



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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ADAM PAUL LAXALT
Attorney General

April 13, 2016

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First Assistant Attorney General

Via First Class Mail

Linda A. Davies
1291 16th Street East
Ely, Nevada 89301

Re: Open Meeting Law Complaint, A.G. File No. 13897-179
Ely City Council

Dear Ms. Davies:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging a violation of the Nevada Open Meeting Law (OML) by the Ely City Council (Council) at a public meeting held on January 14, 2016. In response to the complaint, the OAG reviewed the public notice and agenda for the meeting, the written minutes, and audio and video recordings of the meeting, together with a response from Ely City Attorney Charles Odgers.

FACTUAL BACKGROUND

The complaint alleges that Mayor Melody VanCamp failed to remove a member of the public during the Council's January 14, 2016, meeting for several verbal outbursts that included profanity and were not confined to periods devoted to public comment. The member of the public who uttered these outbursts was Gary Tull, the husband of Mayor VanCamp. Mr. Tull was admonished for his outbursts but was not removed from the meeting.

The agenda for the meeting provided for public comment at the beginning and at the end of the meeting, and specified that:

[T]he public body may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational, or amounting to personal attacks or interfering with the rights of other speakers.

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The complaint also alleges violations of NRS 281A.202(1), NRS 281A.420(1) and NRS 241A.500. These are provisions of the Nevada Ethics in Government Law, NRS Chapter 281A. The Commission on Ethics enforces these provisions and the OAG does not have jurisdiction over ethics violations; therefore those allegations are not addressed in this response.

DISCUSSION AND ANALYSIS

The OML does not “[p]revent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.” NRS 241.030(4)(a); see also *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995). A public body has a legitimate interest in conducting orderly meetings. Public bodies may adopt reasonable restrictions to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting.¹

However, nothing in the OML requires that a member of the public be removed for disruptive behavior, even when removal would be lawful. The decision whether to remove a person for disrupting a public meeting in such instances is left to the discretion of the presiding officer. See *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990). Mayor VanCamp’s restraint in not removing Mr. Tull from the January 14th Council meeting was not a violation of the OML.

CONCLUSION

No violation of the OML occurred; the OAG will be closing its file on this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: _____


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WBK/klr

cc: Melody VanCamp, Ely Mayor
Charles Odgers, Ely City Attorney

¹ NRS 241.020(2)(d)(7) requires that an agenda include “[a]ny restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint.”