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June 26, 2013

Judith L. Miller
P. O. Box 3022
Incline Village, Nevada 89450

Re: Open Meeting Law Complaint / AG File No. 13-005
Mountain Golf Course District

Dear Ms. Miller:

This Open Meeting Law (OML) Complaint alleged multiple violations of NRS 241.020 by the Mountain Golf Course District Venue Advisory Team (DVAT). The Complaint alleges that Mountain Golf DVAT is a public body formed by Incline Village General Improvement District Board of Trustees (IVGID), which has met several times, but it has never published a notice, agenda, or minutes of meetings.

It is alleged that Mountain Golf DVAT had its inception during a meeting of IVGID Trustees in March of 2012. Since then four meetings have taken place, the most recent one being March 4, 2013.

We reviewed the minutes of the March 28, 2012, meeting, the attachments to the Complaint, and IVGID's response, which included General Manager (G.M.) Bill Horn's Declaration regarding the formation and purpose of the Mountain Golf DVAT and other DVATs over the past 11 years.

G.M. Horn asserted in his Declaration that the formation of Mountain Golf DVAT was at his direction and that it reported only to him, not to the Board of Trustees.

IVGID has been utilizing "DVATs" since approximately 2002. G.M. Horn stated that they are used only as a "tool" to gather data and community input on specific topics. DVAT then provides community input information to him or his staff, but it does not make any decisions or recommendations to the Board of Trustees.

G.M. Horn states in his Declaration that Trustee Epstein's suggestion during the March 28, 2012, IVGID Board of Trustee public meeting, to form an advisory group for purposes of the Mountain Golf Course project had already begun. At the March 28, 2012, meeting G.M. Horn selected a member of his staff to chair the Mountain Golf DVAT, while other members either volunteered at the meeting, or were selected from staff.

Legal counsel for IVGID provided the background for the development of the idea of using DVATs. Initially, the aim was to avoid creating a public body. Criteria were developed in conjunction with G.M. Horn. Criteria to avoid the creation of a public body included: (1) no financial support from tax revenue, (2) DVAT would not make recommendations or advise the Board of Trustees, (3) its membership would not include a quorum of the Board Trustees, and (4) DVAT would report to the General Manager, not the Board of Trustees.

G.M. Horn invited you and Aaron Katz to attend the Mountain Golf DVAT on March 4, 2013. Invitations to attend future meetings by any interested person were also extended.

Discussion

Whether Mountain Golf DVAT is a Public Body

NRS 241.015(3) specifically includes committees, subcommittees, or subsidiaries thereof within the definition of a "public body." A committee or subcommittee is covered by the law whenever a quorum of the committee or subcommittee gathers to deliberate or make a decision including taking action to make a recommendation to the parent body. OML Manual § 3.04.

The OML does not define "committee, subcommittee or subsidiary thereof." The Attorney General advises that to the extent a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the OML. See OMLO 2002-017 (April 18, 2002), and OMLO 2002-27 (June 11, 2002). *But see* AG File No. 07-030 (September 10, 2007) (OML does not apply to the appointment of a citizen advisory panel to advise Las Vegas City Manager when acting in his official capacity (see *infra* at § 3.03.).

If a sub-committee recommendation to a parent body is more than mere fact-finding, so that the sub-committee has to choose or accept options, decide to accept certain facts while rejecting others, or to make any type of choice in order to create a recommendation, then it has participated in the decision-making process and is subject to OML.

The Complaint did not allege that Mountain Golf DVAT had participated in the decision-making process or that it had been tasked with making a recommendation to IVGID's Board of Trustees. The gravamen of the Complaint is that DVAT is a public

body that has violated the OML because it has never published a notice and agenda or kept minutes.

The Office of the Attorney General opined that formality in appointment is not the sole dispositive factor in determining what constitutes a public body under the OML, and informality in the appointment should not be an escape from it; to hold otherwise would encourage circumvention of the Open Meeting Law through the use of unofficial committees. We found no evidence of formal or informal appointment of the Mountain Golf DVAT by the Trustees.

Conclusion

Our review of statements, the minutes of March 28, 2012, and February 27, 2013, public meetings, Bill Horn's Declaration, legal counsel's statement and response, and several General Manager Reports (submitted to the Trustees updating them on progress of various DVATS), did not provide any evidence or support for the assertion that Mountain Golf DVAT is a public body subject to the OML.

The minutes of the March 12, 2012, meeting did not indicate that the Mountain Golf DVAT was formally or informally appointed by the Board of Trustees or given any task requiring it to make a recommendation. The minutes of this meeting indicate that G.M. Horn appointed the members or secured volunteers during the meeting. The Trustees did not participate in creating the membership, although two Trustees volunteered to serve on the DVAT.

There was no evidence that Mountain Golf DVAT performed any role other than community input. It did not make any recommendations or decisions to the Trustees. Staff provided updates on DVAT progress at various meetings, but every update or report carefully stated that DVATs are formed at the direction of the District General Manager as a tool to gather data and community input. It is clear that DVATs were not asked to participate in the decision process for any project, and that it is the General Manager who tasks the DVAT to undertake research.

The issue of public participation with DVATs and possible intersection with the role of the OML has been raised by this Complaint. IVGID and the G.M. Horn are addressing this issue. G.M. Horn stated in response to your comments, at its February 27, 2013, public meeting, that staff would make every effort to make everyone feel welcome at the DVAT meetings and that public comment would be allowed at DVAT meetings. In G.M. Horn's March 4, 2012, report to IVGID, he stated that all DVAT meetings would be posted to IVGID's public calendar.

The strict letter of the law, regarding creation of a group outside the OML definition of a public body was followed, but we are glad to see that IVGID seeks to widen access to DVAT meetings. These efforts are in harmony with the spirit of the OML.

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We will not consider the other allegations in the Complaint since the determination that Mountain Golf DVAT is not a public body is dispositive of the other issues.

We are closing our file on this matter.

Sincerely,

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Attorney General

By:



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GHT/rmh

cc: T. Scott Brooke, Esq., Counsel to Incline Village General Improvement District
Incline Village General Improvement District board members:
Bruce Simonian, Chairman
Joe Wolfe, Vice Chairman
Bill Devine, Treasurer
Jim Smith, Secretary
Jim Hammerel, Trustee