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

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

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. The OAG, having reviewed the meeting schedules, minutes, and actions for Board and Committee meetings occurring between December 14, 2016, and January 24, 2018, together with the Complaint, Supplement thereto, and the Board's Responses\(^1\) to

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\(^1\) In its Responses to the Complaint, the Board and Committee included recitations 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
the Complaint and Supplement, issues the following FINDINGS OF FACT AND CONCLUSIONS OF LAW.

**FINDINGS OF FACT**

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

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

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

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

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

6. The Board approved the minutes for its meeting held on May 24, 2017, on July 20, 2017, approximately fifty-seven (57) days after the meeting and twelve (12) days after the time period mandated by statute for approval of the minutes. The Board held one (1) meeting prior to the expiration of the time mandated by statute at which it could have approved the minutes.

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

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

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

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

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

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

11. The Board approved the minutes for its meeting held on September 13, 2017,
on December 13, 2017, approximately ninety-one (91) days after the meeting and forty-six
(46) days after the time period mandated by statute for approval of the minutes. The
Board held two (2) meetings prior to the expiration of the time mandated by statute at
which it could have approved the minutes.
12. The Board approved the minutes for its meeting held on September 26, 2017, on December 13, 2017, approximately seventy-eight (78) days after the meeting and thirty-three (33) days after the time period mandated by statute for approval of the minutes. The Board held one (1) meeting prior to the expiration of the time mandated by statute at which it could have approved the minutes.

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

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

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

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

17. As of January 30, 2018, the Board has not approved the minutes for its meeting held on August 22, 2017. Prior to the expiration of the time mandated by 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, 2017, approximately sixty-four (64) days after the meeting and nineteen (19) days after the time period mandated by statute for approval of the minutes.

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

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

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

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

**LEGAL STANDARDS AND CONCLUSIONS OF LAW**

The legislative intent of the OML is that the actions of public bodies “be taken openly, and that their deliberations be conducted openly.” NRS 241.010(1); see also *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind NRS Chapter 241 favors open meetings”). Minutes of a public meeting “must be made available for inspection by the public within 30 working days after adjournment of a meeting.” NRS 241.035(2). A “working day” is “every day of the week except Saturday, Sunday and any day declared to be a legal holiday pursuant to NRS 236.015.” NRS 241.015(6). “Unless good cause is shown, a public body shall approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later.” NRS 241.035(1). A “day” is a calendar day. See NRS 676A.120 and NRS 107A.070.
The term “public body” includes any “administrative, advisory, executive or legislative body of the State or a local government . . . . which expends or disburses or is supported in whole or in part by tax revenue . . . ." NRS 241.015(4)(a).

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

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

The forty-five (45) days designated for approval of minutes is calendar days and not working days. “Generally, when the legislature has employed a term or phrase in one place and excluded it in another, it should not be implied where excluded.” Coast Hotels and Casinos, Inc. v. Nevada State Labor Com’n, 117 Nev. 835, 841 (2001). A “working
day” is “every day of the week except Saturday, Sunday and any day declared to be a legal holiday pursuant to NRS 236.015.” NRS 241.015(6). A “day” is a calendar day. See NRS 676A.120 and NRS 107A.070. The legislature was clearly aware of the distinction between a working day and a calendar day when it enacted NRS Chapter 241. In fact, the legislature explicitly recognized working days in NRS 241.035(2), concerning making minutes available to the public. However, the legislature, in the same statute, declined to specify the forty-five (45)-day requirement for a public body to approve minutes was “working” days. NRS 241.035(1). Instead, it only specified “days,” which are calendar days, and the OAG will not imply “working day” when the legislature only specified “day.” The forty-five (45) days in which a public body has to approve minutes clearly refers to calendar days.

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

In the case of the minute approval for the Board’s meeting of August 22, 2017, the Board indicated it had good cause to delay approval of the minutes at its meetings of October 25, 2017; November 15, 2017; and, December 13, 2017. The good cause claimed for the meeting held on October 25, 2017, was a member of the public requested revisions to the minutes while the Board clerk was on vacation and the Board clerk was still on vacation on October 25, 2017. The good cause claimed for the meeting held on November 15, 2017, was a power outage during the meeting causing the meeting items occurring after the power outage, including approval of the minutes, to be moved to the next meeting. The good cause claimed for the meeting held on December 13, 2017, was a recently discovered apparently important missing period of time from the minutes. All of these appear to be real reasons supporting a delay in approving the minutes and nct
concocted reasons seeking to avoid compliance with the statute. The OAG finds each of these three (3) instances of claimed good cause to actually be good cause.

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

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

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

**SUMMARY AND INCLUSION OF AGENDA ITEM**

If the Attorney General investigates a potential OML violation and makes findings of fact and conclusions of law that a public body has taken action in violation of the OML,
“the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The public body must treat the opinion of the Attorney General as supporting material for the agenda item in question for the purpose of NRS 241.020. *Id.*

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

DATED this 21st day of February, 2018.

ADAM PAUL LAXALT
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² Complainant expressed concern that the OAG and counsel for the Board and Committee might be negotiating the penalty for these findings during the OAG's 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.