



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street  
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT  
*Attorney General*

April 18, 2016

WESLEY K. DUNCAN  
*First Assistant Attorney General*

NICHOLAS A. TRUTANICH  
*First Assistant Attorney General*

**Via First Class Mail**

Aaron L. Katz  
PO Box 3022  
Incline Village, NV 89450

Re: Open Meeting Law Complaint, A.G. File Nos. 13897-171/180  
Incline Village General Improvement District Board of Trustees

Dear Mr. Katz:

The Office of the Attorney General (OAG) is in receipt of your complaints alleging violations of the Nevada Open Meeting Law (OML) by the Incline Village General Improvement District (IVGID) Board of Trustees (Board). The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 2141.039.

Complaint No. 13897-171 alleges that that the Board violated the OML at a public meeting held on September 16, 2015. Complaint No. 13897-180 alleges that that the Board violated the OML at a public meeting held on November 18, 2015. In response to the complaint, the OAG reviewed the public notice, agenda and supporting material for both the meetings, the written minutes, audio and video recordings of the meetings, together with a response to each complaint from Devon T. Reese, Esq., General Counsel for the Board. Because the complaints are related as further detailed below, they are addressed jointly in this response.

**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.

Complaint No. 13897-171 alleges numerous violations of the OML at the Board's September 16, 2015, meeting; during this meeting the Board interviewed 10 candidates for appointment to a vacancy on the Board and selected a candidate for appointment. Specifically, the complaint alleges:

- 1) That the public notice and revised agenda for the meeting was not timely posted in compliance with NRS 241.020(2);
- 2) That the public notice and revised agenda failed to comply with NRS 241.020(2)(d)(5); and
- 3) That the Board's Chairperson and General Counsel violated NRS 241.020(2)(d)(7) when Mr. Katz was providing public comment.

Complaint No. 13897-180 alleges that at the Board's November 18, 2015, meeting, the Board failed to include the substance of Mr. Katz's remarks during public comment at the September 16<sup>th</sup> meeting when approving the minutes of that meeting, in violation of NRS 241.035(1)(d).

### **DISCUSSION AND LEGAL ANALYSIS**

**Issue #1: Whether the public notice and revised agenda for the meeting was posted in strict compliance with NRS 241.020(2).**

Public bodies must comply with NRS 241.020(2) by providing public notice of all meetings at least 3 working days before a meeting. NRS 241.020(3) further requires that public notice be posted no later than later than 9 a.m. of the third working day before the meeting, that public notice be posted at the office of the public body or the location of meeting and not less than three other separate, prominent places within the jurisdiction, that public notice be posted to the official website of the State pursuant to NRS 232.2175, and that the public notice be provided to any person who has requested notice.

The public notice and revised agenda for the Board's September 16<sup>th</sup> meeting includes a "certification of posting" from the Clerk to the Board, Susan A. Herron, certifying that the public notice and revised agenda was posted in compliance with the statutory requirements on or before Friday, September 11, 2015 at 9 a.m. Mr. Katz alleges that because he is a person who has requested notice of the meetings of the Board pursuant to NRS 241.020(3)(c), and because he received the public notice and revised agenda via electronic mail at 12:54 p.m. on Friday, September 11, 2015, the public notice and revised agenda for the meeting was not posted in strict compliance with NRS 241.020. However, NRS 241.020(3)(c) states:

The notice must be:

- (1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

The plain language of the statute establishes that if a person requesting public notice agrees to receive the notice by electronic mail, the public body at its discretion may provide notice by either method. "When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." *Nevada Power Co. v. Pub. Util. Comm'n*, 122 Nev. 821, 837, 138 P.3d 487, 495 (2006) (citations omitted).

The certification of posting from Ms. Herron indicates that the public notice and revised agenda was delivered to the postal service in compliance with NRS 241.020(3)(c)(1). Delivery by electronic mail was therefore unnecessary, and to the extent Mr. Katz was provide a copy the public notice and revised agenda via electronic mail at 12:54 p.m., it was merely as a courtesy.

**Issue #2: Whether the public notice and revised agenda failed to comply with NRS 241.020(2)(d)(5).**

NRS 241.020(2)(d)(5) was amended during the 2015 Legislative Session by Senate Bill 70 to require that if, during any portion of a meeting, a public body will consider whether to take administrative action regarding a person, the public notice and agenda must include the name of that person. NRS 241.020(2)(d)(5) applied to the Board's interviews and selection of a candidate for appointment to a vacancy on the Board. The public notice and revised agenda for the Board's September 16<sup>th</sup> meeting included the names of all ten candidates in compliance with the statute.

**Issue #3: Whether the Board's Chairperson and General Counsel violated NRS 241.020(2)(d)(7) when Mr. Katz was providing public comment.**

A public body has a legitimate interest in conducting orderly meetings. Public bodies may adopt reasonable restrictions to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. "Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint." NRS 241.020(2)(d)(7); *see also Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266 (9th Cir. 1995). Restrictions on public comment must be included on the agenda.

The public notice and revised agenda for the September 16<sup>th</sup> Board meeting included the follow statement:

Public Comment Advisory Statement – Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.

Mr. Katz alleges that the Board's Chairperson and General Counsel violated NRS 241.020(2)(d)(7) when Mr. Katz was providing public comment. Specifically, he alleges that he was admonished and eventually cut off after he made comments in opposition to the candidacy of Joe Wolfe for appointment to the vacancy on the Board.

The Chairperson and General Counsel deemed the comments slanderous, offensive and inflammatory and concluded that Mr. Katz's conduct was willfully disruptive. The decision whether to cut off a speaker in such circumstances is left to the discretion of the presiding officer of the public body. See *White v. City of Norwalk*, 900 F.2d 1421, 1425-26 (9th Cir. 1990). The actions of the Chairperson and General Counsel in response to Mr. Katz's conduct during public comment at the September 16<sup>th</sup> Board meeting were not a violation of the OML.

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**Issue #4: Whether the Board failed to include the substance of Mr. Katz's remarks during public comment at the September 16<sup>th</sup> meeting when approving the minutes of that meeting, in violation of NRS 241.035(1)(d).**

NRS 241.035(1) requires public bodies to keep written minutes of meetings, including:

(d) 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.

Mr. Katz alleges that the Board failed to include the substance of Mr. Katz's remarks during public comment at the September 16<sup>th</sup> meeting when approving the minutes of that meeting. However, there is no requirement that verbatim remarks be included in the minutes at the request of any person. The minutes accurately reflect that Mr. Katz opposed Mr. Wolfe's candidacy. Furthermore, Mr. Katz declined to provide written remarks regarding his opposition to Mr. Wolfe's candidacy for inclusion in the minutes.

#### CONCLUSION

No violation of the OML occurred; the OAG will be closing its files on both matters.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By: 

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BRETT KANDT  
Chief Deputy Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1201

WBK/klr

cc: Kendra Wong, IVGID Board Chairperson  
Devon T. Reese, Esq.