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Councilors: No final decision on Las Cruces city manager

Heath Haussamen, NMPolitics.Net 6:28 p.m. MDT September 21, 2016



(Photo: Courtesy)

LAS CRUCES - Three Las Cruces city councilors are emphatic they haven't made a final decision on who will be the next city manager and didn't violate the state's Open Meetings Act.

A news release (<http://www.las-cruces.org/en/departments/public-information-office/news-releases/2016/september/city-manager-selected>) the city sent out Monday, after councilors interviewed two city manager finalists in closed session, stated otherwise, claiming that the council "today selected Stuart Ed of El Paso as the new city manager."

"The press release was inaccurate, in my opinion and recollection of events," Councilor Jack Fakman told NMPolitics.net (<http://NMPolitics.net>). "We interviewed candidates and then set Oct. 3 as the date we would take action on whom ever the collective council thought would be best to lead the municipal government of Las Cruces."

Councilors Gregory Z. Smith and Ceil Levatino agreed that the news release was not accurate and the council has made no final decision.



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Stuart Ed is a finalist for Las Cruces city manager (Photo: Courtesy)

The action the city's news release detailed would be problematic because the council hasn't publicly voted ([/story/news/2016/09/19/city-council-selects-ed-new-manager/90716352/](http://www.lcsun-news.com/story/news/2016/09/19/city-council-selects-ed-new-manager/90716352/)) to select a city manager. The state's Open Meetings Act (<http://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Open%20Meetings%20Act%20Compliance%20Guide%202015.pdf>) requires a public vote. The version of Monday's events presented in the news release would violate that law, according to Susan Boe, executive director of the New Mexico Foundation for Open Government.

The law is intended to give the public a record of how each councilor voted and insight into the council's decision-making process.

The situation has caused confusion about the city's search.



LAS CRUCES SUN-NEWS

Does Las Cruces have a new city manager?

(<http://www.lcsun-news.com/story/news/2016/09/19/city-council-selects-ed-new-manager/90716352/?from=global&sessionKey=&autologin=>)

The council plans to offer the position to and negotiate a contract with Ed, who was most recently president and chief executive officer of Goodwill Industries of El Paso. "After deliberations by council, there was a general consensus that Stuart Ed should be offered the position of city manager," Udell Vigil, director of the city's Public Information Office, said Wednesday.

"Stuart Ed is a very strong candidate and we will be very well served if he accepts the position," Smith said earlier this week (<http://nmpolitics.net/index/2016/09/without-a-public-vote-las-cruces-announces-new-city-manager/>).

That's different than making the "decision" the city's news release claimed councilors made on Monday. Negotiations might lead to Ed accepting the job, or they might not. If they don't reach an agreement with Ed, councilors might decide to instead talk with the other finalist, Dan Biles, deputy county manager of infrastructure for Jefferson County, Alabama.

"We expected the press release to say that there were two candidates," Smith said. "There is significant consternation on the part of councilors because the message that we believed we had agreed upon was not the message the city press release shared with the public."

“And, as you know, the message that was shared with the public puts us in an extremely compromised situation,” Smith said.

What happened?

So if the council didn't select a city manager on Monday, how did a news release go out stating otherwise? Smith says the city attorney, William “Rusty” Babington, was brought in toward the end of the council's closed session on Monday to discuss what information to include in the news release. Vigil said he “wrote the news release with information provided by the city attorney, who approved the release.”

Vigil isn't to blame, Smith said, adding, “as far as I'm concerned, Udell is not where the message got turned.” He didn't elaborate on how he thinks things went wrong.

Levatino placed the blame on Mayor Ken Miyagishima. She said she believes the mayor had the news release changed after councilors agreed on what it should say.

“Once again the mayor has chosen to misrepresent what happened and caused the public unnecessary concern and confusion,” Levatino said.

The “once again” in Levatino's statement refers to Miyagishima's public claim [earlier this month \(http://nmpolitics.net/index/2016/09/mayors-comments-cause-confusion-about-city-manager-search/\)](http://nmpolitics.net/index/2016/09/mayors-comments-cause-confusion-about-city-manager-search/) that there were four finalists for the city manager job when, in fact, there were two.

Miyagishima, in a text message exchange, didn't respond to Levatino's claim that he had Monday's news release changed. Other than saying the council has made no final decision on the hiring of a city manager, he referred questions to Babington. Vigil, not Babington, answered those questions: “The mayor was not involved in the drafting of the release,” he said.

Neither Eakman nor Smith blamed Miyagishima.

“I have no idea what happened in the process. I have no idea, and so I'm certainly not going to point a finger at anyone,” Eakman said.

Councilor Gill Sorg declined to comment on the accuracy of Monday's news release. He did say the council is aware it must vote in a public meeting to select a new city manager.

“As far as I'm concerned, nothing's done yet. We have our candidate but it is not final, it is not decided, until we all vote,” Sorg said. “There's a lot of pieces yet to get together.”

Councilors Olga Pedroza and Kasandra Gandara declined to comment.

‘The bottom line: Do it the right way’

Smith said he is concerned that the confusion caused by the news release and questions about the Open Meetings Act could affect negotiations with candidates for the job. And, he said, the stakes are high.

“The selection of the city manager could very well be the most important decision we make as councilors,” Smith said. “He or she puts into motion or makes into reality what we put forward as policy or the decisions we make as a council.”

Eakman said he hadn't considered the possibility that the situation “might compromise us in any way with the candidates, but if it does that would be terrible.” Levatino said her hope “is that this confusion does not hurt our ability or our chances to bring one of these two highly qualified gentlemen in as our next city manager.”

Smith and Eakman also praised Ed and Biles, calling both strong candidates.

Boe, the director of NM FOG, said there's a way to avoid such confusion in the future. Many government boards meet publicly following closed sessions to state what exactly was done in private. The city should adopt such a practice, Boe said.

If the council had stated in a public meeting on Monday what Smith says was intended — that there were two candidates and the council planned to vote to hire a city manager on Oct. 3 — whatever happened in the process of creating the news release might have been avoided, Boe said.

“The bottom line: Do it the right way. Then we don’t have these problems,” she said.

This isn’t the first controversy surrounding Las Cruces’ city manager search. Though the city has released 13 applications for the job, it has withheld dozens of others from the public.

The state’s Inspection of Public Records Act

(<http://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Inspection%20of%20Public%20Records%20Compliance%20Guide%202015.pdf>) make applications for high-profile government jobs like city manager public. But the city contends that applications its contract search firm hasn’t turned over to the city aren’t public records. NMPolitics.net has sued (<http://nmpolitics.net/index/2016/05/nmpolitics-net-sues-for-release-of-city-manager-applications/>), seeking release of all applications. The case is pending (<http://nmpolitics.net/index/2016/08/judge-denies-motions-to-halt-nmpolitics-nets-public-records-lawsuit/>).

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