



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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ADAM PAUL LAXALT
Attorney General

April 13, 2016

WESLEY K. DUNCAN
First Assistant Attorney General

NICHOLAS A. TRUTANICH
First Assistant Attorney General

Via First Class Mail

Linda F. Burleigh
751 Canyon Street
Ely, Nevada 89301

Re: Open Meeting Law Complaint, A.G. File No. 13897-187
Ely City Council

Dear Ms. Burleigh:

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 February 11, 2016. In response to the complaint, the OAG reviewed the public notice and agenda for the meeting, the written minutes and audio recording of the meeting, together with a response from Ely City Attorney Charles Odgers.

FACTUAL BACKGROUND

The complaint alleges that at the Council's February 11, 2016, meeting, Mayor Melody VanCamp and City Attorney Odgers "allowed citizen Marty Westland to make slanderous, offensive, inflammatory, irrational remarks amounting to personal attacks about Mr. Mark Basset." The statements at issue were made by Mr. Westland during public comment at the end of the meeting and are reflected in the meeting minutes.

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 further alleges that “the Mayor makes no attempts to control meetings” and that “Ms. VanCamp and City Attorney Odgers are at fault and must be held accountable for their lack of action.” The complaint does not allege violations of any specific provisions of the OML.

DISCUSSION AND ANALYSIS

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. “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.” NRS 241.020(2)(d)(7); *see also Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995). Restrictions on public comment must be included on the agenda.

However, nothing in the OML requires that a member of the public be ruled out of order and restricted from continuing to speak, even when restriction would be lawful. The decision whether to cut off a speaker in such circumstances is left to the discretion of the presiding officer of the public body. *See White v. City of Norwalk*, 900 F.2d 1421, 1425-26 (9th Cir. 1990). Mayor VanCamp’s inaction during Mr. Westland’s public comment at the February 11th Council meeting was not a violation of the OML.

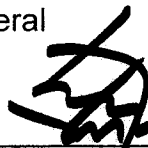
CONCLUSION

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