



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

April 22, 2013

Carol Turner
6440 Sky Pointe Drive, #140-388
Las Vegas, Nevada 89131

Re: Open Meeting Law Complaint / AG File No. 13-004
City of Henderson Self-Funded Insurance Committee

Dear Ms. Turner:

This Open Meeting Law complaint alleged that two agenda items on the December 12, 2012, agenda for City of Henderson's Self-Funded Insurance Committee (Committee) were not "clear and complete" as required by NRS 241.020(2)(c)(1). An agenda item must contain a "clear and complete" statement of topics scheduled to be considered during the public meeting. The complaint alleges that items VII B. and VIII C. were not clear and complete because they did not reflect the City of Henderson's intent to terminate medical, prescription, dental, and vision coverage for retirees that are Medicare eligible or their eligible dependents; therefore the public was not given notice of the pending vote.¹

Also alleged are violations of public comment requirements and the duty to make minutes available within thirty working days. NRS 241.020(2)(c)(3) and NRS 241.035(2).

The Attorney General has jurisdiction to investigate allegations of violations of NRS chapter 241, the Open Meeting Law. This office may seek civil remedies against public bodies, including injunctive relief, to require compliance with the OML, or to

¹ Item VII B. "Discussion and vote regarding retiree health insurance."
Item VIII C. (Discussion and vote regarding retiree eligibility language.)

prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty for violations of the OML are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

We opened an investigation into the allegations of your complaint. The Committee provided the agenda and minutes of the Committee's meetings of August 8, 2012, September 12, 2012, and December 12, 2012. In addition, the Committee responded with a statement from its Chair, Fred Horvath, and it provided Memorandums issued on October 27, 2012, and March 5, 2013. We also reviewed the relevant portions of an audio recording of the Committee's December 12, 2012, meeting. Counsel for the Committee also provided a written response defending the Committee.

The Committee denied that the two items on its December 12, 2012, agenda were not clear and complete and it denied that minutes of that meeting were not made available within the allotted statutory time. The Committee did admit that its December 12, 2012, agenda did not comply with the statutory requirement of two periods of public comment. NRS 241.020(2)(c)(3)(I).

Our review of the Committee's response revealed that the decision to contract with Extend Health,² so that the city would no longer provide insurance coverage to so-called "post 65" retired city employees who were Medicare eligible, was made during the Committee's August 8, 2012, and September 12, 2012, meetings. We reviewed those agendas and minutes to confirm that the Committee voted to take Medicare eligible retirees off its self-funded insurance plan. The decision to drop insurance coverage for City retirees was not made during the December 12, 2012, meeting or at any time subsequent to that meeting.

On August 8, 2012, the Committee voted to eliminate insurance coverage under the City's Self-Funded Insurance Plan for Medicare eligible retirees. The Committee voted to transition City of Henderson retirees to Extend Health, a private health exchange, to assist retirees with finding suitable insurance coverage after cessation of their Plan coverage. The Committee voted to contract with Extend Health at the earliest possible date. At the August 8, 2012, meeting it was agreed that the implementation date for the transition would be determined after the contract had been drafted and reviewed by the Committee and the City.³

² Extend Health is a private company providing insurance exchange services. It made a presentation to the Committee at its June 2012 meeting. We reviewed the presentation.

³ It was not until December 11, 2012, that approvals and signatures from the City were obtained, thus lengthening the time before transition to Extend Health could occur.

At the Committee's next meeting on September 12, 2012, it voted to approve March 1, 2013, as the date of implementation pending City Attorney approval and acquisition of required signatures. Also discussed at this meeting was premium rate pricing for retirees for the 2013 plan year. The Committee voted for an 11% rate increase for the few months before retirees would transition to Extend Health. The Committee explained that the reason for including premium rates for retirees for the 2013 plan year was to cover retirees for a few months prior to the transition to Extend Health.

The Committee sent out a Memorandum to City retirees on October 27, 2012, to remind them that open enrollment would soon begin. It also sent out premium contribution rates for retirees. There was no mention of the forthcoming planned retiree transition to Extend Health or the prior vote to drop retirees from Plan coverage. The Committee claims that failure to mention the forthcoming transition to Extend Health in its October 27, 2012, Memorandum did not offend the OML because it claims it had already made the decision to transition in open public meetings and no further Committee action was necessary. Review of the record supports the Committee's claim that the decision to drop retiree coverage was made in August and September 2012.

We reviewed the minutes and audio of the December 12, 2012, meeting to determine what was discussed and if any vote occurred when the Committee considered either of the two meeting agenda items at issue in this Complaint. The only discussion under VII B was a short discussion about the contract with Extend Health. It had been lost in the (City's) internal signature process, but the Committee learned that all required signatures had been acquired and the contract had been sent out on December 11, 2012. The discussion of agenda item VIII C concerned retiree eligibility issues unrelated to the decision to drop Plan coverage for retirees. No vote was needed or taken as the Committee decided to leave the current plan language intact. There was no discussion or decision about when coverage would be dropped, or of the earlier vote to drop coverage for Medicare eligible retirees.

The Committee acknowledged that its agenda did not comply with public comment rules enacted in 2011. NRS 241.020(2)(c)(3)(I). The Committee has changed its format so that all future agendas will provided at least two periods of public comment – one period before action items and one period before adjournment. Failure to comply with public comment requirements was a violation. It is unnecessary to take any action as the Committee has already taken corrective action.

Carol Turner
April 22, 2013
Page 4

The third issue in the Complaint was that minutes of the December 12, 2012, meetings were not available on the City of Henderson's insurance website. The Committee points out that the unapproved minutes were prepared and available on January 8, 2013, well within the 30 working days required by statute, but complainant did not ask to review them. NRS 241.035(2). There is no statutory requirement that minutes be posted to a public body's website or that they be approved within 30 working days. Unapproved minutes may be provided until approved by the public body. The statute only requires that the minutes be "made available" within 30 working days. "Made available" has been interpreted by this office to mean available for inspection by the public.

The Committee has taken corrective action to comply with the OML's public comment requirement for future meetings. Neither of the other two issues were found to be in violation of the OML.

We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



GEORGE H. TAYLOR
Senior Deputy Attorney General
Open Meeting Law
(775) 684-1230

GHT/rmh

cc: Michael Oh, Assistant City Attorney
Committee Members:
Fred Horvath, Chairman
Dan Pentkowski, Vice Chairman
Connie Kershaw
Norm "Doc" Halliday
Jayne Mazurkiewicz
Sean Simoneau
Patricia Howell
Tim O'Neill