

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

LESLIE NINO PIRO
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

February 2, 2022

Via Certified Mail

Matt Alder
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-375, Sparks
City Council**

Dear Mr. Alder:

The Office of the Attorney General (OAG) has received your Complaint alleging that the Sparks City Council (“Council”) violated Nevada’s Open Meeting Law (“OML”) at its September 14, 2020 virtual open meeting and other unspecified meetings. Pursuant to Nevada Statute, the Office of Attorney General is authorized to investigate and prosecute violations of Open Meeting Law. *See* Nevada Revised Statutes (“NRS”) 241.037, 241.039, and 241.040.

Following its Review of your Complaint; the Council’s Response; video from the City’s September 14, 2020 meeting; Attorney General Open Meeting Law Opinion No. 10-037 (October 19, 2010); and relevant legal authorities; the OAG concludes the Council did not violate Nevada’s Open Meeting Law.

FACTUAL BACKGROUND

Sparks City Council is a public body as defined by Nevada Revised Statute (“NRS”) 241.015(4) and subject to the OML.

The Complaint alleges that “at the beginning of each Sparks City Council Meeting, the clerk informs the public about the OML required public comment periods. At the end of this announcement, the clerk states: ‘Any comments or

questions cannot be addressed or answered by the council if the topics have not been agenzied.” The Complaint further alleges that this rule is “[...] used by the City Attorney and Manager to stifle council from addressing and answering comments from the public.” Additionally, the complaint states that “this announcement seems to contravene NRS 241.020(2)(d)(3), as described in the AG’s OML Handbook, pg. 68.”

At the start of the September 14, 2020 meeting, the clerk recited a disclaimer regarding public comment including the language “any comments or questions cannot be addressed or answered by the council if the topics have not been agenzied.” The agenda for the meeting contained the following public comment statement:

Restrictions on Public Comments – All public comment remarks shall be addressed to the Council as a whole and not to any member thereof. No person, other than members of the City Council and the person having the floor shall be permitted to enter into any discussion. No questions shall be asked of the City Council except through the presiding officer. **No topics may be discussed unless they are on the agenda....**

During the public comment periods, no members of the public attempted to ask questions of or enter into a discussion with the Council.

DISCUSSION AND LEGAL ANALYSIS

The OML requires that a public notice agenda include: “Periods Devoted to comments by the general public, if any, **and discussion of those comments.**” NRS 241.020(3)(d)(3) (emphasis supplied).¹ Regardless of the method chosen by the public body for public comment on agenda items, “No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).” *Id.*

¹ The complaint alleges a violation of NRS 241.020(2)(d)(3). NRS 241.020(2)(d)(3) has been recently amended as NRS 241.020(3)(d)(3) see. Laws 2019, c. 566 § 6.2, eff. Oct. 1, 2019.

On the face of the statute, the OML allows discussion between the public body and the general public, during the public comment period. Moreover, the legislative history of NRS 241 reveals that “the Legislature intended to allow public bodies to discuss matters arising during public comment without fear of violating the OML” and this intent is “clear.” AG File No. 10-037 at 7:10-12, (October 19, 2010). Additionally, although “[...] the law does not require the public body to answer the public’s inquiries [...] neither does it prohibit the public body from discussing the public’s comments.” *Id.* (citing AG File No 05-033 August 29, 2005); NRS 241.020(3)(d)(3).

The Nevada Attorney General has also advised in the Open Meeting Law Manual, § 7.04 (March 26, 2019), that:

A public body **may not inform the public that it legally is prohibited from discussing public comments, either among themselves, or with speakers from the public.** NRS 241.020[(3)](d)(3) clearly allows discussion with members of the public. Of course, no matter raised in public comment may be the subject of either deliberation or action. AG File No. 10-037 (October 19, 2010); *see* § 4.01 for definition of “deliberation.” (emphasis supplied).

Your complaint focuses on the public comment disclaimer read by the clerk at the beginning of each Sparks City Council meeting. A public body is not allowed to inform the public that it is prohibited from discussing items that are not on the agenda and, in fact, is required to allow the public to comment on any matter that is not specifically included as an agenda item. *See* NRS 241.020(3)(d)(3); AG File No. 10-037 (October 19, 2010). However, the OAG acknowledges that there is a fine line between “discussion” with the public and “deliberation”, which is prohibited during public comment periods. Indeed, the definition of “deliberate” contained in the OML includes “the collective **discussion** or exchange of facts preliminary to the ultimate decision.” NRS 241.015(2) (emphasis supplied). This lack of clarity between the terms is ripe for confusion by public body members looking to avoid violations of the OML.

The public comment statement and oral admonition at the Council meeting misstate the OML regarding public comment and the Council’s ability to engage in the discussion of, or “address” non-agendized topics raised during

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public comment. Because public bodies are not required to discuss issues with the general public, the OAG finds that the public comment statement alone is not a technical OML violation. However, the OAG cautions the Council not to state or imply in its public comment statements that it is prohibited from discussing items brought up during public comment. NRS 241.020(3)(d)(3) is clear in its intent to encourage discourse between public bodies and the public they serve.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close its file regarding this matter.

Respectfully,
AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
Rosalie Bordelove
Chief Deputy Attorney General

cc: Chester H. Adams, Sparks City Attorney

