

2009:
Factual Summary of Violations

AG FILE NO. 09-005

ROUND HILL GENERAL IMPROVEMENT DISTRICT

Not Annotated

Violation (technical violation). Complaint alleged that the RHGID violated the OML because it failed to send them notice of its January 20, 2009 meeting as requested. RHGID admitted they did not send the material but that it was just an unintentional oversight on their part and apologized to the complainant. RHGID voluntarily agreed to review procedures to ensure compliance with the OML statutory requirement for mailing agendas and correspondence to the public.

AG FILE NO. 09-007

MESQUITE CITY COUNCIL - Closed 6/25/09

Not Annotated

Violation: public comment. Complainant alleged he was denied **public comment** on an important project being considered during a Council special meeting. The OML violation appeared on the face of the agenda. It limited public comment to “items that are not on the meeting’s agenda,” which limitation violated the public’s right to speak to any matter within the public body’s authority regardless of whether that particular matter is on the agenda that day or not. Council was advised to “cure” a clear cut violation of the OML, one that appeared on the face of the agenda. A public body may allow public comment during consideration of agenda items, but the Council’s agenda limitation on public comment, as described on the agenda was a violation on its face. This office held open the complaint until notice was received that the agenda item under which the complainant had been refused public comment had been re-agendized for action at a future meeting, and that the Council’s public comment policy had been amended to comply with the OML Manual at §8.04. In fact we received notice of compliance from counsel for the City Council that the action item had been re-agendized and that Council’s public comment limitation policy had been amended in accordance with our letter.

AG FILE NO. 09-009

NEVADA BOARD OF PAROLE COMMISSIONERS – Closed 6/16/09

Not Annotated

Violation and “Cure” of technical violation. Complainant alleged the Board failed to notify interested parties of a public meeting on 2/19/09. Review of the draft minutes for the Board’s 2/19/09 meeting, showed that the Board recognized an objection from a member of the public who stated the meeting had not been properly noticed. The Board recognized the objection, then selected another date for the meeting. Because the Board rescheduled the meeting, there was a

cure of a violation.

AG FILE NO. 09-013

SANDY VALLEY CITIZENS ADVISORY COUNCIL - Closed 6/10/09

Not Annotated

Violation of publication of OML notice provisions – technical violation. Complainant alleged the Council did not attach copies of its revised bylaws for the January 13, 2009 meeting to its notice and agenda. Additionally, it was alleged that the notice for the February 10, 2009 meeting was not properly posted. SVCAC's recording secretary failed to timely post the agenda for the public meeting. The public body went forward with the meeting after the secretary told the county liaison she had timely posted the agenda. Evidence uncovered during the investigation showed it had not been posted.

Complainant advised there is no requirement that supporting materials be appended to copies of notice and agenda, but the public body was advised its revised bylaws were "supporting materials" for the meeting and a public copy should have been made available at the meeting.

This office advised the Council of the importance of timely posting its notice and agendas. The Council was also reminded of their duty to make available supporting materials for the meeting. The results of the investigation and our resolution were discussed with the complainant. The recording secretary resigned immediately after this incident.

AG FILE NO. 09-014

VIRGIN VALLEY WATER DISTRICT - Closed 6/30/09

Not Annotated

Violation of "clear and complete" rule. It was alleged an OML violation occurred during a VVWD Board meeting on Feb. 7, 2009, at which the District was asked to approve an agreement to purchase surface water rights, but the agenda item did not publicly disclose a contingency in the agreement based on "lease-back" of use of the water to the seller at a low price. Secondly, it was alleged an item on the March 3, 2009 agenda was written to conceal the actual topic of discussion — the lease of water irrigation shares. Investigation by this office confirmed both agenda items violated the "**clear and complete rule.**" NRS 241.020(2)(c)(1)). Agenda items did not inform the public of unwritten purchase agreements, lease-back contingencies, that the fair market value of the water had not been considered by the District Board and that the District intended to auction the right to lease certain irrigation water shares. There seemed to be genuine differences of opinion by counsel for the District and members of the District about the District manager's authority to purchase and lease water without oversight of the District's governing body. Action by this office was not necessary because the Board cured both violations when it discussed and approved on March 11, 2009 (only days after the second violation) an item which clearly and completely stated the topic regarding the auction of irrigation water rights and then the governing body adopted a policy describing the parameters the District manager must follow prior to leasing water

back to the surface water owner. We issued an informal opinion solely as guidance for the Board.

AG FILE NO. 09-018

Douglas County Board of Commissioners - Closed 6/15/09

Not Annotated

Violation and cure of violation involving agenda “clear and complete” rule. Public body cured violations. Two complaints (consolidated) were filed 60 days beyond Board action. Complainants alleged that the Commissioners considered, discussed, and took action on an agenda item: “Legislative Update, Proposed Legislation and Legislative Issues during the 2009 Legislative Session.” but because the item did not clearly give the public notice of the specific pending legislative bills to be considered, or the nature of the bills and possible fiscal impact on the public, the “**clear and complete**” statutory standard was violated. Since the investigation of this complaint the Commission cured this violation, because they changed the manner of agendizing legislative updates and provided this office with a copy of their April 2, 2009 minutes reflecting the cure.

AG FILE NO. 09-021

Fernley City Council – Closed 8/21/09

Annotated - OMLO 2009-05

Violation of OML requirement to provide “supporting materials”. Warning issued. During public employment contract negotiations between the City of Fernley and the City Manager, the city manager hand delivered a counteroffer to the members of the Council, but did not provide it to the City clerk for distribution or to the public at the meeting when the counteroffer would be considered. The counteroffer was supporting material because it was necessary for contract negotiations – the sole issue on the agenda. Complainants stated they asked for supporting materials, but the City Clerk did not have it or procure it before the meeting. Formal opinion issued which warned the Council that inability to provide supporting material to the public because the public body’s clerk, staff, or other custodian of materials does not have a copy, because the clerk, staff, or other custodian was not provided a copy, is a violation of NRS 241.020(5) and (6). It does not matter that the source of supporting material is a private person, the city manager, or any other person. If all members of the public body receive supporting material for a future agenda item, that material must be made available to the public upon request. After the meeting the City Manager’s counteroffer was provided to the three requestors. It appears that ongoing negotiations between the Council and Mr. Evangelatos were conducted in accordance with the OML.

AG FILE NO. 09-022

Fernley City Council – Closed 8/19/09

Not Annotated

Violation of public comment. Complainant alleged agenda did not contain agenda item for public comment. Council’s response to our investigation stated

that omission of public comment from agenda was clerical error. Public body cured violation. The matter was cured at the meeting when the public body (a committee) publicly adopted a public comment agenda item. The cure was very favorable to the public. Public enjoyed two periods of public comment; the complainant spoke during both periods. The OML manual encourages public bodies to “cure” violations, on matters which may possibly be a violation, by immediately taking corrective action. NEVADA OPEN MEETING LAW MANUAL § 11.01 (10th ed. 2005). We believe the Committee took corrective action by adding public comment to the agenda by voice vote.

AG FILE NO. 09-024

Douglas County School Board - Closed 10/13/09

Not Annotated

Violation: private meeting: no notice or agenda; violation cured. Complainant, Douglas County’s Record Courier newspaper, filed a complaint alleging a subcommittee of three school board members conducted an evaluation of the Superintendent without agendizing its meeting. After investigation it was determined a Trustee subcommittee met to devise a procedure to be used by the full BST during its performance evaluation of the Superintendent which would be publicly conducted later. It was also alleged the results of the private meeting were withheld from the public. Upon advice of its counsel, and to effect a cure of the violation, the President of the BST agreed to convene the Trustee subcommittee in a specially agendized session immediately before a regularly scheduled meeting (about two months later) to publicly describe the Superintendent’s evaluation process. The Superintendent’s performance evaluation had not yet occurred. However in announcing the special session of the subcommittee to publicly adopt the evaluation process, the President of the BST announced the special session was only to “cure” a dispute about whether the private meeting on had been a violation of the OML. She pointedly stated she was not admitting an OML violation. The Trustee subcommittee then met to “cure” the alleged violation by publicly describing the evaluation process, it formally approved evaluation materials and the methodology to be used to compile a summary of each BST member’s evaluation. Despite the lack of acknowledgement of violation, the OML violation was effectively cured by the School Board at this special session. The BST acted responsibly in effecting corrective action. Its actions and deliberations, regarding the allegations in the Record Courier’s complaint were cured. The Trustees also released all results, documents and petititons that had been alleged to have been withheld from public view.

AG FILE NO. 09-029

Henderson City Council – Closed 11/4/09

Not Annotated

Violation. Public body cured violation. Complainant, Las Vegas Review-Journal, filed an Open Meeting Law (OML) complaint against the Henderson City Council (Council) alleging its July 8th process to fill a Henderson City Council seat

was essentially a secret ballot. Each councilman submitted an unsigned ballot to the Council's clerk who tabulated the votes without disclosure to the public of each member's individual vote. The complaint also alleged the unsigned ballots coupled with lack of deliberations before voting to fill the vacancy kept the public in the dark as to deliberations of the Council members which would reveal their assessment of the various candidates, and lack of deliberation violated the letter and spirit of the Open Meeting Law. After review of the complaint with this office, counsel for the Henderson City Council quickly took corrective action. Corrective action occurred prior to the swearing in of the new councilman on July 21, 2009. Council made public recertified ballots on July 21st which had been cast on July 8th, each with the signature of the voting member. The Council's selection process had been defective in one respect, because it failed to make known the identity of each member's ballot at the time it was cast, or at some time during the meeting. Failure to verbally deliberate the qualities of the candidates before balloting was not a violation of the OML, because the OML only requires that deliberation must take place in public, not that there must be deliberation.

AG FILE NO. 09-031

Nevada Board of Wildlife Commissioners - Closed 10/22/09

Not Annotated

Violation. (Warning). Complaint alleged violation of the "clear and complete" rule. Board Chairman violated this rule during the June 26, 2009 Board meeting in Lovelock, Nevada. The complaint alleged that during Board consideration of agenda Item No. 2, an item to discuss correspondence which had been received by members since the last meeting, the Chairman directed questioning to Nevada Department of Wildlife (NDOW) Director which alleged misbehavior, exhibited verbal hostility through comments about his professional competence and that this questioning constituted a job performance review without notice to the Director as required by NRS 241.033. Our investigation revealed the Chairman exceeded the scope of the item with his comments and direction to the Director on several unrelated matters, including NDOW policies, Roberts Rules of Order as the source of the Director's duties. The Chairman then read a motion into the record directing the Director to send a letter to the Legislature indicating the Commission's support or non-support for certain legislative matters and/or bills. During this discussion, another commissioner raised a point-of-order informing the Chair, he was straying from the agenda item and explaining why. Chairman Lent refused to acknowledge the point of order or return to the agenda item. He finally defiantly stated that he was making a statement and was going to finish it. At this point, the Chair was "perilously close to a deliberate and knowing violation." Item #2 was informational only – no action was taken, yet we reminded the Commission and Chairman Lent that compliance with the OML is not conditional on whether the violation is during an informational item or action item. We issued a stern warning to the Chairman to comply with the Open Meeting Law by not straying beyond the scope of the agenda item.

AG FILE NO. 09-032 Clark County Advisory Board to Manage Wildlife - Closed 12/3/09

Not Annotated

Violation: “clear and complete” rule; Public body cured violations. OML complaint based on “clear and complete” rule, filed against the Clark County Advisory Board to Manage Wildlife (CCABMW). The complaint alleged multiple OML violations. We reviewed the minutes and audio recording of the August 4, 2009 meeting and concluded one allegation had merit. CCABMW’s legal counsel responded to the complaint and conceded there were “discrepancies between the posted agenda and the items on which the advisory board took action on August 4, 2009.” Our review of the minutes and the audio recording confirmed her review and conclusion. The CCABMW took action on a variety of matters in order to make recommendations pursuant to NRS 501.297, to the Nevada Board of Wildlife Commissioners which would meet in 2 weeks. CCABMW did not have a final NBWC agenda or supporting materials in time for its meeting, so they used a draft NBWC agenda, voted on several matters appearing on the draft NBWC agenda, but never did list those matters on its own agenda. NBWC had not supplied it with a final agenda or supporting materials in time to complete its statutory duty. Nevertheless, CCABMW violated the OML because it did not list the topics it would be discussing or taking action. CCABMW’s agenda had not been reviewed by counsel, nor did counsel attend the meeting. The County’s legal counsel assured this office that she and county staff will assist the CCABMW with OML compliance and in the preparation and review of agendas. Counsel will attend the next few meetings to provide legal support to the CCABMW. This office found that the County’s recognition and immediate corrective action of the specific agenda problem is sufficient to prevent it from occurring again.

AG FILE NO. 09-034 Clark County School Board of Trustees - Closed 12/29/09

Not Annotated

Violation. (Warning) Complainant alleged during the July 23, 2009 Board meeting his public comment was prematurely terminated after only two minutes. The termination occurred despite guidance in CCBST’s agenda which stated that three minutes would be allowed for public comment on non-agenda matters. CCBST admitted to an inadvertent inconsistency regarding the period of time for public speakers during comment on non-agenda matters. The inconsistency was due to a conflict between the agenda’s allocation of three minutes and the published CCBST policy: GP-11, which clearly allows only two minutes for comments on non-agenda matters, but it allows three minutes for public comment on agenda items. Agenda item “8.01 PUBLIC HEARINGS ON NON-AGENDA ITEMS,” states that “Each speaker’s comments will be limited to not more than three minutes.” This length of time is consistent with policy

regarding public comment on agenda items, but GP-11 (adopted by CCBST on August 9, 2007) states that non-agenda comments will be limited to two minutes. Clearly there was a conflict between agenda item 8.01 and CCBST's adopted policy regarding time limits on comments on non-agenda items. CCBST must be cognizant of their own policies. The public's right to comment must not be compromised because of CCBST's failure to scrutinize its own agenda. Of course, CCBST must comply with the OML, but the core issue here is fairness to public speakers. CCBST's assurance that it will scrutinize its future agendas is not a cure for the loss of time suffered by the complainant, but CCBST must be aware of the importance of the public's right to speak and duty they have to abide by their own agenda terms.

AG FILE NO. 09-035 Pershing County School Board of Trustees – July 21, 2009 mtg.

AG FILE NO. 09-036 Pershing County School Board of Trustees: Aug.31, 2009 mtg.

Not Annotated

Violation: clear and complete rule. Complaints alleged the Board's July 21, 2009 agenda failed to properly notice discussion and action regarding an area adjacent to the Lovelock elementary school, commonly known as the "Science Park." The Board voluntarily cured the violation its August 31, 2009 meeting when it agendaized a clear and complete statement of the topic for discussion/action. After discussion of this issue with this office, Trustees understand that the public must be apprised through clear and complete agenda topics of matters of specific community-wide interest. Generic and broad phrasing of topics is discouraged and may result in violation of the OML. There was no evidence of a walking quorum; instead the meetings following the July 21, 2009 meeting were taken in order to "cure" the action taken on July 21, 2009. We found no basis or support for the other allegations in the complaint.

AG FILE NO. 09-037, 09-039, 09-040, 09-041: Lund Advisory Board – Closed 1/5/10

Not Annotated

Violation Warning to County Commission. Four Open Meeting Law (OML) complaints were filed regarding the Lund Town Advisory Board. It was alleged that the Lund Town Board and its Chair, violated the OML at several open meetings. Generally the allegations centered on failure by the Lund Town Board (the public body) to comply with the OML's requirement to properly prepare minutes, make them available to the public on request, preserve them as public records, and to add comments by any person requesting their comments be added to the minutes. The facts were not disputed. The Chairman's correspondence and reply to the allegations in the complaints acknowledged his actions were substantially as alleged. These violations of the OML and the local controversy surrounding his assertions at open meetings resulted in the resignation of all members of the Board, save one. Violations could have been

avoided had he asked the right questions of county officials when he visited them in Ely. The Chairman received inadequate support and advice regarding his duties under the OML from the D.A.'s office and the Commission. We will not take any action against this public body at this time as there is only one member left so the Town Advisory Board is effectively disbanded. We encourage the White Pine County Commission to give advisory bodies the attention and time necessary for them to function without incurring violations of the OML.

AG FILE NO. 09-042 McDermitt GID – Closed 1/20/09

Not Annotated

Violation; Warning; Public body cured violations. Complaint alleged: (1) that on October 14, 2009 the new GID took action on a contractor's bid without a quorum, because the complainant left the meeting to avoid the vote; (2) that the GID failed to mail its agenda to you as you requested, and (3) that your request for cost figures for operation of the water district were omitted from the minutes of the September 25, 2009 GID meeting. When complainant left the October 14, 2009 meeting, the GID Board was without a quorum, consequently no meeting could take place. Nevertheless, the GID attempted to take action despite the loss of a quorum by phoning an absent member and securing his vote. Counsel for the GID (Humboldt County D.A.) agreed that a quorum had been destroyed; however she stated the matter of the approval water well work in the amount of \$25,000 had been re-agendized for the next meeting on October 23, 2009.

At this meeting the GID Board took corrective action that "cured" the earlier meeting/quorum violation, when complainant's departure destroyed the GID's quorum. The transition from two separate utilities to a NRS Chapter 318 GID has been complicated, but there is no excuse for attempting to take action with less than a quorum.

AG FILE NO. 09-043 White Pine County Commission – Closed 2/11/10

Annotated

Violation "clear and complete" rule (cure, and warning). The City of Ely's City Clerk, filed a complaint against the White Pine County Board of Commissioners alleging that a County agenda item did not comply with the "clear and complete" rule of the OML. County item stated: "Discussion/Action/Possible approval of Ballot Questions for 2010 Election." At the meeting the Commission discussed the possible disincorporation of the City in some detail, but clearly the item did not adequately inform the City or any member of the public of the topic to be discussed. This office agreed that the item was not "clear and complete" so it was a violation. The issue of disincorporation generated significant interest in the City of Ely. Not to put it on an agenda was a gross violation. WP BOCC stated they didn't know this issue would be discussed and that it was brought up unexpectedly by a Commissioner. However they discussed it in some detail. They thought the broad generic agenda item: "2010 ballot questions," would cover any and all discussions initiated by the Commissioners. The matter of disincorporation of the City of Ely was put on the next WP BOCC agenda for

discussion and it was attended by city officials. This office issued an Opinion to the Commission for guidance in the future.

AG FILE NO. 09-049 Beatty Water & Sanitation District - Closed 2/12/10

Not Annotated

Violation (Warning). Complainant alleged the District refused to provide him with the minutes of the meeting. We learned during the investigation that the District told complainant (who had been recently fired by District from position of engineer) it had not prepared minutes for these meetings because the audio couldn't be found. Complainant had been responsible for the meetings' audio; the new engineer said he couldn't find them on the computer, but then he had found the audio of the requested meetings on district's computer with the help of the complainant and he was preparing minutes. It was a violation not to have minutes prepared within 30 working days of the meeting. Minutes and audio recordings are public records. The OML does not obligate public bodies to provide minutes or audio recordings free of charge. Under NRS 239.052, complainant may have to pay for copies of the minutes or for a copy of an audio recording of these meetings. These public records do not fall within the OML's requirement that the public is entitled to free copies of agenda and supporting materials in advance of public meetings, found in NRS 241.015(5).