

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA
3

4 In the matter of:
5 AMARGOSA VALLEY TOWN BOARD
6
7

OAG FILE NO.: 13897-289
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

8 **BACKGROUND**

9 Edwin Goedhart filed a Complaint (Complaint) with the Office of the Attorney
10 General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the
11 Amargosa Valley Town Board (Board). The Complaint alleges that the Board violated the
12 OML as follows:

13 **ALLEGATION NO. 1:** In violation of NRS 241.033 and 241.034, the Board failed
14 to notify the Ponderosa Dairy or its representatives of an agenda item set for the May 24,
15 2018 Board meeting, wherein the Board was to deliberate and discuss “writing a letter to
16 Ponderosa Dairy asking them to start spraying to kill the flies.”

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

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

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

26 The OAG has statutory enforcement powers under the OML and the authority to
27 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040.
28 The OAG’s investigation of the Complaint included a review of the following: the Complaint

1 and attachments; the Board’s Response and supplemental Response to the Complaint; the
2 agenda of the May 24, 2018 Board meeting; and a video recording of portions of the May
3 24, 2018 Board meeting.

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

13 FINDINGS OF FACT

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

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

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

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

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

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

1 final budget” will be a change to the agenda and a violation of the OML.

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

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

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

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

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

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

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

25 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

26 1. **The Board was not obligated to provide notice under NRS 241.033 or
27 241.034, and therefore did not violate the OML.**

28 The OML requires written personal notice in two different circumstances. First,
when a public body “consider[s] the character, alleged misconduct, professional

1 competence, or physical or mental health of any person.” NRS 241.033(1). Second, when a
2 public body considers taking “administrative action against a person.” NRS 241.034(1)(a).

3 Notice requirements of NRS 241.033 only apply to natural persons, because non-
4 natural persons cannot have “physical or mental health.” *See* OMLO 2004-13 (April 19,
5 2004). Thus, proper statutory construction dictates that the notice under NRS 241.033
6 must only be provided to natural persons and not business entities. *See id.* Here, the Board
7 did not discuss the “character, alleged misconduct, professional competence, or physical or
8 mental health” of a natural person, but rather discussed writing a letter to the Ponderosa
9 Dairy, a business entity. Therefore, the Board was not obligated to notice the Ponderosa
10 Dairy or one of its representatives under NRS 241.033.

11 The Board also did not consider taking administrative action at the May 24, 2018
12 meeting. While “administrative action,” is not defined by NRS Chapter 241, a broad
13 interpretation and definition “would encompass a myriad of actions performed by local
14 governments and state agencies, which were not all intended to be covered.” NEVADA OPEN
15 MEETING LAW MANUAL, § 5.10, at 55 (12th ed. 2016). In this instance, the Board considered
16 whether to write a letter to the Ponderosa Dairy asking it to start fly abatement. The
17 agenda did not specify, and the Board did not discuss, any intended action by the Board if
18 the Ponderosa Dairy did not comply with the request made in the letter. Thus, the Board
19 was not obligated to notice the Ponderosa Dairy or one of its representatives under NRS
20 241.034. Accordingly, Mr. Goedhart and the Ponderosa Dairy received proper notice as
21 required by the OML pursuant to NRS 241.020(3)(a).

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

25 NRS 241.020 governs the notice of public meetings and mandates that public bodies
26 must, amongst other requirements, provide written notice of meetings that includes an
27 agenda with a “a list describing the items on which action may be taken and clearly
28 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

1 meeting of a public body must also include a “clear and complete statement of the topics to
2 be considered during the meeting.” NRS 241.020(2)(d)(1).

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

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

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

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

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

25 Here, the agenda for the May 24, 2018 Board meeting indicated that the Board may
26 take possible action on the 2019 **tentative** budget. However, the Board took action and
27 approved the 2019 **final** budget in order to meet the Nevada Department of Taxation’s
28 June 1st deadline. Consequently, the public was not apprised of the Board’s intent to

1 engage in a discussion and possibly take action on the **final** budget, resulting in a violation
2 of the OML's clear and complete statement requirement for agenda items.

3 **SUMMARY AND INCLUSION OF AGENDA ITEM**

4 If the Attorney General investigates a potential OML violation and makes findings
5 of fact and conclusions of law that a public body has taken action in violation of the OML,
6 "the public body must include an item on the next agenda posted for a meeting of the public
7 body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The
8 public body must treat the opinion of the Attorney General as supporting material for the
9 agenda item(s) in question for the purpose of NRS 241.020. *Id.*

10 Accordingly, the Board must place an item on its next board meeting agenda in
11 which the Board acknowledges the present Findings of Fact and Conclusions of Law
12 (Opinion) which results from the OAG investigation in the matter of Attorney General File
13 No. 13897-289. The Board must also include the OAG Opinion in the supporting materials
14 for its next meeting.

15 DATED: July 20, 2020.

16 AARON D. FORD
17 Attorney General

18 By: /s/ Tiffany E. Breinig
19 TIFFANY E. BREINIG
20 Deputy Attorney General

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 17th August, 2020, I served the **FINDINGS OF FACT**
3 **AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States
4 mail, properly addressed, postage prepaid, CERTIFIED MAIL addressed as follows:

5
6 Amargosa Town Board
7 Joe Cohan, Chairman
8 821 E. Amargosa Farm Road
9 Amargosa Valley, Nevada 89020

8 Certified Mail No. 7019 0160 0000 0498 6384

9 Edwin Goedhart

10 [REDACTED]
11 [REDACTED]

11 Certified Mail No. [REDACTED]

12
13 /s/ Debra Turman
14 An Employee of the State of Nevada
15 Office of the Attorney General
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