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STATE OF ARIZONA

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December 9, 2011

Martin Brannan  
Town Attorney  
Town of Quartzsite  
P.O. Box 2812  
Quartzsite, Arizona 85346

**Re: *Open Meeting Law Complaint against Town of Quartzsite Common Council (the "Council")***

Dear Mr. Brannan:

As you know, this Office received and investigated a number of complaints alleging that the Council violated the Arizona Open Meeting Laws ("OML") (A.R.S. §§ 38-431 *et. seq.*). We have concluded our review and our findings are outlined in this letter.

Violation:

Unlawful Removal of Member of the Public from the June 28, 2011, Meeting

The OML requires that "[a]ll meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." A.R.S. § 38-431.01(A). Members of the public thus have the right to attend the meeting and to listen to deliberations, but they do not have the right to participate in or disrupt the meeting. This Office has recognized that "[p]ursuant to certain Arizona statutes, disruptive attendees of meetings may be *removed* to permit the public body to continue to conduct the public's business." Ariz. A.G. Op. No. I99-006 (emphasis added) (recognizing A.R.S. § 13-2911(C) allows an order requiring a person to leave school property if the person is disrupting the lawful use of the property by others). Also, public bodies may impose rules of decorum and remove persons that violate them when someone is "acting in a way that actually disturbs and impedes the meeting" without violating the First Amendment. *White v. City of Norwalk*, 900

F.2d 1421, 1424 (9<sup>th</sup> Cir. 1990) (adopting narrow interpretation of rules of decorum offered by city). However, removing a member of the public from a public meeting may still violate the OML, even if the action complies with First Amendment requirements. *See Galena v. Leone*, 638 F.3d 186, 201-02 (3<sup>rd</sup> Cir. 2011) (explaining that a public body could violate the Sunshine Act by removing a speaker from a meeting without violating the First Amendment). Thus, the public body should only ask or order a person to leave a public meeting when a statute specifically allows it or when the person continues to disrupt the meeting after being warned to stop.

On June 28, 2011, the Council voted to remove Ms. Jennifer Jones from its meeting after she allegedly disrupted the Council by addressing one member, removing the microphone from the podium, and turning to the audience when speaking at the call to the public.<sup>1</sup> As she began her comments, Ms. Jones almost immediately removed the microphone from the stand and held it in her hand. During the first 15 seconds of her comment, Ms. Jones gave the following statement:

Good evening. My name is Jennifer Jones. First of all, I'd like to thank Patricia Anderson for reading aloud before the public assembled here the rules that the Council has placed on the agenda for public comment.

At about 15 seconds into her comment, Ms. Jones turned around to face the audience, which left the Council looking at her back, and said:

I would also like to point out to the public that those rules were drawn up by, I believe by Ms. Walsma at the direction of former Mayor Huntley. They were never put before Council. They were never voted on. They are not even compliant with the Open Meetings Act. And you are, as Mr. Sinstra [Strobeck] of the League of Cities and Towns pointed out ...

These comments took about 20 more seconds. The video recording of the meeting picked up a few, mostly inaudible, voices coming from the Council members and/or Town staff once Ms.

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<sup>1</sup> This analysis focuses on Ms. Jones's conduct prior to the Council's motion to have her removed. The subsequent argument and removal played no part in the Council's initial decision to have her removed in violation of the OML.

Jones turned around. About 12 seconds after Ms. Jones turned around, or 27 seconds into her comment, Councilmember Winslow exclaimed "point of order" in an effort to get the Mayor to control Ms. Jones. Eight seconds later, or about 35 seconds into Ms. Jones's allotted 4 minutes, Councilmember Winslow began making "a motion that Ms. Jones be removed from the duration of this meeting." After a vote on the motion, Councilmember Winslow announced that the motion passed and told Ms. Jones, "You may leave or you may be escorted out." At no time did any Councilmember or staff member ask Ms. Jones to turn around or take her seat. Although her behavior may have irritated or offended members of the Council, the Council should not have removed Ms. Jones without first giving her a warning and an opportunity to cease her disruptive behavior. Accordingly, the foregoing incident violated the OML's requirement that the public be allowed to attend public meetings of the Council.

Violation:

Exclusion of Public from July 10, 2011, Council Meeting

The OML requires that "[a]ll meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." A.R.S. § 38-431.01(A). This requirement includes emergency meetings of a public body. A.R.S. § 38-431(4) (defining "meeting"). The public may only be excluded from meetings of a public body when it goes into a proper executive session under A.R.S. § 38-431.03.

In this case, the Council convened an emergency meeting on July 10, 2011, at the Town Hall to discuss and implement procedural changes to its regular meetings in light of disruptions during previous meetings. The Council locked the doors to the meeting room and did not allow any member of the public to attend its meeting. According to a recording of the meeting, the Council believed that it could exclude the public the meeting because of the existence of an emergency and threats against the Council. However, the proper response to perceived threats against a public body is not to exclude the public from attending a meeting. Rather, the public body should heighten security through meeting at a more secure location, ensuring the presence of security guards or police officers, or using metal detector wands for those entering the

meeting. Thus, excluding the public from the July 10, 2011, meeting violated the OML.

Violation:

Failure to Comply with Posting Requirements for Emergency Meetings

In cases of actual emergency, the OML allows a public body to meet with less than twenty-four hours notice and take appropriate action. A.R.S. § 38-431.02(D). The public body must “post a public notice within twenty-four hours declaring that an emergency session has been held” and including an agenda of items considered at the emergency meeting. A.R.S. § 38-431.02(D). In addition, the public body must make a “statement setting forth the reasons necessitating the discussion, consideration or decision” at the emergency meeting and must include the statement of emergency in the minutes of the meeting. A.R.S. § 38-431.02(J).

In this case, the Council did not fully comply with the posting requirements for emergency meetings. The Council did not post the minutes of the emergency meeting on its website as required by A.R.S. § 38-431.01(E). Although Ms. Norris states that she posted documents for the meeting at a number of physical posting places, she indicates that she may not have posted them on the website because of technical difficulties. As of December 9, 2011, the minutes of the emergency meeting were not posted on the Town website. Additionally, the minutes of the emergency meeting provided by the Council do not contain the statement of emergency required by A.R.S. § 38-431.02(J). This conduct violates the OML.

Letter of Concern:

Private Meetings of a Quorum of the Council

Under the OML, “all discussions, deliberations, considerations, or consultations among a majority of a public body regarding matters that may foreseeably require a final action or a final decision by the governing body, constitute ‘legal action’ and, therefore, must be conducted in a public meeting or executive session.” Ariz. Att’y Gen. Op. 75-8. Additionally, “discussions and deliberations between less than a majority of the members of a governing body, or other devices, when used to circumvent the purposes of the Open Meeting Law violate that law.” *Id.* The

purpose of the OML is to require public bodies to meet publicly and openly so that all persons so desiring may attend and listen to the deliberations and proceedings. A.R.S. §§ 38-431.01(A); - 431.09.

In this case, several complainants alleged that a quorum of the Council meets without public notice or attendance to discuss official business. The complaints indicate that members of the Council meet at a local restaurant or in the Town Manager's office prior to public Council meetings. After reviewing information provided by the Council and the complainants, we cannot substantiate the claim that Council members meet at a local restaurant to discuss business. Although it appears that some Council members and Town personnel frequent the restaurant, we received no evidence showing a quorum in attendance or that members of the Council discussed official business. As to the claim that a quorum of the Council met in the Town Manager's office prior to public meetings, we received sworn statements from each of the Council members denying the allegation and one sworn statement from the former Town Clerk that such meetings did occur. No evidence was produced by either side to corroborate the statements. Accordingly, a violation has not been substantiated.

However, this Office has significant concerns that such pre-meeting discussions are occurring with the Town Manager, even if official business is not discussed. The video recording of the June 14, 2011, meeting shows a quorum of the Council leaving the meeting room together into a back room. It is not unreasonable to believe that a quorum of the Council gathers prior to meetings, even if it is not to discuss agenda items or official business. Thus, although a violation was not substantiated, the meetings of a quorum of Council members are troubling because the ensuing conversations between Council members create a significant risk of violating the OML. Even if they do not result in violations, such gatherings can undermine public confidence that the public body is fulfilling its obligation to deliberate and make decisions in properly noticed public meetings. Accordingly, this Office registers its concern that a quorum of the Council gathers before and during meetings and advises the Council to minimize such gatherings to avoid any appearance of impropriety. In any such gathering, Council members must scrupulously avoid any discussion of official business.

Violation:

Failure to Comply with Posting Requirements for Notices and Minutes

The OML imposes several posting requirements on public bodies. Under A.R.S. § 38-431.02(A)(4), the public bodies of cities and towns must post a statement on their website informing the public where it will post notices of public meetings, including both physical and electronic locations. The public body must also post all public meeting notices on their website at least 24 hours prior to the meeting. *Id.* The public body can also satisfy these requirements by posting on the website of “a website of an association of cities and towns.” *Id.* In addition, cities and towns with a population in excess of 2,500<sup>2</sup> must post the following:

1. “Within three working days after a meeting, except for subcommittees and advisory committees, post on its website, if applicable, either: (a) A statement describing the legal actions taken by the public body of the city or town during the meeting [or] (b) Any recording of the meeting.”
2. “Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its website, if applicable, except as otherwise specifically provided by this article.”
3. “Within ten working days after a subcommittee or advisory committee meeting, post on its website, if applicable, either: (a) A statement describing legal action, if any [or] (b) A recording of the meeting.”

A.R.S. § 38-431.01(E). Each of these postings must remain on the city or town’s website for at least one year after the posting date. A.R.S. § 38-431.01(J).

In this case, the Council is failing to comply with the posting requirements for the statement of legal actions taken and the minutes. As noted above, the Council did not post minutes for the July 10, 2011, emergency meeting. In addition, the Council failed to post minutes for a number of its meetings labeled as “work sessions.” As of October 11, 2011, minutes were not posted for March 22, March 29, June 21, June 24, August 1, August 17, and September 23. In addition, the Council did not post a statement of legal actions taken or minutes

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<sup>2</sup> According to the results of the 2010 census on the website for the United States Census Bureau, the population for

for the June 14, 2011, regular meeting. It appears that the Council also does not post the required statement of legal actions for any of its meetings prior to posting approved minutes as required by the OML. This conduct violates the OML.

#### Remedy

The foregoing violations demonstrates that the Council and its staff are unfamiliar with the provisions of the OML pertaining to notices, agendas, and minutes, proper conduct of a public meeting, and the restrictions imposed on members of a public body. Therefore, we recommend that the Council take the following actions to resolve this matter:

1. The Council will discuss the concerns listed in this letter with its counsel in open session during a properly noticed public meeting.
2. Each member of the Council and staff will participate in a training session with counsel from the League of Arizona Cities and Towns or other counsel approved by this Office, held in a public meeting, regarding the requirements of the OML, with special emphasis on the posting of notices, agendas, and minutes, proper conduct of a public meeting, and the restrictions on members of a public body. The training session shall occur within **three months** of the execution of this letter agreement.
3. The Council will be subject to oversight by this Office for a period of **twelve** months. The Town Attorney will promptly provide to this Office a schedule of all regularly scheduled meetings during the monitoring period, and copies of meeting notices, agendas, and minutes within five days after each meeting conducted by the Council during such period. The Town Attorney will provide advance notice of any special or emergency meetings and shall provide notices, agendas, and minutes within five days after the meeting. If any violations of the Open Meeting Law are found within these documents, this Office will work with the Town Attorney to identify and remedy the violation.

Martin Brannan  
Town of Quartzsite  
December 9, 2011  
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Please let me know by **December 30, 2011**, if the Council agrees to comply with the recommendations set forth above by signing the letter agreement in the space provided below and returning it to me. If you have any questions, please contact me at (602) 542-8303.

Sincerely,



Christopher A. Munns  
Assistant Attorney General

AGREED by the Town of Quartzsite Common Council,  
this \_\_\_\_ day of \_\_\_\_\_, 2011

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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