



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 29, 2013

Dylan Frehner, Esq.  
P. O. Box 517  
Pioche, Nevada 89043

Re: Open Meeting Law Complaint / AG File No. 13-006  
Caliente City Council

Dear Mr. Frehner:

This Open Meeting Law Complaint filed on behalf of Stana Hurlburt (your client) against the Caliente City Council (Council) when it met on February 15, 2013, which alleged the minutes of its February 15, 2013, meeting reflected no discussion or vote regarding a reduction in force – a decision affecting your client. The nature of your allegation is technical. Essentially, you have alleged that on February 15, 2013, the Council failed to follow its own agenda when it discussed and voted on a budgetary reduction in workforce of the position of Grants Administrator<sup>1</sup> effective immediately. The discussion, deliberation, and action to eliminate the position of Grants Administrator from the budget occurred under agenda item #5 – “Any and all action necessary to Prepare FY 2013-2014 Budget.” Item 6 on the same agenda read: “Viability of all City employee positions, benefits, salary, and insurance.” The minutes do not reflect any discussion under item 6.

The relevant portion of the Open Meeting Law (OML), to the issue raised in your Complaint, requires that an agenda consist of a clear and complete statement of topics to be considered during the meeting. NRS 241.020(2)(c)(1). The February 15, 2013, agenda items 5 and 6 listed two topics – budget and city employee positions. Review of the minutes reveals that there is no correlation between the numerical listings of discussion and vote in the minutes, or the numerical listing of the same topics to be considered on the agenda. The minutes show that budgetary issues and city employee positions were both discussed and voted on under one numerical listing – #4. Number

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<sup>1</sup> The position of Grants Administrator had been held by your client.

4 on the agenda was public comment. This failure to correlate agenda topic numbers with the place in the minutes where that topic is discussed is at a minimum – confusing.

The February 15, 2013, minutes adequately describe the discussion, deliberation, and vote to eliminate the position of Grants Administrator, but the topic agenda item was incorrectly identified in the minutes. After this Complaint was filed, the City Council reagendized the matter of the reduction in force decision to the Council's March 7, 2013, meeting. It was reagendized on the Council's March 7, 2013, agenda as item 7(a)(ix), which read: "For possible action: Reduction in Workforce of the Grants Administrator position of for fiscal year 2012-13 – Attorney John Brown." Minutes from the March 7, 2013, meeting show this item was discussed under #6 "Briefing to and From the Council and its Staff (a) Discussion of Matters Affecting the Council." The sole discussion noted in the minutes for this item consisted of the record of a motion made and seconded to retain the services of a Grant Administrator. The motion failed with three votes against it.

Council has the power to take corrective action to rectify violations of the OML or to reconsider a matter for which there was concern about whether prior action taken was in compliance with the OML. Open Meeting Law Manual (OML Manual) §§11.01-11.04. Inadvertent violations may be cured even if serious and even where the violation was acknowledged. OML Manual, §11.02(f). We are persuaded that corrective action was taken on March 7, 2013, but the minutes do not reflect any Council action. NRS 241.035(1) requires that the minutes (which are public records) reflect the date, time, place of the meeting, members who were present and absent, and the substance of all matters proposed, discussed, or decided. Clearly, the discussion and vote on item IX was not included in the minutes and thus, is a technical violation of the OML.

Reagendizing the budget issue of whether to eliminate the Grants Administrator's position to March 7, 2013, was sufficient corrective action under the OML, although the minutes do not indicate whether the Council voted on item IX or not. But, the City's written response to the Complaint dated April 2, 2013, signed by the Mayor, each Councilman, and the City Clerk, avers that the "Council approved to uphold the Reduction in Workforce of the Grants Administration position for the current fiscal year. The meeting minutes were documented and approved at the Thursday March 21, 2013, Council meeting." The Mayor and the Council may remember voting to eliminate the Grants Administrator position, but the minutes do not indicate that action had been taken on this issue. We accept the Council's signed averment to indicate that corrective action was accomplished, but the minutes must be revised to comply with NRS 241.035(1). There must be a recitation of the facts underlying the vote that eliminated the Grants Administrator position.

Review of the agendas and minutes for several recent Council meetings causes us concern that Council agendas, agenda item topics, and correlation of minutes to agenda items must be improved to more clearly inform the public about the Council's handling of public business.

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We encourage the City Council to review the Attorney General's OML Manual's three sample forms (beginning on page 112) which are offered as possible formats for agenda and minutes. The OML Manual is available online at [http://ag.nv.gov/open\\_meeting\\_law/download Manual](http://ag.nv.gov/open_meeting_law/download_Manual). Use of these forms is not required by this office or by the OML, although the OML does require "clear and complete" topics regarding the public's business.

NRS 241.0395 requires publication of this opinion on the Council's next agenda as an informational item and the opinion must be included in supporting materials. NRS 241.0395 reads:

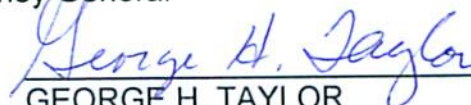
If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

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  
Tele: (775) 684-1230

GHT/rmh

cc: John Brown, Esq., Legal counsel for Caliente City Council

Council Members:

Mayor Ashley Moore  
Victor Jones  
Jo Lynn Cardinal  
Tom Acklin  
Evan Schimveck