OFFICE OF THE ATTORNEY GENERAL STATE OF NEVADA

In the matter of:

ELY CITY COUNCIL.

OAG FILE NO.: 13897-230

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

Patricia E. Robison filed a complaint with the Office of the Attorney General ("OAG") alleging a violation of the Nevada Open Meeting Law ("OML") by the Ely City Council ("Council"). The complaint alleges that at a public meeting on March 23, 2017, the Council continued to deliberate on a pending agenda item during a brief recess.

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 public notice and agenda, minutes and recordings for the March 23, 2017, meeting, together with a written response to the complaint from Charles Odgers, Ely City Attorney.

LEGAL STANDARD

The legislative intent of the OML is that actions of public bodies "be taken openly," and that their deliberations be conducted openly." NRS 241.010(1); see also Chanos v. Nevada Tax Com'n, 124 Nev. 232, 234, 181 P.3d 675, 677 (2008); Del Papa v. Board of Regents of University and Community College System of Nevada, 114 Nev. 388, 394, 956 P.2d 770, 774 (1998); McKay v. Board of Supervisors, 102 Nev. 644, 651, 730 P2d. 438 (1986).

NRS 241.020(1) requires that "[e]xcept as otherwise provided by specific statute, all meetings of public bodies must be open and public." "[E]xceptions to the Open Meeting Law extend only to the portions of a proceeding specifically, explicitly, and definitely excepted by statute." *Chanos*, 124 Nev. at 239.

The OML further requires that public bodies record all meetings, whether public or closed, on audiotape or any other means of sound reproduction or cause the meeting to be transcribed by a certified court reporter, and thereafter create and maintain minutes of all meetings, including the substance of all matters proposed, discussed or decided. NRS 241.035.

Any action taken in violation of the OML is void. NRS 241.036.

FINDINGS OF FACT

- 1. The Council is a "public body" as defined in NRS 241.015(4) and is subject to the OML.
- 2. Agenda item No. B12 for the Council's March 23, 2017, meeting was identified for possible action and read as follows:

Mayor Van Camp – Discussion/For Possible Action – Approval to send Councilwoman Robison to Rural Roundup in Elko, Nevada April 26-27, 2017 to represent the City of Ely; registration fee of \$65.00 covers meals and increases after March 31, 2017, and to authorize the expenditure of up to \$150.00 for lodging should she not be able to share a room with a member of the Tour and Recreation Board who is planning on attending, to be paid from the general fund.

- 3. At the Council's March 23, 2017 meeting, during the course of discussion and deliberation on agenda item No. B12, at the request of Councilman Bruce Setterstrom, Mayor Melody Van Camp recessed the meeting for approximately 3 minutes. When the meeting reconvened, Mayor Van Camp stated "[w]e're done, we've got this figured out."
- 4. Thereafter, Councilman Setterstrom moved to "quash" agenda item No. B12. The motion was seconded by Councilman Sam Hanson and passed unanimously with all councilmembers, including Councilwoman Jolene Gardner, Councilman Kurt Carson, and the complainant, voting in favor.

CONCLUSIONS OF LAW

1. The Council violated NRS 241.020(1) and NRS 241.035 when it continued to deliberate toward a decision on agenda item No. B12 during the recess of the March 23,

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2017, meeting. The OML requires public bodies to deliberate toward a decision in a properly-recorded public meeting, and there are no statutory exceptions to this requirement that would have applied to the Council's consideration of agenda item No. B12.¹

2. The action taken on March 23, 2017, to "quash" agenda item No. B12 is void under NRS $241.036.^{2}$

SUMMARY

The Council admitted in its response to violating the OML when it continued to deliberate towards a decision on agenda item No. B12 during the recess of the March 23, 2017, meeting and subsequently took action to "quash" the agenda item.

Because the OAG finds that the Council has violated the OML, the Council must place these Findings of Fact and Conclusions of Law on its next meeting agenda and include them in the supporting material for the meeting. The agenda item must acknowledge these Findings of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of Attorney General File No. 13897-230, and that it has been placed there as a requirement of NRS 241.0395.

The OAG notes that this is the second OML violation by the Council in three months, following the violations noted in the matter of Attorney General File No. 13897-218. The Council is warned that any further violations may result in action by the OAG pursuant to NRS 241.037 and NRS 241.040.

¹ In his response, Ely City Attorney Charles Odgers repeatedly makes reference to when the Council went "off the record" and went back "on the record." However, the OML mandates that all meetings of public bodies be "on the record."

² The OAG notes that "quashing" an agenda item is not an act recognized under either the OML or any recognized rule of parliamentary procedure. However, to the extent the Council intended to delete the agenda item, NRS 241.020(2)(d)(6)(III) provides that a public body "may remove an item from the agenda."

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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on the 25th day of May, 2017, I caused to be deposited for mailing, a true and correct copy of the foregoing, FINDINGS OF FACT AND CONCLUSIONS OF LAW, to the following:

Patricia E. Robison 257 Nevada Street Ely, NV 89301

Charles H. Odgers, City Attorney City of Ely 480 Campton Street Ely, Nevada 89301

Karen L. Rutledge
Employee of the

Office of the Attorney General