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May 2, 2018

Via U.S. Mail

Jason Woodard
[REDACTED]

**Re: Open Meeting Law Complaint, O.A.G. File No. 13897-261
Sparks City Counsel**

Dear Mr. Woodard:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging a violation of the Open Meeting Law (OML) by the Sparks City Council (Council). The Complaint alleges that the Council failed to give you notice under NRS 241.033 regarding its decision to approve an appeal during its November 13, 2017, meeting (Meeting) and that the Council failed to issue a public notice for a session with its attorney regarding the same matter.

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 the Complaint, the OAG reviewed the Complaint and attachments, the agenda and audio recording for the Meeting, and the response to the Complaint from the Sparks City Attorney's Office.

FACTUAL BACKGROUND

The Council is a "public body" as defined in NRS 241.015(4), subject to the OML.

Mr. Woodard was a party to an arbitration in a personnel matter with the City of Sparks. The arbitration resulted in a decision by the arbitrator that the Sparks City Attorney's Office desired to appeal.

Agenda item 9.4 for the Meeting was listed as an action item and read: “Consideration, discussion, and possible authorization to the Sparks City Attorney’s Office to file or cause to be filed an appeal of an arbitrator’s decision in a personnel matter to the Washoe County District Court and for legal fees of an estimated \$5,000.” Supporting material for the Meeting included a brief report and recommendation from the City Attorney’s Office regarding the appeal. Neither the agenda nor the supporting material mention Mr. Woodard’s name, details identifying Mr. Woodard, or the details of the personnel matter.

Prior to the Meeting, the Council held a conference with its attorneys regarding the potential appeal. During the meeting, staff from the City Attorney’s Office recommended the Council authorize the appeal and counsel for Mr. Woodard, Francis Flaherty, made public comment urging the Council to decide not to appeal. Neither the attorneys for the City nor Mr. Flaherty identified Mr. Woodard or discussed details of the personnel matter. The Council voted unanimously to authorize the appeal.

DISCUSSION AND LEGAL ANALYSIS

The Nevada Legislature intends that the actions of public bodies “be taken openly and that their deliberations be conducted openly.” NRS 241.010(1); see *McKay v. Bd. Of Supervisors*, 102 Nev. 644, 651 (1986). Public bodies must meet in an open meeting to determine material steps in the litigation process, such as authorizing an appeal. *Commission on Ethics v. Hansen*, 396 P.3d 807, 809-10 (2017) *reh’g denied* (Sept. 29, 2017), *reconsideration en banc granted* (Dec. 20, 2017).

The OML defines a meeting as follows: “(1) The gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power;” or “(2) Any series of gatherings of members of a public body at which: (I) Less than a quorum is present, whether in person or by means of electronic communication, at any individual gathering; (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.” NRS 241.015(3)(a). However, the OML allows public bodies to hold attorney-client conferences behind closed doors to receive legal advice regarding a potential or existing litigation. *Hansen* at 809; NRS 241.015(3)(b)(2). The OML excludes attorney-client conferences from its definition of meetings.

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If a public body intends to consider the character, misconduct, competence or health of a person during a public meeting, the public body must provide that person with written notice. NRS 241.033(1).

Here, the Council's conference with its attorney was not a "meeting" under the OML and thus was not required to be noticed as a meeting. The Council's decision to approve the appeal was noticed in accordance with the OML and was made in a public meeting. Thus, the Council did not violate the OML by holding a conference with its attorneys.

Additionally, the Council did not discuss Mr. Woodard or any details of Mr. Woodard's personnel matter during the November 13 meeting. The Council only referred to the arbitrator's decision as one of "a personnel matter." Therefore, as the Council did not consider Mr. Woodard's character, misconduct, competence, or health during its meeting, the Council was not required to give Mr. Woodard specific notice of the meeting and agenda item pursuant to NRS 241.033.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,



Rosalie Bordelove
Deputy Attorney General

RMB:arz

cc: Francis C. Flaherty, Esq.
Shirle T. Eiting, Chief Assistant, Sparks City Attorney