



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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January 6, 2014

Via U.S. Mail

Mr. Aaron L. Katz
P.O. Box 3022
Incline Village, Nevada 89450

Re: Letter Opinion closing file: AG File No. 13-032 (Finding of no Violation)

Dear Mr. Katz:

We received Incline Village General Improvement District Board of Trustees' (IVGID) response to your Open Meeting Law (OML) Complaint. Your Complaint alleged that IVGID's hired consultant contacted IVGID's Board of Trustees during the consultant's handling of the hiring process to select a new General Manager. The complaint alleged consultant's contact with a quorum of the Trustees had been illegal under the Open Meeting Law, because there had not been public notice of the contact. It was alleged the illegal contact allowed the Trustees to have a role in reducing the pool of applicants for the job of General Manager in private serial meetings.

This office has jurisdiction to investigate OML complaints and seek civil remedies against public bodies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

We find that the Trustees took corrective action to "cure" the possibility of having violated the OML, as indicated in your correspondence with the consultant Mr. McKenney, regarding the process that narrowed the applicant pool from 11 to 6.

A new OML amendment (NRS 241.0365), allows a public body to take corrective action to correct an alleged violation of the OML. Notwithstanding the Board's "new" statutory right to correct an alleged violation of the OML, this office has always encouraged "cure" as long as the corrective action occurred within 120 days of the alleged violation. Your Complaint does not allege any date on which the violation occurred. However, it is not necessary to determine the date of the alleged violation, because your Complaint alerted the Trustees to the possibility of a violation and it prevented further and more serious complications.

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Furthermore, we are concerned that it was the consultant who engaged the Trustees in a process that may have constituted a violation of NRS 231.031(1)(b). There is no evidence the Board solicited any involvement in the process from the consultant. The letter the consultant wrote defending his involvement with the Trustees admits that the Trustees participated in whittling 11 candidates down to 6, notwithstanding his view that a "sanitized version of candidate's information" was permissibly shared with Trustees under Nevada's OML.

The Nevada Supreme Court stated more than 20 years ago that the phrase "discussion of appointment" (NRS 241.030(5)(e)), means "all consideration, discussion, deliberation, and selection" done by a public body in an appointment process is subject to the OML. *City Council of the City of Reno v. Reno Newspapers*, 105 Nev. 886, 898, 784 P2d 974, 977 (1989). NRS 231.031(1)(b) specifically encompasses an appointed public officer who serves at the pleasure of a public body as a chief executive officer.

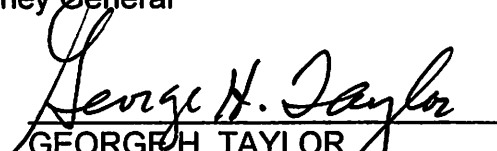
After your Complaint was received, Trustees canceled their scheduled meeting for October 7, 2013 (only 17 days after your Complaint was dated), in which they would have interviewed 6 candidates for the position of IVGID's General Manager. Trustees then instructed the consultant to bring all 11 recommended candidates to the Board for consideration. Trustees' action substantially complied with the letter and spirit of the OML so that it constituted corrective action. During a special meeting on October 30, 2013, the Board interviewed the remaining candidates.

We find this action by the Trustees to be corrective action within the meaning of NRS 241.0365.

We are closing our file on this matter.

CATHERINE CORTEZ MASTO
Attorney General

By:


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GHT:vib

cc. T. Scott Brooke, Brooke, Shaw and Zumpft,
Attorney to the Board of Trustees
IVGID Board Members:
Bruce Simonian, Chairman
Joe Wolfe, Vice Chairman
Bill Devine, Treasurer
Jim Smith, Secretary
Jim Hammerel, Trustee