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July 18, 2012

Janice Prichard
P.O. Box 1668
Fernley, Nevada 89408

Re: Open Meeting Law Complaint / AG File No. 12-009
Fernley City Council

Dear Ms. Pritchard:

We received your Open Meeting Law (OML) complaint on April 12, 2012 alleging that the Fernley City Council did not adhere to the "clear and complete" rule as required in NRS 241.020(2)(c)(1).

This complaint alleges a violation of the OML statutory rule that agenda items must be "clear and complete." It was alleged the agenda for the March 21, 2012 public meeting of the Fernley City Council (FCC) improperly failed to list as an agenda item reports delivered by representatives from the Lyon County Sheriff's office, the North Lyon County Fire Protection District, and Lyon County Commissioner Joe Mortenson.

There is no factual dispute that these individuals spoke during the meeting on important intergovernmental issues, their reports were not action items and their reports were not listed on the agenda. The minutes for the March 21, 2012 meeting states that Item 17 on the FCC's agenda was actually heard after Item 9. After review of the minutes we agree with the complainant that the reports concerning wildfire conditions, the current Lyon county budgetary shortfall, and local availability of synthetic drugs were of great importance to the public.

Item 17 as it appeared on the agenda read as follows: "17. REPORTS BY CITY STAFF, CITY COUNCIL AND MAYOR. No action will be taken."

The issue is whether the reports delivered by the three individuals described above were a violation of the "clear and complete" rule found in NRS 241.020(2)(c)(1).

Nevada's Open Meeting Law Manual (OML Manual) has published guidelines for application of the "clear and complete" rule to a public agenda. OML Manual § 7.02 (11th ed. 2012). The "clear and complete" standard set out in NRS 241.020(2)(c)(1) applies to a public body's consideration of agenda items regardless of whether the item is tagged "for possible action" or as a discussion item. Statutory application of the rule is not dependent on whether the item is "for possible action" or "discussion only." Similarly, there is no exemption from the statutory application to generic agenda items despite the argument that consideration means "discussion, deliberation or action." FCC did not discuss, deliberate, or take action regarding the three reports presented under Item 9.

We reviewed the definition of consideration to determine if in this context, it means only "discussion, deliberation or action." Consideration is not defined in the OML. Webster's online dictionary defines "consideration" as "continuous and careful thought." Random House Collegiate dictionary adds "attention" to the string definition above. Deliberation is also a meaning of consideration, but not action. We believe that "consideration" in this context should be broadly interpreted to include the mere act of listening and giving thought to the subject matter even without discussion or deliberation. Important intergovernmental issues and local issues presented in reports inform the members current and future views and opinions, thus an act of consideration has occurred.

Nevada's OML Manual publishes guidelines for agenda creation. OML Manual at pps. 74–75. These guidelines are useful for preparation of agendas as they have been distilled from prior Attorney General Opinions.

Generic agenda items such as "Reports by City Staff, City Council and Mayor" are appropriate only when the subject or topic is not known at the time the agenda was posted. Among the guidelines is the recommendation that use of broad or unspecified categories in an agenda should be restricted only to those items for which it cannot be anticipated what specific matters will be considered. OML Manual at page 75. The complainant in this matter noted that information provided by the Sheriff's Department and Mr. Mortenson was of great importance to the public, and we agree.

We were not provided an explanation for why these individuals and topics were not on the agenda because it seems clear the issues are not new but have been recent chronic problems. Unless these three individuals showed up at the meeting without notice and asked to speak (they did not speak during public comment) these topics should have been known at the time of publication of the agenda and should have been noticed to the public even if they were included in the item usually reserved for Staff reports, Mayor's report, etc.

The public body must always keep in mind that the purpose of the agenda is to give the public notice of what its government is doing, has done, or may do. OML Manual at p. 75. Use of generic agenda items i.e. "President's Report," "Report by City

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Staff, City Council, and Mayor” does little to further the legislative purpose of the agenda unless the subject matter of the report is simply not known at the time the generic item is inserted into the agenda. The generic item then becomes a placeholder, but the public is left to wonder about the topic, and whether it is worthwhile to attend. If the topic is known, the public may decide whether to attend. It is vitally important for the public body to “flesh out” the generic report so as to encourage more of the public to attend. But generic placeholder items cannot be fleshed out if staff or public officials do not timely provide the subject matter/topic to the agenda’s scrivener prior to publication of the agenda.

We believe the OML Manual’s guidelines should be applied to any item including generic agenda items announcing reports.

We do not find a violation of the OML “clear and complete” rule because it is clear that the FCC and many other public bodies routinely use such reports agenda items as separate from other agenda items which require actual deliberation, discussion, or action.

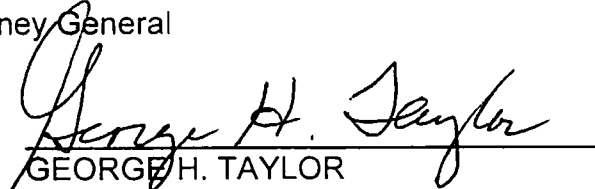
This opinion should not be understood to prohibit use of generic agenda reports items just as you have always done. We only want to encourage the public body to expand the item description to include those topics which are known before the time the agenda is posted.

We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


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GHT/CG

cc: Brandi Jensen, Fernley City Attorney
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