OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of: OAG FILE NO.: 13897-289
AMARGOSA VALLEY TOWN BOARD FINDINGS OF FACT AND
CONCLUSIONS OF LAW

BACKGROUND

Edwin Goedhart filed a Complaint (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). The Complaint alleges that the Board violated the OML as follows:

**ALLEGATION NO. 1:** In violation of NRS 241.033 and 241.034, the Board failed to notify the Ponderosa Dairy or its representatives of an agenda item set for the May 24, 2018 Board meeting, wherein the Board was to deliberate and discuss “writing a letter to Ponderosa Dairy asking them to start spraying to kill the flies.”

**ALLEGATION NO. 2:** The Board incorrectly placed the discussion and deliberation of the town tentative budget under the May 24, 2018 Board meeting agenda item labeled “Town Office Reports,” instead of the agenda item labeled “General Business.”

**ALLEGATION NO. 3:** The Board failed to hold a workshop prior to discussing the town budget at the May 24, 2018 Board meeting.

**ALLEGATION NO. 4:** During its May 24, 2018 meeting, the Board took action on an item that was not properly noticed on the meeting agenda. At the meeting, the Board approved a final budget, but improperly titled the related agenda item as “**For Possible Action** - Discussion and Deliberation on approving the 2019 Tentative Budget.”

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 Complaint included a review of the following: the Complaint
and attachments; the Board’s Response and supplemental Response to the Complaint; the agenda of the May 24, 2018 Board meeting; and a video recording of portions of the May 24, 2018 Board meeting.

After investigating the Complaint, the OAG determines that the Board was not obligated to provide notice under NRS 241.033 or 241.034, and therefore, did not violate the OML. The OAG further finds that the Board’s failure to hold a budget workshop does not violate the OML. Additionally, the Board did not violate the OML by placing the discussion and deliberation of the budget under an agenda item labeled “Town Office Reports.” The OAG, however, finds that the Board did violate the OML by failing to comply with the clear and complete statement requirements for agenda items. The Board did not provide notice to the public that the Board would be discussing and possibly taking action on the final budget.

**FINDINGS OF FACT**

1. The Board is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

2. On May 24, 2018, the Board held a meeting.

3. The Board’s agenda for its May 24, 2018 meeting included the following item under “6 Town Office Report”:

   “C. For Possible Action - Discussion and Deliberation on approving the 2019 Tentative Budget.”

4. During the May 24, 2018 Board meeting, the Board and Amargosa Valley Town Administrator, Scott Mattox, discussed that a workshop was previously scheduled to for the 2019 budget, but it “got pulled.” Following this discussion, a motion was made to approve the budget. This motion was seconded before opening the matter up for discussion and public comment.

5. It was brought to the Board’s attention by Nye County Commissioner, John Koenig, during public comment, that because the agenda indicates that the Board will be approving a “tentative,” not “final” budget, a motion to “approve the tentative budget as a
final budget” will be a change to the agenda and a violation of the OML.

6. Following Commissioner Koenig’s comment, a motion was made to pull the item related to the budget from the agenda and setup a budget workshop on May 29th. Mr. Mattox informed the Board that May 29th will not work because the budget is due to the Nevada Department of Taxation on June 1st. After being seconded, this motion was withdrawn.

7. A motion was made that the Board adopt the budget “as is” for a final version to meet the June 1st deadline, hold a workshop to go over the budget, and submit a subsequent budget augmentation. This motion was seconded and passed with three votes in favor and two votes opposed.

8. The Board’s agenda for its May 24, 2018 meeting included the following item under “9 General Business”:

“D. For Possible Action - Discussion and Deliberation on writing a letter to Ponderosa Diary asking them to start spraying to kill the flies.”

9. During the May 24, 2018 Board meeting, the Board considered “for possible action” writing a letter to Ponderosa Diary to spray for flies because a Board member had received several calls indicating an “influx of flies.” A motion was made to write the letter, and was seconded before opening the matter up for discussion and public comment.

10. During discussion of this item, Mr. Goedhart provided public comment that the Ponderosa Diary already started the fly eradication process.

11. The motion to write the letter to Ponderosa Diary was withdrawn and no vote was taken based on Mr. Goedhart’s comment that the Diary had already started fly abatement.

LEGAL STANDARDS AND CONCLUSIONS OF LAW

1. The Board was not obligated to provide notice under NRS 241.033 or 241.034, and therefore did not violate the OML.

The OML requires written personal notice in two different circumstances. First, when a public body “consider[s] the character, alleged misconduct, professional
competence, or physical or mental health of any person.” NRS 241.033(1). Second, when a public body considers taking “administrative action against a person.” NRS 241.034(1)(a).

Notice requirements of NRS 241.033 only apply to natural persons, because non-natural persons cannot have “physical or mental health.” See OMLO 2004-13 (April 19, 2004). Thus, proper statutory construction dictates that the notice under NRS 241.033 must only be provided to natural persons and not business entities. See id. Here, the Board did not discuss the “character, alleged misconduct, professional competence, or physical or mental health” of a natural person, but rather discussed writing a letter to the Ponderosa Diary, a business entity. Therefore, the Board was not obligated to notice the Ponderosa Diary or one of its representatives under NRS 241.033.

The Board also did not consider taking administrative action at the May 24, 2018 meeting. While “administrative action,” is not defined by NRS Chapter 241, a broad interpretation and definition “would encompass a myriad of actions performed by local governments and state agencies, which were not all intended to be covered.” NEVADA OPEN MEETING LAW MANUAL, § 5.10, at 55 (12th ed. 2016). In this instance, the Board considered whether to write a letter to the Ponderosa Dairy asking it to start fly abatement. The agenda did not specify, and the Board did not discuss, any intended action by the Board if the Ponderosa Dairy did not comply with the request made in the letter. Thus, the Board was not obligated to notice the Ponderosa Diary or one of its representatives under NRS 241.034. Accordingly, Mr. Goedhart and the Ponderosa Diary received proper notice as required by the OML pursuant to NRS 241.020(3)(a).

2. The Board did not violate the OML by placing the discussion and deliberation of the town tentative budget under an agenda item labeled “Town Office Reports.”

NRS 241.020 governs the notice of public meetings and mandates that public bodies must, amongst other requirements, provide written notice of meetings that includes an agenda with a “a list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term ‘for possible action’ next to the appropriate item. . .” NRS 241.020(2)(d)(1). Additionally, an agenda for a
meeting of a public body must also include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1).

Here, the agenda for the May 24, 2018 Board meeting clearly and completely states “For Possible Action – Discussion and Deliberation on approving the 2019 Tentative Budget.” The OML does not require that agenda items be listed under specific or certain categorical titles. While this particular agenda item may have been better suited under the agenda title “General Business,” the fact that it was listed under “Town Office Reports” is not a violation of the OML.

3. The Board’s failure to hold a workshop prior to discussing the town budget does not violate the OML.

The Board’s failure to hold a public hearing or workshop related to the town budget falls within the Local Government Budget and Finance Act under Chapter 354 of NRS, and is not within the scope of review by the OAG on an OML complaint. As such, the Board has not violated the OML by failing to hold a budget workshop.

4. The agenda for the May 24, 2018 Board meeting did not comply with the OML’s clear and complete statement requirements.

As discussed above, NRS 241.020(2)(d)(1) requires an agenda to include a “clear and complete statement of the topics to be considered during the meeting.” See also Sandoval v. Bd. Of Regents of Univ., 119 Nev. 148, 154 (2003). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” Id. As such, a public body may not engage in discussion during a public meeting that exceeds the scope of a clearly and completed stated agenda topic. Id.

Here, the agenda for the May 24, 2018 Board meeting indicated that the Board may take possible action on the 2019 tentative budget. However, the Board took action and approved the 2019 final budget in order to meet the Nevada Department of Taxation’s June 1st deadline. Consequently, the public was not apprised of the Board’s intent to
engage in a discussion and possibly take action on the **final** budget, resulting in a violation of the OML's clear and complete statement requirement for agenda items.

**SUMMARY AND INCLUSION OF AGENDA ITEM**

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 board meeting agenda in which the Board acknowledges the present Findings of Fact and Conclusions of Law (Opinion) which results from the OAG investigation in the matter of Attorney General File No. 13897-289. The Board must also include the OAG Opinion in the supporting materials for its next meeting.


AARON D. FORD  
Attorney General

By: /s/ Tiffany E. Breinig  
TIFFANY E. BREINIG  
Deputy Attorney General
CERTIFICATE OF SERVICE

I hereby certify that on the 17th August, 2020, I served the 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:

Amargosa Town Board
Joe Cohan, Chairman
821 E. Amargosa Farm Road
Amargosa Valley, Nevada 89020

Certified Mail No. 7019 0160 0000 0498 6384

Edwin Goedhart

Certified Mail No. [redacted]

/s/ Debra Turman
An Employee of the State of Nevada
Office of the Attorney General