commends the Board of Mineral County Commissioners’ efforts in conducting this “closed meeting” in excess of the minimum
requirements of the Open Meeting Law.

DATED this ______ day of March 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar 6800
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of March, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Horace H. Carlyle
Post Office Box 2568
Hawthorne, Nevada  89415-2568

Helene J. Weatherfield
Mineral County Clerk and Treasurer
Post Office Box 1450
Hawthorne, Nevada  89415

Cheri K. Emm
Mineral County District Attorney
Post Office Box 1210
Hawthorne, Nevada  89415

An Employee of the Office of the Nevada Attorney General
INTRODUCTION

In a letter received March 3, 2005, by the Office of the Nevada Attorney General, Ms. Ellen Steiner filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Steiner alleges that the Reno City Planning Commission (Commission) violated the Open Meeting Law at its January 20, 2005 meeting by failing to properly notice LDC04-00130 on its agenda.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents.

FINDINGS OF FACT

On January 20, 2005, the Commission considered item VI, subpart 4, which was noticed as follows:

LDC04-00130 (Monarch Property/13095 S Virginia) -This is a request for: 1) a Master Plan Amendment from Urban Residential/Commercial to Tourist Commercial; and 2) a zoning map amendment from AC (Arterial Commercial) to HC (Hotel Casino). The ±12.96 acre site is located on the east side of South Virginia Street, ±4,000 feet south of South Meadows Parkway.

Ms. Steiner alleges that the address of “13095 South Virginia” is incorrect, but the Commission asserts that it obtained the address from the county assessor’s records. The
Engineering Department of Washoe County is the entity responsible for assigning actual street addresses, and it appears that Ms. Steiner’s allegation is correct that the physical street address would be different than the address in the assessor’s records. Therefore, there may be a discrepancy between the actual street address that may be assigned by the Engineering Department of Washoe County and the address noticed in the Commission’s agenda.

III.

ISSUE

Did the Commission meet the “clear and complete” notice requirement in NRS 241.020(2)(c)(1)?

IV.

CONCLUSIONS OF LAW

NRS 241.020(2)(c)(1) states:

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

   ... 
   (c) An agenda consisting of:
   (1) A clear and complete statement of the topics scheduled to be considered during the meeting. [Emphasis added.]

In Section 7.02 of the Nevada Open Meeting Law Manual, it states, “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.” See NEVADA OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001). That section also states, “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.” Id. at 47. In OMLO 99-01 (January 5, 1999) and OMLO 99-03 (January 11, 1999) this Office opined, “agenda descriptions for resolutions, ordinances, regulations, statutes, rules or the like to be considered by public bodies should describe what the statute, ordinance, regulation, resolution or rule relates to so that taxpayers and citizens may determine if it is a subject in which they have an interest.” Thus the issue becomes whether the Commission’s agenda caused confusion or whether it was “clear and
complete" so as to provide the public with enough information to determine if it was a subject in which they had interest.

The Commission considered an amendment to its master plan and zoning map. The property is not only identified by the address, but identified by measurements from specific locations in the City. Although it appears that the Washoe County Engineering Department may provide a different street address to the property, the Commission reasonably relied upon its assessor’s records to determine the address.¹ Further, the facts indicate that the notice did not create confusion for members of the public because 30 members of the public attended the Commission’s meeting and submitted cards to the Commission in favor of or against the amendments. The agenda also clearly and completely described the amendments to be considered and informed the public of the type of changes being considered. Thus if the address on the agenda was in error, it was de minimis and not substantive in this case, and complainant was not denied a right conferred by the Open Meeting Law.

V.
CONCLUSION

The Reno City Planning Commission complied with the “clear and complete” requirement of the Open Meeting Law, and the agenda provided members of the public with enough notice to determine if the item was a topic in which they had an interest. Therefore, the Reno City Planning Commission complied with the Open Meeting Law.

DATED this ______ day of April, 2005.

BRIAN SANDOVAL
Attorney General

By: NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street

¹ Ms. Steiner asserts that two different data bases indicated the address in the notice was incorrect. However, a public body cannot be responsible to check every single source of information. Considering the circumstances, the public body’s reliance upon the public records, its own records, to determine the address was more than reasonable.
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of April, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ellen L. Steiner
12045 Broken Hill Road
Reno, Nevada 89511

Patricia A. Lynch, City Attorney
Allen D. Gibson, Deputy City Attorney
City of Reno
Post Office Box 1900
Reno, Nevada 89505-1900

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of: Pioche Town Board

Attorney General File No. 05-001
OMLO 2005-06

I.

INTRODUCTION

In a letter received January 6, 2005, by the Office of the Nevada Attorney General, Ms. Ann Keaton filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Keaton alleges that the Pioche Town Board (Board) committed multiple violations of the Open Meeting Law at their meeting held on October 7, 2004.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

FINDINGS OF FACT

The Board conducted a meeting on October 7, 2004. At that meeting, the Board considered a setback variance for Ms. Keaton. A member of the Board made a motion to approve the variance, but the item died for a lack of a second. Mr. Zelch, a member of the Board and the Lincoln County Planning Commission, informed the planning director that Ms. Keaton’s variance application failed.

To correct this alleged misinformation, Ms. Keaton requested that the Board place her on its agenda. On January 4, 2005, the Board considered Ms. Keaton’s request under agenda item number 6, which stated “6. *Correspondence.” The asterisk indicated that this
was an action item. The Board addressed Ms. Keaton’s concerns and took action on this
item.

Ms. Keaton alleges that she arrived at the January 4, 2005 meeting 15 minutes prior to
the meeting. At this time, she noticed that three of the five Board members were discussing
issues in the community. This allegation has been denied by the Board members and Lincoln
County District Attorney Philip H. Dunleavy.

At the January 4, 2005 meeting, the Board, under agenda item number 8, which stated
“8. *Old Business* discussed renting the downstairs of Town Hall to Shannon Kirschesh for
her massage therapy practice. The asterisk again indicated that item number 8 on the
agenda was an action item.

On January 6, 2005, Ms. Keaton requested copies of the Board’s minutes and agendas
for the last year. The secretary stated that she prepared the minutes of the January 4, 2005
meeting, but that she would not be able to produce copies of the Board’s minutes and
agendas for the last year. Ms. Keaton has not received copies of the Board’s minutes and
agendas for the last year.

III.

ISSUES

1. Did the Board violate the Open Meeting Law when one of its members reported to
   the planning director that Ms. Keaton’s item failed?

2. Did the Board violate the Open Meeting Law by a quorum of its members discussing
   community issues prior to the January 4, 2005 meeting?

3. Did item numbers 6 and 8 on the Board’s January 4, 2005 agenda fail to meet the
   “clear and complete” notice standards in the Open Meeting Law?

4. Did the Board violate the Open Meeting Law by not immediately supplying
   Ms. Keaton with copies of the Board’s minutes and agendas for the last year?

---

1 Ms. Keaton alleges that the Board’s minutes failed to meet the legal requirements of the Open Meeting
Law. However, Ms. Keaton’s allegation is not specific. This Office reviewed the minutes from the August 18
minutes from each of these meetings appear to comply with the legal requirements found in NRS 241.035.
IV.

CONCLUSIONS OF LAW

1. Did the Board violate the Open Meeting Law when one of its members reported to the planning director that Ms. Keaton’s item failed?

The Open Meeting Law does not govern comments made by a member of the public body after a meeting. Therefore, this is not an issue involving the Open Meeting Law.

2. Did the Board violate the Open Meeting Law by a quorum of its members discussing community issues prior to the January 4, 2005 meeting?

NRS 241.015(2), in pertinent part, states:

2. “Meeting”:
(a) Except as otherwise provided in paragraph (b), means:
(1) 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. [Emphasis added.]

NRS 241.015(4) states, “[q]uorum’ means a simple majority of the constituent membership of a public body or another proportion established by law.”

It is alleged here that three members of the Board met 15 minutes prior to the meeting noticed for January 4, 2005. Three is a simple majority of five and, as a result, is a quorum of the Board. It is further alleged that these three members discussed topics within the supervision, control, jurisdiction or advisory power of the Board. The three board members deny this allegation, and this Office cannot find any other independent proof to support the allegations. Therefore, at this time, this Office does not have the legal proof necessary to find a violation of the Open Meeting Law or proceed with legal action.

However, this Office warns that if these types of allegations could be supported, this type of activity is a violation of the Open Meeting Law. Also, because these types of acts blatantly disregard the Open Meeting Law, this Office would consider immediate legal action under these circumstances. Therefore, this Office advises the Board to refrain from the types of alleged activities that invite suspicion.

3. Did item numbers 6 and 8 on the Board’s January 4, 2005 agenda fail to meet the
“clear and complete” notice standards in the Open Meeting Law?

NRS 241.020(2)(c) states:

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

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

Section 7.02 of the NEVADA OPEN MEETING LAW MANUAL states, “[a]genda 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.” In OMLO 99-03, this office opined that generic agenda items such as “President’s Report,” “Committee Reports,” “New Business,” and “Old Business” do not provide a clear and complete statement of the topics scheduled to be considered. Such items should not be listed as action items as they do not adequately describe items upon which action is to be taken. As a result, it is the responsibility of the public body to provide clear and complete agendas.

The Board listed on its January 4, 2005 agenda as action items “6. *Correspondence” and “8. *Old Business.” Under item number 6, the Board considered Ms. Keaton’s setback variance and her problem with board member Zelch’s comments after the meeting. Also, under item number 6, the Board considered Ms. Hewitt’s problem with paying her power bill. While considering item number 8, the Board discussed Ms. Kirschesh’s request to rent the downstairs of Town Hall. The Board deliberated over the issue and requested that Ms. Kirschesh return with insurance information. Neither agenda item “6. *Correspondence” nor “8. *Old Business” clearly and completely indicate to the public what the Board considered, deliberated, or took action on. As a result, the Board violated the Open Meeting Law.

District Attorney Dunleavy’s correspondence with this Office indicates that the Board recognizes its agendas failed to comply with the Open Meeting Law. He also indicated that he provided the Board with legal suggestions on how to comport with the Open Meeting Law.
in the future. Therefore, at this time, this Office does not see a need to proceed with legal
action against the Board.

4. Did the Board violate the Open Meeting Law by not immediately supplying
Ms. Keaton with copies of the Board’s minutes and agendas for the last year?

NRS 241.035(2) states, in part, “[m]inutes of public meetings are public records.
Minutes or audiotape recordings of the meetings must be made available for inspection by the
public within 30 working days after the adjournment of the meeting at which taken.”

[Emphasis added.] Section 10.05 of the NEVADA OPEN MEETING LAW MANUAL states:

The Open Meeting Law requires that minutes and tapes be made available “for inspection” and does not authorize charging a fee.

However, if a person wants a copy of the minutes or tapes that are public records, public bodies should consult the open records law or other statutes dealing with fees to determine what, if any, fees may be charged. See NRS chapter 239.

Since minutes of a meeting are public records, the analysis must also examine the Public
Records Law, chapter 239 of the NRS. NRS 239.052(1) states:

Except as otherwise provided in this subsection, a governmental entity may charge a fee for providing a copy of a public record. Such a fee must not exceed the actual cost to the governmental entity to provide the copy of the public record unless a specific statute or regulation sets a fee that the governmental entity must charge for the copy. A governmental entity shall not charge a fee for providing a copy of a public record if a specific statute or regulation requires the governmental entity to provide the copy without charge. [Emphasis added.]

As a result, a public body must allow a member of the public to “inspect” the minutes of a public meeting. However, a public body may charge a fee for copying the minutes since the Open Meeting Law does not require a public body to provide copies of the minutes without a charge.

It is alleged here that Ms. Keaton requested copies of the Board’s minutes and agendas for the last year. The Board was under no obligation to immediately provide those copies because Ms. Keaton had to pay a fee for the copies, and the Board was entitled to a reasonable time to prepare the copies. However, the facts indicate that there may have been some confusion on the part of the Board’s assistant, and as a result, the assistant failed to
make the minutes and agendas available for inspection to Ms. Keaton. Pursuant to NRS 241.035 and NRS 239.010, the Board is obligated to make reasonable accommodations to make past minutes and agendas available for inspection by the public. Since the Board failed to make those reasonable obligations, it violated the Open Meeting Law.

V.

CONCLUSION

By its own admission, the Pioche Town Board violated the Open Meeting Law by failing to provide legally sufficient agenda statements. The Pioche Town Board is also obligated by law to make past minutes and agendas available for inspection and copying. The Office of the Nevada Attorney General encourages the Pioche Town Board to use this opinion as a tool to assist it in avoiding future violations, and this Office also encourages the Board to comply with the Open Meeting Law by providing “clear and complete” agenda statements for future meetings. This opinion may be considered by this Office if any future similarly alleged violations occur.

DATED this ______ day of April 2005.

BRIAN SANDOVAL
Attorney General

By:
NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar 6800
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1205

2 Please note that there is nothing in the Open Meeting Law that requires the Board’s minutes to be filed with the clerk’s office as alleged by Ms. Keaton. However, NRS 239.010 of the Public Records Law indicates that public records, in this case the minutes, should be made available for inspection during office hours. Therefore, the minutes should be kept at the Town Hall.
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of April, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ann Keaton
Post Office Box 73
Pioche, Nevada  89043-0073

Philip Dunleavy
Lincoln County District Attorney
Post Office Box 60
Pioche, Nevada  89043

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:

DOUGLAS COUNTY SCHOOL DISTRICT BOARD OF TRUSTEES

Attorney General File No. 05-007
OMLO 2005-07

I.

INTRODUCTION

In a letter received February 7, 2005, by the Office of the Nevada Attorney General, Toni Gumm (Complainant) filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes. In particular, Complainant alleges that the Douglas County School District Board of Trustees (Board) violated the Open Meeting Law at its January 11, 2005 meeting by failing to provide Complainant with written notice pursuant to NRS 241.034.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. In investigating this matter, this Office reviewed the complaint, agenda, minutes, and supporting documents.¹

II.

FINDINGS OF FACT

On or about September 3, 2004, the Douglas County School District (District) contacted Complainant with a memorandum from Rich Alexander, Assistant Superintendent. This memorandum indicated to Complainant that the District had inadvertently overpaid her $2,138 since 2002. As a result, the District placed Complainant on a payment schedule to pay the District back the amount owed.

On October 5, 2004, Complainant filed a Level 2 grievance. Pursuant to the

¹ A tape recording of the Board’s meeting was unavailable because the Board does not tape its meetings.
“Professional Negotiations Agreement Between the Douglas County School District and the Douglas County Professional Education Association, 2003-2005” (Collective Bargaining Agreement), a Level 2 grievance meant that the superintendent would preside over an appeal hearing of the assistant superintendent’s decision. On November 18, 2004, the superintendent issued his decision that upheld the assistant superintendent’s original decision. As a result, the District continued to hold Complainant responsible for the overpayment.

In response to the superintendent’s decision, on November 23, 2004, Complainant filed a Level 3 grievance. Pursuant to section 2-C-3 of the Collective Bargaining Agreement, the Board “shall hear the grievance no later than its next regular meeting.” Since Complainant filed the Level 3 grievance on November 23, 2004, the next Board meeting was scheduled for December 14, 2004. As a result of the Collective Bargaining Agreement, the contract obligated the Board to hear the grievance at that meeting.

On the afternoon of December 14, 2004, Complainant received a call from a reporter regarding the Level 3 grievance to be considered by the Board. Complainant told the reporter that she did not know about the hearing that night. Complainant did not receive notice of the hearing pursuant to NRS 241.034. Because Complainant had a previous engagement, her husband attended the meeting on her behalf. At the meeting, the Board decided to continue the hearing because Complainant could not attend the meeting. The Board informed Complainant’s husband that the Board would hear the grievance at the January 11, 2005 meeting.

The Board scheduled the grievance for the January 11, 2005 meeting. The Board properly noticed the grievance on the agenda. However, the Board did not provide Complainant with notice of the meeting pursuant to NRS 241.034. Complainant did attend the meeting, and the Board denied her grievance by a vote of 7-0.

III.

ISSUE

Did the Board violate the Open Meeting Law by failing to provide Complainant with
written notice pursuant to NRS 241.034?

IV.

CONCLUSIONS OF LAW

NRS 241.034(1) and (2) states:

1. A public body **shall not consider** at a meeting whether to:
   (a) Take administrative action against a person; or
   (b) Acquire real property owned by a person by the exercise of the power of eminent domain,
   unless the public body has given **written** notice to that person of the time and place of the meeting.

2. The written notice required pursuant to subsection 1 must be:
   (a) Delivered personally to that person at least 5 working days before the meeting; or
   (b) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

A public body **must receive** proof of service of the written notice provided to a person pursuant to this section before the public body may consider a matter set forth in subsection 1 relating to that person at a meeting. [Emphasis added.]

This statute is clear that a public body may not consider taking administrative action against a person unless they provided that person “written” notice and “proof of service” of the written notice. Therefore, the issue to be decided is whether the Board considered to “take administrative action against” Complainant in violation of NRS 241.034(1).

In *Harris v. Washoe County*, Docket No. 42951 (2004), the Nevada Supreme Court considered the notice requirement in NRS 241.034. In that case, the Washoe County Board of Equalization (Board of Equalization) raised the plaintiffs’ taxes. The plaintiffs filed a petition challenging the county assessor’s valuation of their property. The plaintiffs received a call the day before the meeting when the Board of Equalization would hear their petition. The plaintiffs sued the Board of Equalization alleging that they were entitled to notice under NRS 241.034 of the Open Meeting Law. The court determined that there were two reasonable interpretations, one of which was a broad interpretation and the other a narrow interpretation, of the phrase “administrative action against a person.” The court, however, adopted the county’s position of a more narrow interpretation of the phrase. The court stated, “that the phrase ‘administrative action against a person’ should be more narrowly construed to include only those actions involving an individual’s characteristics or qualifications, not those
of real property.” *Id.* at 5. The court reasoned that property taxes did not involve an individual’s characteristics or qualifications, and thus the court held that the Open Meeting Law did not require the Board of Equalization to provide the plaintiffs with personal notice pursuant to NRS 241.034.

Although the facts of the *Harris* case are not the same as the issue at hand, they are analogous. Here, Complainant requested a grievance hearing regarding whether she received overpayment for the last two years. The District alleges that it made an error when it placed Complainant on the salary 2002-2003 salary schedule as an E-10. Whether Complainant is entitled to this step on the salary schedule does not involve an issue of her individual character and/or qualifications. Instead, the grievance involves an issue of whether the District made an error. Thus, the Board’s January 11, 2005 grievance hearing was not the type of administrative action contemplated in NRS 241.034, and the District did not violate the Open Meeting Law.

V.

**CONCLUSION**

Pursuant to the Nevada Supreme Court’s decision in *Harris*, the Douglas County School District Board of Trustees did not violate the Open Meeting Law by failing to provide Complainant with notice pursuant to NRS 241.034. As a result, the Office of the Nevada Attorney General will not proceed with any legal action and is closing its file on this issue.

DATED this ______ day of May, 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of May, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Toni Gumm
Post Office Box 2716
Gardnerville, Nevada  89410

John Soderman, Superintendent
Douglas County School District
Post Office Box 1888
Minden, Nevada  89423

Michael A. Nivinskus
Walther, Key, Maupin, Oats, Cox & LeGoy
Post Office Box 30000
Reno, Nevada  89520

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:  
GENOA TOWN ADVISORY BOARD  

Attorney General File No. 05-012  
OMLO 2005-08

I.  
INTRODUCTION  

In a letter received March 18, 2005, by the Office of the Nevada Attorney General, Mr. Paul A. Williams filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Mr. Williams alleges that the Genoa Town Advisory Board (Board) violated the Open Meeting Law at its March 8, 2005 meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.  
FINDINGS OF FACT  

On March 8, 2005, the Board conducted a properly noticed open meeting. Item 15(3) stated, “Discussion and possible action on two options for the recruitment process for the Town Manager’s position, including review of the job announcement.” During the discussion of this item, a member of the Board, Ms. Miluck, asked whether a full-time manager was needed. She went on to discuss the costs associated with the current manager’s dental work. She stated, “I was told by somebody at the County that Paul and his wife had $25,000 dollars in dental work.” She went on to state that she felt the town manager was not overworked and that the position could be reduced to a part-time position. The Board did not notice
Mr. Williams of this discussion.

III.

ISSUE

Did the Board consider Mr. Williams’ character, alleged misconduct, professional competence, or physical or mental health so as to require the Board to provide personal notice to him under NRS 241.033 of the Open Meeting Law?

IV.

CONCLUSIONS OF LAW

NRS 241.033(1), in pertinent part, states, “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.” [Emphasis added.] This statute contemplates that the purpose of the individual agenda item must be to “consider” the person’s character, alleged misconduct, professional competence, or physical or mental health. Here the purpose of the agenda item was to discuss and possibly take action regarding the recruitment of a town manager as well as a discussion of all issues relevant to the recruitment of that position. The purpose of the agenda item was not to consider Mr. Williams’ character, alleged misconduct, professional competence, or physical or mental health. Ms. Miluck argued that the Town of Genoa did not need a full-time town manager because of the high costs associated with a full-time position, which included medical and dental benefits. Unfortunately, she chose to disclose Mr. Williams’ alleged dental costs to prove her point. Nevertheless, Ms. Miluck’s comments related to the recruitment of a new town manager because if the other Board members agreed with her position, the Board would need to modify its announcement and recruitment process. The mere mention of Mr. Williams’ alleged physical health by a Board member did not unilaterally alter the Board’s agenda item. The record does not support the allegation that the Board directed its “consideration” and deliberation toward Mr. Williams’ alleged misconduct, professional competence, or physical or mental health. As a result, the Board did not owe Mr. Williams personal notice because the Board did not “consider” his character, alleged
misconduct, professional competence, or physical or mental health. Instead, it considered the recruitment process for a new town manager.

V.

CONCLUSION

The Open Meeting Law did not require the Genoa Town Advisory Board to personally notice Mr. Williams because it did not consider his character, alleged misconduct, professional competence, or physical or mental health. Instead, the Board deliberated over the recruitment process for a new town manager. The unilateral comments of one Board member that touch on such matters do not, without facts implicating the conduct of the Board generally, cause a violation of the notice requirement under NRS 241.033(1). Therefore, the Office of the Nevada Attorney General finds no violation of the Open Meeting Law and is closing its file on this issue.

DATED this ______ day of May, 2005.

BRIAN SANDOVAL
Attorney General

By: NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada  89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of May 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Paul A. Williams, Town Manager
Genoa Town Advisory Board
Post Office Box 14
Genoa, Nevada  89411

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:
WASHOE COUNTY BOARD OF COUNTY COMMISSIONERS

Attorney General File No. 05-009
OMLO 2005-009

I.
INTRODUCTION

In letters received February 24, 2005 and March 10, 2005, by the Office of the Nevada Attorney General, Mr. Gary R. Schmidt filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Mr. Schmidt alleges that the Washoe County Board of County Commissioners (Board) violated the Open Meeting Law at its February 15, 2005 retreat meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.
FINDINGS OF FACT

On February 15, 2005, the Board conducted a properly noticed open meeting. Item B was noticed on the agenda as follows:

B. Discussion and possible direction to staff regarding Board of County Commissioners' strategic initiatives:
   a) Review and status report on current strategic priorities
   b) Review of market trends affecting the County
   c) Establish strategic priorities and focus areas for 2005/06

With regard to a general public comment period, the agenda also stated, "*Public comments (three-minute time limit per person and limited to items not listed on the agenda). The Commission reserves the right to reduce the time, or limit the total time allowed for public
comment, if more than 10 people request to speak.” The Board conducted a general public
comment period and also allowed the public to comment on individual agenda items at the
time the Board deliberated about the individual item.

During the discussion of Item B, the Chair did not permit public comment after each
subpart. Instead, the Chair treated Item B and its various subparts as one agenda item. The
Chair, however, allowed District Attorney Gammick to address the Board as a staff member
during subpart b of Item B. After the Board discussed Item B in its entirety, the Chair opened
a public comment period to discuss that entire agenda item. During that public comment
period, District Attorney Gammick again addressed the Board, and the complainant,
Mr. Schmidt, also addressed the Board during this item. Mr. Schmidt also addressed the
Board during the public comment period for the other items.

III.

ISSUE

Did the Board violate the Open Meeting Law by not allowing public comment after each
subpart of Item B?

IV.

CONCLUSIONS OF LAW

NRS 241.020(2)(c)(3) states:

2. Except in an emergency, written notice of all meetings must be
given at least 3 working days before the meeting. The notice must
include:

   (c) An agenda consisting of:

   (3) A period devoted to comments by the general public, if any,
and discussion of those comments. No action may be taken upon
a matter raised under this item of the agenda until the matter itself
has been specifically included on an agenda as an item upon which
action may be taken pursuant to subparagraph (2).

Section 8.04 of the NEVADA OPEN MEETING LAW MANUAL states:

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.
Some public bodies choose to hear public comment during
individual agenda items, but that is not a requirement of the Open
Meeting Law.

NEVADA OPEN MEETING LAW MANUAL, § 8.04 (9th ed. 2001). Thus a public body must have a public comment period. If a public body permits a member of the public to speak during individual agenda items, the public body may prohibit further comments on individual agenda items during a general public comment period.

The Board did not allow members of the public to discuss each individual subpart of Item B. The Board did, however, permit District Attorney Gammick to address the Board during subpart b of Item B. District Attorney Gammick, however, addressed the Board as a member of its staff. It is a common lawful practice for a public body to receive information from its staff during individual agenda items. In this case the Board’s Chair chose to treat Item B as one agenda item, which was well within her lawful discretion. The record shows that members of the public had ample opportunity to comment on Item B and its various subparts, and as a result, the Board did not violate the Open Meeting Law by treating Item B as one agenda item.

V.

CONCLUSION

The Washoe County Board of County Commissioners met the legal requirements of the Open Meeting Law, and at this time, the Office of the Nevada Attorney General is closing its file on this issue.

DATED this _______ day of May, 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada  89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of May 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Gary R. Schmidt
9000 Mt. Rose Highway
Reno, Nevada 89511

Jonathan D. Shipman
Washoe County Deputy District Attorney
Post Office Box 30083
Reno, Nevada 89520-3083

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of: NORTH VALLEYS CITIZEN ADVISORY BOARD

Attorney General File No. 05-014 OMLO 2005-10

I.

INTRODUCTION

In a letter received April 12, 2005, by the Office of the Nevada Attorney General, Ms. Lorraine Bushey filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Bushey alleges that the North Valleys Citizen Advisory Board (Board) violated the Open Meeting Law at its March 14, 2005 meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

FINDINGS OF FACT

On March 14, 2005, the Board conducted a properly noticed open meeting. Listed under “NEW BUSINESS” was Item 14 B., which stated, “B.* North Valleys Summit Update – Report on the North Valleys Summit held on February 28th. Pastor Frank Bushey.” The asterisk connoted that this item was an action item, and Pastor Bushey’s name at the end of the agenda item indicated that he was the presenter of this item. Prior to Pastor Bushey presenting the item, a member of the Board, Ms. Junee Feero, spoke quite frankly about her personal opinion of the Bushey family, which by reference included Ms. Bushey. The minutes of the meeting indicate that member Feero “stepped down from the board stating that she
cannot see where anything with the Bushey name can do any good to counteract what the family has done in detriment to the north valleys.” North Valleys Citizen Advisory Board Minutes of the March 14, 2005 meeting.

III.

ISSUE

Did the Board consider Ms. Bushey’s “character, alleged misconduct, professional competence, or physical or mental health” so as to require the Board to provide personal notice to her under NRS 241.033 of the Open Meeting Law?

IV.

CONCLUSIONS OF LAW

NRS 241.033(1), in pertinent part, states, “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.” [Emphasis added.] This statute contemplates that the purpose of the individual agenda item must be to “consider” the person’s character, alleged misconduct, professional competence, or physical or mental health.

The purpose of agenda item 14 B was to update the North Valleys Summit held on February 28, 2005. The purpose of the agenda item was not to consider the “character, alleged misconduct, professional competence, or physical or mental health” of Ms. Bushey or her family. Nothing in the record suggests that the Board considered Ms. Bushey’s character during the presentation or discussion of the agenda item. If Ms. Feero’s comments caused the discussion and deliberation of agenda item 14 B to focus on Ms. Bushey or Pastor Bushey’s character, the Open Meeting Law would have required notice pursuant to NRS 241.033. But that was not the case. Therefore, the Open Meeting Law did not require the Board to provide Ms. Bushey with notice of the meeting pursuant to NRS 241.033.

V.

CONCLUSION

The Open Meeting Law did not legally require the North Valleys Citizen Advisory Board
to provide notice to Ms. Bushey pursuant to NRS 241.033 because the unilateral comments
by one Board member did not cause the Board to redirect its agenda item to “consider the
character” of Ms. Bushey or Pastor Bushey. Therefore, the North Valleys Citizen Advisory
Board did not violate the Open Meeting Law, and the Office of the Nevada Attorney General is
closing its file on this issue at this time.

DATED this ______ day of May, 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada  89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of May, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Lorraine Bushey
463 Oregon Boulevard
Reno, Nevada  89506

Blaine E. Cartlidge
Washoe County Deputy District Attorney
Post Office Box 30083
Reno, Nevada  89520-3083

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:

NEVADA STATE HIGH SCHOOL RODEO ASSOCIATION

Attorney General File No. 05-015
OMLO 2005-11

I.

INTRODUCTION

In a letter received April 6, 2005, by the Office of the Nevada Attorney General, Ms. Ann Johnstone filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Johnstone alleges that the Nevada State High School Rodeo Association (Association) violated the Open Meeting Law at its February 25, 2005 meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents.

II.

FINDINGS OF FACT

The Association is a non-profit corporation as evidenced by the records on file with the Nevada Secretary of State (Corporation Number C583-1967). The Association receives revenue from the State of Nevada license plates for support of rodeo activities. The Association conducted a meeting on February 25, 2005. The Association posted an agenda for that meeting and kept minutes of the meeting.

III.

ISSUE

Did the Association violate the Open Meeting Law at its February 25, 2005 meeting?
IV.

CONCLUSIONS OF LAW

Before proceeding with an analysis of whether the Association violated the Open Meeting Law, it must first be determined whether the Association is a “public body” that must comply with 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 which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. “Public body” does not include the Legislature of the State of Nevada.

Section 3.09 of the NEVADA OPEN MEETING LAW MANUAL states, “[a] private, non-profit corporation is a public body if it is formed by a public body, acts in an administrative, advisory and executive capacity in performing local governmental functions, and is supported in part by tax revenue from the public body.” NEVADA OPEN MEETING LAW MANUAL, § 3.09 (9th ed. 2001) (emphasis added).

Pursuant to NRS 482.37938, the Nevada Department of Motor Vehicles (DMV) issued a license plate to support the Reno Rodeo Foundation and the Association. For a member of the public to receive such a license plate, he/she must pay a $35.00 fee “in addition to all other applicable registration and license fees and governmental services taxes.” NRS 482.37938(3). This additional fee is a choice by a member of the public to pay what amounts to a charitable donation to the Association; this additional fee is not a tax being levied on all members of the public who utilize the services of the DMV. Therefore, the Association is not supported in whole or in part by tax dollars nor does it advise a public body that is supported in whole or in part by tax dollars. Accordingly, the Association does not meet the definition of a “public body” for purposes of the Open Meeting Law.
V.

CONCLUSION

The Nevada State High School Rodeo Association is not a “public body” for purposes of the Open Meeting Law and, as a result, does not have to comply with the Open Meeting Law. At this time, the Office of the Nevada Attorney General is closing its file on this issue.

DATED this ______ day of June, 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of June, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ann Johnstone
HC 61 Box 65A
Battle Mountain, Nevada  89820

Michelle Rankin, State Secretary
Nevada State High School Rodeo Association
Post Office Box 458
Alamo, Nevada  89001

Michael R. Montero
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, Nevada  89509-6069

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of: Churchill County Board of School Trustees Attorney General File No. 05-028

I.

INTRODUCTION

In a letter received June 9, 2005, by the Office of the Nevada Attorney General, Ms. Marlene Garcia filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Garcia alleges that the Churchill County Board of School Trustees (Board) violated the Open Meeting Law at its May 20, 2005, meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

FINDINGS OF FACT

On May 20, 2005, the Board held a properly noticed meeting. The notice listed a closed session at 6 p.m. to discuss the competence and character of superintendent applicants per NRS 241.030. The notice also listed a regular session at 7 p.m. to receive a report from the Superintendent’s Search Committee and Consultant (Search Committee) and to take action related to interviews of finalists.

During the time scheduled for the 6 p.m. closed session, the Chair did not entertain a motion to close the meeting. Instead, she indicated to the Board that a potential legal issue / / /
existed. As a result, the Board contacted its lawyer, Mr. Don Lattin, via telephone to discuss the potential legal issues.

During its discussion with Mr. Lattin, the Board kept the meeting open and recorded its discussion with Mr. Lattin. The potential legal issue was that two members of the Search Committee wrote recommendation letters on behalf of an applicant. Mr. Lattin informed the Board that he believed that these actions created a conflict of interest. A discussion ensued between Mr. Lattin and the Board regarding this issue. The discussions revolved around the issue of the superintendent search and whether the Board should even go into a closed meeting to consider the competence and character of the applicants because the conflict tainted the process. During this discussion, neither the Board nor Mr. Lattin revealed the identity of the two members of the Search Committee by name, but their professional positions were disclosed during the meeting. Because of the nature of their professional positions, a member of the public could have easily discerned their identities. After further deliberations, the Board never moved to close the meeting, and as a result, the Board adjourned the closed session portion of the meeting and recessed until 7 p.m., at which time it would begin its regular meeting.

At 7 p.m. the Board reconvened to conduct its regularly scheduled meeting. There was one action item on the agenda for that meeting which stated, “[r]eport and Recommendations from Superintendent’s Search Committee and Consultant; Board Action Related to Interviews of Finalists . . . .” The Board decided that after its discussion with Mr. Lattin it would not consider the applicants presented by the Search Committee. Instead, the Board took two actions. First, the Board deferred the Search Committee’s recommendations until the next Board meeting, and in the interim, the Search Committee was to meet, reconsider the potential applicants, and bring another recommendation to the Board. Second, it directed Mr. Lattin to author a letter to the two members regarding the ethical issues. The Board then adjourned the meeting.
At the conclusion of the meeting, the Complainant requested copies of the two recommendation letters and the resumes of the applicants recommended by the Search Committee. The Board refused to provide this information to her.

III.

ISSUES

A. Did the Board violate the Open Meeting Law by not providing sufficient notice on the agenda of what was to be discussed at the meeting?

B. Did the Board violate the Open Meeting Law by taking action on topics that were not on the agenda?

C. Did the Board violate the Open Meeting Law by discussing the two members of the Search Committee without noticing them pursuant to NRS 241.033?

D. Did the Board violate the Open Meeting Law by failing to provide the Complainant with support material that she requested?

IV.

CONCLUSIONS OF LAW

A. Did the Board violate the Open Meeting Law by not providing sufficient notice on the agenda of what was to be discussed at the meeting?

NRS 241.020(2)(c)(1) states that a public body must notice all of its meetings “at least 3 working days before the meeting,” and as a part of the notice, there must be an agenda that consists of “[a] clear and complete statement of the topics scheduled to be considered during the meeting.” Section 7.02 of the NEVADA OPEN MEETING LAW MANUAL states that a public body should “[a]lways keep in mind the purpose of the agenda is to give the public notice of what its government is doing, has done, or may do.” NEVADA OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001). That same section of the NEVADA OPEN MEETING LAW MANUAL also states, “[a]gendas should be written in a manner that actually gives notice to the public of the items anticipated to be brought up at the meeting.” NEVADA OPEN MEETING LAW MANUAL, § 7.02 (9th ed. 2001).
Here the Board’s agenda item for the closed meeting stated, “[r]eview and Discussion of Competence and Character of Superintendent Applicants as Recommended by the Superintendent Search Committee Per NRS 241.030.” The Board’s agenda item for the open meeting stated, “[r]eport and Recommendations from Superintendent’s Search Committee and Consultant; Board Action Related to Interviews of Finalists . . . .” Both agenda statements clearly indicated the topic to be deliberated and considered by the Board, which was the Search Committee’s recommendations for the superintendent position. The Board extended its discussion to the conflict of interest issue. This discussion, however, directly related to the Search Committee’s recommendations because the discussion related to whether the Board should accept the Search Committee’s recommendations. Therefore, the Board did not violate the Open Meeting Law by discussing the conflict of interest issue during the time scheduled for the closed meeting.

B. Did the Board violate the Open Meeting Law by taking action on topics that were not on the agenda?

NRS 241.015(1), in pertinent part, states: “‘Action’ means: (a) A decision made by a majority of the members present during a meeting of a public body; or (b) A commitment or promise made by a majority of the members present during a meeting of a public body.” In Sandoval v. Board of Regents, 119 Nev. 148, 67 P.3d 902 (2003), the Nevada Supreme Court favorably cited the Gardner case from Texas in analyzing the sufficiency of notice. In Gardner v. Herring, 21 S.W.3d 767, 773 (Tex. Ct. App. 2000), the Court of Appeals of Texas stated, “In disclosing that some action will be taken, the notice need not mention all possible results which may arise.” In Sandoval, the Nevada Supreme Court held that an agenda statement should “give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” Sandoval, 119 Nev. at 155, 67 P.3d at 906. As a result, it is the position of this Office that an agenda need not include every conceivable action the Board may take in relation to an agenda item, but it must provide the public with clear notice of the topics to be discussed.
The Board twice took action at the May 20, 2005 meeting. First, it took action to defer
the Search Committee’s recommendations until the next Board meeting and required the
Search Committee to present the Board with new recommendations. Second, the Board took
action to direct Mr. Lattin to send a letter to the two members of the Search Committee that
caused the conflict of interest. The issues raised in this factual scenario provide an excellent
example why the Open Meeting Law does not require an agenda to list every possible action.
Here the Board could not possibly foresee the conflict of interest that occurred. However,
under the circumstances, the Board was compelled to take some type of action to resolve the
issue. Therefore, the Board did not violate the Open Meeting Law because its actions were
properly related to the noticed items.

C. Did the Board violate the Open Meeting Law by discussing the two
members of the Search Committee without noticing them pursuant to NRS 241.033?

NRS 241.033, in pertinent part, states:

1. A public body shall not hold a meeting to consider the
classification, 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. Except
as otherwise provided in subsection 2, the written notice must be:
(a) Delivered personally to that person at least 5 working days
before the meeting; or
(b) Sent by certified mail to the last known address of that person
at least 21 working days before the meeting.

This Office previously opined that it will consider the actual discussion at a meeting to
determine whether notice is required pursuant to NRS 241.033. See OMLO 2002-24 (May
28, 2003). In doing so, this Office will look to see if the public body considered, deliberated
over, or thought seriously about the person’s character, alleged misconduct, professional
competence, or physical or mental health. See generally OMLO 2002-34 (August 2, 2002).

The Board did not identify the two members of the Search Committee that created the
conflict situation. In fact, the Board and the Board’s legal counsel went to great lengths to
avoid mentioning the two members of the Search Committee by name, but during the
discussion, the Board ended up disclosing the employment positions of both members.
Because of the nature of their positions, a member of the public could easily discern their
identities. However, the mere mentioning of a person’s name or reference to a known
person does not necessarily require a public body to provide notice pursuant to NRS
241.033. In this instance, the Board did “not hold a meeting” to consider these two
members’ alleged misconduct. NRS 241.033(1). To the contrary, the Board held the
meeting to consider the character of the applicants for superintendent. The Board did not
spend any time considering these two members’ conduct except to determine the negative
impact their actions had on the Search Committee’s recommendations, if any. Any
reference made of the two members of the Search Committee was tangential. As a result,
the Open Meeting Law did not require the Board to notice the two committee members
discussed at the May 20, 2005 meeting.

D. Did the Board violate the Open Meeting Law by failing to provide the
Complainant with support material that she requested?

In pertinent part, NRS 241.020 states:

5. Upon any request, a public body shall provide, at no charge, at
least one copy of:
   (a) An agenda for a public meeting;
   (b) A proposed ordinance or regulation which will be discussed at
    the public meeting; and
   (c) Any other supporting material provided to the members of the
    public body for an item on the agenda, except materials:
      (1) Submitted to the public body pursuant to a nondisclosure or
          confidentiality agreement;
      (2) Pertaining to the closed portion of such a meeting of the public
          body; or
      (3) Declared confidential by law.

   [Emphasis added.]

In OMLO 98-01, this Office opined that agenda support material must be made
“immediately available for pick up at the counter at the time it is sent out to board members,
and copies should also be made available at the meeting.” Section 6.06 of the OPEN MEETING
LAW MANUAL states, “[w]hen a public body is interviewing candidates for a vacant position in
an open session of the meeting, copies of the resumes may not be refused by the public body
on the grounds" that the applicant might suffer ramifications related to his/her current employment. [Emphasis added.]

Here the Complainant requested the two letters of recommendation from the public body and the resumes of the applicants recommended by the Search Committee. The public body, however, refused to provide her copies of the letters of recommendation or the resumes. The requested information pertained to a noticed meeting that could have been held to consider the applicants’ competence and character. At the time the request was made by the Complainant, neither the Board nor the Search Committee had disclosed the requested information in an open meeting. As a result, pursuant to NRS 241.020(5)(c)(2), the Open Meeting Law did not obligate the Board to provide the requested information because it was information that pertained to a meeting that could have legally been closed by the Board.

V.

CONCLUSION

The Churchill County Board of School Trustees complied with the Open Meeting Law, and as a result, this Office is closing its file on these issues at this time.

DATED this 29th day of August, 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada  89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 29th day of August, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

MARLENE J GARCIA REPORTER
LAHONTAN VALLEY NEWS
PO BOX 1297
FALLON NV 89407

DONN LIVONI SUPERINTENDENT
CHURCHILL COUNTY SCHOOL DISTRICT
545 EAST RICHARDS ST
FALLON NV 89406

An Employee of the Office of the Nevada Attorney General
I. INTRODUCTION

In a letter received July 18, 2005, by the Office of the Nevada Attorney General, Mr. Guy P. Felton III (Complainant) filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, the Complainant alleges that the Washoe County Board of Commissioners (Board) violated the Open Meeting Law at its July 12, 2005 meeting by failing to respond to Complainant’s public comments and by expelling Complainant from the public meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and videotape recordings.

II. FINDINGS OF FACT

On July 12, 2005, the Board conducted a properly noticed meeting pursuant to NRS 241.020. During the meeting, the Complainant made four inquiries of the Board. The Board refused to answer Mr. Felton’s inquiries, and Chairwoman Weber informed the public that the law did not permit the Board to respond to comments made during public comment. After a recess of the meeting, the Complainant again attempted to address the Board regarding a “due process” issue. The Board refused to entertain the Complainant’s further comments. In response, the Complainant called Chairwoman Weber a “humbug.” Ms.
Weber told the Complainant to leave the meeting or she would have him removed. The Complainant chose to leave the meeting.

III.

ISSUES

A. Did the Board violate the Open Meeting Law by stating that the Board could not respond to public comment?

B. Did the Board violate the Open Meeting Law by removing the Complainant from the open meeting?

IV.

CONCLUSIONS OF LAW

A. Did the Board violate the Open Meeting Law by stating that the Board could not respond to public comment?

NRS 241.020(2)(c)(3) states:

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

   (c) An agenda consisting of:

   (3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2). [Emphasis added.]

In OMLO 2001-56 (December 10, 2001), this Office opined that “discussion is not required, nor is it prohibited” by the Open Meeting Law during the period devoted for public comment pursuant to NRS 241.020(2)(c)(3).

Here the Board refused to answer the inquiries of the Complainant, and the Chairwoman stated that the law prohibited the Board from responding to the comments of the public. The Open Meeting Law does not require the Board to answer the Complainant’s inquiries. However, the Open Meeting Law does not prohibit the Board from discussing the public’s comments. In fact, the statute specifically states that the Board may discuss the
public’s comments during the public comment period. Although Chairwoman Weber’s 

misrepresentation of the law did not amount to a per se violation of the Open Meeting Law, 

this position of the Board may create a chilling effect on public comment resulting in a 

violation of the Open Meeting Law.\(^1\) As a result, this Office advises that the Board change its 

policy of stating that the law prohibits the Board from commenting on statements made by the 

general public.\(^2\)

**B. Did the Board violate the Open Meeting Law by removing the Complainant from the open meeting?**

This Office has always opined that a public body may establish “[r]easonable rules and 

regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on 

the part of those persons attending the meeting . . . .” NEVADA OPEN MEETING LAW MANUAL, 

§ 8.04 (9\(^{th}\) ed. 2001). For example, the Open Meeting Law does not require a public body to 

tolerate comments that are “willfully disruptive of the meeting by being irrelevant, repetitious, 

slanderous, offensive, inflammatory, irrational or amounting to personal attacks . . . .” Id.

Section 8.05 of the NEVADA OPEN MEETING LAW MANUAL states that the chair of a public body 

may, without the vote of the public body, “declare a recess to remove a person who is 

disrupting the meeting.”

Here the Complainant admits that he called the chair a “humbug,” which is a personal 

attack. Further, the Complainant insisted that the Board permit him the opportunity to discuss 

his perceived “due process” concern, which was not a relevant issue related to the agenda. 

These actions by the Complainant amounted to a willful disruption of the Board’s meeting. 

Therefore, the Board, in particular Chairwoman Weber, acted reasonably by expelling the 

Complainant from the meeting, and the Board did not violate the Open Meeting Law.

/ / /

\(^1\) “[A]ny practice or policy that discourages or prevents public comment, even if technically in compliance 

with the law, may violate the spirit of the Open Meeting Law.” See NEVADA OPEN MEETING LAW MANUAL, 


\(^2\) This Office suggests that at the conclusion of the public comment period or after each individual public 

member’s comments, the Chairperson ask the Board members whether they would like to address the comments 
made by the public.
V. CONCLUSION

The Washoe County Board of Commissioners did not commit a per se violation by misrepresenting that the Open Meeting Law prohibits the public body from discussing comments made by the general public during the public comment period. However, the continuation of this policy by the Board may result in a violation of the Open Meeting Law depending upon its effect on the Board’s public comment period. With regard to the Board requesting that the Complainant leave the meeting, the evidence supports that the Board acted reasonably, and as a result, the Board did not violate the Open Meeting Law.

DATED this ______ day of August, 2005.

BRIAN SANDOVAL
Attorney General

By: NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada  89701-4717  
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of August, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

GUY P FELTON III
1220 SALEM PLACE #5
RENO NV 89509

BONNIE WEBER
CHAIRWOMAN
WASHOE COUNTY COMMISSIONERS
PO BOX 11130
RENO NV 89520

JONATHAN D SHIPMAN
DEPUTY DISTRICT ATTORNEY
PO BOX 30083
RENO NV 89520-3083

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:  
LAS VEGAS HOUSING AUTHORITY

Attorney General File No. 05-043

I.

INTRODUCTION

In a letter received August 29, 2005, by the Office of the Nevada Attorney General, Mr. Jerry Neal filed a complaint with this office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Mr. Neal alleges that the Las Vegas Housing Authority (Authority) violated the Open Meeting Law at its August 26, 2005, meeting by allowing two members of the public to address the Authority during a particular agenda item, but not allowing him to speak during that same item.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents.

II.

FINDINGS OF FACT

On August 26, 2005, the Authority held an open meeting pursuant to NRS chapter 241. At the meeting, the Authority received a presentation about its new Honolulu project, which was a discussion-only item on the agenda. During this discussion, the Authority permitted two members of the public to speak on this item. When the complainant attempted to speak during the same agenda item, the Authority’s chair refused to allow him to address the Authority. However, the complainant could have addressed the Authority on this and any other issue during the general public comment period later in the meeting.
III.

ISSUE

Did the Authority violate the Open Meeting Law by allowing two members of the public to comment during the consideration of a particular agenda item, but prohibiting the complainant from commenting at the same time?

IV.

CONCLUSIONS OF LAW

NRS 241.020(2)(c)(3) states:

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

   . . . .

   (c) An agenda consisting of:

   . . . .

   (3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

Section 8.04 of the Nevada Open Meeting Law Manual states:

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. Some public bodies choose to hear public comment during individual agenda items, but that is not a requirement of the Open Meeting Law.

Although the Open Meeting Law does not require public bodies to permit members of the public to comment on particular agenda items, this office believes that the statutory intent is for public bodies to treat members of the public equally with regard to addressing the public body. For instance, this office has opined: “A public body’s restrictions must be neutral as to the viewpoint expressed, but the public body may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority, of the public body. . ..” OPEN MEETING LAW MANUAL, § 8.04 (9th ed. 2001). If the law permitted public bodies to treat members of the public differently, it would allow for abuses of the open meeting process by
public bodies. For example, the chair of a public body may choose to only allow members of
the public supporting his/her point of view to comment during a particular agenda item. The
chair could then relegate all opposing points of view to the public comment period after the
agenda item. Such a result is absurd because it creates inequity among members of the
public. Thus, members of the public must be treated equally under the Open Meeting Law
with regard to making public comment and failure to do so by a public body is a violation of
the Open Meeting Law.

Here, it is not disputed by the Authority that it permitted two members of the public to
comment on the Authority’s new Honolulu project, but at the same time, prohibited the
complainant from commenting on that project. Because the Authority treated similarly
situated members of the public differently, it violated the Open Meeting Law. However, the
complainant had the opportunity to address the Authority on this project during the general
public comment period, and the particular agenda item at issue was a discussion-only item.
Therefore, the Authority’s violation was *de minimis* and will not result in litigation at this time.
V.

CONCLUSION

The Las Vegas Housing Authority violated the Open Meeting Law by permitting two members of the public to comment during a particular agenda item and, at the same time, prohibited another member of the public from commenting during the same agenda item. In the future, the Office of the Nevada Attorney General advises the Las Vegas Housing Authority to act in a manner consistent with this opinion and treat members of the public equally with regard to making public comment during an open meeting. Failure by the Las Vegas Housing Authority to act in a manner consistent with this opinion may lead to future litigation.

DATED this _______ day of October, 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
Carson City, Nevada  89701-4717
(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of October, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

JERRY M. NEAL, SECRETARY
THE MARBLE MANOR & MARBLE MANOR
ANNEX HOUSING RESIDENT COUNCIL
814 M STREET
LAS VEGAS, NV 89106

PARVIS GHADIRI, EXECUTIVE DIRECTOR
LAS VEGAS HOUSING AUTHORITY
340 NORTH 11TH STREET
LAS VEGAS, NV 89101

SCOTT A. MARQUIS, ESQ.
MARQUIS & AURBACH
ATTORNEYS AT LAW
10001 PARK RUN DRIVE
LAS VEGAS, NV 89145

An Employee of the Office of the Nevada Attorney General
In the Matter of: HENDERSON CITY COUNCIL

I.

INTRODUCTION

In a letter received August 17, 2005, by the Office of the Nevada Attorney General, Mr. Matt Huffman filed a complaint with this office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Mr. Huffman alleges that the Henderson City Council (Council) violated the Open Meeting Law by conducting a series of gatherings to deliberate about the ratification of a new police chief with intent to avoid the Open Meeting Law prior to the Council’s August 16, 2005 meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, response by the Henderson City Attorney’s Office, and affidavits provided by Henderson’s mayor, a member of the city council, and assistant city manager.

II.

FINDINGS OF FACT

In Henderson, the city manager selects the chief of police, and the city’s charter requires the Council to ratify that selection. At a properly noticed public meeting on August 16, 2005, the Council ratified the city manager’s selection, Alan Kerstein, as the Chief of Police for the City of Henderson.

Prior to that meeting, the city manager was asked by a member of the Council to set up a meeting with her to meet the top candidate for the police chief position. Because of this
request, the assistant city manager, through the human resources department, set up meetings with each council member and the mayor. The staff intended these meetings as an opportunity to "meet and greet" the top candidate and for no other purpose. On July 14, 2005, the top candidate for the police chief position, Mr. Kerstein, met with Council Members Cyphers and Hafen individually and met with Mayor Gibson and Council Member Clark collectively. A quorum of the Council was not present during any of the "meet and greet" meetings. During the meetings, general discussions occurred between the top candidate and the members of the Council. No council member indicated his acceptance of Mr. Kerstein as police chief. After these meetings, the council members did not share their thoughts about Mr. Kerstein with other members of the Council until the properly noticed August 16, 2005 meeting. However, prior to the meetings, on July 13, 2005, Assistant City Manager Calhoun stated that a candidate would not be picked until after the "meet and greet" meetings with the Council.

III. ISSUE

Did the "meet and greet" meetings with the top candidate for the police chief position by council members amount to a "Meeting" for purposes of the Open Meeting Law?

IV. CONCLUSIONS OF LAW

NRS 241.015(2) defines "Meeting" as:

2. "Meeting":
   (a) Except as otherwise provided in paragraph (b), means:
      (1) 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.
      (2) Any series of gatherings of members of a public body at which:

1 Since the Council consists of 5 members, a quorum of the Council is 3 members pursuant to NRS 241.015(4).

2 This office received affidavits under penalty of perjury from Mayor Gibson, Council Member Hafen, and Assistant City Manager Calhoun stating the facts adopted herein.

3 "Henderson close to naming new police chief," Las Vegas Sun, July 13, 2005.
(I) Less than a quorum is present at any individual gathering;  
(II) The members of the public body attending one or more of the 
gatherings collectively constitute a quorum; and  
(III) The series of gatherings was held with the specific intent to 
avoid the provisions of this chapter.

In Dewey v. Redevelopment Agency of the City of Reno, 119 Nev. 87, 67 P.3d 1070 (2003), the Nevada Supreme Court provided significant analysis regarding “serial communications.” In Dewey, the Redevelopment Agency for the City of Reno (Agency) owned the Mapes Hotel, a historic landmark listed on the National Trust for Historic Preservation. In 1999, the Agency adopted a resolution in which it would accept bids to rehabilitate the Mapes Hotel. The Agency’s staff put together a request for proposals (RFP), which was sent to more than 580 developers. In response to the RFP, the Agency received six proposals to rehabilitate the Mapes Hotel.

On August 31, 1999, the Agency’s staff conducted two private back-to-back briefings with a non-quorum of the Agency attending each briefing; three members attended one briefing and two members attended the other briefing. For the purposes of an Agency meeting, a quorum was four or more members. The purpose of these meetings was to inform the Agency members of potential issues regarding the RFP responses. The testimony at trial was clear that the Agency members neither provided their opinions, voted on the issue, nor were they polled by staff as to their opinions or potential votes at the briefings. The purpose of the briefings was to provide Agency members with information regarding a complex public policy issue.

The Court stated that the record did not provide substantial evidence that the Agency member’s thoughts, questions, or opinions from one briefing were shared with the members of the other briefing. There was also no evidence of polling by the Agency’s staff to determine the opinions or potential votes of the Agency’s members. Further, there was no evidence in the record that the briefings resulted in the Agency taking action or deliberating on the issue. Finally, the record indicated that the Agency’s staff intended to comply with the Open Meeting Law in conducting the briefings in the back-to-back fashion without a quorum of members. As a result, the Court held that substantial evidence did not exist to prove the
briefings resulted in serial communications creating a constructive quorum and that the Agency’s back-to-back briefings were not “meetings” for purposes of the Open Meeting Law.

Here, the Attorney General’s Office is concerned with Assistant City Manager Calhoun’s comments that a candidate would not be picked until after the “meet and greet” meetings with the council members. This comment could be construed that the staff intended to poll the council members regarding their approval of Mr. Kerstein. However, there is no evidence to suggest any polling occurred. In *Dewey*, the Court stated that because a non-quorum of the public body was present at each briefing, the complaining party must provide substantial evidence to prove “serial communications.” *Id.* at 100. Therefore, the issue in this case is whether the statement of the assistant city manager equates to “substantial evidence” resulting in a finding that the Council conducted “serial communications” in violation of the Open Meeting Law.

“Substantial evidence” is defined as “that quantity and quality of evidence which a reasonable man could accept as adequate to support a conclusion.” *State Employment Security Department v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729 P.2d 497 (1986) quoting from *Robertson Transportation Co. v. Public Service Commission*, 159 N.W. 2d 636, 638 (Wis. 1968). Although the statement made by the assistant city manager could arguably indicate that the Council or its staff desired some type of acquiescence to Mr. Kerstein’s hire through “serial communications,” the evidence collected by this office contradicts that conclusion. First, the assistant city manager provided an affidavit under penalty of perjury that he made the introductions of Mr. Kerstein to the members of the Council. His affidavit further stated that the members of the Council neither commented, expressed concerns, nor acquiesced to Mr. Kerstein’s hire as police chief after the meetings. The affidavit also stated that the meetings were social in nature. Second, the affidavits of Mayor Gibson and Councilman Hafen confirmed that the meetings were social in nature and that they did not discuss or deliberate about the candidate until the open meeting on August 16, 2005. Third, the response by the City Attorney’s Office stated that staff’s intent was to comply with the Open Meeting Law and not to poll the Council. There has been no substantial evidence
provided to this office that the Council intended to avoid the requirements of the Open Meeting Law.

V.

CONCLUSION

In conclusion, the evidence indicates that the Henderson City Council did not violate the Open Meeting Law because the series of communications did not amount to a “meeting” under the Open Meeting Law, NRS 241.015(2)(a)(2). However, the comments of the assistant city manager do create a concern, and this office recommends that under similar circumstances the City of Henderson clearly state the process to the public in order to prevent the appearance of impropriety.

DATED this _____ day of October, 2005.

BRIAN SANDOVAL
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
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(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of October, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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LAS VEGAS SUN
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HENDERSON NV 89074

HENDERSON CITY COUNCIL
ATT MONICA SIMMONS CITY CLERK
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240 WATER STREET 1ST FLOOR
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SHAUNA HUGHES CITY ATTORNEY
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240 WATER STREET 4TH FLOOR
HENDERSON NV 89009

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:
CITY OF FERNLEY “WATER TEAM"

Attorney General File No. 05-036

I. INTRODUCTION

In a letter received August 5, 2005, by the Office of the Nevada Attorney General, the Builders Association of Western Nevada (BAWN) filed a complaint with this office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, BAWN alleges that the City of Fernley “Water Team” (“Water Team”) violated the Open Meeting Law because it is a public body failing to comply with the Open Meeting Law.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents including the affidavits of City Manager Gary Bacock and Mayor David Stix.

II. FINDINGS OF FACT

At the April 20, 2005 open meeting of the Fernley City Council, Paul Taggart, City Attorney of Fernley, gave a presentation on the Open Meeting Law. During his presentation Mr. Taggart noted that the “Water Team” was not a public body for purposes of the Open Meeting Law. In response, BAWN filed a complaint with this office alleging that the “Water Team” may be a public body failing to comply with the Open Meeting Law.

Through its investigation, this office discovered the following facts regarding the “Water Team.” The “Water Team” is generally made up of Fernley’s Community Development Director, Public Works Director, City Manager, City Attorney, and Mayor. The group...
discusses issues regarding water supply relevant to each officer’s department. The group’s
primary purpose is to make each department in Fernley aware of the issues confronting the
other departments within Fernley. By exchanging this information, it ensures that Fernley’s
departments have a consistent response to issues regarding water supply and services. The
“Water Team” was not created by a public body, does not advise a public body, and does not
vote or act as a “collegial body.”

III.

ISSUE

Is the “Water Team” considered a public body for the purposes of compliance with the
Open Meeting Law?

IV.

CONCLUSIONS OF 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 which expends or disburses or
is supported in whole or in part by tax revenue or which advises or
makes recommendations to any entity which expends or disburses
or is supported in whole or in part by tax revenue, including, but
not limited to, any board, commission, committee, subcommittee
or other subsidiary thereof and includes an educational foundation
as defined in subsection 3 of NRS 388.750 and a university
foundation as defined in subsection 3 of NRS 396.405. “Public
body” does not include the Legislature of the State of Nevada.

In Section 3.01 of the Nevada Open Meeting Law Manual, it states:

The combined definitions of “meeting,” “action,” and “quorum” in
NRS 241.015(1), (2), and (4) indicate the type of body covered by
the Open Meeting Law is a collegial body. Those definitions
repeatedly use the plural word “members” and also the words
“quorum” and “simple majority,” which indicate the body must be
comprised of more than one person and those persons share
voting powers.

NEVADA OPEN MEETING LAW MANUAL, §3.01, at 14 (9th ed. 2001); see A. Schwing, OPEN
(March 31, 2005), this office opined that the Open Meeting Law “concerns itself with
meetings, gatherings, decisions, recommendations, and other actions ‘obtained through a
collective consensus of the members.” Further, in OMLO 2004-02 (January 20, 2004), this office opined:

   [S]taff meetings within an agency or interagency meetings of groups which have no independent legal authority, no independent budget, and no formal mission or purpose will not fall within the definition of a public body if these groups, as a group, do not advise or make recommendations to a public body. [Emphasis added.]

Here, the “Water Team” does not take action or make recommendations to a public body through a collective consensus of its members. The “Water Team” does not vote on any issue. In fact, the “Water Team” meetings are interdepartmental meetings to discuss how each department within the City of Fernley should manage water service and supply. The “Water Team” has no independent legal authority, no independent budget, and no formal mission or purpose. The only purpose of these meetings is to ensure a consistent policy throughout Fernley’s departments regarding water supply and resources. Therefore, the “Water Team” is not considered a public body under the Nevada Open Meeting Law.

V.

CONCLUSION

The City of Fernley “Water Team” did not violate the Open Meeting Law because it is not a public body under NRS 241.015. Therefore, the “Water Team” was under no legal obligation to comply with the Open Meeting Law. At this time, this office is closing its file on this issue.

DATED this ______ day of November, 2005.

GEORGE J. CHANOS
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
Nevada State Bar No. 6800
100 North Carson Street
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(775) 684-1205
CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this _____ day of November, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

RICHARD STAUB
ATTORNEY AT LAW
PO BOX 392
CARSON CITY NV 89702

PAUL G TAGGART ESQ
KING & TAGGART LTD
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CARSON CITY NV 89703

An Employee of the Office of the Nevada Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of: WASHOE COUNTY BOARD OF COMMISSIONERS
Attorney General File No. 05-044

I.
INTRODUCTION

In a letter received September 29, 2005, by the Office of the Nevada Attorney General, Guy Felton filed a complaint with this office alleging a violation of the Nevada Open Meeting Law of Chapter 241 of the Nevada Revised Statutes. In particular, Mr. Felton alleges that the Washoe County Board of Commissioners (Board) violated the Open Meeting Law at its September 26, 2005 meeting by excluding Complainant from the meeting for making comments that were irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks and for failing to place a warning that such behavior would not be tolerated on the agenda.¹

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this office reviewed the complaint, agenda, supporting documents, and video tape recordings.

II.
FINDINGS OF FACT

On September 26, 2005, the Board held a properly noticed open meeting. Prior to the public comment period, Chairwoman Weber stated:

¹ The Complainant alleges that the Board violated his First Amendment rights under the Constitution of the United States of America. This office analyzes the complaint only under its authority pursuant to Chapter 241 of NRS.
And before we go to this item as the Chairman of this commission I am just going to share with those in the audience that I am going to insist from today forward on decorum in this meeting room. And the open meeting law does not require a public body to tolerate comments that are willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks. Section 8.05 of the Nevada Open Meeting Law Manual states that the chair of a public body may, without the vote of the public body declare a recess to remove a person who is disrupting the meeting.  

This warning was not placed on the agenda. After her warning, Mr. Felton addressed the Board during the public comment period and stated:

Guy Felton, publisher of Profanepople.info. Public officials whose actions are ominous, sinister and tyrannical invite and deserve uninhibited, vehement and caustic contempt. I request that my remarks be agendized [sic] for in-depth give and take discussion but then you people are deathly afraid of give and take discussion. You prefer cheap shots in response to criticisms with no rebuttal permitted. There are no insults to severe for corrupt public officials who lie as Bonnie Weber did during the meeting of July 12. (Emphasis added.)

Chairwoman Weber interrupted Mr. Felton and warned him to refrain from insulting comments. Mr. Felton then stated, “Ms. Weber, did you lie on July 12?” Chairwoman Weber again warned Mr. Felton to proceed with decorum or he would be removed from the meeting. Mr. Felton again proceeded with his comments and stated:

There are no insults too severe for corrupt public officials who hide the people’s business from the people by arrogantly refusing to answer questions about the people’s business and by use of the hide-and-seek consent agenda. There are no insults too severe for corrupt public officials who defecate on the principle of openness by not televising all meetings with equal camera treatment given to all speakers and by playing games with the start times of meetings in order to intentionally confuse the public. There are no insults too severe for corrupt public officials who misrepresent key laws as District Attorney Gammick did in his statement read here on September 13. (Emphasis added.)

It must also be noted that Mr. Felton’s tone and manners were caustic. After this comment by Mr. Felton, Chairwoman Weber called a recess of the meeting and had Mr. Felton removed from the meeting.
III.

ISSUE

Did the Board violate the Open Meeting Law by removing Mr. Felton from the meeting and not placing the warning that persons could be removed for cause on the agenda?

IV.

CONCLUSIONS OF LAW

NRS 241.020(2) states:

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

   (c) An agenda consisting of:

   (3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

Section 8.04 of the NEVADA OPEN MEETING LAW MANUAL states that a public body may place “reasonable rules and regulations” on public comment, but “any rule or regulation that limits or restricts public comment must be clearly articulated on the agenda.” NEVADA OPEN MEETING LAW MANUAL, §8.04, at 50 (9th ed. 2001) referring to OMLO 99-08 (July 8, 1999).

Section 8.04 of the manual also states that as long as a “public body’s restrictions” are viewpoint-neutral, a “public body may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the public body,” or if the comments willfully disrupt a meeting by being “irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks.” ld. Section 8.05 of the manual also permits a chairperson of a public body to recess a meeting, “without vote of the body,” to exclude a disruptive person from a meeting. ld. § 8.05 at 51.

Here, the Complainant alleges that he was improperly removed from the meeting resulting in a violation of his First Amendment rights, and that the Board violated the Open Meeting Law by not placing Chairwoman Weber’s warning on its agenda. It is the position of this office that a public body should be able to face criticism by members of the general public
during the public comment period of an open meeting. However, at the same time, the public
body does not have to face comments amounting to slanderous, offensive, inflammatory,
irrational, or personal attacks. It does not appear from the videotape that Chairwoman Weber
excluded Mr. Felton from the meeting because of his criticism of her, the Board, or District
Attorney Gammick in regard to the performance of his duties. The videotape indicates that
she stopped Mr. Felton because of what amounted to personal attacks in his comments.
Therefore, the Chairperson’s decision to exclude Mr. Felton from the meeting was viewpoint-
neutral and reasonable. As a result, this office believes that Chairwoman Weber acted in
compliance with the Open Meeting Law.

It must be noted, however, that the removal of any member of the general public from
a meeting is an extreme remedy. Because such an act by a public body may result in a
chilling effect on public comment and a potential violation of the Open Meeting Law, this office
advises the Board to use this remedy as a last resort to prevent the inappropriate disruption of
public meetings.

With regard to Complainant’s allegation that the Board violated the Open Meeting Law
by failing to place Chairwoman Weber’s warning on the agenda, this office accepts the
interpretation of the Washoe County District Attorney’s Office. In response to Mr. Felton’s
complaint, the Washoe County District Attorney’s Office stated, “The requirement that
attendees at public meetings observe appropriate decorum and common courtesy is not a
rule or regulation that restricts public comment or limits First Amendment expression, but
rather is a basic obligation of doing business in any forum.” As a result, this office finds that
such a warning does not need to be placed on an agenda and that the Board did not violate
the Open Meeting Law in this regard.

V.

CONCLUSION

With reference to the Washoe County Board of Commissioners requesting that Mr.
Felton leave the meeting, the evidence supports that the Board acted reasonably. With
regard to the Board failing to place Chairwoman Weber’s warning on the agenda, this office
does not believe that act falls under a rule or regulation on public comment that needs to be stated on the agenda. Instead, it is simply a common courtesy that should be followed during a public forum by all those who attend. As a result, the Board complied with the Open Meeting Law during its September 26, 2005 meeting.

DATED this _______ day of November, 2005.

GEORGE J. CHANOS
Attorney General

By:

NEIL A. ROMBARDO
Senior Deputy Attorney General
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100 North Carson Street
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ______ day of November, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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An Employee of the Office of the Attorney General
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:

EUREKA COUNTY SENIOR CENTERS
ADVISORY BOARD

Attorney General File No. 05-031

I.

INTRODUCTION

In a letter received June 27, 2005, by the Office of the Nevada Attorney General, Ms. Lisa Wolf filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Wolf alleges that the Eureka County Senior Centers Advisory Board (Board) violated the Open Meeting Law at its April 11, 2005 meeting by discussing her position with the senior center without providing her personal notice pursuant to NRS 241.033.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

FINDINGS OF FACT

There are two senior centers in Eureka County, the Eureka Senior Center and the Fannie Komp Senior Center. Eureka County operates both centers. The Board makes recommendations to the Eureka County Commission on issues facing the senior centers. The Board conducts its meetings pursuant to the Open Meeting Law.

The Complainant, Ms. Wolf, was considered a “casual employee” of the Fannie Komp Senior Center. In approximately March of 2005, Adell Panning, Director of the Fannie Komp Senior Center, decided that she should terminate the Complainant’s employment with the
senior center. As a result, she provided the Complainant with a choice between resigning
and being terminated. The Complainant chose to resign.

On April 11, 2005, the Board conducted a properly noticed meeting. The item noticed
for 3:20 p.m. stated, “[q]uarterly Report, Adell Panning, Fannie Komp Senior Center (Action).”
During Ms. Panning’s report she mentioned the forced resignation of the “casual employee” at
the senior center. She did not, however, mention the name of the “casual employee.” The
Board never considered the forced resignation of the employee as an issue, and the Board
did not make any comment or determination regarding whether Ms. Panning properly forced
the resignation of the employee. The Board, however, never personally noticed the
Complainant pursuant to NRS 241.033, that her forced resignation would be discussed at the
April 11, 2005 meeting.

III.

ISSUE

Did the Board violate the Open Meeting Law by failing to provide the Complainant with
personal notice pursuant to NRS 241.033?

IV.

CONCLUSIONS OF LAW

NRS 241.033(1) states:

1. 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. Except
   as otherwise provided in subsection 2, the written notice must be:
   (a) Delivered personally to that person at least 5 working days before the meeting; or
   (b) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.
   A public body must receive proof of service of the notice required by this subsection before such a meeting may be held. [Emphasis
   added.]

This Office previously opined that it will consider the actual discussion at a meeting to
determine whether notice is required pursuant to NRS 241.033. See OMLO 2002-24
(May 28, 2003). In doing so, this Office will look to see if the public body considered,
deliberated over, or thought seriously about the person’s character, alleged misconduct, professional competence, or physical or mental health. See generally OMLO 2002-34 (August 2, 2002).

Here the Board received a report from the director of one of its facilities. The director, who held the authority to terminate the position, mentioned that she forced the resignation of a “casual employee” pursuant to her authority. The Board did not notice a separate agenda item to consider this issue nor did it hold this “meeting to consider the character, alleged misconduct, professional competence, or physical or mental health” of the Complainant. NRS 241.033(1). In fact, the Board did not comment on the forced resignation at all. As a result, the Open Meeting Law did not obligate the Board to notice the Complainant of this discussion.

V.

CONCLUSION

The Open Meeting Law did not require the Eureka County Senior Centers Advisory Board to personally notice the Complainant of its discussion at its April 11, 2005 meeting because the Board did not consider the Complainant’s forced resignation. Any discussion of the Complainant’s forced resignation was informational only. As a result, the Board complied with the Open Meeting Law, and at this time, this Office is closing its file on this issue without further action.

DATED this ______ day of August 2005.

BRIAN SANDOVAL
Attorney General

By: NEIL A. ROMBARDO
Senior Deputy Attorney General
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this ____ day of August 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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