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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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February 2, 2022

Via Certified Mail and Email

Natalie Roach  
[REDACTED]  
[REDACTED]  
[REDACTED]

Ronna McDaniel  
Republican National Committee  
310 First Street, Southeast  
Washington DC 20003  
Email: [RRM@gop.com](mailto:RRM@gop.com)

**Re: Open Meeting Law Complaint, OAG File No. 13897-374,  
Clark County Board of County Commissioners**

Dear Ms. Roach and Ms. McDaniel:

The Office of the Attorney General (OAG) is in receipt of your complaints alleging violations of the Open Meeting Law (OML) by the Clark County Board of County Commissioners (Board) regarding a closed session during their April 21, 2020 meeting and decisions by one of its employees.

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 complaints and attachments; the Board's response and attachments; and the agenda and minutes for the Board's April 21, 2020 meeting.

## **FACTUAL BACKGROUND**

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

On April 16, 2020, a case was filed in the First Judicial District Court regarding Nevada’s election process.<sup>1</sup> The Clark County Registrar of Voters (Registrar) was named as a defendant in the action, in his official capacity. Plaintiffs had filed a motion for a preliminary injunction.

On April 21, 2020, the Board held a meeting. Item #60 on the Board’s public notice agenda was a closed session to receive information from the District Attorney regarding potential or existing litigation. During this item, the Board went into closed session with its counsel. No item on the agenda related to the specific litigation at issue.

On May 4, 2020, the District Attorney’s Office filed a joinder on behalf of the Registrar, joining in the oppositions to the Plaintiffs’ motion that had been filed by other defendants in the case. The joinder included a statement that “At the direction of local county officials, the Clark County Registrar of Voters is setting up two additional election day voting sites and will mail absent ballots to all registered voters, including inactive voters, at additional expense.”

Your complaints allege that the filing of the joinder and the decision to change election procedures required action by the Board and thus the Board must have taken that action outside of a public meeting in violation of the OML.

## **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 is not intended to prohibit every private discussion of a public issue. *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 94 (2003).

### **Filing the Joinder**

The OML does not apply to a gathering of members of a public body to receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a

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<sup>1</sup> *Corona et al. v. Cegavske et al.*, Case No. CV 20-OC-00064-1B (1st J.D. 2020).

decision on the matter, or both. NRS 241.015(3)(b)(2). A public body may deliberate with its attorney over strategy decisions and individual members may express their opinion on how each expects the public body to be represented. Nevada Attorney General Open Meeting Law Opinion 2005-04 (Mar. 2005). However, such deliberations may not result in any action by the public body, such as to initiate litigation or settle a case. *Id.* A public body must meet in an open meeting to determine material steps in the litigation process, such as initiating a lawsuit, agreeing to a settlement or initiating an appeal. *The Commission on Ethics of the State of Nevada v. Hansen*, 134 Nev. 304, 307 (2018).

Here, the step taken by the public body's counsel was a defensive action—joining an opposition to a motion for preliminary injunction. Filing an opposition to a motion, or joining in another's, is not a material step in the litigation process requiring action by a public body as it does not require specific client consent beyond that implied by the representation. *See Hansen* at 307 (discussing initiating a lawsuit, agreeing to a settlement and initiating an appeal as examples of material steps); Nevada Rules of Professional Conduct 1.2(a) (“A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.”); Restatement (Third) of the Law Governing Lawyers § 22(1), 21(3) (Am. Law Inst. 2000); 7A C.J.C. *Attorney & Client* § 288 (2015) (attorney has implied power to “take all steps necessary or incidental to the prosecution or management of the case or defense”); *Blanton v. Womancare, Inc.*, 38 Cal. 3d 396, 404, 696 P.2d 645, 650 (1985). Further, the OAG does not possess any evidence that action was taken or any direction given during the Board's attorney-client conference. Complainants merely allege that because the joinder was filed shortly after the attorney-client conference, it must have been authorized during the conference. Thus, the OAG does not find a violation of the OML.

### **Changes to Election Procedure**

Authority regarding the administration of elections has been given to county clerks by the Nevada Legislature, not to the Board. *See generally* NRS Chapter 293. The Clark County Registrar of Voters is an appointed position that holds the powers and duties vested in the County Clerk by Nevada's election statutes. NRS 293.044; Clark County Ordinance 2.20.010-40. As a department head, the Registrar is selected by and reports to the County Manager. Clark County Ordinance 2.40.100; 2.44.020. The Registrar, as a defendant in the litigation at issue, made certain decisions regarding the administration of the election in response to it. The OAG does not possess evidence that the Board took any action or gave any guidance with respect to the changes in election procedure. Thus, the OAG does not find a violation of the OML.

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**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: Mary-Anne Miller, County Counsel

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**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:

Natalie Roach

[REDACTED]  
[REDACTED]

Certified Mail No.: [REDACTED]

Ronna McDaniel  
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/s/ Debra Turman  
An Employee of the Office of  
The Attorney General