

AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

July 29, 2020

Via U.S. Mail

William P. Mantle
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-343,
Reno City Council**

Dear Mr. Mantle:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) filed on May 22, 2019 alleging a violation of the Open Meeting Law (“OML”) by the Reno City Council (“Council”) related to an online Public Comment Form submitted to the Council’s May 8, 2019 Joint Regular Meeting with the Redevelopment Agency Board.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (“NRS”) 241.037; NRS 241.039; and NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint and Supplement to the Complaint, the response from the Council (“Response”), the supporting materials and video recording of the Council’s May 8, 2019 meeting, prior OML decisions, and portions of the Nevada Revised Statutes relevant to the Complaint.

FACTUAL BACKGROUND

The City of Reno solicits public comments regarding items on a Council Meeting agenda through the use of its online Public Comment Form.¹ The Public Comment Form provides the following instructions:

¹ The Public Comment Form may be found at: <https://docs.google.com/forms/d/e/1FAIpQLScj6SU2NcVRme7TCQ1SvA37RBgojhtHfxc5ANNNSqTm6CCx0Q/viewform?c=0&w=1>.

Please complete this form if you would like to provide your comment on an item to be discussed at this meeting. The Mayor and Reno City Council request that all comments are expressed in a courteous manner. If you choose to speak at the meeting, Public Comment is limited to three minutes each. Comments should be addressed to the Council as a whole, not to an individual member. Thank you for your cooperation and participation.

PLEASE NOTE: If comments are received after the City Council has commenced, your comments may not be included in the record. You are encouraged to send in your comments early to allow for distribution to the Reno City Council for review.

On May 7, 2019, Mr. Mantle submitted a Public Comment Form online regarding the City Council's May 8, 2019 Agenda Item B.1.B.I.D. Mr. Mantle selected that he did not wish to speak and selected "Unsure" as to whether he was in favor or in opposition of the agenda item.

On May 7, 2019, Mr. Mantle submitted a Public Comment Form online regarding the City Council's May 8, 2019 Agenda Item B.2. Alcohol Moratorium. Mr. Mantle selected that he did not wish to speak and selected "Unsure" as to whether he was in favor or in opposition of the agenda item.

On May 7, 2019, Mr. Mantle submitted a Public Comment Form online regarding the City Council's May 8, 2019 Agenda Item B.4. Adult Interactive Cabaret. Mr. Mantle selected that he did not wish to speak and selected "Unsure" as to whether he was in favor or in opposition of the agenda item.

On May 7, 2019, Mr. Mantle submitted a Public Comment Form online regarding the City Council's May 8, 2019 Agenda Item D.5.(a) – Finance, Fee proposals FY 19-20. Mr. Mantle selected that he did not wish to speak and selected "In favor" as to whether he was in favor or in opposition of the agenda item.

On May 14, 2019, Mr. Mantle inquired with the Reno City Clerk via e-mail regarding whether his Public Comment Forms submitted online were part of the formal record of the May 8, 2019 meeting. On May 22, 2019, Mr.

Mantle followed up with the Reno City Clerk via e-mail regarding his May 14, 2019 inquiry.

On May 22, 2019, the City Court Clerk indicated that Mr. Mantle's comments were in the final record and were incorporated in the comments for the packet kept on record but not uploaded online. The City Court Clerk noted that as part of the official record, the comments would be found with a public records request. The City Court Clerk further indicated that based on the formatting of the form and comments being submitted on various items, including items not on the agenda and for other meetings entirely, the Clerk's past practice was not to upload the form to the meeting portal. Moreover, the Clerk indicated that if a submitter's position was stated "in favor or opposition" that such position would be stated on the record.

The Complaint alleges that the Council violated the OML by failing to make Mr. Mantle's four comments a part of the May 8, 2019 meeting material packets. The Complaint also alleges an OML violation by the Council for actively soliciting public comment online but subsequently failing to equally consider the comments, as they are not included in the meeting record.

LEGAL ANALYSIS

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; and NRS 241.041.

The OML applies only to a "public body" as defined in NRS 241.015(4). Here, the Complaint alleges OML violations against the Reno City Council, which is operating under Chapter 662 of the Statutes of Nevada 1971. As such, the City Council is a public body as defined in NRS 241.015(4).

Through the Open Meeting Law, the Nevada Legislature has given members of the public the right to address public bodies. NRS 241.020(2)(c)(3); Op. Nev. Att'y Gen. No. 00-047 (December 17, 2002). Comments by the general public must be taken: (1) at the beginning of the meeting before any items on which action may be taken are heard by the public body, but before the public body takes action on the item; or (2) after each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item. NRS 241.020(3)(I)-(II). However, a

public body is not prohibited from taking comments by the general public in addition to what is required by NRS 241.020(3)(I) or (II). *See id.*

Once the right to speak has been granted by the Legislature, the full panoply of First Amendment rights attaches to the public's right to speak, and the public's freedom of speech during public meetings vigorously is protected by both the U.S. Constitution and the Nevada Constitution. Freedom of expression upon public questions is secured by the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). Nevertheless, a public body may restrict comments by the general public, so long as the restrictions are reasonable, including restrictions on the time, place, and manner of the comments but may not restrict comments based upon the viewpoint. NRS 241.020(7).

In general, a review of whether a restriction on speech passes constitutional muster begins with an analysis of the type of public forum at issue, and the level of constitutional scrutiny placed on a governmental restriction on speech lessens as the public nature of the forum lessens. *See Op. Nev. Att'y Gen. No. 00-047* (December 17, 2002) (discussing *Kindt v. Santa Monica Rent Control Board*, 67 F.3d 266 (9th Cir. 1995) and the possible limitations on speech at public meetings). Various courts have interpreted that the interactive portions of online social media accounts, such as Twitter and Facebook, may be designated public forums. *See One Wisconsin Now v. Kremer*, 354 F.Supp.3d 940 (2019) (the interactive portions of Twitter accounts constitute designated public forums); *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017) (the interactive portions of Twitter accounts constitute designated public forums); *Davidson v. Loudoun County Bd. Of Supervisors* 267 F.Supp.3d 702 (E.D. Va. 2017) (the interactive components of a government official's Facebook page constituted a public forum). Further, courts have also determined that in the context of online public forums, the First Amendment's Free Speech Clause restricts government regulation of private speech, including instances where a government official deletes a member of the public's comments that are adverse to that official. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460 (2009). To that end, in *Kremer*, a United States District Court for the Western District of Wisconsin found a violation of an individual's First Amendment right where three State assemblymen blocked it and its comments from their respective Twitter accounts because the State assemblymen had restricted the speech based on its viewpoint and content. *Kremer*, 354 F.Supp.3d at 955-56.

Here, the OAG can find no violation of the OML on the part of the Council. Unlike the cases cited above, there is no indication that the Council or the City Clerk's Office restricted or prohibited Mr. Mantle from providing his comments nor is there any indication that the Council or the City Clerk deleted Mr. Mantle's comments such that receipt of his comments by the Council was stifled. Rather, included as part of the documents provided by Mr. Mantle to the OAG is an e-mail chain between Mr. Mantle and Ashley Turney of the Reno City Clerk's Office wherein Ms. Turney specifically informed Mr. Mantle that his comments were "in the final record and [were] incorporated in the comments for the packet kept on record." In fact, Mr. Mantle's comments, being a part of the official record, may be found with a public records request.

Furthermore, Mr. Mantle takes issue that public comment forms that select "in favor" or "in opposition" are stated on the record. Upon review of the video of the May 8, 2019 Council meeting, the OAG notes that neither the Council nor the City Clerk read aloud any written public comments. Instead, the Clerk merely noted that its office received correspondence in favor or in opposition of the particular agenda item².

Lastly, nothing in documents reviewed by the OAG indicates that the Council prohibited Mr. Mantle from participating and providing live public comment at the time of the May 8, 2019 meeting.

² The OAG does not have evidence that public comment forms marked "unsure" versus "in favor" or "in opposition" were treated differently at the Council's May 8, 2019 meeting. However, the OAG cautions that the Council should not treat forms marked "unsure" differently from forms marked "in favor" or "in opposition", as differential treatment may rise to the level of an OML violation.

CONCLUSION

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Justin R. Taruc
JUSTIN R. TARUC
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage prepared, first place mail, to the following:

William P. Mantle
[REDACTED]
[REDACTED]

Karl S. Hall, City Attorney
Reno City Attorney's Office
P. O. Box 1900
Reno, NV 89005

/s/ Debra Turman
An employee of the State of Nevada
Office of the Attorney General