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OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701

May 7, 2019

Via U.S. Mail

Frank Wright

**Re: Open Meeting Law Complaint, O.A.G. File No. 13897-283
Incline Village General Improvement District**

Dear Mr. Wright:

The Office of the Attorney General ("OAG") is in receipt of your complaint ("Complaint") filed on May 3, 2018 alleging a violation of the Open Meeting Law ("OML") by the Incline Village General Improvement District Board of Trustees ("Board") on April 25, 2018.

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; and NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint and Supplement to the Complaint, the response from the Board¹ ("Response"), the supporting materials and video recording of the Board's April 25, 2018, meeting, prior OML decisions, and portions of the Nevada Revised Statutes relevant to the Complaint.

FACTUAL BACKGROUND

¹ The Board alleges that the Complaint was brought in bad faith and requested the OAG review an electronic video of Mr. Wright's various public comments to the Board at the IVGID meetings. The OAG has not reviewed the video and did not investigate the Board's allegation of bad faith actions by the Complainant. The Board did not present any argument relating to the legal consequences of a finding of bad faith, thus it is unclear what legal effect a substantiated finding of bad faith would have. As such, the Complainant's motivations, and the Board's bad faith allegation are not relevant to this investigation and the OAG does not consider them in this analysis.

The minutes and video of the meeting do reflect that one member of the public stated that, "You oughta be shot yourselves and sent out of town." The public should remain cognizant that the OML is not an invitation for members of the public to disrupt meetings, interrupt deliberations or maliciously denigrate public servants whose policy positions deviate from their own.

At the Board's April 25, 2018 meeting, Trustee Morris made a motion under Agenda Item G.3, regarding the Board's policies as to the initiation of litigation, which was subsequently seconded by Trustee Horan, Trustee Dent asked Board Chair Wong, "Before we do go to a vote, can we take some public comment? Just to see if anyone in the community has any feedback, before we do vote." Chair Wong declined to allow additional public comment. Members of the public then interrupted the meeting and demanded that the Board take additional public comment prior to voting. After Chair Wong restored order, the Board unanimously voted in favor of the pending motion.

The Complaint alleges that the Board violated the OML by failing to allow a vote on the Trustee's request to take public comment. The Complaint also alleges an OML violation by Chair Wong and the Board's legal counsel, Jason Guinasso, when the Chair conferred with Mr. Guinasso prior to rejecting the request for public comment and by failing to silence Mr. Guinasso as the Chair attempted to regain control of the meeting.

LEGAL ANALYSIS

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; and NRS 241.040.

The OML applies only to a "public body" as defined in NRS 241.015(4). Here the Complaint alleges OML violations against the Board, which is a General Improvement District organized and operating under Chapter 318 of the Nevada Revised Statutes.² As such, the Board is a public body as defined in NRS 241.015(4).

1. Chair Wong's decision not to allow a vote on the request for additional public comment did not violate the OML.

Public comment must be taken "At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting" or after each action item, but before the public body votes.³ For its April 25, 2018 meeting, the Board elected to agendize public comment at the beginning and end of its meetings and it took public comment at 3:15 into the meeting and again at 2:57:46 into the meeting. Thus, the Board's public comment periods complied with NRS 241.020(3).

The Complaint also alleges that the Chair was required to allow a vote on the Board member's request for public comment. The video recording clearly shows that the request for public comment came after a valid motion was already pending before the Board of Trustees, and that the request was a question to the Chair and not a motion that was seconded. The Chair of a board is generally empowered to decide all questions of order unless the chair prefers to submit the question for the decision of the body.⁴ Thus, the Chair was within her powers as

² <https://www.yourtahoepalace.com/ivgid/about-ivgid>

³ NRS 241.020(3)(c)

⁴ Robert's Rules of Order, pg. 237, article X.

chair to determine whether the procedural question of whether additional public comment could be taken prior to the vote on the motion that was placed before the body for determination. The Chair's decision not to allow a vote on the request for additional public comment was within her power as chair and not a violation of the OML.

2. The Complaint's second allegations of an OML violation misstates the facts and does not constitute a violation.

The Complaint attempts to place the verbal allegation of a violation raised at the meeting before the OAG for review. The complainant's citations to the meeting shows no instance of a disruption to the meeting by the Board's counsel. However, the April 25, 2018 record includes an allegation from a member of the public stating that a Board trustee "made a motion to open for public comments, [your] counsel addressed the public, the Chair did not dress him down or silence him therefore public comments were consented silently and all members you cannot allow one person to make public comments even your counsel without allowing the entire body - you have a clear Open Meeting Law violation [and] I hope that someone files it."⁵

Complainant's recitation of events does not accurately reflect the incidents of the Board's April 25, 2018, meeting. A review of the meeting's video recording reveals that Board Chair Wong, not Board counsel Guinasso, answered the question referenced in this allegation. Board counsel did not activate his microphone or address the public, thus the premise of the question is not supported by the video recording of the meeting or the minutes and does not indicate an OML violation.

CONCLUSION

The Legislative intent behind the OML is for all actions of all public bodies to be taken openly and their deliberations be conducted openly. The OML requires actions be taken in the public so that the public may see and understand them; it is not a license for unlawful obstructionism. When deliberations and actions are conducted within an open meeting and the public has an opportunity to participate in accordance with NRS 241.020(3) and members of the public are still dissatisfied with the decisions of their public officers, they have no remedy under the OML. Having determined that no violations of the OML have occurred, the OAG will close the file regarding this matter.

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GREGORY D. OTT
Chief Deputy Attorney General

cc: Jason Guinasso, Counsel to the Board

⁵ Video recording of April 25, 2018 meeting at 2:58:36 and April 25, 2018 Minutes, page 15