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5420 Kietzke Lane, Suite 202  
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October 12, 2018

Mr. Robert A. Switzer

**Re: Open Meeting Law Complaint, OAG File No. 13897-299  
Ely City Council**

Dear Mr. Switzer:

The Office of the Attorney General ("OAG") is in receipt of your complaints ("Complaints") alleging violations of the Open Meeting Law ("OML") by the Ely City Council ("Council") regarding whether your character and/or competence was considered without proper notice during meetings held on July 12, 2018, and on July 19, 2018.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes ("NRS") NRS 241.037; NRS 241.039; NRS 241.040. In response to the Complaints, the OAG reviewed the Complaints and attachments; the response to the Complaints from Rebecca Bruch, counsel to Council Member Tony DeFelice, and attachments thereto; the response to the Complaints from Charles Odgers, City Attorney for the City of Ely, and the attachments thereto; and the agendas and audio from the Council's July 12, 2018, meeting and the Council's July 19, 2018, meeting.

**FACTUAL BACKGROUND**

The Council is a "public body" as defined in NRS 241.015(4) and subject to the OML. You are employed by the City of Ely as its City Administrator.

On July 12, 2018, the Council held a public meeting. One of the agenda items noticed for this meeting was an informational item (i.e., for discussion only; not for possible action) which included a report from the Ely Fire Chief. During this item, Council Member Kurt Carson questioned you concerning your recruitment for open firefighter/EMT positions. Mr. Carson called your posting actions for the recruitment “unacceptable.” Mr. Carson also discussed fireman overtime compensation with you. No other member of the Council discussed your acts or failures to act during this item.

On July 19, 2018, the Council held a special public meeting. One of the agenda items noticed for this meeting was for the approval of the Council to hire a CPA firm to provide accounts payable and payroll services for the City of Ely. During this item, Council Member Tony DeFelice questioned the number of hours worked by you and expressed his opinion that you should work extra hours so hiring the CPA firm would be not be necessary.

#### **DISCUSSION AND LEGAL ANALYSIS**

Chapter 241 of the NRS requires the actions of public bodies “be taken openly and that their deliberations be conducted openly.” NRS 241.010(1); *see McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). NRS 241.033(1) sets out: “. . . a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person . . .” unless it has properly notified the person. In order for a public body to violate NRS 241.033(1), it must as a whole, without notice, consider and deliberate with regard to a person’s character, alleged misconduct, professional competence, or physical or mental health. *See OMLO 2005-08 (May 2005)*. “The unilateral comments of one Board member that touch on such matters do not, without facts implicating the conduct of the Board generally, cause a violation of the notice requirement under NRS 241.033(1).” *Id.*

Your Complaints allege violations of NRS 233.033(1) based on Council Member Carson’s questions and comments with regard to you at the Council’s meeting held on July 12, 2018, and based on Council Member DeFelice’s questions and comments with regard to you at the Council’s special meeting held on July 19, 2018. The agenda items in question do not indicate you were the subject of the items. You do not allege, and the record for this matter does not support, that the Council as a whole considered and deliberated your character, misconduct, professional competence, or physical or mental health. The OAG finds the evidence does not support your allegations that the Council considered your character, misconduct, professional competence, or physical or mental health. Thus, the OAG does not find a violation of the OML.

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CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By: \_\_\_\_\_



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