

Public Comment

Attorney General Opinion Regarding Stipulated Agreement for Steven Morris - 2-16-22 Commission Meeting

[REDACTED]
Mon 2/14/2022 3:37 PM

To: Ross Armstrong <RArmstrong@ethics.nv.gov>

📎 1 attachments (192 KB)

AG File No. 13897-354.pdf;

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Mr. Armstrong,

Thank you for speaking with me earlier today regarding the Commission agenda item #6, a stipulated agreement with Steven Morris to be considered by the Commission on Wednesday February 16, 2022. As I had mentioned, there are factual errors included in the agreement.

I am attaching an opinion the Attorney General (OAG FILE NO.: 13897-354) issued in response to the Open Meeting Law complaint that is included in the Commission agenda packet. The stipulated agreement for item 4.f.5.d states the agenda item was not "clear and complete". The opinion from the Attorney General states the agenda item was clear and complete. The opinion from the Attorney General states the actions by Mayor McManus or members of the City Council did not violate the Open Meeting Law with regard to including the agenda item or proceeding with discussion of the item.

Thank you for providing the opinion from the Attorney General to members of the Commission to provide factual information for consideration of the stipulated agreement.

Best Regards,
Kiernan McManus

[REDACTED]

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:
4 CITY COUNCIL OF BOULDER CITY

OAG FILE NO.: 13897-354

6
7 **BACKGROUND**

8 Peggy Leavitt filed a complaint with the Office of the Attorney General (“OAG”)
9 alleging violations of the Nevada Opening Meeting Law (“OML”) by the City Council of
10 Boulder City (“City Council”), regarding a meeting held by the City Council on October 22,
11 2019. The allegations relate to the City Council’s alleged inclusion on its agenda and
12 consideration of an agenda item related to the discussion and possible retention of a special
13 counsel by the City Council to review and provide advice on Nevada Open Meeting Law,
14 Employment Contracts of Municipal Officers, and “other issues as determined by a
15 majority of [the] City Council.” The Complaint specifically allege violations of the OML as
16 follows:

17 **ALLEGATION NO. 1:** Agenda Item No. 18(b) violated the requirement that agenda
18 items be “clear and complete”.

19 **ALLEGATION NO. 2:** Agenda Item No. 18(c) violated the requirement that agenda
20 items be “clear and complete”.

21 **ALLEGATION NO. 3:** Unilateral removal of an agenda item violates the Open
22 Meeting Law.

23 **ALLEGATION NO. 4:** The City Council violated the OML by approving the agenda
24 for the October 22, 2019 meeting that included Agenda Item No. 18.

25 **ALLEGATION NO. 5:** The OML was violated when Mayor McManus disregarded
26 the City Attorney’s warnings and attempted to persuade other Councilmembers that
27 they were not obligated to follow the City Attorney’s advice.
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1 **ALLEGATION NO. 6:** Mayor McManus' practice of sending memoranda to City
2 staff, Councilmembers, and the public prior to the meeting constitutes deliberation
3 and/or serial communication.

4 **ALLEGATION NO. 7:** Agenda Item Nos. 18(a), 18(b) and 18(c) were attempts to
5 circumvent City Staff and the OML and steps toward terminating the employment
6 of the City Clerk, City Attorney, and City Manager.

7 **ALLEGATION NO. 8:** Mayor Kiernan McManus, Councilwoman Tracy Folda, and
8 Councilwoman Claudia Bridges, in their individual capacities, violated the OML.

9 **ALLEGATION NO. 9:** There may be additional OML violations by the City Council,
10 and the OAG should investigate all potential OML violations.

11 The OAG has statutory enforcement powers under the OML and the authority to
12 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
13 241.040. The OAG's investigation of the Complaint included a review of the following: the
14 Complaint and the attached exhibits; the meeting agenda for the City Council's October 22,
15 2019 meeting; the meeting packet and supplemental materials for the City Council's
16 October 22, 2019 meeting (including the e-mail correspondence and memoranda related to
17 Agenda Item 18); minutes for the October 22, 2019 Board meeting; the visual recordings
18 for the October 22, 2019 meeting; the written response by the City Council of Boulder City
19 to the Complaint and the supporting materials attached thereto; and the written response¹
20 by Mayor Kiernan McManus, individually, and Councilwoman Tracy Folda, individually,
21 and the supporting materials attached thereto.

22 After investigating the Complaint, the OAG determines that the City Council did
23 not violate the OML.

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27 ¹ The response to the OML complaint submitted by Mayor McManus and Councilwoman
28 Folda also included a complaint to the Nevada Commission on Ethics. However, this
decision focuses solely on the alleged OML violations pursuant to NRS 241, and the OAG
will refrain from providing an opinion on the alleged violations under NRS Chapter 281A.

1 **FINDINGS OF FACT**

2 1. The City Council of Boulder City is a “public body” as defined in NRS
3 241.015(4) and is subject to the OML.

4 2. Mayor Kiernan McManus is the Mayor of Boulder City, Nevada, and serves
5 as a member of the City Council.

6 3. Councilwoman Tracy Folda is a member of the City Council.

7 4. Councilwoman Claudia Bridges is a member of the City Council.

8 5. Steven Morris is the City Attorney of Boulder City, Nevada, and serves as
9 legal counsel to the City Council.

10 6. On October 3, 2019, Mayor McManus in a Memorandum made a request to
11 City Clerk Lorene Krumm to include various topics in the City Council’s upcoming City
12 Council meeting, including the following:

- 13 2. For possible action and direction to City Staff: Retention of special
14 counsel by the City Council to review and advise on the following issues.
15 a) Nevada Open Meeting Law standards and requirements.
16 b) Employment contracts of Municipal Officers including the City
17 Manager, City Clerk, City Attorney and Municipal Judge.
18 c) Other issues as determined by a majority of City Council.²

17 7. On October 7, 2019, City Attorney Steven Morris sent e-mail correspondence
18 to Mayor McManus responding to the October 3, 2019 Memorandum. Specifically, with
19 regards to proposed Agenda Item No. 2(a), City Attorney Morris asserted that there was a
20 lack of rationale as to why or how the City Attorney would be unable to perform the duties
21 of his office relative to advising the City Council on Nevada’s OML and that the agenda
22 item failed to explain any legitimate interests of the City that would require employing
23 assistant or special counsel to review and advise the City Council on Nevada’s OML. With
24 regards to proposed Agenda Item No. 2(b), City Attorney Morris cautioned that he did not
25 believe that the proposed agenda item was “clear and complete”, that it required a higher
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27 ² The items listed as 2(a), 2(b), and 2(c) in Mayor McManus’ October 3, 2019 Memorandum
28 eventually became Agenda Item Nos. 18(a), 18(b), and 18(c), respectively, at the City
Council’s October 22, 2019 meeting.

1 degree of specificity to satisfy the OML, and that more detail would be required to put the
2 public on notice of the desire or intent of employing assistant or special counsel to review
3 and advise the City Council on the employment contracts of the appointed city officers.
4 Additionally, City Attorney Morris cautioned with regards to proposed Agenda Item No.
5 2(c) that that item was not “clear and complete” and the phrase “Other issues as determined
6 by a majority of City Council” did not comply with the OML.

7 8. On October 14, 2019, Mayor McManus sent a Memorandum to City Clerk
8 Krumm, which included additional information regarding the proposed agenda items, and
9 requested the same be included as part of the agenda packet for the City Council’s October
10 22, 2019 meeting. Therein, Mayor McManus stated his position that he believed
11 circumstances existed that required the retention of special counsel to provide advice and
12 information to the City Council. Mayor McManus also indicated that the purpose of the
13 agenda item was to discuss “. . . whether a special counsel should be employed in the
14 interests of the City. The discussion of the reasons for doing so or for not doing so are to be
15 discussed by members of the City Council if they choose to do so.”

16 9. On October 15, 2019, City Attorney Morris sent correspondence to Mayor
17 McManus again reiterating his position that it remained his position that the proposed
18 agenda items were not “clear and complete” and therefore violated the OML.

19 10. On October 15, 2019, Mayor McManus sent a Memorandum to City Attorney
20 Morris regarding his interpretation of the City Charter³ as well as the OML. Therein,
21 Mayor McManus expressed that “[t]he purpose of requesting an agenda item to discuss the
22 issue of employing a special counsel is to provide the basis for discussion and deliberation
23 by the Council as a whole for that purpose. I believe we are all aware that I cannot know
24 in advance of such discussions what the thinking of a majority of the Council may be for
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26 ³ The OAG notes that there also may be a disagreement as to whether the City Charter
27 allows the City Council to retain special counsel. However, the OAG does not make an
28 opinion whether the City Charter would allow for the retention of special counsel in this
instance, as the OAG only has statutory authority to investigate alleged violations of NRS
Chapter 241. NRS 241.039.

1 this issue. A primary purpose of the Open Meeting Law is to have such discussions and
2 deliberations held during a public meeting. To say that each Council member must specify
3 each though regarding the issue of employing a special counsel published prior to the
4 meeting voids the purpose of having discussion and deliberation on the issue.” Mayor
5 McManus further clarified, “I requested the inclusion of the agenda item to discuss the
6 retention of a special counsel and provided two of the reasons I believe such action is
7 necessary. I also included the statement ‘Other issues as determined by a majority of City
8 Council.’ as I cannot know the thoughts on the issues of all the members of the Council
9 prior to the discussion occurring.” Mayor McManus went on to state, “My request is for a
10 specific purpose. That purpose is to provide the opportunity for the Council to discuss the
11 possible reasons for retaining a special counsel to advise the Council.”

12 11. On October 18, 2019, Mayor McManus sent an additional Memorandum to
13 City Attorney Morris, providing citations to various OAG opinions that had discussed the
14 OML’s “clear and complete” standard and maintaining his position that he would proceed
15 with the at-issue agenda item.

16 12. On October 22, 2019, the City Council held a public meeting.

17 13. Ultimately, the agenda for the City Council’s October 22, 2019 meeting
18 included the following:

19 18. For possible action: Discussion and possible staff directive
20 regarding retention of a special counsel by the City City Council to
21 review and advise on the following issues: (as requested by Mayor
22 McManus)

- 23 A) Nevada Open Meeting Law standards and requirements
- 24 B) Employment contracts of Municipal Officers including the City
25 Manager, City Clerk, City Attorney, and Municipal Judge
- 26 C) Other issues as determined by a majority of City Council[.]

27 14. During initial public comment at the October 22, 2019 meeting, several
28 individuals express their concern regarding Agenda Item No. 18. Duncan McCoy expressed
that Agenda Item No. 18(c) was too vague to be useful and did not describe what the
conversation may cover. Additionally, Richard Stuart stated that the description of Agenda

1 Item No. 18 was too vague and that the City Council should be more open about what
2 exactly it was proposing. Rod Woodbury stated that Agenda Item No. 18 was confusing,
3 requested the reason for suggesting hiring of special counsel, and believed that the title of
4 the agenda item was too vague. Victor Miller stated that Agenda Item No. 18 was unclear
5 and that he had no ability to prepare for the meeting because the item was not clear or
6 concise.

7 15. During the October 22, 2019 meeting, the City Council deliberated on the
8 Agenda Item, “For Possible Action: Approval of Regular Agenda.” City Attorney Morris
9 recommended the removal of Agenda Item No. 18. In response, Mayor McManus explained
10 that he had requested Agenda Item No. 18 and would not remove it from the agenda. The
11 City Council, by a vote of three (3) to one (1), voted to approve the agenda, with Mayor
12 McManus and Councilmembers Claudia Bridges and Tracy Folda voting in favor of
13 approval, Councilmember James Howard Adams voting in opposition of approval, and
14 Councilmember Warren Harhay absent.

15 16. When Agenda Item No. 18 was called during the meeting, Mayor McManus
16 stated that City Attorney Morris had a “tremendous amount” of conflict of interest and that
17 it was inappropriate for him to recommend removal of the agenda item. In response, City
18 Attorney Morris repeated his objection and stated that he had an ongoing obligation to
19 protect the City Council from possible OML violations. City Attorney Morris indicated that
20 matters of public concern required “heightened obligation for specificity” and that the
21 agenda item completely lacked specificity. Mayor McManus asserted that he had spoken
22 to the Attorney General’s Office and received opinions that substantiated that the agenda
23 item was clear and complete, including opinions relative to OAG File No. 13897-215, OAG
24 File No. 13897-204, and OAG File No. 13897-191.⁴

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26 ⁴ An e-mail dated October 17, 2019 from Michael D. Detmer, Deputy Attorney General, to
27 Kiernan McManus was included in the response by Mayor McManus and Councilwoman
28 Folda to the instant OML Complaint. The e-mail reflects that AGO Opinions OMLO 13897-
215 (Jan. 27, 2017), OMLO 13897-204 (Sept. 30, 2016), and OMLO 13987-191 (Jun. 2, 2016)
were provided to Mayor McManus.

1 17. Mayor McManus withdrew Agenda Item 18(c) from discussion at the October
2 22, 2019 City Council meeting.

3 18. The City Council took Agenda Item Nos. 18(a) and 18(b) separately. With
4 regards to Agenda Item No. 18(a), Mayor McManus indicated that his intent was that he
5 needed additional advice from an attorney regarding Nevada's OML. With regards to
6 Agenda Item No. 18(b), Mayor McManus indicated that he was the only member of the City
7 Council involved in the hiring of the City Attorney and City Manager and that other
8 Councilmembers should have the opportunity to have consult with someone with a legal
9 background to assist with forming a decision on the contracts.

10 19. As to Agenda Item 18 as a whole, Mayor McManus clarified, "The discussion
11 tonight does not concern the process for employing special counsel. If the majority of the
12 Council determines the need for a special counsel, an agenda item for that purpose may be
13 requested for a future council meeting. . . . The discussion tonight does not include a
14 discussion of the person that may be employed as a special counsel, any such discussion
15 would also need to be placed on the agenda of a future council meeting."

16 20. Councilwoman Bridges did not vote to remove Agenda Item 18 from the
17 Agenda because she wanted to share her opinions on the topic. She did not personally feel
18 that there was any reason to support the employment of a special counsel for the City.

19 21. Councilwoman Folda stated that retention of a special counsel was
20 appropriate because the City Attorney had a conflict and could not review his own contract.

21 22. After discussing the agenda item, Mayor McManus moved that "a special
22 counsel be employed by the City to review and advise the city Council on matters related
23 to open meeting law issues and the employment contracts of the City Manager, City Clerk,
24 City Attorney, and Municipal Judge. The employment is in the interest of the City and the
25 special counsel will be employed by and will report directly to the City Council as provided
26 for by the City Charter."

27 23. The motion was seconded by Councilwoman Folda. Councilmembers Adams
28 and Bridges voted in opposition of the Motion. Because of the tie vote, the motion failed.

1 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

2 **1. The OML requires that the City Council’s agenda include a clear and**
3 **complete statement of the topics to be considered at the meeting.**

4 An agenda for a meeting of a public body must include a “clear and complete
5 statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1). The
6 “clear and complete statement” requirement of the OML stems from the Legislature’s belief
7 that “incomplete and poorly written agendas deprive citizens of their right to take part in
8 government’ and interferes with the ‘press’ ability to report the actions of government.”
9 *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the
10 “clear and complete” standard for agenda items is required for compliance under the OML.
11 *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public
12 meetings so that the public can attend a meeting when an issue of interest will be
13 discussed.” *Id.* at 155. The OAG previously explained:

14 *Sandoval’s* holding means that use of catch-all phrases such as ‘and all matters
15 related thereto’ do[] not comply with the statute’s requirement that each
16 agenda contain a clear and complete statement of topics. Related matters,
17 should they come up during a meeting, must be agendized for discussion at a
18 future meeting.

19 Op. Nev. Att’y Gen. No. 10-049 (December 17, 2010).

20 Further, “a ‘higher degree of specificity is needed when the subject to be debated is
21 of special or significant interest to the public.” *Id.* at 155-56. (*quoting Gardner v. Herring*,
22 21 S.W.3d 767, 773 (Tex. App. 2000)).

23 **2. The City Council’s descriptions on its October 22, 2019 meeting agenda for**
24 **Agenda Item No. 18 provided sufficient “clear and complete statements of**
25 **topics to be considered.”**

26 Agenda Item Nos. 18(a) and 18(b) are clear and complete on their face. The agenda
27 items complied with the statutory requirement that the public be provided clear notice that
28 the Board would deliberate and possibly take action to retain special counsel to review and
29 advise specifically on Nevada OML standards and requirements and the employment
30 contracts of Municipal Officers. A plain reading of the agenda items establish that the City

1 Council intended on discussing the possibility of retaining special counsel. It did not appear
2 from a review of the documents received by the OAG that the City Council intended to, nor
3 actually deliberated or took any action on, the topics on which special counsel would have
4 advised the City Council had the City Council voted to employ outside counsel, namely
5 Nevada’s OML or the actual employment contracts of Municipal Officers.

6 While generally the plain language of the OML does not authorize a public body to
7 rely on information contained in its supporting materials in order to meet the “clear and
8 complete statement” requirement, *see* NRS 241.020(2)(d)(1), a review of the meeting
9 materials further supports the finding that the agenda provided sufficient clear and
10 complete statements of topics to be considered. In particular, in Mayor McManus’ October
11 14, 2019 Memorandum to City Clerk Krumm, Mayor McManus stated that the purpose of
12 the agenda item was to discuss “. . . whether a special counsel should be employed in the
13 interests of the City. The discussion of the reasons for doing so or for not doing so are to be
14 discussed by members of the City Council if they choose to do so.” In a subsequent
15 Memorandum dated October 15, 2019, Mayor McManus further indicated that “[t]he
16 purpose of requesting an agenda item to discuss the issue of employing a special counsel is
17 to provide the basis for discussion and deliberation by the Council as a whole for that
18 purpose.” During the October 22, 2019 meeting, Mayor McManus then explained that the
19 discussion did not concern the process for employing special counsel or the names of
20 potential candidates for special counsel, as Mayor McManus acknowledged that such topics
21 would need to be placed as future agenda items. Rather, the October 22, 2019 agenda
22 simply focused on whether the City Council believed that there was a need to employ
23 special counsel.

24 Based on the foregoing, the OAG finds that Agenda item 18(a) and 18(b) were clear
25 and complete and that no OML violations occurred.

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1 **3. The OML was not violated when Agenda Item No. 18(c) was removed from**
2 **discussion at the October 22, 2019 meeting without a vote from the City**
3 **Council.**

4 The Complaint alleges that Mayor McManus' attempt to remove Agenda Item No.
5 18(c) without a vote of the Councilmembers is an OML violation in and of itself.

6 Nevada's OML requires that agendas include notification that the public body may
7 "remove an item from the agenda or delay discussion relating to an item on the agenda at
8 any time." NRS 241.020(2)(d)((6)(III). In *Schmidt v. Washoe County*, 123 Nev. 128, 135,
9 159 P.3d 1099, 1104 (2007) (abrogated on other grounds by *Buzz Stew, LLC v. City of North*
10 *Las Vegas*, 124 Nev. 224 (2008)), the Nevada Supreme Court confirmed:

11 [T]here is no statutory provision requiring public bodies to discuss, or take
12 action on, all agenda items. The agenda requirement merely prohibits a public
13 body from considering or taking action on items without providing proper
14 notice. Because the removal of agenda items does not equate to taking action
15 on those items, we conclude that public bodies are free to remove agenda items
16 at any time.

17 *Id.*

18 Nevada's OML is silent on what procedures a public body must follow in order to
19 remove an item from the agenda or delay discussion related to an agenda item and
20 generally reserves the procedure for removal or delay of discussion of an agenda item to
21 the public body. Nevada's OML merely authorizes a public body to remove an agenda item
22 or delay discussion on such agenda item and requires that the public be made aware of
23 such authority in its agenda. Accordingly, the OAG does not find that the City Council
24 violated the OML by removing Agenda Item No. 18(c) without the Chair first entertaining
25 a motion to remove Agenda Item 18 and taking a vote of City Council thereto.

26 **4. The City Council did not violate the OML where Mayor McManus provided**
27 **copies of memoranda to councilmembers and the public prior to the**
28 **October 22, 2019 meeting.**

The OAG has previously explained that before the OML may be invoked, two criteria
must be present: (1) a quorum or constructive quorum must be present, and (2) the quorum
must deliberate or vote on a matter under the supervision of the public body. *In the Matter*
of Humboldt County School Board, OAG File No. 07-015.

1 In *Del Papa*, 114 Nev. at 400, 956 P.2d 778, the Nevada Supreme Court held:

2 [A] quorum of a public body using serial electronic communication to deliberate
3 toward a decision or to make a decision on any matter over which the public
4 body has supervision, control, jurisdiction or advisory power violates the Open
5 Meeting Law. *That is not to say that in the absence of a quorum, members of a
6 public body cannot privately discuss public issues or even lobby for votes.*
(emphasis added).

7 “In *McKay v. Board of County Commissioners*, 103 Nev. 490, 746 P.2d 124 (1987),
8 the Court stated that sensitive information may be discussed in serial meetings where no
9 quorum is present in any gathering. However, there can be no deliberation, action,
10 commitment, or promise made regarding a public matter in such a serial meeting.” OML
11 Manual Section 4.08. Further, in *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev.
12 87, 64 P.3d 1070 (2003), the Nevada Supreme Court held that “absent substantial evidence
13 of serial communications to support a finding of action or deliberation towards a decision,
14 private-back-to-back briefings of less than a quorum of a public body do not violate the
15 Open Meeting Law.”

16 In this case, the Memoranda by Mayor McManus does not amount to serial
17 communication and deliberation in violation of the OML. Mayor McManus’ Memoranda
18 were addressed solely to City Clerk Krumm and not to any other City Councilmembers.
19 Moreover, the e-mail responses by City Attorney Morris were not addressed to any City
20 Councilmembers other than Mayor McManus and only City Clerk Krumm and City
21 Manager Al Noyola were copied on the correspondence. There was no evidence submitted
22 that indicated that any other Councilmembers provided any input on the matter in
23 advance, or outside of, the October 22, 2019 meeting.

24 Nevertheless, the OAG would like to remind the City Council that possible OML
25 violations may occur through collective discussions of the Councilmembers, even where less
26 than a quorum of the City Council is present, if serial communications were had outside
27 the purview of the public by a number of City Councilmembers constituting a quorum.

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1 **5. Mayor McManus' actions do not warrant individual liability under the**
2 **OML.**

3 The OML provides that it is a misdemeanor for a member of a public body to
4 knowingly attend a meeting of that public body where action is taken in violation of the
5 OML. NRS 241.040(1). Further, each member of a public body is subject to a civil penalty
6 for knowingly participating in a willful violation of the OML. NRS 241.040(4).
7 “Enforcement against a member of a public body based on ‘participation’ only may occur
8 when the member makes a commitment, promise, or casts an affirmative vote to take action
9 on a matter under the public body’s jurisdiction or control when the member knew his/her
10 commitment, promise, or vote was taken in violation of the OML.” (OML Manual, Section
11 10.14 – Monetary penalty for willful violation; one-year limitations period.) However, the
12 OML contains a safe harbor provision that shields against a criminal penalty or
13 administrative fine against a member of a public body, where such violation was a result
14 of legal advice provided by an attorney employed or retained by the public body. NRS
15 241.040(6).

16 Here, the Complaint asserts that Mayor McManus violated the OML by disregarding
17 the City Attorney’s warnings about potential OML violations and attempted to persuade
18 other Councilmembers that they were not obligated to follow the City Attorney’s advice.
19 However, nothing in the OML bans a public body from disregarding its counsel’s warnings
20 regarding potential OML violations. This is not to say that the City Council should
21 disregard the advice from its counsel or that such conduct may not constitute potential
22 liability under other rules, regulations, or statutes. The OAG simply finds that there is no
23 violation of the OML based on the allegations in the Complaint.

24 The OAG also finds that there is insufficient evidence to find that Mayor McManus
25 knowingly attended a public meeting or participated in a willful violation of the OML.
26 While the City Attorney may have advised caution of potential OML violations, prior to the
27 October 22, 2019 meeting, Mayor McManus also contacted OAG and was provided several
28 opinions by the OAG on the “clear and complete” standard. As stated above, the OAG does

1 not find that the agenda for the October 22, 2019 meeting violated the “clear and complete”
2 standard. It follows, then, that no personal liability may attach to Mayor McManus or any
3 City Councilmember for discussing Agenda Item No. 18 at the October 22 meeting.

4 **6. The OML did not require the City Council to approve the agenda for the**
5 **October 22, 2019 meeting and any action by the City Council related to the**
6 **approval of the agenda is not an OML violation.**

7 Nevada’s OML does not require a public body to approve a proposed agenda of a
8 public meeting prior to proceeding with the public meeting. Rather, Nevada’s OML only
9 requires that a public body approve the minutes of a meeting within 45 days after the
10 meeting or at the next meeting of the public body, whichever occurs later. NRS 241.035(1).

11 The Complaint appears to assert that Councilwoman Folda, individually, violated
12 the OML when she seconded the motion by Mayor McManus to approve the agenda as
13 published. This act alone does not rise to a willful violation of the OML, as again, Nevada’s
14 OML does not require a public body to approve a proposed agenda prior to proceeding with
15 the public meeting. Additionally, Councilwoman Folda’s action in seconding the motion to
16 approve the agenda as published does not rise to the level warranting criminal penalties,
17 as the OAG has found no proof that Councilwoman Folda attended the meeting “with
18 knowledge of the fact that the meeting is in violation” of the OML. NRS 241.040(1).
19 Because the OAG has found no violations under the OML, it also follows that
20 Councilwoman Folda may not be found civilly or criminally liable for participating in the
21 October 22, 2019 City Council meeting.

22 Similarly, it appears that the alleged OML violation against Councilwoman Bridges,
23 individually, stems from the fact that she voted in favor to approve the agenda as published.
24 Again, as with Councilwoman Folda, the OAG has found no proof that Councilwoman
25 Bridges attended the meeting “with knowledge of the fact that the meeting is in violation”
26 of the OML. NRS 241.040(1). The OML does not require a public body to vote to approve
27 an agenda for a public meeting. Nevertheless, the October 22, 2019 agenda provided “for
28 possible action” the approval of the regular agenda. The OAG does not find that this action
item to approve the October 22, 2019 agenda violated the OML, as it was clear from a plain

1 reading of the agenda that the intended possible action by the City Council was to approve
2 the agenda.

3 Similarly, voting by Councilmembers Folda and Bridges on Agenda Item Nos. 18(a)
4 and 18(b) does not amount to a violation of the OML. As stated above, the OAG does not
5 find that the description for Agenda Item Nos. 18(a) and 18(b) for the October 22, 2019
6 meeting violated the “clear and complete” standard. It follows, then, that no personal
7 liability may attach to City Councilmembers Folda and Bridges for discussing Agenda Item
8 No. 18 at the October 22 meeting. Because the OAG has found no violations under the
9 OML, it also follows that Councilwoman Bridges may not be found civilly or criminally
10 liable for participating in the October 22, 2019 City Council meeting.

11 **7. The OAG will abstain from making any determinations on additional OML**
12 **violations not asserted.**

13 The OML delineates that a complaint that alleges a violation of NRS Chapter 241
14 may be filed with the Office of the Attorney General. NRS 241.039(1). In addition, the
15 OML provides that generally, the OAG “[s]hall investigate and prosecute any violation of
16 this chapter *alleged in a complaint* filed not later than 120 days after the alleged violation
17 with the Office of the Attorney General.” NRS 241.039(2)(a) (emphasis added). The OAG
18 has investigated and addressed all alleged OML violations lodged in the Complaint.
19 However, to the extent that the Complaint has not alleged additional specific OML
20 violations, the OAG will abstain from addressing the same, if any.

21 **SUMMARY**

22 While the OAG has found that no OML violations occurred at the October 22, 2019
23 City Council meeting, this Opinion should not be construed as providing an opinion as to
24 whether the City Council violated any provisions of the City Charter or whether the City
25 Attorney violated any ethical duties pursuant to NRS Chapter 281A. The OAG has
26 reviewed the available evidence and determined that no violation of the OML has occurred.

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1 The OAG will close its file regarding this matter.

2 Dated: July 22, 2020.

3 AARON FORD
4 Attorney General

5 By: /s/ Justin R. Taruc
6 Justin R. Taruc (Bar No. 12500)
7 Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of July, 2020, I served the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

City Council of Boulder City
City Hall
401 California Avenue
Boulder City, Nevada 89005

Certified Mail No.: 7009 3410 0002 32516854

Peggy Leavitt
[Redacted]
[Redacted]
[Redacted] [Redacted]

Noah G. Allison, Esq.
The Allison Law Firm Chtd.
3191 E. Warm Springs Road
Las Vegas, Nevada 89120
*Counsel for Mayor Kiernan McManus
and Councilwoman Tracy Folda*

Certified Mail No.: 7009 3410 0002 3251 6830

/s/ Debra Turman
An employee of the Office of the
Nevada Attorney General

Public Comment

February 15, 2022

Members of the Nevada Commission on Ethics, thank you for allowing me to address Item 6 at your February 16, 2022 meeting.

My name is Judith Hoskins; I have been a resident of Boulder City for the past 20 plus years. I retired from the Department of Defense with 26 plus years of service and held a high-security clearance. I have a total of 30 plus years of government employment. As President of my HOA for 16 years, I have applied many Nevada Revised Standards. I understand the difficulty of a Governmental body making difficult decisions and not having all the pertinent facts before them. I certainly know when there is a conflict of interest or not.

On October 22, 2019, as a citizen of Boulder City, I attended the meeting in question. City Attorney, Steven Morris, should have recused himself from making any comments or participating in discussions concerning his contract. If you watched the recordings of this meeting, which is readily available to the public, you would have made only one decision; City Attorney Morris' constant interruption during this meeting served only one person, himself and not the City.

[EarthChannel Player v4 CDSEC](#)

I ask the Commission on Ethics to review this recording if you haven't done so recently. I know you are all dedicated to your position, and I believe you will come to a different conclusion on this critical issue.

How is it possible that City Attorney Morris has no interest in his contract, which amounted to well over \$200,000 per year, including benefits? In my humble opinion, he also had an additional financial interest in not wanting his contract reviewed by outside Counsel; if I understand correctly, his contract allowed the City Attorney to practice law while serving as City Attorney. Also, if I understand correctly, the City Attorney did not have to disclose who his clients were or if the reason for his service was related to issues directly

related to City business. How can a City Attorney represent the City of Boulder City citizens while simultaneously representing external clients whose legal interests could be at odds with his full-time, day job as City Attorney? Is this not a conflict of interest? At no time during his employment as City Attorney did Mr. Morris choose to publicly disclose any client conflicts to City officials or submit a nil report as to his private clients and their lack of business before the City of Boulder City.

In reviewing the "Proposed Stipulation to Enter Consent Order Resolving Ethics Complaint with Remedial Action and Consent Order," I reference Page 2, 3(d, e, 1), 2), f, g, h), under e. it states, "A Panel Determination issued May 21, 2020 concluded that: 1) Credible evidence supported just and sufficient cause for the Commission to render an opinion in the matter regarding the alleged violation of NRS 281A.420(1) and (3) related to Morris' alleged failure to disclose and abstain from acting on an agenda item before the Boulder City Council concerning his employment contract as City Attorney; and" 2) "The matter should be referred to the Commission for adjudicatory proceedings."

How can anything change the fact that it was the City Attorney's employment contract that he was addressing? City Attorney Morris does not have to admit to anything. The meeting speaks for itself.

At the November 19, 2019, City Council meeting, I was appointed to the City Council. I served until July 2021. On January 6, 2020, I received a call from the City Manager's Office requesting I attend an emergency meeting. At that time, I was new to the Council. City Attorney Morris, City Manager Noyola, and City Clerk Krumm chaired the meeting. The first statement made to me by all three was, "I am sure you know the reason for this meeting" my response was no, I do not. They stated an individual submitted an OML violation to the Attorney General's Office. The complaint concerned a criminal

violation against Mayor McManus and Councilmember Tracy Folda and a violation against Councilmember Bridges. They stated the Mayor wants to include this as an item on the Agenda. They warned me if I agreed to include the Mayor's item on the Agenda for the next Council meeting, I would be guilty of Criminal Intent. They made this statement at least four times, and City Attorney Morris concurred with the statement. The City Clerk failed to send me the same information she had sent to all other Council members, so I was not aware of this issue at that time. I felt threatened and intimidated by the City Attorney, City Manager, and City Clerk. All Council members, including the Mayor, attended separate meetings on this same issue.

The item the Mayor requested to be included on the Agenda read as follows: "Retention of a special counsel by City Council to advise City Council members in matters pertaining to Open Meeting Law violation allegation(s) and prepare and submit any response that may be necessary or appropriate. The Special Counsel may provide advice to members of the Council or perform other actions necessary with regard to pending allegations of Open Meeting Law violation allegation(s) at the time the Counsel is retained."

After I became aware of the Mayor's request, I agreed that we needed outside Counsel and not the City Attorney's advice on an issue that pertained to him personally. Note: On July 22, 2020, the Attorney General's Office decided on OAG File No. 13897-354 that there was NO OML violation. I respectfully ask this Commission why there is no mention or copy of the Attorney General's Office decision. I am concerned there is no mention of the Attorney General's conclusion, which I believe is the most critical finding of this entire issue, or does it have any meaning?

In conclusion: Due to City Attorney Morris' law experience of 20 plus years, he should have known he was engaging in a conflict of interest. The proposed stipulation is a slap on the wrist. I know you have had

this issue open for the past 2-years. I suggest you DO NOT move forward on Item 6 until the Commission has more time to review additional information that may be presented. Please include this information verbatim with your minutes.

Thank you for your time. Judith

Public Comment

From: [Roger Tobler](#)
To: [Nevada Commission on Ethics](#)
Subject: public comment
Date: Tuesday, February 15, 2022 4:51:16 PM

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To the Ethics Commission Board,

Please read my letter during public comment. It is regarding item #6 on this agenda I was a former Mayor of Boulder City. I was termed out in 2015. It was during my time in office that Mr. Morris was hired by the City Manager as the Assistant City Attorney. All of the department heads at the time were thrilled to have him on board. He proved himself and did great work while I was in office, and continued to do so for many years. Steve Morris is an excellent attorney, and he has a impressive reputation. He is also some one who has served Boulder City with integrity. He has served under many City Council members and also received strong and positive reviews.

Mayor McManus came into his position determined to remove certain staff including the City Manager, Clerk, and Attorney. I attended the Council meeting where Mr. Morris was terminated. It was obvious the City Council had rehearsed their few reasons why Mr. Morris should be terminated. In fact, Mayor McManus never held an evaluation on any of the staff he removed. The voters in the last election made it clear that that Council should no longer be in charge. Mayor McManus discrimination against Mr. Morris showed real malice in attempting to damage his reputation as well as his career.

I would hope Mr. Morris would be treated fairly and that this item will be approved. I was elected for three, four year terms, and I was termed out in 2015. I believe that I am qualified to comment on Mr. Morris' ability and integrity as a City Attorney. I worked with many attorney's that represented the City and the regional boards that I sat on, Mr. Morris was one of the best. Mr Morris was simply caught up in unethical politics. Thank you for reading my comments.

Roger Tobler
Resident of Boulder City

Public Comment

Comments to Ethics Commission regarding Steve Morris

I am writing to you in support of Steve Morris. Mr. Morris was the Assistant City Attorney for approximately 5 years before being hired as City Attorney. In that time, he earned the respect and friendship of the City employees with whom he interacted. He also earned a reputation for being a hard worker and being able to accomplish an extraordinary amount of work in the few hours that he was contracted to work each week. In the capacity as Assistant City Attorney he became familiar with all the operations of the City in addition to meeting many of the staff. He therefore was the obvious choice when the position of City Attorney became open.

It is important to address the controversy when Mr. Morris was hired as City Attorney. At that time, there was a group of people who were vehemently opposed to Mr. Morris being appointed to that position despite his experience in the city and his expertise as an Attorney. Most of that opposition surrounded Mr. Morris' religion. At one of the special City Council meetings in which the Council was discussing prospective candidates, Neil Siniakin, who is a friend and advisor to the mayor, got up and stated that he had called all the finalists to ask if they were Mormons. He went on to report who of the candidates, was and was not a member of the Church of Jesus Christ of Latter-day Saints. Due to this unprecedented action by Mr. Siniakin, the City had to change their hiring procedures so that the process could not be as open and transparent as it once was.

I believe that Mr. Morris was in the "cross hairs" of the Mayor since before he was hired as City Attorney. It was widely circulated by those supporting the Mayor in his election that if he was elected that there were several City employees who would be fired, one of whom was the City Attorney. Despite the public criticism and humiliation that Mr. Morris was subjected to, he rose above it and continued to do a stellar job as the City Attorney until he was fired. He is the epitome of a professional. He is one of the most honorable people I know. His termination has been a huge loss for the city and the community of Boulder City.

Peggy Leavitt – former City Councilwoman for Boulder City

Public Comment

My name is Lauren Oliver and I am submitting public comment on item #6 in support of the settlement agreement between the Commission and Steven Morris. I am a licensed attorney in the state of Nevada and Arizona and a longtime resident of Boulder City. I worked directly under Mr. Morris for three years in the City Attorney's office for Boulder City before his contract was terminated, illegally in my opinion.

I witnessed firsthand the discriminatory, bigoted and retaliatory behavior demonstrated by Kiernan McManus, Tracy Folda, and the citizens they employed to spread false narratives on their behalf. The ethics complaint filed against Mr. Morris was purely retaliatory and a piece of the Mayor's puzzle to breach his employment contract.

The City Attorney's office is a small department within the City, myself and Mr. Morris were the only two full-time employees on staff. I was included in all correspondence and attended all meetings between Mr. Morris and the City Council. Mr. Morris always conducted himself in a professional manner as evidenced in the attached exhibits to this item. I was well aware of the plot to ruin his career within the City and the Mayor's plan to hire a replacement that would conform to his unethical and discriminatory behavior. Kiernan McManus and his constant antics created nothing short of a hostile work environment that we constantly had to work through.

I am pleased to see that a settlement has been reached and Mr. Morris can clear his name. It is unfortunate that he had to be subjected to this retaliatory complaint at the hands of elected officials that do not represent the values Boulder City is known for. Mr. Morris is one of the most ethical people I have been lucky enough to work with and it saddens me to see any attempt to tarnish his name and reputation. He was a true asset to the City. It is my hope that you will approve Item #6. Thank you for your time.

Sincerely,

Lauren M. Oliver, Esq.

Public Comment

Good morning, Commissioners. My name is Lorene Krumm and I am submitting public comment in support of Item No. 6, the proposed settlement agreement between Steve Morris, former City Attorney of Boulder City and the Nevada Commission on Ethics.

I worked for the City of Boulder City from November of 2005 until February 2021, I was the Deputy City Clerk from 2005 – 2009, and then served as the City Clerk from 2009 until 2021. Mr. Morris was originally hired as a part-time contract attorney for the City in 2012 and was appointed as the full-time City Attorney in 2017. I worked very closely with Mr. Morris for nine years. During the nine years of working with Mr. Morris, he was an exemplary employee. He was well-respected for his knowledge, his reasonableness, his ability to see all sides of a complex situation and offer solutions. His was extremely well-liked by staff and elected officials prior to the Council that took office in June 2019.

Mr. Morris was always professional, cordial, and despite his numerous attempts to assist the Council in their duties, he was met with hostility. It is important to point out that other than Mayor McManus, every member of the Council that took office in 2019 was new. None of the other four members had ever served on a public body in Nevada as an elected official or even as a volunteer for a committee/commission. They were very inexperienced.

Upon taking office, it was very obvious that Mayor McManus had a personal vendetta against Mr. Morris. It became clear later on that Mr. Morris was being targeted, bullied, harassed and discriminated against because of his religious affiliation. There are numerous examples and proof of this discrimination, as well as numerous witnesses, including myself. In 30 years of public service in Nevada, I have never witnessed such blatant discrimination. The ethics complaint filed by Mayor McManus and former Council member Folda was a scheme in order to create a reason to terminate Mr. Morris and deny him of his severance pay.

With respect to the complaint itself, I had brought the agenda item that was submitted by Mayor McManus on October 3, 2019 to City Attorney Morris's attention immediately upon receiving it. After 15 years of experience with public meetings and hundreds of hours of training, I was concerned it did not meet the standard of "a clear and complete" statement of the topics. And despite the numerous attempts to try and help Mayor McManus correct the agenda title, he refused to elaborate. Mr. Morris would not know to disclose a potential conflict because after numerous attempts, he did not know what the purpose of the agenda item was and if there was indeed a conflict.

I sincerely hope that the Commission approves the settlement agreement. Mr. Morris is one of the most ethical people I know, both personally and professionally. Mayor McManus and other members of the Council did not just want to fire him and deny him what he is owed contractually, they wanted to destroy his career. The only person that should be sitting in front of this Board answering to any ethical violations is Mayor McManus.

Sincerely,
Lorene Krumm

Public Comment

From: [Steve Walton](#)
To: [Nevada Commission on Ethics](#)
Subject: Public Comment Feb 16 meeting
Date: Wednesday, February 16, 2022 6:58:43 AM

WARNING - This email originated from outside the State of Nevada. Exercise caution when opening attachments or clicking links, especially from unknown senders.

To the Nevada Commission on Ethics,

I am writing in regards to agenda item number 6; Discussion and approval of a Proposed Stipulation for Consent Order concerning Ethics Complaint No. 20-007C regarding Steven Morris, City Attorney, City of Boulder City, State of Nevada, and authorization for the Chair of the Commission, in coordination with Commission Counsel, to prepare and issue the related confidential letter of instruction.

During the time of the events that occurred leading to the ethics complaint filed against Mr Morris, I was serving as Interim Fire Chief for the City of Boulder City. In all my interactions with Mr Morris, I found him to act with the highest ethical and professional standards. In my observations of his dealings with the public, staff, and elected officials, he was always forthright and honest, maintaining the highest principles of integrity.

Sincerely,
Steve Walton
1536 Sunrise Circle
Boulder City, NV 89005