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555 E. Washington Ave. Suite 3900
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February 2, 2022

Via Certified Mail

Douglas Flaherty
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, A.G. File No. 13897-369
Tahoe Fire and Fuels Team and the Multi Agency Coordinating
Committee**

Dear Mr. Flaherty,

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Nevada Open Meeting Law (OML) by the Tahoe Fire and Fuels Team (TFFT) and the Multi Agency Coordinating Committee (MACC) ("Complaint"). The violation(s) alleged in your Complaint, in summary, assert that the TFFT and the MACC are public bodies and have been violating the OML by not operating as such. Specifically, you allege the TFFT and MACC are violating the OML by failing to properly notice meetings with a clear and complete agenda and failing to maintain minutes of their meetings.

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. In response to your Complaint, the OAG reviewed your Complaint and its attachments, the TFFT/MACC's response and its attachments (Response), TFFT/MACC's response to supplemental questions issued by the OAG (Response Supplement), and the *Emergency California-Nevada Tahoe Basin Fire Commission Report*, that was issued in May of 2008 ("Report"). These documents are collectively herein referred to as the "Record."

For the reasons stated below, upon review of the Record, the OAG concludes that neither the TFFT nor the MACC are public bodies and therefore have not violated the OML.

FACTUAL BACKGROUND

In June of 2007, a fire erupted in the North Upper Truckee area of South Lake Tahoe, California. Dubbed the “Angora Fire,” it is reported to have required thousands of evacuations, burned approximately 3,100 acres, and destroyed 254 homes. *Report* at 1. The Angora Fire was perceived to highlight a need to review the fire prevention and fuels management practices implemented within the Tahoe Basin. *Id.* This led to the creation of the “California-Nevada Tahoe Basin Fire Commission” (“Commission”). *Id.* The Commission, established by the Governors of California and Nevada, was tasked to “perform a comprehensive review of the laws, policies, and practices that affect the vulnerability of the Tahoe Basin to wildfires and/or that pertain to fire prevention and fuels management in the Basin.” *Id.* On or about May 2008, the Commission released its findings and recommendations in its *Emergency California-Nevada Tahoe Basin Fire Commission Report*. In the Report, the Commission recognized the benefit of interagency communication. It is asserted that the TFFT and the MACC were created in observation of this interest in interagency communication and in furtherance of wildfire prevention and fuel reduction.

Upon review of material relevant to the Complaint, it is understood that neither the TFFT nor MACC were created through legislation or Executive action. They are comprised of representatives from multiple federal and state (California and Nevada) agencies. The TFFT, which is overseen by the MACC, hold meetings wherein information pertaining to fire prevention and fuel reduction is shared between its members who then report the discussions/findings to their own respective agencies. The TFFT/MACC’s goal is represented to be to “further communication and dialogue so that the multitude of agencies surrounding the Tahoe Basin can effectively work together to coordinate and communicate fire safety.” *Response* at 2. The TFFT and MACC do not take action or make recommendations to a public body through collective consensus of their members. *Id.*

DISCUSSION AND LEGAL ANALYSIS

The issue presented here is whether the TFFT and MACC are considered public bodies for the purposes of compliance with the OML. NRS 241.015(4) defines a “public body” as:

- (a) Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is sup-

ported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes a library foundation as defined in [NRS 379.0056](#), an educational foundation as defined in subsection 3 of [NRS 388.750](#) and a university foundation as defined in subsection 3 of [NRS 396.405](#), if the administrative, advisory, executive or legislative body is created by:

- (1) The Constitution of this State;
 - (2) Any statute of this State;
 - (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;
 - (4) The Nevada Administrative Code;
 - (5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;
 - (6) An executive order issued by the Governor; or
 - (7) A resolution or an action by the governing body of a political subdivision of this State;
- (b) Any board, commission or committee consisting of at least two persons appointed by:
- (1) The Governor or a public officer who is under the direction of the Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department of the State Government;
 - (2) An entity in the Executive Department of the State Government, if the board, commission or committee otherwise meets the definition of a public body pursuant to this subsection; or
 - (3) A public officer who is under the direction of an agency or other entity in the Executive Department of the State Government, if the board, commission or committee has at least two members who are not employed by the public officer or entity;
- (c) A limited-purpose association that is created for a rural agricultural residential common-interest community as defined in subsection 6 of [NRS 116.1201](#); and
- (d) A subcommittee or working group consisting of at least two persons who are appointed by a public body described in paragraph (a), (b) or (c) if:
- (1) A majority of the membership of the subcommittee or working group are members or staff members of the public body that appointed the subcommittee; or
 - (2) The subcommittee or working group is authorized by the public body to make a recommendation to the public body for the public body to take any action.

Section 2.01 of the Nevada Open Meeting Law Manual states:

...the definition of public body is dependent explicitly on its manner of creation rather than its function. It always has been true that a public body must be collegial, that is, it must consist of more than two persons. NRS 241.015(4) requires at least two persons to comprise a public body. The Open Meeting Law concerns itself with meetings, gatherings, decisions, and actions obtained through the collective consensus of a quorum of the public

body membership. *See also Dewey v. Redevelopment Agency*, 119 Nev. 87, 64 P.3d 1070 (2003) (collective process of decision making must be accomplished in public). The Court emphasized that public bodies may only act collectively. Similarly, in *Del Papa v. Board of Regents*, 114 Nev. 388, 400, 956 P.2d 770, 778–77 (1988) the Court said: “the constraints of the Open Meeting Law apply only where a quorum of a public body, in its official capacity as a body, deliberates toward a decision or makes a decision...

Nevada Open Meeting Law Manual, §2.01, at 16 (12th ed. 2016). In Op. Nev. Att'y Gen. No. 2005-05 (March 31, 2005), this office opined that the Open Meeting Law “concerns itself with meetings, gatherings, decisions, recommendations, and other actions ‘obtained through a collective consensus of the members.’” Further, in OMLO 2004-02 (January 20, 2004), this office opined:

[S]taff meetings within an agency or interagency meetings of groups which have no independent legal authority, no independent budget, and no formal mission or purpose will not fall within the definition of a public body if these groups, as a group, do not advise or make recommendations to a public body.

Additionally, in OMLO 2014-05 the OAG was asked whether the Nevada District Attorney’s Association (“NDAA”) was subject to the OML. The NDAA, comprised of elected District Attorneys that were vested with voting powers within the Association, was governed by a constitution, funded by dues assessed from its members, was authorized to exchange information with other members, and was permitted to lobby the legislature regarding matters of commonality among the members’ jurisdictions. In determining whether this nonprofit, unincorporated organization was a public body subject to the OML, the OAG stated:

A public body is any administrative, advisory, executive, or legislative body of the state or local government supported in whole or in part by tax revenue, if it was created by one of seven statutory methods. NRS 241.015(4)(a). The Association is a legal entity which enjoys powers and perpetual existence as an unincorporated nonprofit association under authority of NRS 81.755, but it was not created by any one of the methods in NRS 241.015(4)(a). It is also not an executive body created by executive order of the Governor or by any one of the other methods in

NRS 241.015(4)(b). Thus under the plain meaning of the statute, the Association is not a public body and is not subject to the Open Meeting Laws.

Here, it is understood that neither the MACC nor TFFT take action or make recommendations to a public body through a collective consensus of their members. These members meet only a few times per year to discuss the common goals that their respective agencies are working on and further a platform for information sharing. Response at 6-7; Response Supplement at 1. Neither the MACC nor TFFT have an apparent independent legal authority or budget (no funding, no bank account, no income stream or revenue). Response Supplement at 2. The only purported purpose of these meetings is to further communication and dialogue so that the multitude of agencies surrounding the Tahoe Basin can effectively work together to coordinate and communicate fire safety. Response at 2.

Neither the TFFT nor MACC were created pursuant to one of the methods contained in NRS 241.015(4)(a), by executive order of the Governor, or by any one of the other methods in NRS 241.015(4)(b). Rather, they appear merely to be an outgrowth of recommendations rendered in the *Report*. Thus, the OAG finds that neither the MACC nor TFFT are public bodies and therefore neither are subject to the OML.

CONCLUSION

With consideration of the available Record, the OAG concludes that Neither the MACC nor the TFFT violated the OML because neither of them are public bodies under NRS 241.015. As such, the OAG will be closing its file in this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Michael Detmer
MICHAEL DETMER
Senior Deputy Attorney General

cc: Devon T Reese, Esq. and Alex R. Velto, Esq., counsel for Respondents

