COMPLAINT
via U.S. Mail

Incline Village General Improvement
District Board of Trustees
Attn: Kendra Wong, Chair
893 Southwood Boulevard
Incline Village, NV 89451

Re: Open Meeting Law Complaint, O.A.G. File No. 13897-224
Incline Village General Improvement District Board of Trustees

Dear Ms. Wong:

The Office of the Attorney General (OAG) has jurisdiction over the investigation of complaints alleging violations of the Open Meeting Law (OML), NRS Chapter 241. Enclosed please find a complaint filed with the OAG dated February 16, 2017, alleging an OML violation by the Incline Village General Improvement District Board of Trustees (Board), at the Board’s meeting on February 8, 2017.

The OAG requests that the Board’s legal counsel prepare, on behalf of the Board, a response and/or defense to the allegations. Please include any records or documentation that support the Board’s response, including, without limitation, the public notice and agenda, and audio and/or video recordings for the Board’s February 8, 2017 meeting. Due to the limitations periods set forth in NRS 241.037(3), please respond on or before March 17, 2017.
Should you have any questions, I can be contacted at (775) 684-1201 or via email at btrandt@ag.nv.gov.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: ___________________________
   BRETT RANDT
   Chief Deputy Attorney General
   Boards and Open Government Division

WBK/klr
Encl. As Stated
COMPLAINT FORM

The information you report on this form may be used to help us investigate violations of state laws. When completed, mail, or electronically submit your form and supporting documents to the office 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.

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

SECTION 1.

COMPLAINANT INFORMATION

Your Name: Wright

First

Last

Salutation: Mr. Mrs. Ms. Miss

Frank

First

Last

Your Organization, if any:

Your Address: P.O. Box 186

City

State

Zip

Address

Nv 89402

Your Phone Number: 775-253-4919

Home

Cell

Work

Fax

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

Email: alpinesportss@gmail.com

Age: Under 18 18-29 30-39 40-49 50-59 60 or older

SECTION 2.

TYPE OF COMPLAINT

☐ Bureau of Consumer Protection

☐ Mortgage Fraud

☐ General Investigations

☐ Open Meeting Law

☐ High Tech Crime

☐ Public Integrity

☐ Insurance Fraud

☐ Workers Comp. Fraud

☐ Medicaid Fraud
SECTION 3.

BUSINESS OR INDIVIDUAL COMPLAINT IS AGAINST

Business/Provider Name: Incline Village General Improvement District

Individual/Contact: Wong Kendra

Last First

Individual/Business Address: 893 Southwood Blvd

Address Incline Village

City Nv 89451

State Zip

Individual/Business Phone: 775-832-1122

Work Mobile Fax

Individual/Business Email: kwong@invgid.org

Individual/Business Web Site: 

Please detail the nature of your complaint against the individual, business, or provider listed in Section 3. Include the who, what, where, when, and why of your complaint, full explanation of the transaction involved and a chronology of the events. (Please include any nicknames or aliases, identifying information such as Social Security number(s), license plate(s), year/make of vehicle(s), etc.). You may use additional sheets if necessary.

My complaint is:

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: Incline Village General Improvement District Kendra Wong Board Chairman

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

Date of meeting where alleged violation occurred (mm/dd/yyyy): 02/08/2017

Please detail the specific violations against the board, commission, or agency or person listed in Section 3. 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:

During public comments at the February 8 Incline Village I was cut off by the districts legal counsel from completing my public comments. See attached dialog of the events

PUBLIC OFFICIAL'S INFORMATION (Whom Your Complaint Is Against)

Official's Name: Kendra Wong

Title: Board Chairman of the Incline Village GID

Official's Government

Agency or Body: Incline Village General Improvement District

Official's Work Address: 893 Southwood Blvd

(Street / PO Box) Incline Village

(City) Nv 89451

(State) (ZIP Code)

Official's Telephone: 775-832-1122

Facebook: NVAttorneyGeneral Twitter: @NevadaAG YouTube: /NevadaAG

Complaint Form: Page 2 of 4

Rev: 05/23/2015
SECTION 4.

PAYMENTS

Did you make any payments to this individual or business? □ Yes — Continue to Next Question □ No — Skip to Section 5

How much did the company/individual ask you to pay? ________________________________

Date(s) of payments (mm/dd/yyyy): ________________________________

How much did you actually pay? $ __________________ Payment Method: □ Cash □ Credit Card □ Debit Card □ Check

□ Financed □ Wire Transfer □ Money Order □ Cashier’s Check □ Other: ________________________________

Was a contract signed? □ Yes □ No If yes, date you signed the contract (mm/dd/yyyy): ________________________________

Identify your attempts to resolve the issue(s) with the company, corporation, or organization.

OTHER AGENCIES

Have you contacted another agency for assistance? □ Yes □ No If so, which agency? ________________________________

Have you contacted an attorney? □ Yes □ No

If so, what is the attorney's name, address, and phone number?

Last __________________ First __________________ Phone __________________

Address __________________ City __________________ State __________________ Zip __________________

Is court action pending? □ Yes □ No Have you lost a lawsuit in this matter? □ Yes □ No

SECTION 5.

EVIDENCE

List and attach photocopies of any relevant documents, agreements, correspondence, or receipts that support your complaint (examples include billing statements, correspondence, receipts, payment information, witnesses, and any other document which explains or supports the matters raised in the complaint). No originals. Copy both sides of any canceled checks that pertain to this complaint.

SECTION 6.

WITNESSES

List any other known witnesses or victims. Please provide names, addresses, phone numbers, email addresses, and/or websites.

This board meeting is recorded via live-stream, as well as an official audio recording

Access to live stream via Incline Village General Improvement District web site: yourtahoeplace.com

Board meetings and Agendas

Click on live stream Feb 8, 2017

public comments at beginning of meeting
SECTION 7.

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 by enforcing laws prohibiting fraudulent, deceptive or unfair business practices. I understand that the Attorney General does not represent private citizens seeking refunds or other legal remedies. I am filing this complaint to notify the Attorney General's Office of the activities of a particular business or individual. I understand that the information contained in this complaint may be used to establish violations of Nevada law in both private and public enforcement actions. In order to resolve your complaint, we may send a copy of this form to the person or firm about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the individual or business identified in this complaint. I also understand that the Attorney General may need to refer my complaint to a more appropriate agency.

I certify under penalty of perjury that the information provided on this form is true and correct to the best of my knowledge.

Signature: ____________________________

Print Name: Frank Wright

Date (mm/dd/yyyy): 2/14/2017

SECTION 8. (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 AG Office ☐ Called/Visited Reno AG Office

☐ Attended AG Presentation/Event ☐ Another Nevada State Agency/Elected Official ☐ Search Engine ☐ AG Website

☐ AG Social Media Sites ☐ Media: Newspaper/Radio/TV ☐ Other: ____________________________
During Public Comment at the February 8th Incline Village General Improvement District Board Meeting, I was interrupted by the Board Chairman because I was facing the audience. I was told I had to turn around. I strongly objected to being told which way I had to speak. I informed the board chair Kendra Wong there were no NRS Statues saying I had to face the board. I wanted to talk to the residents. And the board doesn’t listen! It was my personal method of protest! Covered by the 1st Amendment. I against my will followed the chairman’s direction and continued on with my 3 minute presentation. I was again interrupted by Jason Guinasso the district legal counsel and he instructed me to sit down, he took over the meeting bypassing the authority of the board chairman. Mr. Guinasso was upset with my comments some directed at him, he is not an elected board member and has no authority to tell citizens to sit down and shut up. He also took away part of my 3 minutes and when I asked to have it reinstated he denied my request. During this time period another board member came to my defense an offered opposition to the Board Chairs behavior and particularly the Attorney’s involvement.

Summary: The district legal counsel assuming the role of board chair, chastising a citizen, and taking away limited speaking time is unbelievable! The board chair letting the district’s legal counsel take over the meeting is beyond unbelievable. All these actions are violations of the Nevada Open Meeting Laws. As a citizen getting but 3 minutes to speak and having the time interrupted by an unelected employee, and unauthorized behavior of a district legal counsel is a violation of my rights protected by the 1st amendment and the Nevada Open Meeting Laws.

[Signature]
RESPONSE
March 24, 2017

VIA E-MAIL &
HAND DELIVERY

Brent Kandt
Chief Deputy Attorney General
Boards and Open Government Division
100 North Carson Street
Carson City, NV 89701
bkandt@ag.nv.gov

Re: Response of Incline Village General Improvement District Board of Trustees
Open Meeting Law Complaint, O.A.G. File No. 13897-224

Dear Mr. Kandt:

We received your February 27, 2017, correspondence notifying the Incline Village General Improvement District (herein referenced as “IVID” or “District”) of the above referenced complaint by Frank Wright alleging that IVID has violated the Nevada Open Meeting Law (“OML”). Please accept this correspondence and the referenced enclosures as IVID’s response.

Issues Presented

1. Whether Chairwoman Wong violated the Open Meeting Law by interrupting Mr. Wright by asking him to turn around and face the Board during his public comment.

2. Whether IVID General Counsel’s actions constitute a violation of the OML.
IVGID’s Position

IVGID will not respond to each and every assertion submitted in Mr. Wright’s narrative. The record and video speak for themselves regarding what happened at the February 8, 2017, IVGID meeting. IVGID’s response will focus on whether there was a violation of the OML.

A. Chairwoman Wong did not violate the Open Meeting Law by interrupting Mr. Wright and asking him to turn around and face the Board during his public comment.

Your office has opined:

A public body has a legitimate interest in conducting orderly meetings. Public bodies may adopt reasonable restrictions to ensure the orderly conduct of a public meeting and orderly behavior on the part of persons attending the meeting. “Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint.” NRS 241.020(2)(d)(7); see also Kindt v. Santa Monica Rent Control Bd., 67 F.3d 266 (9th Cir. 1995). Restrictions on public comment must be included on the agenda.

See AG File Nos. 13897-171/180 (April 18, 2016)

The public notice and agenda for the February 8, 2017 Board Meeting included the following statement:

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. IVGID 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 **Chairperson and/or General Counsel** 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. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.

See attached Agenda (Exhibit 1)

Here, at the beginning of Mr. Wright’s public comment before speaking, he took his chair which was facing the Board and moved it to the opposite side of the table positioning his back to the Board and facing the residents of the community.

The following comments were made:

Frank Wright: Frank Wright...36 Summers Loop. I'm a member of the community like you people are, I have...
Chairperson Wong: Mr. Wright...
Frank Wright: Yes Ma'am.
Chairwoman Wong: You have to address the Board.
Jason Guinasso: You have to address the Board.
Frank Wright: Why, you don’t listen to me...
Chairwoman Wong: This is public comment to the Board...
Frank Wright: So, you want me to turn around to face you so you can...
Jason Guinasso: If you are going to be disruptive you will not have public comment.
Frank Wright: I'm not being disruptive...
Jason Guinasso: Sit your seat over there and make your public comment please.
Frank Wright: I want to start over again, I was interrupted by this gentleman...
Jason Guinasso: Your time is running Mr. Wright.
Frank Wright: No, it’s not, you don’t have that right to do that, you don’t have the right to do that. Hey, let me talk to the people back here, even though I’m looking at you people for whatever reasons. You don’t represent us, you don’t represent the people in this community. You Mr. whatever your name is, sit up there and you are proud of the fact that you can call a citizen in this community who spent many hours fighting this community to get public records, and your response, your official attorney response is that he vomited all over the paper. Is that what an attorney does? I read Mr. Katz’s legal brief, it’s wonderful, it’s very well written. You’re
incompetent to stand up there and say that a member of this community has vomited all over paper while he’s getting ripped for $229,000, because he asked for public records. He asked to clean up the beaches and get rid of people that don’t live here, but you don’t report that. You only report how much he costs you. Ms. Wong can’t wait to get her money. Mr. Pinkerton here thinks that this place is the envy of all Nevada governments. Who took that survey? You didn’t, you didn’t, you didn’t, you didn’t, and you didn’t. You three board members have just absolutely no reason to be there. You have no reason to be representing this community. You don’t listen to us. A lady was just here talking about the trash ordinance and how ineffective it is for them. You don’t care. You will leave this meeting tonight and you won’t do a thing, you won’t do a thing. You can look at me Mr. G-inasso, you’re still living in District 25, you lied, tell me you moved, tell me you live in District 26…

Jason Guinasso: I live in District 26 and your comments are slanderous I’m going to cut them off right now.

Frank Wright: That wasn’t slanderous.

Jason Guinasso: It was because it’s not true and it’s an attack on me and my character.

Frank Wright: How do you I, how do you know…

Jason Guinasso: Move on to another topic.

Secretary Callicrate: Order…

Frank Wright: Stop the clock.

Secretary Callicrate: If this is a public comment, regardless of what you read, it is for the public to make their comment to the Board, that’s the five of us, and while I appreciate you stepping in Mr. Guinasso to keep us from a potential violation, I would like to hear entirely from Mr. Wright what he’s trying to say, and I think he does have the right to have the clock set back at least 15 seconds.

Jason Guinasso: Absolutely not, absolutely not, and as I mentioned in the public comment statement, the public cannot make slanderous comments, that will be cut off.

Chairwoman Wong: Let’s back up. Give him 15 seconds and that is it.

Mr. Wright: Okay. Thank you Mr. Callicrate, that was very professional. The issue we have here is you don’t represent us. You three board members have no clue. I’m not sure that our new board member is a legal citizen of the united states, he hasn’t provided any documentation showing that he is.

Chairwoman Wong: Times up, thank you.

See recording of 2/8/17 IVGID Board Meeting (Exhibit 2).
NRS 241.020(d) states:

(3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

   (1) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting;

(7) Any restrictions on comments by the general public. Any such restrictions must be reasonable and may restrict the time, place and manner of the comments, but may not restrict comments based upon viewpoint.

Mr. Wright states in his attachment to his complaint dated February 16, 2017:

I informed the board chair Kendra Wong there was no NRS Statutes saying I had to face the board. I wanted to talk to the residents. And the board doesn’t listen to me! It was my personal method of protest! Covered by the 1st Amendment

By Mr. Wright stating he intentionally faced the residents as a “personal method of protest” is just one example of Mr. Wright’s intent to willfully disrupt the Board meeting. The Public Comment Advisory Statement provided in the Agenda for the February 8, 2017 Board meeting, specifically states, “Willful disruption of the meeting is not allowed.”

Chairwoman Wong, did not violate the open meeting law by requesting that Mr. Wright address the Board. The manner of Mr. Wright’s comment was restricted, because he was not addressing the board. Once, he repositioned his chair to address the Board, he was able to proceed with his comment.

B. IVGID General Counsel’s actions do not constitute a violation of the OML.

As stated above, your office has opined:

A public body’s restrictions must be neutral as to the viewpoint expressed, but the public body may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering with the rights of other speakers.

See AG File No. 00-047 (April 27, 2001).
Here, Mr. Wright’s statements about Mr. Guinasso were slanderous, offensive, and inflammatory. Mr. Wright used his time at the IVGID Board meeting, to discuss Mr. Guinasso’s place of residence, which is completely off topic and unrelated to the Board meeting, further the statements are untrue, slanderous and offensive. Mr. Guinasso reminded Mr. Wright that any slanderous statements would be cut off. Therefore, Mr. Guinasso’s actions did not violate the OML. Please note that Mr. Wright was given his full 3 minutes of public comment, he was given 15 seconds more of public comment to make up for the interruptions of Mr. Guinasso and Chairwoman Wong. Mr. Guinasso’s actions do not constitute a violation of the OML.

C. **IVGID Did Not Violate the Open Meeting Law.**

In the event that this memorandum has failed to address an alleged violation of the OML due to the vagueness and ambiguity of the complaint, IVGID denies that any such violation has occurred. IVGID has a stellar 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.

**Concluding Remarks**

In accordance with the foregoing, IVGID respectfully requests that the Attorney General conclude that there has been no violation of the OML or, in the alternative, that the corrective action taken by the IVGID Board cured any alleged violation.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Frank Wright, A.G. File No. 13897-224.

Very truly yours,

Jason D. Guinasso, Esq.
JGuinasso@rkglawyers.com

Encl.

cc: Chairman Kendra Wong
    General Manager Steve Pinkerton
    District Clerk Susan Herron
NOTICE OF MEETING

The regular meeting of the Incline Village General Improvement District will be held starting at 6:00 p.m., on Wednesday, February 8, 2017 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

A Meet and Greet reception will be held prior to the Board meeting at 5:30 p.m. — all members of the public are invited to attend.

A. PLEDGE OF ALLEGIANCE*

B. ROLL CALL OF THE IVGID BOARD OF TRUSTEES*

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. IVGID 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 Chairperson and/or General Counsel 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. IVGID 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. PRESENTATIONS*

1. Director of Community Services Sharon Heider – Verbal Update on Community Services activities

F. GENERAL BUSINESS (for possible action)

1. Review, discuss, and possibly award a procurement contract, in the amount of $448,000.00, to Club Car, LLC for eighty (80) electric golf carts to be located at the Championship Golf Course and review, discuss, and possibly authorize a four year municipal lease agreement, to finance the procurement of eighty (80) electric golf carts to be located at the Championship Golf Course, with California First National Bank in the amount of $484,713.60 (Requesting Staff Members: Director of Community Services Sharon Heider and Director of Golf Michael McCloskey)

2. Utility Rate Study Presentation - 2017: review, discussion and possible direction (Requesting Staff Member: Director of Public Works Joe Pomroy)

3. 2017/2018 Capital Improvement Budget District “Legacy” Project Presentation - review, discussion and possible direction/action (Requesting Staff Member: Director of Asset Management Brad Johnson)

4. 2017/2018 Budget Review Process - review, discussion and possible direction/action (Requesting Staff Member: General Manager Steve Pinkerton)

5. 2017 Board of Trustees Work Plan - review and discussion with next action tentatively slated for the next Board of Trustees meeting (Requesting Trustee: Chairwoman Kendra Wong)
G. DISTRICT STAFF UPDATE

1. General Manager Steve Pinkerton
   - Monthly Financials
   - Information Technology
   - Washoe County Community Area Plan
   - Washoe County Snow Removal

2. Diamond Peak Ski Resort General Manager Mike Bandelin - Verbal update on the Diamond Peak Ski Resort ski season

H. APPROVAL OF MINUTES (for possible action)

1. Regular Meeting of December 14, 2016

2. Regular Meeting of January 18, 2017

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, February 2, 2017 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of February 8, 2017) 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: sah@ivgid.org/phone # 775-832-1207)

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

Notes: 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.yourtahoeplace.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.
EXHIBIT 2
OPINION
OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the matter of: OAG FILE NOS.: 13897-224 & 226
INCLINE VILLAGE GENERAL FINDINGS OF FACT AND
IMPROVEMENT DISTRICT CONCLUSIONS OF LAW

BACKGROUND

Frank Wright filed two separate complaints on February 16, 2017, and April 3, 2017, (Complaints) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board). The Complaints allege that the Board violated the OML as follows:

ALLEGATION NO. 1: The Board improperly required Mr. Wright to face the Board, as opposed to the audience, during his public comment at the beginning of the Board’s meeting on February 8, 2017.

ALLEGATION NO. 2: The Board’s legal counsel improperly cut off Mr. Wright’s public comment during the February 8, 2017, meeting.

ALLEGATION NO. 3: The Board held two training sessions without noticing them in accordance with the OML.

ALLEGATION NO. 4: The Board held meetings with its legal counsel in violation of the OML.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG’s investigation of the Complaints included a review of the agenda and recording of the February 8, 2017 meeting, together with written responses to the Complaints and supporting materials from Jason Guinasso, Esq., counsel to the Board, and a sworn affidavit from Mr. Guinasso regarding Allegation No. 4.
After investigating these Complaints, the OAG determines that no clearly cognizable OML violations occurred, but that the Board’s approach to public concerns failed to encourage openness and participation, both of which are key tenets of the OML.

More particularly, the manner in which the Board and its counsel hold training sessions approaches a potential violation of the OML. Furthermore, the Board and counsel’s approach to public comment periods may discourage public participation in its meetings, which does not comport with the spirit and policy behind the OML.

FINDINGS OF FACT

1. The Board is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

2. The Board’s February 8, 2017, agenda provided for general periods of public comment at the beginning of the meeting and before adjournment, and contained the following Public Comment Advisory Statement, which Mr. Guinasso read into the record prior to the first general public comment period:

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. IVGID 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 not 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 Chairperson and/or General Counsel 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 processional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.

(Emphasis added).

3. On February 8, 2017, Mr. Wright began his public comment during the first general public comment period by facing the audience. The Board Chair, Kendra Wong, cut Mr. Wright off and forced him to face the Board when speaking. Less than two minutes later, Mr. Guinasso cut off Mr. Wright’s public comment citing slander after Mr. Wright made statements regarding Mr. Guinasso’s 2016 candidacy for Nevada State Assembly District 26.

4. Board Secretary, Tim Callicrate, interceded and requested that a portion of Mr. Wright’s allotted time be returned to him so that Mr. Wright could have the opportunity finish his public comment. Over Mr. Guinasso’s objections, Chair Wong granted Mr. Wright 15 additional seconds to finish his public comment and then abruptly cut Mr. Wright off at the end of the 15 seconds.

5. The Board sets a three-minute timer for each public member’s comment period. When the timer goes off, the speaker is cut off, at times mid-sentence.

6. Multiple members of the public complained during the two public comment periods of the February 8, 2017, meeting, stating that the Board had stopped accepting public comment on specific agenda items and that the Board’s decision impaired the public’s ability to be heard on issues before the Board.

7. Mr. Wright received an uninterrupted three minutes of public comment time during the general public comment period at the end of the February 8, 2017, meeting.

8. Immediately following the January 18, 2017, Board meeting, the Board attended a training session (“January Training Session”) conducted by Mr. Guinasso. The January Training Session was directed solely at the Board.

9. Notice of the January Training Session was posted on the evening of January
17, 2017, at the Board administrative offices and the morning of January 18, 2017, at the location of the session. The Board did not post or distribute any other notices regarding the January Training Session. The Notice of the January Training Session stated that the Board "may" attend. The Notice was silent as to whether members of the public may attend the January Training Session.

10. The Board held another public meeting on March 8, 2017. Immediately preceding the March 8th Board meeting, the Board attended another training session ("March Training Session") conducted by Mr. Guinasso and conducted solely for the Board. Also on March 8th, Mr. Guinasso conducted a gathering with Board members to discuss pending or existing litigation involving IVGID.

11. On February 27, 2017, notice of the March Training Session was posted at the Board administrative offices and at the location of the meeting. The Board did not post or distribute any other notices regarding the March Training Session. The Notice of the March Training Session stated that the Board "may" attend. The Notice was silent as to whether members of the public may attend the March Training Session.

12. The January and March Training Sessions were entitled "So, You Were Elected an IVGID Trustee, Now What?" The support materials for both training sessions posed specific questions directly related to matters within the Board's jurisdiction and control. The questions included the following: "Who are the people I am serving with, what are their priorities and ideas, and how can I work with them to accomplish my goals and serve the public well?", "What are the priorities of the District?" and "What powers, duties/ responsibilities and obligations do I have?"

LEGAL STANDARDS AND CONCLUSIONS OF LAW

1. The OAG Possesses Insufficient Evidence to Find that the Board Training Sessions Were "Meetings" Under the OML.

NRS 241.020 governs open and public meetings and it provides that "all meetings must be open and public, and all persons must be permitted to attend any meeting of these public bodies" except as otherwise provided by specific statute. NRS 241.020(1). A
"meeting" generally requires a "gathering of members of a public body at which quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." NRS 241.015(3). "Deliberate' means collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision." NRS 241.015(2).

The OML provides an exception for a gathering "which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." NRS 241.015(3).


"[T]he narrow construction of exceptions to the Open Meeting Law stems from the Legislature's use of the term 'specific' in NRS 241.020(1) and that such exceptions must be explicit and definite." Chanos, 124 Nev. at 239, 181 P.3d at 680. [E]xceptions to the Open Meeting Law extend only to the portions of a proceeding specifically, explicitly, and definitely excepted by statute." Id. The exceptions to the OML requirements, "must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers." NRS 241.016(4).

The January and March Training Sessions were organized by the Board, specifically directed to its members, conducted by its counsel, and contemplated attendance only by its members. The OAG cautions that the questions that formed the basis for the Training Sessions may be perceived as inviting interactive communications among the Trustees and
a collective discussion or exchange of facts.\textsuperscript{1} If such discussions or exchanges of facts were preliminary to some action or decision of the Board, they would constitute deliberations under NRS 241.015(2). Where a gathering of a quorum of a public body includes deliberation, the gathering necessarily meets the definition of a “meeting” contained in the OML.

According to evidence obtained by the OAG from IVGID, the trustees’ responses to the questions posed in the training materials suggest they discussed the priorities of the Board in general terms. However, the OAG does not possess specific evidence that the discussion which occurred during the Training Sessions, together with any exchange of facts, were preliminary to, or resulted in, any action or decision of the Board. As a result, the evidence does not support a finding that the interaction among trustees that occurred during the Training Sessions qualifies as “deliberation.” NRS 241.015(2). Absent “deliberation,” the Training Sessions would not constitute “meetings” under NRS 241.015(3). It follows that evidence does not support a finding that the January and March Training Sessions violated the OML.

The OAG cautions IVGID and its counsel that while no OML violation is found here, IVGID should take reasonable actions to clearly and purposefully comply with the OML, avoiding, where possible, the specter of violation. This may include opening the Training Sessions to the public and noticing and conducting them as public meetings, absent some important reason to continue with its current Training Session practices.

2. The March 8, 2017, Attorney-Client Conference Regarding Potential or Existing Litigation Is an Exception to the OML.

A gathering of members of a public body, at which quorum is actually or collectively present, does not constitute a meeting pursuant to the OML when the purpose of the gathering is for the members “to receive information from the attorney employed or

\textsuperscript{1} The overview of questions posed in the training materials include, but are not limited to, the following: (1) What are the priorities of the District? (2) Who are the people I am serving with, what are their priorities and ideas, and how can I work with them to accomplish my goals and serve the public well?
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.” NRS 241.015(3)(b)(2).

The OAG does not possess any evidence that the March 8, 2017, conference between the Board and its counsel involved any action other than the sharing of information regarding potential or existing litigation. Counsel’s sworn affidavit provides that the only matters discussed during the March 8, 2017 conference concerned specific existing or potential litigation involving the Board. Therefore, the March 8, 2017, conference constituted an attorney-client conference that falls within the OML exception as provided in NRS 241.015(3)(b)(2). The Board did not violate the OML by holding and attending the March 8, 2017, attorney-client conference.

3. The Board’s Counsel Has Not Demonstrated a Recognition of the Importance of Public Comment Periods to the Fulfillment of the Spirit of the OML.

In Nevada, public bodies exist to aid in the conduct of the people’s business. NRS 241.010(1). Public bodies must allot time to allow comments from the general public either “at the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting” or “after each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.” NRS 241.020(2)(d)(3). The OML exists to ensure that the public is able to meaningfully participate in government. See NRS 241.010.

Every citizen may freely speak, write and publish his sentiments on all subjects being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. Nev. Const. art. I, § 9. The United States Supreme Court created a federal rule consistent with the Nevada Constitution in N.Y. Times Co. v. Sullivan, 376 U.S. 254, 269 (1964), that protects even a defamatory falsehood in certain circumstances. N.Y. Times Co., 376 U.S. at 279-280. The public has important First Amendment interests in its ability to comment before public governmental bodies. White v. City of Norwalk, 900 F.2d 1421, 1425 (9th Cir. 1990).
The OML requires public bodies to offer at least two periods of public comment during public meetings—one at the beginning of the meeting before any items on which action may be taken are heard, and another at the end of the meeting prior to adjournment. NRS 241.020(2)(d)(3). Restrictions on public comment must be included in the agenda and must be reasonable restrictions to the time, place and manner of the comments, but may not restrict comments based upon viewpoint. NRS 241.020(2)(d)(7). The interpretation and enforcement of rules during public meetings are highly discretionary functions. See White, supra, 900 F.2d 1421 at 1426. The decision to stop a speaker is left to the discretion of the presiding officer of the public body. Id. A public body may impose restrictions on public comments that are repetitious, irrelevant, or disruptive comment. Id.

Here, the Board fails to provide a reasonable basis for requiring Mr. Wright to face it during public comment. While reasonable rules and regulations during public meetings ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those persons attending the meeting, the Board presents no evidence that the requirement to face the Board was necessary to ensure that the speaker’s comments could be properly heard or recorded, or to otherwise ensure the orderly conduct of the meeting.

Determining whether public comments are repetitious, irrelevant, or disruptive should be left to the presiding officer of the meeting, namely Chair Wong. The Board’s legal counsel should refrain from interjecting his opinions, or silencing speakers, during public comment periods. The Board’s public comment advisory statement, which is contained in its agenda, improperly authorizes and empowers the Board’s legal counsel to stop public comment when such authority lies solely with the Board’s Chairperson. Moreover, the general tone of the advisory statement appears to misunderstand the centrality and dignity of public comment in providing the public with the opportunity to participate in the conduct

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2 The Board’s counsel, who is not the presiding officer of the meetings, has a history of interrupting and cutting off members of the public from speaking during public comment. See OMLO 13897-171/180. The OAG cautions the Board that counsel’s continued actions to hinder public comment may lead to legal liability for the Board for any resulting OML violations.
of public bodies. The OAG advises the Board to revise its public comment advisory statement to grant the discretion to stop public comment to the Board's Chair and to show appropriate respect to the citizenry in whom ultimate democratic authority rests.

Ultimately, the Board allowed Mr. Wright to make his comments during both public comment periods and so it did not commit a formal violation of the OML. Still, actions of Board counsel have shown a lack of sufficient regard for public comment and its role in the OML.

SUMMARY

Upon investigating these Complaints, the OAG determines that the Board did not commit any provable OML violation. However, the Board's general attitude, combined with the conduct of its counsel, discouraged public participation in its meetings and actions and thus has not properly recognized the spirit of the OML.


ADAM PAUL LAXALT
Attorney General

By: CAROLINE BATEMAN
Chief Deputy Attorney General
Boards and Open Government Division
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2017, I served the FINDINGS OF FACT AND CONCLUSIONS OF LAW by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, CERTIFIED MAIL addressed as follows:

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