

1 pertaining to internal PUC operations were brought before the Commission for action at
2 public meetings held in conformance with the OML.

3 The PUC Executive Director is appointed by the Commission pursuant to NRS
4 703.130(2). The PUC General Counsel is appointed by the Commission pursuant to NRS
5 703.164(1). These appointments require action by the Commission at public meetings
6 held in conformance with the OML. NRS 703.130(3) sets forth the powers and duties of
7 the PUC Executive Director. Matters that are beyond the statutory authority of the PUC
8 Executive Director require action by the Commission at public meetings held in
9 conformance with the OML.

10 **LEGAL STANDARD**

11 The legislative intent of the OML is that the actions of public bodies “be taken
12 openly, and that their deliberations be conducted openly.” NRS 241.010(1); *see also*
13 *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit
14 and policy behind NRS chapter 241 favors open meetings”). Public bodies working on
15 behalf of Nevada citizens must conform to statutory requirements in open meetings under
16 an agenda that provides full notice and disclosure of discussion topics and any possible
17 action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

18 The term “public body” includes any “administrative, advisory, executive or
19 legislative body of the State . . . which advises or makes recommendations to any entity
20 which expends or disburses or is supported in whole or in part by tax revenue.” NRS
21 241.015(4)(a). The statutory definition was amended in 2011 to clarify that the definition
22 includes bodies created by “resolution or other formal designation [a public] body created
23 by a statute of this State.” Assembly Bill 59, 2011 Leg., 76th Sess. Consistent with this
24 statutory definition, the OAG has previously opined that to the extent a multimember
25 group is appointed by a public body and given the task of making decisions for or
26 recommendations to that public body, that group is also a “public body” subject to the
27 OML. *See* § 2.04 NEVADA OPEN MEETING LAW MANUAL (12th ed. 2016) (and
28 opinions cited therein).

1 NRS 241.030(4)(d) prohibits a closed meeting for the discussion or appointment of a
2 person to public office by a public body. All portions of the selection and appointment
3 process, whether conducted by the public body itself or delegated to another body, must
4 occur in a public meeting. *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev.
5 886, 891, 784 P.2d 974, 977 (1989). Any action taken in violation of the OML is void.
6 NRS 241.036.

7 **THE ALLEGATIONS IN THE COMPLAINT**

8 1. The limited redaction of the supporting material for the July 22, 2015,
9 Commission meeting did not compromise the purpose of the supporting material: to
10 provide the public with the professional background and qualifications of the two finalists
11 for the position of PUC Executive Director. Therefore, Allegation #1 is without merit.

12 2. The actions taken by the PUC Executive Director that form the basis for
13 Allegation #2 are within the statutory authority of the PUC Executive Director under
14 NRS 703.130(3) and do not require action by the Commission. Furthermore, there is no
15 evidence that the Commission met in violation of the OML to authorize or approve the
16 actions in question. Therefore, Allegation #2 is without merit.

17 3. There is no evidence that the Commission met in violation of the OML to
18 receive reports from the PUC Executive Director. Therefore, Allegation #3 is without
19 merit.

20 4. The submission of BDRs to the Nevada Legislature is not within the
21 statutory authority of the PUC Executive Director and requires action by the Commission
22 at a public meeting held in conformance with the OML. However, the Commission's legal
23 counsel represents that the Commission is not requesting any BDRs for the 2017 Nevada
24 Legislative Session. Furthermore, there is no evidence that the Commission met in
25 violation of the OML to consider BDRs. Therefore, Allegation #4 is without merit.

26 5. The submission of contracts to the State Board of Examiners for approval is
27 within the statutory authority of the PUC Executive Director under NRS 703.130(3)(b)(5)

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1 and does not require action by the Commission. Furthermore, there is no evidence that
2 the Commission met in violation of the OML to authorize or approve the contracts in
3 question. Therefore, Allegation #5 is without merit.

4 6. The unclassified job announcement for the position of PUC General Counsel
5 was posted in conformance with the State personnel laws. Furthermore, there is no
6 evidence that the Commission met in violation of the OML to authorize or approve the
7 posting of an unclassified job announcement for the position of PUC General Counsel.
8 Therefore, Allegation #6 is without merit.

9 **APPLICABILITY OF THE OML TO THE SELECTION COMMITTEE**

10 **Findings of Fact**

11 1. The public notice and agenda for the June 10, 2015, Commission meeting
12 concerned the process for replacing the retiring PUC Executive Director.

13 2. The minutes of the June 10, 2015, Commission meeting state that under
14 agenda item no. 2(D) the Commission took the following action: "Chairman Burtenshaw
15 moved that the Commission post the opening for Executive Director as an
16 internal/external open competitive recruitment, recruit for the Carson City office,
17 designate five members to the selection committee consisting of Ms. Anne-Marie Cuneo,
18 Ms. Tammy Cordova, Ms. Crystal Jackson, Mr. Don Lomoljo, and Ms. Carolyn Tanner
19 with Ms. Breanne Potter serving as the Personnel Officer, and at a subsequent agenda
20 meeting recommend the top two finalists to the Commission for appointment
21 consideration by the full Commission. Commissioner Wagner seconded the motion and
22 Commissioner Noble concurred."

23 3. The public notice and agenda for the July 22, 2015, Commission meeting
24 concerned the appointment of a new PUC Executive Director. Agenda item no. 3(B) for
25 the meeting indicated: "Appoint Executive Director from finalists Kathleen Taylor or
26 Stephanie Mullen recommended by the Commission's internal selection committee. FOR
27 POSSIBLE DISCUSSION/ACTION: APPOINT EXECUTIVE DIRECTOR.

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1 Furthermore, the OAG strongly recommends that the Commission members and
2 staff receive training in the OML; the OAG is available to provide OML training upon
3 request.

4 DATED this 10th day of August, 2016.

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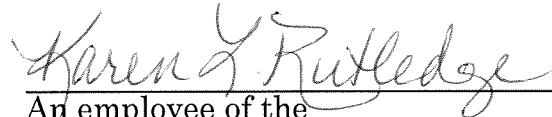
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 10th day of August, 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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