



AARON D. FORD
Attorney General

CRAIG NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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

January 23, 2023

Via U.S. Mail

Timothy Hipp

[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-401
In the Matter of Esmeralda County Board of County
Commissioners**

Dear Mr. Hipp:

On March 29, 2021, the Office of the Attorney General (OAG) received three complaints in which you allege numerous violations of Public Integrity and Open Meeting Laws (OML) by certain Esmeralda County governmental employees.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 Esmeralda County Board of County Commissioners (BOCC) is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

COMPLAINT NO. 1: Alleged OML violation for failure to make BOCC meeting minutes available for inspection within 30 working days after adjournment of the meeting.

FACTUAL BACKGROUND

Your Complaint states that on January 4, 2021, the BOCC approved meeting minutes for its meetings held September 1, September 15, and October 6, 2020. You allege the Clerk’s failure to timely make the meeting

¹ You have filed numerous complaints with the OAG over time, however this office will only address the March 29, 2021, OML complaints identified herein. Of the various allegations made in these three complaints, only two stated colorable claims under the OML – each relating to alleged BOCC actions. As certain other activities alleged in your complaints fall outside of the OML, they will not be addressed in this opinion.

minutes for each of the three prior meetings available to the public constitutes three separate violations of the OML. In response to this complaint, Esmeralda County District Attorney Robert Glennen stated that the Clerk made an audio recording of each meeting immediately available to the public in compliance with the statute.

A secondary issue not specifically complained of is that the approval of the minutes at issue did not occur until January 4, 2021, more than 45 days after each meeting was held, and in violation of NRS 241.035(1).

The District Attorney argued that good cause existed for the Clerk's tardy approval of the minutes. He stated that Ms. LaCinda Elgan is the County Clerk, the County Treasurer, the District Court Clerk, and the Clerk to the Board of County Commissioners. Additionally, she is responsible for the receipt and processing of payments for Goldfield Utilities. Apart from her numerous responsibilities, during this time, Covid-19 infections were rampant among Esmeralda County employees, including Ms. Elgan herself and one of her three employees. The County offices were closed or restricted by the Commissioners due to the spread of Covid-19, and little work could be done remotely. With that backdrop, Ms. Elgan's office was also busily preparing for the November 3rd election.

LEGAL ANALYSIS

Two issues are raised by the allegations in Complaint No. 1: (1) whether the minutes were made available for inspection by the public within 30 working days after adjournment of each meeting; and (2) whether there was good cause for the failure to approve the minutes within 45 days after each meeting.

Minutes **or audio recordings** of public meetings are public records and must be available for inspection by the public within 30 working days after the meeting is adjourned. NRS 241.035(2) and OMLO 99-06 (March 19, 1999). Here, there was no violation of NRS 241.035(2) as the Clerk made audio recordings of the meetings immediately available.

Regarding the second issue, NRS 241.035(1) provides **that unless good cause is shown**, a public body shall approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later. There is no dispute that the minutes for the September 1, September 15 and October 6 meetings were not approved until January 4, well beyond the 45-day requirement of NRS 241.035(1).

The BOCC has demonstrated good cause for the delay in minutes. The Board's Clerk had Covid-19, one of her staff members had Covid-19, the

County offices were either closed or restricted due to the spread of infection from Covid-19, the Clerk was unable to work remotely, and finally the Clerk's office was preparing for elections during the same time period. This litany of challenges constitutes good cause for the Clerk's failure to prepare minutes for BOCC approval within the statute's 45-day requirement.

COMPLAINT NO. 2: Alleged OML violation for BOCC presentation of County audit at a special meeting instead of regularly noticed BOCC meeting.

FACTUAL BACKGROUND

Your Complaint alleges that the BOCC violated the OML by reviewing the County audit at a special meeting held on February 25, 2021, instead of at a regular meeting. There is no requirement for audits to be reviewed at regularly scheduled meetings instead of special meetings. Additionally, the evidence indicates that the Deputy Clerk complied with the requirements of NRS 241.020 in noticing the special meeting.

LEGAL ANALYSIS

Holding meetings on dates other than the regularly scheduled BOCC meeting dates does not violate the OML. NRS 241.020(3) provides that except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The Esmerelda County Deputy Clerk properly noticed the February 25, 2021 special meeting. Additionally, you note that the audit backup material was not provided prior to the meeting. However, the OML does not require materials be provided prior to a meeting where they have not yet been provided to members of the public body. NRS 241.020(8).

CONCLUSION

Upon review of your Complaints and the District Attorney's response to each of them, this office does not find a violation of the OML and will close its file regarding these matters.

Sincerely,

AARON D. FORD
Attorney General

/s/ Gordon R. Goolsby
GORDON R. GOOLSBY
Senior Deputy Attorney General

Timothy Hipp
Page 4

cc: Robert Glennen, Esmeralda County District Attorney
Esmeralda County, Nevada
P.O. Box 339
Goldfield, NV 89013