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April 19, 2016

Via First Class Mail

Wanda L. Beckett
5021 Alejandro Way
North Las Vegas, Nevada 89130

Re: Open Meeting Law Complaint, A.G. File No. 13897-184
Southern Nevada Regional Housing Authority Board of Commissioners

Dear Ms. Beckett:

Wanda Beckett alleges that the Board of Commissioners (Board) of the Southern Nevada Regional Housing Authority (SNRHA), during a public meeting on December 17, 2015, allowed two men from the public to make false accusation against her. Furthermore she alleges the Board should never have heard this matter in public as the false information presented against her was both slanderous and offensive to her. She is a Procurement Officer for SNRHA. She also alleges that the comment of these two men violated the rules of the citizen participation set forth on the agenda as the second period of public comment.¹

¹ **8. CITIZEN PARTICIPATION**

Items raised under this portion of the agenda cannot be deliberated or acted upon by the Housing Authority Commission until the notice provisions of the Open Meeting law have been complied with. If you wish to speak on matters on or off the Agenda, please step to the podium and clearly state your name and address. In consideration of others, please avoid repetition and limit your comments to no more than three (3) minutes. To ensure all persons equal Opportunity to speak, each subject matter will be limited to twelve (12) minutes. . . . Public comment that is **repetitious, slanderous, offensive and inflammatory, amounts to a personal attack** or interferes [with] the rights of other speakers is not allowed. Any person who acts in violation of these rules will be excused from the remainder of the meeting.

Both men commented on SNRHA's procurement process. Both men had been applicants for a janitorial contract covering several buildings owned by SNRHA in Las Vegas. One of the men, who was not a successful bidder, alleged collusion between Ms. Beckett (the contracting officer for the janitorial contract) and the eventual successful bidder because of an alleged relationship through Ms. Beckett's church.

Did the Board and its Counsel violate its own public comment rules by allowing the two men to comment on alleged conduct that Ms. Beckett complains is false and offensive to her personally and professionally?

The Attorney General has jurisdiction to investigate an allegation of a violation of NRS Chapter 241, the OML. This Office may seek civil remedies against individuals and public bodies, including injunctive relief, to require compliance with the OML, or to prevent violation of the OML. A criminal misdemeanor penalty and a monetary penalty for violations of the OML are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

DISCUSSION

Freedom of expression upon public questions is secured by Article 1, § 9 of the Nevada Constitution (Nev. Const.).² In *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964), the Court said, "[a] rule compelling the critic of official conduct to guarantee the truth of all his factual assertions and to do so on pain of libel judgment . . . leads to . . . self-censorship and would deter protected speech." *Id.* at 279.

As a result of the critical importance of preserving and ensuring vigorous public debate and comment on matters of public concern, the *Sullivan* Court created a federal rule that protects even a defamatory falsehood relating to a public official's conduct unless it was uttered with actual malice or reckless disregard as to whether it was false or not. *Id.* at 279–280. The federal rule is consistent with Nev. Const. art. 1, § 9, which secures free speech. The federal rule is applicable to public meetings as long as the public comment regards any matter relevant to the authority, jurisdiction, or control of the public body and is not willfully disruptive. Open Meeting Law Manual § 7.05 (12th ed. 2016).

In general, "the right to criticize public officials" is protected by the First Amendment. *Jenkins v. Rock Hill Local Sch. Dist.*, 513 F.3d 580, 588 (6th Cir. 2008); also see *N.Y. Times Co.*, 376 U.S. at 270 (noting background of "profound national commitment to the principle that debate on public issues should be uninhibited, robust,

² Sec. 9. **Liberty of speech and the press.** Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for libels, the truth may be given in evidence to the Jury; and if it shall appear to the Jury that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted or exonerated.

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and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”).

Public comment is subject to reasonable time, place, and manner restrictions, but absent willful disruption of a meeting due to irrelevant comment, repetitive comments, inflammatory comments, or irrational behavior, the public has a right to speak.


CONCLUSION

Both men commented only about SNRHA’s procurement process. Neither man disrupted the meeting. The matter of procurement of a janitorial contract is clearly under the jurisdiction of the Board. The men spoke on a matter of public concern. Allegations of public misfeasance are a matter of public concern.

The Office of the Attorney General has carefully considered the allegations in this matter in light of important rights the public has to make public comment. The facts do not support a finding of a violation of the OML. We are closing this investigation.

Sincerely,

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