

AARON D. FORD
Attorney General

KYLE E. N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

July 29, 2020

Via U.S. Mail

Dan Tapia



Re: Open Meeting Law Complaints, AG File No. 13897-333 and 13897-335, City of Reno Civil Service Commission

The Office of the Attorney General (OAG) investigated your two complaints alleging violations of the Open meeting Law (OML) by the City of Reno Civil Service Commission (RCSC). Your complaints allege that the RCSC violated NRS 241.033 at both the May 23, 2019 and June 4, 2019 meetings (Meetings) by failing to provide written personal notice to Fire Equipment Operator Joshua Bell and Fire Equipment Operator Wayne Tellez before considering requests for an extension of a promotional probationary period for these individuals at the respective Meetings.

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. To investigate your Complaints, the OAG reviewed the following: Complaints submitted by Dan Tapia and Response from RCSC; agendas and minutes of the RCSC Meetings; and the audio recording of the Meetings.

FACTUAL BACKGROUND

The RCSC is a “public body” as defined in Nevada Revised Statute (NRS) 241.015(4), and subject to the OML. The RCSC was created in Article X of the Reno City Charter and Section 9.060.2(g) states that the RCSC is to create rules for the establishment of probationary periods for employees. Probation extension requests are made by the City Department Heads to the RCSC according to the Reno City Charter and Civil Service Rule VII Section 12(b) as adopted by the RCSC. According to the Response, RSCS takes the position that probation extension requests do not require the personal notice

described in NRS 241.033 because the character, allegations of misconduct professional, competence, physical or mental health are not at issue or discussed by the RCSC. In the Response, RCSC acknowledges that no notice was given as set forth in NRS 241.033.

The agenda for the May 23, 2019 meeting included the following:

6.D. Request to approve probation extension for
Fire Equipment Operator Joshua Bell by Fire Chief
David Cochran (For Possible Action).

As described in the minutes, the matter was removed from the consent agenda for consideration by Chairperson Atkinson. The discussion of the matter revolved around the application of the Civil Service rules and contract rules in a determination of the days for the request.

The agenda for the June 4, 2019 meeting included the following:

7.A. Request to approve probation extension for
Wayne Tellez (For Possible Action).

Patrick Mooneyhan and Dan Tapia were present representing IFF Local 731 and made public comment on the probation extension process. Dunn, Vice President, Local 731 specifically commented that Operators Bell and Tellez were not notified of the possibility of the probation period being extended. The discussion of the RCSC related to the number of days for the request.

DISCUSSION AND LEGAL ANALYSIS

The RCSC did not violate NRS 241.033 when it heard requests for extension of the probationary period of Fire Equipment Operator Joshua Bell and Fire Equipment Operator Wayne Tellez without giving them notice under NRS 241.033. NRS 241.033(1) sets out: "...a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person..." unless it has properly notified the person. In order for a public body to violate NRS 241.033(1), it must as a whole, without notice, consider and deliberate with regard to a person's character, alleged misconduct, professional competence, or physical or mental health. See OMLO 2005-08 (May 2005).

In determining whether a violation of the notice requirement contained in NRS 241.033 occurred, the OAG reviews the actual discussion during which a public body is alleged to have considered a person's character, alleged misconduct, professional competence, or physical or mental health.

See, OMLO 2011-01 (March 29, 2011); OMLO 99-22 (April 7, 1999). The recordings of the meetings and minutes reveal that there was no consideration or discussion by the RCSC that would trigger notice under NRS 241.033. RCSC did not consider the character, any alleged misconduct, professional competence or the physical or mental health of the person identified in the request for the extension of probation at either meeting.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close the file regarding this matter.

Sincerely,
AARON D. FORD

/s/ Linda C. Anderson
LINDA C. ANDERSON
Chief Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage paid, first class mail, to the following:

Dan Tapia

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██████████████████
██████████

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