

ADAM PAUL LAXALT  
*Attorney General*



WESLEY K. DUNCAN  
*First Assistant Attorney General*

NICHOLAS A. TRUTANICH  
*Chief of Staff*

KETAN D. BHIRUD  
*General Counsel*

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 North Carson Street  
Carson City, Nevada 89701

March 7, 2017

OPINION NO. 2017-03

OPEN MEETING LAW; BOARDS  
AND COMMISSIONS; PUBLIC  
BODIES: The Board of Directors of  
the Nevada Northern Railway Founda-  
tion, Inc. is not a “public body” as  
defined in NRS 241.015(4), and therefore  
not subject to the Open Meeting Law

Charles H. Odgers, Esq.  
City Attorney  
City of Ely  
480 Campton Street  
Ely, Nevada 89301

Dear Mr. Odgers:

You have requested a formal opinion from the Office of the Attorney General pursuant to Nevada Revised Statute (NRS) 228.150 on the following question:

QUESTION

Is the Board of Directors of the Nevada Northern Railway Foundation, Inc. a “public body” required to comply with NRS Chapter 241, the Nevada Open Meeting Law (OML)?

SUMMARY CONCLUSION

The Board of Directors of the Nevada Northern Railway Foundation, Inc. is not a “public body” as defined in NRS 241.015(4), and therefore not subject to the OML.

## BACKGROUND

In November 1986, the Kennecott Corporation donated historic railroad items to the Nevada Northern Railway Foundation Inc. (Foundation),<sup>1</sup> a non-profit entity formed pursuant to Chapter 82 of the Nevada Revised Statutes.<sup>2</sup> At that time, the Foundation's governance documents designated the Ely City Council to serve as a Board of Trustees for the Foundation. However, the Foundation's governance documents were revised in 2016 to discontinue the Ely City Council's direct administration through the creation of a separate Board of Directors (Board) for the Foundation, and to provide additional language to clarify the purpose of the Foundation.<sup>3</sup>

## ANALYSIS

Public bodies working on behalf of Nevada citizens must conduct open meetings in conformity with the statutory requirements of the OML including the requirement to publish an agenda that provides full notice and disclosure of discussion topics and any possible action. The Foundation's Board is subject to the OML if the Board is a public body. NRS 241.015(4)(a) defines a "public body" in relevant part as:

(a) Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons 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 . . . if the administrative, advisory, executive or legislative body is created by:

- (1) The Constitution of this State;
- (2) Any statute of this State;
- (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;

---

<sup>1</sup> White Pine Historical Railroad Foundation Amended and Restated Articles – Certified Copy (July 12, 2016) (filing of which changed the entity's name to the Nevada Northern Railway Foundation Inc.).

<sup>2</sup> See Gift by Grant, Bargain and Sale Deed between Kennecott Corporation (Grantor) and the White Pine Historical Railroad Foundation and the City of Ely (Grantees), dated December 29, 1986.

<sup>3</sup> See Nevada Northern Railway Original Articles dated November 8, 1984; White Pine Historical Railroad Foundation Amended and Restated Articles – Certified Copy.

- (4) The Nevada Administrative Code;
- (5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;
- (6) An executive order issued by the Governor; or
- (7) A resolution or an action by the governing body of a political subdivision of this State;

.....

NRS 241.015(4)(a).

As quoted above, the statutory definition of “public body” was amended in 2011 to modify the attributes of a public body; since 2011, the attributes of a public body concern the manner of its creation in addition to its function.<sup>4</sup>

Accordingly, the Board is not a “public body” unless it has two essential attributes. First, the Board must be an “administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons” and created by one of the means enumerated in NRS 241.015(4)(a)(1)-(7).<sup>5</sup> Second, the Board must either (1) expend, disburse, or be supported in whole or in part by tax revenue, or (2) advise or make recommendations to any entity which expends, disburses, or is supported in whole or in part by tax revenue.<sup>6</sup>

The second statutory element relates to the function of a body and requires a nexus to taxpayer funds. This requirement of NRS 241.015(4)(a) is met because the Foundation receives a 2% room tax as part of its regular funding.<sup>7</sup>

However, the Foundation’s governance documents establish that the first statutory element regarding the manner of creation is not met. Neither the Foundation nor the Board are created by one of the means enumerated in NRS 241.015(4)(a)(1)-(7). Rather, they are created and governed by the revised Articles of Incorporation and By-laws.<sup>8</sup> The

---

<sup>4</sup>Act of June 15, 2011, ch.383, § 4, 2011 Nev. Stat. 2385-6.

<sup>5</sup>NRS 241.015(4)(a).

<sup>6</sup>*Id.*

<sup>7</sup>Ely City Code 3-3-5(d)(1) (providing two percent (2%) of the total eleven and one-half percent (11.5%) of the room tax set forth in subsection A of this section shall be specifically allocated and dedicated to the White Pine Historical Railroad Foundation).

<sup>8</sup>White Pine Historical Railroad Foundation Amended and Restated Articles – Certified Copy.

Charles H. Odgers, Esq.  
Ely City Attorney  
Page 4  
March 7, 2017

Foundation is a non-profit entity formed pursuant to Chapter 82 of the Nevada Revised Statutes and governed by the Board.<sup>9</sup>

CONCLUSION

The Board of Directors of the Nevada Northern Railway Foundation, Inc. is not a “public body” as defined in NRS 241.015(4), and therefore not subject to the OML.<sup>10</sup>

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By:



ASHEESH S. BHALLA  
Deputy Attorney General  
Division of Boards and Open Government  
Office of the Nevada Attorney General

ASB/DKT

---

<sup>9</sup> Two of the seven board directors are appointed by the Mayor of Ely with approval from the Ely City Council. The remaining five board directors are elected by the current Board Directors.

<sup>10</sup> Note that per Section 4 of the Foundation’s Development Agreement, between the City of Ely and the Foundation, the Board has agreed to conduct one meeting per year in conformity with the OML. The scope of this opinion covers only the application of NRS Chapter 241. Whether the Board has a contractual obligation to comply with the underlying requirements of the OML is not covered by this opinion.