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July 29, 2013

John C. Carpenter
1091 Dotta Drive
Elko, Nevada 89801

Re: Open Meeting Law Complaint / AG File No. 13-015
Elko City Council

Dear Mr. Carpenter:

We have investigated your Open Meeting Law (OML) Complaint that alleges the Elko City Council violated the OML at its May 21, 2013, public meeting. The Complaint alleges that supporting materials were not provided for Unfinished Business agenda Item I.A. Secondly, the Complaint alleges that an item was added to agenda Item II – Budget workshop – that had not been on the City's preliminary budget and there was no supporting material for it.

The City Council provided copies of the May 21st meeting agenda, minutes, and the meeting audio recording. We also requested and received a written statement responding to the Complaint's allegations from each Council member present at the meeting. Other documents received and reviewed by this Office include the Council packet distributed on May 16, 2013, and a statement from City Manager Curtis Calder.

Background

The City of Elko's May 21, 2013, Special Meeting was a public hearing to adopt the City's final budget for the fiscal year 2013/2014. State law requires that a final budget be adopted before June 1, 2013. NRS 354.598. Council approved the City's final budget concluding the presentation by staff on a 3–1 vote.

There were two items on the agenda. The first item was under the heading Unfinished Business for which the Council was asked to consider authorizing a one-time \$25,000 donation to Vitality Unlimited, Inc. for inclusion in the 2013/2014 budget. The second item was the City's Budget Workshop in which the Council reviewed and discussed the City's proposed final budget.

Vitality Unlimited Donation

The Complaint states that the agenda and Council packet sent to you prior to the meeting did not contain any supporting material for the Winchester Court Housing Project and you did not receive any material from the City prior to the meeting, nor did you see any at the meeting.

Statements from Elko City Manager Curtis Calder and John Rice, Mayor Pro-Tempore Elko City Council said that supporting documents for Item I, Vitality Unlimited donation, were made available to the public at the meeting. Mr. Rice and Mr. Calder stated that supporting materials were not received until the afternoon of the meeting, too late to be uploaded to the City's website where supporting materials could also be found. Mr. Calder stated the materials were placed in the Public Binder available at the Council's chambers prior to the meeting. These same materials were also provided to the Council members by placing them on their seats prior to the meeting. This process complies with the OML and prior opinions of this Office. NRS 241.020(5).

In the Open Meeting Law Manual §6.06 (11 ed. 2012) this office opined that:

In situations where a request for agenda supporting materials is made at the meeting, a public body does not have to stop or delay its meeting to provide the materials if the supporting material requested had been available at the time the agenda was posted. In this circumstance, a public body can satisfy the Open Meeting Law requirement of providing supporting materials "upon any request" by having one "public" copy of the supporting materials available for review at the meeting. NRS 241.020(5).

City Council's response to the Complaint states that you made no request for supporting materials related to the May 21, 2013, meeting; therefore, there was not a necessity to stop the meeting to make copies.

Requests to provide supporting material for the agenda under NRS 241.020(5), are treated separately from standing requests to mail notices of meetings under NRS 241.020(3)(b). See OMLO 99-06 (March 19, 1999). Agenda supporting material need not be mailed but must be made available over the counter when the material is ready and has been distributed to members of the public body and at the meeting. See OMLO 98-01 (January 21, 1998) and OMLO 2003-06 (February 27, 2003).

The OML does not require supporting materials to be appended to or attached to the publication of the public body's meeting Notice and Agenda. Members of the public must request copies of supporting materials before or during the meeting; the public body has no duty to provide copies of supporting materials except when requested.¹

City Council Budget Workshop

Supporting materials for the Budget workshop were made available before the meeting. The Council's packet was emailed to Councilmembers on May 16, 2013, and even though you made no request for it, the Packet was also emailed to you.

The allegation that an item was added to the proposed final budget which had not appeared on the preliminary budget bears further scrutiny. City Council's response indicates that no new agenda items were added to the agenda, but there were changes to various budget funds including the Airport Enterprise Fund, which is the issue in your Complaint. City Council's response states that these changes were made under authority of NRS 354.598.² As required by statute these changes were made known to the public at the time of the public hearing.

We reviewed the meeting minutes which detailed a great deal of discussion and even opposition from one councilmember to the inclusion of a substantial dollar amount to related to City's future request for an Airport Improvement Program (AIP) grant from the Federal Aviation Administration for an Apron Rehabilitation project.

Change to the proposed budget is not an OML matter since the issue is interpretation of statutory budgeting authority in NRS Chapter 354.

¹ The Attorney General's Manual at § 6.06 *Providing copies of agenda and supporting material upon request*, interprets the statute to require the public to request supporting materials before the public body has a duty to provide it. NRS 241.020 (5), states: "Upon any request, a public body shall provide, at no charge, at least one copy of: (a) An agenda for a public meeting; (b) A proposed ordinance or regulation which will be discussed at the public, meeting; and (c) [. . .] any other supporting material provided to the members of the body.

² **NRS 354.598 Final budget: Adoption; budget by default; certification; appropriations; limitations; changes. [the pertinent sub-sections are set out below]**

1. At the time and place advertised for public hearing, or at any time and place to which the public hearing is from time to time adjourned, the governing body shall hold a public hearing on the tentative budget, at which time interested persons must be given an opportunity to be heard.

2. At the public hearing, the governing body shall indicate changes, if any, to be made in the tentative budget and shall adopt a final budget by the favorable votes of a majority of all members of the governing body. Except as otherwise provided in this subsection, the final budget must be adopted on or before June 1 of each year.

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Based on the two allegations in your Complaint, we do not find an OML violation.
We are closing our file on this matter.

Sincerely,

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GHT/rmh

cc: David Stanton, Counsel for the Elko City Council
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Rich Petty
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