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January 4, 2018

Via U.S. Mail

Frank Wright
[REDACTED]

**Re: Open Meeting Law Complaints, O.A.G. File Nos. 13897-242;
13897-244; 13897-245 Incline Village General Improvement
District**

Dear Mr. Wright:

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 alleged cover-ups of illegal behavior by IVGID's former legal counsel (13897-242), regarding your exclusion from an OML training (13897-244), and regarding your requests for Board records (13897-245). I have been assigned to examine these complaints.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. In response to your complaints, the OAG interviewed Sarah Bradley of the OAG concerning the Board training she conducted on September 6, 2017, and reviewed your complaints and attachments; the agendas, meeting materials, and video from the Board's July 20, 2017, meeting; the agendas, meeting materials, and video from the Board's September 13, 2017, meeting; the agendas, meeting materials, and video from IVGID's August 22, 2017, meeting; and OML training materials from the OML training of the Board.

FILE NO. 13897-242

Factual Background

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

Frank Wright
Page 2
January 4, 2018

The allegation of the complaint is, during its September 22, 2017, meeting, the Board "is passing legislation to cover up illegal behavior by legal counsel Jason Guinasso." The complaint refers to agenda item I(1)(a) of the Board's August 22, 2017, meeting. The complaint alleges Mr. Guinasso will be able to claim the Board gave him "authority to secretly respond to OMLs."

Agenda item I(1)(a) was noticed for District General Counsel Jason Guinasso to "[v]erbally review the process of responding to an Open Meeting Law Complaint" with the Board. This agenda item was not designated as "for possible action." The supporting materials for this agenda item included pages 91-93 of the OAG's OML Manual. These pages concern complaints filed against a public body.

At the August 22, 2017, meeting, Mr. Guinasso made a presentation to the Board concerning how an OML complaint moves through the OAG. Mr. Guinasso also described his actions with regard to an OML complaint, including what information he shares with the Board and when he shares the information. The Board did not collectively or individually grant to or withhold from Mr. Guinasso any authority with regard to responding to OML complaints. Mr. Guinasso did not request such authority.

Discussion and Legal Analysis

Your complaint alleges the Board took action to give Mr. Guinasso the power to respond to OML complaints in secret. Chapter 241 of the Nevada Revised Statutes requires the actions of public bodies "be taken openly and that their deliberations be conducted openly." NRS 241.010(1); see *McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). Action means a decision, commitment, or affirmative vote. NRS 241.015(1). Mr. Guinasso made his presentation to the Board and stated how he dealt with and responded to OML complaints. Mr. Guinasso did not give the Board the opportunity to decide how he responds to OML complaints. In fact, Mr. Guinasso stated he could not share his responses to OML complaints with the Board while the investigation of the OML complaint was on-going.¹ The Board did not take any action to grant Mr. Guinasso the authority to respond to OML complaints in secret. The item with which your complaint was concerned was not designated as "for possible action," and the Board did not take any action. Thus, the OAG does not find an OML violation for file No. 13897-242.

¹ While the OAG will keep responses to OML complaints confidential during an on-going investigation, a response submitted to the OAG on behalf of a public body by its attorney should not be kept from the public body by its attorney.

FILE NO. 13897-244

Factual Background

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

On September 6, 2017, Sarah Bradley of the OAG conducted an OML training for the Board. This training was not agendized as a meeting of the Board. No items over which the Board has supervision, control, jurisdiction, or advisory power were discussed or acted upon before, at, or after the training. At least three members of the public attended this training. During the training, you were warned concerning being disruptive. The Board’s attorney contacted the Washoe County Sheriff’s Office and alleged you were being disruptive. At least one deputy sheriff responded. However, you were not actually removed from the training and proceeded to ask Ms. Bradley questions during and after the training.

Discussion and Legal Analysis

Your complaint alleges your removal and exclusion from the OML training violated the OML. Chapter 241 of the Nevada Revised Statutes requires the actions of public bodies “be taken openly and that their deliberations be conducted openly.” NRS 241.010(1); *see McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). “Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies.” NRS 241.020(1). However, a person may be removed from a meeting if the person is willfully disruptive “to the extent that [the meeting’s] orderly conduct is made impractical.” NRS 241.030(4). A meeting is the gathering of the members of a public body “to deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.” NRS 241.015(3). The purpose of the training was to inform the Board concerning the OML. The Board did not deliberate toward a decision, take action, or even discuss anything over which it has supervision, control, jurisdiction, or advisory power at the training. Thus, the training was not a meeting under the OML. Additionally, though not necessary, it appears the Board’s attorney was taking steps to remove you pursuant to NRS 241.030(4), even though you were not actually removed.

FILE NO. 13897-245

Factual Background

The Board is a “public body” as defined in NRS 241.015(4) and subject to the OML. In your complaint for file No. 13897-245, you state the Board has not complied with your public records request.

Frank Wright
Page 4
January 4, 2018

Discussion and Legal Analysis

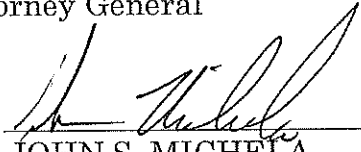
In your complaint, you state the Board has not complied with your public records request. The OML is found in Chapter 241 of the Nevada Revised Statutes. OML grants the OAG certain powers to investigate and make determinations with regard to alleged OML violations. Public records law is found in Chapter 239 of the Nevada Revised Statutes. Chapter 239 does not grant the OAG any powers with regard to alleged public records violations. The remedy available on an alleged public record violation is an application for an order from a district court. NRS 239.011. Thus, file No. 13897-245 does not contain an alleged OML violation.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close these files.

Sincerely,

ADAM PAUL LAXALT
Attorney General

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

JSM:arz

cc: Jason D. Guinasso, Counsel
Kendra Wong, Chairperson, Incline Village General Improvement District
Board of Trustees