

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

AGO 2000-18 OPEN MEETING LAW; PUBLIC BODIES; BALLOTS: Committees appointed pursuant to NRS 295.217 are not public bodies as defined by NRS 241.015(3) when they do not expend, disburse, or are supported, in whole or in part,, by tax revenue and when they will not give advice or make recommendations to any entity which expends or disburses, or is supported, in whole or in part, by tax revenue. Accordingly, such committees are not governed by the provisions of the Open Meeting Law.

Carson City, June 2, 2000

Bradford R. Jerbic, City Attorney, Larry G. Bettis, Deputy City Attorney City of Las Vegas, 400 East Stewart Avenue, 9th Floor, Las Vegas, Nevada 89101

Dear Messrs. Jerbic and Bettis:

You have requested an opinion from this office as to whether committees appointed pursuant to NRS 295.217 are subject to the requirements of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes.¹ Specifically, the question is:

QUESTION

Is a committee appointed by the Las Vegas City Council or the City Clerk pursuant to NRS 295.217, which provides that a committee be appointed to prepare arguments advocating and opposing approval of ballot questions for a city, a “public body” as that term is defined in NRS 241.015(3), and hence governed by the Nevada Open Meeting Law?

ANALYSIS

By way of background, in 1999, legislation was passed to require that a city council appoint a committee to prepare arguments advocating and opposing approval of ballot questions that may appear on the ballot. Specifically, NRS 295.217 provides:

1. In a city whose population is 50,000 or more, for each initiative, referendum or other question to be placed on the ballot by the council, including, without limitation, pursuant

¹ The legislative history is silent on this issue.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

to NRS 293.482 or 295.215, the council shall, in consultation with the city clerk, pursuant to subsection 2, appoint a committee of six persons, three of whom are known to favor approval by the voters of the initiative, referendum or other question and three of whom are known to oppose approval by the voters of the initiative, referendum or other question. A person may serve on more than one committee. Members of the committee serve without compensation. The term of office for each member commences upon appointment and expires upon the publication of the sample ballot containing the initiative, referendum or other question.

2. Before the council appoints a committee pursuant to subsection 1, the city clerk shall:

(a) Recommend to the council persons to be appointed to the committee; and

(b) Consider recommending pursuant to paragraph (a):

(1) Any person who has expressed an interest in serving on the committee; and

(2) A person who is a member of an organization that has expressed an interest in having a member of the organization serve on the committee.

3. If the council of a city whose population is 50,000 or more fails to appoint a committee as required by subsection 1, the city clerk shall appoint the committee.

4. A committee appointed pursuant to this section:

(a) Shall elect a chairman for the committee;

(b) Shall meet and conduct its affairs as necessary to fulfill the requirements of this section;

(c) May seek and consider comments from the general public;

(d) Shall prepare an argument advocating approval by the voters of the initiative, referendum or other question, and prepare a rebuttal to that argument;

(e) Shall prepare an argument opposing approval by the voters of the initiative, referendum or other question, and prepare a rebuttal to that argument; and

(f) Shall submit the arguments and rebuttals prepared pursuant to paragraphs (d) and (e) to the city clerk not later than the date prescribed by the city clerk pursuant to subsection 5.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

5. The city clerk of a city whose population is 50,000 or more shall provide, by rule or regulation:

(a) The maximum permissible length of an argument or rebuttal prepared pursuant to this section; and

(b) The date by which an argument or rebuttal prepared pursuant to this section must be submitted by the committee to the city clerk.

6. Upon receipt of an argument or rebuttal prepared pursuant to this section, the city clerk shall reject each statement in the argument or rebuttal that he believes is libelous or factually inaccurate. Not later than 5 days after the city clerk rejects a statement pursuant to this subsection, the committee may appeal that rejection to the city attorney. The city attorney shall review the statement and the reasons for its rejection and may receive evidence, documentary or testimonial, to aid him in his decision. Not later than 3 business days after the appeal by the committee, the city attorney shall issue his decision rejecting or accepting the statement. The decision of the city attorney is a final decision for the purposes of judicial review.

7. The city clerk shall place in the sample ballot provided to the registered voters of the city each argument and rebuttal prepared pursuant to this section, containing all statements that were not rejected pursuant to subsection 6. The city clerk may revise the language submitted by the committee so that it is clear, concise and suitable for incorporation in the sample ballot, but shall not alter the meaning or effect without the consent of the committee.

8. In a city whose population is less than 50,000:

(a) The council may appoint a committee pursuant to subsection 1.

(b) If the council appoints a committee, the city clerk shall provide for rules or regulations pursuant to subsection 5.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

Nevada Revised Statute 241.015(3) defines a public body as:

Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. "Public body" does not include the legislature of the State of Nevada.

Hence, a threshold requirement for an entity to be considered a "public body" under the Open Meeting Law is that the entity be expending, disbursing, or supported, in whole or in part, by tax revenue, or give advice or make recommendations to a public body subject to the Open Meeting Law.

You have informed us that the committees to be appointed by either the Las Vegas City Council or the city clerk pursuant to NRS 295.217 will not be expending, disbursing, or supported, in whole or in part, by tax revenue. Rather, the committees will be voluntary and self-supporting. Further, you have informed us that the committees will not give advice or make recommendations to the Las Vegas City Council, or any other public body. Rather, as set forth in the statute, each committee will submit its statement to the city clerk for acceptance or rejection. If the statement is accepted by the city clerk, the city clerk is required to place the statement in the sample ballot provided to the registered voters of the city, subject to revisions the city clerk is permitted to make in order to ensure the statement is clear, concise, and suitable for incorporation in the sample ballot. The city clerk is not a public body under the Open Meeting Law.² Accordingly, the committees appointed

² A "public body" must be a multi-member entity. *See* Op. Nev. Att'y Gen. No. 241 (August 24, 1961).

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL

by the Las Vegas City Council or the city clerk are not, under the set of facts presented, public bodies governed by the Open Meeting Law.³

CONCLUSION

The committees to be appointed by the Las Vegas City Council or the city clerk are not public bodies as defined by NRS 241.015(3) because they do not expend, disburse, or will be supported, in whole or in part, by tax revenue, and because they will not give advice or make recommendations to the Las Vegas City Council or other public body. Accordingly, the committees are not governed by the provisions of the Nevada Open Meeting Law.

FRANKIE SUE DEL PAPA
Attorney General

By: VICTORIA T. OLDENBURG
Deputy Attorney General

³ Note that this opinion would not apply to a committee created pursuant to NRS 295.217 that expended, disbursed, or was supported, in whole or in part, by tax revenue, or that gave advice or made recommendations to a public body.