

AARON D. FORD  
*Attorney General*

CRAIG A. NEWBY  
*First Assistant Attorney General*

CHRISTINE JONES BRADY  
*Second Assistant Attorney General*



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

1 State of Nevada Way, Suite 100  
Las Vegas, Nevada 89119

TERESA BENITEZ-  
THOMPSON  
*Chief of Staff*

LESLIE NINO PIRO  
*General Counsel*

HEIDI PARRY STERN  
*Solicitor General*

April 16, 2025

Via Electronic and U.S. Mail

Jonathan Charles Herwig  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-511,  
Tahoe Douglas District Board of Trustees**

Dear Mr. Herwig:

The Office of the Attorney General (“OAG”) has received your Complaint alleging that the Tahoe Douglas District Board of Trustees (“Board”) violated Nevada’s Open Meeting Law (“OML”) at during an open meeting. Your Complaint alleges that the Board violated NRS 241.0355.

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, and the meeting minutes provided by the Board response. After investigating the complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.<sup>1</sup>

**FACTUAL BACKGROUND**

The Board is a governing body of a Tahoe-Douglas District, a special district created under NRS Chapter 318. Pursuant to NRS 318.015(1), the

---

<sup>1</sup> While the Complaint only alleged violations under NRS 241.0355, the Board should be cautious of violating the OML’s “clear and complete statement” requirement under NRS 241.020, staying within the scope of the agendized items in the notice, and failing to provide adequate contact information for those seeking supporting material under NRS 241.015.

purpose of the Board is to “serve a public use and will promote the health, safety, prosperity, security and general welfare of the inhabitants thereof and of the State of Nevada; that the acquisition, improvement, maintenance and operation of any project authorized in this chapter is in the public interest and constitutes a part of the established and permanent policy of the State of Nevada; and that each district organized pursuant to the provisions of this chapter shall be a body corporate and politic and a quasi-municipal corporation.” See NRS 318.015(1).

The Trustees of the Board at the time of this dispute are identified as follows: Trustee Marge Hauge (“Trustee Hauge”), Trustee Herwig, Trustee Andy Huckbody (“Trustee Huckbody”), Trustee John Peel (“Trustee Peel”), and, based on information and belief, Trustee John Tibbitts (“Trustee Tibbitts”). Trustee Tibbitts had submitted a letter of resignation to the Board prior to the start of the meeting in question. Each of the trustees has filed a campaign finance report disclosure with the Secretary of Statute. With the exception of Trustee Huckbody, every trustee filed a campaign financial report as a representative for the Tahoe Douglas Sewer District. Based on these reports, the trustees either served – or currently serves – as a representative of their General Improvement District.

Per Herwig’s Complaint, the meeting in dispute occurred on February 13, 2024. Per the Board’s response, the meeting in dispute occurred on January 16, 2024. While it is unclear what date or which hearing is in question, this information is irrelevant to the analysis of the complained issue.

Per the Complaint, Herwig, who was an active Trustee of the Board at the time of dispute, was absent from the meeting in question. Trustee Hauge, Trustee Huckbody, and Trustee Peel were present at the meeting in question. Janet Murphy (“Murphy”), who served as the Administrator of the Tahoe-Douglas (Utility) District and currently serves as the General Manager of the Douglas County Lake Tahoe Sewer Authority, and Lloyd Bretthauer, who is a former Trustee, are listed as the only other people present at the meeting in question. Trustee Tibbitts was not present at the meeting because he submitted his request to resign.

The Notice of Meeting featured an agenda with the following items:

- a. Roll call
- b. Public comment
- c. Election of officers
- d. Approval of minutes – December 12, 2023 (possible action)
- e. Approval of agenda (possible action)
- f. Monthly financial report (possible action)
- g. Payment of bills (possible action)

- h. Legal Counsel selection (possible action)
- i. Skyland breakwater Bumb v. Stockton Garden Homes, Inc., et al. Tahoe Douglas District update (possible action)
- j. DCLTSA update (possible action)
- k. Pump and Line Operation & Maintenance report (possible action)
- l. Administrator's report (possible action)
- m. Janet's Task Review for Succession Plan (possible action)
- n. Correspondence (possible action)
- o. Discussion/Comments for Future Business
- p. Public Comment

The Board did not provide any contact information for obtaining supporting materials for the meeting notice nor was there any representation that supporting materials would be referenced during the meeting. Per the meeting notice, the meeting was to start at 9:30 A.M. Per the minutes, the meeting started at 9:30 A.M. and adjourned at 11:30 A.M.

During the "Election of officers" portion of the agenda, the Board motioned for the current officers to maintain their current roles and the vote was passed unanimously. During the "Payment of bills" portion of the agenda, the Board motioned to pay specific checks and direct deposits and the vote was passed unanimously.

During the "Janet's Task Review for Succession Plan" portion of the agenda, the Board "received" Janet's task list. It is unclear if the task list was sent prior to the meeting or if it was administered to the Board at the time of the hearing. During that discussion, Trustee Hauge and Trustee Peel motioned to increase Murphy's income by 5%. This motion was based on a past discussion and was not itemized in the agenda. During the meeting in question, the Board voted on a motion to raise Murphy's salary as an administrator by 5%. Trustee Hauge and Trustee Peel voted in favor of the raise. Trustee Huckbody voted against it. Because Trustee Herwig was not present, his vote was viewed as an abstention. Because the votes of the present trustees were 2-1, the Board passed the motion.

During the "Correspondence" portion of the agenda, they discussed an email from Trustee Tibbitts, who sought resignation. Based on the information in the minutes, that email was sent directly to the Board from Trustee Tibbitts. The Board requested that this matter be discussed at the next meeting. No action was taken during this portion of the meeting. After the "Correspondence" portion, no further action was taken until the meeting was adjourned at 11:01 A.M.

The meeting lasted a total of 1 hour and 31 minutes. During this time, the Board reviewed and had discussed (1) a summary of recommendations for sewer rates, (2) the monthly financial report, (3) bills subject to payment, (4) discussed on an update from the Douglas County Lake Tahoe Sewer Authority, (5) a Maintenance and Operation Report, (6) the Administrator's Report, (7) Murphy's task list and succession plan, (8) Correspondence from Trustee Tibbitts, and (9) a task review for future meeting business.

The Complaint alleges that the Board violated the OML, specifically, NRS 241.0355, because the Board did not correctly calculate a majority in favor of the pay increase. Herwig alleges that, because the Board is composed of elected officials, the Board needed a majority of the trustees to pass the motion. In his Complaint, Herwig references two separate documents: Tahoe Douglas District Minutes for 13 Feb 2024 Meeting" and the "Attorney General opinion cited by legal counsel in response to inquiry." However, Herwig did not attach such documents and the Attorney General's office was unable to review them.

In the Board's response, the Board alleges that NRS 241.0355 does not apply to them because the Board does not have to be composed entirely of elected officials and, as such, only needs a majority of the trustees present and not a majority of the Board. As part of their response, the Board attached the Notice of Meeting for the January 16, 2024 meeting, what appears to be the minutes of the January 16, 2024 meeting, a copy of the language of NRS 241.0355, a copy of page 1 of the Tahoe-Douglas District Sewer Regulations Ordinance, a copy of the language of NRS 318.090, and a copy of AGO 2001-25.

## **DISCUSSION AND LEGAL ANALYSIS**

### **A. The Board is a Public Body Subject to the OML.**

The Board is a body composed of electors under NRS Chapter 318. A "public body" is defined as a "[a]ny 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,..., if the administrative, advisory, executive or legislative body is created by... [a]ny statute of this State." NRS 241.015(5). The purpose of the body is to serve as the governing body of Tahoe-Douglas District, a special district, and was created under NRS Chapter 318. Therefore, the Board is a public body as defined in NRS 241.015(5) and is subject to the OML.

**B. The Meeting Subject to This Complaint is Subject to the OML.**

The meeting in question is subject to the OML. A meeting is defined as “[t]he gathering of members of a public body at which a quorum is present... to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.” NRS 241.015(4). Here the Board held a meeting to deliberate and act on matters that the Board has power over and quorum was met. Therefore, the meeting in question is subject to the OML.

**C. The Board Did Not Violate the OML By Passing the Initiative Subject to the Complaint.**

“[A] public body that is required to be composed of elected officials only may not take action by vote unless at least a majority of all the members of the public body vote in favor of the action. For purposes of this section, a public body may not count an abstention as a vote in favor of an action.” NRS 241.0355. An “action” is:

- (a) A decision made by a majority of the voting members present...during a meeting of a public body;
- (b) A commitment or promise made by a majority of the voting members present...during a meeting of a public body;
- (c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the voting members present...during a meeting of the public body; or
- (d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

NRS 241.015(1) [Emphasis added].

To determine if the Board is required to be composed of elected officials, it is important to review the statute that created and governs the Board. The Board is created under NRS Chapter 318. Under NRS 318.080, the Board must be composed of qualified electors. NRS 318.080(3). NRS 318 defines a “qualified elector” as “person who has registered to vote in district elections.” NRS 318.020(8). It does not require that the Board member be a public official. Therefore, the Board is not required to be composed of elected officials and, as such, only needs a majority of the voting members present and not a majority of all the members. As such, the Board did not violate the OML when they considered the majority vote of present members to pass an action rather than the vote of all members of the Board.

**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: Rick Oshiniski, Esq., Counsel for the Board  
504 E. Musser St., Ste. 202  
Carson City, NV 89701