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2
3 **OFFICE OF THE ATTORNEY GENERAL**
4 **STATE OF NEVADA**

5 In the Matter of:

6 INCLINE VILLAGE GENERAL
7 IMPROVEMENT DISTRICT - BOARD
8 OF TRUSTEES;

9 INCLINE VILLAGE GENERAL
10 IMPROVEMENT DISTRICT - AUDIT
11 COMMITTEE.

A.G. FILE NO.: 13897-260

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

12 On or about December 18, 2017, Aaron L. Katz filed a complaint (Complaint) with
13 the Office of the Attorney General (OAG) pursuant to Nevada Revised Statutes (NRS)
14 241.039 alleging violations of the Nevada Open Meeting Law (OML) by the Incline
15 Village General Improvement District Board of Trustees (Board) and by the Incline
16 Village General Improvement District Audit Committee (Committee). Mr. Katz filed a
17 supplement (Supplement) to his Complaint on January 16, 2018. The Complaint and
18 Supplement allege the Board and Committee violated the OML as follows:

19 **ALLEGATION:** The Board and Committee failed to timely approve their meeting
20 minutes for fifteen (15) meetings held between December 14, 2016, and November 15,
21 2017.

22 The OAG has statutory enforcement powers under the OML and the authority to
23 investigate and prosecute violations of the OML. NRS 241.037, NRS 241.039, NRS
24 241.040. The OAG, having reviewed the meeting schedules, minutes, and actions for
25 Board and Committee meetings occurring between December 14, 2016, and January 24,
26 2018, together with the Complaint, Supplement thereto, and the Board's Responses¹ to

27 ¹ In its Responses to the Complaint, the Board and Committee included recitations
28 of criminal history; references to prior filings deemed frivolous or alleged to be frivolous;
references to prior, unrelated, dismissed OML complaints; and references to unrelated

1 the Complaint and Supplement, issues the following FINDINGS OF FACT AND
2 CONCLUSIONS OF LAW.

3 **FINDINGS OF FACT**

4 1. The Board is the governing body of the Incline Village General Improvement
5 District (IVGID). The Washoe County Board of County Commissioners formed IVGID
6 pursuant to NRS Chapter 318. The Committee advises the Board concerning IVGID
7 financial matters.

8 2. The Board and Committee are public bodies as defined in NRS 241.015(4)
9 and are subject to the OML.

10 3. The Board approved the minutes for its meeting held on December 14, 2016,
11 on February 18, 2017, approximately sixty-six (66) days after the meeting and twenty-one
12 (21) days after the time period mandated by statute for approval of the minutes. The
13 Board held one (1) meeting prior to the expiration of the time mandated by statute at
14 which it could have approved the minutes.

15 4. The Board approved the minutes for its meeting held on March 23, 2017, on
16 May 10, 2017, approximately forty-eight (48) days after the meeting and three (3) days
17 after the time period mandated by statute for approval of the minutes. The Board held
18 two (2) meetings prior to the expiration of the time mandated by statute at which it could
19 have approved the minutes.

20 5. The Board approved the minutes for its meeting held on May 10, 2017, on
21 June 28, 2017, approximately forty-nine (49) days after the meeting and four (4) days
22 after the time period mandated by statute for approval of the minutes. The Board held
23 two (2) meetings prior to the expiration of the time mandated by statute at which it could
24 have approved the minutes.

25 6. The Board approved the minutes for its meeting held on May 24, 2017, on
26 July 20, 2017, approximately fifty-seven (57) days after the meeting and twelve (12) days

27 _____
28 litigation. The OAG did not consider these items during its investigation as they are not
relevant to the examination of the Complaint in this matter.

1 after the time period mandated by statute for approval of the minutes. The Board held
2 two (2) meetings prior to the expiration of the time mandated by statute at which it could
3 have approved the minutes.

4 7. The Board approved the minutes for its meeting held on June 12, 2017, on
5 August 22, 2017, approximately seventy-one (71) days after the meeting and twenty-six
6 (26) days after the time period mandated by statute for approval of the minutes. The
7 Board held two (2) meetings prior to the expiration of the time mandated by statute at
8 which it could have approved the minutes.

9 8. The Board approved the minutes for its meeting held on June 28, 2017, on
10 August 22, 2017, approximately fifty-five (55) days after the meeting and ten (10) days
11 after the time period mandated by statute for approval of the minutes. The Board held
12 two (2) meetings prior to the expiration of the time mandated by statute at which it could
13 have approved the minutes.

14 9. The Board approved the minutes for its meeting held on July 20, 2017, on
15 September 13, 2017, approximately fifty-five (55) days after the meeting and ten (10) days
16 after the time period mandated by statute for approval of the minutes. The Board held
17 two (2) meetings prior to the expiration of the time mandated by statute at which it could
18 have approved the minutes.

19 10. The Board approved the minutes for its meeting held on August 2, 2017, on
20 September 26, 2017, approximately fifty-five (55) days after the meeting and ten (10) days
21 after the time period mandated by statute for approval of the minutes. The Board held
22 two (2) meetings prior to the expiration of the time mandated by statute at which it could
23 have approved the minutes.

24 11. The Board approved the minutes for its meeting held on September 13, 2017,
25 on December 13, 2017, approximately ninety-one (91) days after the meeting and forty-six
26 (46) days after the time period mandated by statute for approval of the minutes. The
27 Board held two (2) meetings prior to the expiration of the time mandated by statute at
28 which it could have approved the minutes.

1 12. The Board approved the minutes for its meeting held on September 26, 2017,
2 on December 13, 2017, approximately seventy-eight (78) days after the meeting and
3 thirty-three (33) days after the time period mandated by statute for approval of the
4 minutes. The Board held one (1) meeting prior to the expiration of the time mandated by
5 statute at which it could have approved the minutes.

6 13. The Board approved the minutes for its meeting held on October 25, 2017,
7 on January 24, 2018, approximately ninety-one (91) days after the meeting and forty-six
8 (46) days after the time period mandated by statute for approval of the minutes. The
9 Board held two (2) meetings prior to the expiration of the time mandated by statute at
10 which it could have approved the minutes.

11 14. The Board approved the minutes for its meeting held on November 15, 2017,
12 on January 24, 2018, approximately seventy (70) days after the meeting and twenty-five
13 (25) days after the time period mandated by statute for approval of the minutes. The
14 Board held one (1) meeting prior to the expiration of the time mandated by statute at
15 which it could have approved the minutes.

16 15. The Committee approved the minutes for its meeting held on May 10, 2017,
17 on November 15, 2017. The Committee did not hold a meeting within forty-five (45) days
18 of May 10, 2017. The Committee held its next meeting after May 10, 2017, on September
19 13, 2017. Statute required the Committee to approve its May 10, 2017, meeting minutes
20 at its meeting of September 13, 2017.

21 16. The Committee approved the minutes for its meeting held on November 15,
22 2017, on January 24, 2018, approximately seventy (70) days after the meeting and
23 twenty-five (25) days after the time period mandated by statute for approval of the
24 minutes. The Committee held one (1) meeting prior to the expiration of the time
25 mandated by statute at which it could have approved the minutes.

26 17. As of January 30, 2018, the Board has not approved the minutes for its
27 meeting held on August 22, 2017. Prior to the expiration of the time mandated by
28 statute, the Board held two (2) meetings at which it could have approved the minutes.

1 The Board initially considered approving the minutes at its meeting held on October 25,
2 2017, approximately sixty-four (64) days after the meeting and nineteen (19) days after
3 the time period mandated by statute for approval of the minutes.

4 18. At the October 25, 2017, meeting, a member of the public requested
5 modifications to the minutes of the August 22, 2017, meeting. The Board chair asked the
6 Board clerk to review the minutes with the member of the public and approval of the
7 minutes was deferred to the meeting of November 15, 2017.

8 19. At the November 15, 2017, meeting, a power outage caused the cancellation
9 of the meeting prior to the Board's consideration of the minutes for the meeting of August
10 22, 2017, and approval of the minutes was deferred to the meeting of December 13, 2017.

11 20. At the December 13, 2017, meeting, a Board trustee had more adjustments
12 to the minutes for the meeting of August 22, 2017, and the approval was tabled. As of
13 January 22, 2018, the Board trustee had not provided the Board's clerk with all of the
14 information necessary to complete the requested adjustments to the minutes.

15 21. The Board did not consider approval of the minutes for the meeting of
16 August 22, 2017, at its meetings held on January 10, 2018, and January 24, 2018.

17 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

18 The legislative intent of the OML is that the actions of public bodies "be taken
19 openly, and that their deliberations be conducted openly." NRS 241.010(1); *see also*
20 *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit
21 and policy behind NRS Chapter 241 favors open meetings"). Minutes of a public meeting
22 "must be made available for inspection by the public within 30 working days after
23 adjournment of a meeting." NRS 241.035(2). A "working day" is "every day of the week
24 except Saturday, Sunday and any day declared to be a legal holiday pursuant to NRS
25 236.015." NRS 241.015(6). "Unless good cause is shown, a public body shall approve the
26 minutes of a meeting within 45 days after the meeting or at the next meeting of the
27 public body, whichever occurs later." NRS 241.035(1). A "day" is a calendar day. *See*
28 NRS 676A.120 and NRS 107A.070.

1 The term “public body” includes any “administrative, advisory, executive or
2 legislative body of the State or a local government which expends or disburses or is
3 supported in whole or in part by tax revenue” NRS 241.015(4)(a).

4 The Complaint alleges the Board and Committee did not timely approve the
5 minutes for fifteen (15) meetings held December 14, 2016, through November 15, 2017.
6 The Board and Committee make two (2) arguments concerning time in which minutes
7 must be approved. One, the statutory time by which a public body must approve the
8 minutes for a meeting does not expire until the next meeting of the public body occurring
9 after the expiration of forty-five (45) days from the date of the meeting for which
10 approved minutes are required. Two, the forty-five (45) days set out in statute are
11 working days. These arguments are erroneous.

12 The statutory time by which a public body must approve the minutes for a meeting
13 is not the next meeting after the expiration of forty-five (45) days from the meeting.
14 “When a statute is clear on its face, we will not look beyond the statute’s plain language.”
15 *Washoe Medical Ctr. v. Second Judicial Dist. Court*, 112 Nev. 1298, 1302 (2006). The
16 plain language of NRS 241.035(1) sets out “a public body shall approve the minutes of a
17 meeting within 45 days after the meeting or at the next meeting of the public body,
18 whichever occurs later.” The statute states the later of 45 days or the “next meeting.” If
19 counsel’s argument were correct, the disjunctive nature of the statute would not be
20 required; statute would have designated the time period in which minutes could be
21 approved as “no later than the first meeting following the expiration of 45 days from the
22 meeting.” If the “next meeting” occurs inside of forty-five (45) days from the meeting,
23 then the later of forty-five (45) days or the “next meeting” is forty-five (45) days from the
24 meeting.

25 The forty-five (45) days designated for approval of minutes is calendar days and
26 not working days. “Generally, when the legislature has employed a term or phrase in one
27 place and excluded it in another, it should not be implied where excluded.” *Coast Hotels*
28 *and Casinos, Inc. v. Nevada State Labor Com’n*, 117 Nev. 835, 841 (2001). A “working

1 day” is “every day of the week except Saturday, Sunday and any day declared to be a legal
2 holiday pursuant to NRS 236.015.” NRS 241.015(6). A “day” is a calendar day. See NRS
3 676A.120 and NRS 107A.070. The legislature was clearly aware of the distinction
4 between a working day and a calendar day when it enacted NRS Chapter 241. In fact,
5 the legislature explicitly recognized working days in NRS 241.035(2), concerning making
6 minutes available to the public. However, the legislature, in the same statute, declined to
7 specify the forty-five (45)-day requirement for a public body to approve minutes was
8 “working” days. NRS 241.035(1). Instead, it only specified “days,” which are calendar
9 days, and the OAG will not imply “working day” when the legislature only specified “day.”
10 The forty-five (45) days in which a public body has to approve minutes clearly refers to
11 calendar days.

12 The Board also argues it had good cause not to approve the minutes from the
13 meeting of August 22, 2017, within the statutory time. The required approval period set
14 out in NRS 241.035(1) contains an exception: “unless good cause is shown.” Good cause is
15 a “legally sufficient reason.” BLACK’S LAW DICTIONARY 213 (7th ed. 1999). Basically, good
16 cause is a real reason.

17 In the case of the minute approval for the Board’s meeting of August 22, 2017, the
18 Board indicated it had good cause to delay approval of the minutes at its meetings of
19 October 25, 2017; November 15, 2017; and, December 13, 2017. The good cause claimed
20 for the meeting held on October 25, 2017, was a member of the public requested revisions
21 to the minutes while the Board clerk was on vacation and the Board clerk was still on
22 vacation on October 25, 2017. The good cause claimed for the meeting held on November
23 15, 2017, was a power outage during the meeting causing the meeting items occurring
24 after the power outage, including approval of the minutes, to be moved to the next
25 meeting. The good caused claimed for the meeting held on December 13, 2017, was a
26 recently discovered apparently important missing period of time from the minutes. All of
27 these appear to be real reasons supporting a delay in approving the minutes and not
28

1 concocted reasons seeking to avoid compliance with the statute. The OAG finds each of
2 these three (3) instances of claimed good cause to actually be good cause.

3 The Board further claims the failure of the Board trustee requesting revisions to
4 provide all of the requested revisions to the Board's clerk by January 22, 2018, was good
5 cause not to approve the minutes of August 22, 2017, at the Board's meetings held on
6 January 10, 2018, and January 24, 2018. The Board trustee discussed the desired
7 changes at the meeting held on December 13, 2017. If any additional information was
8 required to make the requested changes to the minutes, the trustee should have provided
9 it as soon as practicable after the meeting. A member of a public body must provide any
10 information necessary to make the member's requested changes to the public body's
11 minutes as soon as practicable after the meeting at which the member requests the
12 changes. Thus, the OAG finds good cause did not exist to excuse approval of the minutes
13 of August 22, 2017, at the meetings of January 10, 2018, and January 24, 2018. The
14 Board did not offer any claim of good cause excusing its failure to approve the minutes of
15 August 22, 2017, at its meetings of September 13, 2017, and September 26, 2017.
16 Further, the Board and Committee did not claim good cause in the other fourteen (14)
17 instances when they failed to timely approve minutes.

18 Based on the Findings of Fact and Legal Standard and Conclusions of Law as set
19 out above, the OAG finds the Board and Committee failed to approve minutes as required
20 by NRS 241.035(1) fifteen (15) times.

21 It should be noted, however, that there are no allegations or findings concerning
22 the Board or Committee being out of compliance with NRS 241.035(2) concerning the
23 production of minutes and making such minutes available to the public. This finding is a
24 finding that the Board and Committee failed to formally approve the minutes as required
25 by statute.

26 SUMMARY AND INCLUSION OF AGENDA ITEM

27 If the Attorney General investigates a potential OML violation and makes findings
28 of fact and conclusions of law that a public body has taken action in violation of the OML,

1 “the public body must include an item on the next agenda posted for a meeting of the
2 public body which acknowledges the findings of fact and conclusions of law.” NRS
3 241.0395. The public body must treat the opinion of the Attorney General as supporting
4 material for the agenda item in question for the purpose of NRS 241.020. *Id.*

5 Here, upon investigating the present Complaint, the OAG makes findings of fact
6 and conclusions of law that the Board and Committee committed violations of the OML
7 by failing to approve meeting minutes within the statutorily required time fifteen (15)
8 times. Therefore, the Board and Committee must place on their next meeting agendas
9 these Findings of Fact and Conclusions of Law and include them in the supporting
10 material for the meetings. The agenda items must acknowledge these Findings of Fact
11 and Conclusions of Law to be the result of the OAG investigation in the matter of
12 Attorney General File No. 13897-260, and that it has been placed there as a requirement
13 of NRS 241.0395.²

14 DATED this 21st day of February, 2018.

16 ADAM PAUL LAXALT
17 Attorney General

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26 ² Complainant expressed concern that the OAG and counsel for the Board and
27 Committee might be negotiating the penalty for these findings during the OAG’s
28 examination of this matter. However, with the exception of requesting responses, the OAG
did not communicate with the Board, Committee, or their counsel. The OAG has a strict
non-communication policy outside of the complaint/response/fact-gathering process during
its examinations of OML complaints.