

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

3  
4  
5 AG FILE NO.: 13897-197

6 In the Matter of:

7 PAHRUMP PUBLIC LANDS ADVISORY  
8 COMMITTEE.

**FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

9  
10 **BACKGROUND**

11 Robert Adams filed a complaint (Complaint) with the Office of the Attorney  
12 General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the  
13 Pahrump Public Lands Advisory Committee (Committee) arising from public meetings  
14 held on May 3 and June 7, 2016. Mr. Adams is a member of the Committee. The  
15 gravamen of the Complaint concerns whether sufficient notice was provided for the  
16 discussion and action taken under agenda item no. 7 at the May 3 meeting and agenda  
17 item no. 8 at the June 7 meeting.

18 The OAG has statutory enforcement powers under the OML and the authority to  
19 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS  
20 241.040. In the course of investigating the Complaint, the OAG reviewed the public  
21 notice and agendas, supporting material, minutes and audio recordings of the May 3rd  
22 and June 7th, 2016, Committee meetings, together with the Committee's response to the  
23 Complaint.

24 **LEGAL STANDARD**

25 Public bodies working on behalf of Nevada citizens must conform to statutory  
26 requirements in open meetings under an agenda that provides full notice and disclosure  
27 of discussion topics and any possible action. *Sandoval v. Board of Regents*, 119 Nev. 148,  
28 67 P.3d 902 (2003). NRS 241.020(2) requires a public body to post notice of any meeting

1 together with an agenda consisting of a “clear and complete statement of the topics  
2 scheduled to be considered during the meeting.” In *Sandoval* the Nevada Supreme Court  
3 interpreted the “clear and complete” requirement to mean that it must provide the public  
4 with “clear notice of the topics to be discussed at public meetings, so that the public can  
5 attend a meeting when an issue of interest will be discussed.” *Sandoval*, 119 Nev. at 155,  
6 67 P.3d at 906. The Court rejected a so-called “germane standard” because it was too  
7 lenient and allowed a public body to stray from its agenda. *Id.* at 154, 67 P.3d at 905.

8 NRS 241.020(2) also specifies additional information that must be included on the  
9 public notice and agenda. NRS 241.020(3) sets forth the requirements for posting a copy  
10 of the notice and agenda, which include posting a copy at the official website of the State  
11 pursuant to NRS 232.2175. NRS 241.020(5) requires posting a copy of the notice and  
12 agenda on any website maintained by the public body. NRS 241.020(6) requires that  
13 supporting material be made available to the public when provided to public body  
14 members. NRS 241.035(1) requires that the public body keep written minutes of its  
15 meetings, including “the substance of all matters proposed, discussed or decided” at each  
16 meeting.

17 Any action taken in violation of the OML is void. NRS 241.036. Corrective action  
18 requires that the public body engage in an **independent deliberative action** in full  
19 compliance with the OML. *See, e.g., Page v. MiraCosta Community College Dist.*, 102 Cal.  
20 Rptr. 3rd 902, 930 (Cal. Ct. App. 2009); *Colorado Off-Highway Vehicle Coalition v.*  
21 *Colorado Bd. of Parks and Outdoor Recreation*, 292 P.3d 1132, 1137–8 (Colo. Ct. App.  
22 2012); *Zorc v. City of Vero Beach*, 722 So. 2d 891, 902-3 (Fla. Dist. Ct. App. 1998); *Pearson*  
23 *v. Selectmen of Longmeadow*, 726 N.E.2d 980, 985 (Mass. App. Ct. 2000); *Gronberg v.*  
24 *Teton County Housing Authority*, 247 P.3d 35, 42 (Wyo. 2011).

25 **FINDINGS OF FACT**

26 1. The Committee is an advisory body formed for the stated purpose “to assist  
27 the Nye County Board of County Commissioners with the decision-making process in  
28 supplying public services to the unincorporated town and area of the Town of Pahrump.”

1           2.     The Committee is a “public body” as defined in NRS 241.015(4), subject to  
2 the OML.

3           3.     As a matter of practice, the Committee does not post a copy of its public  
4 notice and agenda in an electronic file format (such as a PDF file) to comply with the  
5 website posting requirements of NRS 241.020(3)(b) and NRS 241.020(5). Rather, the  
6 Committee notes the time, place and location of the meeting together with a list of agenda  
7 items at [http://www.pahrumpnv.org/pahrump-nevada/pahrump-advisory-boards/public-](http://www.pahrumpnv.org/pahrump-nevada/pahrump-advisory-boards/public-lands/)  
8 [lands/](http://www.pahrumpnv.org/pahrump-nevada/pahrump-advisory-boards/public-lands/) and provides a link to that webpage at <https://notice.nv.gov/>.

9           4.     There is no clear evidence that the public notice and agenda that was posted  
10 for the May 3, 2016, Committee meeting contained all the information required pursuant  
11 to NRS 241.020(2). The Committee provided the OAG two different versions of the public  
12 notice and agenda.

13           5.     Agenda item no. 7 for the May 3, 2016, Committee meeting indicated: “FOR  
14 POSSIBLE ACTION: Review BLM progress of LCP property for recreational purposes.”

15           6.     Agenda item no. 7 did not provide sufficient notice to the Committee  
16 members of the scope of discussion and possible action that might be taken under that  
17 agenda item. This is evidenced by the fact that Mr. Adams contacted Committee Chair  
18 Mike Zaman, Committee Secretary Linda Hatley, and Pahrump Town Manager Pam  
19 Webster requesting background information. Mr. Adams was informed that no  
20 background information was available and no action was contemplated on that agenda  
21 item.

22           7.     The Committee met on May 3, 2016. The minutes of the May 3, 2016,  
23 Committee meeting indicate that Chairman Zaman, Vice Chairman Merrilee Spoor,  
24 Secretary Hatley, Dorothy Smithers, and Rick Tretter were present; Mr. Adams and Erin  
25 Hubbell were absent.

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1           8.       The minutes of the May 3, 2016, Committee meeting state that under  
2 agenda item no. 7: "Linda Hatley shared we need to get approval of the two 10 acre  
3 parcels, one is an alternative. Merrilee Spoor motioned to except the 2 different parcels,  
4 Rick Tretter 2<sup>nd</sup>. Vote was 5-0."

5           9.       There were no supporting materials available for agenda item no. 7.

6           10.       Agenda item no. 7 was too vague to alert Committee members, let alone the  
7 public, of precisely the scope of discussion and possible action that might be taken under  
8 the agenda item. The Committee asserts that the agenda item describes the topic of "the  
9 BLM's progress of reviewing the LCP property for any recreational purposes that may be  
10 approved by the BLM" and that "the BLM sought the identification of two parcels, with  
11 one being an alternate, within the LCP property in order to process the BLM's review of  
12 the proposal to open land at the LCP property for recreational purposes." However, the  
13 express language of the agenda item contains no reference to Bureau of Land  
14 Management "approval" nor does it specify the action required of the Committee.

15           11.       The minutes of the May 3, 2016, Committee meeting fail to reference or  
16 identify the specific parcels that were approved, or to specify which parcel was the chosen  
17 as the alternate, when taking action under agenda item no. 7.

18           12.       There is no clear evidence that the public notice and agenda that was posted  
19 for the June 7, 2016, Committee meeting contained all the information required pursuant  
20 to NRS 241.020(2). The Committee provided the OAG two different versions of the public  
21 notice and agenda.

22           13.       Agenda item no. 8 for the June 7, 2016, Committee meeting indicated: "FOR  
23 POSSIBLE ACTION: BLM progress of LCP property for recreational purposes."

24           14.       The Committee met on June 7, 2016. The minutes of the June 7, 2016,  
25 Committee meeting indicate that Chairman Zaman, Vice Chairman Spoor, Secretary  
26 Hatley, Ms. Smithers, Mr. Adams and Mr. Tretter were present; Ms. Hubbell was absent.

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1 15. The minutes of the June 7, 2016, Committee meeting indicate in part that  
2 "Linda Hatley shared the 5 acre plan and we are now planning a 10 acre parcel" but do  
3 not reflect that any action was taken under agenda item no. 8.

4 16. There were no supporting materials available for agenda item no. 8.

5 17. Agenda item no. 8 was too vague to alert the public of precisely the scope of  
6 discussion and possible action that might be taken under the agenda item. The  
7 Committee asserts that the agenda item describes the topic of "the BLM's progress of  
8 reviewing the LCP property for any recreational purposes that may be approved by the  
9 BLM" and that "the BLM sought the identification of two parcels, with one being an  
10 alternate, within the LCP property in order to process the BLM's review of the proposal to  
11 open land at the LCP property for recreational purposes." However, the express language  
12 of the agenda item contains no reference to Bureau of Land Management "approval" nor  
13 does it specify the action required of the Committee.

14 CONCLUSIONS OF LAW

15 1. By failing to post an actual copy of the public notice and agenda in an  
16 electronic file format (such as a PDF file) at [http://www.pahrumpnv.org/pahrump-](http://www.pahrumpnv.org/pahrump-nevada/pahrump-advisory-boards/public-lands/)  
17 [nevada/pahrump-advisory-boards/public-lands/](http://www.pahrumpnv.org/pahrump-nevada/pahrump-advisory-boards/public-lands/) and <https://notice.nv.gov/>, the Committee  
18 is not complying with the website posting requirements of NRS 241.020(3)(b) and NRS  
19 241.020(5).

20 2. An agenda item must be sufficiently "clear and complete" in conformance  
21 with NRS 241.020(2)(d)(1) to alert the public of any deliberation and possible action on a  
22 matter of substantial public interest. "A higher degree of specificity is needed when the  
23 subject to be debated is of special or significant interest to the public." *Sandoval*, 119  
24 Nev. at 154-155, 67 P.3d at 906.

25 3. If an agenda item is so vague that members of the public body are not  
26 provided with sufficient notice and a clear understanding of the scope of discussion and

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1 possible action that might be taken under that agenda item, that agenda item cannot be  
2 sufficiently "clear and complete" to provide notice to the public in conformance with  
3 Nevada law.

4 4. Agenda item no. 7 for the Committee's May 3, 2016, meeting did not provide  
5 notice to the public that the Committee would be deliberating and taking action on a  
6 matter of substantial public interest: identification of two specific parcels, with one being  
7 an alternate, within the LCP property for potential approval by the BLM for recreational  
8 purposes.

9 5. The Committee's action taken under agenda item no. 7 at the May 3, 2016,  
10 meeting was a violation of the OML, and is void under NRS 241.036.

11 6. By failing to reference or identify the specific parcels that were approved, or  
12 to specify which parcel was the alternate, when taking action under agenda item no. 7,  
13 the minutes of the May 3, 2016, Committee meeting fail to comply with NRS  
14 241.0335(1)(c).

15 7. Agenda item no. 8 for the Committee's June 7, 2016, meeting further failed  
16 to comply with the clear and complete requirement of NRS 241.020(2)(d)(1) and did not  
17 provide notice to the public that the Committee would be further deliberating on a matter  
18 of substantial public interest: the BML's approval of LCP property for recreational  
19 purposes and the Committee's role in that process.

20 **SUMMARY**

21 Because the OAG finds that the Pahrump Public Lands Advisory Committee has  
22 taken action in violation of the OML, the Board must place on its next meeting agenda  
23 these Findings of Fact and Conclusions of Law and include them in the supporting  
24 material for the meeting. The agenda item must acknowledge these Findings of Fact and  
25 Conclusions of Law to be the result of the OAG investigation in the matter of Attorney  
26 General File No. 13897-197, and that it has been placed there as a requirement of NRS  
27 241.0395.

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1 Furthermore, the OAG strongly recommends that the Pahrump Public Lands  
2 Advisory Committee members and staff receive training in the OML. The OAG is  
3 available to provide OML training upon request.

4 DATED this 26th day of July, 2016.

5  
6 ADAM PAUL LAXALT  
Attorney General

7  
8 By: 

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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 26th day of July, 2016, I caused to be deposited for mailing, a true and correct copy of the foregoing, FINDINGS OF FACT AND CONCLUSIONS OF LAW, to the following:

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