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April 25, 2022

Via U.S. Mail & Certified Mail

Michael S. Ross

[REDACTED]
[REDACTED]
[REDACTED]

Joyce E. McIntosh

[REDACTED]
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-386
Lyon County Board of County Commissioners**

Dear Mr. Ross and Ms. McIntosh:

The Office of the Attorney General ("OAG") is in receipt of your respective complaints ("Complaints") alleging a violation of the Open Meeting Law ("OML") by the Lyon County Board of County Commissioners ("Board"). The Complaints allege that members of the public were excluded from attending the Board's December 17, 2020, meeting and were unable to make public comment.

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. The OAG's investigation of the Complaints included a review of the Complaints and attachments thereto; the response filed on behalf of the Board and all attachments thereto; and prior OML decisions, case law, and portions of the Nevada Revised Statutes relevant to the Complaint.

After investigating the Complaint, the OAG does not find a violation of the OML because the evidence shows that members of the public were not

excluded from attending the Board's December 17, 2020, meeting and that they were able to make public comment.

FACTUAL BACKGROUND

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

The Board held a meeting via videoconferencing software at 9:00 a.m. on December 17, 2020. There was no physical location for members of the public to attend the meeting; however, members of the public were permitted to view the meeting via a livestream. According to the Agenda, members of the public were provided a "Meeting ID" to attend the meeting. The Agenda alternatively provided two telephone conference phone numbers to dial to connect to the meeting. The Agenda did not provide a username nor password to access the meeting. However, documents provided reflect individual participants were able to attend the meeting and that during the Board meeting, several individuals were able to make live public comment.

LEGAL ANALYSIS

- 1. There is insufficient evidence that members of the public were excluded from attending the Board's December 17, 2020 meeting.**

The OML requires public bodies to include in their written notices of meetings the time, place, and location of the meetings. NRS 241.020(3)(a). The OML also allows public bodies to conduct meetings by means of teleconference or videoconference where: (1) a quorum is present, whether in person or by means of electronic communication; and (2) there is a physical location designated for the meeting where members of the public are permitted to attend and participate. NRS 241.023(1).

Due to the COVID-19 pandemic, the Governor of Nevada issued an emergency directive suspending the physical requirements for public meetings under the OML. Declaration of Emergency Directive 006.¹ Section 2 of Directive 006 provided:

If a public body holds a meeting by means of teleconference or

¹ A copy of Declaration of Emergency Directive 006 may be retrieved 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 expired on May 31, 2021, but was in effect at the time of the meeting at issue.

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.

Id. Thus, while the OML generally requires that there be a physical location for meetings of public bodies where members of the public are permitted to attend and participate, including providing in-person public comment, Directive 006 suspended the physical location requirement during the time of the alleged violation.

Complainant Ross asserts that the Board held a remote meeting but that members of the public were required to enter a username and password to access the meeting, but such information was not provided. Similarly, Complainant McIntosh asserts that while the Board's agenda provided the Meeting ID, it failed to provide a passcode to attend the meeting. In review of the Complaints, however, both Complainants concede that members of the public were able to access the meeting. In fact, Complainant McIntosh noted that she was able to listen to the meeting on her phone, while Complainant Ross admitted that he was aware of members of the public who were in fact able to access the meeting. Further, the Board notes that the videoconferencing software it used for its December 17, 2020, meeting did not require members of the public to enter a password to participate in the meeting. Lastly, the Board also provided documents that purportedly show there were 85 participants who entered the December 17, 2020, meeting.

Accordingly, based on review of the evidence, the OAG finds no violation of the OML, as there is insufficient evidence that members of the public were excluded from attending the Board's December 17, 2020, meeting.

2. There is insufficient evidence that members of the public were excluded from making public comments during the Board's December 17, 2020, meeting.

The OML requires that public bodies adopt one of two alternative public comment agenda procedures: (1) one public comment period before any action items are heard by the public body and another public comment period before adjournment; or (2) multiple periods of public comment which must be heard after discussion of each agenda action item but before the public body takes action on the item and another public comment period before adjournment. NRS

241.020(3)(d)(3). As noted above, Directive 006 provided that electronic only means of public were permissible.

The Complaints assert that the Board violated the OML by excluding members of the public from making public comment during the Board's December 2020 meeting. With regards to the public comment periods of the December 17 meeting, the Board's Agenda stated:

Public Participation (no action will be taken on any item until it is properly agendized) – *It is anticipated that public participation will be held at this time, though it may be returned to at any time during the agenda. Citizens wishing to speak during public participation are asked to state their name for the record and will be limited to 3 minutes. The Board will conduct public comment after discussion of each agenda action item, but before the Board takes any action. Afterwards, please print your name at the Clerk's desk.*

Upon review of the documents submitted, the OAG finds there is insufficient evidence to show that members of the public were excluded from making public comments during the Board's December 17, 2020, meeting. The Board positioned that when members of the public dialed into the meeting, instructions were given as to how to unmute the call to make comment. However, neither the Board's Agenda nor the meeting minutes document that this instruction was provided. Nevertheless, the audio recording, as well as the meeting minutes, show that several individuals were able to make public comment throughout the meeting, which supports the conclusion that members of the public were provided instructions on how to unmute their respective calls. While the OAG finds that there were no violations of the OML, the OAG recommends that in addition to the prompts provided when members of the public dial in to the meeting, that the Board also provide the same instructions to members of the public either on its Agenda or immediately before taking public comment.²

² The instant meeting occurred prior to the passage of AB253 (2021) which requires that if a meeting is held using a remote technology system pursuant to NRS 241.023 and has no physical location, the notice must include information on how a member of the public may use the remote technology system to hear and observe the meeting, participate in the meeting by telephone, and provide live public comment during the meeting. NRS 241.020(3).

CONCLUSION

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

Sincerely,

AARON D. FORD
Attorney General

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