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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

5420 Kietke Lane, Suite 202  
Reno, Nevada 89511

October 15, 2019

Via Certified Mail and Electronic Mail

Neal F. Jones



**Re: Nye County Commissioners - Open Meeting Law  
Complaint, OAG File No. 13897-325**

Dear Mr. Jones:

The Office of the Attorney General ("OAG") is in receipt of your complaint ("Complaint") filed April 15, 2019 alleging violations of the Open Meeting Law ("OML") by the Nye County Board Commissioners ("Commission") and the Nye County Water District Governing Board ("Water District").

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes ("NRS") 241.03; NRS 241.039; and NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint, the responses from the Commission and the Water District ("Responses"); the video recording, minutes, and agenda of the April 2, 2019 Commission meeting; prior OML decisions; and portions of the Nevada Revised Statutes relevant to the Complaint.

**FACTUAL BACKGROUND**

At the Commission's April 2, 2019 meeting, a member of the public, Ammie Nelson, commented during the general public comment portion of the agenda that she did not understand the ongoing issue related to nitrate levels in the water in Belmont and questioned why grant money had not been used to address nitrate levels. During Agenda Item 6 ("Commissioners'/Managers' Comments (This item limited to announcements or topics/issues proposed for future workshops/agendas)"), Commissioner Lorinda Wichman commented on Ms. Nelson's public

comment and stated the Water District provided all homeowners in Belmont with testing kits and she believed there were one or two wells that needed to be cleaned up with simple chlorine. Ms. Nelson provided public comment during the second general comment period toward the end of the meeting. Her second comment did not mention the nitrate levels issue she previously discussed.

The Complaint alleges that Commissioner Wichman improperly used Agenda Item 6 to respond to Ms. Nelson and that this violated NRS 241.020(2)(d)(3) by “not allow[ing] the public to engage the Commissioners in discussion.” The Complaint’s allegations against the Commission derive from Commissioner Wichman’s response to public comment during Agenda Item 6, which can be divided into two issues: (a) whether a member of a public body may respond to public comment regarding a topic not on the agenda and (b) whether that member may do so during a generic agenda item designated for member comments, reports, or announcements. The Complaint also alleges Commissioner Wichman’s statements regarding water nitrate levels in Belmont were not true. The Complaint further alleges a public records response from the Water District referencing a “public education campaign” on nitrates and the Water District’s September 25, 2017 meeting establish that the Water District’s agenda for the September 25, 2017 meeting was not clear and complete. The Complaint requests sanctions against Commissioner Wichman for allegedly false and misleading comments and the Water District in relation to the September 25, 2017 agenda.

### DISCUSSION AND LEGAL ANALYSIS

The OML applies to “public bodies” as defined in NRS 241.015(4). The Commission and the Water District are public bodies, and Commissioner Wichman is a member of the Commission. NRS 241.015(4).

#### **1. Commissioner Wichman did not violate the OML by responding to public comment.**

The OML requires “[p]eriods devoted to comments by the general public, if any, *and discussion of those comments.*” NRS 241.020(d)(3) (emphasis added). The public must be afforded an opportunity to comment on items within the jurisdiction of the public body. *Id.* Members of a public body are allowed to discuss such comments, even if those topics may not be on the agenda for that particular meeting. *Id.*; accord OMLO 2003-13/AG File Nos. 03-007 and 03-010 (March 21, 2003). Discussion is permitted, but it is not required. OMLO 2010-07/AG File No. 10-037 (Oct. 19, 2010); AG

File No. 05-033 (Aug. 2005); OMLO 2001-56/AG File No. 01-053(Dec. 10, 2001).

While NRS 241.020(d)(3) allows discussion of public comment, no deliberation or action may be taken by a public body on a matter raised during public comment until that matter itself has been specifically included on an agenda as an item upon which action may be taken. NRS 241.020(d)(3); OMLO 2010-07/AG File No. 10-037. While an individual member of a public body may discuss matters raised in public comment, if during that discussion, the member of the public body “feels that the discussion impinges on the member’s duty not to deliberate, then the member must inform the public of the risk and, if possible, redirect discussion to allowable comment, or request the matter to be properly agendized at the next meeting.” OMLO 2010-07/AG File No. 10-037. “Deliberate” means “collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.” NRS 241.015(2). “Action” means a decision, commitment, or promise made by a majority of the members present during a meeting of a public body. NRS 241.015(1).

Here, Ms. Nelson asked a question during the initial public comment period, Commissioner Wichman responded during the meeting, and Ms. Nelson had an additional opportunity for public comment at the end of the meeting, during which she could have provided any further comment on her initial inquiry. Besides Commissioner Wichman, no other Commissioner engaged in discussion of Ms. Nelson’s comment. Thus, there was no collective discussion or exchange of facts preliminary to a decision, and therefore no deliberation. *See* NRS 241.015(2). Moreover, the Commission did not take a motion on the matter and did not entertain a vote on the matter. Accordingly, no action was taken. It follows that the Commission did not commit a violation of the OML.<sup>1</sup>

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<sup>1</sup> This Office previously has recommended to public bodies that at the conclusion of the public comment period or after each individual public member’s comments, the chairperson ask the members of the public body whether they would like to address the comments made by the public. OMLO 2010-07/AG File No. 10-037; AG File No. 05-033.

**2. Commissioner Wichman did not violate the OML by responding to public comment during Agenda Item 6.**

The OML requires that all meetings of public bodies must occur in properly noticed meetings that are open and public, except as otherwise provided by law. NRS 241.020. Proper notice includes a clear and complete agenda properly posted. NRS 241.020(2)(c)(1). The purpose of the clear and complete standard is “to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Sandoval v. Bd. of Regents*, 119 Nev. 148, 155, 67 P.3d 902, 906 (2003). The “plain language of NRS 241.020(c)(1) requires that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic.” *Id.* at 154, 67 P.3d at 905.

While “generic terms such as ‘President’s Report,’ ‘Committee Reports,’ ‘Staff Reports,’ ‘New Business,’ and ‘Old Business’” are not permitted as action items (AGO/OML 99-03), members of a public body are permitted to make announcements, suggest topics for future agendas, and discuss public comment.

Here, during Agenda Item 6, Commissioner Wichman commented on the substance of Ms. Nelson’s public comment, providing factual information in response to Ms. Nelson’s request. Whether such information was true does not implicate the OML and is beyond the OAG’s jurisdiction. Commissioner Wichman’s comment did not go beyond any discussion she could have provided Ms. Nelson during public comment. As previously explained, Commissioner Wichman’s comment did not rise to the level of deliberation and did not propose action. Therefore, there was no violation of the OML. *See* AG File No. No. 13897-320 (May 16, 2019).

It is noted that during Agenda Item 6, in addition to Commissioner Wichman’s discussion of Ms. Nelson’s public comment, various commissioners made announcements or comments regarding public events, the death of a noted community member, bills recently passed by the Legislature, and that April was National County Month. The Commission did not deliberate or take action on any of the announcements or comments. Thus, there was no OML violation.<sup>2</sup>

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<sup>2</sup> While there was no OML violation, this Office has previously cautioned against similar agenda items, such as “member comments” and “reports,” which are problematic because they invite possible deliberation on topics not set forth in the agenda. AG File No. 13897-218 (Feb. 24, 2017);

**3. The allegations regarding the September 25, 2017 Water District meeting are untimely.**

The OAG will not consider the potential alleged violation by the Water District due to untimeliness. The Complaint alleges an OML violation by the Water District in relation to its September 25, 2017 meeting. The Complaint was filed on April 15, 2019. It is current OAG procedure not to consider OML complaints filed beyond 120 days from the complained of activity. AG File No. 13897-290 (May 30, 2019).

**CONCLUSION**

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD  
Attorney General

By:   
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CARRIE L. PARKER  
Deputy Attorney General

CLP:rmz  
cc: Severin L. Carlson, Esq.  
Marla Zlotock, Chief Deputy District Attorney

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of October, 2019, I served the foregoing letter by depositing the same for mailing via United States mail, properly addressed, postage prepaid, Certified Mail, addressed as follows:

Neal F. Jones  


Certified Mail No. 7018 1130 0001 6916 2194

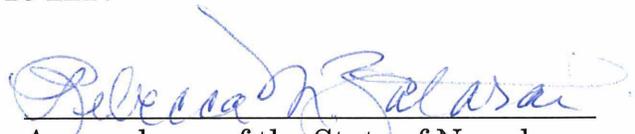
With copies to:

Severin A. Carlson, Esq.  
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Certified Mail No. 7018 1130 0001 6916 2200

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P.O. Box 39  
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Office of the Attorney General