



1 response), which indicated nine members were "appointed" by Trustees. Finally, we  
2 reviewed legal counsel's response to the allegation.

3 II.

4 **FACTS**

5 An October 6, 2009 memorandum from Superintendent Rulffes to the BST was the first  
6 communication about his intention to create a Committee to analyze Prime 6 issues. In it he  
7 asked each Trustee to provide him with names of two or three individuals capable of serving  
8 on the Committee. He said he would select one representative for each Trustee from among  
9 the names submitted to ensure broad representation on the Committee.

10 The Superintendent concluded his October 6, 2009 memorandum by stating the  
11 Committee would review the information and data it gathered and would "develop long and  
12 short term recommendations" to be submitted to the Superintendent in a report no later than  
13 February 18, 2010. The Superintendent would review the Committee's report and submit his  
14 recommendations to the BST no later than March 31, 2010.

15 We reviewed a document provided by the District entitled: "Superintendent's Education  
16 Opportunities Advisory Committee; Facilitator: Dr. Robert McCord, UNLV." This document is  
17 a membership list of the Committee. It contains a column indicating each member's  
18 "Affiliation." The column entries indicate that 9 of the 13 members were appointed by BST  
19 Trustees. We asked for additional discovery from the District to explain why this document  
20 plainly states that nine members were appointed by Trustees if in fact the Superintendent  
21 actually appointed them.

22 The District sent an affidavit from Dale Erquiaga, the Executive Director of Government  
23 Affairs, Public Policy, and Strategic Planning for the Clark County School District, which sheds  
24 light on the origin and meaning of the "affiliation" column on the Committee membership  
25 document.

26 Mr. Erquiaga's Government Affairs office created the Committee membership list as  
27 well as the Committee meeting schedule and Committee topics of discussion. Mr. Erquiaga's

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affidavit states he was aware the Superintendent actually made the appointment of each individual on the Committee. He said:

Although the phrase "appointed by Trustee" is used in the listing, I am aware that the Superintendent had actually made the appointment of each individual to the committee. The term "appointed" on the committee membership list, was used simply to enable interested parties to understand the source of the names on the committee list, and was not intended to state the method by which the committee membership was established.

Dale Erquiaga, Affidavit, February 26, 2010.

The District sent Trustee affidavits for our review. Each affidavit explained the Trustee's role and his or her understanding of the appointment process and whether the Committee was understood by the Trustees to be a BST committee. Each Trustee stated that he or she received the Superintendent's October 6, 2009 memorandum informing the Trustee that the Superintendent intended to create a committee to analyze issues raised in the Prime 6 report. He informed the Trustees that he wanted to have a representative from each of the Trustee districts because solutions could have implications for schools in every Trustee district.

Each affidavit also stated that the Trustee identified one or more nominees and provided those names to the Superintendent. Each affidavit generally states that only later did the Trustee learn who had been appointed (if the Trustee submitted more than one name), or if only one name had been submitted, the Trustee's affidavit avows it was only because it had been challenging to identify potential candidates who were able to make the time commitment. One Trustee was unable to identify potential candidates in her district; we assume the Superintendent made a selection for her.

### III.

## ISSUES

1. Whether the Clark County School District Superintendent's Educational Opportunity Advisory Committee is a public body subject to the OML.

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1 IV.

2 DISCUSSION

3 Resolution of the issue depends in part on how the Committee was formed, its purpose  
4 and who appointed the members.

5 The complaint emphasizes several sections from the OML to suggest how the  
6 Committee could be a public body. First, it is noted that any advisory body of the state or local  
7 government which advises or makes recommendations to any entity<sup>1</sup> which expends or  
8 disburses or is supported in whole or in part by tax revenue, is a public body. NRS 241.015(3).  
9 Secondly, § 3.04 of the OML Manual states that formality in appointment is not the sole  
10 dispositive factor in what constitutes a public body. Citing OMLO 98-04.

11 This office considered these opinions taken from the OML Manual; however, the  
12 evidence provided by the District supports our conclusion that the Committee was not formed  
13 by the BST, it was not formed for the purpose of reporting to the BST, but it was formed to  
14 assist only the Superintendent; therefore it is not subject to the OML.

15 The OML does not define "committee, subcommittee or subsidiary thereof," but the  
16 OML Manual interprets the statute to mean that to the extent a group is appointed by a public  
17 body and is given the task of making decisions for or recommendations to the public body, the  
18 group would be governed by the OML. See § 3.04 NEVADA OPEN MEETING LAW MANUAL (10th  
19 ed. 2005); See OMLO 2002-017 (April 18, 2002) and OMLO 2002-27 (June 11, 2002).  
20 NRS 241.015(3). Based on the District's own document which identifies nine members as  
21 having been appointed by Trustees, it seemed reasonable to conclude the Committee may  
22 have been formed by the Trustees, but the Trustees' affidavits, Superintendent Rulffes'  
23 affidavit and Mr. Erquiaga's explanation of the "affiliation" column on the membership list  
24 convinced this office that the Committee was not a BST committee.

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28 <sup>1</sup> The NEVADA OPEN MEETING LAW MANUAL at § 3.02 interprets the statutory use of the word "entity" to mean a multi-member entity. An entity must be collegial so the OML does not apply to the Governor, or to any other person acting as the sole head of an agency of state or local government. In this case the Superintendent is the sole head of the Clark County School District. He is not an entity subject to the OML.



V.

CONCLUSION

The Superintendent's Educational Opportunity Advisory Committee is not a public body as defined in statute and as interpreted by this office. However, resolution of this question was made more difficult because of the membership document which plainly stated that nine members were "appointed" by the BST. When committees are created, public officers and members of public bodies should exercise more caution to ensure the public is not confused about the creation of committees or subcommittees.

Finally, we had difficulty understanding the District's explanation that the use of the word "appointed" in the Committee's membership document may have been an unintentional use. There was no explanation as to why it was important to connect each Trustee with a name on the Committee, since the Superintendent appointed the Committee and all Trustee districts compose the Superintendent's authority.

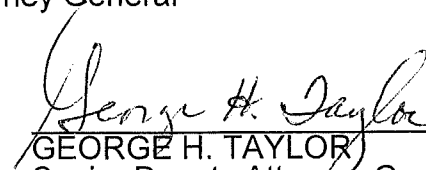
Mr. Erquiaga stated in his affidavit that he was aware the Superintendent appointed all the members; the Superintendent in his affidavit states he reserved the right to make the final selection, and in fact, the Trustees all indicate they only provided names to the Superintendent. Trustees only nominated individuals, but did not appoint anyone to a BST committee that would report to the BST.

Based on these facts we must conclude the Committee is not subject to the OML.

DATED this 7<sup>th</sup> day of April, 2010.

CATHERINE CORTEZ MASTO  
Attorney General

By:

  
GEORGE H. TAYLOR  
Senior Deputy Attorney General  
Nevada State Bar No. 3615  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1230

1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 17th day of April, 2010, I mailed a copy of the Findings of  
4 Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Mr. Thomas Mitchell  
6 Editor, Las Vegas Review-Journal  
7 P.O. Box 70  
8 Las Vegas, Nevada 89125-0070

9 Dr. Walt Rulffes  
10 Superintendent of Schools  
11 Clark County School District  
12 5100 West Sahara Avenue  
13 Las Vegas, Nevada 89146

14 C.W. Hoffman, Jr., Esq.  
15 General Counsel  
16 Clark County School District  
17 5100 West Sahara Avenue  
18 Las Vegas, Nevada 89146

19 Carole Hourley  
20 An Employee of the Office of  
21 the Attorney General  
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1 one Judge. The staff attorney this office spoke with maintains all Administrative Orders for the  
2 Clark County Courts. Her review of administrative orders in her possession did not uncover  
3 an Administrative Order creating a Bench/Bar Committee or an order guiding meetings  
4 thereof.

5 Further, we understand the Committee's purpose is an exchange of information and  
6 discussion about issues between bench and bar within the Court. For example, issues such  
7 as e-filing, the opening of the Self-Help Center, and discussions/recommendations regarding  
8 the time it takes to go through security, etc., are current issues within the Court.

9 Judges do not make appointments to a formal committee, but any member of the civil  
10 bar may attend. The Committee does not have advisory, legislative, or executive power; it  
11 does not vote or take action on matters discussed. It is simply an open forum between the  
12 bench and civil bar.

## 13 II.

### 14 ISSUE

- 15 1. Whether the Bench/Bar Committee is a public body.

## 16 III.

### 17 DISCUSSION

18 Any "advisory committee formed by elected officials" regardless of whether the elected  
19 officials are Judges or any other state or county elected official, is not subject to the OML,  
20 unless the appointing body of elected officials is itself a public body.

21 Our prior OML opinions and the NEVADA OPEN MEETING LAW MANUAL defines "public  
22 body" and has consistently reiterated that a committee is a public body only when the  
23 committee is formed by a parent public body for the purpose of giving the parent public body  
24 advice or recommendations. AGO 2000-18 (June 2, 2000).

25 Furthermore, the OML Manual emphasizes that a public body must be a collegial body,  
26 all members of which have equal voting power. Most importantly for this opinion, a public  
27 body is ". . .any administrative, advisory, executive or legislative body of the state or a local  
28 government which expends or disburses. . . tax revenue. . . ." NRS 241.015(3).

1 This office has always interpreted the requirement that a public body "of the State or a  
2 local government" to mean the public body must be created by statute or local ordinance,<sup>1</sup> or if  
3 the body was organized to perform a governmental function, then even without formal creation  
4 by State or local ordinance, it might be considered a public body under the OML as long as  
5 the body is supported in part or whole by tax revenue. *Compare* Op. Nev. Att'y Gen. No.  
6 2000-18 (June 2, 2000) (committee appointed by the Las Vegas City Clerk to prepare ballot  
7 questions was not a public body where it did not expend tax revenue or make any  
8 recommendation to a public body), *with* OMLO 2001-17 (April 12, 2001) ( a private non-profit  
9 corporation formed at the direction of the County Commission, incorporated by two of the  
10 three Commissioners, and which loaned county money, and where the corporation assets  
11 reverted to the County in the event of dissolution, was deemed to be public body).

12 For example, in OMLO 99-05, an opinion which carefully examined the nature of a  
13 public body in light of the Legislature's definition, this office examined whether a private  
14 non-profit corporation was a public body:

15 [W]e can find no evidence that EDAWN<sup>2</sup> was created by the order  
16 of or otherwise owes its existence to any state or local government  
17 body. EDAWN is given no authority to act on behalf of any  
18 government body. It administers no government programs, passes  
19 no legislation or regulations, has no governmental jurisdiction to  
20 regulate any activity or impose any taxes. . . .No government body  
21 has appointed or asked EDAWN to provide advice on any  
22 governmental matter. . . .We can therefore find no evidence that  
23 EDAWN was organized to act in an administrative, advisory,  
24 executive or legislative capacity. We conclude that [EDAWN  
25 corporate functions] are within the dominion of free enterprise, and  
26 are not government functions. OMLO 99-05 (January 12, 1999).

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25 <sup>1</sup> The definition in NRS 241.015(3) indicates that a public body is an "administrative, advisory, executive  
26 or legislative body of the state or a local government," which means that the body must (1) owe its existence to  
27 and have some relationship with a state or local government, (2) be organized to act in an administrative,  
28 advisory, executive or legislative capacity, and (3) must perform a government function. In addition, it must  
expend or disburse or be supported in whole or in part by tax revenue, or it advises or makes recommendations  
to any entity which expends or disburses or is supported in whole or in part by tax revenue.  
NEVADA OPEN MEETING LAW MANUAL, § 3.01 (10<sup>th</sup> ed. 2005)

<sup>2</sup> EDAWN: Economic Development Authority of Western Nevada.

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IV.

CONCLUSION

Just because the Committee appears to have been formed by elected officials, even though we could not find any evidence of such formation in the distant past, does not convert it into a public body subject to the OML. Whether one Judge or several Judges appointed a group to advise them on a matter, the resulting group has not been created as a committee that simply meets the definition of a public body simply by virtue of appointment by a Judge.

There is no administrative order, ordinance or statute creating this Committee. Hence there is no definition of any committee duties whether advisory or otherwise. Statutory creation or creation by ordinance is the touchstone to defining a "public body." The Committee is an open forum between the local bar and the Judges for the purpose of exchanging information about court programs or current issues. The Committee does not maintain an organization. Meeting dates are spread by announcement in the local Clark County Bar Association website of a meeting.

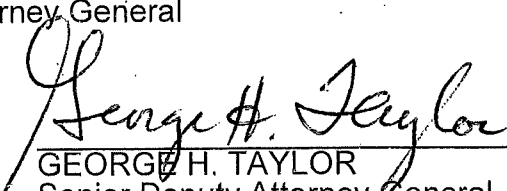
There has been no appointment by the Judges or members of the bar to serve on a committee, but even if there had been, the resulting committee would not be subject to the OML because the Judge or Judges are not themselves a public body subject to the OML and that is a requirement for defining which committees are in fact subject to the OML.

The Bench/Bar Committee is not subject to the OML.

DATED this 12<sup>th</sup> day of April, 2010.

CATHERINE CORTEZ MASTO  
Attorney General

By:

  
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Senior Deputy Attorney General  
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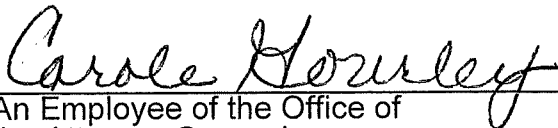
1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 12<sup>th</sup> day of April, 2010, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Colleen McCarty, Reporter  
6 KLAS-TV  
7 322 Channel 8 Drive  
8 Las Vegas, Nevada 89109

9 Steve Grierson, Executive Officer  
10 Family Court Division  
11 8th Judicial District Court  
12 601 North Pecos Road  
13 Las Vegas, NV 89101

14 Ms. Jilian Prieto  
15 Family Court Division  
16 8th Judicial District Court  
17 601 North Pecos Road  
18 Las Vegas, NV 89101

19   
20 An Employee of the Office of  
21 the Attorney General





1 II.

2 **FACTS**

3 A. January 20, 2010 FCC meeting

4 On January 15, 2010, Ms. Skinner submitted a Council Agenda Item Request Form  
5 along with a letter dated January 14, 2010 (two pages) in which Ms. Skinner requested action  
6 by the Council to amend or clarify the procedural application of two recently enacted transient  
7 lodging tax ordinances to local businesses.

8 The Council's response to the complaint provided evidence that submission of the  
9 Agenda Item Request form was untimely. City Manager Evangelatos' Affidavit states the  
10 request was untimely because the agenda for the January 20, 2010 meeting had already been  
11 finalized and published. (Affidavit of Greg Evangelatos dated February 18, 2010).

12 Mr. Evangelatos wrote Ms. Skinner on January 20, 2010 acknowledging receipt of the  
13 Agenda Item Request form, but he also asked her to meet with him and the City Clerk to  
14 "possibly resolve [Ms. Skinner's concerns] before adding an item to a future City Council  
15 agenda." She was asked to contact Lena Shumway, the City Clerk to set up a meeting.

16 On January 20, 2010, Ms. Skinner attended the Council meeting and rose to speak  
17 during public comment (item #19 on the agenda). Ms. Skinner asked to read a letter about  
18 the recently enacted transient room tax ordinances. At this point Mayor Goodman interrupted  
19 her. He said that Mr. Evangelatos had a copy of Ms. Skinner's Agenda Item Request form  
20 and her letter. He said Mr. Evangelatos would be meeting with Ms. Skinner to address her  
21 concerns.<sup>1</sup> Then he said ". . . and if we want to put it [Ms. Skinner's Agenda Item Request] on  
22 as an agenda item, we will." When she asked whether he had the option to put it on the  
23 agenda, Mayor Goodman said "yeah, we have the option to put it on the agenda."

24 Ms. Skinner returned to her original purpose for rising during public comment and  
25 asked if she could encourage the Council to revisit the two recently enacted transient lodging  
26 tax ordinances. She said she thought she could speak on it because it was not on the agenda  
27 and she was rising during public comment.

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<sup>1</sup> Apparently, anyone can request that an issue or matter be placed on the Council's agenda, but ultimately the Mayor, Council and/or the City Manager decides whether to agendize it.

1 Mayor Goodman then reminded her that she asked to agendize her concerns and they  
2 would be on the next agenda. His next comment offered Ms. Skinner a choice — “Now, if you  
3 [Ms. Skinner] want to drop that request [to agendize her concerns for a future Council  
4 meeting] then go ahead . . . and read it [her January 14<sup>th</sup> letter].”

5 Ms. Skinner replied, “I’m not going to drop the request.”

6 Mayor Goodman responded, “Ok, well, then, that’s when it will be discussed.  
7 Otherwise. . . .”

8 Ms. Skinner, recognizing that Mayor Goodman had given her a choice, pointedly asked  
9 him, “. . . when do we as business owners have a right to express our concern?”

10 Mayor Goodman’s reply is very confusing, even in the context of this dialog. He said,  
11 “Where do you want me to answer that, do you?” He then explained that the ordinances were  
12 properly adopted by the Council under applicable OML statutes.

13 In fact, the validity of the ordinances was never in doubt. Ms. Skinner’s letter merely  
14 asks for reconsideration and action on ordinance procedural application to her as a business  
15 owner.

16 B. Council’s Response to the Complaint

17 Council responded to the complaint with affidavits from both Mayor Goodman and  
18 Mr. Evangelatos. After the January 20, 2010 public meeting, both men met with Ms. Skinner  
19 at separate times to discuss her concerns about the transient lodging tax ordinances. Both  
20 affidavits state that Ms. Skinner did not indicate she desired to have her concerns placed on a  
21 future agenda, as requested in her written request of January 15, 2010. However, neither  
22 affidavit avers that she was offered a place on a future agenda, or that she turned the request  
23 down. Council’s response does not indicate whether Ms. Skinner’s request was denied,  
24 whether she released them from her request, or some other disposition.

25 Mayor Goodman’s affidavit in response to the complaint did not explain the reason for  
26 the choice Ms. Skinner had to make. He stated Ms. Skinner did not comment about the  
27 proposed ordinances during the Council’s lawful consideration of them beginning in July of  
28 2009. He also stated he did not refuse to allow her to speak during public comment on

1 January 20, 2010, he only "clarified" that the information she wished to present to the Council  
2 was the "same information" she had requested be placed on the Council's agenda. He did not  
3 discuss or explain the choice given to her.

4 III.

5 ISSUES

6 1. Whether Debbie Skinner's right to public comment was denied when Mayor  
7 Goodman made her choose between public comment or the chance of a future agenda topic.

8 IV.

9 DISCUSSION

10 Courts recognize a governmental interest in conducting orderly, efficient, effective, and  
11 dignified public meetings. *Kindt v. Santa Monica Rent Control Bd.*, 67 P.3d 266, 271 (9<sup>th</sup> Cir.  
12 1995); OMLO 2001-22, December 17, 2002. Through the OML, the Nevada Legislature has  
13 given the public the right to address public bodies. NRS 241.020(2)(c)(3). Once a person is  
14 given the right to address a public body, the right may be limited only within constitutional  
15 parameters. OMLO 2001-22 citing *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515  
16 U.S. 819, 829 (1995); see *White v. City of Norfolk*, 900 F.2d. 1421, 1425-27 (9<sup>th</sup> Cir. 1990);  
17 *Leventhal v. Vista United School Dist.*, 973 F. Supp. 951 (S.D. Cal. 1997).

18 We are mindful that a public body "does not violate the first amendment when it  
19 restricts public speakers to the subject at hand," and that a chair of a meeting may stop a  
20 speaker "if his speech becomes irrelevant or repetitious." *Kindt*, 67 F.3d at 270 quoting *White*  
21 *v. City of Norwalk*, 900 F.2d 1421, 1425 (9<sup>th</sup> Cir. 1990). However, our review of the record of  
22 the dialog between Mayor Goodman and Ms. Skinner does not implicate either concern as  
23 expressed in *Kindt* or *White* decisions. In the context, Ms. Skinner's request for public  
24 comment was not irrelevant or repetitious especially since a future agenda item was only  
25 contingent.

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1 Further insight regarding public comment is found in OMLO 2001-22, p.5:

2 "The most important purpose of the public comment period is to  
3 allow members of the public to comment on action items under  
4 consideration by a public body or on topics within the scope of the  
5 public body's authority. See NRS 241.020. Further, public comment  
6 is necessary to allow citizens to present grievances or concerns to  
7 their government so they may receive redress or influence their  
8 government's decision-making process."

9 After review of the Council's response, the affidavits, and careful review of the audio  
10 recording of Ms. Skinner's public comment, Ms. Skinner was subjected to an improper choice  
11 that effectively prevented her public comment. She did not read her letter because much of  
12 her five minutes was taken when the Mayor confronted her with the "choice." She was not  
13 able to effectively comment on the concerns expressed in her letter.

14 We reviewed the Council's notice governing public comment, set forth under Public  
15 Input, (item #19), to determine if it supported Mayor Goodman's "either/or" proposition.<sup>2</sup> It  
16 does not. The Mayor's action does not fall within any lawful restriction on public comment  
17 mentioned in the Council's notice. There was nothing repetitive or irrelevant about  
18 Ms. Skinner's attempt to read her letter in public comment, despite her existing request for a  
19 future agenda item. The Mayor did not guarantee a future agenda item. In fact he said it was  
20 optional. We cannot find any legal basis to justify his action and therefore conclude his action  
21 unnecessarily restricted Ms. Skinner's right to comment.

22 Essentially, Mayor Goodman offered her a choice to either read the letter during her  
23 five minutes of public comment, or risk denial of her request for an agenda item on a future  
24 agenda. Review of the audio of the colloquy between Mayor Goodman and Ms. Skinner did  
25 not reveal an explanation, factual or legal, for the Mayor's action.

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<sup>2</sup> PUBLIC INPUT. Public comment is limited to five (5) minutes per person. Items not agendized for this meeting cannot be acted upon other than to place them on future agendas. Public input is prohibited regarding comments, which are not relevant to or within the authority of, the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering with the rights of other speakers.

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V.

**CONCLUSION**

The Council's response did not identify a legal reason for the Mayor's choice offered to Ms. Skinner as she sought to comment on recently adopted ordinances. Nothing in the Mayor's dialog with Ms. Skinner suggests a legitimate basis for denial of her right to comment nor did the Mayor explain his action in his affidavit sent to us in response to the complaint.

Expediency cannot trump the public's right to comment.


The choice given to her, while at the podium during public comment, was an unnecessary restriction on public comment which does not comport with either the letter or spirit of the OML. NEVADA OPEN MEETING LAW MANUAL § 8.04 (10th ed. 2005).

This office issues a warning to the Mayor to avoid unnecessarily burdening the public's right to comment by imposing a restriction that does not comport with constitutional review. The Mayor must understand the importance and breadth of the public's right to comment on matters within the Council's jurisdiction and control. Public comment during a public meeting has been bestowed by statute and once bestowed may only be restricted or limited in a constitutional manner. Under current law, Ms. Skinner's right to comment is only subject to time, place, and manner restrictions. Nothing in the record we reviewed suggested that the Mayor's action was based on constitutionally valid time, place, or manner restrictions.

DATED this 18<sup>th</sup> day of May, 2010.

CATHERINE CORTEZ MASTO  
Attorney General

By:

  
\_\_\_\_\_  
GEORGE H. TAYLOR  
Senior Deputy Attorney General  
Nevada State Bar No. 3615  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1230

**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 18th day of May, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Debbie Skinner  
1445 Whipple Tree  
Fernley, NV 89408

Kelly Malloy, Ward 1  
Fernley City Council  
595 Silver Lace Boulevard  
Fernley, NV 89408

LeRoy Goodman, Mayor  
City of Fernley  
595 Silver Lace Boulevard  
Fernley, NV 89408

Don Parsons, Ward 2  
Fernley City Council  
595 Silver Lace Boulevard  
Fernley, NV 89408

Greg Evangelatos  
Fernley City Manager  
595 Silver Lace Boulevard  
Fernley, NV 89408


Robert Chase, Ward 3  
Fernley City Council  
595 Silver Lace Boulevard  
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Brandi Jensen, Esq.  
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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

PERSHING GENERAL HOSPITAL AND  
NURSING HOME BOARD OF TRUSTEES

Attorney General File No. 10-014  
OMLO 2010-01

**I.**

**BACKGROUND**

Matt Rees, alleged in his Open Meeting Law complaint received in this office on February 3, 2010, that agenda item 5(C) on the October 28, 2009 meeting of the Pershing General Hospital Board of Trustees (Board), was legally insufficient to impart notice to him that his character and professional competence would be considered by the Board during its discussion of Item 5(C).

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law (OML). This office reviewed the complaint, agenda, and audio recording of the October 28, 2009 Board meeting in drafting this opinion. Furthermore, we interviewed member Steve Evenson by telephone and solicited his view of the Board's discussion of item 5(C) and his role in that discussion. Our letter to the Board also solicited a response from the Board's legal counsel to the allegations in the complaint.

It is alleged that agenda item 5(C) on the October 28, 2009 meeting of the Board was legally insufficient to impart notice that Matt Rees' character and professional competence would be considered by the Board during its discussion of item 5(C).

**II.**

**FACTS**

Our investigation of the facts underlying this complaint begins with the Board's agenda item 5(C). Item 5(C) is set forth here as it appeared on the agenda:

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1           5. New Business

2           (C)   Discussion regarding election of CEO to receive contractual  
3                bonus based upon FY 08 positive evaluation. *Id.*

4           The minutes for the October 28, 2009 meeting show that discussion of this item was  
5           very short. The minutes only report that "Discussion regarding whether the CEO taking his  
6           bonus was either appropriate or inappropriate ensued." This was the only sentence  
7           summarizing what became a 35-minute discussion/argument.

8           Review of the audio recording revealed that the first few minutes of the Board's  
9           discussion of item 5(C), CEO Matt Rees' election to receive his contractual bonus, was led by  
10          Mr. Rees as an introduction. Mr. Rees began by stating that he had had talks with Roger  
11          Mancebo, Chair of the Board, informing Mr. Mancebo that there was some bonus due under  
12          Mr. Rees' professional contract with the Hospital, but the amount due was unclear. Mr. Rees  
13          continued speaking. He said he and Mr. Mancebo were recommending creation of a  
14          committee of Board members to review the terms of the professional contract, to go over the  
15          time period of the professional evaluation<sup>1</sup> and then bring a final bonus recommendation back  
16          to the Board at another meeting for action.

17          At this point on the audio, after only two minutes, Mr. Evenson moved the tone and the  
18          subject matter of the discussion into new and different issues. The next 35 minutes of  
19          discussion seemed as though Mr. Rees' evaluation was being conducted or reopened.

20          Mr. Evenson began by acknowledging agenda item 5(C) and that the scope of the  
21          discussion was what Mr. Rees did (performance?) to decide to elect to take his contractual  
22          bonus, but then ominously, he said:

23                "We're not there yet. We haven't discussed that yet. I want to  
24                know where it began, who was contacted, what happened, who  
25                gave approval and what process was undertaken to get us to the  
26                point to where he has already received money without coming to us  
                  first. Now maybe that will lead us into yet again another discussion  
                  of why things are being done of a financial nature of this magnitude  
                  without being brought to us first. . . . I have some ideas. I have

27  
28          <sup>1</sup> We learn later in this discussion that Mr. Rees' bonus is contractually tied to his professional  
evaluation. We also learn that Mr. Rees had elected to take two \$500.00 bonus payments and indeed had  
received them prior to putting this matter on the October 28, 2009 agenda. At least some members of the Board  
were aware of the election and receipt of bonus.



1           some information that he already received money, but it's amazing  
2           that when I get an anonymous letter in the mail and I call [Matt  
3           Rees] he doesn't call me back. Once again."

4           Mr. Mancebo quickly advised Mr. Evenson not to discuss the letter, but to keep that  
5           separate from the discussion at hand. Nevertheless the Board never did come back to the  
6           topic at hand which was to discuss the election to receive the bonus. Instead Mr. Evenson led  
7           the Board into a discussion of Mr. Rees' professional problem communicating with the Board.

8           Mr. Evenson admonished the Board and Mr. Rees by asserting Mr. Rees frequently  
9           has been told by the Board to do one thing, or not to do something, yet he does the opposite,  
10          or as in this case, he does things without informing the Board. Then Mr. Evenson discussed a  
11          "mutiny" going on in Mr. Rees' own administrative staff, which Mr. Evenson said he heard  
12          about on a confidential basis from staff. It is alleged by Mr. Evenson that the "mutiny" or  
13          border-line mutiny, was because of "actions [Mr. Rees] continues to take by himself.

14          Another Trustee, unidentified, spoke up and said that as a county commissioner and  
15          businessman, he has not heard any complaints about Mr. Rees nor should an anonymous  
16          letter be given any credence.

17          The 35-minute audio recording of discussion on item 5(C) also reveals that certain  
18          members became concerned as the discussion/argument wore on that they were exceeding  
19          the scope of the agenda item.

20          Chairman Roger Mancebo was openly concerned about the legality of the discussion  
21          and asked Member Steve Evenson, an attorney and former counsel to the Trustees, whether  
22          the discussion was "going beyond where we should be going?"

23                 Mr. Evenson replied:

24                 "I don't know. I don't know. How many times have we had to ask  
25                 that question?"

26                 Jack Riehm, another Trustee, then said to Mr. Evenson:

27                 "You have a lot of opinions here and then you answer, 'I don't  
28                 know.'"

///

1 Mr. Evenson heatedly replied:

2 "Jack [Riehm] I guess my point is this, I'm tired of having to have  
3 these discussions. I don't know if we are violating the Open  
4 Meeting Law or not and frankly, for the record, I don't care. My  
5 point in saying this is, I'm tired of having. . . my point is, why do we  
6 have to keep having this discussion."

7 Roger Mancebo then said:

8 "I do care about the Open Meeting Law and if we're getting into an  
9 area where we're not supposed to be, I don't want to be there."

10 Mr. Evenson concluded this portion of the Trustee's verbal exchange with each  
11 other:

12 "Well, ok fine. Let's not be there and the next time that Matt  
13 [Rees] does something without telling us, and that he informed us  
14 previously that he wasn't going to do, we'll just pat him on the head  
15 again, and say it's okay Matt, don't worry about that. Don't worry  
16 about morale at the hospital, don't worry about anything else, it's ok  
17 we'll take care of it later. We'll just keep doing that, over and over  
18 again until we [are] just considered patsies by everyone in the  
19 facility, and the county for Matt Rees."

20 This exchange among members was an open acknowledgment of their fear that the  
21 discussion was in violation of the OML. Their fear was that the OML had been breached. At  
22 least Mr. Mancebo was reminding the others to ratchet the discussion back to the agenda  
23 item.

24 Mr. Evenson was still heated and seemed to be warning the other Trustees that this  
25 matter should be dealt with firmly and immediately; however, later in the meeting he blamed  
26 an earlier remark about the OML on frustration, but he never acknowledged the fact that the  
27 Trustee's discussion had strayed far from the agenda topic. In fact, he openly stated for the  
28 record that he did not care if the discussions were in violation of the OML.

1 The Board continued discussion of item 5(C) for another 12 minutes and revisited  
2 issues beyond the agenda item's scope as well as new ones which were also clearly outside  
3 the scope of item 5(C). They revisited Mr. Rees' evaluation and the fact that the Trustees  
4 may have unwittingly put a positive spin on an otherwise neutral evaluation, which would have  
5 negated the award of a bonus. They discussed the creation of a committee to review Mr.  
6 Rees' professional contract. They then asked him why he went to the head of the line (for his  
7 bonus) when the Hospital had \$650,000 outstanding in accounts receivable. Mr. Evenson  
8 was critical of Mr. Rees because he is the highest paid employee in the county, yet he gets a  
9 bonus without bringing it to the Board first and in spite of "continuing communications issue"  
10 reflected in his professional evaluation.

11 Toward the end of the audio on this item, Mr. Evenson revisits the OML and reminds  
12 everyone that when he said earlier that he didn't care if the OML was being violated he only  
13 meant that he was "sick of having these discussions." After a little more discussion, he said  
14 that ultimately the Board must deal with "continuing communication issues" referring to his  
15 frustration that the communication issue was continuing. CEO Rees last evaluation had  
16 identified a communication issue between the Board and Mr. Rees which Mr. Evenson felt  
17 was not being corrected by Mr. Rees or addressed by the Board.

18 Just before the Board left this item, the Hospital's Director of Nursing addressed the  
19 Board openly sobbing about the severe financial problems her employees were suffering  
20 every day because of pay cuts and reduced hours. Mr. Rees was openly chastised and  
21 accused of putting himself first in face of poor morale caused by pay cuts and reduced hours  
22 and job sharing.

23 The anonymous letter was again mentioned. Mr. Evenson said he had knowledge that  
24 item 5(C) appeared on the agenda only because the anonymous letter had surfaced.  
25 Mr. Evenson's implication was that the bonus money taken by Mr. Rees would have remained  
26 secret except for the anonymous letter which apparently disclosed Mr. Rees' election to take a  
27 bonus at all.

28 ///

1 III.

2 ISSUES

3 1. Whether the Pershing General Hospital Board's discussion of agenda item 5(c)  
4 exceeded the scope of the topic so that no notice to the public was given of the discussion.

5 2. Whether the Pershing General Hospital Board and each Trustee violated the  
6 OML's requirement to give notice to each person whose character, professional competence,  
7 and alleged misconduct will be considered by the Board.

8 IV.

9 DISCUSSION

10 *Clear and Complete Rule*

11 The issues we examine are closely related. Exceeding the scope of an agenda item<sup>2</sup>  
12 may have led the Board into another violation of the OML – the notice provision in  
13 NRS 241.033<sup>3</sup>

14 ///

15 ///

16 <sup>2</sup> NRS 241.020(2): Notice must consist of: (c): An agenda consisting of:

17 (1) A clear and complete statement of the topics scheduled to be considered during the meeting.

18 <sup>3</sup> NRS 241.033 Meeting to consider character, misconduct, competence or health of person or to  
19 consider appeal of results of examination: Written notice to person required; exception; public body required to  
allow person whose character, misconduct, competence or health is to be considered to attend with  
representative and **to present evidence; attendance of additional persons; copy of record.**

20 1. A public body shall not hold a meeting to consider the character, alleged misconduct, professional  
21 competence, or physical or mental health of any person or to consider an appeal by a person of the results of an  
examination conducted by or on behalf of the public body unless it has:

22 (a) Given written notice to that person of the time and place of the meeting; and

(b) Received proof of service of the notice.

23 2. The written notice required pursuant to subsection 1:

(a) Except as otherwise provided in subsection 3, must be:

(1) Delivered personally to that person at least 5 working days before the meeting; or

24 (2) Sent by certified mail to the last known address of that person at least 21 working days before the  
meeting.

25 (b) May, with respect to a meeting to consider the character, alleged misconduct, professional  
26 competence, or physical or mental health of a person, include an informational statement setting forth that the  
public body may, without further notice, take administrative action against the person if the public body  
determines that such administrative action is warranted after considering the character, alleged misconduct,  
professional competence, or physical or mental health of the person.

27 (c) Must include:

28 (1) A list of the general topics concerning the person that will be considered by the public body during  
the closed meeting; and

(2) A statement of the provisions of subsection 4, if applicable.

1 In 2003, the Nevada Supreme Court in *Sandoval v. Board of Regents*, 119 Nev. 148,  
2 67 P.3d 902 (2003) strictly construed NRS 241.020(2)(c)(1) rejecting a common practice in  
3 which public body members discussed matters in detail, matters which deliberately deviated  
4 from the agenda topic into related and germane areas.

5 The *Sandoval* Court held that UCCSN's<sup>4</sup> Board and Campus Environment Committee's  
6 detailed discussion of extraneous matters greatly exceeded the scope of the published  
7 agenda topic<sup>5</sup>. The Committee discussed details of a Nevada Division of Investigation  
8 investigative report, it discussed public criticism of the UNLV police, and it discussed drug use  
9 on the UNLV campus. The agenda topic under which these discussions occurred only  
10 noticed the public that a review of state and federal law and policies affecting UCCSN's  
11 release of materials would be discussed.

12 The Court made it clear that mere mention of related matters in the abstract will not  
13 implicate the OML, but that detailed discussion leads to violation:

14 [A]lthough discussion of the NDI report in the abstract may not  
15 have violated the Open Meeting Law, the Committee went too far  
16 when it discussed details of the report, criticized the UNLV police  
17 department, and commented on the impact of drug use on the  
18 UNLV campus. Accordingly, we conclude that, as a matter of law,  
19 the Committee violated the Open Meeting Law.

20 *Sandoval* 119 Nev at 155.

21 The Court stated that NRS 241.020(2)(c)(1) was enacted by the Legislature "to ensure  
22 that the public is on notice regarding what will be discussed at public meetings." The court  
23 said that no longer could a public body stray into discussion of related or germane topics,  
24 instead the law was now interpreted to require strict compliance with legislative intent. The  
25 *Sandoval* Court said:

26 [T]he Legislature evidently enacted NRS 241.020(2)(c)(1) to  
27 ensure that the public is on notice regarding what will be discussed  
28 at public meetings. By not requiring strict compliance with agenda

<sup>4</sup> University and Community College System of Nevada.

<sup>5</sup> "Review of UCCSN Policies on Reporting, [described in the agenda as:] Review UCCSN [University and Community College System of Nevada], state and federal statutes, regulations, case law, and policies that govern the release of materials, documents, and reports to the public."

1 requirements, the "clear and complete" standard would be rendered  
2 meaningless because the discussion at a public meeting could  
3 easily exceed the scope of a stated agenda topic, thereby  
4 circumventing the notice requirement. Accordingly, we reject the  
"germane standard," as it is more lenient than the Legislature  
intended. Instead, we conclude that the plain language of NRS  
241.020(2)(c)(1) requires that discussion at a public meeting cannot  
exceed the scope of a clearly and completely stated agenda topic.

5 *Sandoval* 119 Nev. at 155.

6 Relying upon case law from Texas and Nebraska, the Court emphasized the purpose  
7 of Nevada's Law: "Similarly, Nevada's Open Meeting Law seeks to give the public clear notice  
8 of the topics to be discussed so that the public can attend a meeting when an issue of interest  
9 will be discussed." *Id.* at 155.

10 The Office of the Attorney General has written several opinions on "clear and complete"  
11 agenda requirements. See Op. Nev. Att'y Gen. No. 79-8 (March 26, 1979), and Op. Nev. Att'y  
12 Gen. No. 91-6 (May 23, 1991); OMLO 99-01 (January 5, 1999); OMLO 99-02 (January 15,  
13 1999); OMLO 99-03 (January 11, 1999); OMLO 2003-09 (March 4, 2003); OMLO 2003-13  
14 (March 21, 2003); and OMLO 2003-23 (June 24, 2003).

15 *Notice to a Person under NRS 241.033*

16 Written personal notice must be provided to the person whose character, alleged  
17 misconduct, professional competence, or physical or mental health will be considered.  
18 NRS 241.033. Personal notice and return of service is required regardless of whether the  
19 public body meets in closed session or in open session. In addition, a notice of a meeting to  
20 consider a person pursuant to NRS 241.033 should contain the informational statement  
21 regarding administrative action under NRS 241.034. See NEVADA OPEN MEETING LAW MANUAL  
22 § 6.09 (10th ed. 2005).

23 Mr. Rees complains that the Board discussed his character and/or his professional  
24 competence during the discussion of item 5(C) on October 28, 2009, without complying with  
25 the OML's notice requirement in NRS 241.033. We agree.

26 The OML manual has adopted a definition of "character" to assist us in evaluating  
27 complaints. Character is a broad term consisting of many personal attributes, but it certainly  
28 includes one's general reputation. It might also include such personal traits as honesty,

loyalty, integrity, reliability, and such other characteristics, good or bad, which make up one's individual personality. See NEVADA OPEN MEETING LAW MANUAL § 9.04 (10th ed. 2005).

In Op. Nev. Att'y Gen. No. 81-A (February 23, 1981), the Office of the Attorney General opined that "character" encompassed that moral predisposition or habit or aggregate of ethical qualities, which is believed to attach to a person on the strength of the common opinion and report concerning him . . . a person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation of which his general reputation for the possession of a character, good or otherwise is obtained.

The Office of the Attorney General also construed the word "competence" to include: . . . duly qualified . . . answering all requirements . . . having sufficient ability or authority. . . possessing the natural or legal qualifications . . . able . . . adequate . . . suitable . . . sufficient . . . capable . . . legally fit. A/so see OMLO 2004-28 (September 9, 2005).

Applying the law and definitions set forth herein to the facts underlying this complaint, we believe both Mr. Rees' character and competence were impermissibly discussed because he had not received notice. Notice is a bright line rule. There can be no exception to this requirement or the public body will have to postpone any discussion of a person's character and/or competence.

Mr. Rees' competence was clearly discussed and even at times heatedly discussed. Among the matters impermissibly discussed were Mr. Rees' "ongoing communication skills" with the Board, Mr. Rees last professional evaluation and its neutral or face value designation by the Board. Mr. Evenson's pointed question about whether the manner Mr. Rees elected to take his bonus was "below board" in contravention to Mr. Rees statement that he wished to have the matter examined by a committee to insure the bonus was "above board" seems to us to call into question Mr. Rees' character trait for honesty and integrity.

Other character issues impermissibly discussed included the insinuation he went to the "head of the line" to take his bonus while his staff suffered financial hardship, reduced hours of employment, and job sharing, more pointed references to Mr. Rees' integrity. Then there was the thinly veiled insinuation that item 5(C) found its way onto the agenda only because an

1 anonymous letter<sup>6</sup> "got out," which apparently disclosed Mr. Rees' election to take his bonus.  
2 The insinuation was that Mr. Rees was hiding the election from the Board but the anonymous  
3 letter forced him to pursue a cover-up by belatedly putting the matter on the Board's agenda.  
4 Clearly, this insinuation refers to Mr. Rees integrity, his ethical duty to the Board and the  
5 Hospital. It also refers to and denigrates his general reputation before the Board and anyone  
6 else who was present at the meeting or who might listen to the audio.

7 Any discussion of these matters, whether alone or together, is significant and  
8 substantive so as to constitute a violation of both the OML's notice requirement and its "clear  
9 and complete" rule.

10 V.

11 CONCLUSION

12 The Pershing General Hospital Board of Trustees violated two important requirements  
13 of the OML. First, their discussion of item 5(C) greatly exceed the scope of the topic, and  
14 secondly, the extraneous discussion of matters beyond the scope of the item constituted a  
15 discussion of Mr. Rees character and professional competence as described herein.

16 DATED this 25<sup>th</sup> day of February, 2010.

17 CATHERINE CORTEZ MASTO  
18 Attorney General

19 By: 

20 GEORGE H. TAYLOR  
21 Senior Deputy Attorney General  
22 Nevada State Bar No. 3615  
23 100 North Carson Street  
24 Carson City, Nevada 89701-4717  
25 (775) 684-1230  
26  
27  
28

<sup>6</sup> The anonymous letter was never discussed in detail, and we are left to wonder about its content, purpose, and impact on the entire Board.



**CERTIFICATE OF MAILING**

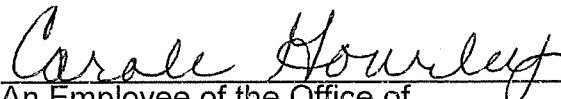
I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 25<sup>th</sup> day of February, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Matt Rees, Chief Executive Officer  
Pershing General Hospital  
& Nursing Home  
P.O. Box 661  
Lovelock, Nevada 89419

Roger Mancebo, Chair  
Board of Trustees  
Pershing General Hospital  
& Nursing Home  
P.O. Box 661  
Lovelock, Nevada 89419

Todd A. Plimpton, Esq.  
BELANGER & PLIMPTON  
P.O. Box 59  
Lovelock, Nevada 89419

Nicole M. Harvey, Esq.  
HARVEY LAW FIRM  
458 Court Street  
Reno, Nevada 89501

  
An Employee of the Office of  
the Attorney General

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BY C. CORTAZ CLERK  
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10 *Attorneys for Defendants*

11 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
12 IN AND FOR CARSON CITY  
13

14 CATHERINE CORTEZ MASTO, Attorney  
General of the State of Nevada,

15 Plaintiff,

16 vs.

17 WHITE PINE COUNTY BOARD OF COUNTY  
18 COMMISSIONERS: Chair Laurie Carson,  
RaLeene Makley, Richard Carney, Robin Bell,  
19 Gary Perea, all in their representative capacity  
as Commissioners.

20 Defendants.  
21

CASE NO. 10 OC 00219 1B

DEPT. NO. 1

STIPULATION FOR DISMISSAL

(Nev. Rules of Civil Procedure:  
41(a)(1))

22 Plaintiff, CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada, by  
23 and through GEORGE H. TAYLOR, Senior Deputy General; and Defendant, WHITE PINE  
24 COUNTY BOARD OF COUNTY COMMISSIONERS, by and through its attorney THOMAS P.  
25 BEKO, hereby submits this voluntary Stipulation for Dismissal of this action subject to this  
26 Court's entry of the Order Entering a Permanent Injunction (proposed Order attached hereto).  
27 Plaintiff agreed to dismiss her complaint, which sought to void the action of the White Pine  
28 County's city-county negotiating team, upon entry of permanent injunctive relief in the District

1 Court. Defendants have agreed to entry of injunctive relief limited solely to the city-county  
2 negotiating team which heretofore has been a bi-yearly negotiation. See Stipulated  
3 Agreement; Consent to Entry of Judgment, paragraph #15.

4 This Stipulation for Dismissal incorporates three documents which resolve each and  
5 every allegation in the State's complaint: (1) Stipulated Settlement Agreement; Consent to  
6 Entry of Judgment; (2) Order Entering Permanent Injunction, and (3) White Pine County Board  
7 of Commissioner's Resolution 2010-42: Resolution To Approve Settlement Agreement With  
8 Nevada Attorney General.

9 The parties to this action hereby stipulate to voluntarily dismiss this action as provided  
10 under Nevada Rule of Civil Procedure 41(a)(1) which provides for voluntary dismissal of an  
11 action when a stipulation of dismissal signed by all the parties who have appeared in the  
12 action is filed. This Stipulation for Dismissal complies with the statutory requirement.

13 DATED this 6<sup>th</sup> day of July, 2011.

14 CATHERINE CORTEZ MASTO  
15 Attorney General

16 By: George H. Taylor  
17 GEORGE H. TAYLOR  
18 Senior Deputy Attorney General  
19 Nevada State Bar No. 3615  
20 100 North Carson Street  
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Attorneys for Defendants

# EXHIBIT 1

# EXHIBIT 1

1 CATHERINE CORTEZ MASTO  
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2 GEORGE H. TAYLOR  
Senior Deputy Attorney General  
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*Attorneys for Plaintiff*  
6

7 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF CARSON  
9

10 CATHERINE CORTEZ MASTO, Attorney  
General of the State of Nevada,

11 Plaintiff,

12 vs.

13 WHITE PINE COUNTY BOARD OF COUNTY  
14 COMMISSIONERS: Chair Laurie Carson,  
RaLeene Makley, Richard Carney, Robin Bell,  
15 Gary Perea, all in their representative capacity  
as Commissioners.  
16

17 Defendants.

CASE NO. 10 OC 00219 1B

DEPT. NO. 1

**STIPULATED AGREEMENT;**  
**CONSENT TO ENTRY OF**  
**JUDGMENT**

18 COMES NOW Plaintiff, CATHERINE CORTEZ MASTO, Attorney General of the State  
19 of Nevada, by and through George H. Taylor, Senior Deputy Attorney General; and  
20 Defendant, WHITE PINE COUNTY BOARD OF COUNTY COMMISSIONERS (BOCC), a duly  
21 elected body representing White Pine County, a political subdivision of the State of Nevada,  
22 by and through its attorney Thomas P. Beko, Esq. The parties to this Stipulated Agreement  
23 and Consent to Entry of Judgment agree and represent that it resolves each and every  
24 allegation in the State's complaint (attached hereto as Exhibit 1).

25 **BACKGROUND**

26 Plaintiff, Catherine Cortez Masto, Nevada Attorney General, filed her complaint on  
27 June 1, 2010 alleging that Defendant White Pine County Board of County Commissioners and  
28 its Police/fire interlocal agreement negotiating team, a subcommittee, violated the Open

1 Meeting Law (OML) provision that proscribes private meetings by public bodies except where  
2 specifically authorized by statute. Plaintiff alleged the City-County negotiating team is a public  
3 body subject to the OML. Defendant BOCC disagrees with the Plaintiff's claims in this regard,  
4 but nevertheless agrees to conduct itself in accordance with this Settlement Agreement.

5 Defendant BOCC and Plaintiff stipulate that this Settlement Agreement and Consent to  
6 Judgment may be settled without trial and that there is no other bar to entry of judgment  
7 herein.

8 The parties to this stipulated settlement agreement hereby agree as follows:

9 **STIPULATIONS**

10 1. This Court has jurisdiction of the subject matter and of the party consenting to  
11 the entry of judgment herein.

12 2. These Stipulations shall apply to and be binding upon the parties to this action  
13 until withdrawn by the Court.

14 3. Under authority of NRS 241.037(1), the Nevada Attorney General has the power  
15 and duty to administer and enforce the open meeting laws of the State of Nevada, and to  
16 bring this action for the violation alleged herein.

17 4. NRS 241.037(1) provided that injunctive relief may be issued by this Court  
18 without proof of actual damages or proof of irreparable harm by any person preliminary to  
19 entry of injunctive relief.

20 5. The parties agree that full and final settlement of the allegations in the complaint  
21 shall be as follows:

22 6. Defendant BOCC is the governing body of White Pine County in the State of  
23 Nevada.

24 7. White Pine County's City-County police/fire interlocal agreement negotiating  
25 committee was informally formed in conformity with County historical practice, whereby each  
26 county commissioner was assigned an area of county government to oversee. The committee  
27 was assembled by Commissioner Laurie Carson and White Pine County Finance Director  
28 Charles Rodewald. This committee was formed with the knowledge and consent of the

1 BOCC, the parent public body, for the purpose of negotiating the terms and conditions of a  
2 new police/fire interlocal agreement (Interlocal Cooperation Act: NRS 277.080 -180) between  
3 the City of Ely and White Pine County.

4 8. In 2008, the Nevada Attorney General investigated an OML complaint about  
5 private meetings by both the County and City negotiating teams during the interlocal police/fire  
6 negotiation process. Both negotiation teams were advised of the plaintiff's belief that their  
7 negotiations constituted a violation of the OML. The Nevada Attorney General's office issued  
8 a formal OML opinion which detailed the nature of the violation. The OML opinion was sent to  
9 District Attorney Richard Sears, legal counsel for the BOCC. Board members RaLeene  
10 Makley and Laurie Carson were members of the 2008 BOCC, the remaining defendants in  
11 this matter were not. Members Makley and Carson were never provided with a copy of the  
12 aforementioned Attorney General's opinion. Members Richard Carney, Robin Bell, and Gary  
13 Perea, also had no knowledge of this opinion.

14 9. On March 5, 2010, the Attorney General's Office again warned legal counsel for  
15 both the City of Ely and White Pine County that the negotiation meetings by either team during  
16 the negotiation process could not be private or closed absent specific statutory authority.  
17 None of the named individual county defendants received a copy of the warning nor were they  
18 informed of it prior to a joint City/County negotiating team public meeting on April 1, 2010  
19 meeting.

20 10. On April 1, 2010, the City of Ely and White Pine County negotiating teams met in  
21 a public meeting which had been properly noticed by White Pine County. After receiving a  
22 financial settlement offer from City of Ely negotiating team, but before agreeing to the  
23 settlement offer, Committee member RaLeene Makley questioned whether the County's  
24 negotiating team could caucus privately to discuss the offer. Board Member RaLeene Makely  
25 contacted Senior Deputy Attorney General George Taylor but was told he could not provide  
26 her with legal advice, and that she needed to contact her District Attorney. She then  
27 contacted White Pine County District Attorney Richard Sears. The committee then met  
28 privately with Mr. Sears believing that they could legally discuss the matter with their counsel.

1 They further believed that they could caucus privately so long as all negotiations occurred in  
2 the public meeting. A quorum of the Defendant's City-County negotiating committee met with  
3 the White Pine County District Attorney behind closed doors on April 1, 2010. The plaintiff  
4 contends that this action constitutes a violation of NRS 241.020(1).

5 11. White Pine BOCC agrees to take corrective action to avoid litigation of the  
6 State's allegation that the act of accepting the City's offer tendered on April 1, 2010 was void.  
7 Corrective action will consist of rescheduling the April 1, 2010 meeting during which the  
8 County negotiating team met privately with the County District Attorney to deliberate and  
9 consider the City of Ely's financial settlement offer. At the rescheduled meeting the County  
10 negotiating team will publicly deliberate on the City of Ely's financial offer made on April 1,  
11 2010. The April 1, 2010 private meeting was the basis for the State's complaint and allegation  
12 of violation of the OML.

13 12. BOCC consents to the entry of a permanent injunction governing the city-county  
14 negotiation process for its police/fire interlocal agreement. Injunctive relief applies only to a  
15 negotiation team appointed by the BOCC, or one that is created informally by the BOCC.  
16 Where the BOCC authorizes an individual, such as a County staff member, to form a  
17 committee to negotiate the terms and conditions of the City-County interlocal agreement, the  
18 OML does not apply as long as the committee reports only to the individual staff member.  
19 Members of the BOCC may be committee members and the OML will not apply so long as a  
20 quorum of the BOCC are not members of the committee. *Attorney General v Board of*  
21 *Regents*, 114 Nev. 388, 400, 956 P.2d 770, 778-779 (1998); *Dewey v. Redevelopment Agency*  
22 *of the City of Reno*, 119 Nev. 87, 98, 64 P.3d 1070, 1078 (2003). The staff member may then  
23 consider the committee's recommendations before placing the proposed negotiated terms and  
24 conditions before the BOCC on its agenda for discussion and action. It is the BOCC's  
25 prerogative to accept or reject any or all proposed terms and conditions proposed by Staff.  
26 The BOCC has sole authority to approve terms and conditions of any proposed interlocal  
27 agreement.

28 ///



1 13. Should the BOCC appoint staff to negotiate proposed terms and conditions of a  
2 new interlocal agreement with the City of Ely, the BOCC agrees and consents to conduct  
3 negotiations in accordance with the following procedure. The BOCC will formally appoint an  
4 individual or County staff member to form a committee to assist with the negotiation process.  
5 Thereafter, and after considering the report and recommendations of the committee, the  
6 individual or County staff member will provide his recommendation regarding terms and  
7 conditions of a new interlocal agreement to the BOCC in a properly noticed public meeting.

8 14. The BOCC shall formally resolve in public session that it consents to judgment  
9 as set forth herein in paragraphs 11, 12 and 13. The Board's resolution shall authorize the  
10 Chair of the BOCC, or other designee, to sign this stipulated agreement on behalf of the entire  
11 Board. The Resolution shall be reduced to writing, signed by the entire Board and returned to  
12 the office of the Nevada Attorney General. The Board's executed Resolution agreeing to entry  
13 of injunctive relief shall be made part of the Court's record.

14 15. The Plaintiff agrees to dismiss her complaint including the claim which sought to  
15 void the action of the County's city-county negotiating team on April 1, 2010 upon entry of  
16 permanent injunctive relief in the District Court as specified herein.

17 DATED this 13 day of October, 2010.

18 ERICKSON, THORPE &  
19 SWAINSTON, LTD.

20 By:

  
21 THOMAS P. BEKO  
Attorney for Defendants

22 WHITE PINE COUNTY BOARD OF  
23 COUNTY COMMISSIONERS

24 By:

  
25 CHAIRMAN OF THE BOARD  
26  
27  
28

CATHERINE CORTEZ MASTO  
Attorney General

By:

  
GEORGE H. TAYLOR  
Senior Deputy Attorney General  
Nevada Bar No. 3615  
100 North Carson Street  
Carson City, NV 89701  
(775) 684-1230  
Attorneys for Plaintiff

## EXHIBIT 2

## EXHIBIT 2

1 CATHERINE CORTEZ MASTO  
Attorney General  
2 GEORGE H. TAYLOR  
Senior Deputy Attorney General  
3 Nevada State Bar No. 3615  
Office of the Attorney General  
4 100 North Carson Street  
Carson City, NV 89701  
5 (775) 684-1230  
*Attorneys for Plaintiff*  
6

7 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF CARSON  
9

10 CATHERINE CORTEZ MASTO, Attorney  
General of the State of Nevada,

11 Plaintiff,

12 vs.

13 WHITE PINE COUNTY BOARD OF COUNTY  
14 COMMISSIONERS: Chair Laurie Carson,  
RaLeene Makley, Richard Carney, Robin Bell,  
15 Gary Perea, all in their representative capacity  
as Commissioners.  
16

17 Defendants.

CASE NO. 10 OC 00219 1B

DEPT. NO. 1

**ORDER ENTERING A  
PERMANENT INJUNCTION**

18 Pursuant to the Stipulated Settlement Agreement and Consent to Entry of Judgment  
19 between the above captioned parties, entered into by and between the Plaintiff, Nevada  
20 Attorney General Catherine Cortez Masto, and George H. Taylor, Senior Deputy Attorney  
21 General; and Defendant, White Pine County Board of County Commissioners,

22 IT IS HEREBY ORDERED AS FOLLOWS:

23 The current White Pine County police/fire city-county negotiating team is permanently  
24 enjoined from privately meeting or caucusing for the purpose of negotiating terms or  
25 conditions applicable to the next or future biennial police/fire interlocal agreement. The  
26 current White Pine County negotiating committee will conduct any further meetings in  
27 accordance with Nevada's Open Meeting Law (OML).

28 ///

1 In the event White Pine County desires to engage in future contract negotiations  
2 relative to an Interlocal Agreement with the City of Ely for police/fire services, the BOCC shall  
3 direct an individual, such as a County staff member, to form a committee to negotiate the  
4 terms and conditions of the City-County interlocal agreement. Members of the BOCC may be  
5 committee members, and the OML will not apply so long as a quorum of the BOCC are not  
6 members of the committee. *Attorney General v Board of Regents*, 114 Nev. 388, 400, 956  
7 P.2d 770, 778-779 (1998); *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev.  
8 87, 98, 64 P.3d 1070, 1078 (2003).

9 IT IS FURTHER ORDERED THAT any newly formed negotiating committee will then  
10 report its findings, conclusions, and/or recommendations to the individual staff member who  
11 will in turn provide his/her recommendations regarding terms and conditions of a new  
12 interlocal agreement to the BOCC in a properly noticed public meeting. It shall be the BOCC's  
13 prerogative to accept or reject any or all proposed terms and conditions proposed by staff.  
14 The BOCC has sole authority to approve terms and conditions of any proposed interlocal  
15 agreement.

16 As long as negotiations are conducted in accordance with these provisions, the OML  
17 will not apply to the meetings of the committee. The injunctive relief described herein will only  
18 apply to a negotiation team that is directly appointed, or informally created by the BOCC.

19 DATED: \_\_\_\_\_.

20  
21 \_\_\_\_\_  
DISTRICT JUDGE

22 Submitted by:

23 CATHERINE CORTEZ MASTO  
24 Attorney General

25 By: George H. Taylor  
26 GEORGE H. TAYLOR  
27 Senior Deputy Attorney General  
28 Bar No. 3615  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701

## EXHIBIT 3

## EXHIBIT 3

Laurie L. Carson, Commissioner  
Robin Bell, Commissioner  
Richard Carney, Commissioner  
RaLeene Makley, Commissioner  
Cory Perea, Commissioner  
John Malone, Ex-Officio Clerk of the Board

953 Campton Street  
Ely, Nevada 89301  
(775) 289-8848 or  
(775) 289-3065  
Fax (775) 289-8860

## White Pine County Board of County Commissioners

### RESOLUTION 2010-42

#### RESOLUTION TO APPROVE SETTLEMENT WITH NEVADA ATTORNEY GENERAL

##### WHEREAS,

On June 1, 2010, the Nevada Attorney General, Catherine Cortez Masto filed an action against the White Pine County Board of Commissioners alleging that a negotiating committee formed by members of the board to negotiate an interlocal agreement with the City of Ely for fire, police and other governmental services constituted a "public body" subject to Nevada's Open Meeting Laws; and,

##### WHEREAS,

Historically, as a means of developing a more detailed understanding of the operations of County governmental services, and to maintain a close working relationship with those County employees who provide such services, individual members of the White Pine County Board of Commissioners have been informally assigned an area of governmental service to oversee on behalf of the entire Board; and,

##### WHEREAS,

In conformity with this historical practice, members of the White Pine Board of Commissioners assisted in the formation of the White Pine County negotiating committee; and,

##### WHEREAS,

The Nevada Attorney General alleged that on April 1, 2010, a private caucus between members of the White Pine County negotiating team and the White Pine County District Attorney violated Nevada's Open Meeting laws. The Nevada Attorney General's opinion was based primarily upon the fact that this committee was formed directly by members of the White Pine County Board of Commissioners; and,

##### WHEREAS,

The Nevada Attorney General and the White Pine County Board of Commissioners have agreed that in exchange for a dismissal of the aforementioned action, the White Pine County Board of Commissioners will agree to appoint a single individual staff member of White Pine County to form any future negotiating committees, and to take recommendations rendered by that committee directly from the staff member who formed the committee; and,

WHEREAS,

The White Pine County Board of Commissioners have agreed that if more than two members of the White Pine County Board (a quorum) are appointed members of the negotiating team, all meetings of that committee will be conducted in accordance with Nevada's Open Meeting laws. However, if less than a quorum of the White Pine County Board is present in such a committee meeting, Nevada's Open Meeting laws shall not apply.

NOW, THEREFORE BE IT RESOLVED,


White Pine County's interlocal contract negotiating committee is hereby dissolved. White Pine County hereby agrees to conduct future interlocal contract negotiations in accordance with paragraphs 11 through 13 of the Stipulated Agreement; Consent to Entry of Judgment, and Order Entering a Permanent Injunction. The Chairman of the Board is hereby authorized to sign said agreement on behalf of White Pine County.

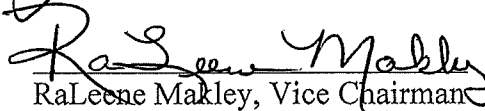
PASSED AND ADOPTED THIS 13 DAY OF OCTOBER, 2010 BY A VOTE OF:

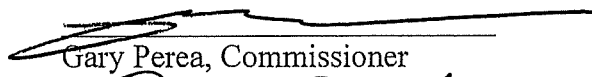
5 AYES

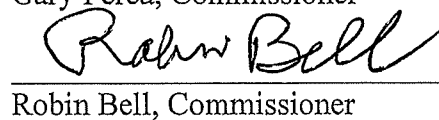
0 NOS

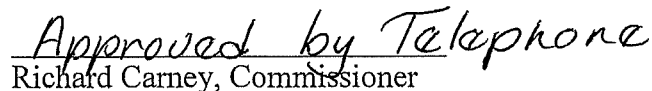
0 ABSENT

  
Laurie L. Carson, Chairman

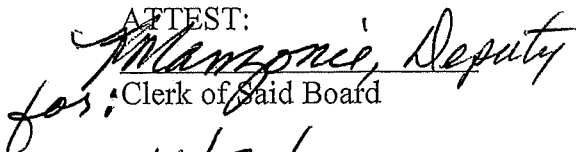
  
RaLeene Makley, Vice Chairman

  
Gary Perea, Commissioner

  
Robin Bell, Commissioner

  
Approved by Telephone  
Richard Carney, Commissioner

ATTEST:

  
for: Maryanne, Deputy  
Clerk of said Board

10/20/10  
Date

1 CATHERINE CORTEZ MASTO  
Attorney General  
2 GEORGE H. TAYLOR  
Senior Deputy Attorney General  
3 Office of the Attorney General  
100 North Carson Street  
4 Carson City, NV 89701  
Attorneys for Plaintiff  
5  
6

REC'D & FILED  
2010 JUN -1 AM 10:54  
ALAN GLOVER  
BY G. COOPER  
DEPUTY

7 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF CARSON  
9

10 CATHERINE CORTEZ MASTO, Attorney  
General of the State of Nevada,

11 Plaintiff,

12 vs.

13 WHITE PINE COUNTY BOARD OF COUNTY  
14 COMMISSIONERS: Chair Laurie Carson,  
RaLeene Makley, Richard Carney, Robin Bell,  
15 Gary Perea, all in their representative capacity  
as Commissioners.

16 Defendants.  
17

CASE NO. 100200219 B  
DEPT. NO. F

COMPLAINT UNDER NRS 241.037

18 COMES NOW the Plaintiff, Catherine Cortez Masto, Attorney General of the State of  
19 Nevada, by and through George H. Taylor, Senior Deputy Attorney General, and hereby  
20 complains as follows:

21 I.

22 JURISDICTION AND PARTIES

23 1. Plaintiff herein, is the duly elected Attorney General of the State of Nevada with  
24 her principal office located in Carson City, Nevada.

25 2. The Attorney General has statutory authority to investigate and prosecute  
26 violations of Nevada's Open Meeting Law (OML). NRS 241.037(1). The Attorney General  
27 has statutory authority to seek to void actions taken by public bodies and/or seek injunctive

28 ///



1 relief against a public body or person to require compliance with or prevent violations of the  
2 provisions of the OML. NRS 241.037(1).

3 3. This Court has jurisdiction of this civil action pursuant to NRS 241.037(1).

4 4. Injunctive relief may be issued without proof of actual damage or proof of  
5 irreparable harm sustained by any person. NRS 241.037(1)(a).

6 5. The Attorney General has authority to investigate and prosecute any violation of  
7 Chapter 241 of the Nevada Revised Statutes. NRS 241.040(4).

8 6. At all times relevant to this complaint, the Defendant White Pine County Board  
9 of County Commissioners and its City-County Negotiating Team, were public bodies within  
10 the meaning of NRS 241.015(3).

11 7. The allegations in this complaint that Defendants violated various provisions of  
12 the OML arose in the County of White Pine, State of Nevada.

13 8. This Complaint was filed within the applicable limitations period set forth in  
14 NRS 241.037(3) for a suit seeking to void an action and seeking injunctive relief.

15 II.

16 **OPEN MEETING LAW**

17 9. "Except as otherwise provided in this subsection, "public body" means any  
18 administrative, advisory, executive, or legislative body of the State or a local government  
19 which expends or disburses or is supported in whole or in part by tax revenue or which  
20 advises or makes recommendations to any entity which expends or disburses or is supported  
21 in whole or in part by tax revenue, including, but not limited to, any board, commission,  
22 committee, subcommittee, or other subsidiary thereof and includes an educational foundation  
23 as defined in subsection 3 of NRS 388.750 and a university foundation as defined in  
24 subsection 3 of NRS 396.405. "Public body" does not include the Legislature of the State of  
25 Nevada." NRS 241.015(3). (Emphasis added).

26 10. "Except as otherwise provided by specific statute, all meetings of public bodies  
27 must be open and public, and all persons must be permitted to attend any meeting of these  
28 public bodies. A meeting that is closed pursuant to a specific statute may only be closed to

1 the extent specified in the statute allowing the meeting to be closed. All other portions of the  
2 meeting must be open and public and the public body must comply with all other provisions of  
3 this chapter to the extent not specifically precluded by the specific statute." NRS 241.020(1).

4 11. "There is no statutory exception specifically providing public bodies with the  
5 privilege to meet in private just because they have their attorneys present; hence such  
6 meetings are prohibited." *McKay v. Board of County Commissioners of Douglas County*, 103  
7 Nev. 490, 491 (1987). In 2001, the Legislature amended NRS 241.015 creating a narrow  
8 exception to the rule of publicity. This legislative amendment carved out an exception for  
9 private meetings between a public body and its attorney to receive information regarding  
10 litigation or potential litigation. But the amendment did not provide authority for a public body  
11 to deliberate or take action on matters unrelated to the information provided by its attorney  
12 regarding litigation or potential litigation. The OML requires that written notice of all meetings  
13 must be given at least three working days before the meeting. NRS 241.020(2).

14 12. It would be incongruous for a committee, or the city-county negotiating team, of  
15 either the City Council or the County Commission to negotiate the terms of the police/fire  
16 interlocal agreement in private, when neither the Council nor the Commission can close its  
17 meetings to negotiate the terms of the same agreement. NEVADA OPEN MEETING LAW MANUAL  
18 (10th ed. 2005) citing *Arkansas Gazette Co. v. Pickens*, 258 Ark. 69, 522 S.W.2d 350, 354  
19 (1975). ("Surely a part of the (board) is not possessed of a prerogative greater than the  
20 whole.")

### 21 III.

### 22 FACTUAL ALLEGATIONS

#### 23 **APRIL 1, 2010: negotiating session**

24 13. For years the City of Ely and the Board of County Commissioners have each  
25 created and authorized a negotiating team to negotiate the terms of a new interlocal  
26 agreement under authority of the Interlocal Cooperation Act; NRS 277.080 – 277.180, for the  
27 purpose of jointly sharing police, fire and other governmental services.

28 ///

1           14. Both the County and the City are represented by their own negotiating team.  
2 Each city-county negotiating team is authorized by its parent body to meet with and negotiate  
3 terms and conditions of the next two year interlocal agreement with the other team. Each  
4 team then makes a recommendation regarding terms and conditions of the new interlocal  
5 agreement to its parent public body, which has sole authority to approve terms and conditions  
6 of a new agreement.

7           15. Each negotiating team is a public body subject to the OML. Each Defendant  
8 appointed two elected public body members to serve on its city-county negotiation team.  
9 Membership on the negotiation teams also included city or county staff and elected officials.  
10 Each team consisted of five members, two of which were either elected county  
11 commissioners or elected councilmen.

12           16. The third joint meeting of these two negotiating teams occurred on April 1, 2010.  
13 At the public meeting on April 1, 2010, the County team verbally discussed the need to  
14 caucus separately from the City's team in order to consider the City's most recent financial  
15 offer. There was verbal discussion of the OML application to the suggestion of a private  
16 caucus from the County team. The Attorney General's most recent letter (March 5, 2010) to  
17 each counsel for each public body was mentioned to County negotiators by the City's  
18 negotiators and the City's attorney, Kevin Briggs, during the April 1, 2010 meeting. The City's  
19 negotiators explained they had been warned not to meet behind closed doors. County  
20 negotiators stated during the meeting they had no knowledge of the letter. In fact, the  
21 Attorney General's March 5, 2010 letter specifically advised both teams not to meet behind  
22 closed doors unless a specific exception in the Nevada Revised Statute for such a closed  
23 meeting could be identified. See Exhibit 1, attached hereto.

24           17. The County's response to the OML complaint did not identify or rely on any  
25 statute exempting the meetings between the two negotiating teams from compliance with the  
26 OML. NRS 241.020(1)(a meeting may only be closed pursuant to a specific statute and the  
27 meeting may only be closed to the extent specified in the statute allowing the meeting to be  
28 closed. All other portions of the meeting must be open and public).

1           18. White Pine County District Attorney, Rich Sears, who had not been at the  
2 meeting, was summoned to the meeting around 4:40 p.m. to advise the County's negotiation  
3 team regarding its authority to caucus separately from the City's team. Once he arrived the  
4 County's negotiating team rose and exited the meeting, followed by Mr. Sears. Minutes of the  
5 meeting state that Mr. Sears "advised that each side could now hold a meeting with their  
6 respective attorneys present." No other explanation or authority for their exit was put in the  
7 record about the County's purpose for meeting behind closed doors. The City's city-county  
8 negotiating team remained in the meeting room. They did not meet privately even though  
9 their counsel was present.

10           19. The City's negotiating team waited patiently in the Senior Center meeting room  
11 while the County's negotiating team met with Mr. Sears behind closed doors for approximately  
12 10 to 15 minutes.

13           20. On April 15, 2010, the Attorney General opened an investigation into the  
14 apparent violation of the OML. The Board of County Commissioners was advised of the  
15 investigation. This office asked for statements and a response from the Board and from its  
16 city-county negotiating team.

17           21. Pursuant to our investigative request, the County's city-county negotiation team  
18 submitted written statements. Statements from the County's team admitted that the team  
19 discussed and deliberated in a private closed meeting a counter-offer to the City's most  
20 recent offer of financial terms.

21           22. Accompanied by Mr. Sears, the five members of the County Team met behind  
22 closed doors. Mr. Sears advised the team of its legal duty to negotiate with the City.  
23 Mr. Sears also said he advised the negotiation team that they could not caucus. He also  
24 advised them of their specific legal duties in spending taxpayer money and the tests that  
25 apply to their exercise of power. He then left and spoke briefly with Mr. Briggs the City  
26 attorney before leaving the meeting. At least one County team member stated that Mr. Sears  
27 said the team could not caucus but that they could meet privately with him present. The  
28 City's most recent offer was then explained to Mr. Sears and it was stated there was concern

1 about the addition to the City's offer of animal control coverage and a proposed extension of  
2 fire protection to a five mile radius of the City.

3 23. Mr. Sears' remarks to the County negotiation team behind closed doors was  
4 unrelated to any exception to the rule of open public meetings found in NRS 241. There was  
5 no mention of litigation or potential litigation from him as indicated from statements from the  
6 negotiation team members. Even if there had been such discussion, the fact that the five  
7 members of the negotiation team met privately and then deliberated on the City's most recent  
8 financial offer and then agreed to make a counter-offer to the City once they returned to the  
9 joint meeting, constituted deliberation and action by a public body. The OML proscribes  
10 closed public meetings absent specific statutory authority.

11 24. Statements from those in the meeting indicate Mr. Sears was asked whether the  
12 caucus behind closed doors was legal. He replied that they could not caucus but could meet  
13 as long as he was present and if the discussion centered on whether the offer made by the  
14 City was legal, responsible, and whether the County was meeting its fiduciary duty. Sheriff  
15 Dan Watts heard Mr. Sears state that the caucus was legal because it was a business  
16 discussion.

17 25. During the April 1, 2010 meeting, Raleene Makley, acting chair of the County  
18 city-county negotiating team expressed the desire to "caucus." In the context, it's clear she  
19 simply meant to meet privately with her team to discuss the City's offer and perhaps respond  
20 to it. Literally, "caucus" means any group which meets to further its interests, and it refers to a  
21 meeting of members of a political party to select delegates, or it could mean a meeting of a  
22 faction within a political party meeting to further its own interests. Mr. Sears said he told the  
23 County team they couldn't caucus; however he never explained to them what he meant by  
24 caucus. Nevertheless, while he remained with them the team deliberated and agreed upon a  
25 counter-offer. Obviously, the team believed they could discuss and deliberate on the City's  
26 offer regardless of whether it was a "caucus" or a private meeting.

27 26. Dave Hendrix, the White Pine County Fire Battalion Chief and County  
28 negotiator, asked Mr. Sears whether he had received a warning letter from the Attorney

1 General warning against holding closed meetings during city-county negotiations. Mr. Sears  
2 replied he had received the letter, but he had not disclosed it to the County team.

3 27. During the closed meeting Raleene Makley and Gary Perea, instructed Finance  
4 Director Charlie Rodewald to make a counter-offer to the City. Mr. Rodewald then suggested  
5 to the team that they return to the public meeting with an offer to split the difference between  
6 what the City had offered and what the County was receiving under the Interlocal agreement  
7 currently in effect. Raleene Makley suggested a slight alteration of the final figure. Others  
8 then discussed the City's offer of a five mile radius for fire response/protection before  
9 returning to the public meeting.

10 28. Still behind closed doors, the team agreed to return to the open meeting and  
11 make the counter offer. Upon return to the open session it became apparent they had agreed  
12 upon a counter-offer in the closed caucus. Acting chair Raleene Makley asked County  
13 Finance Director Charles Rodewald, negotiating team member, "Charlie, if you want to. . .?"  
14 She did not finish her statement. There was a pause and Mr. Rodewald began his  
15 presentation of the County's counter-offer. His presentation of the County's counter-offer, to  
16 split the difference between last the amount the City paid the County under the terms of the  
17 last Interlocal agreement, \$458,000 and the City's current offer of \$300,000, took three  
18 minutes. Mr. Sears left the building once the team emerged from its meeting behind closed  
19 doors.

#### 20 IV.

#### 21 CLAIM FOR RELIEF

22 29. Plaintiff incorporates paragraphs 1 through 28 herein, as though set forth in full  
23 herein.

24 30. City-Council negotiating teams are public bodies as defined in NRS 241.015(3).  
25 They are created by the parent public body for the purpose of negotiating the terms and  
26 conditions of a new police/fire interlocal agreement between the City and County. The  
27 negotiated interlocal agreement would eventually be given to each parent public body with a  
28 recommendation for adoption.

1           31. Neither the OML nor any other statute provides specific authority to allow  
2 closure of any portion of this negotiation process, since both parties chose to negotiate the  
3 terms and conditions of this agreement using committees or subsidiaries of public bodies.

4           32. The NRS does not contain an exception for closed meetings of a public body to  
5 conduct Interlocal agreement contract negotiations. There is no applicable exception in  
6 NRS 241 allowing closure of a public meeting for the purpose of negotiating an Interlocal  
7 agreement.

8           33. A quorum of the County's city-county negotiation team met in a closed meeting  
9 on April 1, 2010 to deliberate and take action on proposed terms and conditions of a new  
10 Interlocal agreement with the City that would be recommended to its parent body.

11           34. Defendant County Commission violated the OML by allowing its negotiating  
12 team to meet privately in violation of the OML.

13           35. Defendants were warned in 2008 by formal published opinion (OMLO 2008-014)  
14 and on March 5, 2010, by letter addressed to each body's counsel, that closure of any public  
15 meeting requires express statutory authority. NRS 241.020(1). See Exhibit 2, copy of memo  
16 from counsel for both public bodies agreeing to resolution of complaint in OML 08-014.

17           36. Defendants have ignored two previous warnings to its city-county negotiating  
18 team to comply with the OML.

19           WHEREFORE, THE PLAINTIFF PRAYS FOR RELIEF AS FOLLOWS:

20           1. That this Court find that the Defendant White Pine County BOCC, its city-county  
21 negotiating team, is a public body within the meaning of NRS 241.015(3);

22           2. That the Court find that County's city-county negotiating team met in private on  
23 April 1, 2010 to deliberate and/or make a decision about its recommendation of settlement of  
24 negotiations to the Commission of certain agreed upon terms and conditions arrived at during  
25 the April 1, 2010 joint meeting.

26           3. That these actions were all in violation of the OML and to the extent the County  
27 team deliberated and took action on a counter-offer of new terms and conditions for a joint  
28 Interlocal agreement, such action must also be declared void;

1 4. That the County's city-county negotiation team's closed meeting violated the OML's  
2 prohibition against closure of public meetings in the absence of specific statutory authority;

3 5. That this Court permanently enjoin the White Pine County Board of County  
4 Commissioners from future closure of any negotiation meeting with the City of Ely's interlocal  
5 negotiation team, where Defendant's appoint or otherwise designate a committee, team, or  
6 subsidiary by any name, which is tasked with negotiation of proposed terms and conditions of  
7 a future agreement, and where Defendants deliberate jointly or separately from the other  
8 team, and where it takes action on proposed terms and conditions whether by formal vote or  
9 by consensus for the purpose of making a recommendation to the parent public body;

10 6. That the Defendant's future police/fire interlocal agreement negotiations comply  
11 with the OML to the extent that its committee, subcommittee, or other subsidiary of the public  
12 body deliberates or makes decisions regarding terms and conditions of a new police/fire  
13 interlocal agreement between the County and the City of Ely;

14 7. That permanent injunctive relief is necessary to prevent future violations of  
15 negotiations for police/fire animal control interlocal agreements as the history of these  
16 negotiations have been proven to be of a recurring nature; and

17 8. That this Court otherwise grant Plaintiff reasonable attorney fees, court costs,  
18 and such further and other relief as is just and appropriate under the circumstances.

19 DATED this 1st day of June, 2010.

20 CATHERINE CORTEZ MASTO  
21 Attorney General

22 By:

23   
24 GEORGE H. TAYLOR  
25 Senior Deputy Attorney General  
26 Nevada Bar No. 3615  
27 100 North Carson Street  
28 Carson City, NV 89701  
(775) 684-1230  
Attorneys for Plaintiff



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Dated this 1st day of June 2010.

Attorney General

By: George H. Taylor  
GEORGE H. TAYLOR

Office of the  
Attorney General  
100 N. Carson St.  
Carson City, NV 89701

### **LIST OF EXHIBITS**

- Exhibit 1 - Letter from the Nevada Attorney General dated March 5, 2010.
- Exhibit 2 - Copy of memo from counsel for both public bodies agreeing to resolution of complaint in OML 08-014.

# **EXHIBIT 1**

# **EXHIBIT 1**

**From:** George H. Taylor  
**Sent:** Friday, March 05, 2010 9:35 AM  
**To:** 'rwsears@wpcda.org'; 'kbriggs@elycity.com'  
**Subject:** City/county budget negotiating teams and the OmL:  
3.5.10

Gentlemen;

I reviewed this morning's Ely Times article concerning City/County budget negotiations. It states that the City negotiating team met behind closed doors only to conclude that no further negotiations last evening (3.4.10) were possible. That decision appears to be an OML violation because the closed meeting required both deliberation and action under the OML. In other words the committee made a promise, commitment or an actual vote to cease negotiating that evening, and that meeting behind closed doors constituted a separate meeting during a recess, according to statute, to discuss breaking off negotiations. NRS 241.015(1) and (2). The County team may have met behind closed doors earlier in the week, but that meeting also concluded early, apparently for the same reasons. I understand that today's session (3.5.10) has been canceled.

This is only a confidential friendly reminder regarding the apparent OML violations. I understand both the City Council and the BOCC appointed their respective negotiating teams, both of which may have a mix of staff and Councilmen/Commissioners.

Any committee appointed by a public body is itself a public body even if less than a quorum of the elected public body serves on the committee. OML Manual §3.04 (to the extent a group is appointed by a public body and given authority to make recommendations or make decisions it is a public body). A Group could be all private citizens and it would still be a committee subject to the OML.

Neither negotiating team can meet behind closed doors, unless there is a specific exception in the NRS for such meeting. For example: NRS 288.220 (exemption for collective bargaining by school districts and teacher's union). I'm unaware of any

exemption for White Pine County/City of Ely budget negotiations. Perhaps the Legislature could enact a specific exception, but until then, each team must follow the law no matter how painful the process seems to be. It makes no difference that there are only two elected public officials on each team. A public body cannot meet behind closed doors for any purpose, unless a statutory exemption or exception exists for such a meeting.

I'm happy to hear that the process is taking place in public. This is a good step forward. I hope you will take this friendly reminder in the spirit it has been sent.

George H. Taylor  
Senior Deputy Attorney General  
100 North Carson St.  
Carson City, Nv. 89701  
775-684-1230 (ph.)  
775-684-1108 (fax)  
gtaylor@ag.nv.gov

**\*\*\*\*\* Confidentiality Notice \*\*\*\*\***

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## **EXHIBIT 2**

## **EXHIBIT 2**

**From:** Kevin Briggs [kbriggs@elycity.com]

**Sent:** Thursday, July 10, 2008 2:49 PM

**To:** George H. Taylor

**Cc:** rwsears@mwpower.net

George, in response to our telephone conversation a few minutes ago, please be advised that both I, representing the City of Ely, and Rich Sears of White Pine County, have both agreed to the resolution in your latest letter. In the future, we will make sure that we both follow the open meeting law provisions when entering into negotiations between the City and County. That may be, as you have suggested, through the use of staff members to negotiate terms and then present those to the respective boards or councils for deliberation and approval in an open meeting. If there are other methods that we come up with, we will ensure that those comply with the open meeting laws of the State. Thank you for your work on this issue. We will have a discussion/action item on our next agenda to address this issue with both the City Council and the Board of County Commissioners.

Kevin Briggs





1 We reviewed audio recordings of BST meetings referenced in the complaint. We  
2 listened to audio admonitions given at the beginning of the public comment period whether it  
3 was before a public hearing item or the public comment item for non-agenda items.

## 4 II.

### 5 FINDINGS OF FACT

6 Recent BST agendas allow public comment before votes on all public hearing agenda  
7 items.<sup>2</sup> These public comment opportunities are in addition to the period of general public  
8 comment specifically limited to non-agenda items.<sup>3</sup> Usually it is at the end of meeting  
9 agendas.

10 BST President Terri Janison stated during the BST's September 24, 2009 meeting<sup>4</sup>  
11 that "Board members by law may not discuss items that have not been agendized," agenda  
12 item 9.01, Public Comment. However, earlier in the same meeting, when agenda item 4.01  
13

14 <sup>2</sup> BST stated its long standing policy has been to invite and receive public input on all agenda items  
15 whether or not designated as public hearing. The following BST statement, which is relevant to public comment  
16 during public hearing for action items, is published at the beginning of each Board agenda:

17 The Board of School Trustees recognizes that its deliberative process benefits  
18 greatly from public input and perspective. Those wishing to address the Board  
19 may sign up to speak by calling the Board Office at 799-1072 during regular  
20 business hours and at least 3 hours prior to the scheduled start of the meeting.  
21 Alternatively, speakers may sign up in person immediately prior to the beginning  
22 of the meeting. Prior to each agenda item being voted on, members of the public  
23 are allowed to speak on the item after the Board's discussion and prior to their  
24 vote. Since approval of the consent agenda may be approved in one motion,  
25 members of the public wishing to speak on a consent agenda item may speak  
26 prior to the vote. Customarily, speakers will be called in the order in which they  
27 signed up. No person may sign up for another individual. No person may yield his  
28 or her time to another person. Generally, a person wishing to speak on agenda  
items will be allowed 3 minutes to address the Board.

23 <sup>3</sup> The BST adopted a standing agenda item with a public comment guideline. It appears on all agendas  
24 at the item for public comment:

25 Should a member of the public wish to speak on matters not listed on the  
26 agenda, they may speak during the Public Comment Period. Speakers will be  
27 given 2 minutes to address the Board. The public should be aware that the Board  
28 is unable, by law, to deliberate or take action on the items raised during the  
Public Comment Period. (*According to Governance Policy GP-11: Public  
Hearings*).

<sup>4</sup> Our review of BST meetings from 2009 are not subject to enforcement action by this office because of  
statutory limitations periods. These meetings are reviewed simply for historical perspective and because the  
complainant alleged a pattern of false admonitions.

1 was called, she said that the "Board, by law, is unable to deliberate or take action on  
2 non-agenda items." Both statements concern non-agenda items, but in her first comment she  
3 said the Board could not *discuss* non-agendized items, then in her second comment, she said  
4 the Board could not *deliberate or take action* on non-agendized items (emphasis added).

5 At the December 10, 2009 BST meeting, just before item 9.01, President Janison did  
6 not give an admonition regarding Board discussion of issues or matters raised by the public.  
7 Yet during public comment, she said the Board could not discuss a matter brought up by a  
8 speaker because it had not been agendized and there could be no debate because it was a  
9 non-agendized matter. She asked Superintendent Rulffes to provide follow up with the  
10 speaker immediately following the meeting.

11 The audio recording of public comment at two meetings in February of 2010, (2/23 and  
12 2/25) revealed the following admonitions prior to public comment for non-agenda items: "The  
13 school board cannot comment on non-agenda items" and similarly, at the second meeting, "by  
14 law we cannot respond to any items not on the agenda."

15 President Janison stated before public comment on non-agenda items during an  
16 April 7, 2010 Work Session, that "the Board is not able to respond back by law, that we will be  
17 able to help you if possible." Once again the President misstated both the law and the BST's  
18 own standing agenda item for public comment.

19 By the April 8, 2010 meeting, the President's admonition before public comment on  
20 non-agenda items had been refined to be consistent with the agenda's printed standing  
21 agenda item. (See n.3, above). On April 8, 2010, the President began public comment with  
22 this statement: "We are unable by law to deliberate or take action on items raised during  
23 public comment."

24 The President did not read the printed admonition before public comment at the  
25 April 22, 2010 BST meeting nor did the President give an improper admonition stating the  
26 Board could not discuss matters brought up by the public.

27 We reviewed audio portions of regular BST meetings: April 14, 2010, April 22, 2010,  
28 May 13, 2010, May 19, 2010, May 27, 2010 and June 24, 2010. At none of these meetings

1 did the President or presiding officer tell the public that the Board could not respond to  
2 inquiries from the public. The admonition given, if any was given, adhered to the printed  
3 standing agenda item which appears on every agenda item. See n.3, above.

4 More recently, during the September 2, 2010 BST meeting, before item 8.01, the  
5 President stated that the "board may not deliberate or take action on items raised during  
6 public comment." This admonition is consistent with the standing written admonition for every  
7 public comment period. There were five persons signed up for public comment during the  
8 September 2, 2010 meeting. One person read a list of seven questions directed to the  
9 Trustees. Another speaker made a verbal request for public records and a third speaker  
10 accused a Trustee of violating the OML. The President did not discuss any of these matters,  
11 nor did she ask the other Trustees if they wished to comment.

#### 12 **BST Response to Complaint**

13 BST responded to this complaint through legal counsel. It is asserted that the Board  
14 always reads the standing agenda item introducing public comment. (See n.3, above.) BST  
15 admitted that on infrequent occasions a Board member has erroneously stated "we can't  
16 legally talk about that right now," but BST argues that this was only in response to legal  
17 counsel's advice. BST acknowledged that the Board has been directed by legal counsel to  
18 not to share viewpoints with the public as to the pros or cons of the subject matter raised by  
19 the public, nor should they disclose how they might vote on the issue. BST asserted the  
20 Board's intention, despite the "poorly worded" admonition, has always been to comply with its  
21 legal duty to not deliberate on a matter until such time as it has been properly placed on an  
22 agenda for public notice and participation.

23 But BST also acknowledged that the OML allows discussion of matters raised by the  
24 public during public comment periods. BST characterized the statutory prohibition against  
25 deliberation and action on the one hand, and the statutory authority to discuss matters with  
26 the public on the other hand, as natural tension between competing public policies. It is

27 ///

28 ///

1 asserted that the standing agenda admonition printed in each agenda for public comment is  
2 their effort to remind trustees and the public of the statutory boundaries applicable to public  
3 comment.

4 **Removal of Response to Public Comment**  
5 **(a standing agenda item)**

6 The second allegation in the complaint alleged the BST, beginning on September 9,  
7 2009, removed a standing agenda item, "RESPONSE TO PUBLIC COMMENT," from  
8 appearances on future agendas. The complaint seems to infer that the discontinuation of the  
9 standing agenda item was related to subsequent remarks from the President that the BST  
10 was legally barred from discussing issues raised by the public during PUBLIC COMMENT ON  
11 NON-AGENDA ITEMS (a remaining standing agenda item not discontinued).

12 BST explained that the discontinued agenda item had allowed discussion among BST  
13 members of matters brought up by the public, but it never disallowed discussion between the  
14 BST and the public. BST's response to the inference that the discontinued item was relevant  
15 to subsequent announcements from BST's President that the Board "could not legally talk  
16 about that now" was that the RESPONSE TO PUBLIC COMMENT agenda item was  
17 discontinued because certain members of the public regularly signed up to provide comment  
18 under this item, and under several other items including general public comment. Because  
19 the public had several opportunities to speak, this item which was deemed to be "confusing,  
20 time consuming and redundant," was deleted as a standing agenda item from future agendas.

21 **III.**

22 **ISSUES**

23 **A. Whether BST admonitions prior to public comment, which informed the**  
24 **public that the Board and its members were legally barred from discussing, either**  
25 **among themselves, or with speakers from the public, issues the public raised under the**  
26 **item: PUBLIC HEARINGS ON NON-AGENDA ITEMS, were in violation of the Open**  
27 **Meeting law?**

28 **///**

**B. Whether BST's removal of standing agenda item: "RESPONSE TO PUBLIC COMMENT: At this time, discussion may be held on issues raised by the public under Public Hearings of Agenda/Non-Agenda Items," was a violation of NRS 241.020(2)(c)(3)?**

C. Whether NRS 241.020(2)(c)(3) requires BST and its standing subcommittees, to include in its agenda, an item entitled BOARD DISCUSSION OF GENERAL PUBLIC COMMENT, or whether the existing BST agenda contains clear and concise language informing the public that board discussion of general public comment may be held under the standing agenda item—PUBLIC COMMENT ON NON-AGENDA ITEMS?

**IV.**

## CONCLUSIONS OF LAW

BST's counsel admitted that the President, occasionally but erroneously, had made statements (admonitions) before a general period of public comment on non-agenda items, which seemed to refuse to engage the public in discussion of their inquiries and issues. Even though the admonition is admitted to be in conflict with NRS 241.020(c)(2)(3), BST argued that no violation occurred because the statute does not require the Board to discuss issues with the public and secondly, the BST only sought to avoid deliberation on matters until properly agendized. However, even at best the erroneous admonitions, admitted to have been given more than once, were clearly in conflict with the statute. But whether the erroneous admonitions were, per se, a violation under NRS 241.020(2)(c)(3), or whether they represented a pattern, so that inferentially BST policy violated the OML, were issues for this investigation. We examined the record to determine if erroneous admonitions created a chilling effect on public comment.

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1           A. Whether BST admonitions prior to public comment, which informed the  
2 public that the Board and its members were legally barred from discussing, either  
3 among themselves, or with speakers from the public, issues the public raised under the  
4 item: PUBLIC HEARINGS ON NON-AGENDA ITEMS, were in violation of the Open  
5 Meeting law?

6                                   Legislative History NRS 241.020(2)(3)(c)

7           NRS 241.020(2)(c)(3) states in part that every agenda must include: "(3) A period  
8 devoted to comments by the general public, if any, *and discussion of those comments.*"  
9 [Emphasis added]. On the face of the statute, the OML allows discussion between the public  
10 body and the general public, during the public comment period. The Legislature intended to  
11 allow public bodies to discuss matters arising during public comment without fear of violating  
12 the OML, and that intent is clearly born out after review of legislative history.

13           A proposal to amend NRS 241.020 arose in the 1991 Legislature at the urging of the  
14 Clark County School District. The Board of School Trustees had been advised by counsel  
15 that if they engaged in discussion with the public and stated their position, in effect, they would  
16 be reaching a consensus and taking a vote. He advised them not to respond to public  
17 inquiries during the public comment period.

18           New counsel for CCBST in 1991 argued that the law should be changed to allow  
19 discussion between a public body and the general public because when board members do  
20 not respond to the individuals concerned [i.e. the general public], it makes the [public] very  
21 antagonistic and upset by the absence of a response.

22           AB 252, as originally introduced by Assemblyman Bergevin from Douglas County,  
23 sought to amend NRS 241.030, but it underwent a complete makeover by the time it emerged  
24 from the Assembly. The first amendment in Assembly Committee on Government Affairs  
25 would have allowed ". . .discussion of and *deliberation*" of public comments. Subsequently,  
26 the Bill was amended again to delete the allowance for deliberation. The Bill, as ultimately  
27 enrolled, amended NRS 241.020 with language that only allowed discussion of public  
28 comments. The Senate made no changes before enrollment.

1 Legislative history of AB 252 reveals that public bodies were encouraged to engage in  
2 discussion with members of the public. There is nothing in the legislative history to suggest  
3 that discussion between a public body and the general public be limited to matters on the  
4 agenda. NEVADA'S OPEN MEETING LAW MANUAL, § 8.04 (10th ed. 2005) states that if  
5 comments are not allowed during the meeting but are required to be reserved to one period of  
6 public comment, the public body may not limit comments to any particular topic but must allow  
7 comment on any subject within the authority of the public body. The OML Manual at § 8.04  
8 also states that public bodies may impose reasonable rules and regulations on public  
9 comment, including time limitations. For example, a public body may prohibit public comment  
10 if the content of the comment is a topic not relevant to or within the authority of the public body  
11 or the comments are disruptive, etc.

12 An OML Opinion from 2005 addressed the issue of whether a public body can respond  
13 to public comment. AG File No. 05-033. The President of the public body informed an  
14 individual who had asked to discuss a matter with them that the law did not permit the Board  
15 to respond to public comments. Our Opinion stated that the law does not require the public  
16 body to answer the public's inquiries; however, neither does it prohibit the public body from  
17 discussing the public's comments. Our Opinion stated that the President misrepresented the  
18 law, but no violation occurred. OMLO 2005-17 (August 29, 2005). The author of the Opinion  
19 advised the public body to change its policy of informing the public that the law prohibits a  
20 public body from commenting on statements made by the general public.

21 We find that the erroneous admonition that the Board could not discuss matters with  
22 the public was a violation. However, it appears to be attributed to a misstatement of the  
23 standing printed admonition which appears on every agenda, and a review of the audio of  
24 several meetings did not reveal an implied or unstated policy that would prohibit discussion of  
25 issues with the public. It is urged by the BST that the erroneous admonitions were only  
26 misstatements of the prohibition against deliberation and action of issues raised during public  
27 comment.

28 ///

1 Since April 22, 2010, BST admonitions to the public have not stated nor implied that  
2 discussion of matters raised by the public during public comment period between BST  
3 members and the public are legally barred. We think this fact evidences corrective action  
4 under the OML and awareness by the Board of the necessity of explaining Board policy before  
5 each public comment period.

6 Of course, the OML's prohibition against deliberation, or action on matters not properly  
7 agendized remains in effect. The 1991 amendment to the OML merely allows members of  
8 public bodies to discuss public issues even those under the public body's control or  
9 jurisdiction, but as always an admonition to the public should be given. No deliberation or  
10 action can be taken on any matter not agendized and noticed to the public. If any BST  
11 member, while in discussion with a member of the public during a meeting, feels that the  
12 discussion impinges on the member's duty not to deliberate, then the member must inform the  
13 public of the risk and, if possible, redirect discussion to allowable comment, or request the  
14 matter to be properly agendized at the next meeting.

15 **B. Whether BST's removal of standing agenda item: "RESPONSE TO PUBLIC**  
16 **COMMENT: At this time, discussion may be held on issues raised by the public**  
17 **under Public Hearings of Agenda/Non-Agenda Items," was a violation of**  
18 **NRS 241.020(2)(c)(3)?**

19 There is no evidence that the deletion of a standing agenda item, RESPONSE TO  
20 PUBLIC COMMENT, from future BST agendas was related to subsequent admonitions which  
21 stated or implied that the Board was legally barred from discussing public comment with  
22 members of the public. We did not find that the President's erroneous admonitions which  
23 misstated Board policy had a chilling effect on public comment or participation in public  
24 comment.

25 Our review of several meeting minutes and its audio record shows that the public  
26 continued to ask to discuss matters with the BST regardless of the admonition given. We  
27 reviewed the audio of BST's September 2, 2010 meeting during which five persons signed up  
28 for public comment. One person read a list of seven questions directed to the Trustees and



1 then asked for responses. Another speaker made a verbal request for public records to the  
2 Trustees and a third speaker accused a Trustee of violating the OML. The President did not  
3 discuss any of these matters nor did she ask the other Trustees if they wished to comment.

4 Our review of the minutes of other meetings showed a similar result. There was no  
5 shortage of public members waiting to speak during public comment. In summary, we did not  
6 hear any speakers complain that the Trustees were duty bound to discuss their issues or  
7 questions about school business.

8 **C. Whether NRS 241.020(2)(c)(3) requires BST and its standing**  
9 **subcommittees, to include in its agendas, an item entitled BOARD DISCUSSION OF**  
10 **GENERAL PUBLIC COMMENT, or whether the existing BST agenda contains clear and**  
11 **concise language informing the public that BST discussion of general public comment**  
12 **may be held under the standing agenda item—PUBLIC COMMENT ON NON-AGENDA**  
13 **ITEMS?**

14 Finally, we are asked to determine if the OML, NRS 241.020(2)(c)(3), requires BST and  
15 its standing subcommittees to include in each and every agenda an agenda item entitled  
16 BOARD DISCUSSION OF GENERAL PUBLIC COMMENT, and we are asked if agendas for  
17 BST and its standing subcommittees contain clear and concise language informing the public  
18 that Board discussion of general public comment may be held under the standing agenda  
19 items Public Comment and Public Hearings on Non-Agenda items. (NRS 241.020(2)(c)(1).

20 These questions inquire whether the OML requires a public body, not just the BST, but  
21 each public body in Nevada to include in its agenda an item for public body discussion with  
22 the public, or does an existing agenda item clearly inform the public that the public body may  
23 discuss public comment with members of the public body. We do not find that this is a  
24 requirement of the OML for public bodies.

25 When the Legislature amended NRS 241.020 in 1991 to allow public bodies to discuss  
26 public comment, questions, issues, or other matters within the public body's jurisdiction or  
27 control with members of the public, the Legislature stopped short of mandating discussion or  
28 even requiring a standing informational statement on all agendas alerting the public that public

1 body members were able to discuss matters with them as long as the public body member(s)  
2 did not deliberate or take action on any matter raised in public comment.

3 V.

4 CONCLUSION

5 The BST President's admonitions prior to public comment on non-agenda items during  
6 some BST meetings before April 8, 2010 seemed to indicate that the BST was legally barred  
7 from discussion of issues or matters raised by the public during public comment. The BST  
8 had been advised by legal counsel not to deliberate or take action on any matter not properly  
9 agendized. The fact that there was no uniformity of procedure among several admonitions,  
10 nor did it appear they were being read, indicates to us the President simply misstated existing  
11 Board policy. BST printed guidelines clearly explain the OML's requirement that any matter  
12 must first be properly agendized before the BST could deliberate or vote on the matter. There  
13 is no printed policy prohibiting discussion with the public, but if there was an unstated policy or  
14 an implied policy behind the admonitions, the BST has taken corrective action so the public no  
15 longer hears that the Board is unable by law to discuss issues with them during public  
16 comment.

17 If the current BST agenda admonition is to be understood and conveyed to the public, it  
18 must be read consistently to the public. Members of the BST must understand the legislative  
19 intent which led to the amendment of NRS 241.020(2)(c)(3). If members decide discussion  
20 with the public is not warranted, no OML violation occurs. OMLO 2003-13 (March 21, 2003).  
21 Our opinion in OMLO 2005-17 advised the President of that public body to change its policy  
22 by surveying members at the conclusion of public comment period to determine if any  
23 member wished to address comments made by the public. We recommend this practice to  
24 BST.

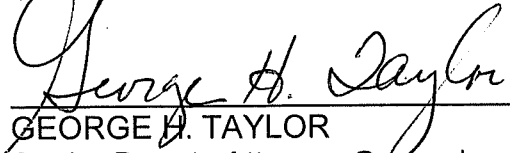
25 Because there have been no similar previous complaints about the BST's erroneous  
26 public comment admonition, we will only warn the BST to carefully inform the public of the  
27 requirements under existing law when public comment is offered. If the public asks to discuss  
28 issues with the BST, then in keeping with our prior advice to public bodies and legislative

1 intent, we urge the President to inquire of the other members if they desire to discuss the  
2 issue or matter with the public. This recommendation should be followed regarding all future  
3 agendas.

4 DATED this 19<sup>th</sup> day of October, 2010.

5 CATHERINE CORTEZ MASTO  
6 Attorney General

7  
8 By:

  
9 GEORGE H. TAYLOR  
10 Senior Deputy Attorney General  
11 Nevada State Bar No. 3615  
12 100 North Carson Street  
13 Carson City, Nevada 89701-4717  
14 (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 19<sup>th</sup> day of October, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Steven B. Miller, VP-Policy  
Nevada Policy Research Institute  
3155 E. Patrick Lane – Suite 10  
Las Vegas, NV 89120

Mark E. Wood, Deputy District Attorney  
Office of the Clark County District Attorney  
P.O. Box 552215  
Las Vegas, NV 89155-2215

Dr. Walt Rulffes  
Superintendent of Schools  
Clark County School District  
5100 West Sahara Avenue  
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Terri Janison, President  
Clark County School District  
Board of Trustees  
5100 West Sahara Avenue  
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Carolyn Edwards, Vice President  
Clark County School District  
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Linda E. Young, Clerk  
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Las Vegas, NV 89120

  
An Employee of the Office of  
the Attorney General

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1 He stated he filed the Petition based on "the approval I had from County Manager Richard  
2 Osborne and Chairman of the Board, Gary Hollis." His June 12, 2010 statement to us  
3 explains that he did not poll the other members of the BOCC nor did he ask that they be  
4 polled on his behalf with regard to authorization to file the Petition. Mr. Loomis also stated he  
5 requested the matter be placed on the next available agenda for ratification and/or approval of  
6 the filing of the Petition. He stated this was done at the June 9, 2010 BOCC meeting.

7 On June 8, 2010, this office received an OML complaint from Leslie Mark Stovall, Esq.,  
8 which alleged the BOCC violated the Open Meeting Law, specifically NRS 241.020, thus  
9 rendering the *Amended Petition* void pursuant to NRS 241.036.

10 On June 18, 2010, this office received another OML complaint from Mr. Stovall which  
11 added additional allegations to the June 8, 2010 complaint. This complaint alleged the BOCC  
12 had filed an opposition to "a motion to dismiss in case CV 30243" captioned: *In Re the Matter*  
13 *of Robert Beckett and the Nye County District Attorney's office*, which had been filed in the 5<sup>th</sup>  
14 Judicial District Court of the State of Nevada on or about June 7, 2010. It was alleged the act  
15 of filing this document on behalf of BOCC was another violation of NRS 241.020.<sup>2</sup>

16 Following the filing of the BOCC's Amended Petition for Appointment of Special  
17 Prosecutor, Mr. Stovall filed a Motion to Dismiss and for Sanctions in the 5<sup>th</sup> Judicial District  
18 Court of the State of Nevada on June 2, 2010. It alleged that the filing of the *Amended*  
19 *Petition* by attorney Keith Loomis was a void act under the OML because Mr. Loomis  
20 appeared to have no authority to file the BOCC's Petition prior to a public meeting. In a letter  
21 to Mr. Loomis dated May 28, 2010, Mr. Stovall stated he had been informed that the BOCC  
22 had not approved the Petition, "unless this [the approval of the Petition] was done in violation  
23 of the open meetings law."

24 On May 28, 2010, Mr. Stovall received an Order to Show Cause from Judge John P.  
25 Davis, 5th Judicial District Court, to answer why a special prosecutor should not be appointed  
26 in the matter of *In Re Robert Beckett and the Nye County District Attorney's Office*.

27  
28 <sup>2</sup> Because the subject matter and the allegations of both complaints are related to the same matter, we  
consolidated them for purposes of this opinion.

1 Mr. Stovall also received a copy of the BOCC's agenda for June 1, 2010 wherein item 20(d)  
2 appeared to seek authority to petition the District Court to appoint a special prosecutor, but it  
3 did not seek to ratify the hiring of Mr. Loomis, or authorize Mr. Loomis' filing of the Petition in  
4 the 5<sup>th</sup> Judicial District Court.<sup>3</sup>

5 On May 30, 2010, Mr. Stovall notified Nye County Deputy District Attorney, Marla  
6 Zlotek that the filing of the BOCC's Petition prior to a "public meeting" violated NRS 241.020.  
7 On June 1, 2010, the BOCC met in a regular commission meeting in Tonopah, Nevada, to  
8 consider agenda Item 20(d).

9 During the BOCC's June 1, 2010 meeting, Gary Hollis, Commission Chair, called Item  
10 20(d) for consideration by the Board. Almost immediately, BOCC counsel, Nye County  
11 Deputy District Attorney Marla Zlotek, asked to speak. She quickly informed the BOCC that a  
12 Petition to appoint a special prosecutor had been filed in the 5th Judicial District Court on the  
13 BOCC's behalf on or about May 27, 2010. Next, she informed them that the June 1, 2010  
14 agenda needed corrective action. The corrective action she spoke about was the immediate  
15 necessity to properly agendize the matter of the filing of the Petition by outside counsel (Keith  
16 Loomis, who had filed the Petition to appoint a special prosecutor on or about May 27th). She  
17 informed the BOCC that in order to discuss the matter and/or take any action, including  
18 ratification of Mr. Loomis' act of filing the Petition on behalf of the BOCC, the matter must be  
19 properly agendized on another agenda.

20 Ms. Zlotek warned the BOCC that if it took action then, based on the wording of item  
21 20(d), to approve the filing of the Petition in the 5th Judicial District Court by Mr. Loomis, that  
22 action would be void because the matter had not been properly agendized. During Ms.  
23 Zlotek's counsel to the BOCC she read portions of §11.02 from NEVADA'S OPEN MEETING LAW  
24 MANUAL in support of her position that corrective action was necessary and allowable under  
25 the OML Manual.

26  
27 <sup>3</sup> Item 20(d.) from the agenda for the June 1, 2010 BOCC meeting:  
28 Action – Discussion, deliberation, possible decision and possible direction to staff 1) to petition the  
District Court to appoint a Special Prosecutor; 2) to ratify any appointment already made by the District Court; 3)  
to authorize the payment for services; and 4) to authorize the execution of the contract which can be funded from  
Fund 492 Settlement Agreement; in the matter of the Bob Beckett Bad Check Program case.

1 Following Ms. Zlotek's counsel, Item 20(d.) was removed from consideration by the  
2 BOCC's June 1, 2010 agenda and no further action was taken on any part of it.

### 3 ISSUES

4 1. Whether the BOCC privately authorized the filing of the Petition for a Hearing to  
5 Consider the Appointment of a Special Prosecutor.

6 2. Whether the BOCC's June 9 Special Meeting ratified or "cured" the alleged  
7 violation of NRS 241.020(2)(a)(b) & (c).

### 8 DISCUSSION AND ANALYSIS

9 Since it is alleged the BOCC may have privately met to authorize Mr. Loomis to file the  
10 Petition, we asked each Board member, and Mr. Osborne, the County Manager, to respond  
11 with affidavits explaining each member's knowledge of the matter and whether they  
12 participated in authorizing the filing of the Petition.

13 Mr. Loomis' assertion that he did not poll the other BOCC members nor did he ask that  
14 they be polled is supported by the affidavits of the other BOCC members. Chairman Gary  
15 Hollis stated in his affidavit that he recalled a telephone conference on May 18, 2010 in which  
16 he gave "what authority he had" to Mr. Loomis to file the Petition and that Mr. Loomis then  
17 asked the matter be placed on the next BOCC agenda for approval and ratification. Mr. Hollis  
18 recalled a subsequent phone conference with Mr. Loomis, but he stated he never had  
19 communications with the other BOCC members to obtain their consent for the filing of the  
20 Petition for a Hearing to Consider the Appointment of Special Prosecutor.

21 Review of the affidavits of the other Commissioners confirms the fact that no  
22 communications between Chairman Hollis and the other Commissioners regarding the  
23 authorization to file the petition on behalf of the BOCC occurred between May 18, 2010 and  
24 June 1, 2010 when the matter was first put on a BOCC agenda. The matter was finally  
25 agendized for a special BOCC meeting on June 9, 2010. At this meeting the Board took

26 ///

27 ///

28 ///



1 action to ratify the act of the filing of the Petition and it also authorized the hiring of attorney  
2 Keith Loomis to represent the BOCC.<sup>4</sup>

3 Mr. Hollis' individual act authorizing Mr. Loomis to file the Petition was not an action by  
4 the BOCC, which would have implicated NRS 241.020. Both Mr. Hollis and Mr. Loomis  
5 explicitly acknowledged the BOCC could either ratify the filing of the Petition or reject it.

6 Because deputies in the District Attorney's office stated they were conflicted,  
7 preventing anyone from the District Attorney's office from prosecuting the criminal case  
8 against District Attorney Beckett, there was a void in county government regarding  
9 prosecution of this matter and there were impending criminal procedure deadlines.<sup>5</sup>

10 While Mr. Hollis, as Chair of the BOCC, might have called an emergency meeting to  
11 handle the matter immediately, his decision to authorize the filing of the Petition cannot now  
12 be challenged under the OML since the BOCC ratified his choice on June 9, 2010. Even if the  
13 OML was implicated with Mr. Hollis' initial choice, ratification of that choice cured any OML  
14 violation.

15  
16 <sup>4</sup> Item No. 3, Special BOCC meeting, June 9, 2010:

17 3. Action – Discussion, deliberation, possible decision and action to direct staff in the matter  
18 of the Robert Beckett Bad Check Division case and David Boruchowitz prosecution:

19 a. To retain Keith Loomis as attorney representing the Board of County Commissioners of  
20 Nye County for the filing of a petition to appoint a special prosecutor;

21 b. Ratify the filing and/or authorize the filing of a petition for the appointment of a special  
22 prosecutor to review and possibly prosecute criminal charges against Nye County District  
23 Attorney Robert Beckett and/or against Nye County Sheriff's Deputy David Boruchowitz;

24 c. To authorize the payment for services for a Special Prosecutor which are not budgeted  
25 but can be funded from Fund 492 Settlement Agreement;

26 d. To authorize the execution of a contract with Keith Loomis which is not budgeted but can  
27 be funded from Fund 492 Settlement Agreement;

28 e. To fund the deductible for a civil attorney through PoolPact to represent the Nye County  
Sheriff's Office in the civil suit filed by Robert Beckett against Sheriff Anthony DeMeo and the  
Nye County Sheriff's Office, which is not budgeted but can be funded from Fund 492 Settlement  
Agreement; and

f. To authorize the filing of a petition for the appointment of a special prosecutor to review  
and determine prosecution on past, present and future criminal cases that have not been  
adjudicated wherein David Boruchowitz is the assigned investigator.

<sup>5</sup> NRS 244.165 gives Boards of County Commissioners the jurisdiction and power to control the  
prosecution of all suits in which it is a party, but because prosecution of criminal cases within the county directly  
affects the county, county commissioners have the authority to employ additional counsel to prosecute criminal  
cases. Op. Nev. Att'y Gen. No. 42 (December 5, 1915).

1 The BOCC properly agendized the matter of the filing of the Petition and the hiring of  
2 outside counsel on the agenda for a special meeting on June 9, 2010. It then took appropriate  
3 action on June 9 when it voted to ratify the filing of the Petition and authorized funds enabling  
4 the County to contract with Mr. Loomis to represent the BOCC in this matter. The BOCC's  
5 ratification of Chairman Hollis' decision to hire private attorney Keith Loomis for the limited  
6 purpose of filing a Petition in court, complied with the OML.

7 Even assuming a potential OML violation, a public body may take corrective action to  
8 rectify a violation of the OML. The NEVADA OPEN MEETING LAW MANUAL, §§ 11.01–11.04 (10th  
9 ed. 2005) specifically allows public bodies to "cure" or take corrective action: "A public body  
10 that takes action in violation of the Open Meeting Law, which action is null and void, is not  
11 forever precluded from taking the same action at another legally called meeting. *Valencia v.*  
12 *Cota*, 617 P.2d 63 (Ariz. Ct. App. 1980); *Cooper v. Arizona; Western College District*  
13 *Governing Board*, 610 P.2d 465 (Ariz. Ct. App. 1980); *Spokane Education Ass'n v. Barnes*,  
14 517 P.2d 1362 (Wash. 1974)." OML Manual, § 11.04.

### 15 CONCLUSION

16 The issues presented in the complaint asserted the BOCC took illegal action when the  
17 Petition was filed because it was filed in the name of the BOCC. But, our investigation  
18 showed no illegal or serial communications among the BOCC members. Mr. Osborne and  
19 Chairman Hollis chose to give the full BOCC the choice to ratify or reject their initial  
20 authorization for private attorney Keith Loomis to file the Petition.

21 Even if we accept the complaint's charge that the filing of the Petition was an illegal act  
22 on behalf of the BOCC, the OML does not forbid corrective action to either ratify the action  
23 complained of, or to reject the action. In either scenario the BOCC acted properly under the  
24 OML when it ratified Mr. Hollis' and Mr. Osborne's earlier decision to authorize Mr. Loomis to  
25 file the Petition. It makes no sense to forbid public bodies from correcting what could be  
26 construed as illegal actions on matters within its jurisdiction, control, or power as that view is  
27 antithetical to the best interest and conduct of the public's business. The OML Manual states  
28 that: "Although it may not obliterate the violation, corrective action should be taken so that the

1 business of government is accomplished in the open. NEVADA OPEN MEETING LAW MANUAL,  
2 §11.01 (10th ed. 2005)

3 DATED this 24<sup>th</sup> day of August, 2010.

4 CATHERINE CORTEZ MASTO  
5 Attorney General

6  
7 By:

  
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  
14  
15  
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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 24<sup>th</sup> day of August, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Leslie Mark Stovall, Esq.  
STOVALL & ASSOCIATES  
3250 S. Highway 160, Suite 6  
Pahrump, NV 89048

Keith Loomis, Esq.  
Attorney at Law  
9468 Double R. Blvd., Suite A  
Reno, NV 89521

Gary Hollis, Chairman  
Nye County Board of County  
Commissioners  
2101 Calvada Blvd., Suite 200  
Pahrump, NV 89048

Lorinda Wichman, Commissioner  
Nye County Board of County  
Commissioners  
HC 60 Box 61250  
Round Mountain, NV 89045

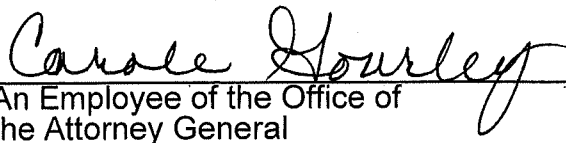
Joni Eastley, Commissioner  
Nye County Board of County  
Commissioners  
P.O. Box 153  
Tonopah, NV 89049

Andrew Borasky, Vice-Chair  
Nye County Board of County  
Commissioners  
2101 Calvada Blvd., Suite 200  
Pahrump, NV 89048

Fely Quitevis, Commissioner  
Nye County Board of County  
Commissioners  
2101 Calvada Blvd., Suite 200  
Pahrump, NV 89048

Maria Zlotek, Deputy District Attorney  
Nye County District Attorney  
P.O. Box 593  
Tonopah, NV 89049

Rick L. Osborne  
Nye County Manager  
2101 Calvada Blvd., Ste 200  
Pahrump, NV 89048

  
An Employee of the Office of  
the Attorney General

George

# Stovall & Associates

Attorneys at Law

June 2, 2010

Keith Munro, Esq.  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

OFFICE OF THE ATTORNEY GENERAL  
CARSON CITY, NEVADA  
JUN 8 2010  
BUREAU OF PUBLIC AFFAIRS  
BUSINESS & LICENSING DIVISION

Re: Nye County Commission  
Violation of NRS 241.020

Dear Mr. Munro:

I believe that Gary Hollis, Chairman of the Nye County Commission violated NRS 241.040 by causing a petition to appoint a special prosecutor to be filed in the Nye County District Court without compliance with NRS 241.020. I request an investigation and prosecution of the matter pursuant to NRS 241.040(4). I have enclosed the following documents for your review:

1. Petition for appointment of a special prosecutor filed May 27, 2010.
2. Letter to Mr. Loomis dated May 28, 2010.
3. Order to show cause from Judge Davis filed May 28, 2010.
4. Nye County Commission Agenda of June 1, 2010 (see item 20(d), p.7).

Your prompt attention to this matter would be appreciated.

Sincerely,



Leslie Mark Stovall, Esq.

LMS:lp

encl.

cc: Gary Hollis  
Chair, Nye County Commission  
Marla Zlotek  
County Counsel

# **EXHIBIT 1**

ORIGINAL

FILED

1 CASE NO. CV-30243

2 DEPT. NO. 1

2010 MAY 27 PM 2:23

3  
4 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
5 **IN AND FOR THE COUNTY OF NYE**

\* \* \* \* \*

6  
7  
8  
9 In Re the Matter of Robert Beckett  
10 and the Nye County District  
11 Attorney's Office.

**AMENDED PETITION FOR HEARING TO  
12 CONSIDER APPOINTMENT OF SPECIAL  
13 PROSECUTOR**

14  
15 The Board of County Commissioners of Nye County through its attorney, Keith  
16 Loomis, Esq. hereby petitions this Honorable Court for a hearing to determine whether to  
17 disqualify the Nye County District Attorney and his office from reviewing and possible  
18 prosecution of cases in which the Nye County District Attorney has a personal interest. The  
19 Board further petitions for the appointment of a special prosecutor to review and possibly  
20 prosecute any cases in which the Court believes the Nye County District Attorney and/or his  
21 office should be disqualified. This Petition is based upon the following allegations.

22 1.

23 On information and belief it is alleged that on or about the 5th day of May, 2010, Mr.  
24 Beckett was arrested by a Detective David Boruchowitz, a member of the Nye County Sheriff's  
25 Office, based upon his belief that there was probable cause to believe that Robert Beckett, had

1 committed criminal offenses within Nye County, Nevada. Detective Boruchowitz was the  
2 principal investigator into the alleged offenses. The charges allegedly arose out of the  
3 management of public and private funds maintained in a bad check restitution account by Mr.  
4 Beckett as the District Attorney of Nye County and his office. The investigation of the case  
5 involved interviews of employees of the Nye County District Attorney's Office and the service  
6 of a search warrant at that office to obtain documents and other evidentiary materials.

7  
8 2.

9 Under NRS 245.030 the Board of County Commissioners is charged with  
10 causing the prosecution of any county officer who is responsible for any delinquencies in the  
11 collection, disbursement, safekeeping, or management of the public revenue.

12  
13 3.

14 Robert Beckett is the duly elected District Attorney of Nye County, Nevada, and is the  
15 public prosecutor for Nye County. He has charge of the Nye County District Attorney's Office  
16 and its staff.

17  
18 4.

19 On information and belief it is alleged that Mr. Beckett's personal interest in defending  
20 himself against criminal charges conflicts with his obligation as the District Attorney of Nye  
21 County to prosecute criminal cases. That same conflict of interest affects his stewardship of the  
22 office of District Attorney, its officers and employees. The conflict of the District Attorney's  
23 Office is further exacerbated by the fact that employees of the District Attorney's Office may  
24 well be witnesses in any prosecution that may occur of Mr. Bennett  
25



5.

It is therefore alleged the District Attorney of Nye County and his office should be disqualified from prosecuting any possible case against Robert Beckett.

6.

On information and belief it is alleged that the investigation into the alleged criminal conduct of Robert Beckett was conducted by Detective David Boruchowitz of the Nye County Sheriff's Office. Detective Boruchowitz has conducted investigations into several other cases. A criminal complaint was filed against Detective Boruchowitz in the Justice's Court of Pahrump Township by an individual describing himself as a special deputy district attorney for Nye County. The complaint alleged that Detective Boruchowitz engaged in criminal conduct during his investigation of other cases. This complaint was subsequently withdrawn by order of the court. It is unknown whether the charges against Detective Boruchowitz contained in the complaint have substance or not. There is a danger, however, that other cases investigated by Deputy Boruchowitz may be affected by the conflict of interests which inheres in the potential prosecution of Mr. Beckett by Mr. Beckett or his office. In particular, the interest in defending himself against criminal charges may cause an incentive on the part of Mr. Beckett and/or his office to discredit the principal officer investigating Mr. Beckett's case and to do so by handling other cases investigated by Mr. Boruchowitz so that he is discredited.

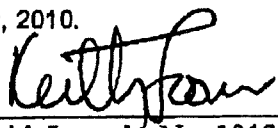
7.

Under NRS 252.100(1) whenever the district attorney is disqualified from acting in any matter coming before the court, the court may appoint some other person to perform the duties of the district attorney.

1 WHEREFORE Petitioner requests as follows:

- 2 1. That the Court set a date and time for an evidentiary hearing to determine whether the  
3 District Attorney and/or his office should be disqualified from evaluating and pursuing  
4 a possible prosecution of Mr. Beckett for his handling and/or management of funds  
5 within the bad check restitution program.
- 6 2. That the Court set a date and a time for an evidentiary hearing to determine whether the  
7 District Attorney and/or his office should be disqualified from evaluating and possibly  
8 prosecuting other cases investigated by Detective Boruchowitz.
- 9 3. That the Court give notice of the time, date and location of the hearing to Robert  
10 Beckett and the District Attorney's Office of Nye County and that all parties be given  
11 the opportunity to present evidence to determine whether the prosecutorial function can  
12 be carried out impartially by Mr. Beckett and/or his office.
- 13 4. That if the Court determines that the District Attorney and his office are disqualified  
14 from evaluating and possibly prosecuting the cases, that a special prosecutor be  
15 appointed to review and pursue possible prosecution of the cases.
- 16 5. That the Court make such other or further provisions as it deems necessary or proper in  
17 the circumstances of this case.

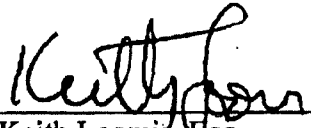
18  
19 DATED this 26<sup>th</sup> day of May, 2010.

20   
21 Keith Loomis, No. 1912  
22 Attorney for Petitioner  
23 Board of County Commissioners of Nye County  
24 9468 Double R Blvd. Ste. A  
25 Reno, NV 89511  
(775) 853-7222  
e-mail keithloomis@earthlink.net

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**VERIFICATION**

Under penalties of perjury, the undersigned declares that he is the attorney for the  
Petitioner named in the foregoing, **Petition for Hearing to Appoint Special Prosecutor** and  
knows the contents thereof; that the pleading is true of his own knowledge, except as to matters  
set forth in any paragraph which begins with a statement that the paragraph is stated on  
information and belief, and that as to such matters he believes them to be true.

Dated this 26<sup>th</sup> day of May, 2010.

  
Keith Loomis, Esq  
Attorney for Petitioner

This Verification is signed by the attorney for Petitioner because to the best of this attorney's  
knowledge there is no officer or employee of the Board of County Commissioners of Nye  
County present in the county where this attorney resides, practices law and prepared this  
Petition.

1                   **IN THE FIFTH JUDICIAL COURT OF STATE OF NEVADA**  
2                   **IN AND FOR THE COUNTY OF NYE**

3  
4                   **AFFIRMATION**  
5                   **Pursuant to NRS 239B.030**

6                   The undersigned does hereby affirm that the preceding document, **AMENDED PETITION**  
7 **FOR HEARING TO CONSIDER APPOINTMENT OF SPECIAL PROSECUTOR**, filed in the  
8 Matter of Robert Beckett and the Nye County District Attorney's Office:

9                   **XX** Document does not contain the social security number of any person.

10                   **OR**

11                   Document contains the social security number of a person required by:

12                   A specific state or federal law, to wit: **STATE SPECIFIC STATE OR FEDERAL LAW**

13                   **or**

14                   For the administration of a public program

15                   **or**

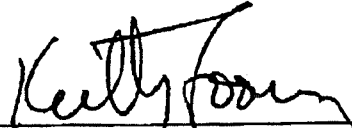
16                   For an application for a federal or state grant

17                   **or**

18                   Confidential Family Court Information Sheet  
19 (NRS 125.130, NRS 125.230 and NRS 125B,055)

20                   Dated this 26th day of May, 2010

21  
22  
23                   **LAW OFFICE OF KEITH L. LOOMIS**

24  
25  
26                     
27 **KEITH L. LOOMIS, ESQ.**  
28 **Attorney for Defendant**

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Law Offices of Keith Loomis and that on the 26<sup>th</sup> day of May, 2010, I served a true and correct copy of the following document, entitled:

**PETITION FOR APPOINTMENT OF SPECIAL PROSECUTOR**

addressed as follows:

Robert Beckett, Esq.  
P.O Box 593  
Tonopah, NV 89049

Nye County District Attorney's Office  
P.O. Box 593  
Tonopah, NV 89049

Leslie Stovall, Esq.  
Stovall & Associates  
3250 S. Highway 160 Ste. E  
Pahrump, NV 89048

☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid an envelope containing the above-identified document at Carson City, Nevada, in the ordinary course of business.

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document by hand delivery to the offices of the addressee named above.

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document to Reno Carson Messenger Service for delivery to the offices of the addressee.

  
ANGEL RADLEY

## **EXHIBIT 2**

TX Report

Date: 05/28/2010 15:45  
Name: STOVALL & ASSOCIATES  
ID: 7022580093

Stovall & Associates  
Attorneys at Law

May 28, 2010

Keith Loomis, Esq.  
9468 Double R Boulevard  
Reno, NV 89521-4808  
Fax: 775-853-0860

Dear Mr. Loomis:

I received the petition for hearing to consider appointment of special prosecutor in my office on May 27, 2010. My immediate concern is the allegation that "The Board of County Commission of Nye County through its attorney, Keith Loomis, Esq. hereby petitions..."

I have been informed that the Nye County Commission has not approved this petition, unless this was done in violation of the open meeting law. I am also informed that approval of this matter may be on the June 1, 2010 agenda of the Nye County Commission.

I suggest withdrawing your petition as written until Commission approval to avoid a procedural challenge. Further, I believe this petition must be served upon the District Attorney. The form of your petition appears to be ex parte without summons or other opportunity to answer.

Finally, I question whether the petition can be filed in good faith in light of the lack of probable cause for the April 21, 2010 search and seizure or May 5, 2010 arrest of Beckett. I have enclosed a copy of my complaint and motion for return of property and to suppress. These will be served upon the Sheriff's Department. I think you should carefully consider whether any allegation of criminal wrongdoing can be made in light of complete lack of evidence and the unlawful searches which occurred in this case.

Sincerely,

Leslie Mark Stovall, Esq.  
(Dictated but not edited)

3218 W. Charleston Blvd., Ste. B  
Las Vegas, Nevada 89102  
Telephone: (702) 324-8054  
Fax: (702) 324-1028

3250 E. Highway 150, Ste. 4  
Pahrump, Nevada 89048  
Telephone: (775) 787-4608  
Fax: (775) 787-4447

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Stovall & Associates  
Attorneys at Law

May 28, 2010

Keith Loomis, Esq.  
9468 Double R Boulevard  
Reno, NV 89521-4808  
Fax: 775-853-0860

Dear Mr. Loomis:

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I have been informed that the Nye County Commission has not approved this petition, unless this was done in violation of the open meeting law. I am also informed that approval of this matter may be on the June 1, 2010 agenda of the Nye County Commission.

I suggest withdrawing your petition as written until Commission approval to avoid a procedural challenge. Further, I believe this petition must be served upon the District Attorney. The form of your petition appears to be ex parte without summons or other opportunity to answer.

Finally, I question whether the petition can be filed in good faith in light of the lack of probable cause for the April 21, 2010 search and seizure or May 5, 2010 arrest of Beckett. I have enclosed a copy of my complaint and motion for return of property and to suppress. These will be served upon the Sheriff's Department. I think you should carefully consider whether any allegation of criminal wrongdoing can be made in light of complete lack of evidence and the unlawful searches which occurred in this case.

Sincerely,

Leslie Mark Stovall, Esq.  
(Dictated but not edited)



1 CASE NO.

2 DEPT. NO.

3

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**IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF NYE**

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9 In Re the Matter of Robert Beckett  
10 and the Nye County District  
11 Attorney's Office.

**PETITION FOR HEARING TO CONSIDER  
APPOINTMENT OF SPECIAL PROSECUTOR**

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The Board of County Commissioners of Nye County through its attorney, Keith Loomis, Esq. hereby petitions this Honorable Court for a hearing to determine whether to disqualify the Nye County District Attorney and his office from reviewing and possible prosecution of cases in which the Nye County District Attorney has a personal interest. The Board further petitions for the appointment of a special prosecutor to review and possibly prosecute any cases in which the Court believes the Nye County District Attorney and/or his office should be disqualified. This Petition is based upon the following allegations.

1.

On information and belief it is alleged that on or about the 5th day of May, 2010, Mr. Beckett was arrested by a Detective David Boruchowitz, a member of the Nye County Sheriff's Office, based upon his belief that there was probable cause to believe that Richard Beckett, had

1 committed criminal offenses within Nye County, Nevada. Detective Boruchowitz was the  
2 principal investigator into the alleged offenses. The charges allegedly arose out of the  
3 management of public and private funds maintained in a bad check restitution account by Mr.  
4 Beckett as the District Attorney of Nye County and his office. The investigation of the case  
5 involved interviews of employees of the Nye County District Attorney's Office and the service  
6 of a search warrant at that office to obtain documents and other evidentiary materials.

7  
8 2.

9 Under NRS 245.030 the Board of County Commissioners is charged with  
10 causing the prosecution of any county officer who is responsible for any delinquencies in the  
11 collection, disbursement, safekeeping, or management of the public revenue.

12  
13 3.

14 Robert Beckett is the duly elected District Attorney of Nye County, Nevada, and is the  
15 public prosecutor for Nye County. He has charge of the Nye County District Attorney's Office  
16 and its staff.

17  
18 4.

19 On information and belief it is alleged that Mr. Beckett's personal interest in defending  
20 himself against criminal charges conflicts with his obligation as the District Attorney of Nye  
21 County to prosecute criminal cases. That same conflict of interest affects his stewardship of the  
22 office of District Attorney, its officers and employees. The conflict of the District Attorney's  
23 Office is further exacerbated by the fact that employees of the District Attorney's Office may  
24 well be witnesses in any prosecution that may occur of Mr. Bennett  
25

5.

It is therefore alleged the District Attorney of Nye County and his office should be disqualified from prosecuting any possible case against Robert Beckett.

6.

On information and belief it is alleged that the investigation into the alleged criminal conduct of Robert Beckett was conducted by Detective David Boruchowitz of the Nye County Sheriff's Office. Detective Boruchowitz has conducted investigations into several other cases. A criminal complaint was filed against Detective Boruchowitz in the Justice's Court of Pahrump Township by an individual describing himself as a special deputy district attorney for Nye County. The complaint alleged that Detective Boruchowitz engaged in criminal conduct during his investigation of other cases. This complaint was subsequently withdrawn by order of the court. It is unknown whether the charges against Detective Boruchowitz contained in the complaint have substance or not. There is a danger, however, that other cases investigated by Deputy Boruchowitz may be affected by the conflict of interests which inheres in the potential prosecution of Mr. Beckett by Mr. Beckett or his office. In particular, the interest in defending himself against criminal charges may cause an incentive on the part of Mr. Beckett and/or his office to discredit the principal officer investigating Mr. Beckett's case and to do so by handling other cases investigated by Mr. Boruchowitz so that he is discredited.

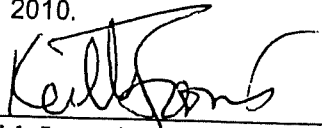
7.

Under NRS 252.100(1) whenever the district attorney is disqualified from acting in any matter coming before the court, the court may appoint some other person to perform the duties of the district attorney.

1 WHEREFORE Petitioner requests as follows:

- 2 1. That the Court set a date and time for an evidentiary hearing to determine whether the
- 3 District Attorney and/or his office should be disqualified from evaluating and pursuing
- 4 a possible prosecution of Mr. Beckett for his handling and/or management of funds
- 5 within the bad check restitution program.
- 6 2. That the Court set a date and a time for an evidentiary hearing to determine whether the
- 7 District Attorney and/or his office should be disqualified from evaluating and possibly
- 8 prosecuting other cases investigated by Detective Boruchowitz.
- 9 3. That the Court give notice of the time, date and location of the hearing to Robert
- 10 Beckett and the District Attorney's Office of Nye County and that all parties be given
- 11 the opportunity to present evidence to determine whether the prosecutorial function can
- 12 be carried out impartially by Mr. Beckett and/or his office.
- 13 4. That if the Court determines that the District Attorney and his office are disqualified
- 14 from evaluating and possibly prosecuting the cases, that a special prosecutor be
- 15 appointed to review and pursue possible prosecution of the cases.
- 16 5. That the Court make such other or further provisions as it deems necessary or proper in
- 17 the circumstances of this case.
- 18

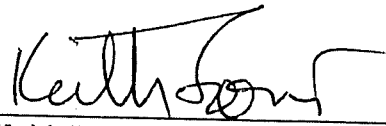
19 DATED this 25th day of May, 2010.

20   
21 Keith Loomis, No. 1912  
22 Attorney for Petitioner  
23 Board of County Commissioners of Nye County  
24 9468 Double R Blvd. Ste. A  
25 Reno, NV 89511  
(775) 853-7222  
e-mail keithloomis@earthlink.net

VERIFICATION

Under penalties of perjury, the undersigned declares that he is the attorney for the  
Petitioner named in the foregoing, **Petition for Hearing to Appoint Special Prosecutor** and  
knows the contents thereof; that the pleading is true of his own knowledge, except as to matters  
set forth in any paragraph which begins with a statement that the paragraph is stated on  
information and belief, and that as to such matters he believes them to be true.

Dated this 25<sup>th</sup> day of May, 2010.

  
Keith Loomis, Esq  
Attorney for Petitioner

This Verification is signed by the attorney for Petitioner because to the best of this attorney's  
knowledge there is no officer or employee of the Board of County Commissioners of Nye  
County present in the county where this attorney resides, practices law and prepared this  
Petition.

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IN THE FIFTH JUDICIAL COURT OF STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, PETITION FOR HEARING  
TO CONSIDER APPOINTMENT OF SPECIAL PROSECUTOR, filed in the Matter of Robert  
Beckett and the Nye County District Attorney's Office:

XX Document does not contain the social security number of any person.

OR

Document contains the social security number of a person required by:

A specific state or federal law, to wit: STATE SPECIFIC STATE OR FEDERAL LAW

or

For the administration of a public program

or

For an application for a federal or state grant

or

Confidential Family Court Information Sheet  
(NRS 125.130, NRS 125.230 and NRS 125B,055)

Dated this 25th day of May, 2010

LAW OFFICE OF KEITH L. LOOMIS

/s/ Keith L. Loomis

\_\_\_\_\_  
KEITH L. LOOMIS, ESQ.  
Attorney for Defendant

1  
2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I am an employee of the Law Offices of Keith Loomis and that on  
4 the 25<sup>th</sup> day of May, 2010, I served a true and correct copy of the following document,  
5 entitled:

6 **PETITION FOR APPOINTMENT OF SPECIAL PROSECUTOR**  
7

8 addressed as follows:

9 Robert Beckett, Esq.  
10 P.O. Box 593  
Tonopah, NV 89049

11 Nye County District Attorney's Office  
12 P.O. Box 593  
Tonopah, NV 89049

13 Leslie Stovall, Esq.  
14 Stovall & Associates  
3250 S. Highway 160 Ste. E  
15 Pahrump, NV 89048

16 ☒ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with  
17 postage fully prepaid an envelope containing the above-identified document at  
18 Carson City, Nevada, in the ordinary course of business.

19 ☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified  
document by hand delivery to the offices of the addressee named above.

20 ☐ **BY MESSENGER SERVICE:** I delivered the above-identified document to  
21 Reno Carson Messenger Service for delivery to the offices of the addressee.

22  
23   
ANGEL RADLEY  
24  
25

## **EXHIBIT 3**



Case No. CV30243

FILED

2010 MAY 28 AM 11:13

NYE COUNTY CLERK  
COUNTY

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

IN RE THE MATTER OF ROBERT BECKETT  
AND THE NYE COUNTY DISTRICT  
ATTORNEY'S OFFICE.

ORDER TO SHOW CAUSE

Whereas, the Board of County Commissioners of Nye County have caused to be filed a verified "Amended Petition for Hearing to Consider the Appointment of a Special Prosecutor" to handle a pending criminal investigation of Robert Beckett's supervision of certain public monies and in other criminal matters pertaining to the prosecution of Detective David Boruchowitz by the Nye County District Attorney's office.

Whereas, all of the above has resulted in considerable confusion and the casting of a black shadow that covers Nye County.

Whereas, the court is the appropriate entity to appoint a special prosecutor in such instances where the office of the District Attorney should be disqualified from cases.

Whereas, the court has inherent powers to enforce the laws of the State and the general supervision of judicial activities within its jurisdiction.

Whereas, the undersigned court being the Judge with the most seniority within the District is the appropriate court to issue an order that is ministerial in nature.

FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



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Whereas, the reasons for the seeking of a special prosecutor is in the nature of a criminal matter and the appointment may be required to prevent the continued erosion of the confidence, perceived by the public, in the legal communities ability to respond to allegations of this nature.

The right, if any, of the respondent to continue prosecuting a case against the officer who has filed charges against him is greatly outweighed by the right of the public to have a restoration of some confidence in the judicial system. In determining whether the respondent should be disqualified and a special prosecutor appointed where the respondent is charged with misfeasance or perhaps malfeasance in office, creates a situation where the appointment of an impartial prosecutor to insure justice is done and confidence in the laws of this state restored is a criminal matter.

The court does not sit in a vacuum on a high hill 170 miles from the epicenter of Nye County but is cognizant of the reports in the public media. The sadness with which this case comes to the court and the erosion of the public's confidence in the legal process and the law within Nye County, has a ripple that extends well beyond the borders of this county. Due process however, requires an opportunity be provided for the respondent to refute these claims and to show why a special prosecutor should not be appointed.

This is a criminal matter and any civil implications are found to be minimal and are greatly outweighed by the public's right to have confidence and credibility in the legal system restored.

Wherefore, the court enters the following Order:

1. Robert Beckett, the elected District Attorney is ordered to appear

1 before this court at 10:00 a.m. on the 11<sup>th</sup> day of June 2010, in the  
2 District Court within the county seat, namely Tonopah, Nevada to  
3 show cause as to why the appointment of a special prosecutor should  
4 not be named.  
5

6 2. The District Attorney in the interim period shall refrain from any  
7 prosecution of any case against Detective David Boruchowitz.  
8

9 3. That the clerk of this court will provide a copy of this Order to  
10 the Sheriff of Nye County. The Sheriff is to see that a copy of this  
11 Order and the underlying Petition is served upon the Nye County  
12 District Attorney and that a proper certificate of such service be filed  
13 in this proceeding.

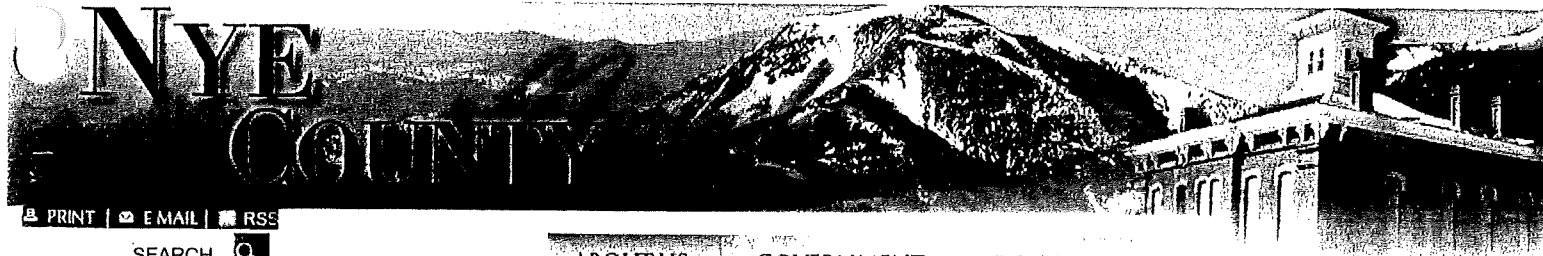
14 DATED this 28 day of May 2010.  
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17 DISTRICT JUDGE  
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FIFTH JUDICIAL DISTRICT COURT  
ESMERALDA, MINERAL AND NYE COUNTIES



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## Board of County Commissioners

### Meetings

- 10:00 a.m.
- First and third Tuesday of each month
- Two locations:
  - County Commission Chambers  
101 Radar Rd.  
Tonopah, NV 89049
  - Bob Ruud Community Center  
150 N. Hwy. 160  
Pahrump, NV 89060

### Agendas

Agendas are available prior to the meetings

- [Most Recent Agenda](#) | [View All](#)

### Calendar

[view more](#)

June 1  
Commissioners Meeting  
June 15  
Commissioners Meeting  
July 6  
Commissioners Meeting

### Members

#### District 1

Commissioner Lorinda Wichman  
HC 60 Box 61250  
Round Mountain, NV 89045  
(775) 761-1626 - Cell  
(775) 482-8198 - County Fax  
(775) 482-7644 - County Cell  
Email: lawichman@gmail.com

#### District 2

Commissioner Joni Eastley  
P.O. Box 153  
Tonopah, NV 89049  
(775) 482-8191 -  
Commissioner's Office  
(775) 482-9466 - Home Office  
(775) 482-4533 - County Cell  
(775) 482-8568 - Fax  
Email: castle@inett.com

#### District 3

Commissioner Gary Hollis  
Chairman  
2101 Calvada Blvd., Ste. 200  
Pahrump, NV 89048  
(775) 751-7075 -  
Commissioner's Office  
(775) 727-1794 - Home  
(775) 727-3169 - County Cell  
(775) 727-1734 - Fax  
Email: ghollis@pahrump.com

#### District 4

Commissioner Andrew "Butch" Borasky - Vice-Chair  
2101 Calvada Blvd., Ste. 200  
Pahrump, NV 89048  
(775) 751-7075 -  
Commissioner's Office  
(775) 209-3100 - Personal Cell  
(775) 751-7093 - County Fax  
Email: aborasky@co.nye.nv.us

#### District 5

Fely Quitevis  
2101 Calvada Blvd., Ste. 200  
Pahrump, NV 89048  
(775) 751-7075 -  
Commissioner's Office  
(775) 209-0808 - County Cell  
(775) 751-7093 - County Fax  
Email: fely@precious-properties.com

**District 1:** Currant Creek, Duckwater, Gabbs, Ione, Manhattan, Mercury, Round Mountain, Sunnyside, Forty Bar, Pahrump Precincts 19, 23 & 32, and Smoky Valley

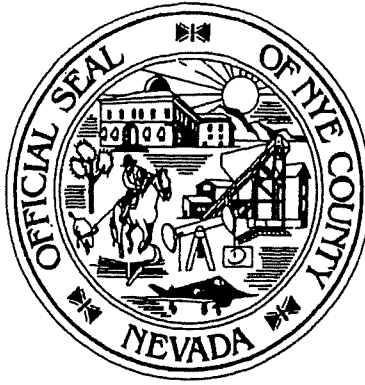
**District 2:** Beatty, Amargosa Valley, Tonopah Precincts 14 & 15, and Pahrump Precinct 26

**District 3:** Pahrump Precincts 9, 21, 25 & 27

**District 4:** Pahrump Precincts 10, 11, 16, 28 & 29

**District 5:** Pahrump Precincts 17, 20, 22, 24, 30 & 31

**EXHIBIT 4**



**NYE COUNTY  
BOARD OF COMMISSIONERS MEETING  
101 Radar Rd, Tonopah NV 89049  
TUESDAY, June 1, 2010  
10:00 AM**

**Gary Hollis, Chair  
Butch Borasky, Vice-Chair  
Joni Eastley, Commissioner  
Lorinda Wichman, Commissioner  
Fely Quitevis, Commissioner  
Sandra "Sam" L. Merlino, Ex-officio Clerk of the Board**

**NOTE:** Items on the agenda without a time designation may not necessarily be considered in the order in which they appear on the agenda. **NOTICE:** It is anticipated that the items of business before the Board of Commissioners on June 1, 2010 will be fully completed on that date. However, should item(s) not be completed, it is possible item(s) could be carried over and be heard before the Board of Commissioners beginning at 8:30 a.m. on the next day.

**Public Comment** during the Commission Meeting on June 1, 2010 will be for all matters, both on and off the agenda, and be limited to three minutes per person. Additionally, public comment of three minutes per person will be heard during individual action items. The Commission reserves the right to reduce the time or limit the total time allowed for public comment. The Commission may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the Commission, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering with the rights of other speakers. Persons are invited to submit comments in writing on the agenda items and/or attend and make comment on that item at the Commission meeting. **NOTE: You will not be permitted to speak during Public Comment without completing and submitting the appropriate forms. Please fill out a Citizen Inquiry form for a general public comment or a Citizen Input form to comment on a specific agenda item located on the public information table.**

Pursuant to NRS 241.020, the Agenda for the Commission Meeting has been posted at the following locations: Tonopah Convention Center, 301 Brougner Avenue, Tonopah, NV; U.S. Post Office, 201 Erie Main St., Tonopah, NV; Commissioners' Meeting Room, 101 Radar Road, Tonopah, NV; District Court, 101 Radar Road, Tonopah, NV; Pahrump Justice Complex, 1520 East Basin Road, Pahrump, NV; Bob Ruud Community Center, 150 North Highway 160, Pahrump, NV; Beatty Community Center, 100 A Avenue South Beatty, NV

Support documentation for the items on the agenda, provided to the Nye County Board of Commissioners is available to members of the public at the County Manager's Office (101 Radar Road, Tonopah, Nevada & 2101 Calvada Blvd, Suite 200, Pahrump, Nevada) and on the County's website.

**WEBSITE: [www.nyecounty.net](http://www.nyecounty.net)  
[www.co.nye.nv.us](http://www.co.nye.nv.us)**

The Nye County Board of Commissioners may take a short break every 1 ½ hours.

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

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ITEM #	SUBJECT
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June 1, 2010

Gary Hollis, Chair  
Butch Borasky, Vice-Chair  
Joni Eastley, Commissioner

Lorinda Wichman, Commissioner  
Fely Quitevis, Commissioner  
Sandra "Sam" Merlino, Ex-Officio Clerk of the Board

NOTE: All times are approximate except for bid openings, public hearings, and any other items agendized at a specific time. Action may be taken on all items except where otherwise indicated. Items not scheduled for a specific time may be considered at any time and in any order.

**Special Note:** Any member of the public who is disabled and requires accommodation or assistance at this meeting is requested to notify the Nye County Manager's Office in writing or call 775-482-8191 prior to the meeting.

**Please note: Blue text that is underlined indicates items are linked to supporting documentation.**

### NOTICE OF TIMED AGENDA ITEMS

- 9:30 a.m. Recess to attend a presentation of the new GE Proteus Radiology Suite (X-Ray machine) located at 825 Erie Main St. Tonopah, NV 89049.
- 10:00 a.m. Timed Agenda Items:
- a. Action – Public Hearing, discussion, deliberation and possible decision to adopt, amend and adopt, or reject Nye County Bill No. 2010-10: A Bill proposing to adopt a Development Agreement between the County of Nye and Amargosa Valley Solar I, LLC, for the proposed development of two 242 MW solar power plants on up to 6,360-acres of land within the Amargosa Town boundary; and other matters properly related thereto.
  - b. Action – Discussion, deliberation, and possible decision to review any public comments received on US Department of Justice, Bureau of Justice Assistance: Bryne Justice Assistance Grant Application per federal pre-grant requirements. Grant is for 48 months and does not require match, nor do we anticipate one. Grant is for three (3) in car cameras in support of our narcotics highway interdiction team. Total project is \$ 16,000.00 and for 48 months in duration.
- 10:15 a.m. Recess to the Nye County Board of Road Commissioners (Agenda Attached)
- 10:30 a.m. Recess to the Nye County Licensing and Liquor Board (Agenda Attached)
- 10:45 a.m. Action – 1) Public Hearing, discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Acknowledgment and Notice of Acceptance of R.S. 2477 Right-of-Way Grant for road number 994810 commonly referred to as Barrel Springs Road; and 2) Discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010 - 25: A Resolution Designating a Minor Road Pursuant to Nevada Revised Statutes 403.170 and R.S. 2477 Right-of-Way.
- 10:50 a.m. Action – Discussion, deliberation, and possible decision concerning a request to approve a loan in the amount of \$907,000.00 for Educational Programs for the Nye County School District which would be repaid from interest earned on the principal in Fund 494 Education Endowment normally paid to the School District annually.

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

ITEM #	SUBJECT
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June 1, 2010

11:15 a.m.     Action – Presentation, discussion, deliberation, and possible decision to approve the Nevada Department of Transportation's proposed Nye County Fiscal Year 2011-2020 Work Program (WP) and Short and Long Range Elements.

### NYE COUNTY BOARD OF COMMISSIONERS

- 1    **Pledge of Allegiance**
- 2    **Action - Approval of the Agenda for the Board of County Commissioners' meeting of June 1, 2010.**
- 3    **Action - Approval of Minutes of the Board of County Commissioners' meeting(s) for – N/A**
- 4    **Awards and Presentations**
- 5    **Announcements (first)**
- 6    **GENERAL PUBLIC COMMENT (Three-minute time limit per person.) Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item (first).**
- 7    **Action - Emergency Items**
- 8    **Action - Commissioners'/Manager's Comments (This item limited to announcements or topics/issues proposed for future workshops/agendas)**
- 9    **Consent Agenda Items**
  - a.    **Action – Discussion of any item from the Consent Agenda Items that needs review before a decision is made.**
  - b.    **Action – Approval of Elected Official Collection Report**
  - c.    **Action – Approval of Assessor's Office Change Request**
  - d.    **Action – Approval of Personnel Actions**
  - e.    **Action – Approval to pay one (1) Medical Indigent inpatient hospital bill in excess of \$12,500.00 and is budgeted from Fund 231 Dedicated Medical and General Indigent.**
  - f.    **Action – Approval to solicit Nevada radio stations to play the wildfire public service announcements by sending out the attached letter to encourage the Federal Government to take a proactive step in preventing wildfires.**



## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

ITEM #	SUBJECT
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June 1, 2010

- g. Action – Approval of a Professional Services Agreement (PSA) with SRK Consulting to provide engineering services related to the closure of the old Round Mountain and the Amargosa Valley Landfills in accordance with their associated permits and closure applications for a total cost of \$8,965 and budgeted from previously approved funds from Fund 611, Landfill Closure and Post Closure, on Project PW 0704
- h. Action – Approval of change Order No. 1 to Ben F. Dotson Construction for the Beatty Ambulance Facility, for an additional beam in the building, in the amount of \$5,554.00 which is budgeted from Fund 492 Settlement Agreement, project number PE1002.
- i. Action – Approval to enter into an agreement with Nevada Geo Tech to provide soils analysis and site plan for new General Service's site at 871 Boothill Drive. Total cost is \$22,000.00 which has been approved to be funded from Fund 492 Settlement Agreement and later reimbursed by the Pahrump Jail Facility Project bond proceeds.
- j. Action – Approval to enter into a Professional Services Contract for Medical Director services for the five (5) Volunteer Ambulance Services in Nye County – Amargosa Valley, Beatty, Gabbs, Tonopah, and Smoky Valley, per NRS, NAC 450B. The contract is for a base rate of \$1,000.00 per month and, in addition may be increased at \$50.00 per hour for instructing approved classes and for related travel expenses. The contract is budgeted from Fund 225 Ambulance.
- k. Action – Approval of a Funds Transfer Agreement with Ceridian for the refundable deposit of \$3,500.00 which represents approximately 3.5% of the total participation into a Flexible Spending Account (FSA) as part of the Full Deposit Funding Agreement. This will be funded out of Fund 101 General.
- l. Action – Approval to accept the Fiscal Year 2011 State of Nevada Emergency Response Commission (SERC) Planning, Training, Equipment and Operations grant award in the amount of \$21,725.00. There is no match required by Nye County. This grant will be administered out of Fund 247 Grants.
- m. Action – Approval to apply for the State of Nevada Division of Emergency Management (DEM) Emergency Preparedness Working Group (EPWG) FFY10 Supplemental grant. Funds from this grant come from the National Nuclear Security Administration Nevada Site Office (NNSA/NSO) low-level waste grant program. The total grant request will be approximately \$114,000.00 and there is no match required. This grant will be administered out of Fund 247 Grants.
- n. Action – Approval for the Nye County Local Emergency Planning Committee (LEPC) to apply for the State of Nevada Emergency Response Commission (SERC), Mid-cycle Hazardous Materials Emergency Preparedness (HMEP) Federal Fiscal Year 2010 grant. The amount applied for shall not be for more than \$25,000.00. This grant will be administered out of Fund 247 Grants (by Emergency Services), and there is no match required by Nye County.

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

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ITEM #	SUBJECT
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June 1, 2010

- o. Action – Approval to apply for a Recreation or Public Purposes Application to lease land from Bureau of Land Management to expand the useful footprint of the current Mt. Mariah Cemetery in Manhattan, Nevada.
- p. Action – Approval to accept the U. S. Department of Energy (DOE) Energy Efficiency and Conservation Block Grant (EECBG), # DE-RW0000170 in the amount of \$185,700.00. There is no match required by Nye County and this grant will be administered in Fund 247, Grants.
- q. Action – Approval to release ballistic vests for destruction that are unusable due to warranty expiration or contaminated. The Nye County Sheriff's Office has twenty (20) ballistic vests that are out of warranty. Approval is requested to release the vests to "Fiber Brokers International", a company that specializes in the disposal and recycling of out of warranty ballistic vests and returned to the market in non-ballistic related post consumer products such as gloves, brake pads, boat ropes, tire treads, etc.
- r. Action – Approval of a letter of support for the State of Nevada's application in the Federal Race to the Top competition for education innovation.
- s. Action – Approval of Nye County Resolution No. 2010-59: a Resolution directing the levy of a special assessment at the rate of \$1.00 per taxable parcel on all taxable property situated within the confines of the Pahrump Valley Groundwater Basin for Fiscal Year 2010-2011.
- t. Action – Approval of Nye County Resolution No. 2010-60: a Resolution directing the levy of a special assessment within the confines of the Amargosa Valley Groundwater Basin as prorated and assessed against each water user who has a permit to appropriate water or perfected water right for the Fiscal Year 2010-2011.
- u. Action – Approval of funding for the purchase and installation of four (4) cameras from Engle Technical Services for the inmate walk-way as stated per the attached scope of work for the Pahrump Justice Facility in the amount of \$1,374.00 which has already been approved from Fund 493 Settlement Agreement PE0841.
- v. Action – Approval of Change Order No. 20 to the contract between Nye County and the Design-Build Team of B & H Construction, Inc. (General Building Contractor) and JVC Architects (Architect) for the design and construction of the Pahrump Justice Facility Addition and Remodel Project in the amount of \$1,411.74 to provide additional security screen above pass thru window in lobby area which is budgeted from the approved 10% holdback of Project PE0841 from Fund 493 Capital Projects.
- w. Action – Approval of Change Order No. 21 to the contract between Nye County and the Design-Build Team of B & H Construction, Inc. (General Building Contractor) and JVC Architects (Architect) for the design and construction of the Pahrump Justice Facility Addition and Remodel Project in the amount of \$3,346.50 for added floor box which is budgeted from the approved 10% holdback of Project PE0841 from Fund 493 Capital Projects.

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

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ITEM #	SUBJECT
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June 1, 2010

- x. Action – Approval of Change Order No. 2 to the Nevada Geo-Tech Professional Services Agreement for site construction of the Calvada Eye Administration Building in the amount of \$2,225.00 for the off-site utility plan which has already been approved from Fund 492 Settlement Agreement PE0703.
- y. Action – Approval to renew a membership with the Nevada Development Authority (NDA) to support continuing growth and economic development in Southern Nevada in the amount of \$10,000.00 which has been budgeted from Fund 101 General.
- z. Action – Approval of Change Order #1 for the contract between Nye County and SCS Engineers for a no cost extension to December 31, 2010. Contract is for Instruction/Training Services under the Environmental Protection Agency (EPA) Brownfields Job Training program grant, administered in Fund 247 Grants.
- aa. Action – Approval of the State of Nevada, Division of Water Resources Budget for water distribution in connection with Duckwater Creek Distribution for the fiscal year July 1, 2010 to June 30, 2011 in the amount of \$8,862.08 which can be funded from Contingency.

### PUBLIC OFFICIALS

#### 10 Assessor

- a. Presentation of projected expenditures of money in the Assessor's Technology Fund (collections in the 2009-10 fiscal year to be added to previously encumbered or unused balances from fiscal years 2006-07 through 2008-10)

#### 11 Board of Commissioners

- a. Action – Closure of meeting, pursuant to NRS 288.220 for purposes of conferring with the County's management representatives regarding labor negotiations, issues and other personnel matters.
- b. Closed meeting, pursuant to NRS 288.220 for purposes of conferring with the County's management representatives regarding labor negotiations, issues and other personnel matters.
- c. Action – Discussion, deliberation, and possible decision on labor negotiations, issues and other personnel matters presented in closed meeting.
- d. Action – Closure of meeting, pursuant to NRS 241.015(2)(b)(2) for purposes of conferring with legal counsel regarding potential or current litigation.
- e. Closed meeting, pursuant to NRS 241.015(2)(b)(2) for purposes of conferring with legal counsel regarding potential or current litigation.
- f. Action – Discussion, deliberation, and possible decision on conference with legal counsel regarding potential or current litigation presented in closed meeting.

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

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ITEM #	SUBJECT
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June 1, 2010

- g. Action – Discussion, deliberation and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010-31: A Resolution in support of a bill to provide for the conveyance of certain public land in and around Historic Mining Townsites located in the State of Nevada and other matters properly related thereto.
- h. Action – Discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010-26: A Resolution for Establishing a County Public Road Pursuant to Nevada Revised Statutes 405.191 and R.S. 2477.
- i. Action – Discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010-29: A Resolution for Establishing a County Public Road Pursuant to Nevada Revised Statutes 405.191 and R.S. 2477.
- j. Action – Discussion, deliberation, and possible decision to adopt, amend and adopt, or reject Nye County Resolution 2010-34: A Resolution for Establishing a County Public Road Pursuant to Nevada Revised Statutes 405.191 and R.S. 2477.

### 12 Clerk

- a. Action – Discussion, deliberation, and possible decision to appoint two members to the Pahrump Regional Planning Commission due to two expired terms.
- b. Action – Discussion, deliberation, and possible decision to appoint two members to the Smoky Valley Library District due to two expired terms.

### 13 District Attorney

### 14 Recorder

### 15 Sheriff

### 16 Treasurer

### 17 Justice(s) of the Peace

### 18 District Court

### 19 Juvenile Probation

## GENERAL NYE COUNTY ADMINISTRATIVE STAFF

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

ITEM #	SUBJECT
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June 1, 2010

### 20 County Manager

- a. Action – Discussion, deliberation, and possible decision to set a date, time, and location for a Public Hearing on Nye County Bill No. 2010-14: a Bill amending Title 17, Chapter 17.04, Section 17.04.890 of the Nye County Code entitled Zoning Ordinance Text Amendment Procedure by clarifying a proposal for a text amendment may be initiated at the direction of the Board of County Commissioners or Regional Planning Commission, providing for the severability, constitutionality, and effective date hereof; and other matters properly relating thereto.
- b. Action – Discussion, deliberation, possible decision and direction to staff to modify the current practice of fireworks permitting.
- c. Action - Discussion, deliberation, and possible decision to pay Maintenance Deductible invoices in the amount of \$370,339.45 and can be funded from Fund 492 Settlement Agreement. These invoices are deductibles due for legal fees for claims assigned to NPAIP/PACT.
- d. Action - Discussion, deliberation, possible decision and possible direction to staff 1) to petition the District Court to appoint a Special Prosecutor; 2) to ratify any appointment already made by the District Court; 3) to authorize the payment for services; and 4) to authorize the execution of the contract which can be funded from Fund 492 Settlement Agreement; in the matter of the Bob Beckett Bad Check Program case.
- e. Action - Discussion, deliberation, and possible decision to set a date, time, and location for a Public Hearing on Nye County Bill No. 2010-15: A Bill proposing to authorize the issuance of the Nye County, General Obligation (Limited Tax) Bonds (Additionally Secured by Pledged Revenues), Series 2010A and the Nye County, General Obligation (Limited Tax) Bonds (Additionally Secured by Pledged Revenues), Series 2010B (Federally Taxable Direct Pay Build America Bonds).

### 21 Emergency Services

### 22 Facilities

### 23 Finance

### 24 Health & Human Services

### 25 H/R and Risk Management

- a. Action – Discussion, deliberation, possible decision and direction to staff to authorize the in-house advertising and filling of the Personnel Technician in the HR department. This position will become vacant June 4, 2010 due the current employee resigning her position. This position is currently budgeted in Fund 101 General.

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

ITEM #	SUBJECT
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June 1, 2010

- b. Action – Discussion, deliberation, and possible decision and direction to staff to authorize the Sheriff's Office to fill the following positions:
1. Detention Deputy in Tonopah due to transfer of Deputy to Tonopah Patrol due to PERS Buyout
  2. Detention Deputy in Tonopah due to transfer of Deputy to Pahrump Patrol due to PERS Buyout
  3. Pahrump Patrol Deputy due to transfer of Deputy to Amargosa Valley Patrol due to PERS Buyout
  4. Detention Deputy in Pahrump due to Deputy taking advantage of PERS Buyout offer.
  5. Pahrump Patrol Deputy due to termination 4/21/10
  6. Pahrump Patrol Deputy due to resignation effective 6/3/10

The positions that are vacant due to transfers or vacancies are not funded in the 2010-2011 Fiscal Year (FY) budget due to the PERS Buyout. The two positions due to a termination or resignation are currently funded from Fund 101 General in the 2010-2011 FY budget.

- c. Action – Discussion, deliberation, and possible decision and direction to staff to authorize the advertising and filling of 1) two Road Maintenance Workers III's in Current Creek; and 2) one Office Assistant in the Road (Engineering & Administration) Department due to employees choosing to take advantage of the PERS Buyout offer. These positions will be vacant effective June 30, 2010. These positions are not budgeted in the 2010/2011 Fiscal Year; however they can be absorbed in Fund 205 Road.
- d. Action – Discussion, deliberation, possible decision and direction to staff to authorize 1) the promotion of Celeste Sandoval Secretary II to Administrative Technical Coordinator; 2) promote Beth McGhee Office Assistant to the Secretary II position; and 3) advertise "in-house" for the vacant office assistant. The Administrative Technical Coordinator position will become vacant due to the employee taking the PERS Buyout Option. These changes can be absorbed in Fund 284 Repository Project Oversight.
- e. Action – Discussion, deliberation, possible decision and direction to staff to: 1) authorize the fulltime appointment of Darrell Lacy into the position of Director of Community Development this is not funded but would be divided equally between Funds 101 General Fund & 245 Building; and 2) advertise the vacant Director of Nuclear Waste Repository Project Office which can be absorbed from Fund 284 Repository Project Oversight.
- f. Action – Discussion, deliberation, possible decision and direction to staff to authorize the advertising and filling of one Dispatch employee in the Pahrump Sheriff's Office from: 1) the existing hiring list; or 2) outside advertising due to the unsuccessful attempts of the "in-house" advertising. This position became vacant April 9, 2010 due to the current employee resigning. This position is budgeted in fund 101 General.

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

ITEM #	SUBJECT
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June 1, 2010

### 26 Information Technology

- a. Action – Discussion, deliberation, possible decision and direction to staff to approve the capitalization of expenses relating to the purchase of user licenses for Microsoft System Center Configuration Manager system. The total cost of the licenses was \$11,249.55, which is not budgeted but can be funded from Fund 491 Special Capital Projects.

### 27 Nuclear Waste Repository Project Office

### 28 Planning/Building

- a. Ex Parte Communications and Conflict of Interest Disclosure Statements
- b. Action – Discussion, deliberation and possible decision on a request for approval of an application for a Final Subdivision Map titled Mountain Vista Manor proposing to divide approximately 6.39 acres into eighteen (18) lots, Marchetti Corp – James R. Marsh, President/Owner, AP #08-261-05 located off Air Force Road in Tonopah (FM-10-0001)
- c. Action – Discussion, deliberation and possible decision on a request for 1) approval of applications for Parcel Maps proposing to divide;
  - 1).
    - a. approximately 40 acres into one 1.76 acre parcel and one 38.49 acre parcel. Raintree Holdings Group Beatty Nevada LLC, Edward S. Ringle, Manager – Owner(s), AP #18-161-05; located in Beatty (PM-09-0009)
    - b. approximately 120 acres into one 8.94 acre parcel, one 6.98 acre parcel and one 104.49 acre parcel. Raintree Holdings Group Beatty Nevada LLC, Edward S. Ringle, Manager – Owner(s), AP #18-171-02; located in Beatty (PM-09-0010)
    - c. approximately 160 acres into one 18.23 acre parcel, one 7.42 acre parcel and one 134.44 acre parcel. Raintree Holdings Group Beatty Nevada LLC, Edward S. Ringle, Manager – Owner(s), AP #18-171-04; located in Beatty (PM-09-0011)
    - d. approximately 8.89 acres into one 4.38 acre parcel and one 4.51 acre parcel. Edward & Rita Ringle – Owner(s), AP #18-201-05; located in Beatty (PM-09-0012); and
  - 2). the following six waivers associated with the above four parcel map applications PM-09-0009 through PM-09-0012:
    - a. waiver of the requirement to provide contour information pursuant to Nye County Code 16.20.115.A.6 (WV-09-0007)
    - b. waiver of the requirement that each lot created with a division of land application shall have legal and physical access pursuant to Nye County Code 16.20.180 (WV-09-0008)

## NYE COUNTY BOARD OF COMMISSIONERS AGENDA

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ITEM #	SUBJECT
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June 1, 2010

- c. waiver of the water rights requirement pursuant to Nye County Code 16.20.190.E.2.A (WV-09-0009)
- d. waiver of the requirement to provide utility will serve letters for water and sewage disposal Nye County Code 16.20.190.E.2.B & 16.20.190.F (WV-09-0010)
- e. waiver of the requirement to show existing improvements on the parcel map submittal pursuant to Nye County Code 16.20.080.B (WV-09-0011)
- f. waiver of the requirement to show existing utilities on the parcel map submittal pursuant to Nye County Code 16.20.115.A.7 (WV-09-0012)

### 29 Public Administrator

### 30 Public Works

### 31 Senior Services

- a. Action – Discussion, deliberation, and possible decision to accept a supplemental grant award from the State of Nevada, Aging and Disability Services Division to purchase a new mini-van to be used in the Long Distance Medical Trip program in the amount of \$21,250.00. This grant supersedes the grant award dated January 14, 2010 and revised to extend the grant ending date. The matching amount is \$3,750.00 which is not budgeted but can be funded from Fund 491 Special Capital.

## OTHER BUSINESS

### 32 Town Boards/Town Advisory Boards

### 33 Public Petitioners

- a. Action – Discussion, deliberation, and possible decision to approve: 1) Nye County Resolution No. 2010-27: A Resolution For Formation of the Unincorporated Town of Beatty; and 2) 2010 Ballot Question Unincorporated Town of Beatty – Formation of Unincorporated Town of Beatty Pursuant to NRS 269.555; and 3) Providing the 2010 Ballot Question Unincorporated Town of Beatty – Formation of Unincorporated Town of Beatty Pursuant to NRS 269.555 to the Nye County Clerk pursuant to NRS 293.481.

### 34 GENERAL PUBLIC COMMENT (second)

### 35 ANNOUNCEMENTS (second)

### 36 ADJOURNMENT



# **NYE COUNTY BOARD OF COMMISSIONERS AGENDA**

**ITEM #    SUBJECT**

**June 1, 2010**

## **AGENDA** **NYE COUNTY BOARD OF ROAD COMMISSIONERS**

**101 Radar Rd, Tonopah NV 89049**  
**TUESDAY, June 1, 2010**

**10:15 A.M.**

**Lorinda Wichman, Chair**  
**Fely Quitevis, Vice-Chair**  
**Joni Eastley, Member**

**Gary Hollis, Member**  
**Butch Borasky, Member**  
**Sandra "Sam" Merlino, Ex-Officio Clerk of the Board**

NOTE: All times are approximate except for public hearings and any other items agendized at a specific time. Action may be taken on all items except where otherwise indicated. Items not scheduled for a specific time may be considered at any time and in any order.

1. Action - Approval of Minutes for the Nye County Board of Road Commissioners' meeting for – N/A
2. GENERAL PUBLIC COMMENT (Three-minute time limit per person and requested to be limited to items not listed on the agenda. No action will be taken by the Board.)
3. Action - General road report by Public Works Director
4. Action - Discussion, deliberation, and possible decision to set a date, time and location for a Public Hearing on Acknowledgment and Notice of Acceptance of R.S. 2477 grant for road number 974250 commonly referred to as Combination Springs Road.
5. Action - Discussion, deliberation and possible decision to set a date, time and location for a Public Hearing on Acknowledgment and Notice of Acceptance of R.S. 2477 grant for road number 973610 commonly referred to as Morgan Creek Road.
6. Action - Discussion, deliberation and possible decision to set a date, time, and location for a Public Hearing on Acknowledgment and Notice of Acceptance of R.S. 2477 grant for road number 965110 commonly referred to as Longstreet Canyon Road.
7. RS2477 Update
8. Adjourn

# **NYE COUNTY BOARD OF COMMISSIONERS AGENDA**

**ITEM #    SUBJECT**

**June 1, 2010**

## **AGENDA NYE COUNTY LICENSING AND LIQUOR BOARD**

**101 Radar Rd, Tonopah NV 89049  
TUESDAY, June 1, 2010**

**10:30 A.M.**

**Butch Borasky, Chair  
Fely Quitevis, Vice-Chair  
Joni Eastley, Member  
Gary Hollis, Member**

**Lorinda Wichman, Member  
Tony DeMeo, Member  
Sandra "Sam" Merlino, Ex-Officio Clerk of the Board**

NOTE: All times are approximate except for public hearings and any other items agendized at a specific time. Action may be taken on all items except where otherwise indicated. Items not scheduled for a specific time may be considered at any time and in any order.

1. Action - Approval of Minutes for the Nye County Licensing and Liquor Board meeting for – N/A
2. GENERAL PUBLIC COMMENT (Three-minute time limit per person and requested to be limited to items not listed on the agenda. No action will be taken by the Board.)
3. **Consent Agenda Item**
  - a. Action – Discussion of any item from the Consent Agenda Items that needs review before a decision is made.
  - b. Action – Approval to issue a Special Event Permit for Town of Round Mountain for an aerial Fireworks display on July 4, 2010 in the Hadley Subdivision. Dan Sweeney Applicant.
  - c. Action – Approval of E-T-T, Inc. to transfer Terrible's Town Casino and Terrible's Lakeside Casino to Flamingo Paradise Gaming, LLC.
4. Brothel
5. Gaming
6. Licensing
7. Liquor
8. Adjourn

# TX Report

Date: 05/28/2010 15:50  
Name: STOVALL & ASSOCIATES  
ID: 7022580093

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## Board of County Commissioners

### Meetings

- 10:00 a.m.
- First and third Tuesday of each month
- Two locations:
  - County Commission Chambers  
101 Radar Rd.  
Tonopah, NV 89049
  - Bob Reed Community Center  
150 N. Hwy. 180  
Pahrump, NV 89060

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### Members

<b>District 1</b> Commissioner Linda Whitten 1400 Box 12150 Reed Heights, NV 89045 (775) 761-6226 - Cell (775) 463-8180 - County Fax (775) 463-7844 - County Cell Email: linda@nyecounty.com	<b>District 2</b> Commissioner Joel Lindsey P.O. Box 153 Tonopah, NV 89049 (775) 462-8191 - Commissioner's Office (775) 462-9464 - Home Office (775) 462-8323 - County Cell (775) 462-8380 - Fax Email: joel@nyecounty.com	<b>District 3</b> Commissioner Gary Hult Chairman 2101 Caliente Blvd., Ste. 300 Pahrump, NV 89046 (775) 751-7075 - Commissioner's Office (775) 727-1764 - Home (775) 727-1768 - County Cell (775) 727-1754 - Fax Email: gahult@pahrump.com
<b>District 4</b> Commissioner Andrew "Butch" Serfaty - Vice-Chair 2101 Caliente Blvd., Ste. 300 Pahrump, NV 89046 (775) 751-7075 - Commissioner's Office (775) 309-2100 - Personal Cell (775) 751-7075 - County Fax Email: butch@nyecounty.com	<b>District 5</b> Fely Caliente 2101 Caliente Blvd., Ste. 300 Pahrump, NV 89046 (775) 751-7075 - Commissioner's Office (775) 309-4000 - County Cell (775) 751-7075 - County Fax Email: fely@nyecounty.com	<b>District 6</b> : Current Creek, Duckwater, Galien, Nye, Humboldt, Persimmon, Perry, St. Pahrump, Potosi, 18, 23 & 31, and Smoky Valley <b>District 2</b> : Nye, Amargosa Valley, Tonopah, Potosi 14 & 15, and Pahrump Potosi 20 <b>District 3</b> : Pahrump Potosi 1, 2, 3 & 27 <b>District 4</b> : Pahrump Potosi 10, 11, 12, 20 & 29 <b>District 5</b> : Pahrump Potosi 17, 24, 25, 26, 30 & 31

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1 **16. UNFINISHED BUSINESS, ACTION ITEMS**

2 **C. Presentation of Information, Discussion and Possible Action**  
3 **Regarding Budget Savings Relating to the FY 2011 Budget.**

4 The BST met next on May 6, 2010. Agenda Item 19.C. concerning budget reductions  
5 read:

6 **19. NEW BUSINESS, ACTION ITEMS**

7 **C. District Administration will present information regarding plans for**  
8 **budget reductions.**

9 The complaint alleged these two agenda items were woefully inadequate under the  
10 "clear and complete rule" to alert the public that a school closure was being considered and  
11 would be discussed during these two meetings.

12 Supporting materials were provided to the public at the April 13, 2010 meeting which  
13 had been prepared by School District staff. In fact, school closure was the key component in  
14 one of three scenarios prepared by District staff as supporting material for the April 13, 2010  
15 agenda item 16.C. Each scenario represented a proposed budget reduction plan based on  
16 alternatives. Scenario "C" was a budget reduction plan based on school closure. Scenario C  
17 was entitled:

18 **SCENARIO C – BUDGET REDUCTION CONSIDERATIONS 2010-2011**  
19 **BUDGET YEAR; BOARD COMMUNICATION –WORKING DOCUMENT**  
20 **(School closure).**

21 Scenarios A and B were not based on budget reduction including a school closure.

22 Review of the minutes on April 13, 2010 showed that the Trustees discussed and  
23 approved numerous line item budget reductions. Another document (2010-2011 Budget Year)  
24 generated by District staff and provided to the BST and the public for item 16.C. provided line  
25 item recommendations for budget reductions.

26 When the BST deliberated on item 16.C. it voted to accept the District's  
27 recommendation per scenario C to close one school per line item 104a from the 2010–2011  
28 Budget Year document. The minutes do not indicate whether the public spoke during  
consideration of this item, but the BST's response to the complaint indicates that 20 members

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1 of the public spoke for more than an hour (mostly about school closure) before the BST voted  
2 on line item reductions, including the motion to accept the recommendation in Scenario C to  
3 close a school.

4 No specific school was targeted for closure in this meeting. It is asserted by the BST  
5 that Trustees understood, following the approval of the motion to accept the recommendation  
6 in Scenario C (school closure), that administrative staff would be researching possible school  
7 closure and coming back to them with a more specific agenda item.

8 The school closure idea was conceived by the Assistant Superintendent just two days  
9 before the meeting on April 13, 2010. Assistant Superintendent Scott Meihack explained  
10 during the meeting, that a school closure seemed to him to be the best way to meet the  
11 budget reduction mandate. He prepared the three scenarios for eventual distribution to the  
12 public and the Trustees on April 13, 2010, one of which was based on a school closure, but  
13 even if the budget reduction scenarios were only tentative, and despite the fact that no  
14 specific school was mentioned or targeted for closure, neither the Trustees nor the public  
15 would have been aware that staff would present a proposal to balance the district's budget  
16 based on the closure of one school.

17 On May 6, 2010, District staff presented further information regarding budget  
18 reductions, including the issue of school closure, to the BST. But before the BST discussed  
19 item 19.C. BST's counsel intervened. She explained that agenda item 19.C. did not indicate  
20 that closure of a school would be considered, so the Board could not deliberate nor take  
21 action on school closure as a budget reduction matter. Counsel warned the BST to refrain  
22 from expressing one's opinion about budget reduction issues to avoid entanglement with the  
23 OML.

24 There was no deliberation or action taken at this meeting. Public comment was  
25 received, during which 16 individuals spoke for a total of 52 minutes. Staff was directed to  
26 bring back to the BST at its next meeting the school closure issue and other budget reduction  
27 options, in an item that specifically identified matters or issues to be discussed or acted upon.

28 ///

1 Budget reduction issues appeared on the May 19<sup>th</sup> agenda, but by this meeting the  
2 agenda item had been revised and expanded. It read:

3 **21. NEW BUSINESS, ACTION ITEMS**

4 **G. Discussion and Possible Action to Direct Staff Regarding Possible**  
5 **Future Elementary School Closure, After Notice as Required by**  
6 **NRS 393.080, as a Budget Reduction Measure, Including Discussion of**  
7 **Consideration Involved with Closing Specific Schools – President Gent.**

8 Prior to discussion of this agenda item, the BST was informed by Administration's  
9 District Director of Finance that the District had a larger than anticipated opening financial  
10 balance. School closure for this budget year was no longer necessary.

11 During the BST's discussion of item 21 G, the BST voted to rescind its April 13<sup>th</sup> action  
12 which had approved one of three staff budget reduction recommendations—Scenario C,  
13 which had been based on closing a school.

14 **May 6, 2010 – Early Retirement Incentives**

15 The complaint also challenges the sufficiency, under the "clear and complete rule," of  
16 another item on the May 6, 2010 meeting agenda. Item 19.B. was for the purpose of  
17 discussing early retirement incentives as a budget reduction measure:

18 **NEW BUSINESS ACTION ITEMS**

19 **B. Discussion and Possible Action to Suspend Process Outlined in**  
20 **P4811 for Early Retirement Incentives and Use Instead for This Year Only**  
21 **Another Process as Recommended by Staff.**

22 While the phrase "Early Retirement Incentives" is clear enough to pass muster as a  
23 topic under the clear and complete rule, the BST actually went further in the meeting than a  
24 mere discussion of a change in the process. The Board approved actual early retirement  
25 incentives for specific teachers. The agenda item did not disclose this possible discussion  
26 and action.

27 BST recognized there might have been a lack of compliance with the clear and  
28 complete rule. It re-agendized the matter for the May 19, 2010 BST meeting. The new  
agenda item was reworded to comply with the OML:

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1 III.

2 **ISSUES**

3 A. Whether the BST complied with the "clear and complete rule" (NRS  
4 241.020(2)(c)(1) for item 16.C. during the April 13, 2010 meeting and item 19.G. during the  
5 May 6, 2010 meeting?

6 B. Whether a presentation to the BST by an elementary school principal during  
7 public comment was made as a spokesperson for the Churchill County School District, which  
8 presentation should have been agendized but not delivered during public comment?

9 C. Whether BST agenda item 19.B. for the BST May 6, 2010 meeting complied with  
10 NRS 241.020(2)(c)(1), the "clear and complete rule"?

11 IV.

12 **DISCUSSION AND ANALYSIS**

13 A. Whether Churchill County Board of School Trustees complied with the "clear and  
14 complete rule" (NRS 241.020(2)(c)(1) for item 16.C. during the April 13, 2010 meeting and  
15 item 19.G. during the May 6, 2010 meeting.

16 Three different BST agenda items are challenged under this complaint. The subject  
17 matter of each item was of a community-wide interest—school district budget reductions. In  
18 each instance the BST took corrective action which shields the BST from action by this office.  
19 Corrective action or "cure" ensures that the business of government is accomplished in the  
20 open. NEVADA OPEN MEETING LAW MANUAL, § 11.01 (10<sup>th</sup> ed. 2005).

21 BST redrafted and re-agendized both the April 13, 2010 and May 6, 2010 agenda items  
22 which were arguably not in compliance with the OML. A revised agenda item which did  
23 comply with the OML was placed on its May 19, 2010 meeting agenda.

24 Before BST considered item 19.C. on the May 6, 2010 agenda, counsel intervened and  
25 discussed the OML implications of the item and advised them not to discuss or take action on  
26 it. She made clear the item was defective because it was not specific about the topics to be  
27 discussed. The BST directed Administration to revise budget reduction agenda items and  
28 return them at the next meeting in a clear and complete item that specifically noticed the

1 public about topics to be discussed and perhaps action to be taken.

2 On May 19, 2010, the BST rescinded its previous action during the April 13, 2010  
3 meeting which had approved a budget reduction scenario based on the closure of a school.

4 ***Sandoval v Board of Regents***

5 The "clear and complete rule" was explained in detail by the Nevada Supreme Court in  
6 *Sandoval v. Board of Regents*. It may be helpful to explore the facts in *Sandoval* in order to  
7 further explain the purpose and importance of the "clear and complete rule."

8 In 2003, the Nevada Supreme Court in *Sandoval v. Board of Regents*, 119 Nev. 148,  
9 67 P.3d 902 (2003) strictly construed NRS 241.020(2)(c)(1) rejecting a common practice in  
10 which public body members discussed matters which deliberately deviated from the agenda  
11 topic, into related and germane areas. The Court said that mere mention of related matters in  
12 the abstract will not implicate the OML, but that detailed discussion leads to violation.

13 The underlying facts in *Sandoval* involved a discussion, by a standing committee of the  
14 Nevada Board of Regents, of a Nevada Division of Investigation report of a dormitory raid by  
15 the UNLV police department on the UNLV campus. The committee engaged in an extensive  
16 discussion of the report criticizing the UNLV police department, and discussing the impact of  
17 drug use on the UNLV campus. This discussion was germane to agenda item's announced  
18 topic of laws and policies governing the release of materials, documents and reports to the  
19 public, but the actual discussion clearly exceeded the agenda topic.<sup>2</sup> The Court said that  
20 "Although discussion of the NDI report in the abstract may not have violated the Open Meeting  
21 Law, the Committee went too far when it discussed details of the report, criticized the UNLV  
22 police department, and commented on the impact of drug use on the UNLV campus.  
23 Accordingly, we conclude that, as a matter of law, the Committee violated the Open Meeting  
24 Law." *Sandoval* 119 Nev at 155, 67 P.3d at 906.

25 The Court unmistakably interpreted Nevada's OML in a manner that requires public  
26 bodies to give the public clear notice of the topics to be discussed at public meetings so that  
27

28 <sup>2</sup> The agenda item was informational only: "Review UCCSN [University and Community College System of Nevada] state and federal statutes, regulations, case law, and policies that govern the release of materials, documents, and reports to the public."

1 the public can attend a meeting when an issue of interest will be discussed. An agenda must  
2 be written to ensure that the public is on notice regarding what will be discussed at public  
3 meetings.

4 In OMLO 2003-23 (June 24, 2003) this office explained that a public body may take  
5 corrective action to "cure" an OML violation. The Alamo Power District, a public body,  
6 published an agenda item that was not clear and complete. The item stated: "MONTHLY  
7 BILLS REVIEWED AND APPROVED." We found this item did not alert the public that a  
8 discussion regarding employee insurance allocation would take place at the meeting.  
9 Employee insurance allocation was an item of special interest to the public body and to  
10 members of the public and should have been specifically set forth as an item on the agenda  
11 for consideration.

12 Although we found that the Alamo Power District's agenda item did not alert the public  
13 to the discussion regarding the employee insurance allocation, the public body had "cured" the  
14 violation by placing the matter on a future agenda for discussion and action. Further action by  
15 this office was not necessary. NEVADA OPEN MEETING LAW MANUAL, §§ 11.01-11.04 (10th ed.  
16 2005).

17 In § 11.04 of the NEVADA OPEN MEETING LAW MANUAL (10th ed. 2005), this office provides  
18 advice regarding corrective action or "cure."

19 A public body that takes action in violation of the Open Meeting Law,  
20 which action is null and void, is not forever precluded from taking the  
21 same action at another legally called meeting. *Valencia v. Cota*, 617 P.2d  
22 63 (Ariz. Ct. App. 1980); *Cooper v. Arizona Western College District*  
23 *Governing Board*, 610 P.2d 465 (Ariz. Ct. App. 1980); *Spokane Education*  
24 *Ass'n v. Barnes*, 517 P.2d 1362 (Wash. 1974). However, mere  
25 perfunctory approval at an open meeting of a decision made in an illegally  
26 closed meeting does not cure any defect of the earlier meeting or relieve  
any person from criminal prosecution for the same violation. *Scott v.*  
*Bloomfield*, 229 A.2d 667 (N.J. Super. Ct. Law Div. 1967). The matter  
should be put on an agenda for an open meeting and reheard or  
discussed.

27 The Office of the Attorney General has written several opinions on "clear and complete"  
28 agenda requirements. See Op. Nev. Att'y Gen. No. 79-8 (March 26, 1979), and Op. Nev. Att'y

1 Gen. No. 91-6 (May 23, 1991); OMLO 99-01 (January 5, 1999); OMLO 99-02 (January 15,  
2 1999); OMLO 99-03 (January 11, 1999); OMLO 2003-09 (March 4, 2003); OMLO 2003-13  
3 (March 21, 2003); and OMLO 2003-23 (June 24, 2003).

4 V.

5 **CONCLUSION**

6 We find that the BST cured any potential violation prior to this complaint being filed with  
7 this office. They did so by redrafting and revising the defective agenda items from its April 13,  
8 2010, May 6, 2010 and June 2, 2010 meetings to future meeting agendas. Revised agenda  
9 items were compliant with the OML.

10 We are confident that there will not be a recurrence of these issues by this BST. The  
11 necessity for compliance with the OML was stressed and discussed in several meetings.  
12 Corrective action was unhesitatingly taken and approved by the BST, which ensured that the  
13 public's business was accomplished in the open and the public received notice. No further  
14 action is necessary.

15 DATED this 2<sup>nd</sup> day of November, 2010.

16 CATHERINE CORTEZ MASTO  
17 Attorney General

18 By:   
19

20 GEORGE H. TAYLOR  
21 Senior Deputy Attorney General  
22 Nevada State Bar No. 3615  
23 100 North Carson Street  
24 Carson City, Nevada 89701-4717  
25 (775) 684-1230  
26  
27  
28

**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 2nd day of November, 2010, 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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Fallon, Nevada 89406

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Minden, Nevada 89423

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Churchill County Board of  
School Trustees  
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Fallon, Nevada 89406

Gregory S. Koenig, Vice President  
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Lou Buckmaster, Clerk  
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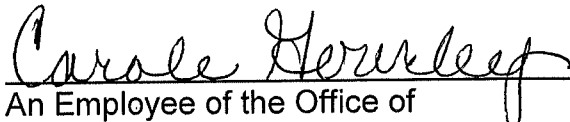
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An Employee of the Office of  
the Attorney General

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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

In the Matter of

MINERAL COUNTY BOARD OF  
COMMISSIONERS

Attorney General File No. 10-049

Mr. Andrew Beach filed an Open Meeting Law (OML) complaint with this office on August 26, 2010 against the Mineral County Board of Commissioners. This complaint against the Mineral County Board of Commissioners alleged that a violation occurred on the agenda for the August 19, 2010 Commission meeting. It is alleged item #3<sup>1</sup> on the August 19, 2010 agenda did not comply with the statutory requirement that every agenda contain a "clear and complete" statement of the topics to be considered during the meeting. NRS 241.020(2)(c)(1).<sup>2</sup> Specifically, the complainant points to the phrase at the end of agenda item #3, (and many other items on the same agenda as well), ". . .and all matters related thereto" as a violation of the OML because use of the phrase allows the Commissioners to stray into matters not specifically listed in the item.

FACTS

Discussion of agenda item #3 by the Commissioners with Clerk-Treasurer Ms. Cherrie George and attorney Stephen Rye, appearing on behalf of Hawthorne Motel owner, Margie Starr, began with Ms. George's discussion of the room tax audit performed by auditors Kafoury and Armstrong, earlier in 2010. Ms. George also told the Commissioners that

<sup>1</sup> Agenda item #3 read: "**Cherrie George** – Relative to business of the Hawthorne Motel: Room Tax Audit findings of said business; type of business as listed on business license and all matters related thereto." (Cherrie George, Mineral County Clerk-Treasurer, presented the item to the Commission.)

<sup>2</sup> NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.

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:

(a) The time, place and location of the meeting.

(b) A list of the locations where the notice has been posted.

(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.

1 Ms. Starr had sent the Clerk-Treasurer a written request for refund of room taxes when she  
2 learned her business was exempt because it had been operating as a monthly rental, not as a  
3 transient day-to-day motel. She had been notified by the auditors and by a former Mineral  
4 County Clerk-Treasurer that her monthly rental business was exempt from room taxes.  
5 Ms. George argued that because the business license still showed the business to be  
6 operating as a motel, Ms. Starr should not be entitled to a refund of taxes paid.

7 Ms. Starr's attorney reviewed the Nevada Revised Statutes pertaining to the  
8 applicability of the room tax. He stated that Ms. Starr's business was a monthly rental and  
9 therefore exempt from room tax under statute. There was discussion of an exchange of  
10 letters between Ms. Starr and the Clerk-Treasurer beginning in 2005 regarding the business'  
11 true status as a monthly rental. Ms. George disputed whether the business was truly a  
12 monthly rental or not. If so, the business license should have been corrected to indicate  
13 monthly rental.

14 There was further discussion of the County Code and whether a refund was practical.  
15 Ms. Starr said that she attended a County Commission meeting in 2008 at which she advised  
16 the Board she rented monthly. Commissioner Tipton requested review of that meeting's  
17 audio.

18 A motion to approve reimbursement of eight months of room taxes, or \$618.30 was  
19 made and it carried unanimously.

20 Following the approval of tax refund, Fire Chief Nixon told the Commission that a  
21 change from transient to non-transient business would require compliance with current  
22 building and fire codes. Mr. Stroud advised the Commission that building code issues might  
23 have to be addressed upon a change in occupancy from transient to non-transient.

24 Upon hearing the continuing challenge to the business' status as transient or  
25 non-transient, the Chair made a motion to rescind his prior motion and Commission approval  
26 of a refund in the amount of \$618.30 so that the matter could be continued when County legal  
27 counsel could be present and the audio of prior meetings could be reviewed to determine  
28 whether the status of the business had been disclosed.

1 ISSUES

2 1. Whether agenda item #3 for the August 19, 2010 Mineral County Board of  
3 Commissioners meeting was "clear and complete" within the meaning of  
4 NRS 241.020(2)(c)(1).

5 2. Whether use of the phrase "...and all matters related thereto" is sufficient to  
6 comply with the statutory requirement that all agenda items be clearly and completely stated.

7 DISCUSSION

8 Our review of the minutes for this meeting and its audio recording shows that the  
9 Commission strayed from the agenda item's statement of topics to be considered. The  
10 agenda item provided notice that the Board would consider the Hawthorne Motel room tax  
11 audit findings of the motel, and the type of business as listed on the motel's business license.  
12 However, most of the discussion centered on Ms. Starr's request for refund of room taxes.  
13 The agenda item did not provide notice that the Commission would be considering a written  
14 request for refund of room taxes or that it may take action on her request.

15 Discussion of compliance with fire and building codes was also not noticed on the  
16 agenda.

17 Despite the Board's assertion that use of the phrase "and all matters related thereto"  
18 covers the Board's consideration of matters not specifically noticed on the agenda,  
19 NRS 241.020(2)(c)(2) requires a clear and complete statement of topics to be considered.  
20 The Nevada Supreme Court strictly interpreted this requirement to prohibit public bodies from  
21 straying into related subject matter.

22 In *Sandoval v. Board of Regents of the U.C.C.S.N.*, 119 Nev. 148 (2003) the Court  
23 rejected the so-called "germane standard" holding that discussion at a public meeting cannot  
24 exceed the scope of a clearly and completely stated agenda topic.<sup>3</sup> In *Sandoval* the Court  
25 found that the public body exceeded the scope of the clear and complete agenda topic  
26 relating to review of law and policies governing the release of materials, documents and  
27 reports to the public. *Sandoval* 119 Nev. at 155. The *Sandoval* Court found that the failure to

28  

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3 The agenda topic at issue in *Sandoval* stated: "Review of UCCSN, state and federal statutes, regulations, case law, and policies that govern release of materials, documents, and reports to the public."



1 state in the agenda item that an NDI investigative report would be discussed, was a violation  
2 of the OML's clear and complete rule. NRS 241.020(2)(c)(2).

3 *Sandoval's* holding means that use of catch-all phrases such as "and all matters related  
4 thereto" does not comply with the statute's requirement that each agenda contain a clear and  
5 complete statement of topics. Related matters, should they come up during a meeting, must  
6 be agendized for discussion at a future meeting. The phrase "and all matters related thereto"  
7 is overly broad to alert the public about the detailed discussion and action the Board took  
8 concerning Ms. Starr's written request for refund of room taxes. OPEN MEETING LAW MANUAL  
9 § 7.02, 7.03 (10th ed. 2005).

### 10 CONCLUSION

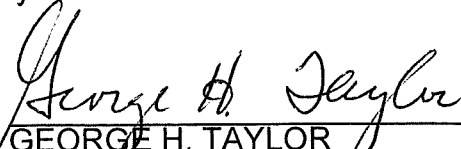
11 The Board's agenda item failed to notice the public that it would be considering  
12 Ms. Starr's written request for refund of room taxes. Use of the phrase "and all matters  
13 related thereto" does not comply with the statute's requirement that every agenda item contain  
14 a clear and complete statement of topics to be considered.

15 The Board's initial consideration of the written request for refund of room taxes was  
16 rescinded before the agenda item concluded, so we will only warn the Board not to stray from  
17 specific topics stated in an agenda item. Any matters not listed as a topic should be  
18 agendized for a future meeting.

19 DATED this 17<sup>th</sup> day of December, 2010.

20 CATHERINE CORTEZ MASTO  
21 Attorney General

22 By:

23   
24 GEORGE H. TAYLOR  
25 Senior Deputy Attorney General  
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27 100 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 17<sup>th</sup> day of December, 2010, 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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Nancy Black, Vice Chairman  
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James Essenpreis, Member  
Mineral County Board of Commissioners  
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Jerrie C. Tipton, Chairman  
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KEITH G. MUNRO  
*Assistant Attorney General*

January 4, 2011

JIM SPENCER  
*Chief of Staff*

Clyde E. Biglieri  
P.O. Box 911  
Reno, NV 89504

Re: Open Meeting Law Complaint / AG File No. 10-051  
Washoe County Regional Animal Services/Nevada Humane Society

Dear Mr. Biglieri:

This letter is in response to your Open Meeting Law (OML) complaint that the Nevada Humane Society, Inc.'s (NHS) Board of Director's meetings are not open to the public. The question presented is whether NHS is a "public body" required to comply with the Nevada Open Meeting Law, Chapter 241 of the Nevada Revised Statutes.

NRS 241.015(3) defines a "public body" as:

[A]ny administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including but not limited to any board, commission, committee, subcommittee or other subsidiary thereof. . . .

The issue you have raised is whether NHS falls within the legal definition of public body in NRS 241.015(3). Central to your allegation is that Washoe County is paying "directly or indirectly to animal services or NHS \$4.3 million a year for employee pay and benefits."

In order to determine if NHS is subject to the OML we reviewed the legal status of the Nevada Humane Society as explained by counsel for both the NHS and counsel for Washoe County Regional Animal Services Center (County). We were provided with a copy of an amended lease agreement between NHS and Washoe County. We were also provided with a copy of a Professional Services Agreement between NHS and Washoe County. Counsel for both Washoe County and NHS agreed that NHS is a 501(c)(3) non-profit corporation in existence since 1932.

Both NHS and the County occupy the same building on Longley Lane in Reno, Nevada. County is the sole owner of the building. NHS leases from the County space in the Regional Animal Services Shelter based on the percentage of the facility utilized by NHS. However it's

Clyde E. Biglieri  
January 4, 2011  
Page 2

clear that the funding for operations and personnel of County and NHS are entirely separate. Both NHS and County fund their own operations. There's no evidence that NHS pays for any County personnel costs; it pays its own employee salaries. The relationship between County and NHS is contractual. This includes a professional services agreement under which NHS, as an independent contractor, agreed to accept owner surrendered animals and to provide certain services in exchange for compensation.

NRS 241.015(3) specifies that a "public body" is an "administrative, advisory, executive or legislative body of the state or a local government." As such, a "public body" must: (1) owe its existence to and have some relationship with a state or local government; (2) be organized to act in an administrative, advisory, executive or legislative capacity; and (3) must perform a government function. See Nevada Open Meeting Law Manual § 3.01 (10th Ed., December 2005). Additionally, a "public body" must expend or disburse or be supported in whole or in part by tax revenue, or advise or make recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue.

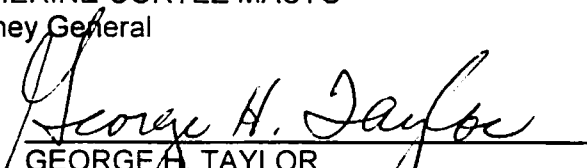
Nevada Humane Society is a non profit corporation. It is not an administrative, executive, legislative or advisory body of state or local government. It was not created by any state or local authority and it's clear that NHS Board of Directors is not controlled by, or has any connection with state or local government. Furthermore, Nevada Humane Society is not supported in whole or in part by tax revenue; it funds its own operations, it leases space from the County and acts as an independent contractor for professional services for compensation.

Accordingly, Nevada Humane Society is not a "public body" and, thus, is not subject to the Open Meeting Laws, Chapter 241 of the Nevada Revised Statutes.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:

  
GEORGE H. TAYLOR  
Senior Deputy Attorney General  
(775) 684-1230

GHT/cg

cc: David Childs, Assistant County Manager  
Terrance Shea, Deputy District Attorney  
Robert A. Carucci, Esq., counsel for Nevada Humane Society

Attorney General File  
Nos. 10-053 and 10-054

**Public Comment:** during the Advisory Board meeting on September 09, 2010 will be for all matters, both on and off the agenda, and be limited to three minutes per person. Additionally, public comment of three minutes per person will be heard during individual action items. The advisory Board reserves the right to reduce the time or limit the total time allowed for public comment. The Advisory Board may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the Advisory Board, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks or interfering with the rights of other speakers. Persons are invited to submit comments in writing on the agenda items and/or attend and make comments on that item at the Advisory Board meeting.

Chairman Souza stated at the beginning of the meeting that he anticipated the meeting would be heated. The local matter that generated so much interest involved Nye County's assumption of control over Amargosa Valley's Volunteer Fire Department, which allegedly resulted in a reduction in employment of certain local firefighters. The purpose of this Special Meeting was to "update members of the community on the condition of the Amargosa Volunteer Fire Department." This matter was agenda item #2.<sup>1</sup> The agenda also showed two periods of general public comment and the agenda also allowed comment during board consideration of individual items.

## FACTS

Following a presentation by Brent Jones and Jim Medici, both Nye County Emergency Services employees, about the current employment status of certain Amargosa Valley volunteer firefighters and other matters related to the VFD's legal relation to Nye County, Jan Cameron, the complainant herein, approached the speaker's podium for public comment. She began by stating that in addition to her three minute allotment, she had reserved six more minutes of public comment, if needed, from two individuals in the audience who "ceded" their time to her. The chair did not acknowledge the claim. The agenda notice did not support the claim of additional minutes for public comment based on an informal ceding of time from one member of the public to another. But this issue became irrelevant when Ms. Cameron's comment was stopped before she finished her three minutes.

<sup>1</sup> Information Only – Update to members of the community on the condition of the Amargosa Volunteer Fire Department.

1 At the beginning of her comment, Ms. Cameron directly asked AVTAB members  
2 Linda Bromell and Jon DeLee about a meeting they attended with Nye County Emergency  
3 Services director Brent Jones in Pahrump on or about August 31, 2010. She wanted to know  
4 whether either member had discussed that meeting with another AVTAB member prior to the  
5 meeting. Mr. Jon DeLee told her he didn't believe so, but couldn't be sure. Ms. Bromwell  
6 disclosed she had emailed both Perry Souza and Jon DeLee to ask which one wanted to go  
7 to the meeting. Ms. Cameron then said that Ms. Bromell's failure to notify the AVTAB's  
8 liaison for the VFD, Joe DeLee, about the meeting she and Jon DeLee had with the County  
9 was "two-faced" because of remarks Ms Bromell allegedly made during a June meeting of the  
10 AVTAB about always notifying the Board's liaison about such meetings. Ms. Cameron then  
11 said that the Board's "honeymoon with the OML was over." The audible tenor of a short  
12 dialog between Ms. Cameron and Ms. Bromell became tense. Chairman Souza intervened  
13 telling Ms. Cameron that "she was done" meaning her time at the podium was over.  
14 Ms. Cameron said she was not done, but Mr. Souza quickly said she was done. The noise in  
15 the room from the public increased as Ms. Cameron and Chairman Souza began talking over  
16 the other's remarks. Ms. Cameron continued speaking despite the Chair's admonition to  
17 stop, however she was allowed to finish. She thanked the Board members for their service  
18 and apologized for any embarrassment she may have caused, and then she sat down.

19 Next, Board member Joe DeLee asked the other Board members if any of them knew  
20 about the possibility of the meeting Ms. Bromell and Jon DeLee had with Brent Jones on  
21 August 31, 2010. Chairman Souza said he did. There was discussion of an email exchange  
22 between Perry Souza and Linda Bromell about who would go to the meeting in Pahrump with  
23 Brent Jones. Perry Souza said he was not at the meeting.

24 Mr. Robert Cameron, Jan Cameron's husband, spoke during public comment. He said  
25 in reference to the Amargosa VFD that "I have 20 acres of land. . . , if you guys step foot on  
26 my land, I shoot trespassers. I'll say it again, (here Mr. Cameron's voice rose), I shoot  
27 trespassers"! Mr. Souza said "you're a little out of order." Mr. Cameron sat down to applause  
28 from the public.

1 ISSUES

2 1. Whether the OML was violated because Ms. Cameron had not finished her three  
3 minutes of public comment before being stopped.

4 2. Whether Ms. Cameron's husband, who also spoke during public comment,  
5 violated any rule of public comment when he stated that "I shoot trespassers."

6 3. Whether the Nye county Deputy Sheriff's close proximity to the podium during  
7 public comment was a violation of the OML.

8 4. Whether Chairman "Perry Souza's yelling over her comments and calling for her  
9 removal" violated her right to speak.<sup>2</sup>

10 DISCUSSION

11 AG FILE NO. 10-053

12 Whether Ms. Cameron was denied her right to comment because Chairman Souza  
13 asked her to sit down or asked for her removal is a close question. Ms. Cameron's public  
14 comment began and ended with questions to two members of the AVTAB. Following their  
15 answers to her questions she said that Ms. Bromell's failure to alert AVTAB's VFD liaison  
16 Joe DeLee to the meeting with Brent Jones was "two-faced from my perspective." These  
17 remarks could easily be viewed as inflammatory and as a caustic personal attack on a  
18 member of the Board. This statement was not simply a benign "characterization of behavior"  
19 as is claimed in the complaint. This comment clearly falls within the parameters of the notice  
20 on the agenda that offensive and inflammatory comments amounting to personal attack may  
21 be prohibited.<sup>3</sup> Following closely on the heels of this comment, Ms. Cameron was allowed to

22 <sup>2</sup> Ms. Cameron raised two other matters, which arose out of the same public comment period. One  
23 matter sought to complain about the Board's handling of the public comment of John Bosta, who has filed his  
24 own complaint. We address his concerns in our response to his complaint. The other matter – whether two  
25 members of the Board told untruths about whether they had contacted another member of the Board prior to  
26 meeting Brent Jones – was explained by each member's response to Ms. Cameron's question. Mr. DeLee said  
he didn't think so (whether he had spoken to another AVTAB member) but couldn't be sure. Ms. Bromell said  
that yes, she had emailed Mr. Souza. These answers were not untruths based on their statements to this office  
and their responses to Ms. Cameron during the meeting's public comment period.

27 <sup>3</sup> Nevada's Open Meeting Law Manual (10th ed., 2005), § 8.05 **Excluding people who are disruptive:**  
28 If a person willfully disrupts a meeting to the extent that its orderly conduct is made impractical, the person may  
be removed from the meeting. NRS 241.030(3)(b). The chair of the public body may, without vote of the body,  
declare a recess to remove a person who is disrupting the meeting. See AG File No. 00-046 (December 11,  
2000).



1 continue, but then she said that the AVTAB's honeymoon with the OML was over and that the  
2 members needed to read their OML manuals. Immediately Ms. Bromell responded by  
3 pointedly and sharply asking how do you know we haven't (read the OML manual)? When  
4 Ms. Bromell and Ms. Cameron began to talk over the other, Mr. Souza intervened to stop  
5 Ms. Cameron's public comment.

6 The audio recording of the meeting does show that Mr. Souza and Ms. Cameron also  
7 kept talking over each other. There was no yelling nor did Mr. Souza call for her removal.  
8 Mr. Souza had already told Ms. Cameron to stop even though both continued to speak over  
9 the other.

10 Our review of the audio of this meeting revealed that the tenor of Ms. Cameron's  
11 "two-faced" remark coupled with her other comments, showed that this portion of the public  
12 comment period was bordering on being disruptive. The public audience's murmurs and  
13 shouts were audible and rising. We can't say that the Chair's decision to ask Ms. Cameron to  
14 stop was a violation of her right to comment. We listened to the audio several times and did  
15 not hear the Chair ask that Ms. Cameron be removed. Ms. Cameron thanked the Board and  
16 sat down of her own volition. There was no allegation that the Deputy Sheriff escorted her to  
17 her chair. While the presence of the Deputy may have been intimidating, the same reaction  
18 might be common to others when in the same situation. Moreover, it appears that the Deputy  
19 was present because Nye County Emergency Services requested his presence. Mr. Souza  
20 stated during our investigation that the AVTAB had not requested his presence. In any event,  
21 the deputy's proximity to the podium was not an OML violation.

22 Finally, we want to correct an assertion in the complaint that Mr. Cameron's statement  
23 that he shoots trespassers on his property, did not pose an immediate threat to anyone and  
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27 Nye County Emergency Services and the community over the County's control of the  
28 community's VFD, this comment clearly was intended to be inflammatory and potentially could

1 have been disruptive. This kind of remark could have triggered an unwanted response; it  
2 could have antagonized and even incited others.

3 Rules that prohibit personal attacks and rules of decorum serve important  
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5 2001). The standard of review of Mr. Cameron's public comment is not whether the comment  
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7 for immediate removal) but whether reasonable AVTAB rules governing time, place, and  
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9 posted notice on the agenda.

10 Our review of the audio recording persuades us that any interruption of the comments  
11 from Ms. Cameron and Mr. Cameron were based on legitimate time, place, and manner  
12 restrictions, clearly posted on the agenda. None of the speakers were prevented from  
13 speaking because of their viewpoint on an important subject.

14 **AG FILE NO. 10-054**

15 **FACTS**

16 This complaint alleged a meeting among a quorum of the AVTAB to discuss the  
17 County's control of the VFD. Statements from Ms. Bromell, Mr. DeLee, and Mr. Souza all  
18 deny having physically met with each other at the Amargosa Fire Hall parking lot following the  
19 meeting with Brent Jones in Pahrump on August 31, 2010. Mr. Souza did appear at the  
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22 Ms. Bromell stated she contacted Mr. Souza prior to the meeting with Brent Jones  
23 when she offered to stand aside if Mr. Souza wished to accompany Mr. DeLee to the meeting  
24 in Pahrump. Mr. Souza declined to go, but he did email Ms. Bromell several questions he  
25 thought should be asked of Nye County Emergency Services director Brent Jones.

26 ///

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1 **ISSUE**

2 Whether a quorum of the AVTAB met "serially and collectively" to deliberate and/or  
3 take action on any issue arising out of a meeting with Nye County Emergency Services on  
4 August 31, 2010.

5 **DISCUSSION**

6 There was no evidence to support a claim of serial meeting.<sup>4</sup> There was evidence that  
7 Ms. Bromell, Mr. DeLee and Mr. Souza, met and discussed how to get the information from  
8 their meeting with Brent Jones before the community in a public forum, but this does not  
9 offend the OML. Pre-meeting discussions among members of a public body regarding  
10 whether to remove an agenda item does not implicate the OML. *Schmidt v. Washoe County*,  
11 123 Nev. 128 135 (2007). We believe this authority also extends to placing an item on an  
12 agenda as long as the statutory time limits for posting the notice and agenda are met. NRS  
13 241.020(3). Each board member stated that their only discussion about the meeting with  
14 Brent Jones was their concern about how to get this information to the community in a board  
15 meeting.

16 **CONCLUSION**

17 This office does not find an OML violation under either complaint. We recognize this  
18 meeting was for the purpose of discussing an important matter. It engendered many heated  
19 comments from members of the public about an important community asset—its Volunteer

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27 <sup>4</sup> NRS 241.015(2). "Meeting":

28 (a) Except as otherwise provided in paragraph (b), means:

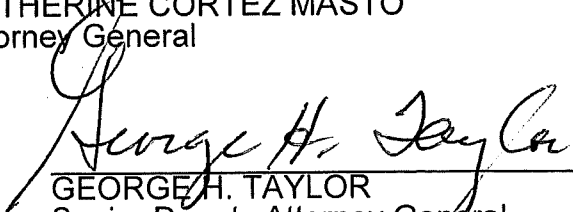
(1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

1 Fire Department and community residents who had served as volunteers. We urge the public  
2 and the AVTAB to obey the posted agenda notice which encourages civil discourse.

3 DATED this 13<sup>th</sup> day of December, 2010.

4 CATHERINE CORTEZ MASTO  
5 Attorney General

6 By:

  
7 GEORGE H. TAYLOR  
8 Senior Deputy Attorney General  
9 Nevada State Bar No. 3615  
10 100 North Carson Street  
11 Carson City, Nevada 89701-4717  
12 (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 13<sup>th</sup> day of December, 2010, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Jan Cameron  
P.O. Box 99  
Amargosa Valley, NV 89020

Joe DeLee, Vice Chairman  
Amargosa Valley Town Advisory Board  
821 East Amargosa Farm Road  
Amargosa Valley, NV 89020

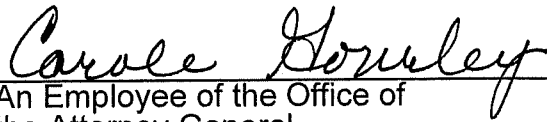
Perry Souza, Chairman  
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Marla Zlotek, Deputy D.A.  
Michelle M. Jones, Deputy D.A.  
Nye County  
P.O. Box 39  
Pahrump, NV 89041-0039

  
An Employee of the Office of  
the Attorney General



**Public Comment:** during the Advisory Board meeting on September 09, 2010 will be for all matters, both on and off the agenda, and be limited to three minutes per person. Additionally, public comment of three minutes per person will be heard during individual action items. The advisory Board reserves the right to reduce the time or limit the total time allowed for public comment. The Advisory Board may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the Advisory Board, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks or interfering with the rights of other speakers. Persons are invited to submit comments in writing on the agenda items and/or attend and make comments on that item at the Advisory Board meeting.

Chairman Souza stated at the beginning of the meeting that he anticipated the meeting would be heated. The local matter that generated so much interest involved Nye County's assumption of control over Amargosa Valley's Volunteer Fire Department, which allegedly resulted in a reduction in employment of certain local firefighters. The purpose of this Special Meeting was to "update members of the community on the condition of the Amargosa Volunteer Fire Department." This matter was agenda item #2.<sup>1</sup> The agenda also showed two periods of general public comment and the agenda also allowed comment during board consideration of individual items.

## FACTS

Following a presentation by Brent Jones and Jim Medici, both Nye County Emergency Services employees, about the current employment status of certain Amargosa Valley volunteer firefighters and other matters related to the VFD's legal relation to Nye County, Jan Cameron, the complainant herein, approached the speaker's podium for public comment. She began by stating that in addition to her three minute allotment, she had reserved six more minutes of public comment, if needed, from two individuals in the audience who "ceded" their time to her. The chair did not acknowledge the claim. The agenda notice did not support the claim of additional minutes for public comment based on an informal ceding of time from one member of the public to another. But this issue became irrelevant when Ms. Cameron's comment was stopped before she finished her three minutes.

<sup>1</sup> Information Only – Update to members of the community on the condition of the Amargosa Volunteer Fire Department.

1 At the beginning of her comment, Ms. Cameron directly asked AVTAB members  
2 Linda Bromell and Jon DeLee about a meeting they attended with Nye County Emergency  
3 Services director Brent Jones in Pahrump on or about August 31, 2010. She wanted to know  
4 whether either member had discussed that meeting with another AVTAB member prior to the  
5 meeting. Mr. Jon DeLee told her he didn't believe so, but couldn't be sure. Ms. Bromwell  
6 disclosed she had emailed both Perry Souza and Jon DeLee to ask which one wanted to go  
7 to the meeting. Ms. Cameron then said that Ms. Bromell's failure to notify the AVTAB's  
8 liaison for the VFD, Joe DeLee, about the meeting she and Jon DeLee had with the County  
9 was "two-faced" because of remarks Ms Bromell allegedly made during a June meeting of the  
10 AVTAB about always notifying the Board's liaison about such meetings. Ms. Cameron then  
11 said that the Board's "honeymoon with the OML was over." The audible tenor of a short  
12 dialog between Ms. Cameron and Ms. Bromell became tense. Chairman Souza intervened  
13 telling Ms. Cameron that "she was done" meaning her time at the podium was over.  
14 Ms. Cameron said she was not done, but Mr. Souza quickly said she was done. The noise in  
15 the room from the public increased as Ms. Cameron and Chairman Souza began talking over  
16 the other's remarks. Ms. Cameron continued speaking despite the Chair's admonition to  
17 stop, however she was allowed to finish. She thanked the Board members for their service  
18 and apologized for any embarrassment she may have caused, and then she sat down.

19 Next, Board member Joe DeLee asked the other Board members if any of them knew  
20 about the possibility of the meeting Ms. Bromell and Jon DeLee had with Brent Jones on  
21 August 31, 2010. Chairman Souza said he did. There was discussion of an email exchange  
22 between Perry Souza and Linda Bromell about who would go to the meeting in Pahrump with  
23 Brent Jones. Perry Souza said he was not at the meeting.

24 Mr. Robert Cameron, Jan Cameron's husband, spoke during public comment. He said  
25 in reference to the Amargosa VFD that "I have 20 acres of land. . . , if you guys step foot on  
26 my land, I shoot trespassers. I'll say it again, (here Mr. Cameron's voice rose), I shoot  
27 trespassers"! Mr. Souza said "you're a little out of order." Mr. Cameron sat down to applause  
28 from the public.



1 ISSUES

2 1. Whether the OML was violated because Ms. Cameron had not finished her three  
3 minutes of public comment before being stopped.

4 2. Whether Ms. Cameron's husband, who also spoke during public comment,  
5 violated any rule of public comment when he stated that "I shoot trespassers."

6 3. Whether the Nye county Deputy Sheriff's close proximity to the podium during  
7 public comment was a violation of the OML.

8 4. Whether Chairman "Perry Souza's yelling over her comments and calling for her  
9 removal" violated her right to speak.<sup>2</sup>

10 DISCUSSION

11 AG FILE NO. 10-053

12 Whether Ms. Cameron was denied her right to comment because Chairman Souza  
13 asked her to sit down or asked for her removal is a close question. Ms. Cameron's public  
14 comment began and ended with questions to two members of the AVTAB. Following their  
15 answers to her questions she said that Ms. Bromell's failure to alert AVTAB's VFD liaison  
16 Joe DeLee to the meeting with Brent Jones was "two-faced from my perspective." These  
17 remarks could easily be viewed as inflammatory and as a caustic personal attack on a  
18 member of the Board. This statement was not simply a benign "characterization of behavior"  
19 as is claimed in the complaint. This comment clearly falls within the parameters of the notice  
20 on the agenda that offensive and inflammatory comments amounting to personal attack may  
21 be prohibited.<sup>3</sup> Following closely on the heels of this comment, Ms. Cameron was allowed to

22 <sup>2</sup> Ms. Cameron raised two other matters, which arose out of the same public comment period. One  
23 matter sought to complain about the Board's handling of the public comment of John Bosta, who has filed his  
24 own complaint. We address his concerns in our response to his complaint. The other matter – whether two  
25 members of the Board told untruths about whether they had contacted another member of the Board prior to  
26 meeting Brent Jones – was explained by each member's response to Ms. Cameron's question. Mr. DeLee said  
he didn't think so (whether he had spoken to another AVTAB member) but couldn't be sure. Ms. Bromell said  
that yes, she had emailed Mr. Souza. These answers were not untruths based on their statements to this office  
and their responses to Ms. Cameron during the meeting's public comment period.

27 <sup>3</sup> Nevada's Open Meeting Law Manual (10th ed., 2005), § 8.05 **Excluding people who are disruptive:**  
28 If a person willfully disrupts a meeting to the extent that its orderly conduct is made impractical, the person may  
be removed from the meeting. NRS 241.030(3)(b). The chair of the public body may, without vote of the body,  
declare a recess to remove a person who is disrupting the meeting. See AG File No. 00-046 (December 11,  
2000).

1 continue, but then she said that the AVTAB's honeymoon with the OML was over and that the  
2 members needed to read their OML manuals. Immediately Ms. Bromell responded by  
3 pointedly and sharply asking how do you know we haven't (read the OML manual)? When  
4 Ms. Bromell and Ms. Cameron began to talk over the other, Mr. Souza intervened to stop  
5 Ms. Cameron's public comment.

6 The audio recording of the meeting does show that Mr. Souza and Ms. Cameron also  
7 kept talking over each other. There was no yelling nor did Mr. Souza call for her removal.  
8 Mr. Souza had already told Ms. Cameron to stop even though both continued to speak over  
9 the other.

10 Our review of the audio of this meeting revealed that the tenor of Ms Cameron's  
11 "two-faced" remark coupled with her other comments, showed that this portion of the public  
12 comment period was bordering on being disruptive. The public audience's murmurs and  
13 shouts were audible and rising. We can't say that the Chair's decision to ask Ms. Cameron to  
14 stop was a violation of her right to comment. We listened to the audio several times and did  
15 not hear the Chair ask that Ms. Cameron be removed. Ms. Cameron thanked the Board and  
16 sat down of her own volition. There was no allegation that the Deputy Sheriff escorted her to  
17 her chair. While the presence of the Deputy may have been intimidating, the same reaction  
18 might be common to others when in the same situation. Moreover, it appears that the Deputy  
19 was present because Nye County Emergency Services requested his presence. Mr. Souza  
20 stated during our investigation that the AVTAB had not requested his presence. In any event,  
21 the deputy's proximity to the podium was not an OML violation.

22 Finally, we want to correct an assertion in the complaint that Mr. Cameron's statement  
23 that he shoots trespassers on his property, did not pose an immediate threat to anyone and  
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15 **FACTS**

16 This complaint alleged a meeting among a quorum of the AVTAB to discuss the  
17 County's control of the VFD. Statements from Ms. Bromell, Mr. DeLee, and Mr. Souza all  
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19 meeting with Brent Jones in Pahrump on August 31, 2010. Mr. Souza did appear at the  
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1 ISSUE

2 Whether a quorum of the AVTAB met "serially and collectively" to deliberate and/or  
3 take action on any issue arising out of a meeting with Nye County Emergency Services on  
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5 DISCUSSION

6 There was no evidence to support a claim of serial meeting.<sup>4</sup> There was evidence that  
7 Ms. Bromell, Mr. DeLee and Mr. Souza, met and discussed how to get the information from  
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17 This office does not find an OML violation under either complaint. We recognize this  
18 meeting was for the purpose of discussing an important matter. It engendered many heated  
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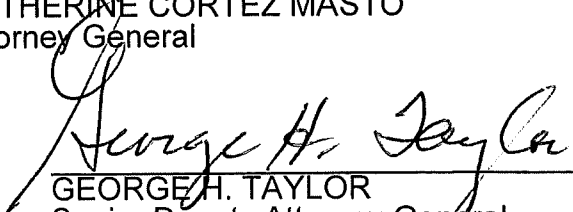
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3 DATED this 13<sup>th</sup> day of December, 2010.

4 CATHERINE CORTEZ MASTO  
5 Attorney General

6 By:

  
7 GEORGE H. TAYLOR  
8 Senior Deputy Attorney General  
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**CERTIFICATE OF MAILING**

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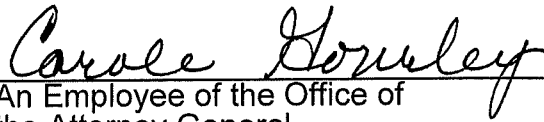
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P.O. Box 39  
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An Employee of the Office of  
the Attorney General

1 STATE OF NEVADA

2 OFFICE OF THE ATTORNEY GENERAL

3 In the Matter of

4 LYON COUNTY BOARD OF  
5 COMMISSIONERS

Attorney General File No. 10-062

OMLO 2011-01

6 I.

7 INTRODUCTION

8 This Open Meeting Law (OML) complaint alleged that a person's character was  
9 impermissibly discussed by a member of the Lyon County Board of County Commissioners  
10 (BOCC) during a public meeting in violation of the notice requirements of NRS 241.033(1).<sup>1</sup>

11 Mr. Charles Newness alleged Commissioner Chuck Roberts spoke about his character  
12 partially based on the fact that Mr. Newness had previously filed an OML complaint with the  
13 Attorney General's office.<sup>2</sup> Mr. Newness's complaint alleged Commissioner Robert's  
14 comments during the public meeting impugned his character, effectively calling him a person  
15 "of less than truthful character." He alleged he did not receive notice that the BOCC would  
16 consider his character during their meeting on December 2, 2010.

17 II.

18 FACTS

19 At least two members of the Lyon County BOCC spoke about Mr. Newness's  
20 character during the agenda item to appoint two individuals to the Silver Springs Advisory

21  
22 <sup>1</sup> NRS 241.033 Meeting to consider character, misconduct, competence or health of person or to  
23 consider appeal of results of examination: Written notice to person required; exception; public body  
24 required to allow person whose character, misconduct, competence or health is to be considered to  
25 attend with representative and to present evidence; attendance of additional persons; copy of record.

26 1. A public body shall not hold a meeting to consider the character, alleged misconduct, professional  
27 competence, or physical or mental health of any person or to consider an appeal by a person of the results of an  
28 examination conducted by or on behalf of the public body unless it has:

- (a) Given written notice to that person of the time and place of the meeting; and  
(b) Received proof of service of the notice.

2. The written notice required pursuant to subsection 1:

- (a) Except as otherwise provided in subsection 3, must be:

- (1) Delivered personally to that person at least 5 working days before the meeting; or  
(2) Sent by certified mail to the last known address of that person at least 21 working days before the

meeting.

<sup>2</sup> See AG File No. 10-044; complaint filed against the BOCC's standing committee—Jail Committee.

1 Board.<sup>3</sup> Mr. Charles Newness was one of two individuals selected by the Silver Springs  
2 Advisory Board and submitted to the BOCC for appointment. It is the BOCC that appoints  
3 members to county advisory boards. The relevant portion of the audio of the discussion of the  
4 proposed appointments during the December 2, 2010 BOCC meeting, item #12, is set forth  
5 below. Chairman Joe Mortensen called item #12 to the floor. Commissioner Roberts was the  
6 first Commissioner to speak:

7 **Commissioner Roberts:** "Mr. Chairman I'm concerned that  
8 Charles Newness might have self-serving interests in this  
9 appointment and that's based on a complaint that he filed against  
10 the County this year. The complaint in itself is certainly reasonable  
11 and appropriate but in the verbiage in the complaint there was  
12 information that I was privy to that is factual and causes me to  
13 believe that he doesn't do all of his homework so I have  
14 reservations appointing him at least without some further  
15 clarification or an interview."

16 **Larry McPherson:** "Well, I don't understand what you are saying  
17 is 'self-serving'. . ."

18 **Commissioner Roberts:** "I'm concerned that he might not be a  
19 team player and may represent some special interests that aren't  
20 apparent to the County."

21 **Commissioner McPherson:** "Are they apparent to the Board. . . I  
22 wonder."

23 **Commissioner Roberts:** "Yeah, I guess you'd have to talk to  
24 them. Yeah, I might not have a problem if I were able to talk to  
25 him, I don't take this lightly, I've never challenged any appointment  
26 to an advisory council, but the verbiage in his complaint was  
27

28 <sup>3</sup> Agenda item #12: "Appoint Charles Newness and Phil Rutherford to the Silver Springs Advisory Board  
(effective January 1, 2011), with terms expiring, December 31, 2014."



erroneous and it was very apparent he failed to do his homework, and I'm very concerned about that. . ."

Commissioner Roberts then stated that he had spoken to Mr. Newness and offered to assist him in finding some information.<sup>4</sup> Commissioner Roberts said Mr. Newness rejected the offer of help. Commissioner Roberts commented that the rejection did not give him a warm and fuzzy feeling that Mr. Newness is somebody he would want advising him on matters representing the citizenry at large.

Commissioner McPherson interjected that based on what he knew of Mr. Newness, he thought "he was a pretty bright man and he might have more to offer than we see."

The Chair asked Commissioner Roberts if he had any documentation to help the other Commissioners understand his comments. Commissioner Roberts said he did not bring anything with him but he could provide something at a later date.

Further discussion among the Commissioners, staff, and the public resulted in tabling the appointment of Mr. Newness subject to an interview by staff. County Manager Jeff Page agreed to conduct interviews and bring the matter back to the Board with a recommendation for appointment.

On December 16, 2010, Mr. Page returned to the BOCC with a recommendation for appointment; however after further discussion with members of the Silver Springs Advisory Board and the individual who had been recommended for appointment, the BOCC decided to return the matter once again to the Advisory Board, so that an election by the citizens, in compliance with its bylaws, could be held in order to select the appointee.

### III.

## ISSUE

Whether the Lyon County Board of County Commissioners violated NRS 241.033 by discussing the character and/or competence of a person without giving that person statutory notice.

<sup>4</sup> The subject matter of the information Mr. Roberts offered to help with was not explicitly stated, but perhaps it was related to the Lyon County Jail Committee which had been the subject of Mr. Newness's previous OML complaint. Commissioner Roberts served on the Jail Committee before it was dissolved by the BOCC in the fall of 2010.

1 IV.

2 DISCUSSION AND ANALYSIS

3 First we must determine if Mr. Newness's character or competence was the subject of  
4 the discussion. The key BOCC discussion of this matter has already been set out in this  
5 opinion.

6 NEVADA'S OPEN MEETING LAW MANUAL § 9.04 (10th ed. 2005), gives a general definition  
7 of the word "character" useful for considering this complaint. Character includes such  
8 personal traits as honesty, loyalty, integrity, reliability, and such other characteristics, good or  
9 bad, which make up one's individual personality. In Op. Nev. Att'y Gen. No. 81-A (February  
10 23, 1981), the Office of the Attorney General opined that the word encompassed that moral  
11 predisposition or habit or aggregate of ethical qualities, which is believed to attach to a person  
12 on the strength of the common opinion and report concerning him. . . a person's fixed  
13 disposition or tendency, as evidenced to others by his habits of life, through the manifestation  
14 of which his general reputation for the possession of a character, good, or otherwise is  
15 obtained.

16 Commissioner Roberts' comments were relevant to Mr. Newness's character. His  
17 description of his reservations about Mr. Newness's appointment revolved around  
18 Mr. Newness's character. It is clear he felt Mr. Newness's desire for appointment was  
19 "self-serving" and that he had failed to "do his homework" on the prior OML complaint. These  
20 comments concern personal traits. They are clearly character descriptions of an individual's  
21 integrity or reliability. Finally, to insinuate that Mr. Newness's self-serving character did not  
22 give him a warm and fuzzy feeling, that Mr. Newness was not someone he wanted to advise  
23 him regarding the general citizenry, is a comment about Mr. Newness's reliability and  
24 truthfulness. Added to this speculation about Mr. Newness's character was a comment that  
25 Mr. Newness might not be a team player.

26 It matters not that Commissioner Roberts prefaced his remarks with the caution that  
27 Mr. Newness's application to the Silver Springs Advisory Board *may be self-serving*. His  
28 comments clearly inserted Mr. Newness's character into the discussion. It caused the BOCC

1 to table the matter so that personal interviews would have to be conducted. Commissioner  
2 Roberts' comments concerned Mr. Newness's character.

3 Even though Commissioner Roberts' comments concerned Mr. Newness's character,  
4 the OML is not violated unless his comments caused the Board to redirect its agenda item to  
5 consider the character of Mr. Newness. NRS 241.033(1); OMLO 2005-10 (May 20, 2005);  
6 OMLO 2002-34 (August 2, 2002); accord OMLO 2006-04 (June 22, 2006). What is important  
7 for the application of notice requirements of NRS 241.033 is the focus of the meeting itself and  
8 review of what was actually discussed or considered by the public body to determine whether  
9 the comments were of such a nature that notice would be required under NRS 241.033. See  
10 OMLO 2002-24 (May 28, 2003); OMLO 2001-44 (September 18, 2001); OMLO 2003-18  
11 (April 21, 2003); OMLO 2002-24 (May 28, 2003).

12 V.

13 CONCLUSION

14 Our prior opinions, which have considered the application of the notice provisions of  
15 NRS 241.033, when taken together and in consideration of the plain language of the statute,  
16 lead us to conclude that Commissioner Roberts' comments caused the BOCC to redirect the  
17 agenda item so that the focus of the discussion was Mr. Newness's character. This was a  
18 violation of NRS 241.033. Commissioner Roberts' initial comments caused the redirection of  
19 the BOCC's discussion of the item. The Board deliberated over the character issue eventually  
20 tabling the appointment over concern about Mr. Newness's character. The act of tabling the  
21 appointment was analogous to an assessment of his character even though the assessment  
22 was inconclusive.

23 The BOCC did not act on the appointment, rather the matter was returned to the Silver  
24 Springs Advisory Body for election of two appointees by the citizens. The complainant is  
25 satisfied with this process and he is in agreement that no further action by this office is  
26 necessary other than this warning. We strongly caution this Board to carefully consider the  
27 ramifications of discussion of any person's character even if it is unintentional and even if it  
28 suddenly arises during any agenda item. Remember to stick to the agenda. The character of

1 any name submitted for appointment is relevant to the appointment, but the OML requires  
2 personal notice to the person five days before the item is discussed. In an abundance of  
3 caution anyone whose name appears on an agenda item, especially if it is subject to an  
4 appointment, should receive notice that their character or competence might be discussed.  
5 NRS 241.033.

6 DATED this 29<sup>th</sup> day of March, 2011.

7 CATHERINE CORTEZ MASTO  
8 Attorney General

9  
10 By:

 For:

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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 29<sup>th</sup> day of March, 2011, 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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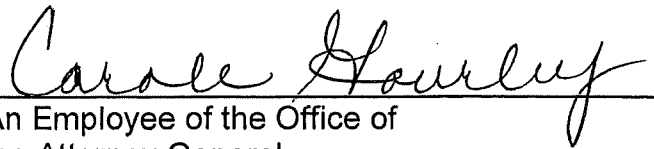
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