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July 1, 2024

Via U.S Mail

Neil Krutz
c/o John K. Gallagher, Esq.
Guild, Gallagher & Fuller, Ltd.
100 West Liberty Street, Suite 800
Reno, Nevada 89501

**Re: Open Meeting Law Complaint, OAG File No. 13897-493
Sparks City Council**

Dear Mr. Krutz:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law, NRS Chapter 241, (“OML”) by the Sparks City Council (“Council”) regarding its June 12 and September 5, 2023, meetings.

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; NRS 241.040. The OAG’s investigation of the Complaints included a review of the Complaints, the Responses on behalf of the Council, and the agendas, minutes and recordings of the Council’s June 12 and September 5, 2023, meetings. After investigating the Complaints, the OAG determines that the Council did not violate the OML as alleged in the Complaints.

FACTUAL BACKGROUND

The Sparks City Council held a public meeting on June 12, 2023. Item 9.15 on the public notice agenda for the meeting read:

Consideration, discussion, and possible action regarding a request for an independent investigation into survey results, leadership, employee relations, and any other items relating to the City Manager. (For Possible Action)

Supporting material for the item indicated that the item's purpose was for the Council to give direction to staff whether to initiate an investigator to perform an investigation with the expectation that a later contract for the investigator would come before the Council at another meeting.

During the meeting, when Item 9.15 was heard, the Human Resources Director introduced the item and noted that it was brought at the request of Councilwoman VanderWell. Councilwoman VanderWell then made some statements regarding potential issues with the City Manager that she wanted to be investigated. Discussion by the Council on the item included whether to initiate an investigation, what type of anonymity would be provided to employees who participated in such an investigation, and some questions to the Human Resources Director regarding if an employee were to make a complaint regarding management, such as the City Manager, how it would be handled. The Council then took a brief recess and the following motion was made by a Councilmember:

I move to direct the hiring of a third-party investigator to work with HR to initiate a complaint driven investigation into the City Manager in the performance of his duties under his contract as it relates to toxic leadership, negative employee survey results, employee morale, gender bias, or whether the City Manager is exercising the care, skill and diligence of a regularly prudent executive.

The motion passed unanimously.

On or around August 28, 2023, the Council sent a notice to Complainant, the City Manager, regarding its September 5 meeting. The notice stated, "in determining whether termination is appropriate, [the Council] may consider your character, alleged misconduct, competence, and physical or mental health." It further listed the following general topics as it related to the City Manager's potential termination, "your character, alleged misconduct, competence, physical or mental health, your performance as City Manager, your job description, your job duties, your Contract of Employment, and any other matters properly related thereto."

The Council held a public meeting on September 5, 2023. Item 6.1 on the public notice agenda for the meeting read:

Consideration, discussion, and possible termination of the employment agreement (AC-5553) between the City of Sparks and City Manager Neil Krutz. (For Possible Action).

The supporting material for the item offered potential motions and information for if the Council were to terminate the contract with or without cause and what the potential costs would be. When Item 6.1 was called, the Human Resources Director gave a brief presentation on the item, a Councilmember made a motion to terminate the contract for cause, stating reasons for making the motion, including specific alleged actions of the City Manager. Complainant's counsel was then invited up and presented his arguments to the Council. The Council discussed the matter, took a brief recess, and then another motion to terminate for cause was made, which passed.

Complainant, through counsel, filed the instant complaints alleging the Council violated the OML by (1) failing to provide notice under NRS 241.034 that administrative action may be taken against the Complainant at the Council's June 12 meeting; (2) agenda item 9.15 on the June 12 agenda failing to meet the clear and complete requirement, and (3) by failing to provide sufficient notice to Complainant that his character would be discussed at the Council's September 5, 2023, meeting.

LEGAL ANALYSIS

The Sparks City Council, as the governing body of a city in Nevada, is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

A. Item 9.15 of the Council's June 12 meeting did not amount to "administrative action against" the City Manager, and thus the Council was not required to provide notice under NRS 241.034.

NRS 241.034 requires public bodies to give written notice to a person if the public body intends to consider whether to take administrative action against the person. NRS 241.034. The term "administrative action against a person" had not yet been defined in the OML at the time of the meeting at issue.¹ The OAG had previously considered "administrative action against a

¹ "Administrative action against a person" was defined by AB52 of the 2023 Legislative Session, which did not go into effect until July 1, 2023. The definition now in NRS 241 is "an action that is uniquely personal to the person and includes, without limitation, the potential

person” as action involving an individual’s characteristics or qualifications, not those of either objective or discretionary standards relating to inanimate matters. NEVADA OPEN MEETING LAW MANUAL at 55-57 (13th ed. Jan. 2019).

There is no dispute that the City Manager did not receive notice contemplated by NRS 241.034 prior to the June 12 meeting. The issue here is whether the agenda item amounted to administrative action against the City Manager and thus required such notice. The OAG finds that notice was not required by NRS 241.034.

The agenda item at issue involved the Council determining whether to instruct staff to begin the process of hiring an investigator to conduct an investigation into complaints against the City Manager. The potential action under the item did not involve any action against the City Manager’s contract, job duties or compensation. It did not even fully initiate an investigation into the City Manager as it required any contract to come before the Council at a future meeting. The OAG finds that because the item did not change the circumstances of the City Manager, it was not “administrative action against” him requiring notice and thus the Council’s failure to provide such notice was not a violation of the OML. *See In re Public Employees’ Retirement System of Nevada Retirement Board*, OMLO 13897-279 at 3 (Jul. 20, 2020).

B. Item 9.15 of the Council’s June 12 meeting agenda included a clear and complete statement of the topics considered and acted upon.

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(3)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that ‘incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence to the “clear and complete” standard for agenda items is required for compliance under the OML. *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155. However, the OAG applies a reasonableness standard in determining whether an agenda item is clear and complete. *In re Board of Veterinary Medical Examiners*, OMLO 13897-363 at 5 (Jan. 8, 2021).

for a negative change in circumstances to the person. The term does not include the denial of any application where the denial does not change the present circumstance or situation of the person.” NRS 241.015(2).

Here, the agenda item at issue provided that the Council would consider whether to instruct staff to begin the process of hiring an investigator to conduct an investigation into complaints against the City Manager. The discussion involved whether or not to engage a third party to perform such an investigation, how complaints against management were handled and details regarding how the investigation might be performed. The action taken was to instruct staff to initiate the process with a future contract coming back before the Council. The OAG finds that the discussion and action fit within the agenda item listed and does not find a violation of the OML.

C. The Council provided sufficient notice to Complainant that his character would be discussed at its September 5 meeting.

NRS 241.033 requires public bodies to provide written notice to a person if the public body intends to consider the person's character, alleged misconduct, professional competence or physical or mental health. The notice 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." NRS 241.033(2)(c). Subsection 4 relates only to closed meetings where character is discussed. The OAG acknowledges that NRS 241.033(2)(c) does not address when a meeting will not be closed and subsection (2)(c)(1) implies that it is referring to closed meetings without so stating, potentially causing some confusion. For purposes of this opinion, the OAG interprets NRS 241.033(2)(c)(1) as applying to both open and closed meetings to consider character and subsection (2)(c)(2) as only applying to closed meetings as it so states.

The Council was not permitted to go into closed session to discuss the character of its City Manager and did not attempt to do so. NRS 241.031(1)(b). Thus, the Council was required to provide notice to Complainant of the time and place of the meeting, and a list of the general topics concerning the Complainant that it intended to discuss. NRS 241.033(1)-(2). The OAG finds the notice sent by the Council to meet this standard.

The Complainant argues that the Council was required to list the specific allegations being made against Complainant so that he could prepare a defense. The OAG disagrees. The statute does not require specific allegations, it lists "general topics", and the OAG cannot expand its meaning to require greater specificity. As such, the OAG does not find a violation of the OML in this respect.

CONCLUSION

Upon review of your Complaints 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/ Rosalie Bordelove
ROSALIE BORDELOVE
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