



STATE OF NEVADA  
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March 29, 2016

**Via First Class Mail**

Tom Fransway  
P.O. Box 514  
Winnemucca, Nevada 89446

Re: Open Meeting Law Complaint, A.G. File No. 13897-175  
Winnemucca/Humboldt Airport Board

Dear Mr. Fransway:

In this Open Meeting Law (OML) complaint and investigation, which facts are closely related to A.G. File No. 13897-169, Tom Fransway (Mr. Fransway) alleges that Steve West, Winnemucca City Manager, would not allow the Winnemucca City Clerk to read aloud Mr. Fransway's written public comment, during the Winnemucca-Humboldt Airport Board meeting on November 17, 2015. The issue raised in Mr. Fransway's public comment concerned the location of the MedXOne ambulance helicopter landing site at the Winnemucca Airport. Mr. Fransway was out of state on November 17, 2015, when the meeting occurred and he asked the City Clerk to read his written comment to the Board.

Mr. Fransway alleges that as a member of the public he enjoys a right to freedom of speech under the First Amendment to the U.S. Constitution to make public comment. He assumes that Constitutional protection extended to him even if someone else actually read his comment aloud in a public meeting.

The First Amendment to the U.S. Constitution has never been interpreted to include a right of public access to public meetings. The right of access has never been adopted by the courts. *Gannett Co. v. DePasquale*, 443 U.S. 368, 404, (1979). However, once a person is given a right to address a public body, thereafter that right may be limited only within constitutional parameters. *Rosenberger v. Rector*, 515 U.S. 819, 829 (1995). The Nevada Legislature has given members of the public the right to address public bodies. NRS 241.020(2)(c)(3).

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NRS 241.035 specifies that persons making public comment may also provide a written statement of his or her public comment for inclusion in the minutes of the meeting. But this statute directs the public body to accept the written comment of the person who actually spoke to the public body. Mr. Fransway sought to have First Amendment of the U.S. Constitution protection when someone else has been asked to read his written comment even though he was not at the public meeting.

The Attorney General's Office (AGO) does not have to determine whether Mr. West refused to consider reading aloud the proffered written public comment, or whether the Board took action to reject the demand to read it aloud. The AGO does not have to decide if the Board or Mr. West violated the OML. Mr. Fransway does not have a right under either the OML or the First Amendment to the U.S. Constitution to have a person read his comment to a public body.


There is no support for Mr. Fransway's asserted right in statute or case law. Instead, in the few courts that have addressed this issue, the assertion of such a First amendment right has been rejected. *Prestopnik v. Whelan*, 253 F.Supp.2d 369 (N.D.N.Y.), *aff'd*, 83 Fed.Appx. 363 (2d Cir.2003), "There is no authority for the proposition that a person has a First Amendment right to speak at a public forum through another person, whether or not that other person is a member of the bar." 83 Fed.Appx. at 365.

We are closing our file on this matter.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By:

  
GEORGE H. TAYLOR  
Senior Deputy Attorney General  
Bureau of Government Affairs

Cc: Steve West, City Manager  
Kent Maher, City Attorney, Attorney for the board