



STATE OF NEVADA
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August 9, 2012

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

Re: Open Meeting Law Complaint / City of Fernley
A.G. File No. 12-018

Dear Ms. Prichard:

We reviewed your Open Meeting Law (OML) complaint which alleges three violations of certain OML statutes occurred during the Fernley City Council (FCC) public meeting on June 6, 2012.

This Office requested and received copies of the agenda, minutes, and audio of the meeting, which have been reviewed.

The first issue in your complaint asks whether the FCC's action on item 2., to approve its agenda for the public meeting, which action occurred before the first period of public comment, was a violation of NRS 241.020(2)(c)(3)(I).¹

¹ NRS 241.020(2)(c):

(3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

(I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

The statute clearly mandates public comment before any public body considers an item marked "for possible action." 241.020(2)(c)(6). But approval of the agenda is a ministerial matter and one that could be taken by the public body outside the public meeting context at any time. NRS 241.020(2)(c)(6). We do not believe the Legislature considered ministerial matters (although the setting of the agenda is very important) to be within the ambit of "for possible action." The FCC added a bit of transparency to the open meeting process by publicly considering changes to the agenda during this item, which public consideration redounds to the benefit of the public. We do not find that this is a violation.

You also asked whether NRS 241.020(3)(I) and (II) require the public body to allow public comment on non-agendized items at both the first and second comment period regardless of whether the public body allows comments during each "for possible action" item. NRS 241.020(3)(II) states that:

"Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting."

We interpret this statutory provision to mean that at a minimum the public may comment once during a public meeting about non-agendized matters within the public body's jurisdiction, control, or advisory power. However, the statute is equally clear that the public body's entertainment of more frequent comment is not prohibited. It is within the discretion of the public body to allow more frequent comment on non-agendized matters. There was no OML violation.

We encourage public bodies to make known on its agenda for the upcoming meeting its policy regarding public comment for that meeting. Although the FCC's practice of announcing policy on an ad hoc basis is not forbidden by statute, the result is confusion. The public may be unaware of the announcement because they have arrived late and did not hear the announcement. We recommend putting the public comment policy for that meeting in writing on the relevant agenda.

We reviewed the FCC's June 6, 2012 agenda for the item acknowledging this Office's finding of violation of the OML by the FCC in the opinion in AG File No. 12-003.² The statute does not set out required language to acknowledge the Attorney General's finding of violation. The statute requires (1) the public body's next agenda include an item acknowledging the finding of violation and (2) the public body must include the Attorney General's written opinion as supporting material for the meeting. Nothing else is required of the public body.

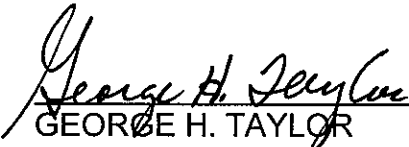
² "15. PUBLIC NOTIFICATION OF THE ATTORNEY GENERAL'S OFFICE'S FINDINGS REGARDING OPEN MEETING LAW COMPLAINTS IN RELATION TO THE JANUARY 25, 2012 BUDGET WORKSHOP."

Thank you for your letter.

We are closing our file on this matter.

Sincerely,

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Attorney General

By: 

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GHT/CG

cc: Brandi Jensen, Esq, Fernley City Attorney
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