



STATE OF NEVADA
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May 1, 2012

Sandra Mathewson
1265 Mesa Drive
Fernley, Nevada 89408

Re: Open Meeting Law Complaint / AG File No. 12-005
Fernley City Council

Dear Ms. Mathewson:

The Fernley City Council (Council) met for its regularly scheduled meeting on February 15, 2012. This Open Meeting Law (OML) complaint arose out of that meeting.

The complainant alleges that the Council violated NRS 241.015(2) when it reconvened following a short recess with only two Council members present. Two members is not a quorum.

We reviewed the video record of the meeting and we reviewed the City Attorney's response and her defense of the conduct of the meeting.

The meeting had been called to order with four Council members present. The meeting quickly recessed to allow Council's Audit Committee to conclude its business, which took about three minutes. During those three minutes, two council members left the podium; they were not members of the Audit Committee.

Mayor Goodman did not leave the podium during the conclusion of the Audit Committee's business. He shifted seats, but then returned to the Mayor's chair upon conclusion of the committee's business. Council members Parsons and Edgington had not returned to their seats when the Mayor reconvened the Council meeting. Mayor Goodman was aware of their absence; he even commented on Mr. Parsons' absence. Only four minutes elapsed between Council's call to order and resumption of the meeting following the recess.

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Upon reconvening the meeting, Mayor Goodman asked the City Manager whether there were any changes to the agenda. This conversation was open and public, it was recorded and it does not appear there was ever any intent to take action on the agenda in the absence of a quorum of the Council. Mr. Turnier said that only item 9 in the agenda would be continued. As this conversation was going on, Council members Parsons and Edgington returned to their seats. A motion to approve the agenda was then made and it was approved 4-0.

Action to approve the agenda was taken when a quorum had been reassembled. There was no deliberation or action in the absence of a quorum after the Council had reconvened.

We do not find a violation of the OML based on these facts; however, the best practice for all public bodies is to refrain from discussing public business until a quorum is present. Even so, legislative intent is clear that the focus of the OML is to serve the public and the public is served when a public body's *actions* are taken openly and that its *deliberations* are conducted openly. Only a quorum can lawfully deliberate or take action.

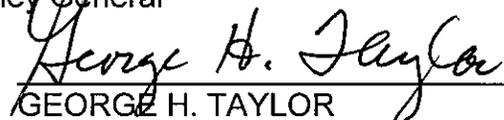
Even though less than a quorum was present when Mayor Goodman asked Mr. Turnier whether there were any changes to the agenda, the public was still being served because this conversation was open and recorded. The OML does not forbid discussion with staff with less than a quorum present.

Mr. Parsons and Mr. Edgington were nearby, they just had not returned to their seats. Only two minutes of conversation between Mr. Turnier and the Mayor Goodman had taken place. The OML requires a quorum when members deliberate and/or take action on any matter within its jurisdiction and control, but that does not mean that all discourse must cease if a public body member leaves the podium and his/her absence destroys the quorum.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



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GHT/CG

cc: Brandi Jensen, Fernley City Attorney
Mayor LeRoy Goodman; Kelly Malloy; Don Parsons, Sr.
Roy Edgington, Jr.; Curt Chaffin; Cal Eilrich