



STATE OF NEVADA
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April 1, 2016

Via First Class Mail

Lori C. Gilbert
1800 Idaho Street
Elko, Nevada 89801

Re: Open Meeting Law Complaint, A.G. File No. 13897-174
Elko County Commissioners

Dear Ms. Gilbert:

Lori Gilbert (Ms. Gilbert) filed an Open Meeting Law (OML) complaint alleging that the Elko Board of County Commissioners' (Board) process used to appoint a new county public defender was in violation of the OML. Specifically, it is alleged that the County's failure to allow public access, transparency, and participation in the process including public review of all candidates' applications and resumes violated the OML.

This office has investigated the facts underlying the complaint. Counsel for the Board provided our office with audio recording of relevant meeting, minutes of the November 4, 2015 meeting and a written response to the complaint. The Office of the Attorney General (OAG) has statutory authority to enforce compliance with the OML. NRS 241.037.

Robert Stokes, Elko County Manager, assigned Amanda Osborne (Ms. Osborne), Elko County Human Resources Director with the job of selecting candidate(s) for the Elko County public defender vacancy. Ms. Osborne arranged advertisement for the job and conducted interviews of applicants. Cash Minor (Mr. Minor), Assistant County Manager and two prominent local private attorneys assisted her through the process. The Board took no part in this process.

Comments from the Board during the November 4th public meeting provide implicit evidence that the Board members did not play any role in the process that Osborne pursued. Commissioners Cliff Eklund, Glen Guttry, and Delmo Andreozzi

were critical of the process primarily because there was no backup information in supporting material to guide them while they publicly interviewed the candidate selected by Ms. Osborne. The three commissioners were not provided with sufficient information regarding this candidate's qualifications, job description, goals, management experience, and his/her knowledge and ability to fill the position of public defender.

Amanda Osborne, with the assistance Mr. Minor selected an internal agency applicant, Kriston Hill (Ms. Hill) as their recommendation to the Board. Osborne placed Ms. Hill's name on the November 4, 2015 Board agenda. Osborne introduced the agenda item and spoke to the Board members about the process used to select Ms. Hill.

The Open Meeting Law applies only to public bodies. Amanda Osborne is a member of county staff, which is not a public body.¹ The Open Meeting law does not apply to Ms. Osborne or Mr. Minor. Consequently, the allegation that Ms. Osborne, Mr. Minor, and the two private attorneys constituted a committee subject to the OML is not reviewable.

Ms. Osborne, Mr. Minor, and the private attorneys, provided the process approved by the County Manager, not by the Board members. The Board members did not have input or an approval role over its composition for the selection process. The group/committee reported to and worked with the County Manager, not the Board. Until Kriston Hill was chosen by Osborne, who then placed her name on the Board's November 4th agenda, the Board had no input or other role in the selection process. Once Ms. Hill's name appeared on the November 4th agenda, then the OML's transparency and disclosure provisions applied.

¹ Prior opinions issued by Attorney General's Office state that generally the OML does not apply to internal staff groups or *committees reporting to an individual*. [Emphasis added.] OMLO 2007-04, September 10, 2007 (finding that a citizens' advisory panel (CAP) was not subject to the OML because it was appointed by and advised only the Las Vegas City Manager, not a public body); OMLO 2002-02, January 20, 2004 (finding that "interagency meetings of groups which have no independent legal authority, no independent budget, and no formal mission or purpose will not fall within the definition of a public body if these groups . . . do not advise or make recommendations to a public body."); Op. Nev. Att'y. Gen. No. 2002-06 (February 8, 2002), (staff committee plus one deputy attorney general not subject to OML as it was advisory only to the Commissioner of Insurance); Op. Nev. Att'y. Gen. No. 2002-13 (March 14, 2002) (stating that "[a] committee formed by an individual who is not subject to the Open Meeting Law is likewise not subject to the Open Meeting Law).

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The Nevada Supreme Court has explicitly stated that the OML applies only to an appointment process **conducted by a public body**. In *City Council of the City of Reno, v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989), the Court made clear that the clause in NRS 241.030(4)(d)² "discussion of appointment" of any person to public office or as a member of a public body "means all consideration, discussion, deliberation, and selection **done by a public body** in the appointment of a public officer."

The Board is statutorily required to appoint a public defender for the County. NRS 260.010(5). The Board appointed Kristen Hill on November 4, 2015.

The OAG's investigation did not find a violation of the OML based on the process utilized by the County Manager and the Board members.

We are closing our file on this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 
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Senior Deputy Attorney General
Bureau of Government Affairs
Boards and Open Government Division
Open Meeting Law

C.c. Demar Dahl, Chairman
Robert Stokes, County Manager;
Kristen McQueary, Chief Civil District Attorney
Amanda Osborne, Elko County Human Resources Director

² NRS 241.030 has been amended since 1989. The phrase "discussion of appointment" is found at NRS 241.030(4)(d).