

Jed Margolin
775-847-7845

1981 Empire Rd.
jm@jmargolin.com

VC Highlands, NV 89521-7430
December 3, 2012

Senator James Settelmeyer
2388 Highway 395
Minden, NV 89423-8923
775-450-6114

Dear Senator Settelmeyer,

I am writing to you about a matter that I believe is as important to Nevada as the budget. However, fixing it won't cost any money.

The Storey County Board of Commissioners has found a way to circumvent the Document provisions of the Open Meeting Law NRS 241.020(5) and NRS 241.020(6) which require that a public body provide the public with copies of the documents that they consider during a meeting, and that the documents be provided at the same time they are provided to the members of the public body. *See Exhibit 1 at 4.*

1. At the May 21, 2012 meeting of the Storey County Board of Commissioners the Board of Commissioners approved an agreement ("Taormina Tower Agreement") without providing a copy of the full agreement to the public.

2. At the June 7, 2012 meeting of the Storey County Board of Commissioners the Board of Commissioners approved the 2012 contract with the Nevada Public Agency Insurance Pool without providing a copy of the contract to the public. (They provided only a Summary.)

I filed complaints with the Office of the Attorney General of Nevada.

The opinion of the Office of the Attorney General of Nevada was that the Storey County Board of Commissioners had not violated the Open Meeting Law by approving the Taormina Tower Agreement without providing a copy of the full agreement to the Public because the Board of Commissioners did not have a copy of the full agreement.

Likewise, the opinion of the Office of the Attorney General of Nevada was that the Storey County Board of Commissioners had not violated the Open Meeting Law by approving the contract with the Nevada Public Agency Insurance Pool without providing a copy of the contract to the Public because the Board of Commissioners did not have a copy of the contract.

See Exhibit 2 at 6.

I filed a complaint with the Nevada Commission on Ethics. They decided that the Board of Commissioners had not done anything unethical.

See Exhibit 3 at 11.

In order to close this loophole I suggest amending the Open Meeting Law NRS 241.020 to add language to the effect that:

1. No public body shall approve an agreement or contract unless the full agreement or contract is fully reduced to writing and provided to the public at least five days before the agreement or contract is considered for approval.
2. Any agreement or contract approved in violation of Paragraph 1 shall be null and void.

Will you support this and use your influence with the Nevada Legislature to make this happen?

Now that the Storey County Board of Supervisors has shown how to circumvent the Document provisions of Open Meeting Law it is likely that everyone is going to want to do it.

And, finally, is it even believable that a public body would approve an agreement or contract that they hadn't seen? Very likely, the members of the public body had discussed it secretly, out of public view.

(Due to the length of my additional supporting documents I have omitted them from this letter. They are posted on my Web site at www.jmargolin.com/towers/tom_index.htm#b55 .)

Sincerely yours,

/Jed Margolin/

Jed Margolin
Virginia City Highlands, Nevada

(Note: As of this date Storey County still has not sent me a copy of the 2012 contract with the Nevada Public Agency Insurance Pool.)

Exhibit 1

Exhibit 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.

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.

Exhibit 2

Exhibit 2



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

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.

///

///

///

///

///

///


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:



GEORGE H. TAYLOR
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

Exhibit 3

Exhibit 3



STATE OF NEVADA
COMMISSION ON ETHICS
704 W. Nye Lane, Suite 204
Carson City, Nevada 89703
(775) 687-5469 • Fax (775) 687-1279
<http://ethics.nv.gov>

October 2, 2012

Jed Margolin
1981 Empire Rd.
Virginia City Highlands, NV 89521

RE: Requests for Opinion Nos. 12-55N, 12-56N, 12-57N and 12-58N, filed September 27, 2012, regarding Bob Kershaw, Bill Sjovangen, and Greg Hess, Storey County Commissioners; and Bill Maddox, Storey County District Attorney.

Dear Mr. Margolin:

In accordance with Nevada Administrative Code 281A, I have conferred with the Commission's legal counsel regarding the above-referenced requests for opinion. We have determined that, for the reasons indicated below, the Nevada Commission on Ethics lacks jurisdiction to consider your requests for opinion, and/or you have failed to provide the minimal level of credible evidence required for the Commission to pursue these matters.

For the Commission to have jurisdiction to consider a Request for Opinion ("RFO"), the alleged acts must constitute a violation of Nevada Revised Statutes ("NRS") Chapter 281A. Your Requests for Opinion Nos. 12-55N, 12-56N, 12-57N and 12-58N, allege acts that do not implicate NRS 281A.

Additionally, for the Commission to have jurisdiction to consider a RFO, the requester must provide a minimal level of credible evidence supporting the allegations. Your Requests for Opinion fail to include the minimal level of evidence required to support a violation of NRS Chapter 281A.

DETERMINATION

October 2, 2012

Page 2

At this time, based on the above information, the Commission has no authority under NRS 281A.440 to investigate the violations alleged in your Requests for Opinion.

Pursuant to NAC 281A.405(4), you may request a panel of Commissioners to review this determination. Should you wish to pursue this remedy, you must submit a request to the Commission in writing not later than 10 days after your receipt of this notification.

Best wishes,



Caren Cafferata-Jenkins, Esq.
Executive Director

CERTIFICATE OF MAILING

I certify that I am an employee of the Nevada Commission on Ethics and that on this day in Carson City, Nevada, I deposited for mailing, via U.S. Postal Service, certified mail, return receipt requested, through the State of Nevada mailroom, a true and correct copy of the **JURISDICTIONAL DETERMINATION** addressed as follows:

Jed Margolin
1981 Empire Rd.
Virginia City Highlands, NV 89521

Cert. No. 7011 2970 0000 0438 9124

Dated: October 2, 2012

Valerie Carter

Valerie Carter, Executive Assistant