OFFICE OF THE ATTORNEY GENERAL STATE OF NEVADA

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In the Matter of:

CITY COUNCIL OF BOULDER CITY.

AG FILE NO.: 13897-223

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BACKGROUND

Joseph Kranyac, III filed a complaint (Complaint) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the City Council of Boulder City (Council) arising from a private breakfast meeting attended by a quorum of the Council members and Hyun Kim, candidate for City Finance Director, on September 21, 2016 (the "Private Meeting"), prior to the Council's concurrence in Mr. Kim's appointment as City Finance Director at the October 11, 2016, Council meeting.

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. In the course of investigating the Complaint, the OAG reviewed the public notice and agenda, supporting material, and minutes of the October 11, 2016, Council meeting, together with documentation provided by Mr. Kranyac of the Private Meeting, and a response to the Complaint from City Attorney Dave Olsen.

LEGAL STANDARD

The legislative intent of the OML is that the actions of public bodies "be taken openly, and that their deliberations be conducted openly." NRS 241.020(1) (emphasis added); see also McKay v. Board of Supervisors, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (stating that "the spirit and policy behind NRS Chapter 241 favors open meetings") (emphasis added). The OML applies to meetings of a public body. A "meeting" is defined in NRS 241.015(3) and generally requires a "gathering of members of a public body at

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which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." See also Dewey v. Redevelopment Agency of the City of Reno, 119 Nev. 87, 95, 64 P.3d 1070, 1076 (2003). "Deliberate" is defined in NRS 241.015(2) as "collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision." If a quorum of the Council deliberates outside of a public meeting, this would constitute a violation of the OML. Del Papa v. Board of Regents, 114 Nev. 388, 956 P.2d 770 (1998).

FINDINGS OF FACT

- 1. Boulder City is an incorporated municipality established by 1959 Charter and governed by the Council pursuant to Article II of the Charter.
- The Council is a "public body" as defined in NRS 241.015(4), subject to 2. the OML.
- Boulder City Code 2-2-2 (1959 Charter § 58; amd. by Amd. 2, 5-4-1965) 3. provides "[t]he head of the Department of Finance shall be the Director of Finance who shall be, or be appointed by, the City Manager, with the concurrence of a majority of the City Council, and whose duties hereinafter set forth shall be subject to the supervision and control of the City Manager."
- In correspondence dated September 6, 2016, a contingent offer was made by 4. the City to Mr. Kim for the position of City Finance Director.
- On September 15, 2016, Nancy Sommer, Executive Assistant to the City 5. Manager, scheduled the Private Meeting through a series of email communications with the Council members. The email communications expressly stated that the purpose of the Private Meeting was for the Council members to meet the Finance Director "candidate."
- 6. On September 21, 2016, Mayor Rod Woodbury and Councilmembers Peggy Leavitt, Duncan McCoy and Rich Shuman participated in the Private Meeting with Mr. Kim at the Boulder Dam Hotel. Councilmember Cam Walker was not present.

- 7. Agenda Item No. 5 for the Council's October 11, 2016, meeting read as follows: "For possible action: Concurrence of the City Manager's appointment of Hyun Kim as Finance Director/Real Estate Officer."
- 8. The minutes of the Council's October 11, 2016, meeting reflect that Mayor Woodbury stated under Agenda Item No. 5 that "the Council had met with Mr. Kim during a breakfast; however, it was not involved in the hiring process." However, the Council does have a role in that process: Boulder City Code 2-2-2 requires "action" in the form of the Council's concurrence in the appointment of the City Finance Director.
- 9. The minutes of the Council's October 11, 2016, meeting reflect that Mayor Woodbury moved to concur the appointment of Mr. Kim as City Finance Director/Real Estate Officer. The motion was seconded by Councilmember Shuman and passed unanimously by Mayor Woodbury, Councilmember McCoy and Councilmember Shuman, with Councilmembers Leavitt and Walker absent.

CONCLUSIONS OF LAW

- 1. The Private Meeting violated both the spirit and letter of NRS 241.010(1) and NRS 241.020.
- 2. The Private Meeting falls squarely within the statutory definition of "meeting" set forth in NRS 241.015(3)(a)(1): a gathering of a quorum of the Council to deliberate on the decision to concur in the appointment of Mr. Kim as the City Finance Director.
- 3. The Private Meeting allowed the quorum of Council members present to collectively examine, weigh and reflect upon the reasons for or against Mr. Kim's appointment, and to collectively discuss or exchange facts preliminary to the ultimate decision to concur, thus constituting deliberations under NRS 241.015(2). The incontrovertible purpose of the Private Meeting was to allow those Councilmembers present to form an impression of Mr. Kim before taking action.

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SUMMARY

Because the OAG finds that a quorum of the City Council of Boulder City has taken action in violation of the OML, the Council must place on its next meeting agenda these Findings of Fact and Conclusions of Law 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. 13897-223, and that they have been placed there as a requirement of NRS 241.0395.

Furthermore, the OAG strongly recommends that the City Council of Boulder City members and staff receive training in the OML; the OAG is available to provide OML training upon request.

DATED this 20th day of March, 2017.

ADAM PAUL LAXALT Attorney General

By:

BRETT KANDT

Chief Deputy Attorney General

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CERTIFICATE OF SERVICE

It is hereby certified that I am an employee of the Office of the Attorney General, State of Nevada, and that on March 20, 2017, a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, was deposited for service by mailing to the following:

Joseph Kranyac, III PO Box 62144 Boulder City, NV 89006

City Council of Boulder City c/o City Attorney 401 California Avenue Boulder City, NV 89005

Marissa Kuckhoff, Legal Secretary II