



STATE OF NEVADA
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July 25, 2013

Jeffrey D. Church
1935A Wind Ranch Road
Reno, Nevada 89521

Re: Open Meeting Law Complaint / AG File No. 13-014
Reno City Council

Dear Mr. Church:

We have investigated your Open Meeting Law (OML) Complaint that alleges improper notice of the Joint Special Session Meeting of the Reno City Council and the Redevelopment Agency Board on May 6, 2013. It is also alleged that the Chair refused your attempted public comment during agenda Item B (City Budget).

We reviewed the minutes of the May 6, 2013, meeting, the agenda, and the City's webpage calendar where meetings and special events are published. We also reviewed City of Reno's legal counsel's response on behalf of the Council, and statements from each Council member and Mayor Cashell. Declarations were submitted from three members of City Staff who either participated in posting or had knowledge of the process regarding the posting of the notice of the meeting on the City's webpage.

We further reviewed the posting of the notice of cancellation of Reno City Council's joint meeting with the City of Sparks, the Washoe County Board of Commissioners, and the Washoe County School District Board of Trustees on the webpage that had been scheduled for May 6, 2013 at 8:30 AM.

The City of Reno provided evidence that the joint meeting of the Council and the Redevelopment Agency Board for May 6, 2013, had been properly posted within statutory time frames and at six physical locations within the City, and on the City's website (www.reno.gov). In fact, the City posts the notice and agenda for Council meetings at three locations on its website: City of Reno Calendar, City Calendar page, and City Council page. Chris Matthews, the City's Web Service Program Manager, verified that the notice and agenda were posted correctly on two of these website locations. Upon reviewing the third location – City Council page – Mr. Matthews discovered it was not there due to a technical error; he immediately corrected the issue.

The failure to post the notice and agenda to a third location on the City's website due to a technical problem is not an OML violation. NRS 241.020(4).

The City Council's staff sends notices and meeting agendas via email to those who request it. The May 6, 2013, meeting notice and agenda were sent to you via email in two formats. One format was a Word document and the other was in PDF format. I have reviewed the e-mail train in which you complained that the date, location, and time of the meeting were missing. The City's senior management analyst reviewed your Complaint and determined that both agenda formats were fully viewable. The City was able to open the attachments, from its email to you, and printed them in full, which indicates the problem is a conversion issue between the software email program in use on your computer and the Word file used by the City. However, the PDF format should have opened with no problem. The problem here appeared to be a technology problem and not caused by the City. This problem is not an OML violation; the City sent you the agenda and notice on widely available formats and there was no problem with the email delivery.

You have alleged that Mayor Cashell prevented you from speaking to OML issues during the Council's consideration of agenda Item B (City Budget). The City's agenda allows two general periods of public comment during its meetings, which complies with the statutory minimum periods of public comment. We have reviewed the minutes of the meeting and note that *you were allowed to speak* to the OML allegations contained in your Complaint at the first public comment period. When Item B was called, you were again allowed to speak, although the Mayor allowed you to speak only to the subject at hand – the City Budget. This was not a violation of the OML or of your First Amendment rights.

Reasonable content-neutral time, place, and manner restrictions apply to the public's right to speak in a limited public forum such as the City Council's public meeting.¹ The application of reasonable speech restrictions on a public meeting agenda item requiring the speaker to comment only on the subject at hand is permissible because it furthers a legitimate State interest in the orderly and efficient conduct of the public body's business. Reasonable time, place, and manner restrictions are constitutionally permissible in the context of a limited public forum or non-public forum such as this City Council meeting. Mayor Cashell asked you to speak to the subject at hand – the city budget. The request was not a violation of your First Amendment rights.

We also reviewed the issue of the cancellation of a joint meeting set for 8:30 PM on May 6, 2013. We were provided a document showing that the meeting to be cancelled was a joint Reno City Council meeting with the City of Sparks Council, the Washoe County Board of Commissioners, and the Washoe County School District Trustees. Announcement that this meeting was cancelled occurred on April 26, 2013, by memo from the City Manager. After review of the City's website archives, it appears that the meeting being cancelled could have been identified more clearly to avoid confusion about which meeting was being cancelled since the date and time of the meetings were so similar. The cancelled meeting was listed as "City Council – Special session" but with no indication that other public bodies would also be present. The confusion arose because of the similarity between the two entries on the City's webpage calendar page (renocitynv.lqm2.com/Citizens/Default.aspx).

The Joint Special Session Meeting of the Reno City Council and the Redevelopment Agency Board was not being cancelled and was correctly noted. Although the cancellation entry created some confusion, because its notice was so similar to the Joint meeting of the Council and Redevelopment Board Agency, we do not believe this was an OML violation.

Finally, the allegation that the City of Reno has failed to hold an open public meeting to consider variable tax levies (Safety 88 and Fire 1998 R-3) is premature, ancillary, or beyond the scope of the OML. The City's response to this portion of your Complaint notes that tax rates are adopted by governing bodies as part of the annual

¹ *Perry Educ. Ass'n v. Perry Local Educ. Ass'n*, 460 U.S. 37, 46, 103 S. Ct. 948, 955 (1983).

budget process, which is governed by NRS Chapter 354. NRS 354.596 sets the time for official public hearings to consider budgets. We do not have jurisdiction to review or investigate such allegations.

We are closing our file on this matter.

Sincerely,

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Attorney General

By:



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GHT/rmh

cc: Tracy L. Chase, Chief Civil Deputy, Reno City Attorney's Office, Counsel for
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