



STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

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BRIAN SANDOVAL
Attorney General

ANN WILKINSON
Assistant Attorney General

January 9, 2003

Mr. Mike Arp
70 Deer Valley Court
Reno, Nevada 89511

Re: Open Meeting Law Complaint
Storey County School District
OMLO 2003-1/AG File No. 02-049

Dear Mr. Arp:

On November 15, 2002, this office received a letter from you, in which you made a complaint alleging that the Storey County School District Board of Trustees (Board) had possibly violated the Open Meeting Law at a meeting on November 13, 2002. You alleged that you were not provided with sufficient notice of the agenda of the meeting, which included an executive session on a complaint filed by you against a Storey County School District employee. Additionally, there was a question as to the sufficiency of the description of the executive session agenda item.

DISCUSSION

This office has primary jurisdiction to investigate violations of the Open Meeting Law pursuant to NRS 241.037. As part of those duties, this office investigated the complaint by requesting a copy of the agenda for the November 13, 2002 Board meeting, and a copy of the audiotapes of the meeting. After reviewing these materials and speaking with you by telephone, we also requested a copy of the Board agenda and audiotapes of the October 23, 2002 meeting, which the Board supplied.

ANALYSIS

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Your complaint alleges that you were not provided sufficient notice of the meeting at which your complaint against a

Mr. Mike Arp
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School District employee would be heard. The Open Meeting Law requires that notice of a meeting be mailed to any person who has requested notice of a meeting. NRS 241.020(3)(b).

You have admitted that you did not submit a written request to receive notice of the meeting. From listening to the audiotapes for the October 23, 2002 meeting, it is not clear that you verbally requested that you receive notice of the next meeting. However, it is clear that the date of the next meeting, November 13, 2002, was discussed while you were present at the meeting. Also, in your memo to the Board dated November 2, 2002, you indicate that the date of the meeting will be November 13, 2002. If you read the agenda for the October 23, 2002 meeting, the date, time, and place of the next meeting were listed under item **IV. FUTURE AGENDA ITEMS & FUTURE MEETINGS.**

In addition, the Board has supplied documentation that the November 13, 2002 meeting was properly noticed, and the notices were properly posted three working days prior to the meeting as required by the Open Meeting Law. NRS 241.020(3)(a).

In light of the fact that you did not request either in writing or verbally, that the Board notify you of the November 13, 2002 meeting, the Board was under no legal obligation to do so. Moreover, you had actual notice of the date of the meeting because you were present during that part of the October 23, 2002 meeting when the next meeting date was discussed, and it was listed on the October 23, 2002 meeting agenda. Your November 2, 2002 memo reinforces the fact that you knew the date of the November meeting.

You also raised a question as to the sufficiency of one of the items listed on the agenda. Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. *Id.* The purpose of the clear and complete standard is that the public will receive notice of what is to be discussed by the public body. The item you questioned related to a complaint regarding an employee and was designed to be in Executive Session. It is difficult to properly describe an action item relating to a closed personnel session because the outcome of the closed session cannot be anticipated. The Board could hold a closed session to consider the character, alleged misconduct, professional competence, or physical or mental health of an employee. NRS 241.030(1).

The item designated **"V. Executive Session 20. Citizen Complaint on Employee"** on the Board's November 13, 2002 agenda, probably does not meet the above standard. The following better describes a closed personnel session:

Closed personnel session in accordance with NRS 241.030

Complaint # (use some type of identifying number, not the employee's name)

a. Motion to close session to consider the character, alleged misconduct, professional

Mr. Mike Arp
January 9, 2003
Page 3

- competence, or physical or mental health of employee named in Complaint # ____
- b. Discussion in closed session
- c. Discussion and possible action in open session on Complaint # ____

The Board may wish to use this example of describing a closed personnel session in the future.

After reviewing the material provided to this office concerning the November 13, 2002, meeting, it appears the only action taken by the Board was to refer the matter to the Board's attorney. No disciplinary action was taken against the employee. While the description of the item on the agenda does not meet the standard required by the Open Meeting Law, this office finds no violation because no disciplinary action was taken. It is our recommendation that the Board provide the public with a clearer and more complete statement on future agendas when describing a personnel matter.

CONCLUSION

This office finds the Storey County School Board has not violated the Open Meeting Law. The Board was under no legal obligation to provide you with notice of the November 13, 2002 meeting, because you did not request either in writing or verbally that you receive notice. Also, the Board's description of a personnel matter does not meet the standard required by the Open Meeting Law; however, this office finds no violation because the Board did not take disciplinary action against the employee.

Sincerely,

BRIAN SANDOVAL
Attorney General

By: _____
KATERI CAVIN
Senior Deputy Attorney General
Commerce Section
(775) 684-1218
kmcavin@ag.state.nv.us

KC/d
cc: Douglas R. Hill, Esq.



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ANN WILKINSON
Assistant Attorney General

January 23, 2003

Donald Minoli
410 Ave. Bleu DeClair
Sparks, Nevada 89434

Re: Open Meeting Law Complaint
Canyon General Improvement District
OMLO 2003-2AG File No. 02-055

Dear Mr. Minoli:

On December 9, 2002, this office received your complaint alleging a violation of Nevada's Open Meeting Law (OML) by the Canyon General Improvement District (CGID). You allege the CGID on November 16, 2002, issued a letter/position without holding a public meeting. We are in agreement that the CGID letter of November 16, 2002, was in response to your attempt to distribute your own notice dated November 14, 2002.

This office has primary jurisdiction to investigate violations of the OML pursuant to Nevada Revised Statutes (NRS) 241.037. As part of our investigation, this office requested copies of the agenda and minutes relating to any CGID meeting for November 16, 2002. I reviewed a letter sent to all homeowners in Rainbow Bend from Connie Lea Butts, Manager of the CGID. In addition to speaking with you, I also spoke with Ms. Butts and was assured that no CGID meeting was held that day. I must conclude, based on the information I have, that the CGID did not violate Nevada's OML.

Your contention is that Ms. Butts' letter indicates that the CGID was polled in order to represent its position as contained in the letter. To the contrary, Ms. Butts' letter states the CGID Board has not discussed the content of your notice of November 14, 2002, and therefore does not endorse the position you advocate in your notice. I have no reason to doubt this representation. It is also worth noting that the notice of November 14, 2002, advocates new responsibilities for the CGID and it should not be surprising that the CGID, would eventually have an opinion on those responsibilities.

Donald Minoli
January 23, 2003
Page 2

Accordingly no violation of the Open Meeting Law occurred. Thank you for directing your concerns to this office.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
WILLIAM J. FREY
Deputy Attorney General
Conservation and Natural Resources
(775) 684-1229

WJF:jf
cc: Connie Lea Butts



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ANN WILKINSON
Assistant Attorney General

January 24, 2003

Della M. Robbins
HC 65, Box 109
Kingston, Nevada 89310

Re: Open Meeting Law Complaint
Kingston Volunteer Fire Department
OMLO 2003-3/AG File No. 02-056

Dear Ms. Robbins:

This is in response to the Open Meeting Law complaint you filed with this office concerning the Kingston Volunteer Fire Department (KVFD). Pursuant to Nevada law, the Office of the Attorney General has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Open Meeting Law, chapter 41 of the Nevada Revised Statutes. In the complaint, you have inquired whether various actions taken by the Kingston Town Board (Board) in 2001 concerning an equipment grant from the Federal Emergency Management Agency (FEMA) constitute a violation of the Open Meeting Law. In the complaint, you also expressed concern that three Board members also serve as members of the KVFD and that during KVFD meetings they may be making decisions regarding KVFD finances that properly should be made by the Board during a public Board meeting.

DISCUSSION

The statutory time frames to review Open Meeting Law complaints are very limited. The Office of the Attorney General may bring suit to have an action declared void that was taken by a public body in violation of the Open Meeting Law, but the suit must be brought within 60 days after the action was taken. NRS 241.037. A suit to require compliance or to prevent future violations of the Open Meeting Law must be brought within 120 days after the action objected to was taken by the public body. NRS 241.037. The Board's actions regarding the FEMA grant were taken in 2001. Because the time provided in the Open Meeting Law has long passed, this office is barred from

Della M. Robbins
January 24, 2003
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bringing a suit based on any actions the Board is alleged to have taken in 2001. Consequently, this office did not conduct an investigation of the alleged violations and offers no opinion whether or not such actions were in compliance with the Open Meeting Law.

In your complaint, you also raised the concern that three members of the Board are also members of the KVFD and attend fire department training sessions where financial decisions are made concerning KVFD operations that should be made by the Board at a properly noticed, open Board meeting. In the memorandums dated October 8, 2002, and October 10, 2002, contained in attachment 10 of your complaint, you discuss the KVFD's decision to deposit the proceeds of a fundraiser into the KVFD bank account, which you claim was not in compliance with a Town Board resolution on the subject matter. Your October 10, 2002 memorandum states your understanding that there were two Board members present at the particular KVFD meeting. You informed this office by telephone that the Town Board thereafter amended its resolution at a public Board meeting to permit the deposit of the fundraiser's proceeds into the KVFD account.

ANALYSIS AND CONCLUSION

The Open Meeting Law applies only to a "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(2)(a)(1). The Kingston Town Board is comprised of five members, and three Board members constitute a quorum. See NRS 269.025(3) (majority of town board constitutes a quorum). Two Board members do not constitute a quorum, and therefore, their attendance at the KVFD meeting does not in and of itself trigger the requirements of the Open Meeting Law.

However, if three Board members attended a meeting of the KVFD, or congregated together elsewhere, it would constitute a gathering of a quorum of the Board. In those circumstances, the Open Meeting Law would be implicated if three Board members proceeded 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(2)(a)(1). Any gathering of a quorum to deliberate toward a decision or take action on a Board matter is required to be noticed and open to the public in accordance with the Open Meeting Law. As this portion of your complaint does not allege a possible violation of the Open Meeting Law, this office declines to determine whether the KVFD's decision was within its authority or constituted a matter within the Board's jurisdiction over which the Board possesses sole control, particularly in light of the Board's formal action that you say took place at a public meeting on October 17, 2002, subsequent to the KVFD meeting.

Thank you for bringing potential violations of the Open Meeting Law to our

Della M. Robbins
January 24, 2003
Page 3

attention. The Attorney General places high importance on our duties with respect to enforcing its provisions, and the system works because people like yourself are involved and committed to open government and a participatory democracy. Please do not hesitate to contact me if you have any questions or concerns.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
RONDA L. MOORE
Deputy Attorney General
Civil Division
(775) 684-1228

RLM:jf
cc: Kingston Town Board
Lander County District Attorney



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ANN WILKINSON
Assistant Attorney General

January 29, 2003

Mary Jane E. Zakas
HC 72 Box 21406
Dyer, Nevada 89010

Re: Open Meeting Law Complaint
Esmeralda County School District Board of Trustees
OMLO 2003-4/AG File No. 02-052

Dear Ms. Zakas:

On November 26, 2002, this office received your complaint alleging a violation of Nevada's Open Meeting Law (OML) by the Esmeralda County School District Board of Trustees (Board). You allege the Board, at its November 19, 2002 meeting, was prepared to vote on eliminating the position of school counselor without adequately discussing the issue prior to the vote.

This office has primary jurisdiction to investigate violations of the OML pursuant to Nevada Revised Statutes (NRS) 241.037. As part of our investigation this office requested copies of the agenda and minutes for the November 19, 2002 meeting. I reviewed the agenda, minutes of the meeting and your complaint and must conclude that no violation of the OML occurred.

The agenda provided adequate notice that elimination of the counselor position for 2003-2004 was an item that action could be taken on. The OML does not dictate the amount of discussion required before action may be taken. The minutes reveal that a motion was properly made and seconded. Then the Board engaged in several minutes of discussion amongst themselves and with you prior to voting.

Mary Jane E. Zakas
January 29, 2003
Page 2

Accordingly no violation of the Open Meeting Law occurred. Thank you for directing your concerns to this office.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
WILLIAM J. FREY
Deputy Attorney General
Conservation and Natural Resources
(775) 684-1229

WJF:jf
cc: Curtis Jordan, Superintendent
Todd Russell, Esq.



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ANN WILKINSON
Assistant Attorney General

February 24, 2003

Edward W. Aro
Post Office Box 790
Fallon, Nevada 89407

Re: Open Meeting Law Complaint
Churchill County Board of County Commissioners
OMLO 2003-05/AG File No. 03-001

Dear Mr. Aro:

This office has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law NRS chapter 241. This office has received a complaint from you alleging that the Churchill County Board of County Commissioners (Board) violated public hearing requirements at its October 16, 2002, and November 8, 2002, meetings. Although you do not specifically reference the Open Meeting Law, we have treated your complaint as an Open Meeting Law complaint to the extent that you may be alleging lack of adequate notice for certain agenda items for the Board's October 16, 2002, and November 8, 2002, meetings. We are unable to review your complaint to the extent that it alleges violations of zoning laws, because we do not have jurisdiction under the Open Meeting Law to investigate such alleged violations.

FACTS

We have reviewed the agendas and the minutes for the meetings in question. The agenda for the October 16, 2002 meeting contains the following action item:

Action on the following Planning Department matters:

Tentative Parcel Map:

Lee and Dianne Hutchens – Cluster Development
(TCID # 02-043 Soda Lake Road)

Parcel Maps:

Lee and Dianne Hutchens – Map A (TCID #02-039 Soda
Lake Road)
Lee and Dianne Hutchens – Map B (TCID #02-040 Cox

Road)
Lee and Dianne Hutchens – Map C (TCID #02-041 Cox
Road)
Mary Jane Hammond (TCID #02-037 Allen Road)

During the October 16, 2002 meeting, the Board discussed the details and merits of the tentative parcel map for a cluster development on Soda Lake Road. The Board approved the Tentative Parcel Map for Lee and Dianne Hutchens subject to all provisions of the Churchill County Code, the water right dedication ordinance, submittal of a phased schedule for road construction approved by the Road Department and Fire Marshall, and further recommendations of the Churchill County Road Department and Bureau of Health Protection Services. The Board also discussed the details of the three parcels maps for Lee and Dianne Hutchens set forth on the agenda. As to each of these items, the Board approved the Parcel Map subject to all provisions of the tentative map, all provisions of the Churchill County Code including requirements of the water right dedication ordinance, further recommendations of the Bureau of Health and the Churchill County Road Department and recordation of the Parcel Map.

The agenda for the November 8, 2002 meeting contains the following action item:

Planning Dept Matters:

- 1) Consideration of request to hire a part-time/short-term Building Inspector
- 2) Parcel Map: Mary Jane Hammond (TCID #02-037 Allen Road)
- 3) Consideration and possible action re: Two (2) Conservation Easement Deeds for Lee and Dianne Hutchens Parcel Map TCID #02-039

During the November 8, 2002 meeting, the Board discussed the details of two Conservation Easement Deeds to be entered into between the developer and Churchill County regarding Parcel Map TCID #02-039. The Board approved two Conservation Easement Deeds regarding Parcel Map TCID #02-039.

ANALYSIS AND CONCLUSION

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). Notice must be posted at the principal office of the public body and at least three separate, prominent places within the jurisdiction of the public body. NRS 241.020(3)(a). In addition, effective January 1, 2003, the public body must post notice of the meeting on its website, if it maintains a website. NRS 241.020(4). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. NRS 241.020(2)(c)(1) The purpose of the clear and

complete standard is that the public will receive notice in fact of what is to be discussed by the public body.

We find that the agenda for the October 16, 2002 meeting, complied with the Open Meeting Law with regard to the agenda item in question. The affidavit contained on the agenda for this meeting sets forth the date and locations of the posting of notice, which was in accordance with the Open Meeting Law. The agenda item identified the agency of the county from which the item originated, the subject matter as parcel maps, the name of the applicant, the Truckee-Carson Irrigation District identifying number, and the name of the road where the subject property was located. This agenda item adequately alerted the general public of the topic to be discussed at the meeting. During the discussions on this agenda item, the Board only discussed the topic as set forth on the agenda. The agenda item was clearly denoted as an action item. The action taken was limited to the agenda item.

We also find that the agenda for the November 8, 2002 meeting, complied with the Open Meeting Law with regard to the agenda item in question. The affidavit contained on the agenda for this meeting sets forth the date and locations of the posting of notice, which was posted in accordance with the Open Meeting Law. The agenda item identified the agency of the county from which the item originated, the subject matter as two conservation easement deeds concerning a parcel map, the name of the party, and the Truckee-Carson Irrigation District identifying number. This agenda item adequately alerted the general public of the topic to be discussed at the meeting. During the discussions on this agenda item, the Board only discussed the topic as set forth on the agenda. The agenda item was clearly denoted as an action item. The action taken was limited to the agenda item. Therefore, we find that the Board did not violate the notice requirements of the Open Meeting Law with regard to the agenda items in question during its meetings on October 16, 2002 and November 8, 2002.

We cannot offer an opinion with regard to your concerns as to possible violations of local ordinances concerning zoning issues, public hearing requirements, special use permits, or variances as these issues are beyond the scope of the Open Meeting Law. We do not have authority under the Open Meeting Law to investigate compliance with

Edward W. Aro
February 24, 2002
Page 4

notice and hearing requirements which may be contained in zoning laws. Because we find no violation of the Open Meeting Law as alleged in your complaint, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML:mas
cc: Churchill County Commissioners



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ANN WILKINSON
Assistant Attorney General

February 27, 2003

Via Facsimile (702) 258-3803 & U.S. Mail

Charles K. Hauser
General Counsel
Southern Nevada Water Authority
1001 South Valley View Boulevard
Las Vegas, Nevada 89153

Re: Open Meeting Law Complaint
Southern Nevada Water Authority
OMLO 2003-06/AG File No. 03-002

Dear Mr. Hauser:

The Attorney General's Office has primary jurisdiction to investigate and prosecute complaints alleging violations of the Open Meeting Law, Nevada Revised Statutes chapter 241.

DISCUSSION

As you are aware, we have received an Open Meeting Law complaint alleging that the Southern Nevada Water Authority (Water Authority) took action concerning a drought plan at its meeting on January 23, 2003, in violation of the Open Meeting Law. The complaint alleges that the Water Authority failed to make the drought plan available to the public upon request in violation of NRS 241.020(5).

The agenda for the January 23, 2003 meeting contained the following action item: "Receive a report on the development of the Authority's draft Drought Plan and, if appropriate, adopt the draft Drought Plan." The draft Drought Plan had been made available to board members prior to the Water Authority meeting as agenda support material. However, the draft Drought Plan had not been made available to the public until after the meeting, despite public requests for the draft Drought Plan prior to the meeting.

ANALYSIS

NRS 241.020(5)¹ provides as follows:

Upon any request, a public body shall provide, at no charge, at least one copy of:

-
- (c) Any other supporting material provided to the members of the body for an item on the agenda, except materials:
 - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement;
 - (2) Pertaining to the closed portion of such a meeting of the public body; or
 - (3) Declared confidential by law.

Pursuant to NRS 241.020(5), the agenda support material must be made available to the public upon request, if available at that time, but no later than the time that it is made available to the board members. OMLO 98-01 (January 21, 1998).

The Water Authority has admitted that it did not provide the draft Drought Plan to members of the public, upon request, at the time that it became available. The Water Authority admits that board members had been provided with the draft Drought Plan, as agenda support material, before the meeting, but members of the public who had requested the draft Drought Plan were not provided with a copy until after the meeting. When this situation was brought to your attention, the Water Authority voluntarily decided to treat the action on this agenda item as void and decided to place the item on the agenda for the February 20, 2003 meeting. The draft Drought Plan has been available to the public since the January 23, 2003 meeting.

CONCLUSION

Based on our review of materials provided by the Water Authority and the admissions of the Water Authority, we find that the Open Meeting Law was violated when agenda support material was not provided to members of the public, upon request, after the material was available. Because the Water Authority has voluntarily taken steps to cure this violation, we find that no action is warranted at this time. Once we have received confirmation that approval of the draft Drought Plan was considered by the Water Authority at a future meeting, we will close our file in this matter.

However, be advised that if the Water Authority violates the Open Meeting Law in the future, legal action may be warranted. We appreciate your cooperation in this matter.

¹ Effective January 1, 2003, this section was reorganized to become NRS 241.020(5). Prior to January 1, 2003, this section was NRS 241.020(4).

Charles K. Hauser
February 27, 2003
Page 3

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML:mas
cc: Thomas Mitchell



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ANN WILKINSON
Assistant Attorney General

January 6, 2003

Francine McDermott
George Mason
Administrative Representatives
Parents of the Nevada Leadership Academy and
Parent/Teacher Association
700 Greenbrae Drive
Sparks, Nevada 89431

Re: Open Meeting Law Complaint
Washoe County School District Board of Trustees (October 22, 2002)
OMLO 2003-07/AG File No. 02-050

Dear Ms. McDermott and Mr. Mason:

On November 18, 2002 and November 29, 2002, this office received complaints from the Parents of the Nevada Leadership Academy and the Parent/Teacher Association, alleging violations of the dictates of the Open Meeting Law, chapter 241 of the Nevada Revised Statutes.

Mr. Mason states that his request to speak on a specific agenda item was denied at a Washoe County School District Board of Trustees (Board) meeting on October 22, 2002, while others were allowed to speak. Also, you state that a motion to continue the item on which you wanted to speak, contained several requirements to be met by the Nevada Leadership Academy (NLA) before the Board meeting on December 3, 2002. You further state that these requirements made the motion to continue an action item.

FACTS

Page three of the October 22, 2002 agenda states:

ACTION ITEMS

- A. NEVADA LEADERSHIP ACADEMY
Presenter: Dotty Merrill, Senior Director, Public Policy,
Accountability & Assessment

RECOMMENDATION: The Board of Trustees will again be presented with the results of the Audit of Nevada Leadership Academy as provided on August 6, 2002. The staff recommendation as presented on August 6, 2002, remains the same: *That the Board of Trustees revoke the Charter of Nevada Leadership Academy.*

At this time, Dr. James Hagar, Superintendent, provided background information regarding the continued recommendation of August 6, 2002 to the Board to revoke the charter of the NLA. Dr. Hager stated that a third party audit of the NLA was scheduled for September but had been delayed until late November. Dr. Hager recommended a continuance to allow further time for information from the NLA.

The Board minutes of October 22, 2002 state as follows:

[T]hat the Board of Trustees continue action to no later than December 3, 2002 on the recommendation to revoke the charter of the Nevada Leadership Academy which will allow the District an opportunity to receive pending audit information and in addition provide the Governing Board of the Nevada Leadership Academy time to complete the following actions:

- 1. By 5pm on Thursday, October 24, 2002, provide to the Superintendent or his designee a copy of valid liability insurance policy;**
- 2. By 5pm on Wednesday, October 30, 2002, provide to the Superintendent or his designee a list of names of Governing Board members in full compliance with the requirements of NRS 386.545;**

- 3. By 5pm on Wednesday, October 30, 2002, provide to the Superintendent or his designee a notarized copy of the signed lease between NLA and the owners of its physical facilities, with the exact monthly rental fee and term for occupancy clearly stipulated within the lease;**
- 4. By 5pm on Wednesday, October 30, 2002, provide to the Superintendent or his designee a copy of the signed contract between the NLA Governing Board and an administrator who will perform all of the duties required by the Nevada Department of Education and Washoe County School District in accordance with reporting requirements and the day-to-day operation of the school;**
- 5. By 5pm on Wednesday, October 30, 2002, provide to the Superintendent or his designee a copy of valid signed teacher contracts and teacher licensing information; and**
- 6. By 5pm on Wednesday, October 30, 2002, provide to the Superintendent or his designee a copy of the full financial encumbrances of Nevada Leadership Academy to date.**

At the October 22, 2002 meeting, the NLA attempted to provide proof of insurance and discuss funding issues. The Board advised the NLA that all documentation requested should be directed to the Superintendent or his designee for review. The Chair permitted no further comments and the item carried for a continuance until the next Board meeting.

It is the custom for the Washoe County School District Board to have two public comment sections on this Board's agenda, one at the opening and one at the close. However, the agenda omitted listing the opening public comment section. Because of this custom, the Board did have opening public comment even though it was not listed on the agenda. Since no action is allowed in public comment and none was taken, the agenda omission was unintentional and harmless. People were permitted to speak during both public comment sections.

DISCUSSION

This office has reviewed the agenda, minutes, audiotape, and videotape from the meeting. Our review finds that a public comment period was on the agenda and two were provided during the meeting, and the public was given the opportunity to speak during each public comment period. You were given the opportunity during each period at the meeting to comment and did not do so. Except during the public comment period required by NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings. The Open Meeting Law does not require that public comment be allowed during agenda items other than the public comment period. AG File No. 02-041 (November 4, 2002); OPEN MEETING LAW MANUAL, §§ 8.04 (9TH ed. 2001).

ANALYSIS

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a “period devoted to comments by the general public, if any, and discussion of those comments.” Discretion as to the length, conduct, or structure of the public comment period lies with the public body, subject of course to certain legal considerations. This office finds no legal basis to support the contention that such conduct violates the Open Meeting Law.

The agenda specifically identified an action item to revoke the charter at the October 22, 2002 meeting. If the Board wanted to add additional standards to be met by the NLA before the next meeting, it could do so in the motion to continue. This type of action does not violate the Open Meeting Law.

NRS 241.020(2)(c)(1) requires an agenda to include, “A clear and complete statement of the topics *scheduled to be considered* during the meeting.” (Emphasis added.) We do not believe that the statute requires the Board to consider everything scheduled on an agenda. Circumstances change and public bodies always have the right to (and frequently do) table or postpone matters on their agendas. In short, the provisions of NRS 241 never force a public body to take action on any agenda topic. These provisions are merely designed to prohibit a public body from taking action on agenda topics if the public has failed to receive sufficient notice that on a particular date such public body may take that action.

CONCLUSION

Members of the public do not have an unqualified right to speak during a meeting of a public body. A public body may impose reasonable restrictions on speakers in order to further their legitimate interest in conducting efficient and orderly meetings. There is no indication that the Washoe County School District Board of Trustees conducted its meeting in any manner that departed from the lawful application of the Open Meeting Law. You were allowed to speak during the public comment period and elected not to speak, which is in conformance with NRS 241.020(2)(c)(3) under the Open Meeting Law. The continuance of an item with requirements to be met by the Nevada Leadership Academy before the next meeting was sufficiently noticed on the agenda.

Francine McDermott
George Mason
January 6, 2003
Page 5

Because we find no violation by the Washoe County School District Board of Trustees during the October 22, 2002 meeting, we are closing our file on this matter.

Sincerely,

BRIAN E. SANDOVAL
Attorney General

By:

JANET HESS
Deputy Attorney General
Commerce Section
(775) 684-1195

JH/d
cc: Jeffrey S. Blanck, General Counsel
Washoe County School District



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ANN WILKINSON
Assistant Attorney General

January 24, 2003

Sheri Smith, Administrator
Gateways to Success Charter School
Post Office Box 5219
Fallon, Nevada 89407-5219

Re: Open Meeting Law Complaint
Gateways to Success Charter School (Meeting of 11/7/02)
OMLO 2003-08/AG File No. 02-053

Dear Ms. Smith:

After receiving a complaint, this office has investigated an allegation that a violation of the Open Meeting Law by the Gateways to Success Charter School Board of Directors (Board) occurred in an open session of a regularly noticed meeting of the Board on November 7, 2002. The Gateways to Success Charter School (Gateways) is located in Fallon, Nevada; it is a public body because it receives public tax support, thus meeting the requirement of NRS 241.015(3). See *also* NRS 386.550.

The complaint alleges Judy Kroshus was the subject of an agenda item and the "subject of an investigation" all in violation of the Open Meeting Law because she was never notified of this meeting. She also alleges that the purpose of the "item on the agenda was to gain advantage in a law suit [sic] that is very near completion whereby the school will have to pay [her] for wages owed."

This office has statutory authority for enforcing compliance and preventing violations of the provisions of the Open Meeting Law. NRS 241.037.

REVIEW OF AGENDA AND TAPE RECORDINGS

We have reviewed the agenda for the Board meeting for November 7, 2002, and listened to the audiotape recording of the meeting, both of which were submitted by the Board. The agenda lists an action item entitled "Discussion and Consideration of Submitting a Formal Report to The District Attorney in Regards to Financial Management by Ms. Judy Kroshus During Her Tenure as Administrator of Gateways To Success Public Charter School." The audiotape reveals that the matter was taken up in open session. One Board member asked early in the meeting whether Ms. Kroshus had been noticed for this meeting (presumably the reference about notice was to NRS 241.033¹). The chairperson for the Board replied that no notice was necessary because "only when [the Board] does things in closed session do you need notice." She continued by elaborating that no notice was necessary when matters are done in open session. There was no further discussion of the requirements of NRS 241.033.

The Board's discussion of the agenda item was clearly a discussion of possible misconduct by Ms. Kroshus during her employment with Gateways. The agenda item was being discussed because of a recommendation from the Board's attorney to submit a report to the Churchill County District Attorney for the purpose of bringing to his attention possible misconduct that could rise to the level of criminal activity. In fact, the Board heard and voted to approve a motion to submit a report to the Churchill County District Attorney's office through the Board's attorney regarding actions taken by Ms. Kroshus that may be deemed illegal. Undeniably, the Board was discussing releasing a report to the District Attorney which might contain information implicating misconduct by Ms. Kroshus. This discussion was conducted without noticing her under the requirement of NRS 241.033 because the Board believed no notice was required under the statute since the matter was being heard in open session. Thus the issue is whether the Board correctly interpreted NRS 241.033. For the following reasons we do not think the Board's interpretation is correct.

¹ NRS 241.033 states in pertinent part:

Closed meeting to consider character, misconduct, competence or health of person: Written notice to person required; exception; copy of record.

1. A public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting. Except as otherwise provided in subsection 2, the written notice must be:

(a) Delivered personally to that person at least 5 working days before the meeting; or

(b) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

A public body must receive proof of service of the notice required by this subsection before such a meeting may be held.

The Board was obviously relying on the descriptive heading for NRS 241.033 which begins with the words "Closed meeting" (see footnote 1 for the text). It does not seem unreasonable to conclude that what follows in the text of the statute pertains to closed meetings; however, "closed meeting" does not appear in the text of the statute. In discussions with the Gateways' administration, this office was informed they relied on the section heading for the decision not to notice Ms. Kroshus.

It might not be apparent to the Board that the descriptive heading for NRS 241.033 is not a part of the statute but was inserted as a convenience for the reader by the statute's legislative compiler. The words in the descriptive heading were never passed or approved by the Legislature, do not appear in the legislative act, and are not part of the statute. It is unfortunate that the words "closed meeting" appear in the section heading because the text of the statute never mentions closed meetings. The statutory text came from Senate Bill No. 174 in the 1993 session of the Legislature, which amended chapter 241 of the Nevada Revised Statutes by the addition of NRS 241.033. Act of July 13, 1993, ch. 629, § 3, 1993 Nev. Stat. 2636. The leading treatise on statutory construction states: "[t]he descriptive heading immediately preceding the text of a code or statutory section does not constitute part of the statute and is not controlling regarding its construction or interpretation." NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION, §§ 47.03, 47.14 (2000), citing *Legum v. Crouch*, 430 S.E. 2d 360 (Ga. 1993), accord *U.S. v. Buckland*, 289 F.3d 558 (9th Cir. 2002) (headings inserted as margin notes which became subsection headings but were never enacted into law by Congress are not a reliable guide to Congress's intentions). See also *U.M. v. District Court, County of Larimer*, 631 P.2d 165 (Colo. 1981) ("where headings are added by the revisor of statutes, 'no implication or presumption of a legislative construction is to be drawn therefrom'; where the legislature has selected the heading it may properly be used as an aid in construing a statute.).

Section 3 of Act of July 13, 1993, ch. 629, 1993 Nev. Stat. 2636, plainly states that a "public body shall not hold a meeting . . . unless it has given written notice to that person of the time and place of the meeting." This language is clear on its face and does not require interpretation; notice is required to be given to any person for any meeting whether open or closed. Section 2 of the same act prevents a public body from holding a *closed meeting* to consider the character, misconduct, etc. of an elected member of a public body; however, the Legislature chose not to use the words "closed meeting" in the very next section of the same act, instead it used the word "meeting," thus clearly forbidding the discussion of character, misconduct, etc. of *any person at any meeting*, whether open or closed.

Notice should have been given to Ms. Kroshus despite the discussion taking place in open session. NRS 241.033 requires notice to the person to be discussed whether that discussion occurs in either an open or closed meeting.

Sheri Smith, Administrator
January 24, 2003
Page 4

CONCLUSION

The failure of the Board to give notice to Ms. Kroshus is a violation of the Open Meeting Law. But, having listened to the audiotape of the discussion, we cannot discern any sinister motive for the violation; instead, and quite to the contrary of the implication in Ms. Kroshus's complaint, it is plain the Board was attempting to do the right thing. Their interpretation and reliance on the section heading for NRS 241.033 was not unreasonable, and there was no "knowing" violation of law in this case. Given the nature of the agenda item and the publicity surrounding it, this office warns the Board that their actions violated the Open Meeting Law. Please abide by the text of the relevant personal notice statute in the future.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By:

GEORGE H. TAYLOR
Deputy Attorney General
Civil Division
(775) 684-1230

GHT:py
cc: Judy Kroshus



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ANN WILKINSON
Assistant Attorney General

March 4, 2003

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint
Reno City Council Meeting (January 28, 2003)
OMLO 2003-09/AG File No. 03-004

Dear Mr. Dehne:

This office has received a complaint from you alleging violations of the Open Meeting Law by the Reno City Council (Council) at its meeting on January 28, 2003. You allege that the Council did not provide adequate notice to the public that it would be considering changing its schedule of meetings, including going from four to two meetings a month, at the meeting. We have reviewed the agenda, videotape, and minutes for this meeting.

DISCUSSION

Agenda item 16B for the January 28, 2003, under the heading "Mayor and Council," provided as follows: Staff Report: Possible amendment to Council Rules to modify the start time of Regular City Council Meetings and potential direction to staff regarding the scheduling of Regular and Special City Council Meetings."

Under this agenda topic, the Council discussed changing the dates and times of the Council meetings and holding only two Council meetings a month rather than four Council meetings a month. The Council discussed how this might be a more efficient way to perform Council business and how this might conserve resources of the Council. The Council also discussed the effect that this change may have on the scheduling of advisory board meetings. The Council discussed that this would enable Council members to attend meetings of the Sparks City Council, and the Washoe County Board of County Commissioners. The Council considered having a standard lunch break and scheduling public comment at a time certain for noon. The action taken under this agenda item was as follows: "It was moved by Councilperson Harsh, seconded by

Council person Aiazzi, to approve the change of the day of the Council meetings effective March 12, 2003, with meetings to be held the 2nd and 4th Wednesdays of the month beginning at 10:00 a.m. Motion carried.”

ANALYSIS

The agenda of a meeting must include a clear and complete statement of the topics scheduled to be considered during the meeting. NRS 241.020(2)(c)(1). The purpose of the clear and complete standard is that the public will receive notice in fact of what is to be discussed by the public body. The public body must stick to the topics on its agenda at the meeting. OPEN MEETING LAW MANUAL, § 7.03 (9th ed., 2001).

The agenda topic in question concerned direction to the staff regarding the scheduling of meetings of the Council. The discussions which actually occurred during the meeting focused on the dates and times of meetings. The action taken was to change the dates and times of meetings. The effect of the action was to start scheduling only two meetings a month rather than four meetings a month. We believe that the discussions and action which took place were all on the designated topic of direction to staff regarding the scheduling of Council meetings. The agenda item clearly and completely described the topic scheduled to be considered, and the public was given adequate notice that the Council would be considering the scheduling of meetings. The Council did not stray from this topic in its discussions. The action of directing staff to only schedule two meetings a month in the future is within the designated topic of scheduling of meetings.

DISCUSSION

We conclude that the Council did not violate the agenda requirements of the Open Meeting Law when it considered and took action directing staff to schedule two Council meetings a month. Because we find no violation of the Open Meeting Law as alleged in your complaint, we are closing our file in this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML:mas
cc: Patricia Lynch
Attorney for the City of Reno



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ANN WILKINSON
Assistant Attorney General

March 5, 2003

Sage Atreides
Post Office Box 994
Virginia City, Nevada 89440

Re: Open Meeting Law Complaint
Virginia City Chamber of Commerce
OMLO 2003-10/AG File No. 03-005

Dear Ms. Atreides:

This office has primary jurisdiction for the investigation and prosecution of violations of the Open Meeting Law, NRS chapter 241. You have alleged that the Virginia City Chamber of Commerce (Chamber) holds secret meetings in violation of the Open Meeting Law.

DISCUSSION AND ANALYSIS

The Open Meeting Law only applies to public bodies. NRS 241.015(3) defines a public body as:

. . . any administrative, advisory, executive or legislative body of the state or a local government 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

The statute requires two elements in order for an entity to be considered a public body. First, it must be an "administrative, advisory, executive or legislative body of the state or a local government." This means that the entity must (1) owe its existence to and have some relationship with a state or local government, (2) be organized to act in an administrative, advisory, executive, or legislative capacity, and (3) must perform a

government function. OPEN MEETING LAW MANUAL, § 3.01 (9th ed. 2001). Second, it must expend, disburse, or be supported in whole or in part by tax revenue, or advise or make recommendations to any entity which expends, disburses, or is supported in whole or in part by tax revenue. *Id.*

CONCLUSION

The Chamber is supported by private membership fees and fundraisers. The Chamber is not supported in whole or in part by tax revenue. The Chamber does not expend or disburse tax revenue nor does it advise or make recommendations to any entity which expends, disburses, or is supported in whole or in part by tax revenue. Therefore, the Chamber is not a public body within the meaning of the Open Meeting Law.

We have found that the Virginia City Chamber of Commerce is not a public body within the definition of the Open Meeting Law and, therefore, is not subject to the provisions of the Open Meeting Law. We are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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TML:mas
cc: Virginia City Chamber of Commerce



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ANN WILKINSON
Assistant Attorney General

March 6, 2003

Georgia Jordan
Post Office Box 813
Battle Mountain, Nevada 89820

Re: Open Meeting Law Complaint
Lander County Board of County Commissioners
OMLO 2003-11/AG File No. 03-003

Dear Ms. Jordan:

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law, NRS chapter 241. We received a complaint from you alleging that the Lander County Board of County Commissioners held private meetings in January 2003. In our investigation, we interviewed the deputy district attorney and the two commissioners who are alleged to have engaged in private meetings.

FACTS

The Lander County Board of County Commissioners (Board) is composed of three commissioners. You witnessed one commissioner meeting with the deputy district attorney followed by a second commissioner meeting with the deputy district attorney. You also witnessed two commissioners having a discussion in the parking lot during a break in a Board meeting.

The deputy district attorney (attorney) stated that he met with one commissioner to discuss an ongoing personnel issue. This commissioner met with the attorney to inquire about an employee's contract, and the procedure for noticing the employee for a personnel session. The next day, a second commissioner met with the attorney to discuss certain legal issues, including how to terminate the contract of an employee and how to initiate a special meeting of the Board. The two commissioners involved confirmed the attorney's recall of the meetings. These meetings took place in January, prior to the January 27, 2003 meeting of the Board. On the agenda for the January 27, 2003 meeting of the Board, there was an agenda item for the discussion and possible action about the termination of this employee.

The attorney and the two commissioners acknowledged that there was a discussion, which took place during a break in a Board meeting. The attorney, one commissioner, and the Public Works director were discussing a water issue. Another commissioner walked past on his way to his nearby house. The second commissioner stopped briefly, for less than a minute, as he walked past the group. He did not engage in the discussion, but continued on his way to his house.

ANALYSIS

Except as otherwise provided by specific statute, all meetings of public bodies must be open to the public and the public must have been provided with proper notice of the meeting. NRS 241.020. A meeting is defined in NRS 241.015(2) as follows:

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The 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.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

Two commissioners constitute a quorum of the Board. NRS 241.015(4). As to the alleged gathering which took place in the parking lot during a break of the Board meeting, we find that this conversation did not amount to a meeting of the Board. Only

one commissioner was present for, and engaged in, the discussion with staff. The brief presence of the second commissioner did not turn the discussion into a meeting of the Board because he did not participate in the discussion and paused at the group for less than a minute. Based on these facts, a quorum of the Board was not present and no meeting took place. Therefore, we find no violation of the Open Meeting Law occurred during this discussion.

An attorney, or other staff member, meeting collectively with two of three commissioners of the Board may constitute a meeting of the Board, within the definition of the Open Meeting Law, if the individual meetings were held with the specific intent to avoid the provisions of the Open Meeting Law and if the commissioners, through the individual meetings, deliberated toward a decision or took action on any matter over which the Board has supervision, control, jurisdiction, or advisory power. NRS 241.015(2).¹

According to the commissioners and the attorney, the two individual meetings, each of which took place with one commissioner and the attorney, concerned related, but not identical, subjects. Each meeting apparently involved the commissioners, individually, coming to see the attorney to ask legal questions concerning the same employment contract. The legal questions asked by each commissioner were on different aspects of the employment contract. The commissioners stated that they never spoke with another commissioner about this employment contract outside of a public meeting of the Board.

CONCLUSION

We have found no evidence to indicate that these individual meetings took place with the specific intent to avoid the provisions of the Open Meeting Law. In addition, we have insufficient evidence to conclude that the gatherings collectively constituted deliberation toward a decision on a matter over which the Board has supervision, control, jurisdiction, or advisory power. Although the commissioners individually discussed related issues with the attorney, we cannot say that they received or discussed the same information or matter such that they were collectively deliberating toward a decision on any matter. Therefore, we cannot find that the individual meetings constituted a meeting of the Board in violation of the Open Meeting Law. We do note that the individual discussions came close to collective deliberation on a matter before the Board, albeit without intent to avoid the Open Meeting Law, and we caution the Board, by copy of this letter, to be mindful of the purpose and intent of the Open Meeting Law when engaging in discussions about Board business with Board staff.

Based on the interviews with the commissioners and the attorney, we conclude that the Board did not engage in private meetings of the Board in violation of the Open Meeting Law as alleged in the complaint. Therefore, we are closing our file on this

¹ NRS 241.015(2)(b)(2) provides an exception for discussion with the attorney for the public body under certain circumstances.

Georgia Jordan
March 6, 2003
Page 4

matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
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TML:mas
cc: Lander County Board of Commissioners



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ANN WILKINSON
Assistant Attorney General

March 11, 2003

Dot Freel
Office Manager
Clark County Medical Society
2590 East Russell Road
Las Vegas, Nevada 89120

Re: Open Meeting Law Complaint
Nevada State Board of Medical Examiners
OMLO 2003-12/AG File No. 03-008

Dear Ms. Freel:

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law, NRS chapter 241. We received a complaint from you alleging that the Nevada State Board of Medical Examiners (Board) has failed to provide you with copies of minutes in violation of the Open Meeting Law. You also expressed concern regarding the method in which the Board processes requests for agenda support material.

FACTS

You submitted two written requests to the Board regarding copies of minutes, agendas, agenda support material, and financial statements. On December 27, 2002, you faxed and mailed a request for copies of the minutes of the December 2001, March 2002, and December 2002 Board meetings. This request was made with a return name and address of CCMS (Clark County Medical Society). On January 16, 2003, you faxed a letter renewing your request to be on the Board's mailing list. You requested to have all agenda packets mailed to you when they become available. You also requested copies of the Board's financial reports for the past five years. This letter was on Clark County Medical Society's letterhead.

On January 28, 2003, the deputy executive director for the Board responded to

your requests. She informed you that you did not need to renew the request to be on the mailing list because the Clark County Medical Society had a permanent subscription for newsletters, public postings, press releases, quarterly newly licensed lists, and meeting minutes. She also advised you that you must request the agenda support material individually for each meeting as the Board cannot accept a blanket request for packets of agenda support material. Finally, regarding the financial reports, the deputy executive director advised you that all public records of the Board were available for viewing at the Board office. She informed you that you could view the records, determine which records you would like copied, and pay for the copies.

In response to your complaint, the Board has asserted that the Clark County Medical Society has in fact been sent copies of the minutes in question. Additionally, the Board has asserted that your complaint is not an Open Meeting Law complaint, but rather concerns Nevada's Public Records Law, NRS chapter 239.

ANALYSIS AND CONCLUSION

NRS 241.035(2) provides, in part, that "[m]inutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken." There is no evidence to suggest that the minutes in question were not made available for public inspection in accordance with this provision.¹ The Open Meeting Law does not require the public body to furnish copies of the minutes upon request but rather this type of request would be covered by the Public Records Law, which is outside the scope of an Open Meeting Law complaint. Therefore, we find no violation of the Open Meeting Law with regard to the minutes of the meetings in question. We do note, however, that the Board stated that it has provided copies of those minutes to the Clark County Medical Society, the entity for which you made the requests. For your convenience, we also are enclosing copies of those minutes.

NRS 241.020(5) provides as follows:

Upon any request, a public body shall provide, at no charge, at least one copy of:

-
- (c) Any other supporting material provided to the members of the body for an item on the agenda, except materials:
 - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement;
 - (2) Pertaining to the closed portion of such a meeting of the public body; or
 - (3) Declared confidential by law.

¹ We note that at the time you requested the minutes for the December 2002 meeting, 30 working days had not yet elapsed from the date of the meeting.

This office has previously considered whether a public body is required to honor a standing request for copies of agenda support material. OMLO 99-06 (March 19, 1999). In that opinion, we found that a public body did not violate the Open Meeting Law when it failed to mail the agenda support material with the notice and agenda pursuant to a request made under NRS 241.020(3)(b). We noted that the Legislature chose to treat the requests for notice and agendas differently than requests for agenda support material. We concluded that “[p]ublic bodies are free to voluntarily honor standing requests for the mailing of agenda support material, but are not required by law to do so.” OMLO 99-06 (March 19, 1999). Therefore, we find that the Board did not violate the Open Meeting Law when it stated that it would not accept a blanket request for agenda support material.

The remainder of your complaint concerns the application of the Public Records Law and is beyond the scope of the Open Meeting Law. Because we find no violation of the Open Meeting Law, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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Senior Deputy Attorney General
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TML:mas
Encl.

cc: Richard J. Legarza, Esq. (w/o enc.)
Norman Azevedo, Esq. (w/o enc.)



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ANN WILKINSON
Assistant Attorney General

March 21, 2003

Kae Pohe, Chairman
Nevada State Committee of Blind Vendors
Post Office Box 60853
Boulder City, Nevada 89006

Re: Open Meeting Law Complaints
Nevada State Committee of Blind Vendors
OMLO 2003-13/AG File Nos. 03-007 and 03-010

Dear Mr. Pohe:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes (Open Meeting Law). This office received complaints alleging that the Nevada State Committee of Blind Vendors (Committee) violated the Open Meeting Law at its January 18, 2003, and February 9, 2003 meetings. We received three complaints regarding the January 18, 2003 meeting, and one complaint regarding the February 9, 2003 meeting.

The complaints allege that the Committee took action on an item at its January 18, 2003 meeting, that was not clearly and completely described on the agenda. The complaints also allege that the Committee did not afford members of the public an adequate opportunity to address the Committee and that the Chair threatened to remove persons from the January meeting. The complaints allege that agenda support material was not made available at the January meeting.

The complaint regarding the February meeting alleges that the agenda items were not adequately described, that action was taken on items that were not denoted as action items, that there was no discussion of public comments, some agenda items were never considered by the Committee, and that notice of the meeting was not posted in Reno. We have reviewed the agendas and minutes for the January 18, 2003 meeting, and the February 9, 2003 meeting. Audiotapes of these meetings were not available.

FACTS

The January meeting of the Committee contained the following agenda item under the category of new business: "Proposal of positive solutions." The minutes indicate that a written proposal regarding exploring the possibility of increasing the take home pay of individual vendor locations, adding vendor locations, and proposing legislation for vendors to qualify for Nevada State health and retirement pay was read into the minutes. The minutes also indicate that a bill draft request was read into the minutes. The minutes do not indicate any action taken on this item. However, the complaints allege that under this agenda item, the Committee approved the bill draft request.

The minutes of the January meeting indicate that the Chair prevented a member of the public from asking questions regarding a letter mentioned in the previous meeting's minutes. These questions were not posed during the public comment section of the agenda. During the public comment section, the Chair requested that a member of the public not repeat prior discussions.

The agenda for the February meeting does not indicate any agenda items as action items. The agenda indicates that it was posted at the principal office of the Bureau of Services to the Blind and Visually Impaired and four other prominent, public places in the State of Nevada, all of these places in either Las Vegas or Carson City. The agenda indicates that the meeting location will be in Las Vegas with a teleconference location in Carson City. Under "Old Business," there was an agenda item of "Review and approve revisions to the by-laws for the NSCBV." This item also states that the Committee will recess the meeting for a one-hour workshop on by-laws and then will reconvene the meeting and call for a vote on the item. However, it does not appear that the Committee actually did recess the meeting to hold a workshop on the by-laws. Under this agenda item, a presentation was made regarding the facilitator process, mediation, and vendor representation as the solution to resolving issues for the vendors, the Committee, and the SLA by an attorney from Ohio Legal Rights Services.

The agenda also contained an item under "Old Business" of "Recap proposal of positive solutions." The action taken under this item was to withdraw the bill draft request that had been approved at the January 18, 2003 meeting.

ANALYSIS

In order to ensure that the public has an opportunity to observe and participate in government, the Legislature enacted strict agenda requirements so that the public is put on notice of the topics which will be considered during a meeting of a public body. NRS 241.020. Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). Notice must be posted at the principal office of the public body and at least three separate, prominent places within the jurisdiction of the public body. NRS 241.020(3)(a). In addition, effective January 1, 2003, the public body must post notice of the meeting on its website, if it maintains a website. NRS 241.020(4).

An agenda must contain a “clear and complete statement of the topics scheduled to be considered during the meeting.” NRS 241.020(2)(c)(1). The agenda must contain a list describing the items on which action may be taken and clearly denote that action may be taken on those items. NRS 241.020(2)(c)(2).

General topics such as “work order reports,” “personnel,” “litigation,” and “real estate matters” do not put the public on notice of the specific topics that will be discussed. *Hansmeyer v. Nebraska Public Power District*, 578 N.W.2d 476, 481 (Neb. App. 1998), *Cox Enter., Inc. v. Board of Trustees of the Austin ISD*, 706 S.W.2d 956, 957-59 (Tex. 1986). In *Cox Enter.*, the Court stated that the:

Board did not provide full and adequate notice, particularly where the subject slated for discussion was one of special interest to the public. Selection of a new school superintendent is not in the same category as ordinary personnel matters—and a label like ‘personnel’ fails as a description of that subject.

Cox Enter., 706 S.W.2d at 959. This court also found that a topic of litigation does not put the public on notice that the Board would be discussing a major desegregation case. *Id.*

NRS 241.020(5) provides as follows:

Upon request, a public body shall provide, at no charge, at least one copy of:

-
- (c) Any other supporting material provided to the members of the body for an item on the agenda, except materials:
 - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement;
 - (2) Pertaining to the closed portion of such a meeting of the public body; or
 - (3) Declared confidential by law.

NRS 241.020(2)(c)(3) requires that public bodies include in their agendas a “period devoted to comments by the general public, if any, and discussion of those comments.” Discretion as to the length, conduct, or structure of the public comment period lies with the public body, subject to certain legal considerations. The Open Meeting Law does not prevent a public body from removing any person who willfully disrupts a meeting to the extent that its orderly conduct is impractical. NRS 241.030(3)(b).

I. January Meeting

We find that the agenda topic "Proposal of positive solutions" was not a clear and complete statement of the topics scheduled to be discussed. This agenda topic is so general and vague that the average member of the public would not have been alerted to the topics that were scheduled to be discussed. The public could not have known from this agenda topic that the Committee would be considering or possibly approving a bill draft request regarding a proposal to include blind vendors in the State insurance and retirement systems. Even though the minutes do not contain specific action taken under this agenda topic, we believe that the Committee did in fact approve the bill draft request at this meeting. Therefore, we find that the Committee violated the agenda requirements of the Open Meeting Law when it considered and approved the bill draft request under this agenda topic. However, because the Committee subsequently voted to withdraw the bill draft request, we do not believe that legal action is warranted to void this action.

The complaints also contain allegations concerning public comment. As set forth above, the Committee must have a period devoted to public comment. The Open Meeting Law does not require the public body to take public comment at any other time. One of the complaints concerns the Chair preventing public comment during a specific agenda item. This is not a violation of the Open Meeting Law. In addition, when the member of the public persisted, the Chair allegedly threatened to remove the person from the meeting. The Open Meeting Law does allow the removal of a person who is disrupting a meeting to the extent that the orderly conduct of the meeting is impractical. The person in question was not actually removed from the meeting. We find no violation of the Open Meeting Law with regard to this exchange. The Chair was not obliged to take public comment at that point in the meeting. The person was disrupting the meeting. The Chair apparently instructed the person that she could be removed if she prevented the orderly conduct of the meeting, but she was not actually removed.

There are also allegations that the Chair prevented public comment during the public comment section of the meeting. The minutes indicate that the Chair informed a member of the public not to repeat prior discussions. The minutes also indicate that this member of the public addressed the Committee earlier in the meeting regarding the same subject. Therefore, we do not believe that this person was deprived of his right to address the Committee. However, we do suggest that the Committee be consistent in accepting public comment so that members of the public know when they will be allowed to address the Committee. It appears that the Committee allowed public comment during some agenda items and not during others. It appears that the Committee may have cut some members of the public short. We were unable to determine if this was related to the subject matter of the comments or possibly due to time constraints. The Committee must treat all members of the public wishing to comment equally and advise the members of the public beforehand of any reasonable rules regarding the length of public comment.

There were allegations that agenda support material was not available to the public during the meeting. Except for certain exempted documents, the public body must make agenda support material available to the public upon request. It appears that the

agenda support material was not available at the teleconferenced site in Carson City. It is unclear whether the member of the public made a request for the agenda support material. Therefore, we do not find a violation of the Open Meeting Law in this regard but we suggest that, in the future, the Committee have copies of the agenda support material available for the public at both locations of the meeting.

II. February Meeting

The agenda for the February meeting contained the same vague agenda topic, "Proposal of positive solutions," as the January meeting. The action taken under this agenda topic was to withdraw the bill draft request. For the reasons stated above, we find that this agenda topic violated the "clear and complete" standard of the Open Meeting Law. We find that no legal action is warranted to void the action taken under this agenda topic because this action reversed a prior action which we believe violated the Open Meeting Law. However, we hereby warn the Committee that any further violations of the Open Meeting Law in this regard will subject the Committee to legal action to ensure compliance with the Open Meeting Law.

We also find that the Committee did not confine its discussions to the agenda topic of "Review and approve revisions on the by-laws for the NSCBV" when it considered this topic. Apparently under this topic, a presentation was made to the Committee regarding the facilitator process, mediation, and vendor representation as the solution to resolving issues for the Nevada Vendors, the Committee, and the SLA. We do not believe that the topic of reviewing and approving revisions to by-laws alerted the public to the subject matter of the presentation. In addition, the Committee had notice of the topic of the presentation and could have put those topics on the agenda. Therefore, we find that the presentation violated the notice requirements of the Open Meeting Law.

We also note that the Committee had planned on recessing the meeting to hold a workshop on its by-laws. Apparently, the intent of the recess was to disconnect the teleconference with the Carson City location of the meeting and to hold a workshop that was not a public meeting of the Committee. Although the workshop did not occur, we hereby warn the Committee that it cannot hold a workshop with a quorum of the Committee present unless the workshop is conducted in compliance with the Open Meeting Law.

The complaint also alleges that the agenda did not denote that action might be taken on certain agenda items in violation of the Open Meeting Law. The agenda did not contain a list describing the items on which action may be taken and did not denote any items as action items. This violates the agenda requirements of the Open Meeting Law. The minutes indicate that action was taken on at least three items during the meeting. Therefore, the Committee violated the Open Meeting Law with regard to each item upon which it took action at the February meeting. We hereby advise the Committee to put each of these items on a future agenda to correct these violations. We also advise the Committee that any future violation of the Open Meeting Law in this regard will subject the Committee to legal action to ensure compliance with the Open

Meeting Law.

The complaint alleges that there was no discussion of the public comments. Although the Open Meeting Law requires the Committee to include a period for public comment and discussion of those comments, we do not believe that the Committee violates the Open Meeting Law if it determines that discussion is not warranted. The Committee is allowed to discuss those comments, even if it is on a topic not on the agenda, but is only required to include a period of time in which a discussion of those comments might occur. Therefore, we do not believe that the Committee violated the Open Meeting Law by not engaging in a discussion concerning public comments.

The complaint alleges that the agenda was not properly posted because it was not posted in Reno. The agenda was posted in accordance with the Open Meeting Law. We find that the agenda was posted in the required number of locations and that each of those locations was a prominent place within the jurisdiction of the Committee, in this case, the State of Nevada. The Open Meeting Law does not require the posting of the notice in Reno by this particular public body. Therefore, we do not find a violation of the Open Meeting Law in this regard.

The complaint also alleges that the Committee did not consider a number of the topics on its agenda. Other than the public comment section, the Open Meeting Law does not require that the Committee reach each of the items on its agenda during the meeting. Therefore, we do not find a violation of the Open Meeting Law in this regard.

CONCLUSION

We find that the Committee violated the agenda requirements of the Open Meeting Law at its January 18, 2003 meeting, and at its February 9, 2003 meeting. The Committee needs to clearly and completely describe the topics scheduled to be discussed so that the public is put on notice of those topics. The Committee needs to denote on the agenda the items upon which action may be taken.

We suggest that the Committee develop reasonable rules for the conduct of public comment to ensure that all members of the public are treated equally and all members of the public are given a fair opportunity to address the Committee. We also suggest that the Committee seek the advice of its legal counsel to assist it in complying with the Open Meeting Law in the future.

If the Committee fails to comply with the Open Meeting Law in the future, the Committee will be subject to legal action.

Sincere regards,

BRIAN SANDOVAL
Attorney General

Kae Pohe
March 21, 2003
Page 7

By: _____
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML:mas
cc: Myla Florence, Director of DETR
John Albrecht, Senior Deputy Attorney General
Michael Diamond, Complainant
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ANN WILKINSON
Assistant Attorney General

March 21, 2003

Judy Kroshus
1140 Dinah Drive
Fernley, Nevada 89408

Re: Open Meeting Law Complaint
Gateways to Success Public Charter School
OMLO 2003-14/AG File No. 03-009

Dear Ms. Kroshus:

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law, NRS chapter 241. We received a complaint from you alleging that the Board of the Gateways to Success Public Charter School (Board) failed to timely provide you a copy of the agenda of its February 6, 2003 meeting in violation of the Open Meeting Law. You also allege that the Board discussed you at its January 16, 2003 meeting, without giving you the required notice. We have reviewed your request for notice and the agenda, minutes, and audiotapes of the January 16, 2003 Board meeting.

REQUEST FOR NOTICE

You sent a written request to the Board in which you stated that you would like to have your name added "to the list of recipients of your complete agenda packets for the period prescribed by law." The agenda packet for the February 6, 2003 meeting was mailed to you on February 6, 2003.

NRS 241.020(3)(b) requires a public body to send notice of each meeting to every person who has requested notice. The notice must be delivered to the postal service by the body no later than 9 a.m. of the third working day before the meeting. NRS 241.020(3)(b).

NRS 241.020(5) provides as follows:

Upon any request, a public body shall provide, at no charge, at least one copy of:

-
- (c) Any other supporting material provided to the members of the body for an item on the agenda, except materials:
 - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement;
 - (2) Pertaining to the closed portion of such a meeting of the public body; or
 - (3) Declared confidential by law.

Pursuant to NRS 241.020(5), the agenda support material must be made available to the public upon request, if available at that time, but no later than the time that it is made available to the board members. OMLO 98-01.

This office has previously considered whether a public body is required to honor a standing request for copies of agenda support material. OMLO 99-06 (March 19, 1999). In that opinion, we found that a public body did not violate the Open Meeting Law when it failed to mail the agenda support material with the notice and agenda pursuant to a request made under NRS 241.020(3)(b). We noted that the Legislature chose to treat the requests for notice and agendas differently than requests for agenda support material. We concluded that “[p]ublic bodies are free to voluntarily honor standing requests for the mailing of agenda support material, but are not required by law to do so.” OMLO 99-06 (March 19, 1999).

The written request that you submitted to the Board requested that you be mailed the complete agenda packet for the period prescribed by law. Apparently, the Board treated this as a request for agenda support material pursuant to NRS 241.020(5). The Open Meeting Law provides that this information be provided when it is available, but no later than when it is given to the Board members. The Board has stated that the complete agenda packet was mailed to you as soon as it was available. We have no evidence to suggest otherwise. We also note that the Board is not required to honor a blanket request to mail agenda packets. Therefore, we find that the Board did not violate the Open Meeting Law when it mailed the agenda support material to you on February 6, 2003, because that is the date on which the material was available.

You may have intended to request notice and agendas of meetings pursuant to NRS 241.020(3)(b). However, the Board reasonably treated the request only as a request for agenda support material. In the future, you may want to request notice of meetings and then the notices would be required to be mailed to you in accordance with NRS 241.020(3)(b). If you want complete agenda packets, this would be a separate request made pursuant to NRS 241.020(5).

DISCUSSION OF PENDING LITIGATION

At the January 16, 2003 meeting, the agenda contained the following agenda item: "Discussion and Consideration of Report of Tortious Filings according to NRS 41.0385 **Action May be Taken on This Item**"

Under this agenda item, the Board's attorney explained a letter to the Board regarding a report of tortious filings to the Attorney General's Office pursuant to NRS 41.0385. The Board was given a brief update on the status of a number of lawsuits pending against the Board. Included in this discussion was an update regarding a lawsuit that you filed against the Board. The attorney explained that there was a delay in the cases due to a substitution of counsel. In addition, the attorney reported that in your case, an attorney had informed the Board's attorney that the insurance company may consider a settlement, and if your case settled, then another case may settle. The Board voted to accept the report as presented.

NRS 241.033(1) provides that a public body shall not hold a public meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting at least five working days before the meeting if delivered personally or 21 working days if sent by certified mail.

During the agenda item in question, the Board's attorney gave the Board an update regarding ongoing litigation in the context of a report filed pursuant to NRS 41.0385. This type of discussion is accepted from the definition of a meeting pursuant to NRS 241.015(2)(b)(2); however, the Board chose to hold the discussion during an open meeting.

The Board did discuss that status of your pending lawsuit against the Board. This discussion did not amount to a meeting to consider your "character, alleged misconduct, professional competence, or physical or mental health." Your name was mentioned with regard to the allegations in the lawsuit and that the attorney believed that the insurance company may want to settle your case, in part, because you presented as a good witness. This is the extent to which you were discussed. Because the Board did not consider your "character, alleged misconduct, professional competence, or physical or mental health," the Board was not required to give you notice of the meeting pursuant to NRS 241.033(1). Therefore, we find that the Board did not violate that Open Meeting Law as alleged in your complaint. Because we find no violation of the Open Meeting Law, we are closing our file on this matter.

Judy Kroshus
March 21, 2003
Page 4

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

cc: James Kalicki, Esq.
Counsel for Gateways Charter School



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ANN WILKINSON
Assistant Attorney General

April 7, 2003

Rick Wilson
Post Office Box 969
Beatty, Nevada 89003

Re: Open Meeting Law Complaint
Beatty General Improvement District
OMLO 2003-15/A.G. File No. 03-012

Dear Mr. Wilson:

This office has received a complaint from you alleging violations of the Open Meeting Law by the Beatty General Improvement District (District) at its meetings on January 6, 2003, and January 30, 2003. You allege that the District did not provide adequate notice to the public that it would be taking action regarding a proposed multipurpose facility at these meetings. You have also alleged that the District used a fund of public money for the project without the proper authority. We have reviewed the agenda, audiotape, and minutes for these meetings.

DISCUSSION

The agenda for the January 6, 2003 meeting, contained the following item: "ACTION AND DECISION: PROPOSED MULTIPURPOSE FACILITY AT OLD BASKETBALL COURT." The action taken on this item was to proceed to the bidding process and to dedicate the facility to a former Board member. During this item there was a discussion about the source of funds for the project, but the source of funds was not a part of either motion made under this agenda item.

The agenda for the January 30, 2003 meeting, contained the following item: "ACTION – REVIEW BIDS RECEIVED AND AWARD SUCCESSFUL BID FOR MULTI-PURPOSE STRUCTURE (CROWELL PAVILION) AT OLD BASKETBALL COURT." The action taken under this agenda item was to accept the bid of Pahrump Steel to build

Crowell Pavilion.

ANALYSIS

An agenda must contain a “clear and complete statement of the topics scheduled to be considered during the meeting.” NRS 241.020(2)(c)(1). In addition, the agenda must contain a list describing the items on which action may be taken and clearly denote that action may be taken on those items. NRS 241.020(2)(c)(2).

The agenda item in question for the January 6, 2003 meeting, was clearly denoted as an action item. The description of the agenda item included the word “action.” Therefore the District did not violate the Open Meeting Law by taking action on this item. We also conclude that the description of the agenda item was adequate to alert the public as to the topic that was scheduled to be discussed. The agenda item alerted the public to the fact that the District would be discussing a proposed multipurpose facility on a particular site. Discussion and action concerning moving to the bidding process on this project was within this agenda topic.

Under this agenda topic, the District also briefly discussed the source of the funds. Although the agenda item did not specifically state that the source of the funds would be discussed, we believe that this was within the designated topic of discussion on the proposed multipurpose facility. We note that the source of the funds was not made a part of the motion on this item. You have alleged that the use of those funds may be improper, but we do not have jurisdiction under the Open Meeting Law to determine whether the District was authorized to use those funds in that manner. Therefore, we find that the District did not violate the Open Meeting Law at its January 6, 2003 meeting, as alleged in your complaint.

The agenda for the January 30, 2003 meeting, also was denoted as an action item. The agenda item was to review bids received and award the successful bid for the multipurpose structure (Crowell Pavilion) at the old basketball court. Under this agenda item, the District discussed the bids received and accepted one of the bids. The District did not take any action under this agenda item with regard to the source of the funds. We believe that the discussion and action taken were clearly on the topic as set forth on the agenda. The agenda topic alerted the public that the District would be reviewing the bids and possibly accepting a bid. Therefore, we find that the District did not violate the Open Meeting Law at its January 30, 2003 meeting, as alleged in your complaint.

Rick Wilson
April 7, 2003
Page 3

CONCLUSION

Based on the foregoing, we conclude that the District did not violate the Open Meeting Law as alleged in your complaint. Therefore, we are closing our file in this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML:mas
cc: Bert Gray, Chairman
Beatty General Improvement District



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ANN WILKINSON
Assistant Attorney General

April 16, 2003

Patricia Marchese
Director
Parks & Community Services
2601 East Sunset Road
Las Vegas, Nevada 89120

Re: Open Meeting Law Complaint
Clark County Sport Shooting Park Advisory Board
OMLO 2003-16/AG File No. 03-013

Dear Ms. Marchese:

Pursuant to Nevada law, the Attorney General's Office has primary jurisdiction for investigating and prosecuting complaints alleging violations of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes (Open Meeting Law). This office received a complaint alleging that the Clark County Sport Shooting Park Advisory Board (Board) violated the Open Meeting Law at its January 21, 2003 meeting, by taking action on items that were not clearly denoted as action items on the agenda. The complaint alleges that the Board took action on an item not listed on the agenda. The complaint also alleges that a member of the public was not allowed to attend a subcommittee meeting.

DISCUSSION

We have reviewed the agenda and audiotapes for the January 21, 2003 meeting of the Board. The agenda contains, among other items, the following items "Call to Order," "Approval of Agenda for January 21, 2003 and Minutes for November 19, 2002," and "Adjournment." Other than the specific description of the agenda items as quoted herein, none of the items on the agenda were listed or denoted as action items. The complaint alleges that the Board took action on these items even though these items were not listed as action items. Under these agenda items, the meeting was called to order and adjourned by the chair, and the minutes of the previous meeting were approved.

The agenda also contained the item "Set Next Meeting Date and Location." Under this agenda item there was an announcement of the next meeting date and location. There was also a statement that subcommittee meetings would be held prior to the next meeting date. It is unclear from the tapes of the meeting whether there was a vote on the meeting dates and location for the Board or for subcommittees.¹

During the public comment section, a member of the public reported that he had been prevented from attending a subcommittee meeting. A member of the Board's staff apologized to the member of the public for this and stated that she was not aware that this had occurred.

ANALYSIS

The Open Meeting Law requires that except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. NRS 241.020(2)(c)(1). The purpose of the clear and complete standard is that the public will receive notice in fact of what is to be discussed by the public body. The agenda must clearly denote the items on which action may be taken. NRS 241.020(2)(c)(2).

The agenda items in question were not denoted as action items. However, the terms used in the agenda items themselves clearly notified the public of the nature of the agenda items. The Board did not take any action on "Call to Order" and "Adjournment," but rather the chair called the meeting to order and adjourned the meeting. Under the agenda item for approval of the previous meeting's minutes, the Board took action to approve the minutes. Even though we believe that the agenda description itself alerted the public that the Board might be taking action to approve the minutes, the Board needs to ensure that it clearly denotes each action item as such on its agenda. One approach that the Board may consider is to list the word "action" next to each item on which action may be taken. This, or a similar approach, will avoid uncertainty about whether the words used in the agenda description clearly denote that item as an action item.

Under the agenda item "Set Next Meeting Date and Location," there was an announcement of the next meeting date and also of subcommittees meetings. It was unclear from the audiotapes whether these dates had been previously set or if there was a general agreement of those in attendance of the dates. Either way, we conclude that the agenda item did alert the public that the Board would be considering and possibly setting a meeting date for its next meeting. The agenda item did not specifically reference subcommittee dates. The Board should include a reference to subcommittee meeting

¹ A portion of the tape of the meeting is blank.

Patricia Marchese
April 16, 2003
Page 3

dates on future agendas if the Board will be setting those dates at its meeting. However, we believe that it was not inappropriate for the Board to alert members of the public present of future subcommittee meeting dates under the circumstances, particularly when a member of the public had complained about being prevented from attending a subcommittee meeting.

Apparently a member of the public was not allowed to attend a subcommittee meeting of the Board. It is unclear as to when this occurred. Staff of the Board acknowledged that this should not have happened. Not allowing a member of the public to attend a public meeting is a violation of the Open Meeting Law. However, we believe that staff will ensure that this does not happen again.

CONCLUSION

Although not specifically included in the complaint, we note that some of the agenda topics should have included a better description in order to meet the standards of NRS 241.020(2). Topics such as "Housekeeping," "Update," and "Discussion Topics/Announcements" are vague and generic. They do not alert the public to the topics scheduled to be discussed under those items. Therefore, we advise the Board to ensure that its agendas contain a clear and complete statement of the topics scheduled to be discussed.

We hope that the Board will implement the suggestions contained in this letter in order to prevent any future violations of the Open Meeting Law. If the Board violates the agenda requirements of the Open Meeting Law in the future, legal action may be warranted.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By:

TINA M. LEISS
Senior Deputy Attorney General
Civil Division
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TML:mas

cc: Carolyn C. Campbell, DDA
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ANN WILKINSON
Assistant Attorney General

April 16, 2003

David Doyle
5170 Tamarack Avenue
Silver Springs, Nevada 89429

Re: Open Meeting Law Complaint
Lyon County School District Board of Trustees
OMLO 2003-17/AG File No. 03-014

Dear Mr. Doyle:

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law, NRS chapter 241. You have alleged that the Lyon County School District Board of Trustees (Board) violated the Open Meeting Law by not approving the agenda for its February 4, 2003 meeting, not providing you with a copy of the audiotape for the February 4, 2003 meeting, and by holding a serial meeting of the Board prior to its February 18, 2003 meeting.

DISCUSSION

I. Approval of the Agenda for the February 4, 2003 Meeting

The agenda for the February 4, 2003 meeting contained an agenda item for approval of the agenda. The agenda also contained the following items: "Interview Candidates to Fill District 6 Board Vacancy" and "Discussion/Action on Appointing Board Member to Fill District 6 Vacancy." The minutes indicate that the Board passed over the agenda item of approval of the agenda and thus took no action on this item. The Board interviewed two candidates during this meeting. The Board continued the interviews until February 18, 2003, because the remaining two candidates were unable to attend the meeting on February 4, 2003.

The Open Meeting Law does not require a public body to consider each and every item on its agenda. In addition, the Open Meeting Law does not require a public body to approve its agenda prior to considering the items contained on the agenda. Therefore, we find that the Board did not violate the Open Meeting Law by failing to approve the agenda for its February 4, 2003 meeting.

II. Audiotape of the February 4, 2003 Meeting

During the February 11, 2003 meeting of the Board, you requested a copy of the tape of the February 4, 2003 meeting. The label on the tape indicated that it was for the open session interviews of February 4, 2003, but the tape was blank. Staff for the Board has indicated that the tape recorder was apparently malfunctioning during the February 4, 11, and 18, 2003 meetings, and thus no portion of these meetings was successfully recorded. Staff has also indicated that because the minutes are prepared from handwritten notes, no one was aware that the tape recorder was malfunctioning until you complained about receiving a blank tape. Therefore, the Board was unable to provide this office with copies of audiotapes for the three meetings in question. Staff has indicated that the problem with the tape recorder has been identified and resolved.

The Open Meeting Law does not require a public body to record its meetings. However, if the public body does elect to record its meetings, then the tapes of the meetings are public record and must be made available for public inspection. NRS 241.035. Because the Board's tape recorder malfunctioned, this meeting was not recorded. This failure to record the meeting is not a violation of the Open Meeting Law and the Board's inability to provide you with a copy of a recording of the meeting is not a violation of the Open Meeting Law.

III. February 18, 2003 Meeting

The agenda for the February 18, 2003 meeting contained the same agenda items as the February 4, 2003 agenda. The Board voted to approve the agenda prior to considering any other agenda item. The Board then conducted the remaining two interviews and voted to appoint one of the candidates to the vacant position on the Board. Four members voted for the successful candidate. You allege that the four members who voted for the successful candidate all met privately with the superintendent prior to the meeting. You allege that one of the members rode to the meeting with the superintendent and the three female members were in conference with the superintendent prior to the meeting. Four members of the Board constitute a quorum.

ANALYSIS AND CONCLUSION

Except as otherwise provided by specific statute, all meetings of public bodies must be open to the public and the public must have been provided with proper notice of the meeting. NRS 241.020. A meeting is defined in NRS 241.015(2) as follows:

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The 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.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering of series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

We conclude that there is insufficient evidence to suggest that the Board held a serial meeting with regard to the appointment to fill the vacancy on the Board. We have found no evidence to show that the superintendent held a meeting with three female Board members immediately prior to the February 18 meeting in order to deliberate towards a decision on the appointment of a Board member. Therefore, we cannot conclude that the Board held a serial meeting on this issue.

David Doyle
April 16, 2003
Page 4

Because we have found that the Board did not violate the Open Meeting Law as alleged in your complaint, we are closing our file.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
Senior Deputy Attorney General
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TML:mas

cc: Don Lattin, Esq.
Lyon County School District Board of Trustees



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ANN WILKINSON
Assistant Attorney General

April 21, 2003

Edwin Armstrong
4779 Dennis Way
Las Vegas, Nevada 89121

Re: Open Meeting Law Complaint
Conservation District of Southern Nevada (CDSN)
OMLO 2003-18/AG File No. 03-017

Dear Mr. Armstrong:

The Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law, NRS chapter 241. You have alleged that the Board of Supervisors of the CDSN (Board) violated the Open Meeting Law at its December 18, 2002 and January 22, 2003 meetings in various respects. You allege that the Board improperly prepared two sets of minutes for the December 18, 2002 meeting. You allege that the Board breached the confidentiality of a terminated employee by discussing personnel issues at the December 18, 2002 meeting. You also allege that the Chair of the Board circumvented the Open Meeting Law by seeking a legal opinion from the Clark County District Attorney regarding the effect of action taken by the Board at its December 18, 2002 meeting, which prompted the Board to change that action at its January 22, 2003 meeting.

We have reviewed the agenda and minutes for both Board meetings. We have also reviewed the transcript of the relevant portion of the December 18, 2002 Board meeting, as well as other explanatory materials provided by the Board.

STATEMENT OF FACTS

The CDSN was organized pursuant to the provisions of NRS chapter 548. CDSN is governed by the Board which is composed of elected and appointed supervisors. NRS 548.280. The Board has apparently had a past practice of designating volunteers as

“associate members.” The associate members were not members of the Board.

At its December 18, 2002 meeting, the Board considered and took action on the following agenda item: “Consider Additional Policy for Appointing Associate Members (Discussion & Possible Action Item).” Under this agenda item, the Board discussed proposed revisions to the policy concerning the appointment of associate members. Three associate members were present at the meeting and expressed concerns about rules and regulations governing associate members and the treatment of the associate members by the Board and CDSN staff. Included in this discussion were comments referencing a terminated employee of CDSN and threats and accusations that had been made by that terminated employee. The discussions concerning the terminated employee were initiated by an associate member, not by a Board member. A Board member discussed circumstances concerning the terminated employee in the context of responding to concerns of the associate members regarding staff and Board member responsiveness to the associate members in providing them with materials and information.

After much discussion on this agenda item by the Board and the associate members present, the Board voted, 3—2, to form a committee to look at associate membership, and that in the interim, until March 2003, the authorities of associate membership would be suspended in lieu of termination of that status.

After December 18, 2002, the Chair of the Board informed the Deputy District Attorney assigned as counsel to the Board of the action taken regarding the issue of associate membership. Based on discussions with the attorney, the Chair requested a legal opinion from the attorney on whether the Board has the authority to designate associate members. Prior to the January 22, 2003 meeting of the Board, the District Attorney opined that the Board should not designate volunteers as associate members.

The agenda for the January 22, 2003 meeting of the Board contained the following action item: “Committee Report regarding Status of Associate Board Members” Under this agenda item, the chair of the committee relayed the District Attorney’s opinion to the Board. The Board voted to abolish the practice of appointing associate members.

The Board prepared minutes of the December 18, 2002 meeting. The Board also had a verbatim transcript prepared, apparently from the voice recording of the meeting, of certain agenda items from that meeting.

ANALYSIS

I. Minutes of the December 18, 2002 Board Meeting

NRS 241.035(1) provides as follows:

1. Each public body shall keep written minutes of each of its meetings, including:

- (a) The date, time and place of the meeting.
- (b) Those members of the body who were present and those who were absent.
- (c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.
- (d) The substance of remarks made by any member of the general public who addresses the body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.
- (e) Any other information which any member of the body requests to be included or reflected in the minutes.

The Board prepared minutes of the December 18, 2002 meeting pursuant to NRS 241.035(1). These minutes were entitled "PROCEEDINGS." Although not required by the Open Meeting Law, the Board made a voice recording of the meeting. Pursuant to NRS 241.035(4), the voice recording must be made available for public inspection.

The Board prepared a verbatim transcript of certain agenda items from the voice recording. The two documents differ in that the minutes contain, among other things, the substance of all matters proposed, discussed, or decided whereas the verbatim transcript includes all statements made.

The Open Meeting Law does not preclude a public body from preparing a transcript of the meeting in addition to the required minutes. Therefore, we find that the Board did not violate the Open Meeting Law by preparing a verbatim transcript of a portion of the December 18, 2002 meeting, in addition to minutes of that meeting.

II. Discussion of Terminated Employee

NRS 241.033(1) provides that a "public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting." NRS 241.030(3)(d) provides that nothing in the Open Meeting Law requires that any meeting be closed to the public.

You have alleged that the Board breached the confidentiality of a terminated employee by referring to him by name in the meeting. You suggest that the open meeting should have been adjourned so that the Board could discuss the personnel issue in private. The only Open Meeting Law issue that we discern from your allegation is whether the Board held a meeting to consider the character, alleged misconduct, or professional competence of this person without providing that person notice pursuant to NRS 241.033.

The Board did not initiate the discussion of the terminated employee. All references to the terminated employee by Board members were made in response to concerns raised by associate members. All references by Board members were concerning the topic of policies relating to associate members and responding to complaints from associate members that staff and Board members were not responsive to the associate members. You made many of the comments concerning the terminated employee.

We do not believe that the discussions concerning the terminated employee amounted to a meeting to consider the character, professional competence, or alleged misconduct of the terminated employee. Although references were made to the fact that he had been terminated, had made threats of litigation, and allegations of CDSN misconduct, no consideration of his character, competence, or alleged misconduct occurred by the Board. Therefore, the Board did not violate the Open Meeting Law by not notifying this person of the meeting pursuant to NRS 241.033. In addition, we note that it was non-members of the Board that engaged in most of this discussion.

In response to your concerns of these discussions taking place in an open meeting, the Open Meeting Law does not require that any meeting be closed to the public. Because the Board did not consider this person's character, competence or alleged misconduct, the Board did not have the authority to hold the discussion in closed session nor was the topic agendaized appropriately for a closed session. Therefore, we conclude that the Board did not violate the Open Meeting Law by not closing the discussion under this agenda item to the public.

III. District Attorney Opinion

Your last complaint concerns the request of the Chair for an opinion from the District Attorney regarding the action taken by the Board at the December 18, 2002 meeting. Based on that opinion, the Board voted to take a different action at the January 22, 2003 meeting. You allege that the Chair's request violated the intent of the Open Meeting Law.

The authority of the Chair to request a legal opinion from the District Attorney is beyond the scope of the Open Meeting Law. However, we note that neither the Chair nor staff of CDSN acted on that opinion until the Board voted on the issue at a public meeting. Therefore, we conclude that the Chair did not violate the Open Meeting Law by requesting a legal opinion from the District Attorney.

Edwin Armstrong
April 21, 2003
Page 5

CONCLUSION

We find that the Board did not violate the Open Meeting Law as alleged in your complaint. Therefore, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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Senior Deputy Attorney General
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TML:mas
cc: Judy Laws, Chair
Clifford M. Jeffers, Deputy District Attorney



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ANN WILKINSON
Assistant Attorney General

April 21, 2003

Tom Ray
General Counsel
University and Community College System of Nevada
2601 Enterprise Road
Reno, Nevada 89512

Re: Open Meeting Law Complaint
Community College of Southern Nevada, Faculty Senate
OMLO 2003-19/AG File Nos. 03-018 and 03-021

Dear Mr. Ray:

This office has primary jurisdiction to investigate and prosecute alleged violations of Nevada's Open Meeting Law, NRS chapter 241. We have received two complaints regarding the application of the Open Meeting Law to the Faculty Senate at the Community College of Southern Nevada. It is our understanding that the Faculty Senate has not been conducting its meetings in accordance with the Open Meeting Law. Therefore, we must initially determine whether the Faculty Senate is a public body within the meaning of the Open Meeting Law.

STATEMENT OF FACTS

The University and Community College System of Nevada (UCCSN or System) is a system of eight institutions, consisting of two universities, a research institute, a State college and four community colleges.¹ The UCCSN is governed by the Board of Regents. The primary governing and organizational document for the UCCSN is the UCCSN Code (Code). Section 1.3 of the Code states that: "The [UCCSN] Code shall establish the primary organizational structure of the System and the basic personnel policies for its faculty." Pursuant to the Code, each UCCSN institution must adopt bylaws which set forth

¹ This statement of facts is based upon a review of the Code and materials provided by the System.

the institution's organizational structure and personnel policies. See §1.3.4 of the Code.

The Code also provides that members of the faculty in each institution shall be represented by a senate.

All members of the faculty of a member institution shall be represented in each such institution in which they are employed by an entity to be known as the "senate," or by another entity or entities which may be established in the institutional bylaws, and which shall be organized in conformity with institutional bylaws. . . .

Code § 1.4.7.

Generally speaking, the primary purpose of the Faculty Senate is to represent the faculty on issues of interest to the faculty within their respective institutions and at the System level. "Under procedures which may be established by the institutional bylaws, the faculty may recommend general policy on matters of faculty welfare, faculty rights under the [UCCSN] Code and faculty involvement in the University of Nevada's primary missions." Code § 1.4.6.

The recommendations of the Faculty Senate regarding faculty issues are made to the institution President. If the recommendation relates to an issue that requires approval of the Board of Regents, the recommendation is made to the institution President. The President would make a recommendation to the Chancellor who then makes a recommendation to the Board of Regents.

Actions of the senates may be considered by the faculty in accordance with institutional bylaws. When applicable, the recommendations of the senates, or of the faculty acting on senate actions, concerning general policy on matters of faculty welfare, faculty rights under the [UCCSN] Code and faculty involvement in the University of Nevada's primary missions shall be transmitted to the presidents for decision or, if the Board of Regents' approval is needed, for recommendations from the presidents through the chancellor to the Board of Regents for the Board's decision.

Code § 1.4.8.

Faculty senates receive some support from their institutions by providing support staff and a small amount for an operating budget. The cost associated with this support is

a part of the institutions' state supported budget.

Faculty senates are not given any authority to act on behalf of the board or their institutions. They do not establish any regulations regarding programs and have no governmental authority to bind the board of regents or their institution in any manner. Faculty senates have no explicit policy-making or advisory power regarding higher education. Organization of the faculty senates is left entirely to the faculty.

ANALYSIS

The Open Meeting Law only applies to public bodies. NRS 241.015(3) defines a public body as:

[A]ny administrative, advisory, executive or legislative body of the state or a local government 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 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. "Public body" does not include the legislature of the State of Nevada.

The statute requires two elements in order for an entity to be considered a public body. First, it must be an "administrative, advisory, executive or legislative body of the state or a local government." This means that the entity must (1) owe its existence to and have some relationship with a state or local government, (2) be organized to act in an administrative, advisory, executive or legislative capacity, and (3) must perform a government function. OPEN MEETING LAW MANUAL, § 3.01 (9th ed. 2001), AG File No. 00-030 (April 12, 2001). Second, it must expend or disburse or be supported in whole or in part by tax revenue, advise or make recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue. *Id.*

In order for an entity to be a public body, each of the above requirements must be satisfied. For the purposes of this analysis, we will first determine whether the Faculty Senate is organized to act in an administrative, advisory, executive, or legislative capacity of a state or local government and whether it performs a government function.

The Board of Regents provided for the establishment of faculty senates in the Code.

However, neither the Board of Regents nor individual institutions control or govern faculty senates. Faculty senates are governed in accordance with by-laws. Faculty senates do not have the authority to bind the System or the institution. Faculty senates do not have the authority to formulate policy on behalf of the System or the institution. Faculty senates are not charged with the duty to advise the Board of Regents regarding higher education policy or any government function. Faculty senates are not charged with any governmental authority.

The Code does give faculty senates the ability to make recommendations concerning faculty welfare, faculty rights, and faculty involvement in the primary mission to the president of the institution. This recommendation may ultimately be directed to the Board of Regents if the recommendation would require action by the Board of Regents. We do not believe that this provision in the Code makes the Faculty Senate advisory to the Board of Regents. This provision simply provides a mechanism for the faculty to bring items of interest to the faculty to the attention of the appropriate decision maker. This provision does not require the Faculty Senate to advise the Board of Regents on any issues but rather allows the Faculty Senate to raise faculty-related issues through the appropriate channels. Therefore, we conclude that the Faculty Senate is not an administrative, advisory, executive or legislative body of the state or local government but rather is in the nature of an association of faculty organized for the purpose of promoting issues of interest to faculty, not government. The Faculty Senate does not perform a government function but rather promotes the interests of the faculty.

Because we have found that the Faculty Senate is not an administrative, advisory, executive, or legislative body of the state or local government and does not perform a government function, we do not need to consider the other necessary requirements. However, we do note that our conclusion is further supported by other provisions in the Open Meeting Law.

NRS 241.038 requires the Board of Regents to establish requirements for student governments equivalent to the provisions of the Open Meeting Law. In addition, University Foundations are specifically included within the definition of public body. However, the Open Meeting Law does not include a similar provision for faculty senates, which are comparable to the entities specifically referenced. We believe that had the Legislature intended the Open Meeting Law to apply to faculty senates, it would have expressly so provided.

We also note that decisions from other jurisdictions are not helpful in our analysis. The functions of faculty senates vary widely from jurisdiction to jurisdiction. Whether a faculty senate is subject to a state's open meeting law depends on the duties of the faculty senate and the particular law of that state. Some faculty senates have broad authority to govern their institutions and others have powers to make decisions or recommendations

Tom Ray, Esq.
April 21, 2003
Page 5

regarding faculty. For instance, the same state may subject one faculty senate to its open meeting law but not another based on the differing duties of the faculty senates at different institutions. Compare, *Cathcart v. Andersen*, 530 P.2d 313 (Wash. 1974) to *Refai v. Central Washington University*, 742 P.2d 137 (Wash. App. 1987). Therefore, the fact that faculty senates in other states may be subject to open meeting laws has no bearing on our analysis.

CONCLUSION

Based on the foregoing, we conclude that the Faculty Senate of the Community College of Southern Nevada is not a public body within the meaning of the Open Meeting Law. Therefore, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
Senior Deputy Attorney General
Civil Division
(775) 684-1203

TML:mas
cc: Jennifer Nelson
Dr. Robb Bay



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ANN WILKINSON
Assistant Attorney General

April 21, 2003

Susan Wonderly, Director
Pahrump Community Library
701 East Street
Pahrump, Nevada 89048

Re: Open Meeting Law Complaint
Pahrump Community Library Board
OMLO 2003-20/AG File No. 03-020

Dear Ms. Wonderly:

This office has primary jurisdiction to investigate and prosecute alleged violations of Nevada's Open Meeting Law, NRS chapter 241. This office has received a complaint alleging that the Pahrump Community Library Board (Board) violated the Open Meeting Law by failing to provide copies of agendas and minutes upon request.

DISCUSSION

On December 15, 2002, a member of the public contacted the Pahrump Community Library (Library) and requested a copy of the agenda for the next Board meeting, and a copy of the minutes for the last Board meeting. He was informed verbally that the Board did not provide or mail out copies of the agenda. He asked if he could receive an agenda if he provided a self addressed envelope. He was told that he still would not be provided with an agenda.

The next day, this same member of the public went to the Library to request a copy of the agenda and minutes. The request was denied.

ANALYSIS AND CONCLUSION

NRS 241.020(3)(b) provides that a public body must mail a copy of the notice of a

Susan Wonderly
April 21, 2003
Page 2

meeting to any person who has requested notice in the same manner in which notice is required to be mailed to a member of the public body. The notice must be delivered to the postal service not later than 9 a.m. of the third working day before the meeting.

NRS 241.020(5)(a) provides that, upon any request, a public body shall provide at least one copy of an agenda for a public meeting.

NRS 241.035(2) provides that minutes of public meetings are public records and must be made available for public inspection within 30 working days after the adjournment of the meeting.

Refusal to place a person on the mailing list for notice of public meetings after a valid request is a violation of the Open Meeting Law. Refusal to provide a copy of an agenda upon a valid request by a member of the public is a violation of the Open Meeting Law. Refusal to allow inspection of the minutes of the meeting, which must be available within 30 working days of the meeting, is a violation of the Open Meeting Law.

We will close our file on this matter if the Board provides evidence of compliance with above-cited provisions in relation to this person's requests. However, we hereby warn the Board that any future refusal of the Board to provide notice of its meetings pursuant to NRS 241.020(3)(b), refusal to provide a copy of an agenda pursuant to NRS 241.020(5), or refusal to allow public inspection of minutes pursuant to NRS 241.035(2), may result in legal action to ensure the Board's compliance with the Open Meeting Law.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By:

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ANN WILKINSON
Assistant Attorney General

May 21, 2003

Sara Goldman, Esq.
Office of the General Counsel
Freedom Forum of New York City
45 West 21st Street, Fifth Floor
New York, New York 10010

Re: Open Meeting Law Complaint
Nevada Department of Corrections Psychological Review Panel
OMLO 2003-21/AG File No. 03-019

Dear Ms. Goldman:

The Attorney General has primary jurisdiction to investigate and prosecute alleged violations of Nevada's Open Meeting Law, NRS chapter 241. We have received Mr. Frank Rucker's complaint alleging numerous violations of the Open Meeting Law by the Nevada Department of Corrections Psychological Review Panel (Panel) during its meetings on February 21 and 24, 2003. We must first determine whether the Panel is subject to the Open Meeting Law.

DISCUSSION

On September 18, 1998, a deputy attorney general authored a memorandum regarding whether the Panel fits within the definition of public body contained in NRS 241.015(3). This memorandum was published as an Open Meeting Law Opinion as OMLO 98-47 (September 18, 1998). The conclusion of the memorandum was that the Panel was a public body as defined in NRS 241.015(3). The memorandum went on to state that the author could not find any statutory exception exempting either the panel or its functions from the Open Meeting Law. We believe that this memorandum failed to analyze the application of NRS 241.030(3)(a) to the Panel.

ANALYSIS

NRS 241.030(3)(a) provides that the Open Meeting Law does not apply to judicial proceedings. The sole function of the Panel is to make certifications before a prisoner may be released on parole. The Panel, like the Parole Board when it conducts parole hearings, acts as an arm of the sentencing court. *Sellers v. Proconier*, 641 F.2d 1295, 1302 n.15 (9th Cir. 1981), *cert. denied*, 454 U.S. 1102 (1982). Because the Panel functions as an arm of the judiciary, we believe that its proceedings are judicial proceedings within the meaning of NRS 241.030(3)(a) and thus are not subject to the requirements of the Open Meeting Law. Even though the Panel may fall within the definition of a public body, its hearings fall within the exemption for judicial proceedings because the Panel is an arm of the sentencing court.

Our conclusion is consistent with a recent district court decision from the Sixth Judicial District in and for the County of Pershing, Case No. PI 03 375. In that case, the court held that the Panel's hearings are judicial proceedings exempted from the Open Meeting Law.

We note that in 1983, the Legislature provided that parole hearings be open to the public. See NRS 213.130(3), 1 Statutes of the State of Nevada, 62nd Session 1983, chapter 491 (S.B. 404) at p. 1332. Therefore, parole hearings are open to the public by operation of NRS 213.130(3) and not by application of the Open Meeting Law.

CONCLUSION

For the above-stated reasons, we find that the Panel is exempt from the Open Meeting Law pursuant to NRS 241.030(3)(a), and we hereby specifically reverse our opinion in OMLO 98-47 (September 18, 1998). Therefore, it is unnecessary to consider the specific allegations concerning alleged violations of the Open Meeting Law by the Panel.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By:

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Sara Goldman, Esq.
May 21, 2003
Page 3

TML:mas
cc: Nancy Derlashon, Dept. of Corrections



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ANN WILKINSON
Assistant Attorney General

June 2, 2003

Richard Thornley, Esq.
Post Office Box 39
Carson City, Nevada 89702

Re: Open Meeting Law Complaint
Indian Hills General Improvement District Board of Trustees
OMLO 2003-22/AG File No. 03-023

Dear Mr. Thornley:

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law, NRS chapter 241. We received a complaint from you alleging that the Indian Hills General Improvement District Board of Trustees (Board) held private meetings prior to its January and March meetings. Your complaint also alleges that the Board failed to include the comments of a member of the public in the minutes for the January 21, 2003 meeting. You have also included agendas for seven meetings of the Board prior to the January 21, 2003 meeting.

We are unable to address your complaint to the extent that you are alleging violations of the Open Meeting Law at Board meetings prior to the January 21, 2003 meeting. The statutory time period for our jurisdiction regarding these meetings expired prior to our receipt of your complaint.

In our investigation, we interviewed the Board's attorney, general manager, chairman, and three other trustees of the Board. We reviewed the audiotapes for the January 21, 2003 and March 25, 2003 meetings. We have also reviewed all written documentation submitted to us by you and by the Board.

FACTS

You have alleged that the Board held secret meetings regarding placing a construction project out to bid and awarding the bid for that project. You allege that the

Richard Thornley, Esq.
June 2, 2003
Page 2

Board held secret meetings based on the fact that the Board did not discuss these items prior to voting on these items. You also allege that the Board did not include the comments of a member of the public in the minutes of the January 21, 2003 meeting.

At its January 21, 2003 meeting, the Board granted approval for the architect to advertise for bids on the construction project in question. During this agenda item, the general manager explained the agenda item. The Board had no questions regarding the agenda item. One member of the Board commented that the project was going out to bid to see what it would cost to build.

A member of the public commented on this item during the public comment section of the agenda, which was held prior to the specific agenda item. This member of the public also had prepared written comments on this agenda item which she asked to be included in the minutes of the meeting. These written comments were attached to the minutes of the meeting of the Board.

At its March 25, 2003 meeting of the Board, the Board had an agenda item to select a contractor for the construction project and to award the contract for that project. During this agenda item, the general manager set forth the history of the project, including the number of times the project had been discussed at public meetings of the Board, and the financing of the project. Two members of the Board made statements regarding the history of the project and the length of time that it had been under consideration by the Board. The Board heard extensive public comment on this agenda item, including comments from former Board members explaining past considerations of the Board on this project. The Board held discussions with staff concerning some of the concerns raised by the public. The Board voted to award the contract for the construction project. The vote was unanimous of the four trustees present.

We interviewed each of the four trustees present at the March meeting. Each trustee stated that he or she was unaware of any meetings or discussions among the trustees regarding the project in question outside of an open, public meeting. We received documentation that indicated that this project had been under consideration by the Board for a number of years and had been discussed many times at public meetings of the Board.

ANALYSIS

Except as otherwise provided by specific statute, all meetings of public bodies must be open to the public and the public must have been provided with proper notice of the meeting. NRS 241.020. A meeting is defined in NRS 241.015(2) as follows:

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

Richard Thornley, Esq.
June 2, 2003
Page 3

(1) The 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.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering of series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

Three trustees constitute a quorum of the Board. NRS 241.015(4). We have found no evidence that suggests that three trustees, either actually or collectively, met to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power outside of an open, public meeting. Staff and trustees of the Board have stated that no meetings of the Board, actually or collectively, took place outside of an open, public meeting. The lack of discussion prior to the votes in January and March on this project does not necessarily lead to the conclusion that secret meetings occurred given the facts that the Board had an extensive history with this project, had previously discussed the project, and the general manager gave presentations to the Board regarding the project prior to the votes in question. Therefore, because we have found no evidence of secret meetings of the Board, we find no violation of the Open Meeting Law with regard to these allegations in the complaint.

NRS 241.035(1) sets forth what must be included in the minutes of a public body. NRS 241.035(1)(d) provides that the minutes must include the "substance of remarks made by any member of the general public who addresses the body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his

Richard Thornley, Esq.
June 2, 2003
Page 4

prepared remarks if he submits a copy for inclusion.”

At the January meeting, a member of the public submitted written remarks to the Board for inclusion in the minutes of that meeting. The minutes of the January meeting submitted to this office include a copy of that written submission. However, under the agenda item of public comments, the minutes state that there were no public comments. Because the minutes include a copy of the written submission, we find no violation of the Open Meeting Law in this regard. We recognize that the minutes may have been somewhat confusing because they stated that there was no public comment during the public comment section even though there was a written submission of public comment for a particular agenda item. We do not believe that this amounts to a violation of the requirements for minutes under the Open Meeting Law because the written comments were included with the minutes.

CONCLUSION

For the above-stated reasons, we find no violation of the Open Meeting Law as alleged in the complaint. Because we find no violation, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
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TML:mas
cc: Indian Hills General Improvement District
Board of Trustees



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ANN WILKINSON
Assistant Attorney General

June 24, 2003

Douglas Miller
General Manager
Alamo Power District
Post Office Box 189
Alamo, Nevada 89001

Re: Open Meeting Law Complaint
Alamo Power District Board
OMLO 2003-23/AG File No. 03-025

Dear Mr. Miller:

This office has primary jurisdiction to investigate and prosecute alleged violations of Nevada's Open Meeting Law, NRS chapter 241. We have received a complaint alleging that the Alamo Power District Board (Board) violated the agenda requirements of the Open Meeting Law at its meetings on February 25, 2003, and March 18, 2003. The complaint also alleges that the Board's minutes of the March 18, 2003 meeting, do not meet the requirements of the Open Meeting Law. The complaint alleges that the Board's procedure of discussing complaints concerning the Alamo Power District (District) at a public meeting may also be in violation of the individual notice required to be given to any person whose character, competence, or alleged misconduct will be discussed at a meeting. We have reviewed the agendas, audiotapes, and minutes of the meetings in question.

FACTS

At the February 25, 2003 meeting, the Board had an agenda item entitled "MONTHLY BILLS REVIEWED AND APPROVED." Under this agenda item, the Board had a discussion regarding the payment of \$800 per month towards certain employees' health insurance. It appears that the discussion was started because these payments were monthly bills to be approved. A Board member inquired about the payments, and a discussion ensued regarding the appropriate method in which to make the payments. The Board members consulted previous minutes regarding the prior decision that was

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made regarding the insurance allocation. One Board member stated that she felt the prior motion had no effect if it was against appropriate accounting procedures and principles. It was generally agreed that the Board needed to have financial and legal counsel present to resolve the issue of the appropriate method in which to make the payments. The only action taken on this agenda item was to approve and pay the bills.

At the March 18, 2003 meeting, the Board placed this item on the agenda as follows: "EMPLOYEE INSURANCE ALLOCATION." At this meeting, the Board again discussed the issue of the appropriate method in which to pay the insurance allocations. The Board discussed various alternatives and received the advice of their financial advisor through the district manager. After discussion, the Board voted to pay additional insurance allocations for each employee for the months of April and May and to revisit the issue later.

The March 18, 2003 agenda also contained an item entitled "MANAGERS REPORT." This appears to be a standard agenda item for the Board. Under this agenda item, the Board's district manager reported various administrative items to the Board, including hours worked by employees, line inspections, service estimates, pending service, and delinquencies in payment. The agenda for the March 18, 2003 meeting did not include a period for public comment. However, the minutes for this meeting reflect that the Board realized that public comment was left off of the agenda. The Board allowed public comment. It is unclear from the minutes and the tapes of the meeting as to when the item of manager's report concluded and the public comment section began. Some of the discussion reflected in the minutes as public comment appeared to be under the agenda item of manager's report on the tape. In addition, it appears from the tape of the meeting that the Board includes inquiries made of Board members outside of the meeting as public comment and discusses those inquiries during public comment even if no member of the public brings the issue forward during the meeting.

During the March 18, 2003 meeting, during either the public comment section or the manager's report, the Board held a discussion about the appropriate manner in which to address public inquiries and complaints regarding the District made to Board members outside of the Board meeting. The Board president felt these inquiries and complaints should be addressed at Board meetings. During this discussion, the Board did not address the specifics of any particular complaint and did not consider the character, competence, or alleged misconduct of any person.

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ANALYSIS

1. Agenda Requirements

The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. NRS 241.020(2)(c)(1). The purpose of the clear and complete standard is so that the public will know in advance when an item of interest to the public will be discussed by the public body. *Sandoval v. Board of Regents*, 119 Nev. Adv. Op. 19 (May 2, 2003).

The agenda item of "MONTHLY BILLS REVIEWED AND APPROVED" did not alert the public that a discussion regarding the employee insurance allocation would take place at the meeting. The employee insurance allocation was an item of special interest to the public body and members of the public and should have been specifically set forth as an item on the agenda for consideration. We do not believe that it was reasonably anticipated by the public body in advance that the topic of the employee insurance allocation would arise during the course of this agenda item, and therefore we do not believe that the public body intentionally drafted its agenda in a manner inconsistent with the Open Meeting Law.

Although we find that the agenda item did not alert the public to the discussion regarding the employee insurance allocation, we find that any harm due to this violation of the Open Meeting Law has already been cured by the public body. The Board did not take any action regarding the employee insurance allocation during the February meeting other than to approve the payment along with all of the other bills, which was consistent with a prior action of the Board on this matter. The Board then directed that the item be specifically included on the next agenda of the Board for discussion and action. The March agenda included the agenda topic of employee insurance allocation and the Board thoroughly discussed this issue before taking action. Any interested member of the public was alerted to the discussion regarding the employee insurance allocation at the March meeting and was able to observe the consideration and action of this item by the Board. Therefore, we do not believe that any further action is necessary.

The complaint also alleges that the agenda topic of "Managers Report" is too generic to alert the public as to the topics that will be considered at the meeting. We have previously opined that generic items such as "report" should be used sparingly and carefully and actual discussions under these agenda topics should be tightly controlled. Nevada Open Meeting Law Manual, § 7.02 (9TH ed. 2001). Matters of public interest should be rescheduled for consideration at later meetings. *Id.*

The minutes and the audiotapes for the February and March meetings indicate that the agenda item of "managers report" is used as a way for the manager of the

Douglas Miller
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District to inform the Board of the administrative activities which have occurred during the previous month. It appears that the intent of this agenda item is for general information and not for the Board to discuss or act on any of the issues reported to the Board. For instance, the report of the general manager during these meetings included statements regarding employees' activities regarding line inspections, pending services, and power outages. None of the items reported under this topic appear to be issues which require Board consideration or approval and none appear to be of specific public interest. Therefore, we do not find that the use of the agenda topic "managers report" in the February or March Board meetings was a violation of the Open Meeting Law. However, we do caution the Board to be mindful that issues for Board consideration or action of which are of specific public interest need to be specifically set forth on the agenda.

2. Notice to Specific Persons

The complaint alleges that the procedure of the Board to consider consumer complaints and inquiries at Board meetings may violate NRS 241.033(1). NRS 241.033(1) provides that a public body shall not hold a public meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting at least 5 working days before the meeting if delivered personally, or 21 working days if sent by certified mail.

During the public comment section of the March meeting, the Board chair stated that she would like to consider consumer complaints and inquiries which have been directed to individual Board members, outside of a Board meeting, during Board meetings. During the March meeting, the Board did not discuss the character, professional competence, alleged misconduct, or mental or physical health of any individual. Therefore, we find no violation of NRS 241.033(1) at the March meeting of the Board. However, we note that the public comment section is intended to be devoted to comments by the general public during the meeting. NRS 241.020(2)(c)(3). It appears that the Board treats its public comment section as a time for Board members to raise issues of concern to Board members in addition to issues brought up by members of the public in attendance at the meeting. We suggest that in the future, if Board members have issues that they would like to raise, these issues be specifically placed on the agenda and not brought up by Board members during the public comment section of the meeting.

3. Minutes

The complaint alleges that the minutes of the Board are not always factual representations of what occurred at the Board meeting. The Open Meeting Law sets forth the requirements for minutes of meetings of public bodies.

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NRS 241.035(1) provides as follows:

1. Each public body shall keep written minutes of each of its meetings, including:

(a) The date, time and place of the meeting.

(b) Those member of the body who were present and those who were absent.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) The substance of remarks made by any member of the general public who addresses the body if he requests that the minutes reflect his remarks or, if he has prepared written remarks, a copy of his prepared remarks if he submits a copy for inclusion.

(e) Any other information which any member of the body requests to be included or reflected in the minutes.

After reviewing the minutes of the February and March meetings and the audiotapes of those meetings, we conclude that the minutes of these meetings comply with the provisions of NRS 241.035(1). Therefore, we do not find a violation of the Open Meeting Law with respect to the minutes of these meetings.

The complaint also alleges that some discussion during the March meeting was attributed to public comment rather than to the "MANAGERS REPORT" in the minutes, even though it is unclear on the audiotape to which agenda item certain discussions pertained. Although it is unclear which agenda item the Board was actually considering at the end of the March meeting, the minutes reflect the discussions which took place at the meeting. The confusion as to the appropriate agenda item for these discussions stems from the fact that at the end of the meeting the discussions were not well focused, at times a number of discussions were taking place at the same time, and some members of the Board and public were on one agenda item while others were on another agenda item. It appears that the person who prepared the minutes placed the discussions under the appropriate agenda items even though the Board had not necessarily made a clear move from one item to another. Because the minutes reflect the substance of the discussion which took place, we do not find a violation of the Open Meeting Law in this regard.

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CONCLUSION

We find that the Alamo Power District Board violated the agenda requirements of the Open Meeting Law at its February 25, 2003 meeting because the agenda did not contain a clear and complete statement of the topic of employee insurance allocation. However, the Board cured this violation prior to the complaint by specifically including this topic on its next agenda. Therefore, no further action is necessary. We find that the Board did not otherwise violate the Open Meeting Law as alleged in the complaint at its February 25, 2003, and March 18, 2003 meetings.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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cc: Susan Lewis



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ANN WILKINSON
Assistant Attorney General

August 4, 2003

Sam Dehne
297 Smithridge
Reno, Nevada 89502

Re: Open Meeting Law Complaint
Reno City Council
OMLO 2003-25/AG File No. 03-026

Dear Mr. Dehne:

This office has received a complaint from you alleging violations of the Open Meeting Law by the Reno City Council (Council) at its meetings on April 9 and April 23, 2003. You allege that the Council's consent agenda does not comply with the Open Meeting Law because the descriptions of the items on the consent agenda are inadequate. However, you have failed to allege any specific item on either consent agenda which you believe does not give the public adequate notice of the topic of the agenda item. You also allege that the consent agenda procedure does not allow for sufficient public deliberation or public comment. We have reviewed the agendas and videotapes for these meetings. We have also discussed the consent agenda procedure with the Council's attorney.

FACTS

The agendas for the April 9 and April 23, 2003 meetings of the Council, each contain consent agendas. On each agenda is a notice for a caucus meeting to be held before the Council meeting for the review of agenda items, and if requested by the Council, brief staff presentation of issues including review of background information and questions to be answered at the Council meeting. This caucus meeting is open to the public.

During the consent agenda portions of the meetings in question, public comment

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was allowed. It appears from review of the meetings, as you also state in your letter, the Council allowed you to provide comment on consent agenda items. Because you do not allege any specific agenda items which you believe failed to give adequate notice to the public of the topic of the item, we are unable to specifically address this allegation. However, during the meeting of April 9, 2003, you did complain to the Council that item 5H was not adequately described because the common name of the building in question was not included in the agenda topic. Item 5H for the April 9, 2003 meeting was described as follows: "Staff Report: Approve Bid Award – Phase 1, Asbestos Abatement of the 1 East 1st Street Building, Contract No. 1168."

ANALYSIS

The Open Meeting Law does not specifically address the use of consent agendas by a public body. A consent portion of an agenda is treated as any other portion of an agenda by the Open Meeting Law.

Except as otherwise provided by specific statute, all meetings of a public body must be open to the public. NRS 241.020(1). A meeting includes a gathering of a quorum of the public body 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(2)(a)(1). The agenda must contain a clear and complete statement of the topics scheduled to be considered, including items on the consent agenda. NRS 241.020(2)(c)(1). The agenda for the meeting must contain a period for public comment. NRS 241.020(2)(c)(3). The Open Meeting Law does not require that the public body engage in a certain amount of deliberation prior to taking action on a matter, nor does the Open Meeting Law require that each agenda item be acted on separately.

Consent agendas are not uncommon at meetings of public bodies. Consent agendas are contained within a larger agenda for a meeting of a public body. Generally, the items on a consent agenda are voted on as a group with little or no discussion prior to the vote. Items may be pulled from the consent agenda if a member of the public body believes that the item requires separate consideration.

We have found no evidence that the Council's use of a consent agenda for its April 9 and April 23, 2003 meetings violated the provisions of the Open Meeting Law. While you have in general alleged that the items are not adequately described, without specific allegations, we cannot find that any of the agenda items was not adequately described on either consent agenda. In addition, we also find that item 5H on the April 9, 2003 meeting was adequately described to put the public on notice of the topic scheduled to be considered. You complained to the Council that the agenda item did not contain the common name of the building. However, the agenda item contained the specific address of the building in question. We believe that including the address of

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the building is adequate to put the public on notice of the topic which was scheduled to be considered.

We note that the Council allowed you to comment on specific items on the consent agenda and the agenda for the meeting did include a period devoted to comments by the public. We also note that the consent agenda items generally include agenda support material which is available to the public in accordance with NRS 241.020(5)(c). The public could also attend the caucus meeting held prior to the main meeting. Therefore, we do not believe that the public did not have adequate notice of, or input on, the items contained on the consent agenda.

CONCLUSION

We conclude that the Council did not violate the requirements of the Open Meeting Law through its use of the consent agenda at its April 9 and April 23, 2003 meetings. Because we find no violation of the Open Meeting Law as alleged in your complaint, we are closing our file in this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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cc: Reno City Council



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ANN WILKINSON
Assistant Attorney General

August 4, 2003

Luther DuPree
Nevada Leadership Academy
700 Greenbrae Drive
Sparks, Nevada 89431

Re: Open Meeting Law Complaint
Nevada Leadership Academy
OMLO 2003-26/AG File No. 03-027

Dear Mr. DuPree:

This office has primary jurisdiction to investigate and prosecute alleged violations of the Nevada Open Meeting Law, NRS chapter 241. This office received a complaint alleging that the Nevada Leadership Academy (NLA) violated the Open Meeting Law by failing to provide agendas to the Washoe County School District (WCSD) upon request and taking action on an item not clearly denoted as an action item.

FACTS

WCSD sent a memorandum to the NLA on February 28, 2003, requesting agendas for meetings of the NLA. NLA denied receiving a copy of this memorandum. The memorandum was resent by WCSD on April 9, 2003, by certified mail and facsimile. WCSD received copies of the agendas for the March 27, 2003, and April 10, 2003 meetings after the meetings were held. WCSD did not receive a copy of the agenda for the May meeting.

WCSD alleges that NLA took action on item C under the "Information only, No action" portion of the agenda. Item C is "A.A.L.A. Report." WCSD alleges that the action taken under this item was for the "Board to meet on April 10 at 6:30 p.m. to discuss NLA's proposed budget." The minutes provided to this office from the NLA show that the action for the Board to meet on April 10 to discuss the proposed budget came under Item B under the heading "Action items." Confusion as to which item that action was taken under may

have resulted from one set of the draft minutes having pages out of order.

ANALYSIS

NRS 241.020(3)(b) provides that minimum public notice includes “[m]ailing a copy of the notice to any person who has requested notice of the meetings of the body in the same manner in which notice is required to be mailed to a member of the body. . . . The notice must be delivered to the postal service used by the body not later than 9 a.m. of the third working day before the meeting.”

WCSD requested notice of the NLA’s meetings. NLA did not mail notice of its March, April, and May meetings to the WCSD in compliance with NRS 241.020(3)(b). Therefore, we find that NLA violated NRS 241.020(3)(b) by failing to honor the WCSD’s requests under NRS 241.020(3)(b).

NRS 241.020(2)(c)(2) requires that the agenda of a meeting include a list describing the items on which action may be taken and clearly denoting that action may be taken on those items. We find that NLA did not violate this provision as alleged in the complaint because the action taken, to consider the budget at the May meeting, was actually taken under an agenda item that was clearly denoted as an action item.

CONCLUSION

On or about November 7, 2002, this office filed a civil action against the NLA for alleged violations of the Open Meeting Law. On May 27, 2003, a stipulation was approved by the court resolving the action. In the stipulation, the NLA has agreed to provide agendas of all meetings to the Washoe County School District, with or without a request for such agendas. Because this stipulation includes the areas of concern in the complaint, we do not believe that any further action is necessary at this time. However, any violation of the terms of the stipulation or the Open Meeting Law may result in appropriate legal action.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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Luther DuPree
August 4, 2003
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cc: Rick Hsu, Esq.



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ANN WILKINSON
Assistant Attorney General

August 15, 2003

Janelle Dietrich
Post Office Box 27
Eureka, Nevada 89316

Re: Open Meeting Law Complaint
Eureka County Board of County Commissioners
OMLO 2003-27/AG File No. 03-029

Dear Ms. Dietrich:

This office has primary jurisdiction to investigate and prosecute alleged violations of Nevada's Open Meeting Law, NRS chapter 241. You have alleged that the Eureka County Board of County Commissioners (Board) violated the Open Meeting Law at its meetings on April 21, 2003 and May 6, 2003. You allege that an agenda item under the Treasurer's Report for the April 21, 2003 meeting did not provide adequate notice of a discussion concerning specific property. You also allege that the Board considered your character, alleged misconduct, professional competence, or physical or mental health at the April 21, 2003 and May 6, 2003 meetings without giving you notice pursuant to NRS 241.033(1). You allege that the Board's attorney misrepresented facts to the Board concerning litigation in which you are a party during the April 21, 2003 meeting. Finally, you allege that notice of the Board's May 6, 2003 meeting was not posted timely.

We have reviewed the agendas and minutes for the meetings in question. We have listened to the voice recordings of the relevant portions of the April 21, 2003 meeting and the entire May 6, 2003 meeting. We have also reviewed additional documents submitted to us by the Board.

FACTS

The April 21, 2003 meeting of the Board contained the following agenda item under the heading of Treasurer's Report: "Discuss, approve or deny the next group of title searches for the tax delinquent properties held by Eureka County and determine if any of

the properties should be retained or withheld from the next tax delinquent property sale (Action).” The purpose of this agenda item was for the Board to approve certain properties for the next tax delinquent sale. After approval of these properties for sale, the Eureka County (County) would then follow the prescribed statutory processes for notice and sale of these properties for delinquent taxes. Agenda support material shows that there were 51 parcels for consideration under this agenda item. The list of parcels was available for public inspection as agenda support material.

Under this agenda item, the Board approved most of the properties on the list for sale without discussion. The Board specifically discussed the status of three parcels in order to decide whether to include those parcels for sale. One of the parcels on which the Board had questions was Lots 1-5, Block 37 in the Town of Eureka (Reutlinger property). This property was involved in litigation with a neighboring property owner, the County, and the State Fire Marshal, and the Board wanted an update on the status of that litigation. The Board’s attorney updated the Board on this litigation which necessarily involved discussion of the neighboring property because of the nature of the litigation.

During the discussion of this parcel, the Board’s attorney informed the Board that you, the neighboring property owner, had brought an action involving the County, State Fire Marshal, and the Reutlinger property to force the demolition of a building on the Reutlinger property which has a common wall with a building on your property. The Board was informed that the State Fire Marshal had not given a report that the Reutlinger building would fall over, so there was insufficient evidence for the District Court to order the demolition of the building. There was an order for the County or the State Fire Marshall to cordon off the buildings.

The attorney noted that there is a dispute as to which building was causing the problem. He also stated that if the County leaves this property on the list to be sold, the County would need to provide information on the litigation and what the neighboring property owner thinks about the building. The Board was also told that if it does anything proactive with the building, the Board will most likely be sued by the neighboring property owner because it would be impossible to guarantee no impact on her property if the building were taken down. The attorney noted that there was no affirmative report stating that the Reutlinger building will fall down, but there is a report from the neighboring property owner’s insurance company that her building will fall down.

A recommendation was made to attempt to obtain a structural engineering report to determine if it was appropriate to sell the property. The attorney again stated that no matter what the Board does, the neighboring property owner will likely sue the County. The Board discussed obtaining the engineering report on just the Reutlinger property or on the neighboring property as well. The attorney stated that permission would be required from the owners of the property. The Board took action to keep the property on the list for sale but to attempt to obtain permission for entry to obtain a structural engineer’s report.

The agenda for the May 6, 2003 meeting was dated May 6, 2003. You contend that the meeting could not have been posted timely if that agenda was dated on the date of the meeting. The Board has provided our office with documentation that the agenda, although dated May 6, 2003, was delivered for posting on April 30, 2003. During the May 6, 2003 meeting, the Board did not discuss you or your property.

ANALYSIS

Except as otherwise provided by specific statute, all meetings of public bodies must be open to the public and the public must have been provided with proper notice of the meeting. NRS 241.020. A meeting is defined in NRS 241.015(2) as follows:

2. "Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The 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.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering of series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

Notice of a meeting of a public body must be posted by 9:00 a.m. of the third working day before the meeting. NRS 241.020(3)(a). Notice of the meeting must include an agenda. NRS 241.020(2)(c). The agenda must contain a "clear and complete statement of the topics scheduled to be considered during the meeting."

NRS 241.020(2)(c)(1).

NRS 241.033(1) provides that a public body shall not hold a public meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting at least 5 working days before the meeting if delivered personally or 21 working days if sent by certified mail.

1. April 21, 2003 Meeting

You allege that the agenda for the April 21, 2003 did not meet the notice requirements of the Open Meeting law because the agenda only stated that delinquent property taxes would be discussed and did not state that the safety of the property and legal action concerning the property would be discussed.

The agenda item in question alerted the public that the Board would be making a determination concerning whether the properties should be retained or withheld from the next tax delinquent property sale. The discussion that ensued was entirely on the topic of whether the Board should retain or withhold the property in question from the sale. The discussion solely involved the status of the property related to whether or not the property could be sold. This discussion necessarily involved discussion regarding safety issues of the property and pending litigation concerning the property. Therefore, we find that the Board did not violate the agenda requirements of the Open Meeting Law when it discussed the status of the property in order to determine whether or not it should be sold.

In addition, we note that the discussion regarding this property most likely falls outside of the definition of a meeting because it concerned information from the Board's attorney regarding potential or existing litigation. Thus, to the extent that the Board was receiving information from its attorney regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction, or advisory power, and discussing that information, the agenda requirements of the Open Meeting Law would not apply.

You allege that the discussion regarding the Reutlinger property amounted to a discussion of your character, alleged misconduct, professional competence, or physical or mental health and that you were not given personal notice of such discussion. The Board did not discuss your character, alleged misconduct, professional competence, or physical or mental health when it held a discussion regarding the Reutlinger property. Comments regarding the fact that your building might fall down, that you had brought litigation concerning the safety of the property, and that you may bring further litigation did not amount to a discussion of your character, alleged misconduct, professional competence, or physical or mental health. Therefore, the Board was not required to give you personal notice of the meeting and did not violate the requirements of the Open Meeting Law in this

respect.

You also allege that the Board's attorney misrepresented facts concerning your lawsuit to the Board during the meeting. This allegation is outside the scope of the Open Meeting Law and therefore we will not address such allegation.

2. May 6, 2003 Meeting

You allege that the May 6, 2003 meeting was not posted in accordance with the Open Meeting Law because the agenda was dated May 6, 2003. The Board has provided documentation that the agenda was posted on April 30, 2003, the fourth working day before the meeting. Therefore, we do not find a violation of the Open Meeting Law in this respect.

You also allege that the Board discussed your character, alleged misconduct, professional competence, or physical or mental health during the May 6, 2003 meeting, but did not give you notice of the meeting as required by NRS 241.033. The Board did not discuss your character, alleged misconduct, professional competence, or physical or mental health during this meeting and therefore it was not required to give you notice pursuant to NRS 241.033. We find that the Board did not violate the Open Meeting Law in this respect.

CONCLUSION

We find that the Board did not violate the Open Meeting Law at its April 16, 2003 and May 6, 2003 meetings as alleged in your complaint. Therefore we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By:

TINA M. LEISS
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TML:mas

cc: Theodore Beutel, Eureka County District Attorney



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ANN WILKINSON
Assistant Attorney General

November 14, 2003

Irene Carlyle, Chair
Mineral County School District
Board of Trustees
Post Office Box 1540
Hawthorne, Nevada 89415

Re: Open Meeting Law Complaint
Mineral County School District Board of Trustees
OMLO 2003-28/AG File No. 03-031

Dear Ms. Carlyle:

The Attorney General's Office has primary jurisdiction to investigate and prosecute alleged violations of Nevada's Open Meeting Law, NRS chapter 241. We have received a complaint alleging that the Mineral County School District Board of Trustees (Board) violated the Open Meeting Law by considering the character, alleged misconduct, professional competence, or physical or mental health of a Technology Department employee during its June 25, 2003 meeting, without giving that employee notice pursuant to the Open Meeting Law. The complaint alleges that a member of the Board requested that the audio recording of the meeting be turned off during the closed session of the Board.

We have reviewed the audio recordings and the minutes of the closed session held on June 25, 2003. We have reviewed the agenda for the June 25, 2003 meeting. We have also interviewed a staff member who was present during a portion of the closed session and a Board member regarding the allegations of the complaint.

FACTS

The agenda for the June 25, 2003 meeting of the Board contained the following agenda item under the heading of Closed Session: "Review and consider the

Superintendent's Performance Evaluation, Memorandum of Understanding, Contract and Expectations from the Board."

In this closed session, the Board considered the Superintendent's job performance at length. This discussion focused on the competence of the Superintendent. In the course of reviewing the Superintendent's job performance, the Board specifically discussed numerous issues or problems which had arisen involving staff and how the Superintendent resolved such issues or problems.

During the closed session, the Board commented on issues involving the Technology Department. A Board member mentioned the name of an employee in the Technology Department and stated that there have been many complaints regarding this employee. Specific complaints against this employee were mentioned by the Board members. Specific details regarding these complaints were briefly discussed in the context of reviewing the Superintendent's competence in managing staff.

During the closed session, the Board excused the Superintendent and the staff member acting as the recorder from the meeting. At that point, a Board member expressed a desire to cease recording the closed session. There appears to have been a general agreement amongst the Board members to cease the recording, but the Board member operating the recording equipment after staff was excused allowed the tape to continue recording. However, when the end of that tape was reached, the tape was not immediately replaced. We have been informed that some discussion occurred before the tape was replaced.

ANALYSIS

NRS 241.020(1) provides, in pertinent part, that "[e]xcept as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies." NRS 241.030(1) allows a public body to hold a closed meeting in order to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, except as otherwise provided in NRS 241.031 and NRS 241.033. NRS 241.033(1) provides that a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it has given written notice to that person of the time and place of the meeting at least five working days before the meeting if delivered personally or 21 working days if sent by certified mail.

NRS 241.035(5) provides as follows:

If a public body elects to record a public meeting pursuant to the provisions of subsection 4, any portion of that meeting which is closed must also be recorded and must be retained

and made available for inspection pursuant to the provisions of subsection 2 relating to records of closed meetings. Any record made pursuant to this subsection must be made available to the attorney general upon request.

A review of the audiotapes and minutes of the closed session held by the Board on June 25, 2003, make it clear that the intent of the Board in holding the closed session was to consider the character, alleged misconduct, and professional competence of the Superintendent. Although the Board members did mention situations involving other employees, the Board members did so solely in the context of considering the Superintendent's character, alleged misconduct, and professional competence and not intentionally considering the character, alleged misconduct, or professional competence of the employee mentioned. However, in the case of the discussions concerning complaints against the Technology Department employee, the Board did in fact briefly consider the character, alleged misconduct, or professional competence of that employee. That employee was not given notice that his alleged misconduct or professional competence would be considered by the Board at its June 25, 2003 meeting. Therefore, the Board violated the provisions of NRS 241.033(1) during its meeting. This violation appears to have been unintentional, and the discussion regarding the Technology Department employee was a minor portion of a lengthy closed session. Thus we do not believe any further action is warranted at this time. However, we caution the Board to be diligent in the future to ensure that it stays strictly on the appropriate topic in closed sessions of the Board.

We also caution the Board that it must tape all portions of a closed session when it has elected to tape a public meeting. At its June 25, 2003 meeting, two Board members apparently intended to cease taping the closed session, even though the open session of the meeting had been taped and the closed session had been taped for well over one hour. The tape did continue to run, but portions of the closed session apparently were not taped. This is a violation of NRS 241.035(5). This violation appears to be unintentional only because one Board member decided to continue taping and forgot to replace a finished tape immediately. We do not believe any further action is warranted at this time because the vast majority of the closed session was taped, and the person operating the recording equipment did not intentionally fail to continue recording. However, we strongly caution the Board that it cannot pick and choose which portions of meetings will be recorded and that it must tape the entire closed session of a meeting when the Board has elected to tape its meeting.

CONCLUSION

As set forth above, we find that the Board violated the Open Meeting Law by considering the character, alleged misconduct, and professional competence of a person without giving that person notice as required by the Open Meeting Law. We also find that

Irene Carlyle
November 14, 2003
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the Board violated the Open Meeting Law by failing to record the entire closed session of a meeting when it had elected to record the meeting. Although we have found these violations, we have also found that these violations were unintentional and do not require corrective action. However, we caution the Board that any further violations of the Open Meeting Law may result in appropriate legal action. We also suggest that the Board seek appropriate instruction in the Open Meeting Law, particularly as it relates to conducting closed sessions.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
TINA M. LEISS
Senior Deputy Attorney General
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cc: Chris Hegg



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ANN WILKINSON
Assistant Attorney General

November 13, 2003

Richard Willey
1141 W. Dutch Ford Rd.
Pahrump, NV 89048-4924

Re: Open Meeting Law Complaint
Pahrump Town Board
OMLO 2003-29/AG File No. 03-040

Dear Mr. Willey:

This office has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law, NRS chapter 241. This office has received a complaint from you alleging that action taken at the August 26, 2003 meeting of the Pahrump Town Board (Board) of removing three members from the Pahrump Public Lands Advisory Board (Advisory Board) violated certain by-laws of the Advisory Board and the Open Meeting Law. We are unable to review your complaint to the extent that it alleges violations of the Advisory Board's by-laws because we do not have jurisdiction under the Open Meeting Law to investigate such alleged violations. Therefore, we may only review your complaint to the extent that it alleges a violation of the Open Meeting Law.

FACTS

The Advisory Board was created by the Board through by-laws and a constitution. The Advisory Board was created to make recommendations to the Board and/or to the Pahrump Town Manager. The Advisory Board's function is to research, investigate, analyze, and advise the Board and/or the Pahrump Town Manager on issues relating to federal, state, county, and township lands in and adjacent to the Pahrump Valley. At the time of the allegations in the complaint, the Advisory Board was required to be composed of no less than seven members with two alternates. The by-laws and constitution provide a procedure for the removal of members of the Advisory Board by the Board.

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The Board held a meeting on August 26, 2003. The Board's agenda contained the following agenda item number 16: "Discussion, action and decision regarding membership to the Pahrump Public Lands Advisory Board. Charlotte LeVar." The agenda also contained the following agenda item number 17: "Discussion, action and decision regarding Public Lands Advisory Board by laws. Charlotte LeVar." Charlotte LeVar is the Board member who requested that these items be placed on the agenda.

Under agenda item number 16, Ms. LeVar explained that she had provided backup material regarding attendance of Advisory Board members at the meetings of the Advisory Board. Ms. LeVar stated that several meetings of the Advisory Board had to be cancelled due to lack of a quorum. She also stated that the intent was to reorganize the Advisory Board.

Ms. LeVar made a motion that the Advisory Board continue with the three members who had regularly attended meetings and to advertise for new memberships for having a board of five regular members and at least two alternates. During discussion on the motion, Ms. LeVar pointed out that agenda item 17 included the change to a five member board with two alternates. After further discussion, the motion passed by a vote of 4-1.

Under agenda item number 17, Ms. LeVar stated that the only change in the by-laws was to change the Advisory Board to a five member board with two alternates. Ms. LeVar moved to make such change. After discussion, this motion was withdrawn and the Board voted to table this item pending legal review. The by-laws were ultimately changed at the Board's September 9, 2003 meeting.

You were a member of the Advisory Board prior to the Board's August 26, 2003 vote concerning the membership of the Advisory Board. The Advisory Board had a meeting scheduled for August 7, 2003, which you were unable to attend due to a conflict. You informed the staff of the Board and the Advisory Board chair of your inability to attend that meeting. The meeting apparently was cancelled due to a lack of a quorum. You also were unable to attend the rescheduled meeting on August 14, 2003 due to a conflict. Although this was a seven member board with two alternates, at the time, three positions on the Advisory Board were vacant.

You allege in your complaint that you, the Advisory Board chair, and Advisory Board secretary were fired by the Board for missing two meetings in a row. You allege that this action was unlawful for the following reasons: 1) a meeting that was cancelled by the Town Office cannot be counted as an absence; 2) members had excused absences for the second meeting because of conflicts; 3) the action effectively eliminated the Advisory Board because it makes a quorum impossible; and, 4) the agenda of the Board for the August 26, 2003 meeting did not state that action would be

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taken to eliminate the Advisory Board. You also suggest that the Advisory Board currently cannot legally conduct business because it does not have enough members to conduct a meeting.

ANALYSIS

This office does not have jurisdiction under the Open Meeting Law to address alleged violations of the Advisory Board's by-laws and constitution. Your first three grounds as restated above concern alleged violations of the by-laws and constitution. Therefore, we make no comment regarding those grounds. However, you also allege that the Board's August 26, 2003, agenda violated the Open Meeting Law.

The Open Meeting Law requires, except as otherwise provided by specific statute, that all meetings of public bodies must be open and public. NRS 241.020(1). Written notice of such meetings must be given as provided by statute, which must include an agenda. NRS 241.020(2). The agenda must include a clear and complete statement of the topics scheduled to be considered during the meeting. NRS 241.020(2)(c)(1). The agenda must contain a list of the items on which action may be taken and must clearly denote that action may be taken on those items. NRS 241.020(2)(c)(3).

You allege that the Board's agenda did not state that any action would be taken to eliminate the Advisory Board. The specific action that was taken on this subject at the August 26, 2003 Board meeting was to retain three of the current Advisory Board members and to advertise for the vacant positions. This action effectively created three additional vacant positions on the Advisory Board but did not eliminate the Advisory Board. At a later meeting, the Board voted to change the composition of the Advisory Board so that the Advisory Board became a five member, rather than a seven member board.

The action to retain three members of the Advisory Board and to declare three positions vacant was under agenda item 16. This agenda item was clearly denoted as an action item. The description of this agenda item was discussion, action, and decision regarding membership to the Pahrump Public Lands Advisory Board. This agenda description was adequate to alert the public that the Board would be considering, and taking action on, the membership of the Advisory Board. Therefore, we find that the action taken by the Board under this agenda item did not violate the Open Meeting Law.

CONCLUSION

As noted above, we cannot offer an opinion with regard to your concerns as to violations of the Advisory Board's by-laws and constitution by the Board. Because we

Richard Willey
November 13, 2003
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find no violation of the Open Meeting Law as alleged in your complaint, we are closing our file on this matter.

Sincere regards,

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Attorney General

By: _____
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TML:mas
cc: Christina Hinds, Esq.
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ANN WILKINSON
Assistant Attorney General

December 2, 2003

B. Delbert Williams
Post Office Box 8762
Reno, NV 89507

Re: Open Meeting Law Complaint
Regional Transportation Committee/Pedestrian Advisory Committee
OMLO 2003-30/AG File No. 03-033

Dear Mr. Williams:

This office has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law, NRS chapter 241. This office has received a complaint from you alleging that the Regional Transportation Committee/Pedestrian Advisory Committee (Committee) violated the Open Meeting Law by holding meetings which were not open to the public and by not having minutes of Committee meetings available to Committee members for approval at the next meeting of the Committee.

FACTS

You have alleged that the Committee has held a meeting in the past that was not open to the public. You did not provide us with a date upon which this meeting allegedly took place. You also state that the Committee's vice-chair suggested holding a closed meeting of the Committee to discuss procedural issues but you are not aware that such a closed meeting was ever held.

At the May 28, 2003 meeting of the Committee, the minutes of the previous meeting, February 26, 2003, were not provided to the Committee for approval and there was no agenda item for approval of those minutes. We have been informed by Committee staff that, due to turnover in staff and other issues, draft minutes of the February 26, 2003 meeting were not available for approval at the May meeting but were available for approval at the August meeting. Audiotapes of the February 26, 2003 meeting were available in April 2003. We are not aware of any member of the public having been denied access to either the minutes or audiotapes of the meeting.

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ANALYSIS

The Open Meeting Law requires, except as otherwise provided by specific statute, that all meetings of public bodies must be open and public. NRS 241.020(1). We have found no evidence that the Committee has held meetings that were not open and public.

NRS 241.035(1) provides, in part, that public bodies "shall keep written minutes of each of its meetings . . ." NRS 241.035(2) provides, in part, that "[m]inutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken." We have previously opined that a public body did not violate the Open Meeting Law when minutes were not available within 30 working days of the meeting if audiotapes of the meeting were available within 30 working days of the meeting. OMLO 99-14 (Jan. 15, 1999). The Open Meeting Law does not address how minutes are to be approved by public bodies, nor does it specifically say that approved minutes must be made available within 30 working days of the meeting. *Id.*

We find that the Committee did not violate the Open Meeting Law by not approving the minutes of the February 26, 2003 meeting at its May 28, 2003 meeting. Audiotapes of the February meeting were available for public inspection in April 2003. We are not aware of any members of the public being denied access to either minutes or the audiotapes of the meeting upon request. The Committee has explained why it had difficulties preparing the minutes for the February 26, 2003 meeting prior to the next meeting of the Committee, and those difficulties have been addressed.

CONCLUSION

We find that the Committee did not violate the Open Meeting Law as alleged in your complaint. Because we find no violation of the Open Meeting Law, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

By: _____
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B. Delbert Williams
December 2, 2003
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cc: A. Stanyan Peck, Esq.
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ANN WILKINSON
Assistant Attorney General

November 13, 2003

Thomas Mitchell
Editor
Las Vegas Review-Journal
Post Office Box 70
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Re: Open Meeting Law Complaint
Public Utilities Commission
OMLO 2003-31/AG File No. 03-039

Dear Mr. Mitchell:

This office has primary jurisdiction to investigate and prosecute violations of Nevada's Open Meeting Law, NRS chapter 241. We received a complaint from you alleging that two members of the Public Utilities Commission ("Commission") held a meeting in violation of the Open Meeting Law. Your complaint alleges that two commissioners met privately to discuss an investigation into rulemaking for resource planning.

In our investigation, we reviewed the sworn statement of the Commission's Chairman, Donald Soderberg, and a detailed account provided by former Commission member, Richard McIntire, the individuals who allegedly took part in the private meeting as well as other materials provided by the Commission.

FACTS

The Commission is composed of three commissioners. Donald Soderberg is, and at all relevant times was, a commissioner and the chairman of the Commission. Richard McIntire was appointed to the Commission in December 1999 and resigned effective September 30, 2003.

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On September 25, 2003, Commissioner McIntire informed Chairman Soderberg that his last day with the Commission would be September 30, 2003. At that time, there was a meeting of the Commission scheduled for October 1, 2003. Because Commissioner McIntire would no longer be a member of the Commission for the October 1, 2003 meeting, he would not be able to handle his agenda items during that meeting.

The agenda for the October 1, 2003 meeting of the Commission included an item, Docket Number 02-5030, with the following description:

PUBLIC UTILITIES COMMISSION OF NEVADA

In re investigation and rulemaking into revision of resource planning regulations generally for potential changes including but not limited to obsolete sections, distribution generation, renewable energy credits, filing requirements of amendments to plans of action, Regional Transmission Organizations, purchased power, and risk and for consistency with Commission renewable energy regulations.
DISCUSSION/ACTION:ISSUE PROPOSED REGULATIONS FOR COMMENTS AND HEARING? ORDER TO ISSUE?

Commissioner McIntire had been responsible for this agenda item. This agenda item had been on the agenda for the September 17, 2003 meeting of the Commission but was continued. On September 25, 2003, when Commissioner McIntire informed Chairman Soderberg as to his last day with the Commission, Commissioner McIntire also informed Chairman Soderberg that the reason Docket No. 02-5030 was placed on the October 1, 2003 agenda was to enable any discussion on policy matters that the Commissioners may want to have at that stage of the rulemaking process. Chairman Soderberg and Commissioner McIntire did not discuss any part of the draft rules. The extent of this conversation was that there was to be an opportunity for discussion of the draft rules at the upcoming public meeting. On September 26, 2003, Commissioner McIntire reiterated to Chairman Soderberg that he would not be attending the October 1, 2003 meeting.

During the October 1, 2003 meeting, Chairman Soderberg introduced the agenda item regarding Docket No. 02-5030 and gave a brief history of the docket. During the introduction, Chairman Soderberg stated that "Commissioner McIntire had expressed to me, before leaving off to his greener pastures, that it was his intention to bring this regulation to the Commission, not for promulgation, but as sort of a policy direction check."

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ANALYSIS

Except as otherwise provided by specific statute, all meetings of public bodies must be open to the public and the public must have been provided with proper notice of the meeting. NRS 241.020. A meeting is defined in NRS 241.015(2) as follows:

2. Meeting:

(a) Except as otherwise provided in paragraph (b), means:

(1) The 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.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering of series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

Two commissioners constitute a quorum of the Commission. NRS 241.015(4). Therefore, Commissioner McIntire and Chairman Soderberg constituted a quorum of the Commission prior to October 1, 2003. However, in order for a meeting of the Commission to take place, the quorum must deliberate toward a decision or take action on any matter over which the Commission has supervision, control, jurisdiction, or advisory power.

We find no evidence to show that the brief conversations which took place between Commissioner McIntire and Chairman Soderberg on September 25 and 26, 2003 regarding Docket No. 02-5030 and Commissioner McIntire's resignation

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constituted a meeting of the Commission. Commissioner McIntire and Chairman Soderberg did not make a decision, commitment, or promise during these conversations, and thus no action of the Commission was taken. NRS 241.015(1). In addition, Commissioner McIntire and Chairman Soderberg did not deliberate toward a decision on a matter over which the Commission has supervision, control, jurisdiction, or advisory power.

Deliberate has been defined as "to examine, weigh and reflect upon the reasons for or against the choice . . . thus connoting not only collective discussion, but the collective acquisition or the exchange of facts preliminary to the ultimate decision." *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. ____ (2003), 64 P.3d 1070 (citations omitted). In this case Commissioner McIntire and Chairman Soderberg did not examine, weigh, or reflect upon the reasons for or against any choice concerning Docket No. 02-5030 and did not engage in any collective discussion or the collective acquisition or exchange of facts preliminary to a decision concerning Docket No. 02-5030. The allegedly private meetings consisted of a statement by an outgoing commissioner to another commissioner that an item was placed on an agenda to allow for a public policy discussion. In our opinion, this statement does not meet the definition of deliberate because there was no intent to weigh, examine, or reflect upon the reasons for or against a choice. In light of the above, we conclude that no meeting of the Commission took place as alleged in your complaint.

CONCLUSION

Based on our investigation in this matter, we conclude that the Commission did not engage in a private meeting in violation of the Open Meeting Law as alleged in the complaint. Therefore, we are closing our file on this matter.

Sincere regards,

BRIAN SANDOVAL
Attorney General

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TML:mas
cc: Don Soderberg, Chairman
Public Utilities Commission

Thomas Mitchell
November 13, 2003
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