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555 E. Washington Ave. Suite 3900
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July 29, 2020

Via U.S. Mail

Aaron Katz
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-330,
Incline Village General Improvement District**

Mr. Katz:

The Office of the Attorney General (“OAG”) has received your Complaint alleging the Incline Village General Improvement District Board of Trustees (hereafter “the Board”) violated Nevada’s Open Meeting Law (“OML”) at public meetings held on May 1, 2019, and May 22, 2019. Pursuant to Nevada statute, the Office of the Attorney General is authorized to investigate and prosecute violations of the OML. *See* Nevada Revised Statutes (“NRS”) 241.037, 241.039, and 241.040.

Following a review of your Complaint; the Board’s Response; video from the Board’s May 1, 2019 meeting; Attorney General Open Meeting Law Opinion 13897-263; and relevant legal authorities; the OAG concludes the Board did not violate the OML.

FACTUAL BACKGROUND

On May 1, 2019, the Board held a public meeting to consider various agenda items. Agenda Item C involved the question of whether to authorize the lease of a golf course fairway mower, golf carts, and a snowcat vehicle. Eleven days before the meeting, the Board published notice of Agenda Item C and invited written public comment via email. In response to its publication, the Board received five (5) written statements prior to the commencement of the meeting. Three of these statements expressed support for the agenda item, and the other two opposed the item.

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During his presentation at the May 1, 2019 meeting, Director of Finance Gerry Eick noted that the Board had received the five written statements and provided the statements to the clerk for inclusion in the minutes. The statements were subsequently attached to the meeting minutes, and the Board approved the minutes at another meeting held on May 22, 2019.

Following an extended discussion of the merits of Agenda Item C at the May 1, 2019 meeting, there was insufficient support from the Board and a related motion failed to clear a vote.

DISCUSSION AND LEGAL ANALYSIS

In the Complaint, you argue the Board's decision to include the five written statements resulted in a violation of the OML because none of the persons who submitted the statements were physically present at the meeting or made an affirmative request to include their statement with the minutes.

Minutes of public meetings are governed by NRS 241.035. Pursuant to NRS 241.035(1)(d), the minutes must include:

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.

As you correctly note, the OAG interpreted this statute in an opinion dated June 26, 2018. *See* Attorney General OML Opinion (File No. 13897-263). There, you complained the same Board had failed to include written statements of the general public in its minutes of meetings held in September 2017 and February 2018. *See id.* at 1. In determining no violation occurred, the opinion concluded NRS 241.035(1)(d) requires inclusion of written statements "only if the member of the general public makes remarks to the

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public body during a meeting and requests his [or her] remarks be reflected in the minutes.” *Id.* at 2.

While both decisions relate to the public meeting minutes statute, the issue presented here is with a public body’s decision to *include* in its minutes the written statements of persons who were not physically present at the meeting. This distinction matters. Although Nevada law did not require the Board to include written statements of persons who did not attend the meeting, its decision to nevertheless include the statements is not prohibited and is consistent with the legislative intent that public actions be “taken openly and that [a public body’s] deliberations be conducted openly.” *See* NRS 241.010(1). The OAG therefore concludes that the inclusion of the five statements did not violate the OML.

You also assert the Board’s decision to include the statements exceeded its limited powers and shows favoritism when contrasted with its decision not to include other statements. However, these assertions fall outside the scope of the OML and thus are not addressed in this opinion.

CONCLUSION

The Board’s decision to include in its meeting minutes written statements from persons who were not physically present at a public meeting did not violate Nevada’s Open Meeting Law.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Jared M. Frost
JARED M. FROST
Senior Deputy Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. first class mail, properly addressed to the following:

Aaron Katz

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████████████████████

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/s/ Debra Turman
An employee of the State of Nevada
Office of the Attorney General