

AARON D. FORD
Attorney General

CRAIG NEWBY
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

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

January 13, 2023

Via Certified Mail

[REDACTED]

Lisa Erquiaga

[REDACTED]

[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-417
Coalition for Senior Citizens**

Dear Ms. Erquiaga:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging a violation of the Open Meeting Law (“OML”) by the Coalition for Senior Citizens (“CSC”) asserting that the CSC’s elimination of the Director position for its organization was not in compliance with the OML’s clear and complete standard and notice requirements.

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. The OAG’s investigation of the Complaint included a review of the Complaint; the response filed on behalf of the Board and all attachments thereto; the audio recording of the Churchill County’s Board of County Commissioners’ June 10, 2021 meeting; the audio recording of CSC’s June 11, 2021 Special Meeting; the audio recording of the CSC’s June 17, 2021 Special Meeting; and prior OML decisions, case law, and portions of the Nevada Revised Statutes relevant to the Complaint.

After investigating the Complaint, the OAG determines that the CSC did not violate the OML because the evidence did not show that the CSC considered the character, alleged misconduct, professional competence, or health of Ms. Erquiaga, and therefore, no personal notice was required under NRS 241.033.

FACTUAL BACKGROUND

According to the Complaint, Ms. Erquiaga was hired by the CSC in May 2016 to serve as the Director of the William N. Pennington Life Center (“Senior Center”) during a public meeting. The CSC is a domestic non-profit corporation that provided services for the operation of the Senior Center through several grants and from a portion of Churchill County’s tax rate.

The Churchill County Board of County Commissioners determined that the services of the Senior Center would be better provided and managed by bringing the Senior Center under the direct operation and control of the County, and accordingly, the operations of the Senior Center were transferred from the CSC to Churchill County, effective July 1, 2021. The restructuring plan called for terminating a lease between the County and the CSC for the Senior Center. The restructuring plan also called for CSC’s staff to be County employees, whereby existing CSC employees were invited to apply for their positions with the County. Further, the restructuring plan called for the elimination of the Director position and the creation of a new manager position that would fall under the supervision of the County’s Social Services Director.

On June 10, 2021, the Churchill County Board of County Commissioners (“Board”) held a special meeting to consider the restructuring plan, which included (1) transferring all operations of the Senior Center to the Churchill County Social Services Department; (2) termination of the lease with the CSC; (3) transferring all accompanying budgets, funding, and grants to the County; and (4) authorizing the appointment of an interim manager. The Board unanimously approved the agenda items on June 10, 2021.

Subsequently, on June 11, 2021, the CSC held a special meeting to discuss the restructuring plan. The CSC’s agenda included the following items:

- A. Consideration and possible action re: Approval of the Churchill County Restructuring Plan for the provision of services to seniors in the community, including: (1) transferring all operations of the William N. Pennington Life Center to the Churchill County Social Services Department; (2) terminating the Lease with the Coalition for Senior Citizens; (3) transferring

all accompanying budgets, funding, and grants to Churchill County, with an effective date of July 1, 2021.

- B. Consideration and possible action re: Approval of Churchill County's request to terminate the Lease of the William N. Pennington Life Center, effective July 1, 2021.
- C. Consideration and possible action re: Approval of Amended Bylaws, which removes the position of Director and makes related changes based upon the Restructuring Plan of Churchill County for the provision of services to seniors.

The CSC approved Agenda Items A and B and tabled discussion of Item C. On June 17, 2021, the CSC held a public meeting to have a follow up discussion on the restructuring plan. During the June 17, 2021 meeting, the CSC's agenda included the following items:

- A. Consideration and possible action re: Approval of a request for certain members of the Coalition of Senior Citizens to be involved in the hiring process for the Senior Center Manager of the William N. Pennington Life Center and not to utilize Manpower but to allow current employees to continue working in their positions until the positions are filled by the county.
- B. Consideration and possible action re: Approval of Amended Bylaws, which removes the position of Director and makes related changes based upon the Restructuring Plan of Churchill County for the provision of services to seniors.

Upon conclusion of the June 17, 2021 meeting, the CSC approved to amend the Bylaws to remove the position of Director. The Complaint alleges that Ms. Erquiaga, as the then-currently sitting Director of the CSC, should have been terminated from her position in an open meeting.

LEGAL ANALYSIS

- 1. The OAG will not opine whether the CSC is a "public body" under the Open Meeting Law.**

As a preliminary matter, it is not apparent from the evidence that the CSC is a public body under the OML. However, the CSC has been operating under the assumption that it is a public body, did not argue in its response that it is not a public body and as discussed below, followed the OML. Thus, the OAG determines that it is not necessary to determine the CSC's status as a public body at this time.¹

2. The CSC did not violate the OML's requirement for a clear and complete agenda.

An agenda for a meeting of a public body must include a "clear and complete statement of the topics to be considered during the meeting." NRS 241.020(2)(d)(1). The "clear and complete statement" requirement of the OML stems from the Legislature's belief that "incomplete and poorly written agendas deprive citizens of their right to take part in government' and interferes with the 'press' ability to report the actions of government." *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the "clear and complete" standard for agenda items is required for compliance under the OML. *Id.* The OML "seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed." *Id.* at 155.

Further, a public body may not hold a meeting to consider the character, alleged misconduct, professional competence or physical or mental health of any person unless the public body has given written notice to that person of the time and place of the meeting and received proof of service of the notice. NRS 241.033. "Character" is defined as "the qualities that combine to make an individual human being distinctive from others, esp. as regards morality and behavior [sic]; the disposition, reputation, or collective traits of a person as they might be gathered from close observation of that person's pattern of behavior." Black's Law Dictionary (11th ed. 2019). "Misconduct" means "a dereliction of duty; unlawful, dishonest, or improper behavior, esp. [sic] by someone in a position of

¹ As an independent not for profit entity, the CSC would not ordinarily be presumed to be a "public body" under the OML. To be a "public body", an organization must expend or be supported by tax revenue and must meet one of the creation requirements in NRS 241.015(4). There is no question that CSC expends or is supported by tax revenue. However, the OAG does not possess sufficient evidence regarding the creation of the CSC to determine if it meets the requirements of NRS 241.015(4). For example, if the CSC were to have been created at the direction of the County Commission and its members appointed by the County Commission, it would likely be a public body under NRS 241.015(a)(5), despite its non-profit entity status.

authority or trust.” *Id.* “Competence” means “a basic or minimal ability to do something; adequate qualification, esp. [sic] to testify.” *Id.*

In this case, the evidence does not show that the CSC considered or deliberated on the character, alleged misconduct, professional competence, or health of its then-current Director, Ms. Erquiaga. The discussion by the CSC did not mention Ms. Erquiaga’s character, nor did the CSC assert that she engaged in any misconduct, lacked competence, or that her health was at issue. Accordingly, the requirement under NRS 241.033 for personal written notice does not apply.

Additionally, the OML requires public bodies to give written notice to a person if the public body intends to consider whether to take administrative action against that person. NRS 241.034. The term “administrative action against a person” is not defined in the OML; however, the OAG has previously defined “action against a person” as action involving an individual’s characteristics or qualifications, not those of either objective or discretionary standards relating to inanimate matters. *Nevada Open Meeting Law Manual*, Section 5.10 – Meeting to consider administrative action against a person or acquisition of real property by eminent domain (NRS 241.034) (12th ed. Jan. 2016, updated March 26, 2019). “Administrative action against a person’ does not occur unless the matter being acted upon is uniquely personal to the individual or entity. ‘Administrative action against a person does not occur when the legal basis of the action is consideration of the inanimate characteristics of a facility or property and no consideration of the characteristics or qualifications of the individual or entity (the person) that has sought the governmental approval.” *Id.* Further, the OAG has previously explained that “an act is not subject to the additional notice requirements of NRS 241.034 if the action depends on the application of either objective or discretionary standards . . . unrelated to the personal qualities and characteristics . . . that is subject to the authority of the public body.” *Id.*

Here, the CSC did not consider the personal characteristics or qualifications of Ms. Erquiaga in her position as the Director of the CSC. Instead, the CSC agendaized an item for the amendment of its bylaws, which included

elimination of the Director position, in conformance with the restructuring plan. Therefore, the notice requirements stated in NRS 241.034 are inapplicable.²

CONCLUSION

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

cc: Katherine F. Parks, Esq.
Thorndal Armstrong
6590 S. McCarran Blvd., Suite B
Reno, NV 89509
Certified Mail No.: 7009 3410 0002 3253 1789

² This Opinion focuses solely on matters related to the Open Meeting Law and does not provide a position on whether the CSC violated its bylaws, administrative procedures, or other local or county ordinances or laws associated with the amendment of its bylaws and elimination of the Director position.