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555 E. Washington Avenue, Suite 3900
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Via U.S. Mail

Frank Wright

Re: Open Meeting Law Complaint, O.A.G. File No. 13897-233
Incline Village General Improvement District Board of Trustees

Dear Mr. Wright:

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 Board of Trustees (Board) regarding meetings between Trustees and the Board's General Manager. The Complaint alleges that Trustees conduct "walking quorums" through serial communications with the General Manager during one-on-one meetings prior to public Board meetings.

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 Complaint and attachments, as well as the response to the Complaint from the Board's counsel, Jason Guinasso, including sworn affidavits from Board staff and all five Trustees.

FACTUAL BACKGROUND

The Board is a "public body" as defined in NRS 241.015(4), subject to the OML. The Trustees meet with the Board's General Manager, Steve Pinkerton, on an individual basis roughly every two weeks. The purpose of the meetings is for the General Manager to review supporting materials for the next public Board meeting and to answer any questions the Trustees may have. A quorum is never present at these meetings and the Trustees do not discuss the opinions and planned votes of other Trustees.

DISCUSSION AND LEGAL ANALYSIS

The Nevada Legislature intends that 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). While the spirit and policy behind the OML favors open meetings, the OML is not intended to prohibit every private discussion of a public issue. *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 95 (2003). The OML only prohibits “collective deliberations or actions where a quorum is present.” *Id.* Thus, absent substantial evidence of serial communications to support a finding of action or deliberation toward a decision, private briefings of less than a quorum of a public body do not violate the OML. *Id.* at 88-89.


Here, the purpose of the meetings between the Trustees and the General Manager was to provide a period in which the Trustees were presented with information contained in supporting materials and for the Trustees to ask questions. Each Trustee signed an affidavit stating that they did not attend the meetings with the intent to circumvent the OML and that they do not provide their opinions regarding items on upcoming Board meeting agenda. The OAG does not find substantial evidence of serial communications to support a finding of action or deliberation toward a decision. Thus, the meetings do not constitute a violation of the OML.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. Nonetheless, the OAG advises the Trustees and General Manager to be mindful of engaging in any communications that may undermine the public’s faith in transparency and open government. The OAG will close the file regarding this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 
CAROLINE BATEMAN
Chief Deputy Attorney General
Boards and Open Government Division

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cc: Jason D. Guinasso, Counsel

Incline Village General Improvement District Board of Trustees