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Via U.S Mail

Aaron L. Katz
[REDACTED]
[REDACTED]

Re: Open Meeting Law Complaint - Incline Village General Improvement District Board of Trustees; OAG File No. 13897-501

Dear Mr. Katz:

The Office of the Attorney General ("OAG") is in receipt of your complaints ("Complaints") alleging violations of the Open Meeting Law ("OML"), NRS Chapter 241, by the Incline Village General Improvement District Board of Trustees ("Board of Trustees") regarding its December 13, 2023, January 25, 2024, and January 31, 2024 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. The OAG's investigation of the Complaints included a review of the Complaints, the Responses on behalf of the Board of Trustees, and the agendas, minutes and recordings of the Board of Trustees' December 13, 2023, January 25, 2024, and January 31, 2024 meetings. After investigating the Complaints, the OAG determines that the Board of Trustees committed one OML violation raised in the three complaints, but after taking corrective action the violation was cured.

FACTUAL BACKGROUND

The Board of Trustees held public meetings on December 13, 2023, January 25, 2024, and January 31, 2024.

December 13th 2023 Board of Trustees Meeting

Prior to the December 13, 2023, meeting, the Board of Trustees posted an agenda that did not include information that the Board of Trustees District Clerk was the person designated by the Board of Trustees for seeking copies of supplemental materials.

Upon receipt of an OML complaint regarding the December 13, 2023 meeting the Board of Trustees staff took corrective action by modifying its standard agenda template to specifically identify that all requests for supplemental materials be directed to the District Clerk, avoiding any potential future violations of NRS 241.020(3)(c).

January 25th 2024 Board of Trustees Meeting

At the January 25, 2024, Board of Trustees meeting, the Board of Trustees adopted its meeting minutes from its October 25, 2023 meeting. This was 92 days after the October 25, 2023 meeting took place.

January 31st 2024 Board of Trustees Special Meeting

At the Board of Trustees' special meeting on January 31, 2024, staff proposed agenda item H.1., titled: "Recommendation for Action: That the Board of Trustees adopt a resolution augmenting the budget and appropriating General Fund reserves in the amount of \$1,512,949, along with Recreational Services Reserves, Beach Utility Reserves, and Internal Services Reserves in the cumulative amount of \$3,956,700."

The Board approved the proposal by appropriating the following amounts: \$364,000 from the Community Services Fund balance, \$41,200 from the Beach Fund balance, \$208,800 from the Utility Fund balance, and an increase of \$52,700 in the Internal Services Fund budget—totaling \$666,700 for alleged cost allocations transferred to the District's General Fund. This motion passed with a unanimous vote of 5-0.

Subsequently, the Board voted 4-0, with one abstention, to adopt Resolution 1907, formally augmenting the budget and appropriating General Fund reserves in the amount of \$1,512,949.

LEGAL ANALYSIS

The Incline Village General Improvement District Board of Trustees, as a governing body in the State of Nevada, is a “public body” as defined in NRS 241.015(5) and is subject to the OML.

A. December 13th, 2023 Board of Trustees Meeting Agenda.

The Board of Trustees staff properly took corrective action.

In this instance, the Board of Trustees staff was mindful of the Attorney General's recommendation when the OML violation occurred and promptly took corrective action in accordance with the relevant NRS and policy manual. The OML manual advises that when an OML violation has occurred or been alleged, "The public body [should] make every effort to immediately correct the apparent violation." (OML Manual § 10.01).

Additionally, NRS 241.0365(4) states, “The provisions of this section do not prohibit a public body from taking action in conformity with this chapter to correct an alleged violation of the provisions of this chapter before the adjournment of the meeting at which the alleged violation occurs.” Furthermore, NRS 241.0365(1) states that the Attorney General may decide not to commence prosecution if corrective action is taken within 30 days of the alleged violation.

In this case, the alleged violations are moot. Upon receiving the complaint, staff took immediate steps to bring the Board of Trustees into compliance with NRS 241.0365. While the corrective action was not taken directly by the public body during the meeting, agendas are typically prepared and managed by Board and Commission staff. As such, the staff's actions effectively resolved the issue and rendered the alleged violation without further consequence. Moreover, the OAG does not possess evidence that any member of the public was unable to view or obtain the meeting materials due to the error in the agenda.

B. Approval of the October 25, 2023 Meeting Minutes at the January 25th 2024 Board of Trustees Meeting

NRS 241.035(1)(e) requires that, “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.” The appropriate standard of review in a matter such as this would be a showing of Good Cause. “Good cause” is defined as “a ground for legal action” or “a legally sufficient reason.” In re: Nevada System of Higher Education Board of Regents,

OAG File No. 13897-380 (2020) (quoting Black's Law Dictionary (11th ed. 2019)).

The evidence indicates that the responsibility for agendaing and preparing the meeting minutes rested with the District Director of Administrative Services, who was on long-term administrative leave at the time. This absence was unexpected and highlighted a need for significant improvements in workflow management among District staff and contributed to a delay of 47 days passed the statutory deadline. Once the issue was identified, staff acted promptly to implement corrective action. The record supports a finding that good cause existed for the delay in approving the meeting minutes. Based on this determination, the OAG does not find a violation of the OML in connection with the October 23, 2023 meeting minutes and their approval on January 25, 2024.

C. Appropriation of funds at January 31st 2024 Board of Trustees Special Meeting

Finally, the Complaints contain allegations relating to the appropriation of funds under NRS Chapter 354. As these allegations do not fall within the OML, or NRS Chapter 241, the OAG will not address them in this opinion.

CONCLUSION

Upon review of your complaints and the available evidence, the OAG has determined that a violation of the OML occurred; however, due to the corrective action taken by the Incline Village General Improvement District Board of Trustees staff, the violation was cured. Accordingly, the OAG will close its file on this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Joseph Peter Ostunio, Esq.
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Deputy Attorney General

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cc: Sergio Rudin, Esq.
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Trustees*