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June 26, 2018

Via U.S. Mail

Mr. Aaron L. Katz

Re: Open Meeting Law Complaint, OAG File No. 13897-263
Incline Village General Improvement District

Dear Mr. Katz:

The Office of the Attorney General (OAG) is in receipt of your complaints alleging violations of the Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board) regarding an alleged failure to include written statements in its minutes as required by law.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040. In response to your complaints, the OAG reviewed your complaint and attachments; your supplemental complaint and attachments; the Board's response; video from the Board's September 13, 2017, meeting; and, minutes from the Board's meetings of September 13, 2017, September 26, 2017, and February 21, 2018.

FACTUAL BACKGROUND

The Board is a "public body" as defined in NRS 241.015(4) and subject to the OML.

The allegations of the complaint are the Board failed to include three (3) written statements as part of its minutes as required by law.

The first written statement was entitled "WRITTEN STATEMENT TO BE ATTACHED TO AND MADE A PART OF THE WRITTEN MINUTES OF THE

IVGID BOARD'S REGULAR SEPTEMBER 13, 2017 MEETING – AGENDA ITEM E(1) – PROPOSED MODIFICATION TO THE GROUND LEASE BETWEEN IVGID AND THE PARASOL TAHOE COMMUNITY FOUNDATION ('PARASOL')" (September 13th Statement). (Capitalization as in original title). The September 13th Statement was written by you and Frank Wright. Mr. Wright appeared at the Board's meeting of September 13, 2017. You were not present at the Board's meeting of September 13, 2017. Mr. Wright spoke during the public comment period concerning the performance of a Mr. Pinkerton. Mr. Wright presented the Board with an evaluation checklist concerning Mr. Pinkerton, which reflected the remarks made by Mr. Wright during the public comment period. Mr. Wright mentioned in passing during his comments that he worked on something with you concerning Parasol and that the Board could read it later. Mr. Wright did not request the minutes reflect any of his remarks.

The evaluation checklist reflecting Mr. Wright's remarks during public comment were made a part of the minutes. The September 13th Statement was not made a part of the minutes. Mr. Wright's passing mention of Parasol was reflected in the minutes.

The second written statement was an e-mail from you to the trustees of the Board sent on September 21, 2017, with the subject "Omissions From Chairperson Wong's List of Issues Concerning IVGID's Possible Purchase of the Parasol Building in Anticipation of the IVGID Board's Regular September 26, 2017 Meeting" (September 21st e-mail). The September 21st e-mail requested inclusion in the minutes of the Board's meeting of September 26, 2017. You did not attend the Board's meeting of September 26, 2017. The Board did not include the September 21st e-mail in its minutes for its meeting of September 26, 2017.

The third written statement was not included with the complaint or supplemental complaint but was referenced in e-mails attached to the supplemental complaint. The e-mails requested the Board include a written statement from Linda Newman and Clifford Dobbler (Newman/Dobbler Statement) in the minutes concerning the Board's meeting of February 21, 2018. Ms. Newman and Mr. Dobbler were not present at the Board's meeting of February 21, 2018. The Board did not include the third written statement in its minutes for its meeting of February 21, 2018.

DISCUSSION AND LEGAL ANALYSIS

The complaint alleges the Board did not include copies of written statements in its minutes as required by NRS 241.035(1)(d). NRS 241.035(1)(d) sets out minutes shall include:

> The substance of remarks made by any member of the general public who addresses the public body if the member of the general

> public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion.

The complaint argues NRS 241.035(1)(d) means any written statement submitted for inclusion in a public body's minutes must be so included. The Board, in its response, argues a member of the public must be present and address the public body in order to submit written statements and the written statements must supplement the comment offered by the member of the public at the meeting.

The OAG agrees with the Board's analysis of NRS 241.035(1)(d).

NRS 241.035(1)(d) was added to law by S.B. 140 in the 65th Session of the Nevada Legislature (1989). The language as originally proposed would have simply added "or general public" to what is now NRS 463.035(1)(e): "[a]ny other information which any member of the body *or general public* requests to be included or reflected in the minutes." If this language had made it into law, a member of the general public could submit a statement without attending a meeting and the statement would have to be made a part of a public body's minutes if so requested by the member the general public. However, the Nevada Legislature did not pass the language giving a member of the general public the same power to require the inclusion of information in a public body's minutes as a member of that public body.

Rather, the language codified was narrower: a member of the general public must address the public body if he wants his remarks or a written statement containing his remarks made a part of the public body's minutes. NRS 241.035(1)(d). This conclusion is supported by the stated purpose of the language: "[t]he evil you are trying to cure is to make sure that if someone comes to testify before the board or one of the state regulatory agencies, that what they have to say will somehow get into the minutes." *Testimony on S.B. 140 Before the Ass'bly Comm. on Gov't Affairs,* 65th Leg. (May 10, 1989) (Statement of Assemblyman Gary A. Sheerin).

In short, NRS 241.035(1)(d) requires inclusion of the prepared written remarks of a member of the general public in the minutes of a public body only if the member of the general public makes remarks to the public body during a meeting and requests his remarks be reflected in the minutes.

At the Board's meeting of September 13, 2017, Mr. Wright spoke of Mr. Pinkerton. Mr. Wright did mention Parasol in passing during his remarks, and the minutes reflect this passing comment. Mr. Wright did not request his remarks be included in the minutes. Thus, the September 13th Statement was not required to be included in the minutes for the meeting of September 13, 2017.

The September 21st e-Mail and the Newman/Dobbler Statement did not

reflect remarks made by you, Ms. Newman, or Mr. Dobbler at the Board's meetings of September 26, 2017, and February 21, 2018. Thus, these statements were not required to be included in the minutes for the meetings of September 26, 2017, or February 21, 2017.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: _____
JOHN S. MICHELA
Senior Deputy Attorney General
Gaming Division

JSM:sd
c: Jason D. Guinasso, Esq.