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Via U.S. Mail and Electronic Mail

Douglas Flaherty



**Re: Open Meeting Law Complaint, Tahoe Regional Planning Agency;
OAG File No. 13897-534**

Dear Mr. Flaherty:

The Office of the Attorney General ("OAG") is in receipt of your complaints ("Complaints") alleging violations of the Open Meeting Law, NRS Chapter 241, ("OML") by the Tahoe Regional Planning Agency ("TRPA") regarding a meeting of its Advisory Planning Commission on December 6, 2023.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG's investigation of the Complaints included a review of the Complaints and supplemental information; the response from the TRPA and attachments; the Tahoe Regional Planning Compact ("Compact"), the TRPA Rules of Procedures, applicable Nevada statutes, and applicable case law. After a thorough investigation, the OAG concludes that TRPA did not violate the OML as alleged, as California's stricter OML now governs under Article III(d) of the Compact, preempting Nevada's OML and eliminating jurisdiction.

FACTUAL BACKGROUND

The Advisory Planning Commission of the TRPA held a public meeting on December 6, 2023. Complainant filed the instant complaints alleging:

1. Failure, as required per NRS 241.020(3)(b), to provide a list of locations where the public notice has been posted.
2. Failure, as required per NRS 241.020(5)(a)(b)(c), to document in writing that the public body complied with the minimum public notice required by paragraph (a) of subsection 4. The documentation must be prepared by every person who posted a copy of the public notice and include, without limitation: (a) The date and time when the person posted the copy of the public notice (b) The address of the location where the person posted the copy of the public notice; and (c) The name, title and signature of the person who posted the copy of the notice.
3. Failure, as required per NRS.241.020(3)(d)(1) and as discussed in NV AG OML Manual § 6.02, to provide a clear and complete statement describing Agenda Item VI. A. Public Hearings, of which broadly states: A. "Economic sustainability and housing amendments to Placer County's Tahoe Basin Area Plan."
4. Failure, as required per NRS.241.020(3)(d)(2) to place the term "for possible action" next to Agenda Item V.I.A.

LEGAL ANALYSIS

- 1. The OML only applies to the TRPA to the extent required by the Tahoe Regional Planning Compact.**

The Tahoe Regional Planning Agency was created by an Act of Congress through the ratification of the Tahoe Regional Planning Compact. The TRPA states that the Tahoe Regional Planning Compact is federal law which preempts Nevada law, including the OML. In support of this claim, the TRPA cited *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, (7 F.2d 517 (9th Cir. 1974); *Lake Tahoe Watercraft Recreation Ass'n v. Tahoe Regional Planning Agency*, 24 F.Supp.2d 1062, 1068 (E.D. Cal. 1998). These cases confirm that the Tahoe Regional Planning Compact constitutes federal law. The Court in *Lake*

Tahoe Watercraft Recreation Ass'n directly addressed this issue when it stated that “[t]o the extent that the [Compact] conflicts with state law, the [Compact] preempts state law.” 24 F.Supp.2d at 1069. This Court further explained that “the only exception to this rule is where a compact specifically reserves the right of the state to impose state law on the compact organization.” *Id.* In addition, the *League to Save Lake Tahoe* Court also stated that that an interstate compact was a “statute of the United States.” 507 F.2d at 522.

The Compact has reserved the rights of the states to impose state law on the TRPA regarding the OML. Article III (d) of the Tahoe Regional Planning Compact states that “[a]ll meetings shall be open to the public to the extent required by the law of the State of California or the State of Nevada, whichever imposes the greater requirement, applicable to local governments at the time such meeting is held.” This section of the Compact clearly reserves to the State of California and the State of Nevada the right to ensure that TRPA’s meetings are “open to the public.”

TPRA in its response brings up two main disagreements that the State of Nevada’s OML should be controlling. First, TRPA believes that the State of California’s OML is now stricter the State of Nevada’s OML and Second, that the OML would only partially apply to the Compact as it cannot supersede the Compact.

2. The State of California’s OML now “imposes the greater requirement.”

As outlined in Article III(d) of the Compact, “[a]ll meetings shall be open to the public to the extent required by the law of California or Nevada, whichever is stricter, as applicable to local governments at the time of the meeting.” As federal law, the Compact supersedes state law,¹ and the OML applies to TRPA only through this provision reserving rights to the states. The determination of which OML governs hinges solely on which is stricter. TRPA asserts that amendments to California’s OML render it stricter than Nevada’s.

TRPA’s position is based on Cal. Gov. Code § 54952.2(a), which defines a meeting as “any congregation of a majority of the members of a legislative body at the same time and location, including teleconference locations as permitted by

¹ *Lake Tahoe Watercraft Recreation Ass’n v. Tahoe Regional Planning Agency*, 24 F.Supp.2d 1062, 1069 (E.D. Cal. 1998).

Section 54953, to hear, discuss, deliberate, or take action on any item within the legislative body's jurisdiction." In contrast, Nevada's definition of a meeting is provided in NRS 241.015(4), which states:

NRS 241.015 Definitions. As used in this chapter, unless the context otherwise requires:

...

4. "Meeting":

(a) Except as otherwise provided in paragraphs (b) and (c), means:

(1) The gathering of members of a public body at which a quorum is present, whether in person, by use of a remote technology system or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present, whether in person, by use of a remote technology system or by means of electronic communication, at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include any gathering or series of gatherings of members of a public body if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(c) Does not include a gathering or series of gatherings of members of a public body at which a quorum is actually or collectively present, whether in person, by use of a remote technology system or by means of electronic communication, to receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a mat-

ter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

The key distinction between the two definitions is that Cal. Gov. Code § 54952.2(a) classifies a meeting as any gathering where a majority of members hear an item within their jurisdiction, whereas NRS 241.015(4)(b) excludes such gatherings from being meetings unless deliberation or action occurs. Consequently, California's OML imposes the stricter requirement for local governments at the time of the meeting, as per the Compact. Based on this determination, Article III(d) of the Compact renders Nevada's OML inapplicable, and no further action can be taken.

As Nevada OML now inapplicable, OAG will refrain from addressing the remaining arguments.

CONCLUSION

The OAG has concluded that Nevada's OML is no longer controlling due to California's stricter OML under Article III(d) of the Compact, which mandates the application of the more stringent state law. As a result, your complaints cannot be assessed on their merits, and the OAG will close the matter.

Sincerely,

AARON FORD
Attorney General

By: /s/ Rosalie Bordelove
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cc: Graham St. Michel, General Counsel
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