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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

February 2, 2022

Via Certified Mail

Virginia Starrett



**Re: Open Meeting Law Complaint, OAG File No. 13897-371,
Douglas County Board of County Commissioners**

Dear Mrs. Starrett:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Open Meeting Law (OML) by the Douglas County Board of County Commissioners (Board) regarding a public comment during their June 25, 2020 meeting.

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; and the agenda, minutes and video recording for the Board's June 25, 2020 meeting.

FACTUAL BACKGROUND

The Board, as a County Commission, is created by statute, is a "public body" as defined in NRS 241.015(4) and subject to the OML.

The Board held a meeting on June 25, 2020. The meeting had no physical location due to the COVID-19 pandemic. Board members and staff attended the meeting via videoconferencing software, while public could view the meeting via a live stream on YouTube. A link to the live stream was listed on the public notice agenda. The agenda listed three methods for public to submit written public comment, instructions on making public comment via telephone, and a phone number for the County Manager's office where public could obtain help in making public comment. The

live stream for the meeting included a banner across the top stating “For public comment, call 775-783-6007.”

The Board’s process for telephonic public comment was to open the public comment phone line at the start of the meeting and leave it open until at least five minutes after the first public comment period was called. Members of the public could call the line and leave a message with their public comment, which was limited to three minutes per person. Any messages received were played during the first public comment period. The phone line was then left open during the meeting for public to leave comment for the second public comment period, at the end of the meeting. During the second public comment period, any messages received during the meeting or within the public comment period (also left open for at least five minutes), were played for the Board. This process was listed on the Board’s agenda and was followed by the Board during the meeting.

During the June 25, 2020 meeting, when the Chair initially called the first public comment period, there was only one message on the phone line and it was garbled and incomprehensible. The Chair asked that the caller call back and leave a new message if he or she wanted their comment heard and staff left the line open for additional time for that purpose. A message was received and played shortly thereafter. The Board then received three additional messages, including one from you, each of which was played during the first public comment period, which lasted for a little over 10 minutes. There were no messages received during the meeting or the second public comment period.

Your Complaint alleges that the Board violated the OML by putting in place a public comment policy that works against the idea of openness and transparency. Particularly, you allege that not opening the public comment line until the start of the meeting, only leaving it open for five minutes and limiting each individual commenter to three minutes improperly limits public comment. In addition, you state that the public comment line did not open until four minutes after the start of the June 25, 2020 meeting and that the equipment the Board used to record and/or play public comment messages was poor, leading to the comments being indecipherable and garbled.

DISCUSSION AND LEGAL ANALYSIS

The legislative intent of the OML is that actions of public bodies “be taken openly, and that their deliberations be conducted openly.” NRS 241.010(1); *see also McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind NRS chapter 241 favors open meetings”). The OML requires public bodies to include periods devoted to comments by the general public during their meetings. NRS 241.020(3)(d)(3). Any restrictions on comments by the general

public must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint. NRS 241.020(3)(d)(7).

Due to the COVID-19 pandemic, the Governor of Nevada issued a directive suspending the physical requirements for public meetings. Declaration of Emergency Directive 006, *available at* [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22 - COVID-19 Declaration of Emergency Directive 006/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-22_-_COVID-19_Declaration_of_Emergency_Directive_006/). Directive 006 states:

If a public body holds a meeting by means of teleconference or video conference and a physical location where members of the public can attend is not provided, the public body must provide a means for the public to provide public comment, and post that means on the public notice agenda posted in accordance with NRS 241.020. Public comment options may include, without limitation, telephonic or email comment.

The Board offered multiple methods for public comment to be submitted, including by mail, website and telephone. The method for receiving telephonic comment, which is most at issue here, largely mimics that of public comment during an in person physical meeting. Commenters are asked to call in to a line at the start of the public comment period, similar to being called to a podium during the same time frame. The public comment period was not limited to five minutes total. Rather, it was promised to be kept open for at least five minutes and was kept open as long as needed to entertain all of the comments offered. The public comment process and the three minute per person limitation were stated on the agenda and are reasonable time, place, and manner restrictions.

While the public comment line may not have opened until four minutes past the stated start time of 1:00 p.m., it was held open until all public comment messages had been heard. No messages were received during the meeting or during the later public comment period, indicating that no messages were left right after the cut off of the first public comment period. The OAG possesses no evidence that anyone was prevented from making public comment during the meeting at issue. 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/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

cc: Douglas V. Ritchie, Chief Civil Deputy District Attorney

Virginia Starrett
February 2, 2022
Page 5

**AMENDED
CERTIFICATE OF SERVICE
(Amended Copy Sent via U.S. Mail February 7, 2022)**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on February 2, 2022, I mailed foregoing document via Certified Mail, postage paid to the following:

Virginia Starrett

[REDACTED]
[REDACTED]

Certified Mail No.: [REDACTED]

Douglas Ritchie, Chief Civil Deputy District Attorney
Office of the District Attorney Douglas County
P.O. Box 218
Minden, NV 89423

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/s/ Debra Turman
An Employee of the Office of the
Attorney

Virginia Starrett
February 2, 2022
Page 6