



AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

July 22, 2020

Via U.S. Mail

James W. Utterback
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-326
Mineral County Board of Commissioners**

Dear Mr. Utterback:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Open Meeting Law (OML) by the Mineral County Board of Commissioners (Board) regarding whether the Board exceeded the scope of an agenda item; whether the minutes were complete; and whether there were serial communications between two Board members.

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. In response to your complaints, the OAG reviewed your complaint; the Board's response thereto; and the agenda and minutes for the Board's meeting of February 20, 2019.

FACTUAL BACKGROUND

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

On February 20, 2019, the Board held a meeting. One of the items heard during the meeting was noticed and agendized as follows: "**25. Honorable Garth Price, Commissioner** – For consideration and possible action relative to requesting permission from the Governor's Office on Economic Development to participate in the Sierra Region Development Authority. (Public comment following.)"

No action was taken on this item at the February 20, 2019, meeting. The minutes for this meeting stated Commissioner Chris Hegg "has been talking to Rob Hooper and Matt Moore, Director of the Governor's Office of Economic Development"

The Board's response indicated that Commissioner Hegg and Commissioner Price met individually with Mr. Moore and had individual telephone calls with Mr. Hooper. Both Commissioners submitted signed statements confirming this. Commissioner Hegg's signed statement also indicated he spoke again with Mr. Moore prior to the Board's meetings of February 20, 2019, and March 6, 2019. Both signed statements affirmatively indicated the commissioners did not discuss with Mr. Moore and Mr. Hooper how they would vote or thought other commissioners would vote.

Your complaint makes, essentially, three allegations: 1) the Board's February 20, 2019, agenda item set out above was not broad enough to cover the action taken on the item; 2) the minutes for the February 20, 2019, meeting do not reflect that Commissioner Price quoted Mr. Moore at the meeting; and 3) Commissioner Hegg and Commissioner Price had serial meetings involving Mr. Hooper and Mr. Moore.

DISCUSSION AND LEGAL ANALYSIS

Allegation #1

You allege the Board took action at its meeting of February 20, 2019, on the above-referenced agenda item which exceeded the scope of the agenda item. It does not appear any action was taken on the above-referenced item at the February 20, 2019, meeting.¹ Thus, the OAG does not find a violation of the OML.

Allegation #2

You allege the minutes concerning the February 20, 2019, meeting are deficient because they do not reflect Commissioner Price quoted Mr. Moore at the meeting. NRS 241.035(1)(c) sets out that minutes shall include the "substance of all matters proposed, discussed or decided" While the minutes for the meeting do not reflect the quoting of Mr. Moore, they do reflect Mr. Hooper and Mr. Moore were discussed at the meeting. The OAG finds this sufficiently includes the substance of matters discussed and does not find a violation of the OML.

Allegation #3

You allege serial meetings occurred regarding the above-referenced agenda item prior to the Board's meeting of February 19, 2019. Chapter 241 of the NRS requires the actions of public bodies "be taken openly and that their deliberations be conducted openly." NRS 241.010; see *McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). A

¹ Action was taken on this item at the Board's meeting of March 6, 2019. As there is a separate complaint concerning this item at that meeting, the OAG will address those allegations in its findings with regard to that complaint.

“meeting” is a “gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action . . .” NRS 241.015(3)(a)(1). A “quorum” is a “majority of the membership of a public body . . .” NRS 241.015(5). A quorum may be established through a series of gatherings involving members of the public body. NRS 241.015(3)(a)(2). In short, a public body may not deliberate or take action outside of a public meeting whether a quorum of the public body meets in person or the thoughts and opinions of members of a public body are shared amongst the members through serial meetings or communications where no individual meeting or communication involves a quorum of members.

Your complaint appears to allege Commissioner Hegg and Commissioner Price communicated serially through Mr. Hooper and/or Mr. Moore. Your complaint bases this on the discussion of conversations held with Mr. Hooper and Mr. Moore during the Board meeting on February 20, 2019. If Commissioner Hegg and Commissioner Price did engage in serial communication, it would have involved a quorum as the Board is comprised of three members. However, you do not provide any evidence Commissioner Hegg or Commissioner Price went beyond individually obtaining answers to their questions. That is, the OAG does not possess any evidence that Commissioner Hegg or Commissioner Price used Mr. Hooper or Mr. Moore to communicate their thoughts about any issue before the Board to each other, let alone voting or motions, using Mr. Hooper or Mr. Moore. Thus, the OAG does not find a violation of the OML.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ John S. Michela
JOHN S. MICHELA
Senior Deputy Attorney General

JSM:mmh

cc: Sean E. Rowe, District Attorney of Mineral County

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CERTIFICATE OF SERVICE

I certify that on the 17th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage prepaid, first class mail, to the following:

James W. Utterback
[REDACTED]
[REDACTED]

Sean E. Rowe, District Attorney
of Mineral County
P.O. Box 1210
Hawthorne, NV 89415

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