

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 East Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

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Via U.S. Mail and Electronic Mail

Frank Wright

Re: Incline Village General Improvement District Board of Trustees (IVGID) – Open Meeting Law Complaint, OAG File No. 13897-287

Dear Mr. Wright:

The Office of the Attorney General (OAG) is in receipt of your Complaint (Complaint) alleging violations of the Open Meeting Law (OML) by IVGID. Your Complaint alleges first that IVGID violated the OML by failing to provide in its May 9, 2018 meeting (Meeting) “Board Packet¹,” correspondence received by IVGID. Your Complaint’s second allegation is that IVGID is unlawfully censoring from its meeting minutes remarks made in public comment.

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. In response to the Complaint, the OAG reviewed the Complaint and attachments, the agenda and support materials for the Meeting, the video recording for the Meeting, the approved Meeting minutes, and the response to the Complaint from IVGID.

FACTUAL BACKGROUND

IVGID is a “public body” as defined in Nevada Revised Statute (NRS) 241.015(4), subject to the OML.

The Complaint’s first allegation concerns Meeting agenda item “J” which IVGID listed as “CORRESPONDENCE RECEIVED BY THE DISTRICT.” The support material for the Meeting did not include any documents identified as correspondence received by IVGID. It is stated in the

¹ A review of the “Board Packet” for the May 9, 2018 meeting shows that the “Board Packet” consists of the agenda and support materials for the meeting.

Meeting video recording that the absence of the correspondence from the board packet was because IVGID's practice² was to only include correspondence that was not previously communicated to the Board and which was not determined to be defamatory. This policy is not stated in the Meeting agenda. The approved Meeting minutes for agenda item "J" lists the authors of the correspondence received by IVGID but said correspondence is not attached to the approved Meeting minutes.

The Complaint's second alleged violation of the OML relates to improper censoring of IVGID meeting minutes. The Complaint specifically provides:

Public comments at Board Meetings and correspondence to the Board have been critical of Board Chair Wong, Vice Chair Horan (who is also Chair of the Audit committee), General Manager Pinkerton, Director of Finance Eick, Public Records Officer Herron and Legal Counsel Guinasso. There have been citations of these individuals violating Nevada Revised Statutes and Board Policies and Practices. Public Comments addressing the above named individuals and their actions, conduct or decisions have been sanitized in the recorded Meeting Minutes. Trustees and citizens requesting corrections in the interest of accuracy have been for the most part ignored.

The complaint does not provide any specificity as to what part of the Meeting minutes is being "sanitized." Furthermore, the Complaint does not make clear that the allegation is even referring to the IVGID May 9, 2018 meeting.

DISCUSSION AND LEGAL ANALYSIS

Allegation #1: IVGID violated the OML by failing to produce in its support material "correspondence received by the District."

The complaint alleges that IVGID violated the OML by failing to include in its board packet "correspondence received by the district." The OML is found in NRS chapter 241. There is no statutory provision in NRS chapter 241 requiring a public body to produce correspondence it has received. If the subject correspondence constitutes public records, the issue of whether they are subject to dissemination would be governed by NRS chapter 239³. Thus,

² This practice was explained in the Meeting by General Manager Steve Pinkerton, IVGID General Counsel Jason Guinasso, and Chairman Kendra Wong.

³ The Nevada Public Records Act (PRA), embodied in NRS 239.010, provides all public books and records of a governmental entity, the contents of which are not otherwise declared by law to be confidential, must be open at all times during office hours to inspection by any person. NRS 239B.010.

the proper remedy for a public record violation would be provided in NRS chapter 239 and not an OML complaint.

However, NRS 241.020(2)(d)(1) requires a public body to post an agenda consisting of a “clear and complete statement of the topics scheduled to be considered during the meeting.” In *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003), the Nevada Supreme Court interpreted the “clear and complete” requirement to mean that it must provide the public with “clear notice of the topics to be discussed at public meetings, so that the public can attend a meeting when an issue of interest will be discussed. *Id.* at 155. The Meeting’s agenda item “J” simply stated “CORRESPONDENCE RECEIVED BY THE DISTRICT.” There is nothing in this description explaining the limited scope of correspondence that would be made public under this agenda item. Agenda item “J” can be interpreted to say that all of IVGID’s correspondence is a “topic scheduled to be considered during the meeting.” NRS 241.020. While this did not constitute an OML violation, a more “clear and complete” description of what is contemplated under this agenda item may avoid further confusion for the public⁴.

Allegation #2: IVGID is improperly censoring remarks made in public comment from meeting minutes.

The Complaint alleges that IVGID is censoring from its meeting minutes remarks made in public comment that have been critical of certain members of the board. Nevada Revised Statute (“NRS”) 241.035 governs public meeting minutes and it provides that each public body shall keep written minutes of each of its meetings, including the following:

1. Each public body shall keep written minutes of each of its meetings, including:
 - (a) The date, time and place of the meeting.
 - (b) Those members of the public body who were present, whether in person or by means of electronic communication, and those who were absent.

The PRA presumes that all records are to be open to the public unless deemed confidential by law. The purpose of the PRA is to ensure the accountability of the government to the public by facilitating public access to vital information about governmental activities. *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 59, 63 P.3d 1147, 1149 (2003), citing *DR Partners v. Board of County Commissioners of Clark County*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

⁴ “There is no statutory provision requiring public bodies to discuss, or take action on, all agenda items.” *Schmidt v. Washoe County*, 123 Nev. 128, 135, 159 P.3d 1099, 1104 (2007) (abrogated on other grounds by *Buzz Stew LLC v. City of Las Vegas*, 124 Nev. 224, 181.3d 670 (2008)). However, notice of the meeting must notify the public that the public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time. NRS 241.020(2)(d)(6)(iii). The Meeting agenda had such a disclaimer and IVGID had the option to remove this item from the Meeting agenda.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) 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.

(e) Any other information which any member of the public body requests to be included or reflected in the minutes.

As provided above, NRS 241.035 does not require verbatim memorialization of public comment in meeting minutes. Rather, NRS 241.035 requires only the substance of the public comment in the minutes, or a copy of the remarks be included in the minutes, if the speaker requests it.

The allegation does not articulate that a speaker requested that his/her remarks be reflected in the meeting minutes. Furthermore, the allegation does not indicate which meeting minutes lack "the substance of remarks made by any member of the general public." *Id.* Instead, the allegation is merely a conclusory statement that fails to identify a specific instance in which an OML violation may have occurred. Thus, IVGID cannot be found in violation of the OML for failing to adhere to the mandates set forth in NRS 241.035.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:


MICHAEL DETMER
Deputy Attorney General

MDD/dt

C: Jason D. Guinasso, Esq., Incline Village General
Improvement District