



STATE OF NEVADA
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September 30, 2016

via First Class Mail

Linda S. Newman
PO Box 5685
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Re: Open Meeting Law Complaint, O.A.G. File No. 13897-204
Incline Village General Improvement District Board of Trustees

Dear Ms. Newman:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging a violation of the Nevada Open Meeting Law (OML) by the Incline Village General Improvement District (IVGID) Board of Trustees (Board) at a public meeting held on July 7, 2016. The complaint alleges that agenda item No. G(3) for the meeting was not clear and complete in compliance with NRS 241.020(2)(d)(1) and (2).

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 the complaint, the OAG reviewed the public notice, agenda and supporting material, written minutes, and audio recording of the meeting, together with a response to the complaint from Jason Guinasso, Esq., General Counsel for the Board.

FACTUAL BACKGROUND

The Board is created pursuant to NRS Chapter 318, and is a "public body" as defined in NRS 241.015(4), subject to the OML. Agenda item No. G(3) for the Board's July 7, 2016, meeting read as follows:

3. Review and Approve the Second Amended and Restated Franchise Agreement to Provide Solid Waste and Recyclables Collection Services; Incline Village General Improvement District and Reno Disposal Co.,

dba Incline Sanitation Co. **and** authorize Chair and Secretary to execute the Second Amended and Restated Franchise Agreement to Provide Solid Waste and Recyclables Collection Services; Incline Village General Improvement District and Reno Disposal Co., dba Incline Sanitation Co. based on a review by Staff and General Counsel (Requesting Staff Member: General Manager Steve Pinkerton; presented by Director of Public Works Joe Pomroy) - pages 79-139.

The agenda item provided a specific reference to pages 79–139 of the supporting materials, which were made available to the public at the time they were provided to the Board trustees. The supporting material was extensive and included a complete copy of the Franchise Agreement, details on the solicitation and negotiation of the Franchise Agreement, the projected financial impact of the Franchise Agreement, and a PowerPoint presentation explaining the Franchise Agreement.

During public comment at the beginning and again at the end of the meeting, Aaron Katz offered detailed comment in opposition to the Franchise Agreement. Kevin Lyons offered comment at the beginning and again at the end of the meeting apparently directed at Agenda item No. G(3), that took exception to whether the agenda item was clear and complete.

After presentations by staff and extensive discussion, Board Trustee Hammerel moved “to approve the Second Amended and Restated Franchise Agreement to Provide Solid Waste and Recyclables Collection Services; Incline Village General Improvement District and Reno Disposal Co., dba Incline Sanitation Co.” Trustee Horan seconded the motion. The motion passed with Trustees Hammerel, Dent, Horan and Wong voting in favor; Trustee Callicrate was not present to vote.

DISCUSSION AND LEGAL ANALYSIS

NRS 241.020(2)(d)(1) requires that an agenda must include a “clear and complete statement of the topics scheduled to be considered during the meeting” while NRS 241.020(2)(d)(2) requires that an agenda must include a “list describing the items on which action may be taken and clearly denoting that action may be taken on those items.” *See also Sandoval v. Board of Regents*, 119 Nev. 148, 154, 67 P.3d 902, 906 (2003) (“discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic”).

Agenda item No. G(3) is clear and complete on its face. The agenda item was identified “for possible action” and accurately reflects the action taken: approval of the Franchise Agreement itself and, consequently, authorization to the Board Chair

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and Secretary to execute the Franchise Agreement. The substance of the public comments concerning agenda item No. G(3) further demonstrate that the public understood that the potential action to be taken was approval of a new agreement with Reno Disposal Co., dba Incline Sanitation Co., to provide solid waste and recyclables collection services to the residents of Incline Village.

The complaint further asserts that agenda item No. G(3) was not "clear and complete" in that it did not specify the impact that the approval of the Franchise Agreement would have upon the residents of Incline Village. "A higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public." *Sandoval*, 119 Nev. at 154-55, 67 P.3d at 906 (citations omitted). However, agenda item No. G(3) complied with the statutory mandate to provide the public clear notice that the Board would deliberate and potentially take action on approval of the Franchise Agreement. NRS 241.020(2)(d)(1) does not require that the agenda item include speculation as to the full impact that such a decision might have, nor would such a requirement be reasonable. "A statute should be construed in light of the policy and the spirit of the law, and the interpretation should avoid absurd results." *Hunt v. Warden*, 111 Nev. 1284, 1285, 903 P.2d 826, 827 (1995) (citations omitted). Moreover, the extensive supporting material agenda item No. G(3) provided transparency on the potential impact of the action taken.


CONCLUSION

The OAG finds that no violation of the OML occurred, and the OAG will be closing its file this matter.

Sincerely,

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By:



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cc: Jason Guinasso, Esq.