

AARON D. FORD
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Avenue, Suite 3900
Las Vegas, Nevada 89101

January 18, 2019

Via Electronic Mail

Aaron Katz

Re: Open Meeting Law Complaint - Incline Village General Improvement District, OAG File No. 13897-305

Dear Mr. Katz:

The Office of the Attorney General (OAG) is in receipt of your complaint (Complaint) alleging violations of the Open Meeting Law (OML) by the Incline Village General Improvement District (IVGID or District) regarding the alleged failure to take action in an open meeting.

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.

FACTUAL BACKGROUND

The Board is a "public body" as defined in NRS 241.015(4) and subject to the OML. The Complaint alleges the Chairwoman of the IVGID Board of Trustees (Board) improperly committed the Board to expending public funds outside of an open meeting through a letter of support dated July 6, 2018 (Letter of Support), on behalf of the Tahoe Transportation District (TTD) to the United States Department of Transportation (US DOT). The Complaint further alleges the Board improperly discussed the Letter of Support at the Board meeting on July 24, 2018.

In January 2013, the Board authorized entering into an Interlocal Agreement with TTD for the purposes of evaluating the feasibility of the co-location of the District's Export Pipeline. In October 2014, following the evaluation and determination that the co-location is viable, the Interlocal Agreement was amended to allow for the completion of the primary design and an environmental analysis for the co-location. The amendment further contemplated that there may be a future agreement between IVGID and TTD to pursue final design, permitting, and construction of the project. Additionally, IVGID has collected and earmarked \$7.5

million dollars for the co-location project, but the Board has yet to take action to commit or contribute these funds to the project.

On July 6, 2018, Board Chair, Kendra Wong, signed the Letter of Support issued to USDOT in support of a grant application submitted by TTD. Specifically, the Letter of Support stated: "IVGID has \$7.5 million dollars available as a match for this BUILD grant to allow co-location and construction of the replacement 3.75-mile pipeline segment."

The Board's agenda for its July 24, 2018, meeting included the following item:

J. BOARD OF TRUSTEES UPDATE (*NO DISCUSSION OR ACTION*) ON ANY MATTER REGARDING THE DISTRICT AND/OR COMMUNITIES OF CRYSTAL BAY AND INCLINE VILLAGE, NEVADA*

The supporting material included for agenda item "J" was the July 6, 2018 Letter of Support signed by Chairwoman Wong.

Upon calling agenda item "J," Chairwoman Wong informed the Board of the letter and specified that the letter could be located in the meeting packet on page 766. Chairwoman Wong indicated that she signed the Letter of Support and included a copy because she did not want to forget to inform the other Board members of the signed letter.

DISCUSSION AND LEGAL ANALYSIS

The OML, as comprised by Chapter 241 of the NRS, applies to meetings of public bodies, and it requires that the actions of public bodies "be taken openly and that their deliberations be conducted openly." NRS 241.010(1); *see McKay v. Bd. Of Supervisors*, 102 Nev. 644, 651 (1986). Public bodies working on behalf of Nevada citizens must conform to statutory requirements in open meetings under an agenda that provides full notice and disclosure of discussion topics and any possible action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

The July 6, 2018 Letter of Support

"Action" is defined as a decision, commitment, promise, or vote "made by a majority of the members present . . . during a meeting of a public body." NRS 241.015(1). Chairwoman Wong's execution of the Letter of Support is consistent with the intent of the Board's prior actions related to the Interlocal Agreement, and subsequent amendment to the agreement, with TTD. The letter provides support of TTD's efforts in obtaining grant funding for the co-location project. Although the Letter of Support indicates that the Board has funds available as a match for the co-location project, it did not legally obligate or commit the Board to payment of any

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money and was not an Action of the Board. Thus, Chairwoman Wong's execution of the Letter of Support without full Board approval did not constitute an OML violation.

The July 24, 2018 Agenda

The Board agendaized the Letter of Support without allowing for Board discussion of the item. However, Chairwoman Wong's update regarding the Letter of Support spawned comments from the Board despite the notification that "no discussion" will take place for agenda item "J." A discussion related to the Letter of Support was avoided when Board counsel, Jason Guinasso, reminded the Board that the agenda item as written does not allow for discussion. However, absent control of Mr. Guinasso, an OML violation would likely have occurred.

Accordingly, the OAG cautions the Board to ensure compliance with its own agendaized restrictions for future agenda items.

CONCLUSION

Upon review of your Complaint 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: 

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TEB:arz

cc: Jason D. Guinasso, Counsel to IVGID
Kendra Wong, Chair, IVGID Board of Trustees