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STATE OF NEVADA  
BOARD OF WILDLIFE COMMISSIONERS  
1100 Valley Road  
Reno, Nevada 89512  
(775) 688-1500 • Fax (775) 688-1595



BRIAN SANDOVAL  
Governor

August 19, 2011

Catherine Cortez Masto  
Nevada Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4717

Re: Request for Withdrawal of Former Chairman Scott Raine's Request for Opinion Dated July 25, 2011

Attorney General Cortez Masto:

On August 12, 2011, I was elected Chairman of the Nevada Board of Wildlife Commissioners. I am formally requesting that the Request for Opinion submitted by former Chairman Scott Raine on July 25, 2011 be officially withdrawn.

I have serious concerns as to the authority that former Chairman Raine had to make such request for opinion. While NRS 501.167 created the Board of Wildlife Commissioners and NRS 501.171.5 authorizes the Board to elect a Chairman and Vice Chairman, I see no statutory authority for the Chairman of the Nevada Board of Wildlife Commissioners to act unilaterally to take any action independent of the duly noticed actions of the Board of Wildlife Commissioners. I find it troubling that former Chairman Raine altered the official letterhead of the Board of Wildlife Commissioners to make his request. That altered letterhead does not include three Commissioners that were appointed by Governor Brian Sandoval effective July 1, 2011, twenty-five days before his request for opinion, and who were barred, along with two re-appointed Commissioners, from participating in any decision to make this request for opinion.

I will place on the Nevada Board of Wildlife Commissioner's September 23-24, 2011 agenda an action item to consider the issue of a request for opinion on the matter referenced in former Chairman Raine's letter dated July 25, 2011 in an attempt to finally resolve this matter.

If you have any questions or concerns regarding this request or wish to discuss this matter further please feel free to contact me at 702-401-1848.

Sincerely,

A handwritten signature in black ink that reads "Michael K. McBeath".

Michael K. McBeath  
Chairman

mkm/km/jt

cc: Ken Mayer, Secretary to the Commission  
Cassandra P. Joseph, Deputy Attorney General to the Commission



OFFICE OF THE ATTORNEY GENERAL  
CARSON CITY, NEVADA

AUG 16 2011

BUREAU OF PUBLIC AFFAIRS  
BUSINESS & LICENSING DIVISION

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*

August 15, 2011

**Via Interoffice Mail**

Michael McBeath, Chairman  
Nevada Board of Wildlife Commissioners  
c/o Nevada Department of Wildlife  
1100 Valley Road  
Reno, Nevada 89512

Re: Opinion request.

Dear Chairman McBeath:

We received a request for an Attorney General's opinion from former Chairman Scott Raine, dated July 25, 2011. See attachment. This letter is to advise you that we must respectfully decline to provide the requested opinion.


A board or commission of the State may request an opinion through its chairperson pursuant to NRS 228.150. However, individual board members—including chairpersons—acting without the authority of the board or commission may not do so. Because Chairman Raine's request appears not to have been supported by board action, this office lacks authority to respond with an opinion.

Please call on me if you have any questions.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:

  
G. WAYNE HOWLE  
Solicitor General

Enclosure

cc: Scott Raine, Commissioner  
Cassandra Joseph, Deputy Attorney General ✓



COMMISSIONERS

Scott Raine  
*Chairman*

Daryl Capurro  
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STATE OF NEVADA  
**BOARD OF WILDLIFE COMMISSIONERS**

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*GOVERNOR BRIAN SANDOZAL*

Catherine Cortez-Masto  
Nevada State Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4717

July 25, 2011

Re: Request for opinion

Attorney General Masto:

This correspondence is sent by the Chairman of the Nevada Board of Wildlife Commissioners requesting a formal written opinion from you regarding current Wildlife Commissioner Daryl Capurro's refusal to resign his seat on the Wildlife Commission and the Governor announcing a replacement for him on the Wildlife Commission.

NRS 501.172 clearly states the law for the removal of a member from office and none of these apply, even for "just cause". Mr. Capurro has never been notified by the Governor in accordance with NRS 501.172 that he has been terminated for just cause.

The question is: does a sitting governor have the authority to terminate or replace any duly appointed members of the Board of Wildlife Commissions without just cause before their term is up, or can they serve out their appointed term?

In the past, prior governors had legal advice that appointees could not be removed from office before their terms expired absent good cause. Examples of this were the State Board of Agriculture and the State Medical Board in which Board members refused to resign. In addition to the lack of (just) cause issue, it appears that the legislature has violated article section 15 of the Nevada State Constitution in that assembly bill 322 (recently passed) violates the prohibition against a Bill Attainder.

It is important to note that "Bill of Attainder" has been defined as legislation that applies to either

a named individual or an individual or group which is easily ascertainable. Clearly Mr. Daryl Capurro was targeted in the subject bill AB 322 in that the definition of his function as wildlife Commissioner was changed from "a member who is actively engaged in the conservation of wildlife" to the additional requirement of possessing experience and expertise in advocating issues relating to conservation. This additional language in the bill disqualifies Mr. Capurro from holding his position as wildlife commissioner and clearly was intended to end his appointment mid-term. ie. The governors letter of 1 July 2011 thanking Mr. Capurro for his service and indicating that a replacement has been selected.

I also request current legal counsel for the Wildlife Commission, Deputy Attorney General Bryan L. Stockton and legal counsel for the Department of Wildlife, Deputy Attorney General Nhu A. Nguyen not be personally involved in this request as they both would be put in an awkward position and would probably need to recuse themselves.

Since the next Wildlife Commission meeting will be held on August 12 and 13, 2011, I am requesting that you recommend nobody be appointed to Mr. Daryl Capurro's position until this matter is resolved. If a legal opinion can not be produced within the time frame I have set out, I request an injunction be sought which will enable Mr. Capurro to sit as a Commissioner at the meeting of August 12 and 13, 2011.

Sincerely,



Scott Raine  
Chairman, Nevada Board of Wildlife Commissioners