



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

September 24, 2012

GREGORY M. SMITH
Chief of Staff

Ole Chavez
3900 Topaz Ranch Drive
Wellington, Nevada 89444

Re: Open Meeting Law Complaint / AG File No. 12-026
Topaz Ranch Estates GID

Dear Mr. Chavez:

We have investigated your Open Meeting Law (OML) complaint against the Topaz Ranch Estates General Improvement District (TGID). This Office has jurisdiction to investigate OML complaints and seek civil remedies against public bodies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

This complaint alleges (1) TGID wrongfully terminated your employment with them as its Water Master; (2) TGID did not give you the right to an open or closed disciplinary meeting; (3) TGID denied your request for continuance of the disciplinary proceeding; and (4) the agenda for the July 13, 2012 proceeding (the disciplinary proceeding) was improperly posted and the meeting time listed on the agenda for an earlier meeting (July 11, 2012) was wrong.¹

This Office subpoenaed relevant documents and materials in support of an OML investigation including statements from TGID members. TGID also provided a Monthly Operations Report for July 2012 submitted to TGID by the Nevada Rural Water Association. We reviewed the audio recording of the July 13, 2012 disciplinary proceeding, the minutes of that meeting, and TGID's Standing Rule 25 which contains

¹ This office does not have jurisdiction over the allegation regarding wrongful termination or whether he was an employee with due process rights.

several sections governing disciplinary action.² TGID denied all of the complaint's allegations.

ISSUES

I. WHETHER TGID COMPLIED WITH THE PERSONAL NOTICE REQUIREMENTS OF NRS 241.033(1) AND (2).

II. WHETHER MR. CHAVEZ HAD THE RIGHT, UNDER THE OML, TO CHOOSE AN OPEN OR CLOSED DISCIPLINARY PROCEEDING.

III. WHETHER NRS 241.033(4) MANDATES ALLOWANCE OF A PERSON'S REQUEST FOR CONTINUANCE OF A PUBLIC MEETING HELD TO CONSIDER HIS CHARACTER, MISCONDUCT, PROFESSIONAL COMPETENCE OR HEALTH, SO THAT THE PERSON MAY OBTAIN REPRESENTATION OF AN ATTORNEY.

FINDINGS OF FACT

On July 6, 2012 Mr. Ole Chavez, TGID Operations Manager, was served with a Notice of Charges pursuant to TGID Standing Rule 25, sections 8 and 9. He was ordered to appear before TGID Board of Trustees on Friday July 13, 2012 to face disciplinary charges. Mr. Chavez was served on July 6, 2012 at 7:40 a.m. A Declaration of Service of Notice was returned to TGID and it appears in the record. On July 12, 2012, one day prior to the disciplinary proceeding Mr. Chavez made a written request for continuance citing NRS 241.033(4) as authority.

ANALYSIS

NRS 241.033(1) and (2) specifies a person's rights prior to a public meeting to discuss that person's character, professional competence, misconduct or physical or mental health.³ The public body's sole requirement before holding a meeting to discuss

² TGID Standing Rule 25, Section 9.3: "Hearings. A hearing shall be convened by the Board of Trustees in accordance with the provisions of The Open Meeting Law (NRS 241), and any and all Board decisions shall be final."

³ NRS 241.033 Meeting to consider character, misconduct, competence or health of person or to consider appeal of results of examination: Written notice to person required; exception; public body required to allow person whose character, misconduct, competence or health is to be considered to attend with representative and to present evidence; attendance of additional persons; copy of record.

1. Except as otherwise provided in subsection 7, a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body unless it has:

(a) Given written notice to that person of the time and place of the meeting; and
(b) Received proof of service of the notice.

2. The written notice required pursuant to subsection 1:

(a) Except as otherwise provided in subsection 3, must be:

(1) Delivered personally to that person at least 5 working days before the meeting; or

character, professional competence, misconduct or health is personal notice of the meeting. NRS 241.033(1)(a) and (b) require the person be given five working days' notice of the time and place of the meeting and proof of service must be received. NRS 241.033(2) requires personal service of notice and an informational statement that the public body may, without further notice, take administrative action against the person following the meeting. A statement of general topics concerning the person which will be discussed and considered by the public body must be included in the notice.

CONCLUSIONS OF LAW

I. WHETHER TGID COMPLIED WITH THE NOTICE REQUIREMENTS OF NRS 241.033(1) AND (2).

The record we reviewed provided evidence that the provisions of NRS 241.033(1) and (2) were followed by TGID. The record contained proof of service that Mr. Chavez had been given five working days' notice of disciplinary charges and the time and place of the public meeting. The notice clearly informed him that his character, professional competence and misconduct would be considered. The time and place of the meeting was shown on the Notice to Appear and Notice of Charges.

TGID complied with other requirements in the same statute. The Notice of Charges specifically set out the topics to be considered and a range of disciplinary action that could be taken. It also informed Mr. Chavez of proposed action by the Board of Trustees—immediate discharge from employment.

TGID did not violate personal notice requirements prior to holding an open public meeting.

II. WHETHER COMPLAINANT HAD THE RIGHT UNDER THE OML TO CHOOSE AN OPEN OR CLOSED PROCEEDING.

NRS 241.030(2) gives a person the right to waive closure of a public meeting held to consider the person's character, misconduct or professional competence. The

(2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

(b) May, with respect to a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, professional competence, or physical or mental health of the person.

(c) Must include:

(1) A list of the general topics concerning the person that will be considered by the public body during the closed meeting; and

(2) A statement of the provisions of subsection 4, if applicable.

public body must honor the person's request to close the meeting except where a witness objects to testifying in open public session.

Unlike the right to waive closure of a public meeting OML statutes do not give a person the right to decide to close a public meeting held to consider his or her character, competence, or misconduct.

NRS 241.030(5)(d) states that a public body is not required to close any meeting.

TGID did not violate the Mr. Chavez's right to determine whether his disciplinary would be open or closed.

III. WHETHER NRS 241.033(4) MANDATES ALLOWANCE OF A PERSON'S REQUEST FOR CONTINUANCE OF A PUBLIC MEETING HELD TO CONSIDER HIS CHARACTER, MISCONDUCT, PROFESSIONAL COMPETENCE OR HEALTH, SO THAT THE PERSON MAY OBTAIN REPRESENTATION OF AN ATTORNEY.

NRS 241.033(4) requires a public body which has provided notice to a person that a closed meeting will be held to consider the person's character, misconduct, professional competence or health to allow the person to attend the closed portion of the meeting. The person may have an attorney present, present written evidence, provide testimony and provide witnesses to the person's character, alleged misconduct, professional competence and physical or mental health of the person. But there is no statutory analogue to subsection (4) which mandates that a person has the right to an attorney if the proceeding is held in public.

TGID Board of Trustees denied Mr. Chavez's request for a continuance after determining that NRS 241.033(4) was not applicable. We agree that NRS 241.033(4) is not applicable to an open public meeting. TGID's July 13th meeting was not closed; therefore NRS 241.033(4) by its own defined terms does not apply; however review of the audio of the meeting shows that the Board of Trustees did give Mr. Chavez the opportunity to have an attorney present, to call character witnesses and to provide written testimony; but it did not grant his request for continuance.

The denial of Mr. Chavez's request for continuance did not violate the OML.

///

///

///

///

///

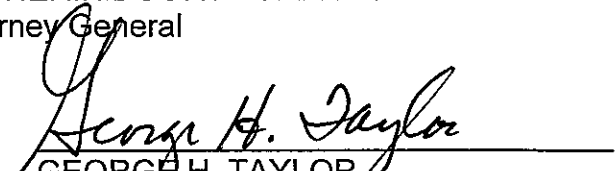
CONCLUSION

TGID did not violate notice statutes in the OML, nor did it wrongly refuse to continue the disciplinary hearing or to close the meeting upon Mr. Chavez's request.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


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

GHT/CG

cc: Tyler Altom, Counsel for TREGID
TREGID Board Members:
Larry Offenstein, Chairman
Denice Morphew, Vice Chair
Peggy Bristol, Treasurer
Nancy Bauer, Secretary