

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL



HECTOR H. BALDERAS
ATTORNEY GENERAL

January 7, 2020

VIA ELECTRONIC MAIL ONLY

City of Las Vegas
Esther Marie Garduño Montoya, Esq.
1700 N Grand Ave.
Las Vegas, NM 87701-4731
Email: emgarduno@yahoo.com

Re: Open Meetings Act Advisory Letter – Phil Scherer

Dear Ms. Montoya:

This letter addresses the report submitted to the Office of the Attorney General by Mr. Phil Scherer indicating that the City Council (hereinafter the “Council”) of the City of Las Vegas (the “City”) scheduled a meeting to take place on July 29, 2019, in violation of the Open Meetings Act (“OMA”), NMSA 1978, Sections 10-15-1 to -4 (1974, as amended through 2013). Our Office is charged with enforcement of the OMA and in that capacity has reviewed the facts and allegations in Mr. Scherer’s report. *See* NMSA 1978, § 10-15-3(B).

Mr. Scherer’s report to our Office specifically alleged that the City attempted to call a special Council meeting without having provided timely notice to the public. He emphasized that the City failed to provide prior notice to the Las Vegas Optic. It appears that, after Mr. Scherer contacted our Office, the City later canceled this Council meeting and therefore that no action was taken by the Council.

However, in the interest of clarifying its statutory obligations, we would remind the City going forward that all meetings of the Council *must* fully comply with OMA. Given that the public policy of the State of New Mexico is to provide the public with access to “the greatest possible information regarding the affairs of government,” the notice and agenda requirements of OMA are of the utmost importance. Section 10-15-1(A). This includes the obligation, present in both the

text of OMA itself and in the Council's most recent OMA Resolution,¹ to provide meeting notices to all "broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice." Section 10-15-1(D). These requirements also carry with them a sanction for noncompliance with OMA: any action taken in violation of the statute is invalid. *See* § 10-15-3(A) (providing that "[n]o resolution, rule, regulation, ordinance or action ... shall be valid unless taken or made at a meeting held in accordance with" OMA). In practical terms, this means that had the City insisted on holding a meeting without satisfying its OMA obligations no action taken would have been legally valid.

Thus, while we have determined that the cancellation of the Council's proposed July 29, 2019, meeting effectively resolved Mr. Scherer's report to our Office, we strongly caution the City to be cognizant of its legal obligations under the Open Meetings Act. It is unacceptable for any public body in New Mexico – including the City Council of the City of Las Vegas – to fail to provide the public with reasonable advance notice for any meeting. Even if only to avoid future litigation and legal challenges, the City *must* abide by this obligation in the future. For your reference, a copy of the OMA Guide is available on the website of the Office of the Attorney General at www.nmag.gov. If you have any questions regarding this determination or OMA in general, please let me know.

Sincerely,



John Kreienkamp
Assistant Attorney General

Enclosure

cc: Phil Scherer

¹ We have reviewed the Council's 2019 OMA Resolution, which largely mirrors the language in Section 10-15-1(D) by specifically stating that notices for both regular and special meetings must be "telephoned, e- mailed or faxed to broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice." City of Las Vegas Resolution No. 19-01, available at http://lasvegasnm.gov/document_center/Resolution%2019-01%20Open%20Meetings%20Act.pdf.



Salazar, Patricia <psalazar@nmag.gov>

Fwd: Open Meetings Act Questions

Matt Baca <mbaca@nmag.gov>
To: Patricia Salazar <PSalazar@nmag.gov>

Fri, Jul 26, 2019 at 4:15 PM

Hi Patricia,

Will you please process this as an OMA complaint?

Thanks,
Matt

Begin forwarded message:

From: Phil Scherer <pscherer@lasvegasoptic.com>
Date: July 26, 2019 at 12:37:35 PM MDT
To: "Baca, Matt" <mbaca@nmag.gov>
Subject: Open Meetings Act Questions

Hi, this is Phil Scherer, the editor of the Las Vegas Optic newspaper. I had a couple questions regarding the Open Meetings Act and wondered if you, or someone there, could help me out.

The City of Las Vegas is planning to hold a special meeting on Monday afternoon to discuss the city's budget. There has been no notice published on the city's website about the meeting, there was no legal ad placed in our newspaper regarding the meeting and when asked about it, the City Manager said that if they held the meeting they would advertise it on their own channels at this point.

No agenda has been sent to the city councilors yet.

Is there any scenario in which they would be allowed to hold a meeting on Monday at this point legally under the Open Meetings Act?

Thanks

Phil Scherer



Salazar, Patricia <psalazar@nmag.gov>

Open Meetings Act Complaint – City of Las Vegas

Phil Scherer <pscherer@lasvegasoptic.com>
To: "Salazar, Patricia" <PSalazar@nmag.gov>

Fri, Jul 26, 2019 at 4:30 PM

Thank you for the response. Attached is the notice that was just posted on the City of Las Vegas website regarding the meeting Monday. No notice was given to the Las Vegas Optic newspaper, as is required for a special meeting. The agenda for the meeting went online just after 3:30 p.m. Friday.

[Quoted text hidden]

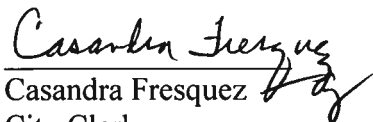
 **special meeting.pdf**
35K

City Clerk's Office

NOTICE OF A SPECIAL CITY COUNCIL MEETING

Notice is hereby given that the City Council of the City of Las Vegas, NM, will hold a Special meeting on Monday, July 29, 2019 starting at 5:30 p.m. at the City of Las Vegas Council Chambers, 1700 N. Grand Ave. Items to be discussed: Approval of consent agenda items 1-5 (from July 17, 2019), Approval/Disapproval of the American Federation of State, County and Municipal Employees (AFSCME) Local 2851 Agreement, Approval/Disapproval of a salary increase of seventy five cents (.75) to all non-union bargaining unit employees who have successfully completed a 6 month probationary period to include part-time employees with at least one year of continuous employment with the City of Las Vegas, Approval/Disapproval of Resolution #19-39 to approve the Final 2018-2019 DFA Financial Report for submission to DFA Local Government Division and Approval/Disapproval of Resolution No. 19-40 to adopt the Final FY 2019-2020 Budget for the submission to DFA Local Government Division. The Council may convene in Executive Session if the subject matter of such discussion or action is exempt from the open meeting requirement under Section 10-15-1 (H) of the Open Meetings Act. A copy of the agenda may be obtained from the City Clerk, 1700 N. Grand Avenue, during regular business hours. The Meeting is open to the public.

City of Las Vegas


Casandra Fresquez
City Clerk

Available on City Website: www.lasvegasnm.gov
Fax: KFUN-KLVF Radio and KNMX-KMDZ-KBQL Radio for PSA