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OFFICE OF THE ATTORNEY GENERAL

5420 Kietzke Lane, Suite 202
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July 3, 2024

Via U.S. Mail

Mitchell Miller
[REDACTED]

**Re: Mesquite City Council – Open Meeting Law Complaint; OAG
File No. 13897-503**

Dear Mr. Miller:

The Office of the Attorney General (“OAG”) is in receipt of your complaint alleging violations of the Open Meeting Law (“OML”) by the Mesquite City Council (“Council”) regarding whether a quorum of the Council participated in a meeting which was not noticed.

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; NRS 241.040. In response to your complaint, the OAG reviewed your complaint and supplement thereto and the Council’s response.

FACTUAL BACKGROUND

The Council is a “public body” as defined in NRS 241.015(4) and subject to the OML.

According to your complaint, on April 6, 2023, a quorum consisting of three out of the five council members participated in a private gathering regarding Mesquite’s Sports Entertainment Complex (“SEC”). Also present were the city attorney, city manager, and several private citizens. You state that the private citizens spoke out against a proposal regarding the SEC. You also state that all persons present spoke, asked questions, shared ideas, and had a continuing dialogue.

The Council's response does not dispute that a gathering of the aforementioned persons occurred. However, the response states that prior to the gathering, the three members of the Council were briefed by the city attorney. The response states that the city attorney discussed what the members of the Council could do to ensure that they did not commit any OML violations:

The city attorney instructed that as there would be three city council members present, they could not take any action nor could they deliberate in any manner – specifically they could not share their opinions, could not indicate how they would vote, and could not comment on issues in any way that would turn the gathering into a “collective” discussion among the city council members about the issues. The city attorney further instructed that they could ask clarifying questions about positions or statements of others, but that they should be careful in so doing so as to avoid communicating their feelings on any of the relevant issues.

The response further states that during the briefing of the three members of the Council by the city attorney, one member of the Council expressed his frustration with how city staff was handling the SEC matter. The response states there was not a reaction or discussion of the expressed frustration.

The response set out that the parameters of the gathering which were necessary to avoid OML violations were restated at the beginning of the gathering. According to the response, during the gathering, various options concerning the SEC were presented to the private citizens by city staff and the members of the Council. The members of the Council, city staff, and private citizens asked clarifying questions concerning the facts of the proposals. City staff and the private citizens were then questioned as to their thoughts regarding the options by the members of the Council. According to the response, at no time during this gathering did any member of the Council express any opinion concerning the various options. The response indicated that all parties to this gathering knew that the options would be deliberated at the April 11, 2023, publicly noticed meeting of the Council.

The response does admit that after the departure of one member of the Council, leaving two members present and less than a quorum of the Council, one member did express an opinion.

The response summarizes the gathering as follows:

In sum, no one present in the gathering recalls (1) any city council members expressing any opinions about how the SEC should be regulated other than suggesting options for the entire

council to consider at the later meeting, (2) anyone asking any city council members what their opinions were about how the SEC should be regulated or how they intended to vote on how the SEC should be regulated, or (3) any city council members engaging in any discussion between themselves about any of the issues – their exchanges were always directed to the members of the public or to city staff in an information seeking manner.

Your complaint alleges that a quorum of the Council held a meeting which did not comply with the OML.

DISCUSSION AND LEGAL ANALYSIS

There is insufficient evidence of a meeting occurring on April 6, 2023.

The OML was enacted to ensure public access to government as it conducts the people's business. NRS 241.010. It is the intent of the law that the actions and deliberations of public bodies be conducted openly. *Id.* However, the OML is not intended to prohibit every private discussion of a public issue. *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 94 (2003). Instead, the OML only prohibits collective deliberations or actions where a quorum is present. *Id.* at 94-95. The OML defines a "meeting" as:

- (1) The gathering of members of a public body at which a quorum is present, whether in person, by use of a remote technology system or by means of electronic communication, **to deliberate toward a decision or to take action** on any matter over which the public body has supervision, control, jurisdiction or advisory power.

NRS 241.020(3)(a) (emphasis supplied). "Action" is defined as "A decision made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body." NRS 241.015(1)(a). "Deliberate" is defined as "collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision." NRS 241.015(2).

There is no dispute that a quorum of members gathered together at the gathering on April 6, 2023. The complaint and supplement thereto also do not allege that action was taken outside of a properly noticed meeting. These facts distill the issue down to whether deliberation occurred at the April 6, 2023, gathering.

There is insufficient evidence to determine whether deliberation occurred at the April 6, 2023, gathering. However, the evidence available to the OAG indicates that deliberation did not occur. Your complaint and supplement thereto allege that ideas were shared, and a dialogue was held concerning the SEC at the April 6, 2023, gathering. However, you were not present at the April 6, 2023, gathering and do not refer the OAG to any evidence from any person who was present.

The evidence in possession of the OAG is a response to your complaint and supplement written by Mesquite City Attorney Brian Pack who was present at the April 6, 2023, gathering. The response sets out Mr. Pack's recollections and admonitions regarding the gathering.

The response sets out that Mr. Pack specifically admonished the Council members that they could not express their views and could only direct their questions to staff and the private citizens who were present. The response also sets out that the members of the Council directed all of the factual exchanges to staff and the private citizens. The response states that the members of the Council did not express their opinions, and no one asked their opinions.

In short, the response accurately characterizes the law: that a meeting does not occur even with a quorum present if all inquiries are directed toward persons who are not members of the public body, and no member of the public body expresses an opinion about the matter. The response, which encompasses the only direct evidence in the OAG's possession, sets out that the gathering on April 6, 2023, complied with the law.

The OAG, however, must caution the Council. The response sets out that one member of the Council expressed his frustration with how city staff were handling the SEC matter with two other members of the Council present. This could easily be construed as expressing an opinion which disagreed with the staff actions taken concerning the SEC matter. The discussion in the response regarding this discounts it as deliberation based on the fact that this member had expressed similar sentiments at properly noticed meetings and, thus, this statement was not new and did not constitute deliberation. However, the OAG cautions the Council that no opinions or ideas may be expressed by a member of a public body where a quorum of the public body is present.

Thus, the OAG does not find evidence of deliberation by a quorum of members. Without deliberation or action, the gathering does not meet the definition of a meeting in NRS 241.015(2). As such, the OAG does not find a violation of the OML.

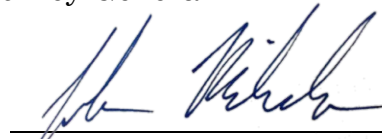
CONCLUSION

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 the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: _____



JOHN S. MICHELA
Senior Deputy Attorney General

cc: Brian Pack, City Attorney
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