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October 31, 2024

Via U.S. Mail

Mr. Aaron L. Katz  
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-498  
Incline Village General Improvement District**

Dear Mr. Katz:

The Office of the Attorney General (OAG) is in receipt of your Complaint alleging violations of the Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board), which may be summarized as follows:

**ALLEGATION NO. 1:** The wording of item G(1) on the September 19, 2023, agenda was too broad to place the public on notice that the Board would select golf committee applicants by revealing material concerning their professional competence.

**ALLEGATION NO. 2:** The wording of item F(2) on the August 9, 2023 agenda failed to adequately notice a Capital Investment Committee applicant that the Board intended to embarrass him and would select members by revealing material concerning their professional competence.

**ALLEGATION NO. 3:** The Board proceeded with item G(1) during its September 19, 2023 meeting without prior notice to candidates it would consider their professional competence or receiving proof of such notice, and instead removed candidates from the pool of applicants.

**ALLEGATION NO. 4:** Golf committee applicants involuntarily waived their right to NRS 241.033(1) notice in advance of the September 19, 2023, public meeting.

**ALLEGATION NO. 5:** The waivers of notice were invalid because there is no record that applicants were informed in writing that the waivers were voluntary and of the statutory rights they were asked to waive.

**ALLEGATION NO. 6:** Notice given by the Board did not contain a required list of the general topics concerning the person to be considered by the public body and a statement of the procedural provisions.

**ALLEGATION NO. 7:** The Board failed to approve the minutes of its July 26, 2023, meeting within the statutory timeframe.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040. In response to your complaints, the OAG reviewed your complaint and attachments; the Board's response; agenda and minutes from the Board's August 9, 2023, meeting; video from the Board's September 19, 2023, meeting;<sup>1</sup> and agenda and minutes from the Board's September 19, 2023, meeting.

### **FACTUAL BACKGROUND**

The Board held a public meeting on July 26, 2023, and subsequent public meetings on August 9, 2023, and August 30, 2023. Per the Complaint, Board staff received the transcript of the minutes of the July 26, 2023, meeting on August 7, 2023.

The Board held a public meeting on September 19, 2023. At this meeting, it approved the minutes of the July 26, 2023, meeting. On the September 19, 2023, meeting agenda item G(1) read:

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<sup>1</sup> The OAG reviewed the Board's September 19, 2023, meeting at: <https://livestream.com/ivgid/events/10967159>.

“G. GENERAL BUSINESS (for possible action)

1. **SUBJECT:** Review, discuss and possibly appoint members of the community to the Board Advisory Committee on Golf (Requesting Trustee: Trustee Tonking).

Applicants are Armand Jay Simon Jr., Steven Ross, Robert Watson, Elyse Gut, John E. Johnson, Polly Wolfe, Katherine C. Holland, Robert A. Riccitelli, Harry N. Swenson, Judith Miller, Todd Wilson, Frank Wright.”

Prior to the meeting, Board staff sent a waiver of notice via email to all candidates, which read:

“The Board of Trustees of the Incline Village General Improvement District will be considering your application to serve on an advisory committee at its September 19th meeting. Pursuant to NRS 241.033(1), in order to consider the professional competence of an individual, notice is provided to that person of the time and place of the meeting in compliance with such statutory provisions.

By signing below, I knowingly and voluntarily waive my rights to all written notice requirements under to [sic] NRS 241.033(1).”

The email from Board staff to candidates stated, “This is a required document prior to tonight’s IVGID Board of Trustees meeting.” All candidates except for Judith Miller and Frank Wright signed the waiver. During initial public comment under item C, Mr. Wright withdrew his application for the golf advisory committee.

During item G(1), Board counsel advised that if Board members wanted to engage in a discussion of applicants’ competency, they could either postpone a decision and provide Ms. Miller notice by mail or personal service, or they could remove her from the pool of potential applicants.

The Board opted not to discuss the candidates but instead select candidates based on submitted forms and not disqualify Ms. Miller from consideration for not signing the waiver.

## LEGAL ANALYSIS

The Board is a public body as defined in NRS 241.015(5) and subject to the OML.

**1. The Board did not violate the OML’s clear and complete requirement at its September 19, 2023, meeting and did not need to provide NRS 241.033 notice to Complainant.**

A meeting agenda must include a “clear and complete statement of the topics ... to be considered during the meeting.” NRS 241.020(3)(d)(1). Item G(1) on the Board’s September 19, 2023, agenda stated that the Board would, “Review, discuss and possibly appoint members of the community to the Board Advisory Committee on Golf.” Mr. Katz alleges this statement was too broad to place the public on notice that the Board intended to “ambush” and publicly embarrass applicants by revealing material about their professional competence, and the Board exceeded the scope of the agenda item. Further, Mr. Katz alleges that advertisements soliciting applications to the golf advisory committee did not disclose that applicants’ competency would be considered.

Neither NRS 241.020(3)(d)(1) nor the notice provisions of NRS 241.033 require the Board to provide notice to the public that a particular individual’s “character, misconduct, or professional competence” will be discussed. NRS 241.020(3)(d)(4) requires the Board to list on the agenda the names of any person whose professional competence will be considered in a closed portion of the meeting. However, this provision is not applicable since no part of the September 19, 2023, meeting was closed for such a purpose. NRS 241.033(2) requires notice be given to a person before the Board may discuss their “character, alleged misconduct or professional competence,” but does not require that every member of the public be given notice of such discussion. The Board was not required to provide Mr. Katz, as a member of the public, notice that it would consider Ms. Miller’s character and competency during the September 19, 2023, public meeting.

Further, the Board did not exceed the scope of the agenda item. Mr. Katz cites to the OML manual’s determination that a “similar agenda item” which read “election of CEO to receive contractual bonus” was insufficient to give notice to a CEO that his character and professional competence

would be considered and exceeded the scope of the agenda item.<sup>2</sup> However, no such difference between the agenda item and actual Board action exists here. The scope of item G(1) was discussion and possible appointment of members of the golf advisory committee, and Board members proceeded to forego discussion and make their appointments. The Board, therefore, stayed within the scope of discussion and appointment of members to the golf advisory committee.

Mr. Katz does not allege any facts from the September 19, 2023, meeting to substantiate his claim that the Board “ambushed” applicants. The only evidence Mr. Katz cites of the Board’s intent to embarrass applicants is an event that allegedly transpired at a different meeting to a different individual. Here, the Board both listed all names of applicants on the agenda and sent them waivers of notice, so regardless of if they signed the waivers, applicants were not “ambushed.” Further, the Board did not discuss the candidates’ character or competence, so no statements embarrassing applicants were made.

Finally, nothing in the OML requires notice on solicitations for applications that applicants’ character and professional competence will be considered by a public body. Therefore, the Board did not violate the OML with respect to these allegations.

**2. Complainant does not have standing to bring a claim for inadequate notice on behalf of Mr. Dobler, and the Board did not exceed the scope of item F(2) on the August 9, 2023, agenda.**

As established in previous OAG decisions, a complainant not owed notice under NRS 241.033 does not have standing to challenge the sufficiency of notice to another person.<sup>3</sup> We have previously held that only the person entitled to the notice may claim that notice was inadequate.<sup>4</sup>

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<sup>2</sup> See Nevada Open Meeting Law at 61, [https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental\\_Affairs/2019-03-26\\_OML\\_12TH\\_AGOMANUAL.pdf](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/2019-03-26_OML_12TH_AGOMANUAL.pdf).

<sup>3</sup> See Section 3 of the AG’s Response to OAG File No. 13897-449, dated Jan. 5, 2024, and addressed to Ms. Judith L. Miller.

<sup>4</sup>[https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental\\_Affairs/AG%20File%20No.%2013897-428.pdf](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/AG%20File%20No.%2013897-428.pdf).

Mr. Katz alleges that the wording of item F(2) on the August 9, 2023 agenda failed to adequately notice a Capital Investment Committee applicant that the Board intended to embarrass him and would select members by revealing material concerning their professional competence. Since Mr. Katz is not the person owed notice under NRS 241.033, he does not have standing to bring this claim.

Mr. Katz also alleges that the Board failed to clearly and completely describe the nature of item F(2) at its August 9, 2023 meeting and instead intended to publicly embarrass an applicant to the capital investment committee, Mr. Cliff Dobler. The noticed agenda for the Board's August 9, 2023 meeting identified item F(2) as: "Review, discuss and possibly appoint members of the community to the Board Advisory Committee on Capital Investment." Mr. Dobler had signed a waiver of notice that the Board would discuss his character and competency, and trustees raised concerns about his past treatment of district staff. Since discussing an applicant's character and competency falls within the discussion of an applicant's appointment, the Board did not exceed the scope of the agenda item. Therefore, the OAG finds that the Board did not violate the clear and complete requirement of the OML with respect to this allegation.

**3. Complainant does not have standing to bring a claim for inadequate notice on behalf of Ms. Miller; regardless, the Board did not deliberate on her character or competency.**

As discussed previously, Complainant does not have standing to bring this complaint and the same is therefore dismissed.

**4. Complainant does not have standing to challenge the waiver of Ms. Miller's right to notice under NRS 241.033; regardless, applicants voluntarily waived their right to notice.**

As discussed previously, Complainant does not have standing to bring this complaint and the same is therefore dismissed.

**5. Complainant does not have standing to challenge the contents of others' waivers of notice; regardless, the Board's waivers of notice listed the statutory rights applicants waived and thus were valid.**

As discussed previously, Complainant does not have standing to bring this complaint and the same is therefore dismissed.

**6. Complainant does not have standing to challenge the Board's compliance with NRS 241.033(4) in relation to another person; regardless, NRS 241.033(4) is not applicable to the September 19, 2023, meeting.**

As discussed previously, Complainant does not have standing to bring this complaint and the same is therefore dismissed.

**7. While the Board failed to approve the minutes of its July 26, 2023, meeting within the statutory timeframe, consulting with legal counsel constituted good cause for doing so.**

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). “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).

Mr. Katz alleges that the Board failed to approve the minutes of its July 26, 2023, meeting within the statutory timeframe. The Board concedes this fact in its Response. Forty-five days after July 26, 2023, was September 9, 2023. However, the Board claims it had good cause for the delay, since the Board and its legal counsel needed time to examine whether certain proposed submissions for inclusion in the minutes by members of the public were in fact appropriate for inclusion, and what the Board's legal obligations were with regard to some of the potentially privileged and confidential information contained therein. In the alternative, the Board asked the OAG to determine that it has corrected any violation by adopting the minutes at the September 19, 2023, meeting.

Complainant stated that the Board did not receive the meeting transcript until August 7, 2023, two days before the next meeting on August 9, 2023. Of note, the minutes of the July 26, 2023, meeting contained 73 pages of submitted public comment, 57 of which Mr. Katz submitted. The need for additional time to review this volume of material with counsel is understandable. Therefore, the Board had good cause for failing to meet the statutory deadline, and the OAG does not find a violation of the OML with respect to this issue.

Mr. Aaron L. Katz  
Page 8  
October 31, 2024

**CONCLUSION**

Upon review of your Complaints and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD  
Attorney General

By: /s/ Shane S. Chesney  
SHANE S. CHESNEY  
Senior Deputy Attorney General

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