



AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

THERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

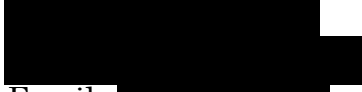
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

July 3, 2024

Via U.S. Mail and Electronic Mail

Beth Borysewich



Email: [Redacted]

Re: Open Meeting Law Complaint

Dear Beth Borysewich:

This letter is in response to your filed complaint (Complaint) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Valley Electric Association, Inc. Board of Directors (the "Board") regarding the Board's October 4, 2023, meeting. The Complaint makes three allegations within the scope of the Attorney General's Office's OML jurisdiction. First, that the Board failed to make available a requested copy of a statement read by President Michelle Caird at the start of the meeting. Second, that the Board met during an executive session on May 10, 2023, to discuss your request for records which should have taken place in an open meeting. The third and final allegation is that the minutes were not OML compliant. The Complaint also includes "breach of ethics" and "breach of fiduciary duty" allegations which are beyond the scope of the Attorney General's review of this OML matter, and therefore not considered.

In the course of investigating the Complaint, the OAG reviewed (1) the definition of "public body" in NRS 241.015(4), (2) NRS Chapter 704 on the regulation of public utilities, (3) President Caird's October 7, 2023, email answer to Borysewich's request for information to the Board. (4) The Board's meeting minutes, (5) Borysewich's recorded minutes of the October 4, 2023, Board Meeting. (6) The Board's May 12, 2023, response to Borysewich regarding her request. (7) Valley Electric Association Articles of Incorporation, and (8) OMLO 2001-08/AG File No. 00-055 March 12, 2001, determination.

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. “Public bodies exist to aid in the conduct of the people’s business” and must do so in compliance with the statutory requirements of Nevada’s Open Meeting Law. *Sandoval v. Board of Regents*, 119 Nev. 148, 154, 67 P.3d 902, 905 (2003); NRS 241.010. Only “public bodies” are subject to compliance with Nevada’s Open Meeting Law. *Id.* A “public body” is defined 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 supported 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.

After reviewing the above exhibits and applicable statutes, we find that the Board is not an 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. The Board also does not advise or make recommendations to said entities. The Board was not created by the constitution of Nevada, any statute, a city charter and any city ordinance which has been filed or recorded as required by the applicable law, the Nevada Administrative Code, a resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government, an executive order issued by the Governor; or a resolution or an action by the governing body of a political subdivision of this State. None of its members are appointed by the Governor or a public officer under the direction of the Governor. Valley Electric Inc. is not an entity in the Executive Department of the State Government and is also neither a limited-purpose association created for rural agriculture residential common-interest community, or a subcommittee consisting of at least two appointed persons. The Board was created by Valley Electric Association's Articles of Incorporation when Amargosa Valley Cooperative, Inc. and White Mountain Power Cooperative, Inc. consolidated. Article 6 of the Consolidation Agreement created the Board of Directors. A plain language application of the statute to the facts of this case shows that The Board is not a "public body" as defined in NRS 241.015(4), and therefore not subject to the OML.

Whereas the Board is not a public body, Nevada's OML does not apply to Valley Electric Association, Inc meetings. This is consistent with OMLO 2001-08/AG File No. 00-055 March 12, 2001, which further delves into case law that remains valid and supports the same conclusion. Because this determination

Beth Borysewich
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finds the Board need not comply with OML, no further analysis of their actions is considered in this determination.

Sincerely,

/s/ Richard P. Yien

RICHARD P. YIEN

Deputy Attorney General

cc: Bob Sweetin, Esq.
Davison Van Cleve, P.C.
4675 W. Teco Ave., Suite 230
Las Vegas, NV 89118