



STATE OF NEVADA  
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April 22, 2016

**Via First Class Mail**

Pearl A. Olmedo  
PO Box 1805  
Round Mountain, NV 89045

Re: Open Meeting Law Complaint, A.G. File No. 13897-172  
Round Mountain Town Board

Dear Ms. Olmedo:

The Office of the Attorney General (OAG) investigated the allegation in the Open Meeting Law (OML) complaint filed by Pearl Olmedo (Ms. Olmedo). It alleges Sheila Beery-Burggraff, Board Chairwoman (Chairwoman Beery-Burggraff) of the Round Mountain Town Board (Board), publicly made a derogatory remark about Ms. Olmedo's character without serving her notice as required by the OML.

Counsel for the Board responded to the OML complaint with requested documents, copies of the audio of the October 13th Board meeting and a written defense based on the facts of the complaint. The OAG has reviewed the audio of the public meeting together with its notice and agenda.

The Attorney General has jurisdiction to investigate an allegation of violation of the Open Meeting Law, Nevada Revised Statute (NRS) Chapter 241. The OAG may seek civil remedies against members of a public body, including injunctive relief, to require compliance with the OML, or to prevent violations 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.

## ANALYSIS

NRS 241.033 requires service of notice to the person whose character will be considered by the public body in a public meeting and return of service to the public body at least five days before the public meeting.

This issue arose because the Round Mountain Town Manager (Manager) had submitted his resignation. The Board agendaized discussion of a succession plan for the manager's position during a meeting on October 13, 2015; the item was for possible action. During discussion amongst the Board, Chairwoman Beery-Burggraff said, "So my concern [] with having Pearl step up [to the manager's position] is I think she does a wonderful job with paperwork and behind the scenes, but she does not have a very good reputations as a people person." "There is a lot of talk out there that you're not very nice, that you're a bitch . . . ."

Ms Olmedo immediately suggested to the Board that such comment regarding her character were without notice and not on the agenda. She cautioned the Board to stop. The Board stopped and immediately returned to the process of succession. No further discussion regarding Ms. Olmedo's reputation in the community occurred. Further discussion was harmonious.

On November 5, 2015, the Board agendaized an item to consider the appointment of Ms. Olmedo as the interim town manager. She received notice from the Board of the agenda item. Ms. Olmedo was appointed.

NRS 241.033(7)(b) exempts casual or tangential references to a person or the name of a person during a closed meeting. A casual reference does not constitute consideration of the character, alleged misconduct, professional competence, or physical or mental health of the person.

The OAG must determine whether Chairwoman Beery-Burggraff's remarks were "casual" within the meaning of the statute. After review of the entire audio recording of this item, we believe it was a casual mention, merely referencing what others in the community may have said that was relevant to the item under consideration—succession following resignation of the town manager. The Board did not consider Ms. Olmedo's reputation in the community. Nevertheless, Chairwoman Beery-Burggraff should not have made the casual remark without being certain that the OML would not be offended. Chairwoman Beery-Burggraff's statement even if local hearsay within the community was unfortunate. Our determination is a close call.

In addition to the notice issue, Ms. Olmedo alleges she was not given the due process protection by having her character discussed in a closed meeting. NRS 241.031 forbids a public body from holding a closed meeting to consider a public official's character if the person is appointed by the public body or serves at its pleasure.

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We are unsure as to whether Ms. Olmedo, as the Administrative Supervisor is an appointed public officer, or whether she serves at the pleasure of the Board. A closed personnel session would not be allowed in either case.

The OAG warns the Board that discussion of a person's character, even if only uttered casually or tangentially could become a violation. The public body must respect the line drawn by the legislature. The line between casual remark and a violation is thin. The Chairperson's remarks were more than casual but on balance the OAG believes that a warning is more appropriate.

We are closing this file

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By:

  
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Cc: Sheila Beery-Burggraff, Board Chair  
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