



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

April 27, 2015

Via First Class Mail

Dena J. Lopez
P.O. Box 2132
Fernley, Nevada 89408

Kathy D. McClellan
1700 Harvest Creek Way
Fernley, Nevada 89408

Re: Open Meeting Law Complaint, A.G. File No. 13897-139

Dear Ms. Lopez and Ms. McClellan:

BACKGROUND

Kathy McClellan and Dena Lopez each submitted an Open Meeting Law (OML) complaint that alleges the Fernley Swimming Pool District Board of Trustees (Trustees), a public body subject to the OML, violated the OML when the Chairperson, Jann Van Horn, did not allow public comment regarding its January 20, 2015 meeting agenda item. Action on this item could have resulted in restructure of three different employee classifications. The District did not take action on the matter.

We have reviewed the agenda, minutes and the audio of the meeting as well as statements from employees and other interested persons. Ms. Van Horn also submitted a response to the complaints.

The Office of the Attorney General has jurisdiction to investigate Open Meeting Law complaints, issue findings of fact and conclusions of law in an opinion or sue a public body to void its action, sue for injunctive relief, and other civil remedies including monetary fines. NRS 241.037 and NRS 241.040.

FINDINGS OF FACT

Item 10 on the January 20, 2015 agenda was brief. It reads, "For possible action to restructure the current job classifications: elimination of the Cashier, Senior Supervisor, and Office Assistant classifications." No action was taken on the item and the Chairperson did not allow any Trustee discussion. The Chair did not call for public comment, nor did the public seek comment after the presentation by Paul Murphy, a newly elected Trustee.

The agenda for this meeting had two periods of public comment and in addition the Chair allowed public comment on other agenda items. The Trustees met the statutory minimum requirement for public comment. NRS 241.020.

At the conclusion of the meeting Ms. Van Horn called for public comment. One person commented on an unrelated matter to item #10. There was discussion among the Trustees. After this comment no one else rose to speak or asked to comment.

CONCLUSION OF LAW

The Open Meeting Law requires at least one period of public comment on every agenda which allows citizens to speak on any matter or topic not specifically included on the agenda as an action item. NRS 241.020(2)(d). If the Chairperson had failed to ask for public comment at the end of the meeting, or had refused to hear comment from the public about item #10 then a violation of the OML would have occurred. NRS 241.020(2)(d).

However, these facts indicate that no violation occurred. No one asked to speak about item #10. After Mr. Murphy's presentation, Mr. Vann Horn merely informed the Trustees that there would be no discussion of Mr. Murphy's presentation. Her handling of this issue was confusing as many in the audience, including the two complainants, interpreted her order as though it applied to them and others in the audience forbidding public comment.

Nonetheless, the audio indicates that following the comment of Carol Hume, at the last period of public comment, Ms. Vann Horn quickly moved to the final item without canvassing the public to ask if anyone else had public comment. Normally, such action by a Chairperson does not rise to the level of a violation, but given the

Dena J. Lopez
and
Kathy D. McClellan
April 27, 2015
Page 3

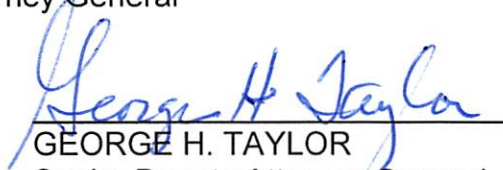
tension in the audience and the circumstances noted herein, the chair could have asked if there was any further comment.

We will only warn the Chairperson to ensure that all members of the public are given the chance to speak during public comment periods especially when items of significant public interest have been heard.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:


GEORGE H. TAYLOR
Senior Deputy Attorney General
Bureau of Government Affairs
Open Meeting Law

Cc: Stephen B. Rye, District Attorney
31 South Main Street
Yerington, Nevada 89447

Roy Edgington, City Manager
595 Silver Lace Blvd.
Fernley, Nevada 89408

Jann Van Horn
562 Wege Lane
Fernley, Nevada 89408

Fernley Swimming Pool
c/o Paul Murphy, Paula Kerr, Bill Riesen, and Marty Hanna
300 Cottonwood Lane
Fernley, Nevada 89408