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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900  
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April 16, 2021

Via Certified Mail

Steven Lisk  
[REDACTED]  
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-334,  
Mesquite City Council**

Dear Mr. Lisk:

The Office of the Attorney General (“OAG”) is in receipt of your complaint alleging violations of the Nevada Open Meeting Law (“OML”) by the Mesquite City Council (“MCC”). The violations alleged in your complaint, in summary, assert that the MCC violated the OML when: 1.) it voted to add an item to a future agenda without said vote’s inclusion on a properly noticed meeting agenda; and 2.) there were purported serial communications of a quorum of the MCC regarding an item on the MCC’s April 9, 2019 meeting (“April 9 Meeting”) agenda.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. In response to your complaint, the OAG reviewed your complaint and its attachments (“Complaint”), the MCC’s response and its attachments (“Response”), the agenda and minutes for the MCC’s April 2, 2019 meeting (“April 2 Meeting”), the agenda and minutes for the April 9 Meeting, and the video recording of the April 9 Meeting relevant to the Complaint. Additionally, the OAG interviewed select council members for the MCC (all of the above is hereinafter collectively referred to as the “Record”).

## **FACTUAL BACKGROUND**

The MCC is a “public body” as defined in Nevada Revised Statute (NRS) 241.015(4), and subject to the OML.

On April 2, 2019, the MCC held a public meeting. During the April 2 Meeting, City of Mesquite Mayor, Alan Litman, requested that an item be added to the MCC’s April 9, 2019 meeting agenda. The requested addition to the April 9 Meeting agenda concerned a settlement agreement to resolve a lawsuit between the City of Mesquite and MMC of Nevada, LLC dba Mesa View Regional Hospital (“Settlement Agreement”). Although the vote for this addition was not listed on the agenda, the MCC voted unanimously to add this item to its April 9 Meeting agenda. This item was later listed on the April 9 Meeting agenda as “Administrative Item #11” (“AI #11”):

Consideration for approval of the Settlement Agreement and Release between Plaintiff, the City of Mesquite and Defendants, MMC of Nevada, LLC dba Mesa View Regional Hospital and Roe Corporations I-X (collectively with Hospital).

During the April 9 Meeting, public comment on AI# 11 was received from multiple members of the public, including the instant complainant, Steven Lisk (“Complainant”). During the Complainant’s public comment he stated that, through a public records request, he had received MCC councilmembers’ emails with/between, the Mountain View Regional Hospital (“MVRH”) Chief Executive Officer, Ned Hill (“Hill”). The Complainant further stated that based upon his review of said emails he believes serial communications occurred between a quorum of the MCC and, as such, he filed an OML complaint with the OAG. Subsequent to the April 9 Meeting’s public comment on AI #11, as well as after some discussion by the MCC in regards to the same, the MCC determined not to take action to adopt the Settlement Agreement but rather voted unanimously for its counsel to continue with the underlying lawsuit with MVRH and meet with its attorneys for continued discussion on a possible settlement agreement.

On May 28, 2019, the MCC met again for a regularly scheduled meeting (“May 28 Meeting”). Amongst the items listed on its agenda was the consideration of a revised version of the Settlement Agreement. The MCC’s consideration for this revised agreement during the May 28 Meeting was agendized as:

Consideration of the Proposed Settlement of dispute between the City of Mesquite and Mesa View Regional Hospital relating to the breach of the Development

Agreement between Mesa View Regional Hospital and the  
City of Mesquite.

After public comment was received for this revised agreement, as well as some comment/deliberation from some of the councilmembers of the MCC, the MCC voted to approve the revised settlement agreement.

**DISCUSSION AND LEGAL ANALYSIS**

**Allegation: The MCC violated the OML by voting to add an item to a future agenda without said vote's inclusion on a public meeting agenda.**

The Complaint asserts that the MCC violated the OML when it voted during its April 2 Meeting to add to its April 9 Meeting agenda the deliberation and possible action regarding the Settlement Agreement without said vote's inclusion on the April 2 Meeting agenda. The decision to include an item on a future agenda does not require action by a public body. It is an ancillary action similar to polling public body members for a meeting date. Such a decision serves the purpose of providing the public notice of the item prior to the public body's consideration of it. Thus, no violation occurred by the vote to include the Settlement Agreement's consideration to the April 9 Meeting agenda.

**Allegation: The MCC violated the OML by deliberating amongst a quorum of members via serial communications prior to the April 9 Meeting.**

The Complaint alleges that a quorum of the MCC engaged in a walking quorum concerning the Settlement Agreement and/or its underlying litigation. While it is clear that there was discussion on the Settlement Agreement by members of the MCC outside of a public meeting, the Record is insufficient to clearly identify the existence of a walking quorum.

The legislative intent of the OML is that the actions of public bodies "be taken openly, and *that their deliberations be conducted openly.*" NRS 241.020(2) (emphasis added); *see also McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 437, 443 (1986) (stating that "the spirit and policy behind NRS Chapter 241 favors open meetings") (emphasis added). The OML applies to meetings of a public body. A "meeting is defined in NRS 241.015(3) and generally requires a "gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." *See also Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 95, 64 P.3d 1070, 1076 (2003). "Deliberate" is defined in NRS

241.015(2) as “collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.” If a quorum of the Council deliberates outside of a public meeting, this would constitute a violation of the OML. *Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998). A quorum may be established through a series of gatherings involving members of the public body. NRS 241.010(3)(a)(2). In short, a public body may not deliberate or take action outside of a public meeting whether a quorum of the public body meets in person or the thoughts and opinions of members of a public body are shared amongst the members through serial meetings or communications, even though no individual meeting or communication involves a quorum.

The Complaint alleges the Board violated the OML because members of the MCC participated in a walking-quorum or serial-communications concerning the Settlement Agreement, and/or it’s underlying lawsuit, prior to the April 9 Meeting. The evidence propounded by the Complaint to support this allegation consists of emails sent by Hill to MCC members. These emails, in summary: 1.) establish that Hill sent multiple emails to the MCC councilmembers to discuss “Senate Bill 63” (“SB 63”) as well as the litigation concerning the Settlement Agreement; 2.) show that Councilmembers George Rapson and Brian Wursten told Hill that communication should go through the respective attorneys; 3.) provide that none of the councilmembers responded to Hill via email (with the exception of Councilmember Rapson’s email refusing to speak with Hill); and 4.) allude that Hill met/spoke with several members of the MCC.

It is undisputable that Hill sent several emails to the councilmembers regarding the Settlement-Agreement/litigation and SB 63. However, the emails provided within the Record do not show that these emails amounted to electronic serial communications in violation of the OML. The Legislative intent of the OML states that “electronic communication, must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.” NRS 241.016(4). The emails within the Record are one-sided emails sent by Hill to the councilmembers. These unsolicited and unresponded-to-emails are not evidence of serial electronic communications as they do not illustrate that a quorum of the MCC took action, deliberated, shared opinions, or made any promise over a matter within its jurisdiction. Rather, the emails value to the instant matter is not as directive evidence of electronic serial communication, but instead as evidence of meetings by/with MCC members.

The Response confirms that Councilmembers George Gault, Annie Black, Sandra Ramaker, and Mayor Litman did in fact meet/speak with Hill (it is understood based on the Record that these meetings/discussions were not with the presence of a

physical quorum of the MCC). It is not contested that these meetings occurred. However, their existence, and a possible inference within the emails of a walking quorum, without more, is insufficient to establish an OML violation.

To determine whether the meetings in the instant matter violated the OML by creating a walking quorum, the OAG conducted interviews with councilmembers Gault and Ramaker, as well as with Mayor Litman<sup>1</sup>. Generally, the interviewees' recall of the facts and circumstances surrounding the instant matter were diminished. With this fact in mind, the interviews collectively did not show that the councilmembers, in any discussion between themselves and/or through conversations with Hill, shared or received the opinions of each other in a manner that would constitute a walking quorum. For example, while Councilmember Gault met with Councilmember Black and Mayor Litman, in these non-quorum meetings he did not come to a conclusion on his vote on the Settlement-Agreement and to the best of his recollection, he did not hear the opinions or decisions of his fellow councilmembers either through themselves individually or through another (including Hill). The absence of affirmative evidence of polling, sharing of opinions, and/or deliberations in regards to the Settlement-Agreement were mirrored with the other interviewees. As such, the Record does not yield sufficient evidence that a walking quorum occurred between the members of the MCC.

Although the OAG does not find a preponderance of evidence in the Record to sustain a violation of law, it notes that certain members of the MCC, through their conduct, have brought the MCC perilously close to a violation of the OML. As noted below, the OAG strongly encourages the MCC's compliance with the OML and cautions its conduct when it pertains to communications regarding matters within its jurisdiction.

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<sup>1</sup> Councilmembers Rapson and Wursten were not interviewed as there is an absence in the Complaint and Record of an allegation, evidence, or implication that they were party to the walking quorum alleged in the Complaint. Efforts were made through Mesquite City Attorney, Bob Sweetin, to coordinate an interview with Councilmember Black but ultimately one could not be arranged prior to the release of this opinion.

**CONCLUSION**

The OAG has reviewed the available evidence and determined that there is insufficient evidence to sustain a violation of the OML. Nonetheless, the OAG advises the MCC to be mindful of engaging in any communications that may undermine the public's faith in transparency and open government. The OAG will be closing its file in this matter.

Sincerely,

AARON D. FORD  
Attorney General

By: /s/ Michael Detmer  
MICHAEL DETMER  
Deputy Attorney General

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of April, 2021, I served the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

Steven Lisk  
[REDACTED]  
[REDACTED]

**Certified Mail No.:** [REDACTED]

Robert Sweetin, Esq.  
c/o Mesquite City Council  
Mesquite City Hall  
10 E. Mesquite Blvd.  
Mesquite, NV 89027

**Certified Mail No.: 7019 0160 0000 0498 4519**

/s/ Debra Turman  
An employee of the Office of the  
Nevada Attorney General