



STATE OF NEVADA
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January 11, 2013

Mr. John C. Carpenter
1091 Dotta Drive
Elko, Nevada 89801

Re: Open Meeting Law Complaint / A.G. file No. 12-036
City of Elko

Dear Mr. Carpenter:

This letter will explain this office's resolution of the allegation made in your October 30, 2012 complaint against the Elko City Council (City) that an incomplete and unclear agenda item appeared on agenda. The agenda item proposed to adopt an amendment to Title 4, Chapter 4 of the Elko City Code gaming section entitled "Slot Machines; Gaming." The incomplete agenda item appeared under Item B. NEW BUSINESS, RESOLUTIONS AND ORDINANCES. It was published on October 23, 2012 on the City Council's regular meeting agenda.

Item B. read: "First reading of Ordinance No. 764, and ordinance amending Title 4, Chapter 4 of the Elko City Code entitled "Slot machines; Gaming" by adding or amending licensing requirements for Restricted and Non-Restricted Gaming, and matters related thereto. FOR POSSIBLE ACTION. A copy of the proposed ordinance had been included in the agenda packet for review.

We received your complaint on October 31, 2012. After review of the complaint and the attached proposed amendment to the Elko City gaming code section, we thought that the item was incomplete and unclear about the topics to be discussed at the second reading, which was scheduled to be heard on November 13, 2012. This office immediately contacted the City's legal counsel and the city manager. We explained our concern and noted the short period of time to resolve the matter. We suggested new agenda language that would avoid entanglement with the "clear and complete" standard found in NRS 241.020(2)(c)(1).

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The language in italics, below, was our proposed language for the November 13, 2012 agenda item:

Second reading, public hearing and possible adoption of Ordinance No. 764, an ordinance amending Title 4, Chapter 4 of the Elko City Code entitled "Slot Machines; Gaming" by adding or amending licensing requirements for Restricted and Non-Restricted Gaming, and matters related thereto. *Ordinance No. 764 includes a section entitled "NONRESTRICTED GAMING LICENSE," which includes a **definition for "Rural Resort Hotel,"** which was revised through City Council action during the October 23, 2012 first reading. The motion to set Ordinance No. 764 for second reading included minor revisions to the minimum number of rooms available for sleeping accommodations (reducing the minimum number of rooms from 75 to 60), the restaurant seating capacity (reducing capacity from 100 seats to 50 seats), and the restaurant hours of operation (reducing the hours of operation from 24 hours to one-half the hours of the gaming operation).* A copy of the proposed ordinance has been included in the agenda packet for review. **FOR POSSIBLE ACTION.**

On November 6, 2012, the City agreed with our suggested amendment to the agenda item. It appeared in the agenda when it was posted the next morning on November 7, 2012.

We have continued to follow this matter, the proposed amendment to the City Code, and have reviewed the minutes of both the October 23, 2012 Elko City Council regular meeting and its November 13, 2012 meeting.

At the November 13, 2012 meeting, City Attorney Dave Stanton explained to the Council that a new issue had arisen since the first reading on October 23, 2012 of the proposed amendment to the City Code's gaming section. The new issue necessitated his recommendation that Item B be tabled until a Business Impact Statement (BIS) could be prepared. Mr. Stanton opined that NRS 237.080 applied to the issue of amending the City Code's gaming section as proposed in Item B, which meant a BIS would have to be prepared before the Council could proceed with consideration of the proposed adoption.


After much discussion and extensive public comment (we noted your comment in the minutes) the City simply took no action. Effectively, this meant the process of amending the gaming section of the Code would have to begin anew following the preparation of a BIS. Mayor Johnson admitted that the time constraints for the adoption process would prevent further consideration of this amendment effort, so there was no need to table the matter. Mr. Stanton suggested they simply take no action and they complied.

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We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: 

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GHT/CG

cc: David M. Stanton, Esq.
James C. Copenhaver, Esq
Curtis Calder, Elko City Manager
City Council Members:
Chris J. Johnson, Mayor
Rich Perry, Councilman
Jim Conner, Councilman
Jay Elquist, Councilman
John P. Rice, Councilman