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STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

NEVADA DISCOVERY MUSEUM

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Attorney General File No. 07-042
OMLO 2008-01

I.

INTRODUCTION

This office received a request for an opinion as to whether the Nevada Discovery Museum (Museum) is subject to the Open Meeting Law (OML) because the 2007 Legislature appropriated \$1 million for its use. The 2007 Legislature appropriated \$1 million for construction and initial operating expenses for the Museum.¹ The issue is whether the Museum (a private nonprofit corporation) and its Board of Directors is subject to the OML based on receipt of public money.

II.

FINDINGS OF FACT

The Museum’s Articles of Incorporation and Bylaws show it was incorporated in 2004 as a private nonprofit corporation (NRS Chapter 82) and is recognized under federal law as a Section 501(3)(c) corporation. We reviewed Senate Bill 443 § 16 (2007) for more information regarding the purpose for which the Legislature appropriated \$1 million. The Legislative appropriation was exclusively designated for construction and initial operating expenses. The Legislative appropriation sunsets June 30, 2011, after which the remaining balance of the appropriation may not be committed by the Museum for future use. S.B. 443, § 17 (2007). The Museum is empowered to raise money by solicitation and donation. Following construction and initial operation, the Museum must become self supporting.

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¹ Senate Bill No. 443 (2007), Sec. 16. (1.) states: “There is hereby appropriated from the State General Fund to the disbursement account created by section 1 of this act for the use of the Nevada Discovery Museum in Reno the sum of \$1,000,000 for capital construction and initial operating expenses.”

1 The Museum's corporate purposes are constrained by Section 501(c)(3) of the Internal
2 Revenue Code. It must be operated exclusively for charitable, religious, educational, scientific
3 and literary purposes. Our review of the corporate Bylaws does not reveal any affiliation with
4 state or local government, nor is there a requirement that the Board of Directors act in any
5 administrative, advisory, or executive role to a state or local governmental entity. The
6 absence of any affiliation with state or local government was also confirmed in our interview
7 with the Museum Board's secretary.

8 III.

9 ISSUE

10 Whether the Museum is subject to the OML (NRS Chapter 241) because of the
11 Legislative grant of \$1 million (public funds) for construction and initial operations?

12 IV.

13 CONCLUSIONS OF LAW

14 The Museum's purpose as expressed in its Bylaws and Articles of Incorporation show
15 that it is a civic organization intended to advance certain educational and scientific purposes.
16 In Nevada, if a civic organization is intended to perform any administrative, advisory,
17 executive, or legislative function for state or local government and if it expends or disburses or
18 is supported in whole or in part by tax revenue, or if it is intended to advise or make
19 recommendations to any other Nevada governmental entity which expends or disburses or is
20 supported in whole or in part by tax revenue, then it is a public body subject to the OML.
21 Open Meeting Law Manual § 3.09 (10th ed. 2005); See e.g., *Seghers v. Community*
22 *Advancement, Inc.*, 357 So. 2d 626, 627 (La. Ct. App. 1978); *Raton Public Service Co. v.*
23 *Hobbes*, 417 P.2d 32, 34-35 (N.M. 1966); accord *OMLO 2001-17* (April 12, 2001). Neither the
24 Articles of Incorporation nor the Museum's Bylaws grant the Museum traditional governmental
25 functions. It will not act in administrative or advisory roles.

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1 The Open Meeting Law Manual (10th ed. 2005) states that if a government body or
2 agency establishes a civic organization (i.e. the Discovery Museum, for example), even
3 though the new organization is composed of private citizens, the new organization may well
4 constitute a “public body” under the law. *Palm Beach v. Gradison*, 296 So. 2d 473, 476 (Fla.
5 1974). Our examination of the Articles of Incorporation and Bylaws does not show any
6 connection to state or local government by any of the means expressed above.

7 Finally, the Open Meeting Law Manual (10th ed. 2005) also clarifies that the mere
8 receipt of a grant of public money does not by itself transform a private, nonprofit civic
9 organization into a “public body” for purposes of the OML, nor does the membership of a few
10 government officials on the organization's board of directors, per se, make the organization a
11 “public body.” Open Meeting Law Manual, § 3.09 (10th ed. 2005); See *OMLO 2004-03*
12 (February, 10, 2004) citing *OMLO 1999-05* (January 20, 1999).

13 V.

14 CONCLUSION

15 We conclude that the Museum is not subject to the OML. This office has consistently
16 opined that private organizations may be subject to the OML unless the private organization
17 has no connection to state or local government and secondly, the private organization does
18 not perform any tasks the state or local government would otherwise have to perform. See
19 *OMLO 2001-17* (April 12, 2001). The Board of Directors does not act in an executive,
20 legislative, or advisory role to any state or local government. The Museum was not created by
21 a state or local government, instead it is a private nonprofit corporation incorporated for
22 charitable, educational, scientific, or literary purposes. The legislative appropriation from the

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1 State's general fund is only to be used for capital construction and initial operating expenses.
2 There is no tax revenue stream supporting the Museum. The Museum will be self-supporting.
3 The Museum is not subject to the OML.

4 DATED this 24th day of January, 2008.

5 CATHERINE CORTEZ MASTO
6 Attorney General

7 By: s/s George H. Taylor
8 GEORGE H. TAYLOR
9 Senior Deputy Attorney General
10 Nevada State Bar No. 3615
11 100 North Carson Street
12 Carson City, Nevada 89701-4717
13 (775) 684-1230

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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 24th day January, 2008, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Beth Wells
Nevada Discovery Museum
490 S. Center Street
Reno, NV 89501

s/s Carole Brackley
An Employee of the Office of the Attorney General

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STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

DOUGLAS COUNTY PLANNING
COMMISSION

} Attorney General File No. 07-051
} OMLO 2008-02

I.

INTRODUCTION

This office received an Open Meeting Law (OML) complaint from Mr. Jim Slade alleging that a quorum of the Douglas County Planning Commission (Commission) met during a recess in a duly noticed meeting (November 13, 2007) to deliberate and/or take action on a matter that was being discussed and over which the Commission had jurisdiction.¹ It is alleged that four commissioners met in the Commission’s meeting room with two members of the public, who were there to advocate for their interests, in a matter the Commission was openly discussing and had only taken a recess to allow counsel to research a legal issue. The complainant alleges he overheard the conversation when he approached the gathering confirming that the discussion was about the Commission’s current agenda item.

The office of the Attorney General has jurisdiction to investigate alleged violations of the OML. NRS 241.037. This office opened an investigation and requested audio and/or video tapes of the November 13, 2007 Commission meeting from the public body. In addition, we requested and received written and signed statements from each commissioner alleged to have participated in an unnoticed meeting during a recess of the open meeting. Each commissioner was asked to describe in detail what had been discussed during the recess gathering. We have reviewed the agenda, minutes of the meeting, the audio and video disks of the meeting as well as the Deputy District Attorney’s (counsel for the Commission) response and defense of the Commission’s actions to determine if a violation occurred and secondly whether any violation was cured as asserted by the Commission.

¹ NRS 241.015 (2)(a)(1) and (2) defines meeting as: “(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.”

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II.

ISSUES

1. Whether a quorum of members of the Commission met in violation of NRS 241.015(2)(a)(1)?

2. Whether the Commission’s subsequent action and disclosure of the facts of the gathering immediately following the recess cured any violation?

III.

FACTS

The Commission met on November 13, 2007 to consider a zoning text amendment (item 11, DA 07-112) to the Douglas County Code that would control the division of certain agricultural land for conservation purposes. The controversial portion of the amendment would force the landowner (rancher) to lose a development right in order to create a two-acre parcel every five years because of the application of a special standard (loss of a development right) if these new parcels were in a primary flood plain.

Those affected by the proposed zoning textual amendment included members of the agricultural community (ranchers) who own more than 100 acres of irrigated land. Mr. Mark Neddenriep, an unofficial spokesperson for the agricultural community, spoke during public comment stating that the central issue for the ranchers was whether ranchers must give up a development right in order to create a two-acre parcel under the terms of staff’s proposed amendment. Mr. Neddenriep stated he felt staff’s objective was to stop the proliferation of 19 acre parcels carved out of agricultural land, but even that laudable goal conflicted with the practical economics for a rancher. If a rancher had to give up a development right in order to create a two-acre parcel, the rancher might lose incentive to keep water on his 19 acre agricultural parcel. There would be a risk that the rancher would be tempted to strip the water leaving a “weedette.” It was these issues that seemed to underlie the Commission’s discussion and it was the issue of development rights vis-à-vis the creation of two-acre parcels that appears to have been discussed during the recess gathering.

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1 After public comment closed, Douglas County Senior Planner, Harmon Zuckerman
2 raised staff's concerns about the possibility of conflict between the amendment and the county
3 code if the Commission followed the agricultural community's desire to change staff's
4 proposed textual amendment. He was concerned about the potential increase in development
5 rights in the flood zone and the impact the proposed changes to the amendment advocated by
6 the agricultural community might have on the flood plain by future owners of agricultural land
7 who might want to do the same thing that the current owners would be allowed to do if the
8 Commission adopted the rancher's proposed change.

9 Because of the tension between the ranchers' desires and staff's proposed
10 amendment, the chairman ordered a ten minute recess so that counsel could research the
11 legal issue of whether a continuance of the matter to another public meeting was feasible.

12 During the recess a quorum of the commissioners appeared to have gathered behind
13 the dais, in the Commission's meeting room. There was no recording or minutes taken of this
14 gathering. Mr. Slade, the complainant observed the gathering and he also approached to
15 listen to the conversations.

16 Whether a quorum gathered is somewhat disputed. The complainant stated he
17 observed the gathering of Commissioners Howell, Madsen, Pross and McKinney who were in
18 discussion with Mr. Neddenriep and Mr. Leising, two members of the public (ranchers). He
19 approached them to hear what was being discussed. The complaint alleges that the ranchers
20 were lobbying the commissioners to accept their version of the amendment, rather than staff's
21 version.

22 Each commissioner involved in the gathering submitted signed statements to this office
23 in the course of our investigation, in which they described the substance of and their
24 involvement in the conversation during the recess.

25 Commissioner Howell's recollection of his conversation with the ranchers was that one
26 of the ranchers was explaining that their residences on the flood plain never flooded because
27 they knew where to build. Commissioner Howell noticed that Mr. Neddenriep, another
28 rancher had approached them presumably to listen in. Commissioner Howell states he

1 responded to a question from Mr. Leising before he realized three other commissioners had
2 gathered behind him. He knew then that a quorum was gathered. He stated he exited the
3 room when he noticed that a quorum had gathered. Despite the presence of a quorum, he
4 denied there was a violation of the OML saying that he was not aware of a discussion of the
5 agenda item.

6 Commissioners Madsen and McKinney admit that during the recess they discussed
7 with the ranchers proposed solutions to the apparent problem with the amendment caused by
8 staff's treatment of development rights. Commissioner McKinney's recollection of the recess
9 gathering was that he along with Commissioners Madsen, and Pross were in conversation
10 with Mr. Neddenriep at the dais. Commissioner Howell's seat is adjacent to Commissioner
11 Madsen. Commissioner McKinney states that when Commissioner Pross approached and
12 asked a question, Commissioner Howell departed, but he was unsure whether Commissioner
13 Howell participated in the conversation. Mr. Leising and Mr. Slade also approached the
14 gathering "during this period" according to Commissioner McKinney. Both commissioners
15 state that the recess conversation did not arrive at a solution, that no promises or decisions
16 were made by them, nor did the discussion influence their votes.

17 Commissioner Pross's statement and the recollection of Mr. Slade's account of the
18 recess offer a contrasting view to the accounts of the other commissioners of the recess
19 gathering. Commissioner Pross spoke on the record about the apparent OML violation
20 immediately upon the Commission reconvening. She stated for the record that the ranchers
21 and the commissioners were discussing a solution to the ranchers' objection to staff's
22 requirement that they give up a development right in order to create a two-acre parcel.
23 Following her apology, she said, in response to questions from counsel, that no promises, or
24 decisions had been given or made during the recess meeting. The other commissioners were
25 invited to comment on her recounting of the facts, but none did so. This would have been an
26 appropriate place commissioners who did not believe that an OML violation had occurred to
27 voice their opinions.

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1 Mr. Slade's complaint stated that when he observed four Commissioners talking with
2 two ranchers he approached to listen in. He says that the meeting lasted about 10 minutes
3 and that Commissioner Howell left about half way through. Commissioner Pross's statement
4 and her video apology leave no doubt that she believed an OML violation occurred during the
5 recess. She remembers four Commissioners on their side of the dais conversing with two
6 ranchers and that Mr. Slade was about two feet from the group.

7 Our review of the video and audio of this portion of the meeting showed that following
8 Commissioner Pross' statement the Chairman invited the ranchers to comment about the
9 possibility of a continuance to allow for more dialog with staff. Several ranchers spoke urging
10 the Commission to bring the matter to a vote. Following those comments, the Chairman
11 re-opened item 11, DA -07-112 to any public comment. He can be heard on the audio saying
12 he would accept any other public comment since he "opened the can of worms" by soliciting
13 the ranchers' reaction to the issue of a continuance. Eight people spoke during this second
14 period of public comment including Mr. Slade who addressed the potential OML violation. He
15 also commented that he favored a continuance so that the ranchers and county staff could
16 have more time to resolve their differences.

17 IV.

18 CONCLUSIONS OF LAW

19 1. Whether a quorum of members of the Commission met in violation of
20 NRS 241.015(2)(a)(1)?

21 There is no video or audio of the recess period during which it is alleged that a quorum
22 of the Board met. After review of each Commissioner's statement, the complainant's
23 recollection of the recess gathering and the counsel's response to the complaint, the facts
24 show that a quorum of the Board met in an unscheduled non-noticed meeting during the
25 recess while counsel researched a legal issue. This recess meeting appears to have been
26 unintentional as it took place in the open with the public free to approach; nevertheless, a
27 quorum was gathered at one time for at least a part of the recess and it appears the agenda
28 item was considered by a quorum of the Commission.

1 Commissioner Pross's apology on the record immediately following convening of the
2 Board admitted to an OML violation which was not contradicted by the other Commissioners
3 who were asked to comment on her brief apology. None did. Had there been a question in
4 their minds about the presence of a quorum that was the time to assert it.

5 2. Whether the Commission's subsequent action and disclosure of the facts of the
6 gathering immediately following the recess gathering, cured the violation?

7 We have carefully reviewed the audio and video record of the Board's consideration of
8 item 11 as well as commissioner's statements, and counsel's response to the complaint.
9 Counsel's response presents a compelling argument that the disclosure of the violation by
10 Commissioner Pross coupled with her recitation of the conversation between the
11 Commissioners and the two ranchers, cured the violation so that the Commission was justified
12 in voting on item 11 that evening.

13 Actions taken in violation of the OML are void. NRS 241.036. But even though a
14 violation of the OML may have occurred during the recess, it is also clear that no action
15 occurred as a result. Therefore, we must consider whether the Commission cured the
16 violation through disclosure. It is our opinion that the disclosure on the record and the
17 subsequent actions of the commissioners did cure the violation so that no further action by the
18 Commission or by this office is necessary.

19 We believe the record supports our view, as Commissioner Pross and all the other
20 Commissioner statements attest, that no promises, or commitments were made during the
21 recess. The gathering was in plain view of the public in the Commission's meeting room,
22 hardly a tact suggesting an intentional violation. We are persuaded by Commissioner Pross's
23 apology and the statements of the other Commissioners, that the discussion with the ranchers
24 during the recess meeting did not affect their votes. OMLO 2004-16 (written statements from
25 members of public body accepted as evidence.)

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1 Many other states allow a public body to cure a violation as does Nevada.² The OML
2 manual encourages public bodies to cure violations voluntarily. OML Manual, §11.01 – 11.04,
3 pps. 71–72 (10th ed. 2005). It does so by encouraging public bodies to “stop, contain, and
4 correct violations,” – advice that is set forth in examples in the manual. See *also* OML
5 Attorney General Opinion 06-013 (violation with regard to public comment and adjournment
6 were cured by the remaining members of the Board following the chairman’s abrupt
7 departure).

8 V.

9 CONCLUSION

10 The public was not deprived of access to the Commission’s deliberation and vote on
11 agenda item DA 07-112. During the recess gathering, there was no action on the pending
12 matter. To the extent there was deliberation among the quorum, it was cured by immediate
13 disclosure of what was discussed when the Commission reconvened. The chairman reopened
14 public comment following the recess to allow anyone to comment. Public comment

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23 ² It seems that whether a discussion during a recess is in violation of the law is in part dependent on
24 factual details surrounding the discussion such as: (1) location of the discussion, i.e. whether it took place behind
25 closed doors, in secret, or whether it took place in the same room where the public meeting was being
26 conducted and whether the discussion barred the public from participation or whether the public was free to
27 overhear the conversation (2) whether the discussion was recorded (3) length of discussion (4) whether a
28 quorum was present (5) whether the discussion took place during consideration of one matter or between
consideration of different matters on the agenda (6) whether the public body voted immediately following the
recess without further public discussion (7) the substance of the discussion (8) whether there was evidence of
prejudice to the public and (9) whether the public body acted in good faith. Anne Taylor Schwing, *Open Meeting
Laws 2d* § 6.54, pps. 314-316 (2000).

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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 7th day February, 2008, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Mr. Jim Slade
589 Leealan Drive
Gardnerville, NV 89460

Cynthea Gregory, Esq.
Deputy District Attorney
Douglas County
P.O. Box 218
Minden, NV 89423

Douglas County Planning Commission
P.O. Box 218
Minden, NV 89423

/s/ Carole Brackley
An Employee of the Office of the Attorney General

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STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

CLARK COUNTY BOARD OF
SCHOOL TRUSTEES

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Attorney General File No. 08-011
OMLO 2008-03

I.

COMPLAINT

The Office of the Attorney General (Office) has reviewed an Open Meeting law (OML) complaint alleging the Clark County Board of School Trustees (BST) violated the OML when it refused to honor a member’s request that her verbatim remarks read to BST during discussion on an agenda item, be included “word for word for the record.” It is alleged BST’s refusal to set out the remarks in the minutes was a violation of NRS 241.035(1)(e).

This Office has jurisdiction to investigate and prosecute violations of the OML. NRS 241.037. This opinion is issued pursuant to the Attorney General’s authority and as a guideline for enforcement of the OML.

During our investigation we reviewed the complaint and subsequent correspondence from the complainant and the public body. We reviewed BST’s response to the complaint, along with the agenda and minutes for two meetings, December 13, 2007 and February 14, 2008.

II.

FACTS

During the December 13, 2007 BST meeting, a member stated she wished to make a brief comment on the item under consideration “word for word for the record.” Staff interpreted this to mean the member’s statement should be included in the text of the minutes for that meeting. At the February 14, 2008 BST meeting, during the agenda item for approval of the December 13, 2007 meeting minutes, BST voted to only approve the minutes of the December 13, 2007 meeting if the member’s “word for word” remarks were summarized, not included verbatim. BST did not approve the minutes with the verbatim statement inserted.

1 BST provided this Office with two versions of the December 13, 2007 meeting minutes.
2 One version is “uncorrected.” It was prepared by staff and sets forth the member’s verbatim
3 remarks directly in the text of BST’s discussion of the item. BST also sent this Office a
4 “corrected” version which reflects the change made to the minutes by staff after BST voted to
5 summarize the verbatim remarks. Staff appended the member’s prepared written statement
6 as an exhibit to the minutes.

7 **III.**
8 **ISSUE**

9 Whether the OML (NRS 241.035) is violated when a public body does not include in
10 the text of its minutes, the verbatim statement of a member of the public body when the
11 demand is made that certain designated remarks be included verbatim in the minutes?

12 **IV.**
13 **DISCUSSION**

14 NRS 241.035(c) only requires that “The substance of all matters proposed, discussed
15 or decided” be reflected in the minutes of a public body’s meeting. There is no explicit
16 requirement or authority in Nevada’s statute to require a public body to include verbatim
17 remarks in its minutes.¹ The complainant relies on NRS 241.035(e) as authority.
18 NRS 241.035(e) states that public bodies shall keep “written minutes . . . including: . . . [a]ny
19 other information which any member of the public body requests to be included or reflected in
20 the minutes.” [Emphasis added.] Resolution of this issue lies in the legislative declaration of
21 purpose found in NRS 241.010.² The Nevada Supreme Court, when discussing the purpose

22 ¹ As a general proposition, minutes of meetings of public bodies should contain an accurate description of
23 the topics discussed, the action taken, if any, but not a description of the discussion itself. Ann Taylor Schwing,
24 *Open Meeting Laws 2d*, § 5.52 (2000) citing NRS 241.035(1); Ariz.Op.Atty.Gen. 183-006 (Jan. 17, 1983) (minutes
25 need not repeat verbatim or summarize discussions that occur in meetings); *Maready v. City of Winston-Salem*,
26 342 N.C. 708, 733, 467 S.E.2d 615, 631 (1996) (minutes “should contain a record of what was done at the
meeting, not what was said by the members”), quoting Henry Robert, *Roberts Rules of Order Newly Revised*
§ 47 at 458 (9th ed. 1990). Verbatim stenographic records are not required in the absence of a statute so
requiring such a record (citations omitted).

27 ² “NRS 241.010 Legislative declaration and intent. In enacting this chapter, the Legislature finds and
28 declares that all public bodies exist to aid in the conduct of the people’s business. It is the intent of the law that
their actions be taken openly and that their deliberations be conducted openly.”

1 of the OML in light of the legislative declaration, said that “a statute promulgated for the public
2 benefit such as a public meeting law should be liberally construed and broadly interpreted to
3 promote openness in government.” *Dewey v. Redevelopment Agency of City of Reno*, 119
4 Nev. 87, 94, 64 P.3d 1070, 1075 (2003) *citing* Op. Nev. Att’y Gen. No. 85–19 (December 17,
5 1985); *see also McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 651, 730 P.2d
6 438, 443 (1986). Exceptions to legislative intent of openness must be expressly enacted,
7 specifically stated by statute and are narrowly construed by the Court. *McKay v. Bd. of*
8 *County Comm’rs of Douglas County*, 103 Nev. 490, 492–493, 746 P.2d 124, 125–126 (1987).

9 Review of the allegation in this complaint has been performed in light of the
10 Legislature’s fundamental tenets set forth above and reiterated by the Nevada Supreme
11 Court. The allegation in the complaint does not involve an exception to the OML. This
12 Office’s resolution of the issue is intended to broadly interpret the law to promote openness in
13 government.

14 Interpreting NRS 241.035(1)(e) to require a public body to set forth verbatim remarks
15 of one of its members in the text of its minutes is not required by statute,³ and it does not
16 further the statute’s requirement that minutes should reflect the substance of discussions.⁴
17 Complainant’s interpretation of NRS 241.035(1)(e) also does not further the legislative goal of
18 openness in government based on consideration of the policy and spirit underlying the OML,
19 because in our view it would lead to an absurd result.⁵

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23 ³ *Runion v. State*, 116 Nev. 1041, 1046–47, 13 P.3d 52, 55–56 (2000) (“The intent of the legislature is
the controlling factor in statutory interpretation.”)

24 ⁴ *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. _____, 148 P.3d 790, 792–93 (Adv. Op. 110,
25 December 28, 2006) (“When a statute is clear on its face, we will not look beyond the statute’s plain language.”)
(footnote omitted); *State v. Stu’s Bail Bonds*, 115 Nev. 436, 439, 991 P.2d 469, 471 (1999) (“Furthermore, a court
26 should presume that the legislature intended to use words in their usual and normal meaning.”)

27 ⁵ *Washoe Medical Ctr. v. Second Judicial Dist. Ct.*, 122 Nev. _____, 148 P.3d 790, 793 (Adv. Op. 110,
28 December 28, 2006) (“Finally, we consider ‘the policy and spirit of the law and will seek to avoid an interpretation
that leads to an absurd result.’”) (footnote omitted; quoting *City Plan Dev. Co. v. State Labor Comm’r*,
121 Nev. 419, 435, 117 P.3d 182, 192 (2005))

1 The "corrected" minutes for the February 14, 2008 meeting summarized the member's
2 prepared written remarks and the remarks of the other members during the December
3 13, 2007 meeting. However, the "corrected" minutes also have appended as an exhibit a
4 copy of the member's written statement that was read to the other members on December
5 13, 2007, which is the same statement the member wanted inserted "word for word" into the
6 minutes.

7 When preparing the corrected minutes, BST determined to give members the same
8 privilege that members of the public enjoy when making similar requests. NRS 241.035(1)(d).
9 If a member of the public requests that his prepared written remarks be made a part of the
10 minutes, the law requires the public body to honor that request. By appending a copy of the
11 member's prepared written remarks to the minutes of the December 13, 2007 meeting, the
12 legislative intent underlying NRS 241.035 is served, and more importantly, a strained
13 interpretation of the statute is avoided.

14 NRS 241.035(1) does require the public body to append prepared written remarks by a
15 member of the public to minutes if requested, but the same privilege was not extended to
16 members of the public body. There is no requirement in the statute that verbatim remarks be
17 included in the minutes by request of any person. The conclusion drawn is that the phrase
18 "any other information" does not include the right to have the public body insert verbatim
19 remarks in the text of the minutes. Appending prepared written remarks to the minutes is an
20 accommodation which serves the public interest just as efficiently as the insertion of verbatim
21 remarks into the text of the public body's minutes and it also furthers the goal of openness in
22 government. However, there is no requirement in statute that verbatim remarks by anyone be
23 inserted into minutes.

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V.

CONCLUSION

We find BST's interpretation of NRS 241.035 to be in compliance with legislative tenets of furthering openness in government even though there is no statutory requirement that verbatim minutes be taken during public meetings. NRS 241.035(1)(e) does not require a public body to insert verbatim remarks into the text of its minutes. The public body may append prepared written remarks by a member to its minutes just as it would do if a member of the public made the same request.

DATED this 9th day June, 2008.

CATHERINE CORTEZ MASTO
Attorney General

By: /s/ George H. Taylor
GEORGE H. TAYLOR
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 9th day June, 2008, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Board of Trustees
Clark County School District
5100 West Sahara Avenue
Las Vegas, NV 89146

Dr. Walt Ruffles
Superintendent of Schools
Clark County School District
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Mary-Anne Miller
County Counsel
Office of the District Attorney – Civil Division
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Las Vegas, NV 89155-2215

Shirley Barber
1308 Robin Street
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/s/ Carole A. Brackley
An Employee of the Office of
the Attorney General

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STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

INDIAN HILLS GENERAL
IMPROVEMENT DISTRICT

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Attorney General File No. 08-010
OMLO 2008-04

I.

COMPLAINT

The Office of the Attorney General (Office) reviewed an Open Meeting Law (OML) complaint from Ms. Diane Humble, a resident within the jurisdiction of the Indian Hills General Improvement District (IHGID). Ms. Humble complained that a quorum of the IHGID Board of Trustees, a public body within the meaning of NRS Chapter 241, met without notice or agenda immediately following adjournment of IHGID’s regularly scheduled meeting on April 7, 2008. Specifically, she alleged a quorum of the IHGID met to discuss IHGID business, among other issues, and that the meeting was arranged without notification to the public that a quorum would remain after adjournment of the regularly scheduled meeting on April 7, 2008.

This Office has statutory jurisdiction to investigate and prosecute alleged violations of the OML. NRS 241.037. This opinion is being issued as a guideline for public bodies regarding compliance with the OML. This Office reviewed the complaint, IHGID’s response to the complaint, the agenda for the April 7, 2008 meeting, and the audio tape of the meeting. This Office also asked for and received statements from each of the IHGID Trustees who gathered following the April 7, 2008 regularly noticed Trustee meeting. The Trustees were asked to describe the meeting and disclose in detail the substance of their discussion.

II.

FACTS

It is not disputed that a quorum of the IHGID gathered after adjournment of the regularly scheduled and noticed meeting on April 7, 2007. IHGID’s response, by and through its counsel, states that despite the acknowledged gathering, no public business was discussed, “either from a prior agenda, that night’s agenda [April 7th], or a future agenda.”

1 The District also states that “there was no discussion or deliberation toward any decision on
2 any action item within the purview of the District’s Board of Trustees.” There was no recording
3 of the gathering. The three Trustees who gathered after the regular meeting were asked to
4 submit individual written statements detailing the substance of their conversation. Counsel for
5 the District attended the regularly scheduled meeting but left when the meeting was
6 adjourned. It does not appear from the Trustee’s statements that counsel was asked about
7 the propriety of a quorum of the Trustees gathering for another meeting after adjournment of a
8 regularly scheduled meeting.

9 Review of the three statements from Trustees Laura Lau, Bill Eisele, and Brian Patrick
10 revealed that the gathering of a quorum was Chairperson Lau’s idea and that she asked
11 Trustee Patrick to join her for purposes of “observation.” Board Chairperson Laura Lau stated
12 that she asked Brian Patrick to stay after the April 7, 2008 meeting to meet with her and
13 Bill Eisele. Trustee Patrick stated he was not told about the purpose of the meeting, only that
14 Trustee Lau wanted to talk with Trustee Eisele. Trustee Lau stated she wanted an observer
15 present to be a buffer because past meetings with Trustee Eisele had been heated. She did
16 not want this discussion to get out of hand. Her statement did not acknowledge the presence
17 of a quorum of Trustees or whether she was aware of the ramifications of meeting with a
18 quorum of Trustees under the OML.

19 Trustee Lau’s statement gave some background about IHGID’s operations. At the time
20 of the April 7, 2008 meeting, IHGID was without the services of a general manager. It
21 appears that the Board members had assumed some of the duties of the general manager,
22 including day-to-day supervision of operations, perhaps until another manager was hired.
23 Trustee Lau wanted to speak with Trustee Eisele about a “personnel matter” regarding his
24 daughter-in-law, who is the Human Resources Manager for the District. This information
25 shows the purpose of the gathering was in furtherance of the Board’s oversight of District
26 operations. After a heated discussion, it was agreed that Trustee Lau would handle the
27 personnel issue. Neither Trustee Lau nor Trustee Eisele described the nature of the
28 personnel issue; only Trustee Patrick’s statement characterized the issue as “payroll

1 discrepancies” although he was quick to indicate the issue may have arisen because the
2 District was using a “newly contracted payroll company” and because the company was new,
3 there could be problems with the issuance of checks.

4 After a discussion of the payroll issue concerning Trustee Eisele’s daughter-in-law, the
5 quorum discussed other issues. Trustee Lau was concerned that Trustee Eisele was
6 spending considerable time at the District involved in day-to-day activities of the field crew and
7 District staff and that he was “making decisions regarding how the District is run without
8 getting a consensus from the Board.” Trustee Lau objected to Trustee Eisele’s time spent at
9 the District office without “involving the Chairperson or Vice Chairperson in any of his
10 decisions regarding the District.”

11 Trustee Eisele’s statement was that he was unaware of the purpose of the gathering or
12 that Trustee Lau had asked Trustee Patrick to also be present. He recalls discussion of the
13 personnel matter, an issue he characterized as “ministerial processing of payroll matters.” He
14 also recalled that Trustee Lau “chastised him for bringing to the Board a Consultant’s contract”
15 (Haugen & Keck) which he claims was voted on and approved by the Board.

16 **III.**

17 **ISSUE**

18 Whether a quorum of the Board of Trustee’s of IHGID violated the NRS 241.015(2) by
19 gathering without notice or agenda after adjournment of the Board of Trustee’s April 7, 2008
20 regularly scheduled and noticed meeting?

21 **IV.**

22 **DISCUSSION**

23 Applicability of Nevada’s OML is dependent on the presence of a quorum of a public
24 body, whether through physical presence or constructive presence. NRS 241.015(2);
25 *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev.87, 95, 64 P.3d 1070,
26 1075-1076 (2003) (Nevada follows the majority of states in adopting a quorum standard as the
27 test for applying the Open Meeting Law to gatherings of the members of public bodies). A
28 quorum of the Trustees of IHGID was present following adjournment of its regularly scheduled

1 meeting on April 7, 2008, so the OML is implicated. We must review the Trustee's statements
2 to determine if NRS 241.015(2) was violated.

3 NRS 241.015(2) defines "Meeting" as "The gathering of members of a public body at
4 which a quorum is present to deliberate toward a decision or to take action on any matter over
5 which the public body has supervision, control, jurisdiction or advisory power." The statute
6 explicitly states that a meeting occurs when a quorum gathers if either of two events also
7 occurs. If a quorum of a public body either deliberates or takes action¹ on any matter over
8 which the public body has supervision, control, jurisdiction or advisory power, then a meeting
9 has taken place.

10 Despite the District's assertion that no public business was discussed by these
11 Trustees, "either from a prior agenda, that night's agenda [April 7th] or a future agenda." or
12 that "there was no discussion or deliberation toward any decision on any action item within the
13 purview of the District's Board of Trustees," We believe the quorum of Trustees met in
14 violation of NRS 241.015(2).

15 First, under the OML, discussion of matters not appearing on a public body's agenda
16 by a quorum does not exempt the discussion from the application of the OML.
17 NRS 241.015(2) does not define the people's business as only matters appearing on a public
18 body's agenda. It specifically states that the OML is applicable whenever a quorum of a
19 public body deliberates or takes action on any matter over which the public body has
20 supervision, control, jurisdiction, or advisory power. The fact that a matter has not appeared
21 on a public body's agenda is not dispositive of its characterization as people's business for
22 purposes of the OML.

23 In this case, we are convinced that the matters the IHGID quorum discussed following
24 adjournment of its regular meeting were matters within its control and supervision. This is
25 especially true given the admissions in the statements that the Board (and Trustee Eisele in
26 particular) had assumed at least some day-to-day control and supervision of the District's
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28 ¹ NRS 241.015(1) defines "Action" as (a) a decision by a majority of the members present during a
meeting of a public body; (b) a commitment or promise made by a majority of members present during a meeting
of a public body; and (c) and (d) which merely specify the action requirements for public bodies with or without
elected members.

1 operations. Furthermore, the quorum appears to have deliberated, as well as taken action,
2 (“action” means a commitment or promise) with regard to at least one matter under its control.
3 When the quorum agreed to allow Chairperson Lau to handle the personnel issue concerning
4 the District’s Human Resources Manager, the quorum both deliberated and took action thus
5 violating the OML.

6 The quorum also discussed the District’s day-to-day operation. Chairperson Lau
7 expressed an objection that Trustee Eisele did not consult her or the vice-chairman about
8 decisions he made concerning the District’s operation. This indicates that the Board had
9 assumed de facto control and operation of the District. There is nothing in the record before
10 us that indicates the Board had appointed an interim general manager or had delegated
11 matters handled by a general manager to someone already on staff. In fact, Chairperson Lau
12 states that in the absence of a general manager, she had to deal with personnel issues that
13 would normally be under the general manager duties.

14 There were other matters discussed by this quorum which clearly fell within any
15 definition of the people’s business such as the consultant’s contract, but it is not clear that any
16 further deliberation or action took place as the statements indicate the meeting lasted only
17 10 to 15 minutes.

18 There was no explanation why the Board appears to have assumed control of the
19 District or why an interim manager (even if an appointed interim manager was a member of
20 the Board) was not appointed, but it is clear that the Board was conflicted about who was to
21 be giving orders to District personnel.

22 **V.**

23 **CONCLUSION**

24 Although the meeting of a quorum of IHGID was a clear violation of the OML, this office
25 will not seek legal action against the IHGID at this time. It is appropriate, considering the
26 egregious nature of the violation, to warn the Board that we will not hesitate to pursue legal
27 remedies allowed under law, including seeking injunctive relief to force the Board to obey the
28 OML, if the Board ignores the OML in the future. We strongly encourage a thorough

1 discussion of this matter before the entire Board during a future meeting so that this violation
2 is not repeated and that all members and the public are aware of the requirements of the
3 OML. We are closing our file on this matter.

4 DATED this 22nd day July, 2008.

5 CATHERINE CORTEZ MASTO
6 Attorney General

7
8 By: /s/ George H. Taylor
9 GEORGE H. TAYLOR
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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 23rd day July, 2008, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Dianne Humble
991 Hilltop Drive
Carson City, NV 89705

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/s/ Carole Brackley
An Employee of the Office of
the Attorney General

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STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of:

CLARK COUNTY BOARD OF
SCHOOL TRUSTEES

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Attorney General File No. 08-020
OMLO 2008-05

I.

COMPLAINT

Thomas Mitchell, editor of the Las Vegas Review Journal, filed an Open Meeting Law (OML) complaint against the Clark County Board of School Trustees (BST) alleging the BST “held an improper closed session to discuss whether to approve a collective bargaining agreement with the teacher’s union.” Furthermore, Mr. Mitchell alleged the closed session was improper because it is his belief the BST’s purpose was to discuss its approval of the contract, rather than discuss negotiating strategy or to receive attorney-client privileged communication.

The Office of the Attorney General (Office) has jurisdiction to investigate OML complaints and to enforce compliance with the OML in all Nevada courts. NRS 241.037. We asked BST for a detailed response including minutes and audio/video copies of both the open and closed session portions of the meeting held on June 26, 2008.

II.

FACTS

We reviewed the video of the June 26, 2008 meeting of the BST at which it considered agenda items 7.08, 7.09 and 7.10.¹ Immediately upon the Chairwoman’s call for consideration

¹ 7.08 EMPLOYEE LABOR RELATIONS. Discussion and possible action regarding negotiation or informal discussion with management representatives regarding collective bargaining with employee organizations or individual employees, and discussion regarding the approval of closed session minutes. Closed session and action may be recommended as necessary.

7.09 FINAL APPROVAL OF NEGOTIATED AGREEMENT. Discussion and possible action on final approval of the amendments to the 2005-2009 Negotiated Agreement between the Clark County School District and the Clark County Education Association may be recommended.

7.10 FINAL APPROVAL OF NEGOTIATED AGREEMENT. Discussion and possible action on final approval of the amendments to the 2005-2009 negotiated Agreement between the Clark County School District

1 of item 7.08, a member moved for a closed meeting. NRS 288.220. The BST voted to go into
2 closed session then left the podium. Immediately upon return from the closed session the
3 BST approved the negotiated amendments to the contract without any discussion.

4 The record of the 27 minute closed session identified the topics which were discussed.
5 Discussion centered on the impact school district budget cuts would have on the new contract,
6 contract revisions, and the fact that contract negotiations could be reopened under certain
7 circumstances. The BST then returned to open session and voted on the employment
8 contract.

9 NRS 288.220² provides an exemption from any provision of the OML including
10 NRS 241.020(1).³ NRS 288.220(4) exempts any meeting of a local government employer
11 with its management representative(s) from the provisions of the OML, or any other statute
12 that requires a meeting to be open to the public. The BST's closed meeting on June 26, 2008
13 was with the District's chief negotiator (for the bargaining process with the teacher's unions)

14 _____
15 and the Clark County Association of School Administrators and Professional-Technical Employees may be
16 recommended.

17 ² **NRS 288.220 Certain proceedings not required to be open or public.** The following proceedings,
18 required by or pursuant to this chapter, are not subject to any provision of NRS which requires a meeting to be
19 open or public:

- 20 1. Any negotiation or informal discussion between a local government
21 employer and an employee organization or employees as individuals, whether
22 conducted by the governing body or through a representative or representatives.
- 23 2. Any meeting of a mediator with either party or both parties to a negotiation.
- 24 3. Any meeting or investigation conducted by a fact finder.
- 25 4. Any meeting of the governing body of a local government employer with its
26 management representative or representatives.
- 27 5. Deliberations of the Board toward a decision on a complaint, appeal or
28 petition for declaratory relief.

(Added to NRS by 1969, 1380; A 1971, 600, 1508; 1977, 1368; 1979, 287)

³ **NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of
meetings; copy of materials; exceptions.**

1. Except as otherwise provided by specific statute, all meetings of public
bodies must be open and public, and all persons must be permitted to attend any
meeting of these public bodies. **A meeting that is closed pursuant to a
specific statute may only be closed to the extent specified in the statute
allowing the meeting to be closed. All other portions of the meeting must
be open and public and the public body must comply with all other
provisions of this chapter to the extent not specifically precluded by the
specific statute.** Public officers and employees responsible for these meetings
shall make reasonable efforts to assist and accommodate persons with physical
disabilities desiring to attend.

1 and also attending were the District's Superintendent, Chief Financial Officer, and its General
2 Counsel.

3 Agenda item 7.08, EMPLOYEE LABOR RELATIONS, clearly informs the public that
4 BST might close its meeting with its management representatives for consideration of
5 collective bargaining with employee organizations.

6 **III.**

7 **ISSUE**

8 Whether the BST's closed session on June 26, 2008 to discuss whether to approve a
9 collective bargaining agreement with the teacher's union, was a violation of the OML's
10 requirement that all meetings be open and public, unless otherwise provided by specific
11 statute. NRS 241.020(1).

12 **IV.**

13 **DISCUSSION**

14 NRS 288.220(4) states that "any meeting" between a local government employer and
15 its management representative is not subject to any provision of the NRS which requires a
16 meeting to be open or public.⁴ In past opinions, this Office has always interpreted the statute
17 as an exemption from the OML; an exemption not requiring notice, agenda, or minutes. See
18 AG File No. 97-047 (March 8, 2004) (county commission meeting with its management
19 representative not governed by the OML because the meeting was exempt from OML
20 pursuant to NRS 288.220(4)); OMLO 98-31 (June 10, 1998) (exempt meeting pursuant to
21 NRS 288.220); OMLO 98-60 (November 3, 1998) (meeting to review labor negotiations with
22 its management representative, exempt from the OML); AG File No. 04-042 (September 9,
23 2004) (reaffirming NRS 288.220 exemption, citing to OMLO 98-60); See *Also* OMLO 2002-20
24 (May 10, 2002) (Legislature intended to exempt negotiations and informal discussions from
25 the OML which occur prior to the creation of a collective bargaining agreement.)

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⁴ See *also* OMLO 1999-04 (Jan. 11, 1999) (school board disciplinary hearings have complete exemption from the OML based on specific statutory authority in NRS 392.467).

1 The Legislature has created statutory exceptions to the general rule of publicity for
2 public bodies from time to time. NRS 288.220 is a specific exception to the general rule of
3 publicity:

4 [W]hen it has been deemed suitable to do so, the legislature has
5 from time to time “specifically provided” certain exceptions to the
6 open meeting requirement. Exceptions provided which permit
7 closed meetings, for example, include questions of personal
8 character, misconduct, competence and health (NRS 241.030(1)).
9 In addition to these exceptions, the legislature, in other NRS
10 chapters, has enacted a series of specific exceptions to the general
11 rule of publicity. (See NRS 281.511(9), 286.150(2), 288.220,
12 630.336, 392.467(3)). When the legislature intends to make
13 exceptions to the rule of publicity, its does so *specifically by statute*.

10 *McKay v. Bd. of County Comm’rs of Douglas County*, 103 Nev. 490, 492, 746 P.2d 124,126
11 (1987) (Court refused to imply an exception to the OML for public body meetings with its
12 attorney). The Court’s designation of NRS 288.220 as a specific exception from the OML was
13 without condition or limitation.

14 It was only two years after enactment of NRS 288.220 in 1969, that another legislative
15 amendment to the statute was added which exempted from the application of the OML “Any
16 meeting of the governing body of a local government employer with its management
17 representative or representatives.” NRS 288.220(4). Act of April 17, 1971, ch. 340, § 1, 1971
18 Nev. Stat. 600. It is clear that the Legislature intended to allow local government employers
19 an opportunity to meet with its management representative outside an open meeting without
20 conditions or restrictions.

21 In 2007 the Legislature amended NRS 241.020(1) making explicit the Supreme Court’s
22 historic narrow construction of statutory exceptions to the general rule of publicity.⁵

23 _____
24 ⁵ Speaker of the Assembly, Barbara Buckley, shepherded an amendment to NRS 241.020(1), AB 433,
through the Legislature. AB 433 amended NRS 241.020(1) with the insertion of the following language:

25 “A meeting that is closed pursuant to a specific statute may only be closed to
26 the extent specified in the statute allowing the meeting to be closed. All other
27 portions of the meeting must be open and public and the public body must
comply with all other provisions of this chapter to the extent not specifically
precluded by the specific statute.”

28 AB 433 was eventually declared an emergency measure under the Nevada Constitution. It was signed into law
by the Governor. Act of June 2, 2007, ch. 296, § 1, 2007 Nev. Stat. 1122.

1 Complainant's assertion that the OML was violated because the BST may have
2 discussed approval of the agreement as opposed to negotiating strategy is not indicated by
3 our review of the meeting's minutes.

4 BST's closed meeting was lawful under NRS 288.220 and is exempt from the OML.

5 DATED this _____ day of October, 2008.

6 CATHERINE CORTEZ MASTO
7 Attorney General

8
9 By: _____
10 GEORGE H. TAYLOR
11 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 October, 2008, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Thomas Mitchell
Las Vegas Review Journal
P.O. Box 70
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Clark County School District
Board of Trustees
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Las Vegas, Nevada 89146

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General Counsel, Board of Trustees
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An Employee of the Office of the Attorney General