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555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

August 5, 2020

Via U.S. Mail

Judie A. Allan
[REDACTED]
[REDACTED]

Re: Open Meeting Law Complaints, AG File No. 13897-351 Lander County Commissioners

The Office of the Attorney General (OAG) investigated your complaint alleging violation of the Open meeting Law (OML) by the Lander County Commissioners. Your complaint alleges that the Lander County Commissioners violated NRS 241.033 at the September 19, 2019 meeting by failing to provide you timely personal notice that your character, alleged misconduct, professional competence or physical or mental health would be considered. Your complaint also alleges that the agenda item was too broad and vague.

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. To investigate your Complaint, the OAG reviewed the following: Complaint submitted by Judie Allan and Response from Lander County Commissioners which included the agenda and partial transcript of the meeting held on September 19, 2019 as well as an e-mail dated September 13, 2019.

FACTUAL BACKGROUND

The Lander County Commissioners are a “public body” as defined in Nevada Revised Statute (NRS) 241.015(4), and subject to the OML. The agenda for the September 19, 2019 meeting of the Lander County Commissioners included the following agenda item:

- (1) **COMMISSIONERS:** For possible action: Consider the character, alleged misconduct, professional competence, or physical or mental health of Lander County

Commissioner Judie Allan including but not limited to her failure to offer courtesy and respect during open meetings and her failure to observe ethics guidelines. Action may include censure, admonishment or such other action deemed appropriate by the board.

According to the Response, the Lander County Commissioners take the position that this agenda item did not require the personal notice described in NRS 241.033(2) because Judie Allen is an elected member of a public body. In the Response, the Lander County Commissioners submit that the agenda sent via e-mail on September 13, 2019 to Judie Allen was sufficient notice.

The transcript of this agenda item demonstrates that no action was taken and there was no discussion specific to Judie Allan's character, alleged misconduct professional competence or physical or mental health at the meeting on September 19, 2019. Member Clark and Member Sparks recused themselves and Member Allan was not present.

DISCUSSION AND LEGAL ANALYSIS

The Lander County Commission did not violate NRS 241.033(1). NRS 241.033(1) sets out: "...a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person..." unless it has properly notified the person. In order for a public body to violate NRS 241.033(1), it must as a whole, without notice, consider and deliberate with regard to a person's character, alleged misconduct, professional competence, or physical or mental health. *See* OMLO 2005-08 (May 2005).

The consideration of Judie Allan as an elected member of Lander County Commission could not be held in a closed meeting and was properly on the agenda in an open session as required by NRS 241.031. Regardless of whether the meeting is open or closed, NRS 241.033(2) required notice to Judie Allan either by personal delivery at least 5 working days before the meeting or by certified mail sent to her last known address at least 21 working days before the meeting. The only exceptions to the notice requirements are found in NRS 431.433(7). The e-mail sent to Judie Allan on September 13, 2019 did not meet the criteria for proper notice for this agenda item.

In determining whether a violation of the notice requirement contained in NRS 241.033 occurred, the OAG reviews the actual discussion during which a public body is alleged to have considered a person's character, alleged misconduct, professional competence, or physical or mental health.

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See, OMLO 2011-01 (March 29, 2011); OMLO 99-22 (April 7, 1999). The transcript of the meeting reveals that there was no consideration or discussion by the Lander County Commissioners of the character, any alleged misconduct, professional competence or the physical or mental health of Judie Allan at the meeting on September 19, 2019.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

/s/ LINDA C. ANDERSON

Linda C. Anderson
Chief Deputy Attorney General

cc: Rebecca Bruch, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage prepared, first place mail, to the following:

Judie A. Allan

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██

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