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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

3014 West Charleston Boulevard, Suite 150
Carson City, Nevada 89102

December 8, 2020

Via Certified Mail and Electronic Mail

Dan Schinhofen



**Re: Open Meeting Law Complaint – Nye County Board of
County Commissioners, OAG File No. 13897-359**

Dear Mr. Schinhofen:

The Office of the Attorney General (OAG) is in receipt of your complaint (Complaint) alleging violations of the Nevada Open Meeting Law (OML) by the Nye County Board of County Commissioners (Board) regarding an appeal hearing from a decision of the Nye County Water District Governing Board. This letter will address all allegations in this Complaint related to the OML.¹

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040. The OAG's investigation of the Complaint included a review of the Complaint and attachments, the Response from the Board's legal counsel and attachments, and the agendas, minutes and video recordings of the Board's December 17, 2019 and January 14, 2020 meetings.

FACTUAL BACKGROUND

The Board is the governing body of Nye County, is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

¹ To the extent that the Complaint makes allegations of ethical violations, including failure to disclose financial interests, and problems with the Board's appeals process, those do not fall within NRS Chapter 241 and are not discussed in this opinion.

The Board held a meeting on December 17, 2019. Item #40 on the agenda read:

40. For Possible Action – Discussion and deliberation regarding the Nye County Water District Governing Board decision to fund a carbonate aquifer exploratory project by raising the parcel fee of all parcels served by Basin 162, and legal, administrative or statutory actions by the Board.

During the meeting, the Board heard a lengthy public comment period specific to item #40. After hearing public comment, Commissioners John Koenig and Donna Cox discussed the item and stated their position against the parcel fee raise. Commissioner Leo Blundo also discussed the item and asked that public be a part of later meetings on the issue. No vote was proposed or taken on the item.

The Board held a meeting on January 14, 2020. Items #4 and 5 on the agenda read:

4. 10:00 – For Possible Corrective Action – Discussion and deliberation to rescind the action taken on item 40 (decision of the Nye County Water District Governing Board to raise parcel fee to fund carbonate aquifer exploratory project) at the BoCC meeting of December 17, 2019. The action consisted of the commitment of a majority of BoCC members present who made statements of non-support for the decision of the Nye County Water District Governing Board when an appeal of that decision was to be heard before the BoCC in January 2020.

5. 10:00 – For Possible Action – Public Hearing, discussion and deliberation on Appeal of the Nye County Water District Governing Board's December 9, 2019 decision to raise the per parcel fee in Basin 162 to \$35.00 a year for a minimum of 3 years for funding of the carbonate aquifer exploratory project. The Board may affirm, modify or reverse the decision.

During the meeting under item #4, the Board voted to rescind their prior action. Under item #5, the Board heard the position of the appellant and public comment. The Board then voted to reverse the decision of the Water District Governing Board.

The Complaint alleges that at the December 17, 2019 meeting of the Board, two Commissioners stated their positions regarding the appeal of a

parcel fee increase that was not on the agenda in violation of NRS 241.020(3)(d)(1). The Complaint further alleges that at the Board's January 14, 2020 meeting, the Board heard only one viewpoint on the appeal and prevented the other from speaking.

DISCUSSION AND LEGAL ANALYSIS

December 17, 2019 Meeting

The legislative intent of the OML is that actions of public bodies "be taken openly, and that their deliberations be conducted openly." NRS 241.010(1); *see also McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit and policy behind NRS chapter 241 favors open meetings"). Public bodies working on behalf of Nevada citizens must conform to statutory requirements in open meetings under an agenda that provides full notice and disclosure of discussion topics and any possible action. NRS 241.020(3)(d); *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

Agenda item #40 on the Board's December 17, 2019 meeting agenda stated that the Board would be deliberating and potentially taking action regarding the decision of the Water District Governing Board. Commissioners discussed the issue, stated opinions, but ultimately did not take action on the item. The Complaint alleges that this deliberation went beyond the scope of the agenda item in violation of the OML, because an appeal of the subject decision was to be heard at a later meeting.

The Board deliberated regarding whether to uphold or overturn the Water District Governing Board's decision, precisely what was stated in the agenda item. Although the Board did not take action on the item, agendaizing it as an action item allowed the Board to deliberate toward a decision on the matter. While a statement of position on the issue prior to the hearing of the appeal may have been in contravention of one or more of the Board's appeals procedures, those procedures do not fall within the OML. Thus, the OAG does not find a violation of the OML during item #40 at the December 17, 2019 meeting.

January 14, 2020 Meeting

Public bodies must devote periods of their meetings to comments by the general public and any restrictions to public comment must be reasonable time, place and manner restrictions. NRS 241.010(3)(d)(3). Public bodies may not restrict public comment based upon viewpoint. *Id.*

The Complaint alleges that the Water District Governing Board was not permitted to speak and present its side of the appeal. Representatives from the Water District Governing Board were not present or did not attempt to speak during the January 14, 2020 meeting. The Board took extensive public comment specific to items #4 and 5 and limited speakers to three minutes each. The OAG does not possess any evidence that any person was prevented from speaking for any reason other than the end of their three minute time period. Whether the Board heard sufficient information to make an informed decision on the appeal is not within the scope of the OML and will not be discussed in this opinion. Therefore, the OAG does not find a violation of the OML during items #4 and 5 at the January 14, 2020 meeting.

CONCLUSION

Upon review of the Complaint and available evidence the OAG does not find a violation of the OML. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

/s/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2020, I served the foregoing by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, CERTIFIED MAIL addressed as follows:

Dan Schinhofen

████████████████████
████████████████████

Certified Mail No.: _____████████████████████_____

/s/ Debra Turman
An employee of the Office of the
Nevada Attorney General