



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

CATHERINE CORTEZ MASTO
Attorney General

KEITH G. MUNRO
Assistant Attorney General

GREGORY M. SMITH
Chief of Staff

June 26, 2012

Dennis Jacobsen
1630 Eli Drive
Reno, Nevada 89511

Re: Open Meeting Law Complaint / AG File No. 12-008
Truckee Meadows Fire Protection District – Board of
Fire Commissioners

Dear Mr. Jacobsen:

BACKGROUND

This Open Meeting Law (OML) complaint arises out of the meeting of the Washoe County Board of County Commissioners sitting as the Board of Fire Commissioners (BOFC) for the Truckee Meadows Fire Protection District (organized under NRS 474) on March 27, 2012. Complainant alleged that the use of the statutory OML exemption, found in NRS 288.220¹ during several BOFC meetings between February 14, 2012 and March 27, 2012 was "improper under the intent of the OML."

¹ **NRS 288.220 Certain proceedings not required to be open or public.** The following proceedings, required by or pursuant to this chapter, are not subject to any provision of NRS which requires a meeting to be open or public:

1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives.
2. Any meeting of a mediator with either party or both parties to a negotiation.
3. Any meeting or investigation conducted by a fact finder.
4. Any meeting of the governing body of a local government employer with its management representative or representatives.
5. Deliberations of the Board toward a decision on a complaint, appeal or petition for declaratory relief.

(Added to NRS by 1969, 1380; A 1971, 600, 1508; 1977, 1368; 1979, 287)

Furthermore, complainant alleged that the BOFC's "handling of the Transitional Fire Department Plan² behind closed doors . . . [was] an erosion of our right to transparent operation of our local government."

ISSUE

Further clarification of underlying issues was sought from the complainant. He responded with a letter describing in particular his view that utilization of NRS 228.220 as statutory authority to exempt the BOFC's March 27, 2012 closed meeting from scrutiny of the OML was "in direct opposition to the intent of all of Nevada's Open Meeting Law for transparent governmental operations." In particular complainant objected to BOFC's closed door discussion of the Transitional Fire Department Plan because "no bargaining has occurred to date between Local 731 and the Washoe County BOFC" and he claimed that non-specific subject matter may be discussed. Complainant did not define or further specify what was meant by "non-specific subject matter" nor did he make a factual allegation that an OML violation occurred during the closed meeting; the complaint only alleged that the closed meeting was improperly founded on NRS 288.220 exemption from open and public meetings.

BOFC's response to the complaint stated that Chief Hernandez presented the "idea" and/or information expressed as the Transitional Fire Department Funding/Staffing Analysis Plan, to the BOFC, but no action had been taken during the closed meeting.

DISCUSSION

The Legislature long ago made a policy decision that labor negotiations and other labor matters arising out of NRS 288 are exempt from the Open Meeting Law. That policy means NRS 241 does not apply in the context of this complaint. In response to the complaint, Counsel for BOFC recognized that the NRS 241 does require that the subject matter of a closed meeting pursuant to NRS 288.220(4) must relate to the subject matter treated in NRS 288 and cannot stray into other unrelated

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² Transitional Fire Department Funding/Staffing Analysis Plan is acknowledged by the parties to be a financial/budgetary analysis document developed and prepared jointly during a workshop attended by less than a quorum of the Washoe County BOCC, less than a quorum of the Reno City Council and the Reno Firefighters Association IAFF Local 731. It has been referred to as the "Reno/731 plan" and was characterized as a budgetary proposal to prevent deconsolidation of Washoe County/Reno firefighting services.

matters, but beyond that legislative requirement, nothing more is required. NRS 241.020(1) (a closed meeting may only be closed to the extent allowed in the statute allowing closure).³

During public comment on March 27, 2012, Complainant asked counsel for the BOFC what sub-section of NRS 241 he was relying on to close the portion of the meeting to consider/the so-called Transitional Fire Plan. The complaint alleged counsel cited attorney client privilege for declining to answer, but under the OML an answer would not have been required even if a member of the BOFC had been asked the same question. Because none of the exceptions to open meetings found in NRS 241.030 were the basis for closure of the BOFC's March 27, 2012 discussion of the Transitional Fire Department plan, the agenda's notice to the public citing NRS 288.220 was a complete exemption from the OML requirements regarding open and closed meetings.

There is a fundamental difference between exceptions to the OML found only in NRS 241 and complete exemptions found in many other NRS chapters. See Nevada's OPEN MEETING LAW MANUAL §§ 4.01 and 4.02. NRS 288.220 is a complete exemption from the OML but it is not codified in NRS 241. NRS 288.220(4) is broadly stated to include any meeting between an employer and its management representative. The OML Manual recommends that the subject matter of an exempt meeting must be related to labor issues under NRS 288. OPEN MEETING LAW MANUAL, § 4.02(11th ed. 2012) (Even exempt meetings should be limited by statutory authority. Citing AG File No. 10-020 (June 22, 2010)). For purposes of this meeting, Mike Hernandez was designated the management representative.

The complaint asserts that failure of BOFC (the employer) to put the Transitional Fire Department Plan on an agenda for public discussion was outside the collective bargaining process. BOFC points out in its response that the Transitional Fire Plan was only an idea that "purported to demonstrate a way deconsolidation could be avoided." This allegation, while not implicating the OML, implies that the BOFC was obligated to bargain under NRS 288. Nevertheless, NRS 288.220(4) exempts **any meeting** between an employer and its management representative. The statute does not require a closed meeting's subject matter to only address mandatory bargaining issues.

³ **NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.**

1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend.

Whether or not BOFC must bargain with the City or IAFF local 731 regarding the Transitional Fire Plan is not an issue for the OML. This letter opinion does not address that issue as it is outside the jurisdiction of the OML.

CONCLUSION

Closure of the Washoe County BOFC's March 27, 2012 agenda item to hear Chief Hernandez' review of the Transitional Fire Plan was supported by NRS 288.220(4)—an exemption from the OML.

We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:  For: _____
GEORGE H. TAYLOR
Senior Deputy Attorney General
(775) 684-1230

GHT/CG

cc: Paul A. Lipparelli, Esq., Board Counsel
Amy Harvey, Washoe County Clerk
Commission Members:
Robert Larkin, Chair
Bonnie Weber, Vice Chair
John Breternitz, Member
Kitty Jung, Member
David Humke, Member