



STATE OF NEVADA
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January 17, 2014

Via First Class Mail

John C. Carpenter
1091 Dotta Drive
Elko, Nevada 89801

Re: Open Meeting Law Complaint / AG File No. 13-034
Elko City Council

Dear Mr. Carpenter:

Your complaint alleges that the Elko City Council received a supporting document applicable for agenda Item VI(B) during its October 22, 2013 meeting, but it was not provided to you or anyone else gathered there in the public.

The City's response to your complaint admits that a document was received by the Council during the meeting. The City Manager, Curtis Calder, stated in his written response to this office that, "during the City Council meeting [October 22, 2013], Mr. Ted Schnoor, Building Official, presented the City Council and Staff with a supplemental document, dated October 22, 2013. The document pertained to Item VI B, an item regarding the consideration and possible authorization to waive a building code requirement (drinking water fountain) for Stonecraft Jewelers." It was disclosed in the document that Stonecraft interior remodel plans had only been received by the Elko Building Department on October 21st, which explained why it was presented at the meeting and not in the supporting material packet.

Mr. Calder also stated that once the Council's Chairman began consideration of item VI B, he referenced the one-page document and stated, "Now Ted [Schnoor] you gave us some literature here ...". From review of the minutes it seems clear you did not request a copy of the supplemental document during Council's discussion of the matter even though you made several comments to the Council in support of the Mr. Stonecraft's waiver application. Mr. Calder states that he would have immediately provided it to you if a request had been made.

Your complaint alleges that the Council members "began reading from a piece of paper they had just received." It was not in supporting materials nor was it in the Agenda file kept outside the meeting room. You also state in your complaint that staff frequently presents supporting materials to the Council during meetings. The lateness of the receipt of these materials means the Council and the public does not have a chance to read and digest the materials prior to action by the Council. But, the Open Meeting law clearly allows this practice.

A public body may receive supporting materials during its meeting related to items on its agenda, but we believe it can refuse to accept documents submitted at the time of the meeting for the same reason you've pointed out in your complaint. If the members of the Board haven't seen the document before it's provided during the meeting, members haven't had time to read it and digest it.

Nevertheless, NRS 241.020(6)¹ only requires a public body to make it available to a requester at the time it is given to the members of the public body, even if that time is during consideration of the item. The statute does not require members of the Council to consider the materials or even to review them before taking action on the item to which the materials are supporting.

¹ NRS 241.020(6). A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

- (a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or
- (b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

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We suggest that the Council review this practice with a goal of ensuring the public is fully informed about the impact of new supporting materials on decision making. Decisions may always be made on a case-by-case basis.

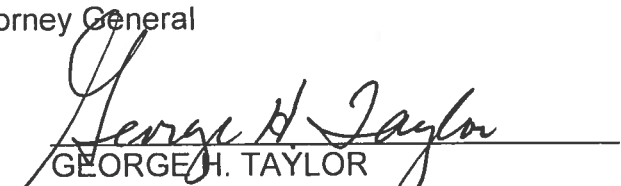
Council's receipt of the document was legal and we find that the document was made available at the time it was received by the Council.

We are closing our file on this matter. Thank you for bringing this issue to our attention.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


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Enclosures

Cc: Richard Barrows, Legal Counsel for the Elko City Council
Mayor Chris J. Johnson, Elko City Council

Members:

Rich Petty
Mandy Simons
Robert Schmidlein
John Patrick Rice