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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**

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

July 3, 2024

Via Electronic and U.S. Mail

Neal Jones  


**Re: Open Meeting Law Complaint, OAG File No. 13897-481,  
Nye County Board of County Commissioners**

Dear Mr. Jones:

The Office of the Attorney General (“OAG”) has received your Complaint alleging that the Nye County Board of County Commissioners (“Board”) violated Nevada’s Open Meeting Law (“OML”) at its May 2, 2023, open meeting. Your Complaint alleges that the Board violated the OML’s clear and complete agenda requirement, that the discussion of the agenda item changed and exceeded the scope of the agenda topic, a review of an incomplete affidavit, and that the Board should not have taken action on certain items presented during the meeting.

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 the Complaint, the OAG reviewed the Complaint; the response from the Board; and the agenda, the meeting minutes, and the video recording of the Board’s May 2, 2023, meeting. After investigating the complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.

## **FACTUAL BACKGROUND**

On May 2, 2023, at 10:03 A.M., the Board held a public meeting. The hearing was physically held in Tonopah, Nevada. Constituents who could not attend the meeting physically could call into the hearing via the Board's conference call telephone number. The agenda was posted at approximately ten (10) different locations. It is unclear if the agenda was posted on the Board's website. Agenda item #27 of the May 2, 2023, Board meeting stated:

**27. For Possible Action** – Discussion and deliberation to consider North American Silver Corporation's Affidavit and Petition for Sale that would allow North American Silver Corporation to purchase a Nye County Owned patented mining claim known as the Constitution Mining Claim, Mineral Survey No. 1424 in the Philadelphia Mining District, Assessor's Parcel No. 000-258-70.

It is unclear if the Board gave the board members any documents related to the matters itemized in the agenda or if any information that the board members reviewed prior to and referenced within the meeting was information that was sought and obtained in their personal capacities. There is also no accusation that the petition subject to Agenda Item #27 was unavailable or inaccessible to the Board, its members, or the public.

The Board started discussion on Agenda Item #27 approximately two (2) hours and thirteen (13) minutes into the meeting. The Board anticipated the Petitioner and the Assistant County Manager to present information to the Board during the May 2, 2023, hearing. The Petitioner was not present.

In lieu of the Petitioner being present, Director Lorinda Wichman, the Director of Nye County's Natural Resource Office, presented historical information regarding the parcel and the matters regarding Agenda Item #27. The Assistant County Manager, Lorina Dellinger, advised the Board as to the next steps of selling the parcel, if the Board so chose. During the course of the hearing, Director Wichman clarified that she was only seeking permission to prepare the property for sale, but not that it be sold to the Petitioner without doing the proper due diligence. The District Attorney, Marla Zlotek, who was present at the hearing advised the Board that Agenda Item #27, as written, allowed the Board to consider the petition, but it did not need to decide on the actual sale of parcel. Attorney Zlotek also stated that Agenda Item #27 could allow the Board to order the Treasurer to sell the property and have a separate

meeting as to what the selling mechanisms may look like. The Deputy District Attorney, Michelle Nelson, during discussion also pointed out and advised the Board that, because the petition was incomplete, the Board would need to wait until the petition was complete to consider the sale pursuant to NRS 517.460.

The Board opened public comment for discussion specifically on this matter. You presented public comment and requested that the Commissioners deny the sale because the Agenda Item #27 was misleading and inaccurate. You also referenced that the respective county did not have any information related to the APN in the agenda item or that the public was not provided with correct information related to this mining claim. You proceeded to give provide a lengthy history related to the potential property.

Commissioner Frank Carbone motion that the Board consider the sale of the property, which was seconded by Commissioner Ron Boskovich. To clarify the motion, the Board stated that consideration of the sale was not a motion for the property to be sold. The point of the motion, per the Board's representation, was to allow Director Whittman and the Petitioner the authority to do their due diligence and pursue the information needed to answer the Board's questions related to the parcel. The motion passed 4-1.

As part of their agenda, the Board held two separate opportunities for public comment – in the beginning of the meeting after the Pledge of Allegiance (Agenda Item #2) and at the end of the meeting before Commissioner/Manager Comments (Agenda Item #28). During the second round of Public Comment, Round Mountain Gold gave public comment related to mining. However, it was not directly related to Agenda Item #27. The meeting adjourned at 1:28P.M.

The complaint submitted on May 16, 2023, argued (1) the Board violated the OML's clear and complete agenda requirement, (2) that the discussion of the agenda item changed and exceeded the scope of the agenda topic, (3) the meeting included a review of an incomplete affidavit, and that (4) the Board should not have taken action on certain items presented during the meeting. The Board argues (1) that the agenda topics were clear and concise, (2) that the Complainant failed to provide any evidence that the Board's discussion exceeded or changed the scope of the agenda item, and (3) the law does not mandate that public comment be re-opened after discussion of an agenda item.

## DISCUSSION AND LEGAL ANALYSIS

The Board, as an administrative body of the State of Nevada under NRS Chapter 450B, is a public body as defined by NRS 241.015(4) and is subject to the OML.

***Agenda Item #27 Met The Required Standards under NRS 241.020 Because It Informed the Public That the Board Would “Discuss[] and Deliberat[e] to Consider...” the Sale of the Property.***

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(3)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “‘incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” *Sandoval v. Board of Regents of Univ.*, 119 Nev. 148, 154 (2003). The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155. An agenda item is adequate and reasonable if it apprises the public of the items action is intended to be taken as well as the subject matter of discussion. *Nw. Area Residents Ass’n v. City of Las Vegas*, 432 P.3d 191 (Nev. 2018). Further, “a ‘higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.’” *Sandoval* at 155-56 (quoting *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)). In *Schmidt v. Washoe County*, where the Washoe County Board of Commissioners held a public meeting to act on bill drafts, the Nevada Supreme Court found the “clear and complete” requirement met because the agenda noted that the board would meet to discuss legislation and listed the specific legislation for discussion. *Schmidt v. Washoe Cnty.*, 123 Nev. 128, 137–38, 159 P.3d 1099, 1106 (2007), abrogated by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008) (only for the Special Meeting Standard).

Here, the agenda item met the OML’s clear and complete requirement because the agenda specifically stated that the Board would discuss and deliberate the sale of the property. Like *Schmidt*, Agenda Item #27 noted a specific piece of property subject to discussion and noted the specific action (i.e., to consider) that the Board would deliberate and vote on. Agenda Item #27 also clearly stated that it was subject to “possible action.” Additionally, based on your comments submitted during public comment, you knew that Agenda Item #27

was subject to the Board's action because you asked that they vote against the sale of the parcel. Even more telling, you offered specific history related to the property that was not privy or made available to the Board. Thus, Agenda Item #27 met the high degree of specificity needed to meet the clear and complete requirement. Therefore, the Board did not violate the OML.

***The Board's Discussion Did Not Exceed or Change the Scope of Agenda Item #27.***

In your complaint, you made issue of the Board's discussion regarding the sale of the parcel as exceeding and/or changing the scope of Agenda Item #27. While it is unclear what evidence is specifically used to support your assertion that the discussion exceeded and/or changed the agenda item, it is assumed that that following are intended to serve as such evidence:

- The parcel number was incorrect;
- The petition was incomplete;
- The sale is subject to legal limitations;
- The sale is subject to potential legal issues under NRS Chapter 517;
- The petitioner was not present; and
- There was no evidence that other jurisdictions were involved in discussing this agenda item.

While the above is concerning, it does not equate to a violation of the OML. As outlined above, the agenda only needs to give notice to the public of what topics are to be discussed. The agenda clearly stated that there was to be a "[d]iscussion and deliberation to consider..." matters related to the sale of the property. The examples above, the information presented in your complaint, the information in the meeting minutes, and the information demonstrated in the hearing video show that the discussions under Agenda Item #27 were to "discuss" and "deliberate" "to consider" the sale of the property. Based on the evidence presented in this matter, the above information does not demonstrate that the discussion exceeded or changed during the scope of Agenda Item #27. Therefore, discussion was not a violation of the OML.

***Referring to an Incomplete Petition is Irrelevant Under the OML.***

In your complaint, you made issue of the Board referring to an incomplete petition. Whether the Board considers an incomplete petition is irrelevant under the OML. Agenda Item #27 clearly mentioned the petition as being part of the

discussion. The fact that it was incomplete does not substantially change the topic for discussion. Therefore, the Board's review of an incomplete petition is not a violation of the OML.

***The Board Can Approve for Possible Action the "Consider[ation]" of the Sale of the Property.***

An agenda item is adequate and reasonable if it apprises the public of the items action is intended to be taken as well as the subject matter of discussion. *Nw. Area Residents Ass'n*, 432 P.3d 191 (Nev. 2018). Here, the language of Agenda Item #27 clearly outlines for possible action the Board's consideration of the sale of the property. During the discussion, the Board sought additional information related to the sale and simply moved for the Board to further consider the sale. As this specific language was noticed in the agenda, the Board did not violate the OML.

***The Board Did Not Deny Public Comment.***

Under NRS 241.020(3)(a)(3), the Board must provide an opportunity for community members to provide public comment. The statute only requires the Board to provide at least two (2) opportunities for public comment: one (1) at the beginning of the meeting or prior to considering each action item, and a general opportunity for public comment at any time during the meeting. As outlined in the agenda, the Board provided two (2) opportunities for community members to provide public comment. Additionally, during the discussion portion of Agenda Item #27, the Board opened up an additional opportunity for public comment prior to considering any action related thereto. You allege that the Board allowed the Petitioner to provide comment on Agenda Item #27 during public comment. However, there is no evidence that the Petitioner was present or that any community member provided any public comment on Agenda Item #27 during the final round of public comment. Therefore, the Board did not violate the OML.

**CONCLUSION**

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

Respectfully,  
AARON D. FORD  
Attorney General

By: /s/ Jessica Guerra  
JESSICA GUERRA  
Deputy Attorney General

cc: Marla Zlotek, Esq.  
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