# OFFICE OF THE ATTORNEY GENERAL

STATE OF NEVADA

In the matter of:

AMARGOSA VALLEY TOWN BOARD

OAG FILE NO.: 13897-445

FINDINGS OF FACT AND CONCLUSIONS OF LAW

### BACKGROUND

Jimmie Thomas filed a complaint with the Office of the Attorney General ("OAG") alleging violations of the Nevada Open Meeting Law ("OML") by the Amargosa Valley Town Board ("Board") regarding posting of its agendas for two meetings occurring on April 28, 2022.<sup>1</sup>

After investigating the Complaint, the OAG determines that the Board violated the OML by failing to timely post its agendas to its website and to Nevada's notice website.

## FINDINGS OF FACT

1. On April 25, 2022, Complainant searched the Board's website and Nevada's notice website, notice.nv.gov, for agendas for two Board meetings scheduled to occur at 5:00 p.m. and 7:00 p.m. on April 28, 2022. Complainant did not find the agendas on either website.

2. The agendas for the Board's April 28 meetings were posted to Nevada's notice website at 11:45 and 11:51 a.m. on April 25.

3. Board staff posted physical copies of the agendas to the physical posting locations listed on the agenda on April 22. The Board's posting documentation did not list posting to either website.

4.

The Board conducted the two meetings on April 28.

<sup>&</sup>lt;sup>1</sup> In addition, Mr. Thomas made an allegation regarding use of the term "public hearing" on an action item for one of the meetings that fails to state a claim under the OML. The OML does not define the term "public hearing" nor prohibit its use on items listed as "for possible action." As such, the OAG will not further address this allegation.

### LEGAL STANDARDS AND CONCLUSIONS OF LAW

The Amargosa Valley Town Board, formed pursuant to NRS Chapter 269, is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

At the time of the meetings at issue, public bodies were required to post their agendas to (1) their principal office, (2) three separate prominent locations within their jurisdiction, (3) their website, if they maintain one, and (4) the official notice website of the State. NRS 241.020(4)(a)-(b); NRS 241.020(6).<sup>2</sup> This posting is required to occur by 9:00 a.m. on the third working day before the meeting is to be held, regardless of what time the meeting is to occur on the meeting day. *Id.* 

The parties do not dispute that the agendas were posted to the required physical location prior to the posting deadline. The parties also do not dispute that the agendas were not posted to Nevada's notice website until after 9:00 a.m. on April 25 (the posting deadline). Thus, the Board acknowledged, and the OAG finds, a violation of the OML with respect to this posting.

The Board contends that because there was a physical location for the meeting, the Board was not required to post the agendas to its website pursuant to NRS 241.020(4)(a), which states "If the meeting is held using a remote technology system pursuant to NRS 241.023 and has no physical location, the public body must also post the notice to the internet website of the public body ...." (emphasis supplied). The OAG disagrees. NRS 241.020(6) states: "... if a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website." The Board does not contend, and the OAG does not possess evidence, that there was a technical problem with the Board's website at the time posting was required. Thus, the OAG finds the Board also violated the OML by failing to post its agendas to its website prior to the 9:00 a.m. posting deadline.

1

<sup>&</sup>lt;sup>2</sup> NRS 241.020(4) was amended in 2021 to remove the requirement that a public body post to three separate prominent locations. Assembly Bill 253 of the 2021 Legislative Session of Nevada § 2.

#### SUMMARY

Upon investigating the present Complaints, the OAG makes findings of fact and conclusions of law that the Amargosa Valley Town Board violated the OML as described above.

If the Attorney General investigates a potential OML violation and makes findings of fact and conclusions of law that a public body has taken action in violation of the OML, "the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The public body must treat the opinion of the Attorney General as supporting material for the agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board must place an item on its next meeting agenda in which it acknowledges the present Findings of Fact and Conclusions of Law ("Opinion") resulting from the OAG's investigation in this matter. The Board must also include the OAG Opinion in the supporting materials for its next meeting.

Dated: September 15, 2023.

#### AARON FORD Attorney General

By: <u>/s/ Rosalie Bordelove</u> Rosalie Bordelove Chief Deputy Attorney General

<b>CERTIFICATE</b> C	<b>OF SERVICE</b>
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I hereby certify that on the 15th day of September, 2023, I served the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, CERTIFIED MAIL addressed as follows:

(via email only, no address provided)

Jimmie R. Thomas

**Certified Mail No.:** 

c/o Marla Zlotek, Esq.

Pahrump, Nevada 89041

**Certified Mail No.:** 

P.O. Box 39

Amargosa Valley Town Board

Nye County Office of the District Attorney

Page 4 of 4	

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/s/ Debra Turman

An employee of the Office of the

Nevada Attorney General