OPINION
Via Electronic Mail

Aaron Katz
S4s@ix.netcom.com

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: “TVGID 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
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 agendized 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 agendized 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:

TIFFANY E. BREINIG
Deputy Attorney General
(702) 486-3125
tbreinig@ag.nv.gov

cc: Jason D. Guinasso, Counsel to IVGID
    Kendra Wong, Chair, IVGID Board of Trustees
RESPONSE
October 12, 2018

Via Electronic Mail- CBateman@ag.nv.gov
& Hand Delivery to:

Ms. Caroline Bateman, Chief Deputy Attorney General
State of Nevada Office of The Attorney General
Boards and Open Government Division
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101

Re: RESPONSE OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES - OPEN MEETING LAW COMPLAINT, KATZ, AARON O.A.G. FILE NO. 13897-305

Dear Ms. Bateman:

We received your September 27, 2018 correspondence notifying the Incline Village General Improvement District (herein referenced as “IVGID” or “District”) of the above referenced complaint by Aaron Katz alleging that IVGID has violated the Nevada Open Meeting Law (“OML”). Please accept this correspondence and the referenced enclosures as IVGID’s response.

I. Issues Presented

Whether IVGID Board of Trustees Chairwoman Kendra Wong and District Staff violated Nevada Open Meeting Law by issuing the SR-28 Shared Use Pathway 2018 BUILD Grant Letter of Support (“Letter of Support”), dated July 6, 2018, pursuant to IVGID Board Policy No. 3.1.0.6(f).

See Exhibit A (IVGID SR-28 Shared Use Pathway 2018 BUILD Grant Letter of Support).

II. Short Answer

No, IVGID Board Chairwoman Wong and District Staff did not violate Nevada OML. IVGID’s denial of the allegations presented by Aaron Katz are based on the fact that: (1) The Board of Trustees had already authorized entering into an Interlocal Agreement with the Tahoe Transportation District in January of 2013 and the Letter of Support was consistent with that Board action; (2) the decision to issue the Letter of Support was delegable to the IVGID Board of Trustees to General Manager Steve Pinkerton and/or designee; and, (3) the issuance of the Letter of Support does not commit or contract the District to incur any expense.

III. IVGID’s Response

On January 9, 2013, the IVGID Board of Trustees authorized staff to enter into an Interlocal Agreement with the Tahoe Transportation District (TTD). The Agreement allowed for the formal evaluation of the feasibility of co-locating the District’s Export Pipeline within the alignment of the proposed bikeway running along the lake

Thereafter, on October 30, 2014, the Interlocal Agreement was amended to allow IVGID to provide up to $300,000.00 in District funds to allow for the completion of the primary design and environmental analysis for the co-location of IVGID’s Export Pipeline with the SR-28 Bikeway. See Exhibit C (Minutes of November 19, 2014, IVGID Board meeting and October 30, 2014 Memorandum). The Amendment also set forth the duties of each agency. In this regard, TTD was required to hold all contracts and be responsible for managing the design and environmental process, while IVGID provided the technical review and project management support. Further, it was acknowledged by the Board and the Staff that, should TTD be able to secure funding for the final design and construction of the proposed SR-28 bikeway, IVGID would realize a cost savings of up to $7,000,000.00 of an estimated $23,000,000.00 project, as well as long term operational and maintenance benefits by co-locating the pipeline within the bikeway.

Consistent with the foregoing Board actions, on July 26, 2018, Board Chair Kendra Wong signed a letter of support for the TTD BUILD grant application for the next phase of the State Route 28 Shared Use Pathway. The Support Letter specifically provided:

As one of 13 project partners, IVGID is providing $300,000 in funding, via a January 2013, Interlocal Agreement with TTD (amended October 2014), for the current Environmental Analysis which is on track to be completed this year... 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 Support Letter did not commit public funds or make any other commitment that had not been previously approved by the Board of Trustees. The Support Letter was merely a reaffirmation of IVGID’s collaborative relationship with TTD and IVGID support of TTD’s efforts to secure grant funding. Preparing this Support Letter was clearly within the General Manager’s authority. Chairwoman Wong’s signature on the letter was consistent with what the IVGID Board had previously approved and was in furtherance of the Interlocutory Agreement between IVGID and TTD.

In his OML Complaint, Mr. Katz cites The Comm’n on Ethics of the State of Nevada v. Hansen, 134 Nev. Adv. Op. 40 (2018), alleging that Chairwoman Wong and General Manager Pinkerton had violated the Nevada Open Meeting Law by not obtaining approval from the Board before preparing and signing the Letter of Support. Hansen does not apply because (1) there was not an expenditure of public funds or a commitment to spend public money, (2) the actions taken were consistent with prior Board action and (3) the actions of the General Manager are within the authority delegated to him.

The Nevada Open Meeting Law does not apply to decisions and actions of the General Manager of a “public body.” While the IVGID Board of Trustees, which was formed in accordance within the provisions of NRS Chapter 318, is a “public body” under NRS 241.015(4), the General Manager acting within the powers delegated to him by the Board of Trustees is not a “public body” subject to the provisions of the OML. Additionally, the “actions” of the General Manager are not subject to the Nevada OML. In this regard, “action” under the OML is defined to mean, “decision,” “commitment or promise made,” or “an affirmative vote” taken, by “a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body.” NRS 241.015(1)(a),(b),(c). The actions taken by the General Manager to prepare a
Letter of Support for previously approved collaboration with TTD, are within the authority delegated to him and do not constitute an unauthorized expenditure of public funds.

In this regard, the Court in Hansen specifically stated:

The dissent's analysis presupposes that the authority to file a notice of appeal is (1) delegable and (2) was delegated in this case. The dissent also cites City of San Antonio v. Aguilar, 670 S.W.2d 681 (Tex. App. 1984), rejecting a Texas Open Meeting Act appeal filed by a city attorney based on the city attorney's separate authority under the city's ordinances.

Here, whether the authority to file a notice of appeal is delegable is not germane to our analysis because the record does not show and nothing in the statutes or regulations concerning the Ethics Commission provides for a grant or delegation of decision-making authority to the Commission's chair, director, or legal counsel to file a notice of appeal without action by the Commission as a whole.

The Court acknowledges "delegated authority" and the ability of public bodies to grant or delegate decision-making authority to directors or their designee. Whereas, in Hansen, there was no previous statute or regulation germane to the delegable authority; in this instance, the issuance of the Letter of Support is within both the scope of previous Board direction regarding TTD and within the authority specifically delegated to the General Manager, as codified in IVGID Board Policy 3.1.0.6(f).

f. Contracts.

Contracts entered into by the District that are required to be advertised under Nevada Revised Statutes 332 and/or 338 must be approved by the Board of Trustees. All documents approved or awarded by the Board shall be signed in the name of the District by the Chair and countersigned by the Secretary, unless authorization to sign is given to another person(s) by the Board.

Contracts, other than those covered by Nevada Revised Statutes 332.115 and which are not subject to the advertising thresholds of Nevada Revised Statutes 332 and/or 338, may be authorized, approved and executed by the General Manager of the District or designee, unless otherwise ordered by the Board of Trustees.

Contracts covered by Nevada Revised Statutes 332.115 may be authorized, approved and executed by the General Manager or his designee of the District, if it is for an amount less than the advertising threshold of Nevada Revised Statute 332. Contracts over the threshold of NRS 332.115 must be approved by the Board of Trustees.

The Letter of Support affirmed the District’s contribution of $300,000 for the shared cost of the Environmental Impact Statement approved via the January 2013 Interlocal Agreement; however, contrary to Mr. Katz’s interpretation, the Letter in no way commits the District to any additional expenses. While the Letter does reference the District’s $7.5 million Utility Fund balance earmarked for Phase II Effluent Pipeline Repairs/Replacement as “available as a match for this BUILD grant”, this element of the letter does not constitute a promise, contractual obligation, nor commitment. The intent of the letter is stated explicitly in a statement by Chairwoman Wong at the July 24, 2018 IVGID Board of Trustees Meeting:
Chairwoman Kendra Wong, speaking of the Letter of Support: “I did read the letter beforehand and made sure I wasn’t committing us (the District) to spending any funds, it wasn’t anything that would commit the District to anything that would be outside the role of an individual Board member.”

See Exhibit D (Livestream link of July 24, 2018 IVGID Board of Trustees Meeting, beginning timestamp 3:05:13, ending timestamp 3:05:28)

Absent a commitment of public money on an endeavor which requires the governing board’s approval, there can be no violation as alleged. Mr. Katz’s hypervigilance and hypersensitivity to District action have caused him to erroneously interpret both the Letter of Support and Nevada OML, in an effort construe any possible violation.

IV. Closing Remarks

Scope of Response

IVGID has not responded to each and every assertion submitted in Mr. Katz’s narrative. IVGID’s response has focused on whether there was a violation of the Nevada Open Meeting Law.

IVGID Did Not Violate the Open Meeting Law

In the event that this memorandum has failed to address an alleged violation of the Nevada Open Meeting Law due to the vagueness and ambiguity of Mr. Katz’s Complaint, IVGID denies that any such violation has occurred. IVGID has a record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency.

Please do not hesitate to call or write me if you have any further questions or need any further information.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Aaron Katz, A.G. File No. 13897-305.

Sincerely,

HUTCHISON & STEFFEN, LLC
Jason D. Guinasso, Esq.

cc: Chairwoman Kendra Wong
General Manager Steve Pinkerton
District Clerk Susan Herron

JDG:ts
EXHIBIT A

EXHIBIT A
July 6, 2018

The Honorable Elaine Chao
United States Department of Transportation
1200 New Jersey Avenue SE
Washington DC, 20590

RE: SR-28 Shared Use Pathway 2018 BUILD Grant Letter of Support

Dear Ms. Chao,

The Incline Village General Improvement District (IVGID) appreciates and supports the Tahoe Transportation District’s (TTD) BUILD grant application for the next phase of the State Route 28 Shared Use Pathway. We are a rural area that relies upon this critical infrastructure and we are consistently challenged with safety issues and congestion along the State Route 28 corridor of the Lake Tahoe Basin. This is a narrow two-lane highway with steep topography and traffic at peak season can be delayed for hours impeding commuters, visitors, and emergency response vehicles. Working together, the project partners set the goal of this multi-phased project to clear congestion, provide safe multi-modal access to Lake Tahoe’s east shore, provide road safety improvements, underground and replace 40-80+ year old utility infrastructure, and to control erosion along the highway shoulder in order to protect the highway and Lake Tahoe’s water quality.

Within this corridor, IVGID operates and maintains approximately 11.5 miles of underground pipeline that carries treated wastewater effluent out of the Tahoe Basin. This pipeline, originally constructed in 1970, is approaching the end of its service life. IVGID has replaced 5.5-miles of the pipeline to date and condition assessment activities have identified an additional 3.75-miles that must be replaced in the near future. Additional condition assessment of the final 2.25-miles is scheduled for the fall of 2018.

It is IVGID’s desire to relocate the replacement sections of pipeline to within the Shared Use Pathway as much as physically possible within the project area. As one of 13 project partners, IVGID is providing $300,000 in funding, via a January 2013 Interlocal Agreement with TTD (amended October 2014), for the current Environmental Analysis which is on track to be completed this year.

The entire length of the 3.75-miles of pipeline identified for near term replacement is located within the alignment of the proposed next phase of the SR-28 Shared Use Pathway. IVGID believes there is a tremendous opportunity to relocate the pipeline out of the narrow highway footprint and into the pathway alignment. Doing so eliminates future traffic congestion during normal pipeline maintenance, substantially reduces pipeline construction costs, and halves the duration of traffic impacting construction. Additionally, co-location would allow the installation of fire hydrants on the replacement pipeline to support the firefighting activities in the event of a wildland fire along the eastern shore of Lake Tahoe. 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.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT
893 SOUTHWOOD BOULEVARD • INCLINE VILLAGE, NV 89451
PH: (775) 532-1100 • FAX: (775) 532-1122 • WWW.YOURTAHOEPLACE.COM
As you are aware, our small rural communities need assistance in replacing aging infrastructure. But just as important, this National Scenic Byway deserves our attention in providing the over 2.6 million motorists in this stretch a safe driving experience, the over one million visitors safe multi modal access to their public lands, and to protect the water clarity of this national treasure, Lake Tahoe.

Sincerely,

Kendra Wong
Chairwoman
Board of Trustees
Incline Village General Improvement District
EXHIBIT B

EXHIBIT B
Minutes
Meeting of January 9, 2013
Page 16

*New York Post Times* article which stated that Mr. Trump is buying up a lot of
golf courses.

Aaron Katz congratulated the new Trustees and said that he has two issues to
talk about – when a member of the community wants something on the agenda,
they can't get by the General Manager and that when he submitted an item, he
received no response which is absolutely wrong. Mr. Katz continued that he
made another request on November 26 and that he hasn't heard anything about
that and that he expects he won't hear anything which is wrong. When any
member of the community wants to come before the Board, it isn't fair to pick and
choose who can or can't and that he has a written statement with a request. The
second item is that there is unethical conduct going on by IVGID employees and
it is going on right under the Board's noses. It is unethical for a public employee
to solicit expense allowance and/or accept it from a private source in addition to
their public salary. This is a good provision and it is the law in Washoe County.
He has a friend who was confronted not only with a tip jar but on their food
receipt, there is a tip line. This is unethical conduct and yet the General Manager
has made the representation that he can establish the policies so the fault lies
with the General Manager and that a recent decision, by the Attorney General,
says that we can't go after them – it is wrong.

K. **CONSENT CALENDAR** *(for possible action)*

K.1. Interlocal Agreement with the Nevada Division of State Lands
for Sale and Transfer of Coverage Owned by Incline Village
General Improvement District *(Requesting Member of Staff:
Director of Public Works Joe Pomroy)*

K.2. Interlocal Agreement with the Tahoe Transportation District for
Initial Scoping for the Co-location of the IVGID Export Pipeline
with the SR-28 Bikeway *(Requesting Member of Staff: Director
of Public Works Joe Pomroy)*

Trustee Wolfe made a motion to approve the Consent Calendar items
as submitted; Trustee Hammerel seconded the motion. Chairman
Simonian called the question and the motion was unanimously passed.

L. **GENERAL BUSINESS** *(for possible action)*

L.1. Resolution 1814: A Resolution in Support of the Consolidated
Tax Bill Draft Generated by the Interim Subcommittee to Study
MEMORANDUM

TO: Board of Trustees

THROUGH: William B. Horn
          General Manager

FROM: Joseph J. Pomroy, P.E.
       Director of Public Works

SUBJECT: Interlocal Agreement with the Tahoe Transportation
         District for Initial Scoping for the Co-location of the
         IVGID Export Pipeline with the SR-28 Bikeway

DATE: December 31, 2012

I. STAFF RECOMMENDATION AND PROPOSED MOTION

That the Board of Trustees makes a motion to:

1. Enter into an Interlocal Agreement between the Tahoe
   Transportation District and the Incline Village General Improvement
   District to complete the initial scoping for the co-location of IVGID’s
   Export Pipeline and the SR-28 Bikeway.

2. Authorize Chair and Secretary to execute the Interlocal Agreement
   based on a review by General Counsel and Staff.

II. BACKGROUND

The District’s effluent export pipeline transports treated wastewater
from the District’s wastewater treatment plant to the disposal point at
the District’s wetlands facility southeast of Carson City. This pipeline
was constructed in the early 1970’s as part of a regional effort to
eliminate all wastewater effluent discharges in the Lake Tahoe Basin.
The effluent export pipeline has been in continuous service since that
time and is comprised of five segments totaling approximately 20-
miles in length. Three segments (Segments 1-3), totaling approximately 12-miles, are located within the Lake Tahoe Basin.

As part of the original Effluent Export Project, the District replaced approximately 6-miles of 16-inch diameter effluent export pipeline in the Lake Tahoe Basin. This was accomplished in multiple phases (starting in 2006 and finishing in 2009) and included approximately 18,000-linear feet of Segment 1 (Incline Village to Sand Harbor) and 11,000-linear feet of Segment 3 (around Spooner Meadow). During planning and design of the first phase approximately 13,700-linear feet of Segment 3 and all 17,300-linear feet of Segment 2 were identified to be in good condition and were not identified for replacement. These pipeline segments are in the southbound shoulder of State Route 28 between Sand Harbor and Spooner Meadow.

In August of 2009, a pipe break within the un-replaced portion of Segment 3 washed out State Route 28. An investigation conducted by District staff and a District hired corrosion consulting engineer revealed areas of advanced corrosion on the damaged pipeline section indicating the un-replaced portions of the export line may be nearing the end of their service life and replacement of the remaining pipeline should be planned and budgeted.

At the January 5, 2011 meeting, the Board of Trustees authorized a preliminary engineering services contract with HDR Engineering to begin Phase II of the Effluent Export Project. The project was initially scoped to replace the two remaining sections within the Lake Tahoe Basin (a total length of approximately 6-miles). Segment 2 is comprised of approximately 17,300-linear feet of welded, cement mortar lined, high pressure steel pipe. The remaining 13,700-linear feet of Segment 3 is comprised of bell and spigot, cement mortar lined, low pressure steel pipe.

At the October 10, 2012 meeting, the Board of Trustees authorized an engineering services contract to evaluate and provide recommendations on pipeline condition assessment technologies for
Interlocal Agreement with the -3- Tahoe Transportation District for Initial Scoping for the Co-location of the IVGID Export Pipeline with the SR-28 Bikeway

Segment 2, 17,300 linear feet of welded steel export pipeline, based on recently gathered data. As part of the construction of the Spooner Pumping Station Improvements Project this summer, a section of the high pressure welded steel pipe in Segment 2 was removed. The condition of this pipe section was better than anticipated and, if the section examined is representative of the condition of the rest of Segment 2, it could mean replacement of Segment 2 is not necessary in the near future. The contract also included additional engineering tasks for pipeline alignment, crossing of NDOT culverts and additional work zone analyses.

District staff for the last several years has been part of the Tahoe Transportation District (TTD) Project team that is analyzing the SR-28 corridor for improving transportation, parking, bikeways and access to the east shore of Lake Tahoe. A key part of this involvement has been direct discussions between TTD and District staff about the possibility of co-locating the effluent export pipeline with a new Bikeway on the east shore.

The Tahoe Transportation District was created by Congress in 1980 when the bi-State compact was amended. The agency is responsible for facilitating and implementing safe, environmentally positive, multi-modal transportation plans, programs and projects for the Lake Tahoe Basin, including transit operations. Specific tax revenue to support transit and transportation facilities can be allotted to the District. TTD may also acquire, own and operate public transportation systems and parking facilities serving the Tahoe region and provide access to convenient transportation terminals outside of the region.

The purpose of the Nevada Stateline-to-Stateline Bikeway is to provide non-auto transportation opportunities that link recreation areas, community centers, transportation facilities, and neighborhoods in the bikeway corridor to expand recreational access and transportation choices for residents and visitors to the Tahoe Basin. Separated bicycle facilities are not available along most of the Nevada side of Lake Tahoe. The bikeway would provide a spectacular recreation
Interlocal Agreement with the Tahoe Transportation District for Initial Scoping for the Co-location of the IVGID Export Pipeline with the SR-28 Bikeway

December 31, 2012

opportunity to link public beaches and coves along the picturesque east shore.

The alignment of the Bikeway from Sand Harbor State Park to Spooner Summit area essentially follows the alignment of the existing export pipeline. Therefore, a new Bikeway could provide a great opportunity for construction of the new export pipeline out of the NDOT SR-28 Right-of-Way and under the Bikeway. There are numerous advantages for operating and maintaining the pipeline under a bikeway as opposed to under the busy SR-28 corridor. This agreement will look at the feasibility of this idea.

The specific agreement details the duties of each agency. The TTD will be preparing preliminary alignment drawings for the Bikeway from the Secret Harbor Parking lot (approx 2 miles south of Sand Harbor) to Spooner Summit that could include the export pipeline along with providing an initial analysis of key environmental constraints, co-location feasibility, and performing a cost-benefit analysis. IVGID will provide technical review of the preliminary phase documents as well as provide pipeline design requirements to be included in the analysis.

The deliverable of the initial scoping phase is to determine if a co-location of the export pipeline and the Bikeway is feasible along a three mile stretch of SR-28. If the conclusion is that a co-location is feasible, then both agencies will work towards an extension of the agreement to pursue further design analysis efforts.

III. FINANCIAL IMPACT AND BUDGET

The TTD will pay for all costs associated with the scope of work to prepare the preliminary alignment and cost benefit analysis for co-location of the Bikeway and the export pipeline. The District will provide pipeline design criteria, review of documents, attendance at meetings and general assistance throughout the initial scoping phase.
Interlocal Agreement with the Tahoe Transportation District for Initial Scoping for the Co-location of the IVGID Export Pipeline with the SR-28 Bikeway December 31, 2012

We anticipate that District staff will engage HDR Engineering, the design engineer for the Export Pipeline Project since 2002, to provide review, analysis, and cost estimating for this effort. This contract is expected to be less than $25,000 and will be approved under staff authority.

IV. ALTERNATIVES

None.

V. BUSINESS IMPACT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.

VI. COMMENTS

The Board can choose not to enter into the interlocal agreement and pursue planning, design and construction of the Effluent Export Pipeline in the State Route 28 corridor instead of co-location with the Bikeway.
As part of the original Effluent Export Pipeline Project, IVGID replaced approximately 8 miles of 15-inch Export Pipe. These included approximately 13,000 linear feet (LF) in Segment 1 and 11,000 LF in Segment 3. During planning and design of the first phase, approximately 13,700 LF of Segment 3 and all 17,300 LF of Segment 2 were identified to be in good condition and were not identified for replacement. In August 2009, a pipe break within the unreplaced portion of the pipeline caused the segment to wash out State Route 28. Investigation of the leak by the IVGID staff and an IVGID hired corrosion consulting engineer revealed areas of advanced corrosion on the damaged pipeline section. Indicating that unreplaced portions of the export line may be nearing the end of their service life. Replacement of the remaining pipeline should be planned and budgeted.

The proposed project, Effluent Export Pipeline Project - Phase II, will replace these two remaining sections within a total length of approximately 6 miles. Segment 2 is comprised of approximately 17,300 LF of welded, cement mortar lined, high pressure steel pipe. The remaining 13,700 LF of Segment 3 is comprised of ball and socket cement mortar lined low pressure steel pipe. The project will be completed over multiple years in a manner similar to the original Effluent Export Pipeline Project. Like Phase I, the export line will be replaced using open-cut construction, moving the pipeline to the center of the Southbound travel lane.

Project Justification

The effluent export line transports treated wastewater from Incline Village General Improvement District's (IVGID) wastewater treatment plant to the disposal point at the wetlands southeast of Carson City. This line was constructed in the early 1970s as part of a regional effort to eliminate all wastewater effluent discharges in the Lake Tahoe basin. The effluent export line has been in continuous service since that time. Approximately 8 miles of line was replaced as part of the Effluent Export Pipeline - Phase I. Phase II will replace the remaining 6 miles of pipe within the Tahoe Basin.

The current Project Cooperation Agreement with the US Army Corps of Engineers will expire with the completion of the Phase I work. IVGID will seek to enter into an expanded Project Cooperation Agreement with the US Army Corps of Engineers for 55% funding of all construction costs. The current political climate and financial issues in Washington D.C. make it unlikely that any future funding will be secured for this project. All grant funding has been removed for this project. IVGID will also place the project on the list for the Nevada State Revolving Loan Fund. Funding for this project will be the utility rate.
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EXHIBIT C

EXHIBIT C
MEMORANDUM

TO: Board of Trustees

THROUGH: Steven J. Pinkerton
General Manager

THROUGH: Joseph J. Pomroy, P.E.
Director of Public Works

FROM: Bradley A. Johnson, P.E.
Engineering Manager

SUBJECT: Authorize an Amendment to the Interlocal Agreement with the Tahoe Transportation District for Co-location of the IVGID Export Pipeline with the SR-28 Bikeway - 2014/2015 Capital Improvement Project: Fund: Utilities; Division: Sewer; Project #2524SS1010

DATE: October 30, 2014

I. RECOMMENDATION

Staff recommends that the Board of Trustees makes a motion to authorize Staff to enter into an Amendment to the Interlocal Agreement between the Tahoe Transportation District and the Incline Village General Improvement District to provide up to $300,000 in IVGID funding to allow completion of preliminary design and environmental analysis for the co-location of IVGID’s Export Pipeline with the SR-28 Bikeway.

II. BACKGROUND

At the January 9, 2013 meeting, the Board of Trustees authorized entering into an Interlocal Agreement with the Tahoe Transportation District (TTD) that allowed for the formal evaluation of the feasibility of co-locating the District’s Export Pipeline within the alignment of the proposed bikeway running along the lake side of SR-28 between Sand Harbor State Park and the Junction of SR-28 and US-50 (see attached meeting minutes). The feasibility evaluation was completed and determined co-location is viable over the vast majority of the overlapping alignments. In the areas where co-location was determined to be less than ideal, due primarily to topography constraints, the Export Pipeline can
easily deviate from the non-viable bikeway alignment into SR-28 and then return to the bikeway when the topography is better suited for the pipeline.

The proposed Amendment for the existing Interlocal Agreement would allow the completion of the next steps of the project: completion of preliminary engineering and design and conducting the necessary environmental analysis of the proposed alignment to satisfy the National Environmental Policy Act (NEPA) and the Tahoe Regional Planning Agency (TRPA) requirements.

The proposed Amendment details the duties of each agency. TTD will hold all contracts and will be responsible for managing the design and environmental analysis process. IVGID will provide technical review and project management support.

Should TTD be able to secure funding for the final design and construction of the proposed SR-28 bikeway, District Staff estimates there will be substantial savings and long term operational and maintenance benefits by co-locating the pipeline within the bikeway. Depending on the total length of pipeline eventually replaced, the District could save upwards of $7,000,000 out of the estimated $23,000,000 total project cost via co-location and cost sharing with TTD over replacing the pipeline entirely within the SR-28 roadway.

III. FINANCIAL IMPACT AND BUDGET

The estimated cost of the proposed effort is $1,045,000. TTD will provide the first $745,000 of those costs and IVGID will be responsible for the remaining costs up to $300,000.

A total of $2,000,000 is included in the 2014/2015 Capital Improvement Program (CIP) Budget (see attached data sheet) and there is an additional $5,200,000 carried forward and available from previous years’ CIP budgets.

IV. ALTERNATIVES

The Board can choose not to authorize the interlocal agreement amendment and direct Staff to exclusively pursue planning, design, and construction of the Effluent Export Pipeline in the State Route 28 corridor. However, in doing so, the District is backing out of a partnership opportunity that has the potential to provide the District substantial cost savings.
Authorize an Amendment to the Interlocal Agreement with the Tahoe Transportation District for Co-location of the IVGID Export Pipeline with the SR-28 Bikeway – 2014/2015 Capital Improvement Project: Fund: Utilities; Division: Sewer; Project # 25245S1010

October 30, 2014

V. COMMENTS

TTD is scheduled to begin construction of the bikeway from Incline Village to Sand Harbor in Spring of 2015. The project received approval from TRPA in September 2014 and is fully funded. The District has already replaced the effluent export pipeline in this section of SR-28. The success of this first phase of bikeway along with the partnerships established to support it is encouraging for the next phase of bikeway that includes the pipeline co-location.

VI. BUSINESS IMPACT

This item is not a "rule" within the meaning of Nevada Revised Statutes, Chapter 237, and does not require a Business Impact Statement.
Hearing no further public comments, Chairman Wolfe brought the matter back to the Board and called the question – Trustees Wolfe, Smith and Hammerel voted in favor of the motion and Trustees Devine and Simonian voted opposed. The motion was passed.

G. **Consent Calendar for possible action**

G.1. Authorize an Amendment to the Interlocal Agreement with the Tahoe Transportation District for Co-location of the IVGID Export Pipeline with the SR-28 Bikeway - 2014/2015 Capital Improvement Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010 (Requesting Staff Member: Engineering Manager Brad Johnson)

G.2. Employee Health Insurance Renewal (Requesting Staff Member: Director of Human Resources Dee Carey)

G.3. Diamond Peak Ski Resort Medical Services Agreement Renewal (Requesting Staff Member: General Manager Diamond Peak Ski Resort Brad Wilson)

Trustee Hammerel made a motion to approve the Consent Calendar as submitted; Trustee Smith seconded the motion. Chairman Wolfe called the question and the motion was unanimously passed.

H. **GENERAL BUSINESS (for possible action)**

H.1. Set Date for Public Hearing for January 14, 2015 for the Proposed Amendments to Solid Waste Ordinance #1 (Requesting Staff Member: Director of Public Works Joe Pomroy)

Director of Public Works Joe Pomroy gave an overview of the submitted memorandum.

Trustee Wolfe made a motion to set the date of a public hearing for the proposed amendments to the Incline Village General Improvement District Solid Waste Ordinance No. 1, entitled “An Ordinance Regulating Solid Waste Matter and the Collection,
https://livestream.com/TVGID/events/8303850/videos/178110861

Beginning timestamp 3:05:13, ending timestamp 3:05:28
COMPLAINT
September 27, 2018

Via U.S. Mail

Incline Village General Improvement District – Board of Trustees
Kendra Wong, Chair
895 Southwood Boulevard
Incline Village, NV 89451

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

Dear Chair Wong:

The Office of the Attorney General (OAG) has the authority to investigate and prosecute alleged violations of the Open Meeting Law (OML). NRS 241.039. The OAG is in receipt of a Complaint alleging OML violations by the Incline Village General Improvement District Board of Trustees (District).

The OAG requests that the Board, by and through its legal counsel, prepare a response and/or defense to the allegations contained in the attached Complaint. Please include any records or documentation that support the response.

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before October 12, 2018.

Should you have any questions, please contact Althea Zayas at (702) 486-3224 or via email at azayas@ag.nv.gov.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: /s/ Caroline Bateman
CAROLINE BATEMAN
Chief Deputy Attorney General
Bureau of Gaming and Government Affairs

CB:arz
Enclosures
OPEN MEETING LAW COMPLAINT FORM

The information you report on this form may be used to help us investigate alleged violations of Nevada's Open Meeting Law – NRS chapter 241. When completed, mail or fax your form and supporting documents (if any) to the office location listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Attorney General’s Office may contact you if additional information is needed. If you have a claim against the State of Nevada, complete the Tort Claim Form found on our website.

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

COMPLAINANT INFORMATION

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Call me between 8am-5pm at: | Home | Cell | Work |

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ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: Incline Village General Improvement District

(i.e., specific board, commission, agency, or person(s) etc.)

Date of meeting where alleged violation occurred (mm/dd/yyyy): 07/09/2018
SECTION 2.

Please detail the specific violations against the board, commission, or agency or person listed in Section 1. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

My complaint is:

See attachment with exhibits.

SECTION 3.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints.

I understand that the Attorney General is not my private attorney, but rather represents the public. I am filing this complaint to notify the Attorney General's Office of alleged violations of the Open Meeting Law by public bodies or individual members of a public body. I understand that the information contained in this complaint may be used by the Attorney General to investigate the public body named in my complaint. I understand that the Attorney General has statutory authority to require public bodies to comply with the Open Meeting Law. In order to resolve your complaint, we may send a copy of this form to the public body about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the public body identified in this complaint.

Signature

08/10/2018

Date (mm/dd/yyyy)

AARON L. KATZ
Print Name
SECTION 4. (Optional)

The following section is optional and is intended to help our office better serve Nevada consumers. Please check the categories that apply to you.

Gender: ☐ Male  ☐ Female

Have you previously filed a complaint with our office?: ☐ Yes  ☐ No
If yes, enter in the approximate filing date (mm/dd/yyyy) of your original complaint: __________

I am (mark all that apply):
☐ Income below federal poverty guideline
☐ Disaster victim
☐ Person with disability
☐ Medicaid recipient
☐ Military service member
☐ Veteran
☐ Immediate family of service member/veteran

Ethnic Identification:
☐ White/Caucasian
☐ Black/African American
☐ Hispanic/Latino
☐ Native American/Alaskan Native
☐ Asian/Pacific Islander
☐ Other: ______________

Primary Language:
☐ English
☐ Spanish
☐ Other: ______________

May we provide your name and telephone number to the media in the event of an inquiry about this matter?
☐ Yes  ☐ No

How did you hear about our complaint form (please choose only one):
☐ Called/visited Las Vegas AG Office  ☐ Called/visited Carson City Office  ☐ Called/visited Reno Office
☐ Attended AG Presentation/Event  ☐ Another Nevada State Agency/Elected Official  ☐ Search Engine  ☐ AG Website
☐ AG Social Media Sites  ☐ Media: Newspaper/Radio/TV  ☐ Other

Return original form to:
Office of the Attorney General – ATTN: CML Coordinator
100 N. Carson St.
Carson City, NV 89701
Fax: 775-684-1105
(Faxed copies will be accepted followed by original)
ATTACHMENT TO NEVADA ATTORNEY GENERAL
OPEN MEETING LAW COMPLAINT FORM

INTRODUCTION

The Incline Village General Improvement District ("IVGID") is a general improvement district ("GID") and governmental subdivision of the State [NRS 318.075(1)]. On May 20, 1961 IVGID was created by Washoe County Bill No. 57, (Initiating) Ordinance No. 97 [see NRS 318.055(1)(a)]. As such it is an "administrative...executive or legislative body...created by...a...statute of this State" [see NRS 241.015(3)(a)(2)] and a "public body" for purposes of NRS 241\(^1\) [the Open Meeting Law ("the OML").

After the Washoe County Board of Commissioners ("the County Board") adopted IVGID's initiating ordinance, it appointed "five persons to serve as the first board of trustees of the district" [see NRS 318.080(3)]. Thereafter, IVGID conducted biennial elections for the election of trustees who each serve for terms of 4 years. Elections for trustees are staggered so that in 2018, for instance, two trustees will be elected. In 2016 three trustees were elected [see NRS 318.095(3)].

IVGID's Board of trustees ("the Board") regularly conducts "meetings" subject to the OML in that three or more trustees "gather...to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power" [see NRS 241.015(2)(a)(1)].

NRS 318.055(4)(b) instructs that a GID's basic powers ["(for instance, by way of illustration, for paving, curb and gutters, sidewalks, storm drainage and sanitary sewer improvements within the district) as long as]...one or more of those authorized in NRS 318.116, as supplemented by the sections of this chapter designated therein...are limited to those expressly set forth in its initiating [and supplemental (NRS 318.077)] ordinance(s)." Given IVGID's initiating ordinance granted it the basic power to "furnish...sanitary facilities for sewerage" [see NRS 318.116(11)], delivering sewer services to the inhabitants of Incline Village and Crystal Bay is one of its permissible activities.

IVGID's sewer effluent pipeline runs south underneath Highway 28 from Incline Village to the north Douglas County line approximately 8 miles of the Stateline to Stateline Bikeway Project from Sand Harbor to Spooner junction. A good portion of this section of Highway 28 (at least 3.75 miles) is failing and requires repair, remediation or replacement. An additional 2.25 miles may be in the same deteriorating condition and requires the same repair, remediation or replacement, however, assessment has not as of yet been initiated. In order to explore possible cost savings, past IVGID Boards have addressed the advisability as well as feasibility of relocating the District's pipeline underneath a proposed shared use pathway project adjacent to Highway 28 ("the pathway project") which is being prosecuted by the Tahoe Transportation District ("TTD") on behalf of 13 project partners.

At the present time the only agreement IVGID has entered into with the TTD insofar as the pathway project is concerned, is to share in the cost of an Environmental Impact Statement ("EIS"). There is no agreement that IVGID will in fact be allowed to relocate its pipeline, what the costs will be,

\(^1\) See NRS 241.015(4)(a)(2) and (7).
what portion of TTD's grant will be applied to pipeline relocation (if any), future maintenance responsibilities, etc. In fact Article II, ¶1 of the current interlocal agreement contemplates that there may (or may not) be "a future agreement between IVGID and TTD to pursue final design, permitting and construction." And regardless, Article II, ¶2 states that either side "reserve(s) the right to... terminate (said) Agreement for any reason upon thirty...day written notice," as well as to "discontinue participation in any future phases of the Co-Alignment project." Moreover, Article II, ¶7 states that "nothing contained in (that) Agreement shall be deemed or construed to create...any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other." Thus although IVGID may have a fund balance in its Utility Fund of some $7.5 Million which has been collected from rate payers and earmarked for Phase II effluent pipeline repairs/replacement, it is quite evident no agreement exists between TTD and IVGID insofar as the future of the pathway project is concerned. Nor has the IVGID Board has agreed to contribute any of these funds towards that project!

Meanwhile, TTD has applied to the U.S. Department of Transportation ("USDOT") for a BUILD grant to fund a portion of its pathway project. Notwithstanding Article II, ¶7 of the interlocal agreement in place declares that IVGID and TTD "are associated with each other only for the purposes and extent set forth in (that) Agreement." TTD has asked IVGID staff to write a letter to the USDOT committing matching IVGID funds given TTD's grant application will be looked upon more kindly if TTD represents there will be matching funds. Thus staff, in tandem with TTD, drafted such a letter and presented it to the IVGID Board's chairperson, Kendra Wong, for her signature, on behalf of the IVGID Board. But rather than presenting the proposed letter to the Board for its approval, on July 6, 2018 Ms. Wong affixed her signature. As the Office of Attorney General ("OAG") can see, the letter commits $7.5 million of rate payer funds as a "match" for construction of TTD's pathway project.

On May 31, 2018, our Supreme Court rendered its opinion in The Commission on Ethics v. Hansen, 134 Nev. Adv. Op. 40 (2018). In that case the Court was faced with a circumstance where the executive director of the Ethics Commission's Board, in tandem with its chairperson and attorney, took "action" (filing an appeal of a district court order) which "involved the commitment of public funds" without first obtaining board approval at a public hearing held, in part, for that purpose.

It is footnote 2 of the Hansen opinion which complainant believes has relevance to this complaint:

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2 In other words, nothing more than an agreement to agree.
3 In other words, funding of the EIS.
4 Given no agreement exists between IVGID and TTD to pursue final design, permitting and construction of the Co-Alignment project, there is no assurance IVGID will realize any portion of the sought for grant funds in exchange for its financial commitment to match.
5 This letter appears at pages 766-767 of the packet of materials prepared by staff in anticipation of the Board's regular July 24, 2018 meeting ["the 7/24/2018 Board packet" (https://www.yourtahoeplace.com/uploads/pdf/Ivigid/7-24-2018_BOT_Packet_Regular_-_as_revised.pdf)]. A copy of the letter is attached as Exhibit "A" to this complaint.
"The underlying premise for the dissent is that the open meeting law does not apply because there was no meeting. But that argument ignores the fact that actions by a public body must be taken by the body in an open meeting conducted in accordance with the open meeting law. When the action taken by the public body requires an open meeting, failure to hold an open meeting itself is a violation. NRS 241.015."  

The foregoing constitutes the basis of this OML; the Board's failure to take action in an open meeting it is required to take which involves the commitment of public funds to the pathway project.

PROLOGUE

Even though District staff begrudgingly admit IVGID is a "public agency" governed by a five (5) member Board of trustees [NRS 318.080(3)], complainant feels the OAG has experienced enough recent history with IVGID to understand that nothing could be further from the truth. The District is a commercial enterprise run by unelected staff emboldened by their "fixer," attorney Jason Guinasso. Unelected staff and attorney Guinasso indoctrinate lay trustees as to "the ways of IVGID." These ways mandate that trustees exist to do nothing more than create staff's "policies" (aka rubber stamping). The actual implementation of policy is left to unelected staff, and trustees are told not to interfere. And how would any freshman GID trustee know anything differently?

Not that the IVGID Board has the power to create any "policy" given it is a limited purpose special district [A.G.O. 63-61, p. 103 (August 12, 1963)] and its basic powers are restricted to those expressly included in its charter [NRS 318.055(4)(b)] and supplemental (NRS 318.077) ordinances "as supplemented by the sections of this chapter (NRS 318 which)...must be one or more of those (basic powers) authorized in NRS 318.116" [NRS 318.055(4)(b)], and none other [Ronnow v. City of Las Vegas, 57 Nev. 332, 341-343, 65 P.2d 133 (1937)], but nowhere in NRS 318.116 is a GID permitted to pass laws or create legislation. Notwithstanding, decades ago staff in essence hijacked the IVGID Board by promoting its adoption of Policy No. 3.1.0,6(f) which essentially abdicates the power to make essentially all contractual and financial decisions to unelected staff. Based upon this abdication of powers, IVGID staff:

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6 Actually, they distance themselves from the notion of being a public agency by asserting IVGID is only "quasi-public" (see https://www.yourtahoeplace.com/ivgid/about-ivgid). And when IVGID's GM speaks, he emphasizes the fact IVGID is so much more than "just government" ("we have more business lines than much larger companies. We aren't just government" (https://www.tahoealitribune.com/news/opinion/outsource-or-in-house-work/)).


8 At best, NRS 318.205 instructs that "the board shall have the power to adopt and amend bylaws, not in conflict with the Constitution and laws of the State: 1. For carrying on the business, objects and affairs of the board and of the district. 2. Regulating the use or right of use of any project or improvement." Policies of substance, rather than procedure, violate the Nevada Constitution (Article 8, section 8) and are not bylaws.

9 See page 10 at https://www.yourtahoeplace.com/uploads/pdf-ivgid/IVGID-Board-Policies.pdf ("contracts, other than those covered by Nevada Revised Statutes 332.115 and which are not subject to the advertising thresholds of Nevada Revised Statutes 332 and/or 338, may be authorized, approved and executed by the General Manager of the District or designee, unless otherwise ordered by the Board of Trustees. Contracts covered by Nevada Revised Statutes 332.115 may be authorized, approved and
1. "Hire and retain" themselves contrary to NRS 318.180, and "fix their (own) compensation" contrary to NRS 318.185\(^{10}\);  

2. Have initiated litigation against local citizens, and decided whether or not to settle litigation (and if so, upon what terms and conditions), all without Board approval;  

3. Have "manage(d), control(led) and supervise(d) all the business and affairs of the district" contrary to NRS 318.175(1);  

4. Have wasted hundreds of thousands of public dollars worth of goods and services, annually, through the artifice of public philanthropy, again without Board approval;  

5. Have "dispose(d) of...real and personal property, and any interest therein" contrary to NRS 318.160, without going out to public bid and without Board approval;  

6. Have deceived Washoe County into deeding real property for represented "open space" purposes, when their secret intent was to dispose of that property was secured, for money;  

And now IVGID staff, using the Board's chairperson as their tool\(^ {11}\), have deceived the United States Government into believing the IVGID Board has agreed to match TTD's request for public funds for the latter's pathway project when local sewer rate payers were told these moneys were restricted to IVGID's effluent pipeline replacement.  

These are all examples of the same basic problem; who's driving the bus? Because it's certainly not the IVGID Board. Given the Supreme Court has instructed that the driver of IVGID's bus cannot be unelected staff and their attorney, and that their exercise of such powers when it comes to the expenditure of public funds represents an OML violation, this complaint is filed.  

**BACKGROUND FACTS**  

In anticipation of the Board's July 24, 2018 meeting, staff in concert with the Board's chairperson noticed an agenda for that meeting\(^ {12}\). Nowhere in the agenda was the public put on notice of the fact that the IVGID Board intended to discuss Ms. Wong's July 5, 2018 letter to the USDOT in support of TTD's application for grant funding wherein the IVGID Board chairperson had represented that if the grant were approved, the District would make $7.5 Million of restricted public funds available as matching grant funds for the TTD's (and not IVGID's) pathway project. Nowhere was the public put on notice of the fact that Ms. Wong had already signed that letter and dispatched it to

\(^{10}\) In other words, IVGID's public employees are for all practical purposes our GM's employees. And instead of owing 100% of their loyalty to the public which provides their salaries and benefits, our employees owe their loyalty to IVGID's GM.  

\(^{11}\) Notwithstanding Ms. Wong has publicly proclaimed on several occasions that no single Board member has the power to do anything on the Board's behalf. When the Board speaks, according to Ms. Wong, it must speak collectively rather than singularly.  

\(^{12}\) See https://www.yourtahoeplace.com/uploads/pdf-lgid/BOT_Agenda_Rtular7-24-18.pdf. A copy of the agenda is attached as Exhibit "B" to this complaint.
the USDOT without Board knowledge or approval. Nowhere was the public put on notice that Ms. letter would be buried in the board packet for this meeting under agenda item J, "Board of Trustees Update(s)." And notwithstanding the agenda clearly informs the public that there will be "no discussion or action" whatsoever on any such "update" matter, listen to the "discussion" which took place insofar as Ms. Wong's letter was concerned:

Chairperson Wong: "I included in the board packet on page 766, a letter that I signed related to the shared use pathway and our effluent pipeline project that Brad [Johnson (IVGID's director of asset management)] went in depth about. I just didn't want to forget to mention it to you guys (i.e., the Board), so I included a copy here...

Trustee Callicrate: I don't think I was absent but if that (i.e., the letter) was brought...I would have appreciated that the Board discuss the direction that we wanted to go and then given that to you (i.e., Ms. Wong) before the letter went out. Because that's what we had discussed for other things. I know that I was admonished by the Board for supposedly acting rogue or doing something or speaking out of turn. I know you are the chair but I think that for something like that, especially for spending $7 Million, I think it is important that we as a Board are apprised of it prior...whatever it might be. Just so I had a 'head's up' it (i.e., the letter) really surprised me. I was happy to see that it was in there, but, you know, we do have some protocols that we should follow with the Board. So that's just my only concern and I wanted to share that with you...

Brad Johnson: For the record...typically when we get a letter of support request it's usually with a time line that doesn't allow for full board discussion. And so historically we've issued letters of support sent by the chair. It is on projects where there is already an interlocal agreement in place. And since we're in (a) Board approved partnership with TTD...we (unelected staff) felt it was appropriate to have the Board chair sign the letter on behalf of the board because of that interlocal. But ultimately, because of the deadlines associated with TTD's grant application when the request came in from TTD, there wasn't time available to get it into a board packet for discussion by the Board...

Trustee Callicrate: I understand and appreciate the clarification...

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13 If the OAG goes to the District's web site, it will discover that agendas and board packets for public meetings are posted on line (go to https://www.yourtahoeplace.com/ivgid/board-of-trustees/meetings-and-agendas, Go to the Board's July 24, 2018 meeting and see the links to various topics. Click on the link to "board updates" and your office will find the subject letter.

14 IVGID livestreams its board meetings. The livestream for its July 24, 2018 meeting ("the 7/24/2018 livestream") appears at https://livestream.com/IVGID/events/8303850/videos/178110861. The subject discussion appears at 3:02:30-3:05:58 of the 7/24/2018 livestream.

15 Notwithstanding IVGID staff knew there was to be no discussion of this matter, watch how Brad Johnson voluntarily injects himself into the discussion starting at 3:09:30 of the 7/24/2018 livestream. Mr. Johnson is Jason Guinasso's version of "fixer" insofar as staff matters are concerned.

16 Remember, the only interlocal agreement in place is the one where the District has agreed to contribute up to $300,000 towards a pathway project EIS.

17 This is a misstatement of fact. TTD knew of the application requirement as early as April of 2018, and it knew the application deadline was in July of 2018. Why it waited until the eve of application submittal to make request to IVGID staff for a letter of support is a mystery to complainant. Additionally, as recognized in Hansen, staff could have called a special meeting of the Board once TTD's request was made on as little as three working days' notice (see NRS 241.020(2)).
Chairperson Wong: Also, I did read the letter (which had been prepared by staff and the TTD) before hand to make sure I wasn't committing us to spending any funds. It wasn't anything that would commit the District to anything that would be outside the role of...

Attorney Guinasso: I apologize for interrupting you but for this agenda item it says no discussion or action. And so if we want to discuss this (matter) any further, we should probably get it onto the next agenda.

Simply stated, Ms. Wong's letter which staff fully intended be represented as the action of the IVGID Board as a whole, represented to the USDOT that if TTD's grant application were approved, IVGID would commit $7.5 Million in matching BUILD grant funds towards the subject of TTD's application; its pathway project.

ARGUMENT

Until the Hansen case, complainant was not going to file an OML complaint because if the IVGID Board had failed to commit the subject $7.5 Million, complainant could not allege that this financial commitment had not been "clearly and completely" agendized (rather, he could only allege that the commitment had not been approved by the Board). But after Hansen, whenever a public agency's staff commits the agency to spending public moneys on an endeavor which requires its governing board's approval, yet there is no approval, an OML violation has occurred. And that's exactly what has taken place here.

Although Ms. Wong's letter speaks to "substantially reducin(g) pipeline construction costs " and "supportin(g)...firefighting activities in the event of a wildland fire along the eastern shore of Lake Tahoe," IVGID has no power to "furnish facilities for protection from fire," and there is no evidence that approval of TTD's grant application will reduce pipeline construction costs one iota. Although complainant can provide evidence of the latter, he won't because it is not relevant to this complaint. What is relevant is that by depriving the IVGID Board as a whole of making that determination, unelected IVGID staff and attorney Guinasso used Chairperson Wong as their administrative tool to accomplish the same purpose; a purpose which involved the public's possible expenditure of $7.5 Million in restricted moneys in support of TTD's pathway project.

CONCLUSION

What are the consequences of the Board's commission of yet another OML violation? And yet another instance where unelected staff and "fixer" attorney Guinasso have committed the public to the possible expenditure of public funds on someone else's (i.e., TTD's) project? According to NRS

18 As the OAG can see, Ms. Wong's letter in fact represented the exact opposite.

19 Although this is a legitimate potential power a GID may exercise [see NRS 318.116(17)], IVGID has never been granted this power by the Washoe County Board of Commissioners; a mandatory pre-requisite to the assumption of power [see NRS 318.077 ("the board shall cause proceedings to be had by the board of county commissioners similar, as nearly as may be, to those provided for the formation of the district [see NRS 318.055(4)(b)], and with like effect").
241.036, "the action of any public body taken in violation of any provision of this chapter is void." This means that at the very least, Ms. Wong's financial commitment to USDOT should be declared void.

But there is a larger issue at play here. And that's the Board's abdication to unelected staff of essentially all duties and responsibilities so it becomes staff, rather than the Board, which makes the decision to spend or commit the expenditure of public funds.

Complainant has shared his views of IVGID with the OAG on several past occasions; that it is an enterprise run by non-elected and mostly nonresident staff who have callous disregard for the rights of IVGID's citizens. In the words of the late George Carlin, their "arrogance is stunning." Hopefully the resolution of this complaint will provide behavior modification.

After Hansen, all of the above ultra vires acts can become OML violations to the extent they involve the expenditure of public moneys and are not expressly approved by the IVGID Board as a whole. And as a result, the OAG's prior decision in OAG No. 13-008 (that the OAG has no jurisdiction to construe bylaws or policies that do not conflict with the OML), must now be called into question. A message needs to be sent so an end can be put to impermissible acts such as these. A message needs to be sent that unelected staff cannot take actions in the name of the District when as here, they must be taken by the IVGID Board at a public meeting. And a message needs to be sent to the IVGID Board that their duties as members involve far more than simply "setting policy." Because if such messages are not sent, the IVGID Board, in name only, will simply ratify such acts after-the-fact, whenever they are challenged; just the way the Ethics Commission in the Hansen case attempted to ratify its executive director's, chairperson's and attorney's decision to file an appeal.

Given this complaint does not represent the first instance of IVGID's OML violations, complainant and others believe something more is required to "get the Board's attention" and to protect the public. Given only "the Attorney General shall investigate and prosecute any violation of...(NRS) chapter" 241 [NRS 241.039(1)]; and, only he/she "may sue in any court of competent jurisdiction...for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter" [NRS 241.037(1)]; amongst other remedies, complainant feels that the time has come to secure an injunction which permanently enjoins future violations of NRS Chapter 241 by IVGID. Remember, in the last eight years the OAG has found IVGID guilty of at least eighteen (18) OML violations, and there have been at least another four (4) which would have resulted in similar violations were it not for IVGID's after-the-fact corrective action. Complainant knows of at least two pending OML complaints (OAG No. 13897-263) he believes may result in further violations. Plus he knows of a third he believes would have resulted in another violation had he not filed a complaint to force IVGID into complying with the OML (OAG No. 13897-282). If an injunction were obtained and IVGID's wayward ways continued, the perpetrator(s) would be in contempt of court and for the first time face very, very real consequences.

Finally, given each Board member was present at the Board's July 24, 2018 meeting and thus cannot claim ignorance insofar as the underlying facts recited herein are concerned, complainant also asks that the OAG invoke the criminal and civil penalties of NRS 241.040. This means bringing an action to recover civil penalties against the Board of trustee members who have allowed its
chairperson, GM and attorney to in essence take action in violation of chapter NRS 241. Complainant asks that the assessment of civil penalties be levied against individual trustees *personally* for at least two reasons. First, if it doesn't cost these public stewards personally, then the purpose served will not be achieved. And second, if Board members allow IVGiD's finances to be depleted by a like amount (i.e., reimbursement), it will mean that the real people who have paid these penalties are the citizens who have been prejudiced by Board member's OML violations. Please send a message.
EXHIBIT "A"
July 6, 2018

The Honorable Elaine Chao
United States Department of Transportation
1200 New Jersey Avenue SE
Washington DC, 20590

RE: SR-28 Shared Use Pathway 2018 BUILD Grant Letter of Support

Dear Ms. Chao,

The Incline Village General Improvement District (IVGID) appreciates and supports the Tahoe Transportation District’s (TTD) BUILD grant application for the next phase of the State Route 28 Shared Use Pathway. We are a rural area that relies upon this critical infrastructure and we are consistently challenged with safety issues and congestion along the State Route 28 corridor of the Lake Tahoe Basin. This is a narrow two-lane highway with steep topography and traffic at peak season can be delayed for hours impeding commuters, visitors, and emergency response vehicles. Working together, the project partners set the goal of this multi-phased project to clear congestion, provide safe multi-modal access to Lake Tahoe’s east shore, provide road safety improvements, underground and replace 40-80+ year old utility infrastructure, and to control erosion along the highway shoulder in order to protect the highway and Lake Tahoe’s water quality.

Within this corridor, IVGID operates and maintains approximately 11.5 miles of underground pipeline that carries treated wastewater effluent out of the Tahoe Basin. This pipeline, originally constructed in 1970, is approaching the end of its service life. IVGID has replaced 5.5-miles of the pipeline to date and condition assessment activities have identified an additional 3.75-miles that must be replaced in the near future. Additional condition assessment of the final 2.25-miles is scheduled for the fall of 2018.

It is IVGID’s desire to relocate the replacement sections of pipeline to within the Shared Use Pathway as much as physically possible within the project area. As one of 13 project partners, IVGID is providing $300,000 in funding, via a January 2013 Interlocal Agreement with TTD (amended October 2014), for the current Environmental Analysis which is on track to be completed this year.

The entire length of the 3.75-miles of pipeline identified for near term replacement is located within the alignment of the proposed next phase of the SR-28 Shared Use Pathway. IVGID believes there is a tremendous opportunity to relocate the pipeline out of the narrow highway footprint and into the pathway alignment. Doing so eliminates future traffic congestion during normal pipeline maintenance, substantially reduces pipeline construction costs, and halves the duration of traffic impacting construction. Additionally, co-location would allow the installation of fire hydrants on the replacement pipeline to support the firefighting activities in the event of a wildland fire along the eastern shore of Lake Tahoe. 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.
As you are aware, our small rural communities need assistance in replacing aging infrastructure. But just as important, this National Scenic Byway deserves our attention in providing the over 2.6 million motorists in this stretch a safe driving experience, the over one million visitors safe multi-modal access to their public lands, and to protect the water clarity of this national treasure, Lake Tahoe.

Sincerely,

Kendra Wong
Chairwoman
Board of Trustees
Incline Village General Improvement District
EXHIBIT "B"
NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6:00 p.m. on Tuesday, July 24, 2018 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

A. PLEDGE OF ALLEGIANCE*

B.1. ROLL CALL OF THE IVGIS BOARD OF TRUSTEES*

B.2. ROLL CALL OF THE CANDIDATES FOR IVGIS BOARD OF TRUSTEES*
   Tim Callicrate....Sara Schmitz.... Bruce Simonian....Kendra Wong

C. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration.

   Public Comment Advisory Statement – A public body has a legitimate interest in conducting orderly meetings. IVGIS may adopt and enforce reasonable restrictions on public comment to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. Public comment, as required by the Nevada Open Meeting Law, is an opportunity for people to publicly speak to the assembled Board of Trustees. Generally, it can be on any topic, whether or not it is included on the meeting agenda. In other cases, it may be limited to the topic at hand before the Board of Trustees. Public comment cannot be limited by point of view. That is, the public has the right to make negative comments as well as positive ones. However, public comment can be limited in duration and place of presentation. While content generally cannot be a limitation, all parties are asked to be polite and respectful in their comments and refrain from personal attacks. Willful disruption of the meeting is not allowed. Equally important is the understanding that this is the time for the public to express their respective views, and is not necessarily a question and answer period. This generally is not a time where the Board of Trustees responds or directs Staff to respond. If the Chair feels there is a question that needs to be responded to, the Chair may direct the General Manager to coordinate any such response at a subsequent time. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. The law mitigates toward allowing comments, thus even nonsensical and outrageous statements can be made. However, the Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGIS appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.

D. APPROVAL OF AGENDA (for possible action)

   The Board of Trustees may make a motion for a flexible agenda which is defined as taking items on the agenda out of order; combining agenda items with other
agenda items; removing items from the agenda; moving agenda items to an agenda of another meeting, or voting on items in a block.

-OR- 

The Board of Trustees may make a motion to accept and follow the agenda as submitted/posted.

E. DISTRICT STAFF UPDATES*

1. Recap of 4th of July activities/events – a verbal report provided by Director of Parks and Recreation Indra Winquest

F. GENERAL BUSINESS (for possible action)

1. Receive and Review the Draft 2018 Community Services Master Plan (Requesting Staff Members: Director of Parks and Recreation Indra Winquest and Director of Asset Management Brad Johnson)

2. Approval of the District’s Form 4410LGF Indebtedness Report and related Debt Management Policy as of June 30, 2018 for filing with the Nevada Department of Taxation and the Washoe County Debt Commission AND Approval of Form 4411LGF Five Year Capital Improvement Plan, related IVGID prepared Five Year Capital Project Summary, and Carry Over Schedule, for the fiscal years starting 2018-2019, for filing with the Nevada Department of Taxation, the Washoe County Clerk and the State of Nevada Legislative Counsel Bureau (Requesting Staff Member: Director of Finance Gerry Eick)

3. Review, Discuss, and Comment on a Sample Popular Reporting format under 2018 Board Work Plan. (No action will be taken to adopt a specific report.) (Financial Reporting Board Work Plan) (Presenting Staff Member: Director of Finance Gerry Eick)

4. Review, discuss, and possibly authorize an Additional Services Addendum for Electromagnetic Remote Field Testing Inspections of the Effluent Export Pipeline – 2018/2019 CIP Project: Fund: Utilities; Division: Sewer; Project # 2524SS1010; Vendor: PICA Corp in the Amount of $480,000 (Requesting Staff Member: Director of Asset Management Brad Johnson)
NOTICE OF MEETING

5. Current and Potential Outside Agency Project Partnerships (Master Plan/Capital Plan Board Work Plan) (Presenting Staff Member: Director of Asset Management Brad Johnson)

6. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law (No Open Meeting Law Violation) as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-263, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 and to inform our public (Chairwoman Kendra Wong)

7. Review, discuss, receive Board direction and possibly approve a Board Correspondence Policy to be included in Policy 3.1.0. (Requesting Board Member: Trustee Tim Callicrate)

G. DISTRICT STAFF UPDATE (for possible action)
   1. General Manager Steve Pinkerton

H. APPROVAL OF MINUTES (for possible action)
   1. Regular Meeting of May 23, 2018
   2. Regular Meeting of June 13, 2018

I. REPORTS TO THE IVGID BOARD OF TRUSTEES*
   1. District General Counsel Jason Guinasso

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*

K. CORRESPONDENCE RECEIVED BY THE DISTRICT*

L. PUBLIC COMMENTS* - Conducted in accordance with Nevada Revised Statutes Chapter 241.020 and limited to a maximum of three (3) minutes in duration; see Public Comment Advisory Statement above.

M. REVIEW WITH BOARD OF TRUSTEES, BY THE DISTRICT GENERAL MANAGER, THE LONG RANGE CALENDAR (for possible action)
N. ADJOURNMENT (for possible action)

CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Thursday, July 19, 2018 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of July 24, 2018) was delivered to the post office addressed to the people who have requested to receive copies of IVGID’s agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

1. IVGID Anne Vorderbruggen Building (Administrative Offices)
2. Incline Village Post Office
3. Crystal Bay Post Office
4. Raley’s Shopping Center
5. Incline Village Branch of Washoe County Library
6. IVGID’s Recreation Center
7. The Chateau at Incline Village

/s/ Susan A. Herron, CMC
Susan A. Herron, CMC
District Clerk (e-mail: shh@ivgid.org/phone # 775-832-1207)

Board of Trustees: Kendra Wong, Chairwoman, Tim Callicrate, Peter Morris, Phil Horan, and Matthew Dent.

Notes: Items on the agenda may be taken out of order; combined with other items; removed from the agenda; moved to the agenda of another meeting; moved to or from the Consent Calendar section; or may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Those items followed by an asterisk (*) are items on the agenda upon which the Board of Trustees will take no action. Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to call IVGID at 832-1100 at least 24 hours prior to the meeting. Copies of the packets containing background information on agenda items are available for public inspection at the Incline Village Library.

IVGID’S agenda packets are now available at IVGID’s web site, www.yourtahooplace.com; go to "Board Meetings and Agendas”. A hard copy of the complete agenda packet is also available at IVGID’s Administrative Offices located at 893 Southwood Boulevard, Incline Village, Nevada, 89451.

*NRS 241.020(2) and (10): 2.Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting ...10. As used in this section, “emergency” means an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public.