

M E M O R A N D U M

TO: Board of Trustees

FROM: Devon Reese
District General Counsel

SUBJECT: Incline Village General Improvement District Board of Trustees Policy 3.1.0, Conduct of Meetings of the Board of Trustees, Specific Section – 0.6 Rules of Proceedings, c. Method of Action

DATE: August 14, 2015

It has been brought to my attention, via the attached e-mail dated August 6, 2015 written by an Incline Village resident, that information discussed at an Attorney-Client privileged meeting may have been shared with a member of the community. I have been asked by a member of the Board of Trustees to publicly review exactly what Attorney-Client privilege means at a noticed public meeting. I have also attached as a reference, from the Nevada Open Meeting Law manual, the section regarding Attorney-Client meetings.



Herron, Susan

From: s4s@ix.netcom.com
Sent: Thursday, August 06, 2015 11:29 PM
To: Wright Frank; Newman Linda; Warren Dick; margaretmartini@liveintahoe.com; Miller Judith; Olmer Robert
Cc: Hammerel, Jim; Devine, Bill; Tim Callicrate; Kendra Wong; Herron, Susan; DRese@rkglawyers.com
Subject: The IVGID Board Has a Conflict of Interest With IVGID's Attorney - the IVGID Board Needs its Own Attorney Because of Mr. Reese's Conflict of Interest

Have I gone too far or do each of you think it is appropriate to send this e-mail to the IVGID Board?

Thanks for your input.

Aaron

Dear Chairperson Smith and Other Honorable Members of the IVGID Board -

I am writing to alert the IVGID Board to the fact that it is now apparent to myself and others that the Devon Reese law firm neither represents the public nor the IVGID Board.

Mr. Reese is advising and making recommendations to IVGID staff which are in conflict with the best interests of the IVGID Board and the public. Let me give an example.

The Board will recall that I asked for the details giving rise to Mr. Reese's July 30, 2015 letter to the County Board of Commissioners ("the County Board") declining the County Board's invitation to appear on August 25, 2015 and provide answers to several questions. I asked for the details because Mr. Reese's letter appears to communicate prior Board action, yet that action was taken without the benefit of a public meeting. Mr. Reese has suggested there was a meeting of the Board, however, it was not a meeting for purposes of the Open Meeting Law ("OML"). Notwithstanding the fact Mr. Reese's letter to the County Board that IVGID residents have the ability to ask the IVGID Board and staff questions of Incline Village concern, and to receive answers, I asked such questions and there have been no answers (I am certain at Mr. Reese's counsel).

Well I have now learned THERE WAS NO IN PERSON MEETING. Rather, staff and Mr. Reese got together and decided they would use Mr. Reese to decline the County Board's invitation. So Mr. Reese sent a proposed letter to each Board member for his/her review/approval. The cover e-mail instructed that unless objections were returned to Mr. Reese (rather than other members of the IVGID Board), Mr. Reese would construe non-action as approval.

After one or more trustees communicated objection/proposed revisions, Mr. Reese serially polled the communications of all trustees, incorporated them into his proposed letter, and then went ahead and sent the July 30, 2015 letter. At no time did the Board as a whole direct the mailing of Mr. Reese's letter.

What you have here is either serial polling of the Board by someone who has been hired to ensure that such polling NOT occur (because it represents an OML violation), or unelected staff action without first securing approval of the IVGID Board (which Mr. Reese should know is impermissible because he has represented himself to be an expert in representing public agencies, UNLESS his client is unelected staff rather than the IVGID Board). Mr. Reese is attempting to protect unelected staff from the embarrassment and employment termination which in my opinion is warranted.

If the former took place, we're talking malpractice. If the latter took place, we're talking a conflict of interest. In either event, the IVGID Board requires its own attorney who has undivided loyalty to the IVGID Board and the public.

I am therefore asking that the IVGID Board engage its own attorney because it requires legal advice from someone other than IVGID staff, and the advice it is getting from Mr. Reese, in my opinion is the product of his negligence/conflict of interest. And most of you don't even realize this fact because you are lay persons and too close to the situation to know otherwise.

How many of you have examined Mr. Reese's engagement letter? For those of you who haven't, I suggest you do. And I

suggest you examine who Mr. Reese's client really is. It's NOT the IVGID Board. According to the agreement Mr. Reese drafted, it's "IVGID."

Well who is IVGID? Whoever it is, it's certainly not the IVGID Board.

I say it's the public.

But Mr. Reese will tell you it's not the public. It's IVGID staff.

So there you go, a conflict of interest. Mr. Reese represents staff and the IVGID Board represents the public.

Even if staff and the IVGID Board were on the same page on this issue (which it should not be because staff obtained no direction from the IVGID Board to go into the magazine publishing and regional transportation businesses), because of the potential for a conflict of interest (giving Mr. Reese the benefit of the doubt which in my opinion doesn't exist), I believe each must have its own legal representation.

But here staff and the IVGID Board are not on the same page.

Mr. Reese has instructed Board members to keep their mouths shut about the truth. In other words, to protect IVGID staff (his true client) to the public's detriment. I've been informed that because trustees Smith and Callicrate have announced they plan on attending the County Board's August 25, 2015 hearing, Mr. Reese plans on being there as well (Why? Who is he representing?) in order to patently if not subliminally insure that trustees Smith and Callicrate don't speak the truth which would otherwise compromise staff - his real clients. It's a scene straight out of Godfather II. You remember, The U.S. Senate is investigating Michael's alleged ordering of a murder and it has an informer; Frank "Frankie Five Angels" Pentangeli. Frankie has already given a deposition to Federal agents where he has testified that Michael ordered the hit. So Michael brings Frankie's father from Sicily into the audience where he just sits. Frankie sees his father and because of the subliminal "pressure," changes his testimony. He was pressured and confused by federal marshals. His deposition testimony cannot be relied upon.

Well in our case, Mr. Reese is the equivalent of Frankie's father. He will be present on August 25, 2015 to make sure trustees Smith and Callicrate don't open their mouths and spill the beans. All allegedly in the best interests of the public Mr. Reese represents.

Therefore, I urge the IVGID Board to seek outside counsel for itself.

I also ask that Board members to come forward and share the truth with the public. Mr. Taylor will soon be asking all of you to do what I have asked and if you have nothing to hide, TELL THE TRUTH! Turn over the two or more e-mails and proposed letters to the County Board so the serial polling Mr. Reese engaged in will be up and center for all to see. And then if there is liability, it can be affixed to the person who is really responsible.

Or if there was no serial polling, then all will see that Mr. Reese's letter of July 30, 2015 was nothing more the culmination of conversations between he and his real client, IVGID staff.

Thank you for your cooperation and decision to hopefully do the right thing in the public's best interest. Aaron Katz

§ 4.05 Attorney-client non-meeting

NRS 241.015(2)(b)(2) excepts from the definition of "Meeting," for purposes of the Open Meeting Law, a meeting of a quorum of a public body "[t]o receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both."

A non meeting held for the purpose of having an attorney-client discussion of potential and existing litigation pursuant to NRS 241.015(2)(b)(2) is not a meeting for purposes of the Open Meeting Law and does not have to be open to the public. In fact, no agenda is required to be posted and no notice is required to be provided to any member of the public. *See* OMLO 2002-21 (May 20, 2002). However, the Office of the Attorney General advises that if the public body interrupts its meeting to conduct a non-meeting with its legal counsel, the public body should place this interruption of the open meeting on the agenda to avoid any confusion. *See* § 5.11 of this manual for more information regarding non-meetings to confer with counsel.

It is important to note that a public body may deliberate, which is "to examine, weigh and reflect upon the reasons for or against the choice," which connotes collective discussion in an attorney-client conference. *See Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003), OMLO 2001-09 (March 28, 2001) and OMLO 2002-13 (March 22, 2003). However, NRS 241.015(2)(b)(2) does not permit a public body to take action in an attorney-client non meeting.





Conduct Meetings of the Board of Trustees Policy 3.1.0

POLICY. The Board of Trustees will fix the time and place of the regular meeting of the Board of Trustees of the Incline Village General Improvement District and provide the manner in which special meetings of said District may be called, designating an official mailing address, and establishing the order of business and rules for its proceedings for the Incline Village General Improvement District, Washoe County, State of Nevada.

- 0.1 Regular Meetings.** The regular meetings of the Board of Trustees of the Incline Village General Improvement District shall hereafter be held at the time and place set by the Board of Trustees.
- 0.2 Special Meetings.** Special meetings of the Board of Trustees shall be held upon call of the Chair of the Board or of at least two of the members thereof. Notice of all meetings shall be given in conformity with the provisions of Nevada Revised Statutes 241.020.
- 0.3 Meeting Place.** All meetings of the Board of Trustees shall be held within the District.
- 0.4 Holidays.** In the event that any day fixed for a regular meeting of the Board shall fall upon a holiday, that meeting shall be rescheduled by the Board.
- 0.5 Item(s) of Business.** The item(s) of business at the regular meetings of said Board may include, but are not limited to:
 - Roll call of Trustees
 - Initial Public Comment
 - Public Hearings (if any)
 - Approval of minutes
 - Approval of agenda
 - Reports
 - Consent Calendar*
 - General Business*
 - Final Public Comment
 - Adjournment



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*UNLESS OTHERWISE APPROVED BY the Board Chair, no matter shall be heard, or acted upon unless all relevant materials have been included in the Board of Trustees Meeting Packet.

0.6 Rules of Proceedings.

- a. Public Meetings. All meetings of the Board shall be in accordance with Nevada Revised Statutes 241, the Nevada Open Meeting Law.
- b. Quorum. A majority of the Board of Trustees present in person or by remote communication shall constitute a quorum for the transaction of business. In no event shall any matter be approved without the affirmative vote of three trustees.
- c. Method of Action. The Board of Trustees shall act only by motion which, to become effective, shall be adopted by the affirmative vote of at least a majority of its members present in public meeting, unless otherwise provided by statutes. In the event of only three members present, the method of action must be unanimous.
- d. Recording Vote. Except where action shall be taken by the unanimous vote of all Trustees present and voting, the yes/ayes and no/nays shall be taken on all actions had and entered upon the minutes. All Trustees shall have the equal right to vote, make and second motions. If the vote for/against any item is not unanimous, the Chair may ask the Clerk to conduct a roll call vote.
- e. Ordinances. The enacting clause of all ordinances passed by the Board shall include the word "ordinance" and be consecutively numbered. All actions to pass or revise an ordinance shall be attested by the Secretary.



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- 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.

- g. Claims. The General Manager and General Counsel, and their designees, are authorized to negotiate on behalf of IVGID, the settlement of all property damage, personal injury, or liability claims, unless otherwise ordered by the Board of Trustees. Final settlement of such claims may be authorized by the General Manager, provided the amount attributed to IVGID is less than the amount that must be approved by the Board for amounts per occurrence, including all sources of payment (insurance, risk reserve, operating funds, or working capital). For claims that exceed the amount, those must be approved by the Board, the General Manager may authorize and accept a tentative settlement, which shall not be final and binding upon IVGID, unless and until approved by the Board of Trustees.



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- 0.7. Robert's Rules.** Unless contrary to this rule, such meetings shall be substantially conducted in conformity with Robert's Rules of Order unless those provisions conflict with Chapter 241 of the NRS, in which case, the statutes will prevail.
- 0.8. Agenda Preparation.** The Board Chair, in cooperation with the General Manager, is responsible for preparing the agenda for each meeting. The Chair will place on the Agenda any item requested by a fellow Trustee. The General Manager shall schedule for consideration by the Board any matter requested to be placed on the agenda by any three Trustees. Unless directed otherwise by the Board, the General Manager may delay consideration of any item. In any conflict between the provisions of this paragraph and that of paragraph 0.9., paragraph 0.9. shall govern.
- 0.9. Reconsideration.** Reversal, or substantial modification, of any item by the Board of Trustees within six months of the meeting date at which the action was taken, shall only be considered as follows: the General Manager may request reconsideration of any action of the Board, and place reconsideration of the action before the Board, if the General Manager determines that the action compromises the efficiency of operations or otherwise impairs the effective management of the District. Additionally, a Board action may also be scheduled for reconsideration if at least three Trustees request same. Once placed on the agenda under the procedure established herein, the Board may rescind, modify, reaffirm, or take no action on the item; in the same manner it would take action on any other general item of business.
- 0.10 Public Participation.** Comments shall be solicited from the public on each General Business item. When comments from the public are solicited, the Board or Board chairperson may set a time limit on any presentation by a member of the audience. Unless otherwise permitted by the Chair, no person shall be allowed to speak more than once on any single agenda item.
- 0.11 Officers of the Board.** The officers of the Board shall be elected as provided by Nevada Revised Statutes 318.085 and shall consist of a



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Chair of the Board, Vice Chair of the Board, Treasurer, and Secretary. The term of office shall be for one (1) year or until a reorganization of the Board is required.

- 0.12 Authorization to Sign Checks.** The General Manager and the officers of the Board are hereby authorized to sign checks drawn on the various bank accounts of the District. It shall be required that at least two (2) signatures are affixed to any check drawn on such accounts.
- 0.13 Facsimile Signatures.** The banks with which the District does business are authorized and directed to honor checks drawn on the various bank accounts of the District, when bearing any two facsimile signatures of the officers of the Board and General Manager of the District, after their manual signatures are filed with the Secretary of State, in conformance with Nevada Revised Statutes 351.030.
- 0.14 Reports.** The Board Meeting agenda may include items under Reports which are intended to inform the Board and/or the public. These reports are not actionable items rather informational in nature and substance. Should an action be required the matter shall be presented as a General Business Item.
- 0.15 Consent Calendar.** In cooperation with the Chair, the General Manager may schedule matters for consideration on a Consent Calendar. The Consent Calendar may not include changes to user rates or taxes, adoption or amendment of ordinances, or any other action which is subject to a public hearing. Each consent item shall be separately listed on the agenda, under the heading of "Consent Calendar." A memorandum will be included in the packet materials for each Consent Calendar item. The memorandum should include the justification as a consent item in the Background Section.

Any member of the Board may request the removal of a particular item from the consent calendar and that the matter shall be removed and addressed in the general business section of the meeting.



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A unanimous affirmative vote shall be recorded as a favorable motion and approval of each individual item included on the Consent Calendar.

- 0.16 Legislative Matters.** The General Manager may from time to time propose positions on legislative issues, which positions shall be reviewed and approved by the Board at its regular meeting. In the event a position on a legislative issue must be established prior to the next regular Board meeting, the General Manager is hereby authorized to adopt a position on IVGID's behalf.
- 0.17 Conflict Resolution.** In the event that the provisions of Policy 3.1.0 conflict with any other Policy Provisions, this section shall prevail.