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

AG FILE NO.: 13897-177

In the Matter of:

FERNLEY SWIMMING POOL DISTRICT
BOARD OF TRUSTEES.

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

BACKGROUND

Dena Lopez filed a complaint (Complaint) with the Office of the Attorney General (OAG) alleging a violation of the Nevada Open Meeting Law (OML) by the Fernley Swimming Pool District Board of Trustees (Board) at a meeting held on December 28, 2015.¹ The Complaint alleges that the Board held the meeting without providing the public notice required under NRS 241.020.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.039; NRS 2141.040. In response to the Complaint, the OAG reviewed written minutes and an audio recording from the December 28th meeting, together with agendas, written minutes, and audio recordings from two subsequent meetings held on January 5 and January 12, 2016, and a response from Carrie Parker, Esq., legal counsel for the Board.

LEGAL STANDARD

NRS 241.020(2) provides that *except in an emergency*, notice to the public of all meetings must be provided at least three working days before the meeting. The public notice must include an agenda consisting of a "clear and complete statement of the topics scheduled

¹ Ms. Lopez filed a second complaint alleging violations of the Nevada Ethics in Government Law, NRS Chapter 281A, by Board Trustee Paul Murphy at a meeting held on December 17, 2015. The Commission on Ethics enforces these provisions and the OAG does not have jurisdiction over ethics violations; therefore those allegations are not addressed in this opinion.

1 to be considered during the meeting.” NRS 241.020(2)(d)(1); *see also Sandoval v. Board of*
2 *Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

3 NRS 241.020(9) defines an emergency as: “an unforeseen circumstance which
4 requires immediate action and includes, but is not limited to: (a) Disasters caused by fire,
5 flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of
6 the public.” An emergency meeting may only be called where the need to act upon a matter is
7 truly unforeseen and circumstances dictate that immediate action is required. The spirit and
8 policy behind the OML favors open meetings and any exceptions thereto should be strictly
9 construed. NRS 241.010(1); *see also McKay v. Board of Supervisors*, 102 Nev. 644, 730
10 P.2d 438 (1986).

11 Any action taken in violation of the OML is void. NRS 241.036. A public body may
12 take action to correct an alleged OML violation. NRS 241.0365. Corrective action requires
13 that the public body engage in an *independent deliberative action* in full compliance with the
14 OML. *See, e.g., Page v. MiraCosta Community College Dist.*, 102 Cal. Rptr. 3rd 902, 930
15 (Cal. Ct. App. 2009); *Colorado Off-Highway Vehicle Coalition v. Colorado Bd. of Parks and*
16 *Outdoor Recreation*, 292 P.3d 1132, 1137–8 (Colo. Ct. App. 2012); *Zorc v. City of Vero*
17 *Beach*, 722 So. 2d 891, 902 (Fla. Dist. Ct. App. 1998); *Pearson v. Selectmen of Longmeadow*,
18 726 N.E.2d 980, 985 (Mass. App. Ct. 2000); *Gronberg v. Teton County Housing Authority*, 247
19 P.3d 35, 42 (Wyo. 2011). A public body must clearly denote that corrective action may be
20 taken at a meeting by placing the term “for possible corrective action” next to the appropriate
21 agenda item. NRS 241.020(2)(d)(2).

22 FINDINGS OF FACT

23 1. The Board was created by resolution of the Lyon County Board of
24 Commissioners pursuant to NRS Chapter 318.

25 2. The Board is a “public body” as defined in NRS 241.015(4), and subject to
26 the OML.

27 3. The Board met on December 28, 2015, without providing public notice and
28 without an agenda. Trustees Jann Vann Home, Paul Murphy, Marty Hanna, Bill Riesen, and

1 Bill Clegg were all present.

2 4. During the December 28, 2015, meeting the Board deliberated on vacancies in
3 the positions of Facility Director and Office Assistant, the resulting impact upon the Fernley
4 Swimming Pool District's operations, and a course of action for hiring replacements.

5 5. During the December 28, 2015, meeting Trustee Clegg moved "to seek an
6 outside person to handle the administrative portion of the Facility Director's position," Trustee
7 Riesen seconded the motion, and after further discussion the motion carried unanimously.

8 6. Immediately after taking this action, the Board deliberated upon whether the
9 December 28, 2015, meeting was taking place in violation of the OML, and agreed to hold
10 another meeting on January 5, 2016.

11 7. The Board met on January 5, 2016. Trustees Jann Vann Horne, Paul Murphy,
12 Marty Hanna, Bill Riesen, and Bill Clegg were all present.

13 8. The agenda for the January 5, 2016, meeting did not clearly denote that
14 corrective action might be taken at the meeting by placing the term "for possible corrective
15 action" next to a clear and complete agenda item in conformance with NRS 241.020(2)(d)(2).

16 9. During consideration of agenda item 2, entitled "Public Input", at the January 5,
17 2016, meeting, Board Chairman Vann Horne publicly acknowledged that the basis for the
18 December 28, 2015, meeting did not constitute an "emergency" under NRS 241.020.

19 10. During consideration of agenda item 2, entitled "Public Input", at the January 5,
20 2016, meeting, Trustee Clegg moved to ratify the prior vote that was taken at the December
21 28, 2015, meeting, Trustee Murphy seconded the motion, and the motion carried unanimously
22 without any discussion.

23 CONCLUSIONS OF LAW

24 1. The Board violated the OML when it met, deliberated, and took action on
25 December 28, 2015, without proper notice to the public and an agenda as required under
26 NRS 241.020. The basis for the meeting did not constitute an "emergency" under NRS
27 241.020; there was no immediate threat or imminent danger to the public that required
28 emergency action.

- 1 2. The action taken on December 28, 2015, is void under NRS 241.036.
- 2 3. Each Trustee attended the December 28, 2015, meeting, with knowledge of the
- 3 fact that the meeting was in violation of the OML.
- 4 4. The Board failed to effectively take corrective action at the January 5, 2016,
- 5 meeting. The agenda did not clearly denote that corrective action might be taken at the
- 6 meeting, and the Board did not engage in an independent deliberative action involving
- 7 substantial reconsideration of the void action from December 28, 2015.
- 8 5. The Board's action at the January 5, 2016, meeting to ratify the prior vote that
- 9 was taken at the December 28, 2015, meeting constituted a second violation of the OML. The
- 10 action to ratify was taken without an agenda item clearly denoting the action to be taken, and
- 11 therefore without notice to the public, as required under NRS 241.020.
- 12 6. The action taken on January 5, 2016, to ratify the vote that was taken at the
- 13 December 28, 2015, meeting is void under NRS 241.036.

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SUMMARY

Because the OAG finds that the Board has taken action in violation of the OML, the Board must place on its next meeting agenda these Findings of Fact and Conclusions of Law and include them in the supporting material for that meeting. The agenda item must acknowledge these Findings of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of Attorney General File No. 13897-177, and that it has been placed there as a requirement of NRS 241.0395.

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

DATED this 4TH day of May, 2016.

ADAM PAUL LAXALT
Attorney General

By: _____



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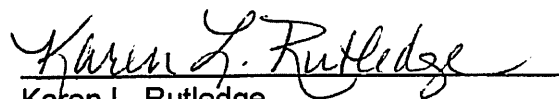
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General, State of Nevada, and on the 6th day of May, 2016, I served a true and correct copy of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW**, by placing a copy of said document in the U.S. Mail, postage prepaid, addressed to the following:

Carrie L. Parker, Esq.
Snell & Wilmer, LLP
50 W Liberty Street, Suite #510
Reno, Nevada 89501

Dena J. Lopez
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Karen L. Rutledge
An Employee of the
Office of the Attorney General
State of Nevada