



STATE OF NEVADA
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September 4, 2012

Jed Margolin
1981 Empire Road
Virginia City Highlands, NV 89521-7430

Re: Open Meeting Law Complaint / A.G. File Nos. 12-017 and 12-019
Storey County Board of Commissioners

Dear Mr. Margolin:

We have investigated the allegations made in two Open Meeting Law (OML) complaints A.G. File Nos. 12-017 and 12-019. Both complaints (filed 25 days apart) ask this office to find that the Storey County Board of Commissioners (BOCC) violated the OML for failure to provide you with copies of documents which were discussed and acted upon in the public meeting.

OML statutes require the public body to make "supporting documents" available to the public based on when the documents were provided to public body members.¹

¹ NRS 241.020

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

- (a) An agenda for a public meeting;
- (b) A proposed ordinance or regulation which will be discussed at the public meeting; and
- (c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:
 - (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;
 - (2) Pertaining to the closed portion of such a meeting of the public body; or
 - (3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality. The public body shall make at least one copy of the documents described in paragraphs (a), (b) and (c) available to the public at the meeting to which the documents pertain. As used in this subsection, "proprietary information" has the meaning ascribed to it in NRS 332.025.

The Attorney General does not have authority to enforce public records requests under NRS 239. It seems that these two complaints involve public records requests which are separate from OML requests for supporting materials.

**MAY 21, 2012 BOCC PUBLIC MEETING
A.G. FILE NO. 12-017**

This complaint alleges BOCC failed to provide you with a written settlement agreement between Storey County and Midge A. Taormina in case #3:09-cv-00021-LRH-VPC. The agenda item for May 21, 2012 BOCC meeting stated:

***DISCUSSION/POSSIBLE ACTION:** Possible approval of settlement agreement between Thomas & Midge Taormina and Storey County regarding their application and determination of Special Use Permit 2011-010 for purposes of allowing, constructing and/or limiting multiple amateur radio antenna support structures with heights in excess of 45 feet on their property located at 370 Panamint Road, Highland Ranches, Storey County, Nevada. Possible action may also provide for allowing, constructing and/or limiting similar support structures of 45 feet or less and may alter the earlier Board of Commissioners determination made on June 7, 2011.

Although already discussed above, we reiterate once more that the OML only requires that documents actually provided to the public body be made available to the public. The basis for your OML complaint is that the Taormina Staff Recommendation summary is not a settlement agreement. Nevertheless it was the only document provided to the BOCC, signed or unsigned. The OML cannot compel the BOCC to provide a signed written settlement agreement if it was not already in existence and given to the elected members of the BOCC as supporting materials for a public meeting.

BOCC's response through the District Attorney explains that "no other writing of the agreement between Storey County and Taormina was prepared [for the May 21st BOCC meeting] because if the full Storey County Commission had rejected the agreement contained in the . . . Staff recommendation summary, there would have been no agreement."

No other writing, signed or unsigned, existed regarding the Taormina settlement agreement on May 21, 2012.

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

- (a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or
- (b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body. If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

The BOCC did not have a duty under the OML to provide you with any other document other than the summary provided to its elected members.

**JUNE 19, 2012 OML COMPLAINT
A.G. FILE NO. 12-019**

In this complaint you have alleged the BOCC refused to give you a copy of a document which was discussed and acted upon at its June 19, 2012 public meeting. Specifically you asked for a copy of an insurance contract for this agenda item: "*Acceptance of renewal proposal from the Nevada Public Agency Insurance Pool (POOL) and approval for payment from fiscal year 2012–2013*". Review of your email requests to County Manager Pat Whitten and responses from Mr. Whitten, revealed that you had been requesting a contract between POOL/PACT and Storey County.²

The OML requires that any supporting materials provided to members of a public body must be made available to the public at the same time the members receive them. NRS 241.020(6)(a). BOCC complied with the OML requirement.

The BOCC provided this office with a copy of the June 19, 2012 meeting packet (NRS 241.020(6)(a) supporting materials). The only document included in the packet for BOCC members and available to the public was a document entitled "POOL insurance renewal proposal" (pps. 91–98 of 116 page packet). The packet, including this document, was made available on June 16, 2012 online at the Storey County.org/clerk webpage to you and the public at the same time the BOCC received theirs. The BOCC considered only the renewal proposal—not a contract. No OML violation occurred.

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² BOCC's response to this complaint stated the county's insurance company finally sent them the contract, 2011NPAIP Coverage form (72 pages) and a Certificate of Participation for Storey County which was then sent to you on June 29, 2012.

We are closing our file on these two matters.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



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Senior Deputy Attorney General
(775) 684-1230

GHT/CG

cc: William A. Maddox, District Attorney
Pat Whitten, Storey County Manager
Storey County Commission:
Bob Kershaw, Chairman
Greg "Burn" Hess, Vice Chairman
Bill Sjovangen, Member