

ADAM PAUL LAXALT
Attorney General



WESLEY K. DUNCAN
First Assistant Attorney General

NICHOLAS A. TRUTANICH
First Assistant Attorney General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

January 24, 2017

via US Mail

Jeffrey Church
1720 Wind Ranch Road #B
Reno, NV 89521

In Re: Reno City Council – OML Violation
Open Meeting Law Complaint, OAG File No. 13897–205

Dear Mr. Church:

The Office of the Attorney General (OAG) received your Complaint (OAG File No. 13897–205) alleging the Reno City Council (Council) violated the Nevada Open Meeting Law (OML) when a quorum of the Council met on August 10, 2016, with a law firm hired to manage an investigation regarding a former City Manager.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The investigation of the Complaint included OAG review of the August 10, 2016, meeting agenda, supporting material and minutes, staff report 7058, and written responses to the Complaint from Reno City Attorney Karl Hall (City Attorney).

After reviewing these materials, the OAG concludes that no violation of the OML occurred because the alleged closed meeting with an attorney hired by the Council is exempt from the definition of “meeting” by NRS 241.015(3)(b)(2).

LEGAL STANDARD

The Nevada Legislature intends that the actions of public bodies “be taken openly and that their deliberations be conducted openly.” NRS 241.010(1); *see also McKay v. Bd. of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“[t]he spirit and policy behind NRS chapter 241 favors open meetings.”)

All exceptions to the OML must be construed narrowly and in favor of openness. *Chanos v. Nevada Tax Comm’n*, 124 Nev. 232, 239, 181 P.3d 675, 680 (2008). “[T]he narrow construction of exceptions to the Open Meeting Law stems from the Legislature’s use of the term ‘specific’ in NRS 241.020(1) and that such exceptions must be explicit and definite.” *Id.* “[E]xceptions to the Open Meeting Law extend only to the portions of a proceeding specifically, explicitly, and definitely excepted by statute.” *Id.* The OML “mandates open meetings unless ‘otherwise specified by statute . . .’” *McKay*, 102 Nev. at 651, 730 P.2d at 443.

Although the OML was first enacted in 1960, the exclusion for attorney-client meetings regarding potential or existing litigation was not added until 2001. Prior to that addition, the OML required attorneys to provide information regarding pending or existing litigation to members of public bodies singly or in groups smaller than a quorum. *See McKay*, 103 Nev. at 496, 746 P.2d at 127.

FINDINGS OF FACT

The Council is a “public body” as defined in NRS 241.015(4) and is subject to the OML. The August 10, 2016, Council meeting agenda contained item E.21 which stated “Staff Report (For Possible Action): Approval of Award of Contract for Special Counsel to Kamer Zucker Abbott to manage an investigation into complaints of alleged misconduct by City Manager Andrew Clinger in an amount not to exceed \$50,000 (General Fund).” When item E.21 was called at 11:38 a.m., staff recommended that the Council award the Special Counsel contract to Kamer Zucker Abbott to “manage an investigation into complaints of alleged misconduct by City Manager Andrew Clinger.” During the Council’s discussion of item E.21, Gregory J. Kamer of

Kamer Zucker Abbott explained his office's role as legal counsel in managing the investigation included making sure the Council had good advice and could take whatever appropriate action was necessary. The Council voted to uphold the staff recommendation. Subsequently, the Council meeting recessed at 12:08 p.m. and reconvened at 2:10 p.m. During the recess, a quorum of the Council met with the City Attorney and Kamer Zucker Abbott to discuss the investigation of the alleged workplace misconduct by former City Manager Andrew Clinger (Clinger).

NRS 241.015(3)(b)(2) exempts conferences between public bodies and attorneys employed or retained by that public body regarding potential or existing litigation.¹

In its November 18, 2016, response to the Complaint, the Council, through Kamer Zucker Abbot, represents that "the City retained Kamer Zucker Abbott as Special Counsel to manage the investigation as it wanted Special Counsel's . . . legal advice regarding legal problems and defenses relating to the potential litigation stemming from the investigation." The Council further represents that the August 10, 2016, meeting between the Council, City Attorney, and Kamer Zucker Abbott concerned the potential litigation that may arise from Clinger's alleged workplace misconduct.

CONCLUSIONS OF LAW

Accepting the Council's representations as true—having received no evidence to contradict them—NRS 241.015(3)(b)(2) exempts the August 10, 2016, meeting as the Council received information at that meeting

¹ The plain text of NRS 241.015(3)(b)(2) does not limit its exemption to attorneys specifically retained to litigate a matter for a public body. Instead, NRS 241.015(3)(b)(2) more broadly exempts meetings to receive information from an "attorney employed or retained by the public body regarding potential or existing litigation." Where, as here, an attorney is employed by a public body to help navigate the legal contours of an investigation likely resulting in litigation, communications between the attorney and the public body are exempt from the OML. However, the OAG cautions public bodies that this OML exception should be used carefully and attorneys should not be hired for non-legal roles in conjunction with pending or anticipating litigation in an attempt to shield the public body's discussions regarding those matters from the purview of the OML.

Jeffrey Church
Page 4
January 24, 2017

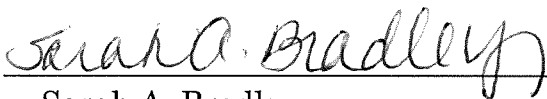
from an attorney retained regarding potential litigation. Therefore, the Council did not violate NRS 241.020(1).

SUMMARY

At this time, there is no evidence of an OML violation, and the OAG will be closing its file in this matter. If, however, it is revealed that (1) Kamer Zucker Abbott was not retained regarding potential or existing litigation; or (2) the August 10, 2016, meeting did not involve the receipt of information regarding potential or existing litigation, the OAG will consider reopening this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:  _____

Sarah A. Bradley
Senior Deputy Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
Telephone: (775) 684-1213
Email: sbradley@ag.nv.gov

SB/klr

cc: Karl S. Hall, Reno City Attorney