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October 2, 2018

Via U.S. Mail and Electronic Mail

Aaron L. Katz

Re: Incline Village General Improvement District – Open Meeting Law Complaint, O.A.G. File No. 13897-294

Dear Mr. Katz:

The Office of the Attorney General (OAG) is in receipt of your complaint (Complaint) alleging a violation of the Open meeting Law (OML) by the Incline Village General Improvement District (“District”). Your Complaint alleges that the agenda for the District’s April 11, 2018 Meeting did not “clearly and completely” describe that as part of item G(1), the District would be considering approval of a one-time special promotion allowing “Incline Village/Crystal Bay residents to use their expiring Punch Cards with remaining value at a \$0.50 cent per \$1 value to purchase a Mountain Course Pass only”¹ (“Punch Card policy”).

The OAG has statutory enforcement powers under the OML and the authority to investigation and prosecute violations of the OML.² The OAG’s investigation of the Complaint included a review of the following: the Complaint, the Response to the Complaint from the Incline Village General Improvement District, the Board’s agenda, supporting material and video recording from its meeting on April 11, 2018.

FACTUAL BACKGROUND

The District is a “public body” as defined in NRS 241.015(4) and is subject to the OML. On April 11, 2018, the District held a public meeting. In that meeting, the District’s agenda included the following item under General Business (*for possible action*):

¹ See pg. 2-3 of the supporting materials for item G(1) of the District’s April 11, 2018 agenda.

² See NRS 241.037; NRS 241.039 and NRS 241.040).

- “1. Review, discuss and possibly approve Golf Play Pass rate structure for the Incline Village Golf Courses 2018 golf season (Requesting Staff member: Director of Golf Michael McCloskey)”

During that meeting, the District approved the Golf Play Pass rate structure for the Incline Village Golf Courses 2018 golf season.

DISCUSSION AND LEGAL ANALYSIS

1. Applicable Laws and Opinions

Nevada Revised Statute (NRS) 241.020 governs the notice of public meetings and it mandates that public bodies must provide written notice of meetings that includes an agenda with “a list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term “for possible action” next to the appropriate item ...”.³

An agenda for a meeting of a public body must also include a “clear and complete statement of the topics scheduled to be considered during the meeting.”⁴ The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government.”⁵ As such, a public body may not engage in discussion during a public meeting that exceeds the scope of a clearly and completely stated agenda topic.⁶ In addition, a public body must recognize that a “higher degree of specificity [for agenda items] is needed when the subject to be debated is of special or significant interest to the public”.⁷

2. Analysis

In this case, both the District and the Complaint agree that the agenda clearly stated that the Golf Play Pass rate structure for the Incline Village Golf Courses 2018 golf season would be brought up for review, discussion and possible approval. In addition, neither the District nor the Complaint seem to argue that the Punch Pass policy is of a special or significant interest to the public⁸.

However, the District argues that part of the Golf Play Pass rate structure includes the Punch Card policy. The complaint argues that the Punch Card policy is not included in the overall Golf Play Pass rate structure and needed to

³ NRS 241.020(2)(d)(2)

⁴ NRS 241.020(2)(d)(1)

⁵ *Sandoval v. Bd. of Regents of Univ.*, 199 Nev. 148, 154 (2003).

⁶ *Id.*

⁷ *Id.* at 154-155.

⁸ The Complaint cites to *Sandoval* and the OML Manual regarding the need for higher specificity for agenda items which are of special or significant interest to the public but solely to argue that “just like the agenda description in *Sandoval*, the subject agenda description ‘was too broad.’” The Complaint never makes the argument that item G(1) of the April 11, 2018 agenda was of special or significant interest to the public. In addition, even if the Complaint had made this argument, there is no evidence provided to support such claim.

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be agendized separately or at least stated in the description of agenda item G(1) for the description to be clear and complete and to avoid violating the OML.

Here, based on the plain language of the item G(1) of the District's April 11, 2018 agenda, the District did provide a clear and complete description of the agenda topic. Item G(1) of the April 11, 2018 agenda states that the "Golf Play Pass rate structure" will be discussed and possibly approved. The language of agenda item G(1) does not limit the discussion to only certain aspects of the rate structure but includes the rate structure in its entirety. It is reasonable to assume that the public would see this language and understand that the entirety of the rate structure would be up for approval which would necessarily include any proposed promotions, such as the Punch Card policy. It should also be noted that the supporting materials for item G(1) included a description of the Punch Card policy, further supporting the reasonableness of the description used by the District.

Based on the above, the AGO concludes that the District's description of item G(1) on its April 11, 2018 agenda was clear and complete. As the public was reasonably apprised of the fact that the entirety of the Golf Play Pass rate structure would be discussed and possibly approved and that the rate structure reasonably would include promotions such as the Punch Card policy, the District's description of item G(1) on its April 11, 2018 agenda did not violate the OML.

CONCLUSION

Based on a review of the Complaint, the Response to the Complaint from the Incline Village General Improvement District, the Board's agenda and video recording from its meeting on April 11, 2018, the OAG determined that the District's agenda for its April 11, 2018 meeting satisfied the "clear and complete" standard for agenda items under the OML and thus the District did not violate the OML.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 

DAVID M. GARDNER
Senior Deputy Attorney General

C: Jason D. Guinasso, Esq., Incline Village General
Improvement District