COMPLAINT
June 15, 2017

via U.S. Mail

Jason D. Guinasso, Esq.
Reese Kintz Guinasso
190 West Huffaker Lane, Suite #402
Reno, NV 89511

Re: Open Meeting Law Complaint, O.A.G. File No. 13897-233
Incline Village GID Board of Trustees

Dear Mr. Guinasso:

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 an additional complaint with attachments filed with the OAG on or about June 14, 2017, alleging OML violations by the Incline Village General Improvement District Board of Trustees (Board).

The OAG requests that, as the Board’s legal counsel, you provide a response and/or defense to the allegations on behalf of the Board. Please include any records or documentation that support the Board’s response. Due to the limitations periods set forth in NRS 241.037(3), please respond on or before June 29, 2017.

Should you have any questions, I can be contacted at (775) 684-1201 or via email at bkandt@ag.nv.gov.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: BRETT KANDT
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 | Salutation:  
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<td>Your Name: Wright</td>
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<td></td>
<td>Last</td>
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<tr>
<td>Your Organization, if any:</td>
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<tr>
<td>Your Address: Box 186</td>
<td>Crystal Bay NV 89402</td>
</tr>
<tr>
<td>Your Phone Number: 775-252-9919</td>
<td>818-601-1996</td>
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<tr>
<td>Email: <a href="mailto:alpinosport55@gmail.com">alpinosport55@gmail.com</a></td>
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<tr>
<td>Age: Under 18 18-29 30-39 40-49 50-59 60 or older</td>
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<td>Call me between 8am-5pm at: Home Cell Work Fax</td>
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SECTION 2.

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<thead>
<tr>
<th>TYPE OF COMPLAINT</th>
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<td>Bureau of Consumer Protection</td>
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<td>General Investigations</td>
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<td>High Tech Crime</td>
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<td>Mortgage Fraud</td>
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<td>Open Meeting Law</td>
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<td>Workers Comp. Fraud</td>
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SECTION 3.

BUSINESS OR INDIVIDUAL COMPLAINT IS AGAINST

Business/Provider Name:__________________________________________

Individual/Contact:______________________________________________

Individual/Business Address:______________________________________

Individual/Business Phone:________________________________________

Individual/Business Email:________________________________________

Individual/Business Website:______________________________________

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(e), year/make of vehicle(e), 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

(i.e., specific board, commission, agency, or person(s) etc.) @APR 25, 2017

Date of meeting where alleged violation occurred (mm/dd/yy) MAY 10, 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: Incline Village General Improvement District is conducting "walking quorums" prior to every board meeting.

See Attached 6 Pages of Explanation

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

Official's Name: Kendra Wong, Philip Horan, Tim Campbell

Official's Government Position: Board Members of

Agency or Body: Incline Village General Improvement Dist

Official's Work Address: 293 Southwood Blvd, Incline Village, NV 89451

(Street / PO Box) Incline Village, (City) NV (State) 89451 (ZIP Code)

Official's Telephone: 877-468-4397

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Facebook: NV/AttorneyGeneral Twitter: @NevadaAG YouTube: NevadaAG

Rev: 05/28/2015
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.

Jim Smith

Former Trustee

President of Service Scouts

916-955-9705

Box 3671 Incline Village NV 89450 – 3671

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Rev: 05/28/2015

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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]

[Date (mm/dd/yyyy)]

Print Name

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
Basis for OML Complaint:
Incline Village General Improvement District is violating the Nevada Open Meeting Law by conducting "Walking Quorums" prior to each board meeting. The General Manager is artfully indoctrinating or preparing board members for upcoming meetings. Decisions on pending agenda items are discussed. Final vote decisions are made behind closed doors and outside the view of the public. The actual board meetings are scripted. The trustee who will make a motion to vote on an agenda item has been selected in advance. Evidence validating this practice can be observed on the livestream of each board meeting; little if any serious debate or discussion between board members takes place before items are voted on by the board.

Introduction:
Incline Village General Improvement District is conducting pre arranged board meetings, prior to every board meeting. This scenario is toxic, illegal, and designed to keep the money flowing. This pretentious display of being a "public body" has become an obscene event in our community. Our governing district has been hijacked by the General Manager and the Legal Counsel. Conducting forced meetings with board members to discuss agenda items for upcoming board meetings. But in reality it is a methodology to indoctrinate and poll Trustees. {Hence: A Walking Quorum} The trustees actually believe they have to attend these one on one sessions with the general manager.
Public records are non-existent and hidden from Trustees. Financials records are convoluted, financial reports to the board are vague and difficult to understand. The walking quorums are allowing millions of tax dollars to be wasted or have just disappeared. Passing utility rate increases which are not warranted. Passing capital improvement projects with no community input, the list is massive. All decided outside of the board meetings. Three board members willingly play along with the General Manager's game plan. Creating a quorum guaranteeing passage of every item created by the General Manager. The walking Quorum allows the General Manager to program the board members into voting his way.
In simple terms this is: PUBLIC CORRUPTION!
Background:
Incline Village General Improvement District has concocted a methodology to deceive the public and guarantee passage of expensive proposals brought to the board by the general staff. (Example: Parasol building purchase. See description in footnotes)

**OML 4.08 Serial communications, or "walking quorums"**
The Open Meeting Law forbids "walking quorums" or constructive quorums. Serial communication invites abuse if it is used to accumulate a secret consensus or vote of the members of a public body.
Any method of meeting where a quorum of a public body discusses public business, whether gathered physically or electronically, is a violation of the OML.

Every other week the General Manager and possibly legal counsel meets with the 5 board members, individually to discuss the upcoming agenda items for the Board of Trustees regular bi-monthly meeting. These are planned sessions, sharing the same information and positioning of Trustees for upcoming votes at the board meeting. The public rarely if ever hears the individual board members views on agenda items, but rather only witnesses the final vote, which 100 times out of 100 attempts is pro-staff, and pro-spending.

In these meetings the general manager is able to screen the voting positions of the various trustees. Arguments for and against agenda items is openly discussed. This information is carried to each board member by the General Manager, a clear violation of the OML. These one on one sessions give the General Manager a distinct advantage with unlimited time to indoctrinate the various board members. While the residents have but three minutes during public comments to offer their information and viewpoints. By the time agenda items are brought before the board
decisions have been made, and votes have been secured. All outside the view of the public.

The General Manager will orchestrate/ select the motion presenter prior to the board meeting. (This has been witnessed as the newest board member Peter Morris proposed a motion at the April 25 board meeting Mr. Morris proposed two motions before the board, he turned his microphone on and started to read the motion without looking or acknowledging other board members. He was pre-assigned to make the motion. This could only take place after other board members and he worked out the process. Outside the public view, or during a walking Quorum or serial polling.

At the May 10, 2017 board meeting after an excessive amount of public opposition to a board agenda item to basically give away millions of taxpayer dollars to a non-profit “charity” Which would be a massive giveaway of public property. All done with little discussion. The decision to move forward on this monster giveaway was done outside the view of the public, behind closed doors and orchestrated by the general manager during the “walking quorums.” The “tainted” three board members act and do as they have been instructed by the General Manager.

The elected positions for various leadership positions on the board are freely discussed during these pre-board meetings. The positions are predetermined outside the boardroom, under the guidance of the General Manager, Legal Counsel, and possibly an individual by the name of Jim Clark. Mr. Clark is a Republican political activist.

Mr. Clark will host members of the board at his home in Incline Village and he will tell how they should vote on legislation before the board.

Three members control the board and vote in unison, hence the control of the chairman of the board position is always discussed and pre-determined prior to the public vote at the regular board meeting.

False and misleading information about the agenda item will be presented to each board member during their one on one meeting with
the General Manager. Views of other board members on agenda items is shared with each board member as the individual meetings takes place.

OML 4.08 Serial communication invites abuse of the Open Meeting Law if it is used to accumulate a secret consensus or vote of the members of a public body. In McKay v. Board of County Commissioners, 103 Nev. 490, 748 P.2d 124 (1987), the Court stated that sensitive information may be discussed in serial meetings where no quorum is present in any gathering. But there can be no deliberation, action, commitment, or promise made regarding a public matter in such a serial meeting.

The General Manager uses this one on one meeting to convince the Trustees to vote his way, and to support staff at the upcoming board meeting. The general public is seldom presented with individual board member views as to their positions on agenda items. It has all been pre-determined in these one on one sessions with the GM. Outside the view of the public.

The General Manager is accumulating a secret consensus having these meetings and the vote at the board meetings are pre-determined. These forced lobbying sessions are used as a tool to intimidate the board members to vote exactly as the General Manager wishes. Members of the board fully believe they must attend these indoctrination sessions, they are cleverly disguised as review sessions for agenda items. Trustees are allowed to receive information about agenda items but these sessions are outside the scope of what is permissible under the OML laws of the state of Nevada.

The community is being cheated out of a free dialog and pros and cons to potential agenda Items by board members. Through intimidation board members are pressed to support the staffs proposals or follow along with the “Game Plan”. Not playing along will create difficult repercussions for the individual board members. Former Trustee Jim Smith will testify to the brutal consequences for not being a “Team Player”. Jim Smith can also verify the allegations contained in this complaint. Jim Smith can verify Jim Clark’s, and the General Manager’s methods of intimidation.
It is inconceivable that each member of the board has a perfect understanding of agenda items week after week, never asking questions or clarification prior to a vote. In simple terms it is all predetermined.

Investigation:
As the Attorney General investigates this OML complaint it will become rather apparent to the investigating team that three members of the board have been “Coached” by legal counsel, Jason Guinasso, as to how to respond to the Attorney General’s inquiries. Two Trustees will be candid and offer precise information as to the abuses of the OML and will give testimony which will be true and accurate. None of the members of the board understand the OML with regards to “Walking Quorums”. The General Manager is rather clever when conducting these Walking Quorums, he knows which board members he can intimidate and which ones will question him as to his intentions. Many items which are extremely detrimental to the community are “rubber stamped” and passed often times against the will of the community.

Summary:
I have filed three OML complaints in the last four months against IVGID, I am waiting on resolutions from the first two. I have much better things to do with my time then to file OML complaints, but the abuses of public trust is so rampant within the walls of Incline Village General Improvement District, I find I must report what I have learned.

During your investigation it will be rather apparent that there are three rogue trustees and two conscientious trustees who are trying to do what is proper and legal.
These “Walking Quorums” are costing taxpayers millions in lost tax dollars.
Please feel free to contact me if you have any questions, the information I have provided comes from an extremely reliable source. As the AG’s office investigates these claims of OML violations I believe you will find other information which will be equally damaging.
A full and diligent review of the above alleged OML violations is the only option to stop the perceived criminal activities taking place behind the walls of IVGID. I request that an Attorney General other than Brett Kandt be assigned to this OML complaint.

This complaint needs to be looked at with fresh eyes. I really believe the allegations contained herein warrant an assignment of a special prosecutor. What is taking place is governmental corruption. The amounts of public funds being wasted is excessive. Handing down a decision to send the board members to OML school is not the answer. If Steve Pinkerton, the general manager is guilty of hosting these walking Quorums, and Jim Clark helps orchestrates the substance of the quorums I believe a conspiracy in public government is taking place.

(FOOTNOTE: THE BOARD IS CONSIDERING THE $5.5 MILLION PURCHASE OF A 31,000 SQ FOOT BUILDING ON IVGID LAND OWNED BY A NON-PROFIT ORGANIZATION. PUBLIC CRITICISM OF THIS WASTE OF PUBLIC MONEY HAS BEEN EXTREMELY HIGH. GIDS DO NOT HAVE THE POWER TO USE TAXPAYER MONEY TO OWN AND OPERATE COMMUNITY NON-PROFIT CENTERS AND SUBSIDIZE THE TENANTS OF THIS CENTER. DESPITE THIS, THE PURCHASE IS IN THE WORKS, DISCUSSED OUTSIDE THE VIEW OF THE PUBLIC. THE DISTRICT'S LEGAL COUNSEL IS WORKING FOR THE NON-PROFIT DRAFTING THE INSTALLMENT PURCHASE AGREEMENT AND THEN SUPPORTING THE DRAFT AT IVGID PUBLIC MEETINGS. ALTHOUGH THERE ARE BUILDING USE RESTRICTIONS AND COVENANTS PRECLUDING THE NON-PROFIT ORGANIZATION FROM SELLING THIS BUILDING TO IVGID, THESE RESTRICTIONS AND COVENANTS ARE BEING WITHHELD FROM PUBLIC DISCLOSURE. DISTRICT LEGAL COUNSEL HAS PUBLICLY ANNOUNCED THAT HE HAS REVIEWED ALL THE LEGAL DOCUMENTS, EVEN THOUGH THE FULL BOARD AND THE PUBLIC HAS NOT. BEHIND CLOSED DOORS, THE GENERAL MANAGER IS USING LEGAL COUNSEL AS A LEGAL SHIELD OF APPROVAL TO INDOCTRINATE TRUSTEES TO APPROVE THIS PURCHASE AND PREVENT TRUSTEES FROM EXERCISING PROPER DUE DILIGENCE AND AN OPEN DISCUSSION WITH ALL THE FACTS IN A PUBLIC FORUM. THERE IS A REASON THE LEGISLATURE CREATED OPEN MEETING LAWS AND CONSIDERED WALKING QUORUMS AND SERIAL POLLING VIOLATIONS. WHAT IVGID IS DOING, IS EXACTLY WHAT THE COURTS AND OUR STATE LEGISLATORS WERE DETERMINED TO PREVENT.

Frank Wright
P.O. Box 186
Crystal Bay, Nevada 89402
775-253-4919
alpinesportss@gmail.com
§ 4.07 Mail polls

In view of the legislative declaration of intent that all actions of public bodies are to be taken openly, the making of a decision by a mail poll that is not subject to public attendance appears inconsistent with both the spirit and intent of the law. See Op. Nev. Att'y Gen. No. 85-19 (December 17, 1985).

§ 4.08 Serial communications, or “walking quorums”

The Open Meeting Law forbids “walking quorums” or constructive quorums. Serial communication invites abuse if it is used to accumulate a secret consensus or vote of the members of a public body. Any method of meeting where a quorum of a public body discusses public business, whether gathered physically or electronically, is a violation of the OML.

Nevada is a “quorum state,” which means that the gathering of less than a quorum of the members of a public body is not within the definition of a meeting under NRS 241.015(3). Where less than a quorum of a public body participates in a private briefing with counsel or staff prior to a public meeting, it may do so without violating the Open Meeting Law. Dewey, 119 Nev. at 99, 64 P.3d at 1078.

While the Nevada Supreme Court ruled that meetings between a quorum of a public body and its attorney are not exempt from the Open Meeting Law, it observed in McKay v. Board of County Commissioners, 103 Nev. 490, 746 P.2d 124 (1987) that:

Nothing whatever precludes an attorney for a public body from conveying sensitive information to the members of a public body by confidential memorandum; nor does anything prevent the attorney from discussing sensitive information in private with members of the body, singly or in groups less than a quorum. Any detriment suffered by the public body in this regard must be assumed to have been weighed by the Legislature in adopting this legislation. The Legislature has made a legitimate policy choice—one in which this court cannot and will not interfere.

McKay, 103 Nev. at 495–96, 746 P.2d at 127.

In another case, the Nevada Supreme Court observed that the OML did not forbid all discussion among public body members even when discussing public business:

[A] quorum of a public body using serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory power violates the Open Meeting Law. That is not to say that in the absence of a quorum, members
can only be achieved by a physical gathering of a quorum at the same time and place.)

§ 4.09 “Private Briefings” among staff of public body and non-quorum of members

In Dewey, 119 Nev. at 94, 64 P.3d at 1075, the Nevada Supreme Court stated that private briefings among staff of a public body and a non-quorum of members of a public body are not meetings for purposes of the Open Meeting Law, and such a meeting is not prohibited by law. See §5.08 supra for a further discussion of Dewey.

§ 4.10 Meetings held out-of-state or out of local jurisdiction

The Open Meeting Law applies even if the meeting occurs outside of Nevada. For example, minutes must be kept, and a clear and complete agenda must be noticed properly.

Nothing in the Open Meeting Law limits its application only to meetings in Nevada, and any such interpretation would only invite evasion of the law by meeting across state lines. A county-based public body may lawfully meet outside the county. See AG File No. 00-040 (January 5, 2001).

See also § 4.05, Attorney-Client conferences.

While the Open Meeting Law does not prohibit out-of-jurisdiction meetings, other statutes might. See, for example, the limitations on county commission meetings in NRS 244.085.

§ 4.11 Exception for conferring with counsel

“Meeting” has been redefined to exclude a gathering or series of gatherings of members of a public body at which a quorum is present (1) to receive information from the attorney for the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction, or advisory power and (2) to deliberate toward a decision on the matter.

The law specifically allows the members of a public body to deliberate, but not act, information obtained from its counsel in an attorney-client conference. See § 4.05 supra. However, any action must be taken in an open meeting. The agenda should note that the public body may interrupt the open meeting and exclude the public for the purpose of having an attorney-client discussion of potential and existing litigation, pursuant to NRS 241.015(3)(b)(2).

Alternatively, the public body may gather to confer with legal counsel at times other than the time noticed for a normal meeting. In such instances, there is no notice or agenda required. However, the usual notice and agenda will be required in order to later convene an open meeting in order to take any action based on the attorney-client conference. A decision on whether to
RESPONSE
June 29, 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. 13897-233

Dear Mr. Kandt:

We received your June 15, 2017, correspondence notifying the Incline Village General Improvement District (herein referenced as "IVGID" or "District") of the above referenced complaint by Frank Wright alleging that IVGID has violated the Nevada Open Meeting Law ("OML"). Please accept this correspondence and the referenced enclosures as IVGID’s response.

Issues Presented

1. Whether Chairwoman Wong, Vice Chairman Philip Horan, Treasurer Matthew Dent, Secretary Tim Callicrate, and Trustee Peter Morris (the "IVGID Board of Trustees") are conducting “walking quorums” prior to every board meeting.

2. Whether IVGID Board of Trustees are in violation of the Open Meeting Law by receiving information at social gatherings.

3. Whether IVGID 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. IVGID's response will focus on whether there was a violation of the Nevada Open Meeting Law.

A. Whether Chairwoman Wong, Vice Chairman Philip Horan, Treasurer Matthew Dent, Secretary Tim Callicrate, and Trustee Peter Morris (the "IVGID Board of Trustees") are conducting "walking quorums" every other week and prior to every board meeting.

Mr. Wright alleges that every other week the General Manager and possibly legal counsel meets with 5 board members, individually, to discuss the upcoming agenda items for the Board of Trustees regular bi-monthly meeting. Mr. Wright alleges these meetings are planned sessions, sharing the same information and positioning of Trustees for upcoming votes at the board meeting. Mr. Wright alleges these meetings are defined as "serial communications" or "walking quorums" which is prohibited under the Nevada Open Meeting Law.

I. "Serial communications", or "walking quorums" defined.

NRS 214.015 provides as follows:

"Meeting":

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a 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.

(2) Any series of gatherings of members of a public body at which:

(I) Less than a quorum is present, whether in person or by means of electronic communication, at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and
(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is or collectively present, whether in person or by means of electronic communication:

(1) 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.

(2) To 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.

Here, a gathering falls within the definition of a “meeting” under the provisions of the Open Meeting Law Chapter when: “(I) Less than a quorum is present, whether in person or by means of electronic communication, at any individual gathering; (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter of NRS Chapte: 241.015.” In order for a constructive quorum to exist, the Agency members or staff would have to participate in serial communications.

While the Nevada Supreme Court ruled that meetings between a quorum of a public body and its attorney are not exempt from the Open Meeting Law, it observed in McKay v. Board of County Commissioners, 103 Nev. 490, 746 P.2d 124 (1987) that:

Serial communication invites abuse of the Open Meeting Law if it is used to accumulate a secret consensus or vote of the members of a public body. In McKay v. Board of County Commissioners, 103 Nev. 490, 746 P.2d 124 (1987), the Court stated that sensitive information may be discussed in serial meetings where no quorum is present in any gathering. But there can be no deliberation, action, commitment, or promise made regarding a public matter in such a serial meeting.

Here, IVGID General Manager, Steve Pinkerton meets with each IVGID Trustee, individually, once every two weeks, unless that Trustee: (1) requests a more frequent schedule of meetings; (2) stops by the office to discuss a matter; or (3) declines a meeting with the General Manager. **Exhibit “1” (Affidavit of Susan Herron).** For IVGID, a quorum is reached when three or more individuals serving on the Board of Trustees are gathered. There is no quorum present or collectively constituted at any of the bi-weekly gatherings, because during the one-on-one meetings, opinions are not exchanged, issues are not voted on, nor are the Trustees polled by Mr. Pinkerton as to their opinions or votes at the meetings.

Nevada is a “quorum state,” which means that the gathering of less than a quorum of the members of a public body is not within the definition of a meeting under NRS 241.015(3). Where less than a quorum of a public body participates in a private briefing with counsel or staff prior to a public meeting, it may do so without violating the Open Meeting Law. Dewey, 119 Nev. at 99, 64 P.3d at 1078.


Further, Mr. Pinkerton does not relay questions or comments made by one Trustee during one briefing to another Trustee during a separate briefing. The purpose of the briefings is to discuss materials that have been prepared by staff and to answer all questions each board member individually may present regarding the Board packet materials. **Exhibit “1”**. "When less than a quorum is present, private discussions and information gathering do not violate the Open Meeting Law." N.R.S. 241.015, subd. 2 (2000). *Dewey v. Redevelopment Agency of City of Reno*, 64 P.3d 1070 (Nev. 2003)

**II. Determining if “serial communications” occurred**

In *Dewey v. Redevelopment Agency*, 119 Nev. 87, 64 P.3d 1070 (2003), the Court reaffirmed its position in *McKay* and provided a substantial discussion regarding “serial communications” and non-quorum private briefings by staff. Please note that NRS 241.015(3)(a)(2), which defines “serial communications” as a “meeting” for purposes of the Open Meeting Law, was enacted after the *Dewey* case was decided. However, the Office of the Attorney General believes the Court’s analysis in *Dewey* provides substantial insight into the facts the Supreme Court will analyze to determine if “serial communications” occurred.

In *Dewey*, the Redevelopment Agency for the City of Reno (Agency) owned the Mapes Hotel, a historic landmark listed on the National Trust for Historic Preservation. In 1999, the Agency adopted a resolution in which it would accept bids to rehabilitate
the Mapes Hotel. The Agency's staff put together a request for proposals (RFP), which was sent to more than 580 developers. In response to the RFP, the Agency received six proposals to rehabilitate the Mapes Hotel.

On August 31, 1999, the Agency's staff conducted two private back-to-back briefings with a non-quorum of the Agency attending each briefing; three members attended one briefing and two members attended the other briefing. For the purposes of an Agency meeting, a quorum was four or more members.

The purpose of these meetings was to inform the Agency members of potential issues with the RFP responses. The testimony at trial was clear that the Agency members neither provided their opinions, voted on the issue, nor were they polled by staff as to their opinions or votes at the briefings. The purpose of the briefings was to provide Agency members with information regarding a complex public policy issue.

Dewey, as well as other plaintiffs, filed a lawsuit against the Agency alleging a violation of the Open Meeting Law. The trial court held that there was a violation of the Open Meeting Law because the meetings constituted a constructive quorum for purposes of the Open Meeting Law. However, the Court only issued an injunction and refused to void the Agency's actions. In response, Dewey appealed the court's final order in hopes of voiding the Agency's actions, and the Agency cross-appealed alleging that the Court erred in finding an Open Meeting Law violation.

On appeal, the Nevada Supreme Court stated, "[W]e have . . . acknowledged that the Open Meeting Law is not intended to prohibit every private discussion of a public issue. Instead, the Open Meeting Law only prohibits collective deliberations or actions where a quorum is present." (Emphasis added.) Dewey, 119 Nev. at 94–95, 64 P.3d at 1075. The Court stated, in part, that deliberations meant the collective discussion by a quorum. (See §5.01, infra for the full definition of deliberations.) Since a quorum of the Agency did not attend the back-to-back briefings, a collective discussion equaling deliberations could not have occurred. In order for a constructive quorum to exist, the Agency members or staff would have to participate in serial communications. The trial court shifted the burden to the Agency to prove that the Agency did not participate in serial communications. The Supreme Court held that shifting the burden
was inappropriate because a quorum of the public body did not attend the briefings. Thus, the burden was on Dewey to provide substantial evidence that the Agency conducted serial communications.


Here the Open Meeting Law was not created to prohibit the Trustees from individually meeting with Mr. Pinkerton to receive information. “The Open Meeting Law only prohibits collective deliberations or actions where a quorum is present.” N.R.S. 241.015, subd. 2 (2000). Dewey v. Redevelopment Agency of City of Reno, 64 P.3d 1070 (Nev. 2003).

Absent substantial *89 evidence of serial communications to support a finding of action or deliberation towards a decision, private back-to-back briefings of less than a quorum of a public body do not violate the Open Meeting Law.

Dewey v. Redevelopment Agency of City of Reno, 64 P.3d 1070, 1071 (Nev. 2003)

In this instance, there is not substantial evidence to support Mr. Wright’s accusations of an Open Meeting Law violation. His accusations are merely hearsay, without any credible evidence to support is claims. The burden is on Mr. Wright to provide substantial evidence that IVGID conducted serial communications.

The Office of the Attorney General accepts affidavits or written statements from members of a public body as evidence whether “serial communications” occurred. See OMLO 2004-16 (May 65, 2004).

Though the burden is on Mr. Wright to provide substantial evidence to support his accusations, IVGID in its continued efforts to remain transparent, has provided affidavits to support its position that no violation of the Open Meeting Law has occurred Exhibit “2” (Affidavits of Trustees and Steve Pinkerton).

The IVGID Trustees have not violated the Open Meeting Law by individually meeting with the General Manager for informational purposes. The General Manager does not relay any information or questions that were discussed during one individual meeting with the other Trustees in subsequent meetings. The series of gatherings are not held with the specific intent to avoid the provisions of the Open Meeting Law Chapter.

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///
///
B. Whether IVGID Board of Trustees are in violation of the Open Meeting Law by receiving information at social gatherings.

NRS 214.015 (b)(1) provides as follows:

"Meeting":

....

(b) Does not include a gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present, whether in person or by means of electronic communication:

(1) 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.

When applying this principle, the IVGID Board of Trustees are not prohibited from receiving information or being lobbied on issues at social functions. IVGID members have not collectively or serially deliberated, taken action on issues, or provided their opinions when receiving information at social functions.

The IVGID Board of Trustees have not violated the Open Meeting Law by attending social functions and receiving information at the functions.

C. Whether IVGID General Counsel's actions constitute a violation of the OML.

Mr. Wright states District General Counsel violated the Nevada Open Meeting Law; however, reading his Complaint thoroughly, it is not clear what violation of the Nevada Open Meeting Law was committed by District General Counsel. If the Attorney General finds that there is an alleged violation of the Nevada Open Meeting Law to which the District General Counsel has not already responded to in this response, Counsel would welcome the opportunity to respond further.

D. 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. Wright's 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.
E. Concluding Remarks

In accordance with the foregoing, IVGID respectfully requests that the Attorney General conclude that there has been no violation of the Nevada Open Meeting Law.

Thank you for the opportunity to respond to the Open Meeting Law Complaint of Frank Wright, A.G. File No. 113897-233.

Very truly yours,

[Signature]

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

Encl.
cc: Chairman Kendra Wong
    General Manager Steve Pinkerton
    District Clerk Susan Herron
AFFIDAVIT OF SUSAN HERRON

STATE OF NEVADA

) ss.

COUNTY OF WASHOE

Under penalty of perjury, I, Susan Herron, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Susan Herron.

2. I am a resident of the State of Nevada.

3. I am over 18 years of age.

4. I serve as the Executive Assistant/District Clerk/Public Records Officer for Incline Village General Improvement District ("IVGID").

5. General Manager Steve Pinkerton meets with each IVGID Trustee, individually, once every two weeks, unless that Trustee (1) requests a more frequent schedule of meetings; (2) stops by the office to discuss a matter; or (3) declines a meeting with the General Manager.

6. There is never a gathering of a quorum, which for the Incline Village General Improvement District Board of Trustees, is a total of three (3).

7. These meetings are typically to discuss the Board materials that have been prepared by Staff and to answer any questions each Board member individually may present regarding the board materials.

8. The General Manager is the only employee of the Board of Trustees so it is usual that other subject matters come up unrelated to the prepared Board materials.
9. General Manager Steve Pinkerton is a member of staff, he never meets with a quorum of the public body, but does participate in a private briefing, with one Board member, prior to a public meeting.

10. To the best of my knowledge, there is not ever any deliberation, action, commitment, or promise made regarding a public matter during such one on one meetings.

11. The only script that is typically provided is for when the Board of Trustees holds a public hearing and that script is included in the Board materials and is fully available to members of the public.

12. This is provided to the Chair of the Board of Trustees who typically conducts these hearings but in the unfortunate event of an emergency, the Vice Chair could take over the meeting using that script.

13. The General Manager does not select an individual Board member to make a motion on any General Business slated for action. Rather, he goes over the publicly available information with each Trustee and answers any questions they might have regarding the Board materials.

14. There are no forced meetings with Board members and again, Board members have the opportunity to cancel any scheduled meeting with the General Manager.

15. District General Counsel is not present at these meeting unless it has been requested by either the Trustee and/or General Manager and it is well known in advance.

16. In each memorandum prepared by Staff, there is included a recommendation i.e. motion.

17. The accusation that Mr. Morris, our newest Board member, read the motion without looking or acknowledging other Board members was simply because it is Trustee Morris’ intent to get his motion correct the first time.

18. Mr. Pinkerton does not provide false and misleading information to each Board member during their one on one meeting.

19. The Board meeting materials are all presented to both the public and the Board in a true and unbiased manner and presented in accordance with the Nevada Open Meeting Law requirements i.e. all at the same time.
20. Former Trustee Jim Smith was fairly elected by the citizens of this community. He served until he resigned from his position.

21. All Trustees have been through Open Meeting Law training conducted by POOL/PACT's Wayne Carlson as well as additional training conducted by District General Counsel.

22. All Trustees have all been provided with a copy of the Nevada Open Meeting Law manual and advised of its location on the Internet. To say that the Trustees have no knowledge of a "walking quorum" is without basis.

23. Briefly, regarding the footnote included within the complaint, the Board of Trustees and its Staff have been open and transparent regarding this requested lease modification. There has been no request to purchase and the Board of Trustees, in open, public meetings, has committed to hold a special meeting with this lease modification or whatever it morphs into, as being its only topic and having it well publicized prior to its occurrence.

DATED: This 28th day of June, 2017.

SUSAN HERRON

SUBSCRIBED and SWORN to before me This 28th day of June, 2017.

Carla Priester

NOTARY PUBLIC
AFFIDAVIT OF STEVEN J. PINKERTON

STATE OF NEVADA  
)  
) ss.  
COUNTY OF WASHOE 

Under penalty of perjury, I, Steven J. Pinkerton, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Steven J. Pinkerton.

2. I am a resident of the State of Nevada.

3. I am over 18 years of age.

4. I serve as the General Manager for Incline Village General Improvement District ("IVGID").

5. I meet with each IVGID Trustee, individually, once every two weeks, unless that Trustee (1) requests a more frequent schedule of meetings; (2) stops by the office to discuss a matter; or (3) declines to meet with me.

6. There is never a gathering of a quorum, which for the Incline Village General Improvement District Board of Trustees, is a total of three (3) gathered Board Members.

7. I do not poll the Trustees as to their opinions or votes at the meetings.

8. The Trustees do not tell me how they are going to vote on any items on upcoming board meeting agendas.

9. The series of gatherings are not held with the specific intent to avoid the provisions of the Open Meeting Law Chapter.

10. During the one-on-one meetings issues are not voted on by the Trustees.

11. When I meet with each Trustee individually, I do not relay concerns or questions from one meeting to a Trustee a meet with later during a separate one-on-one briefing.
12. These meetings are typically to inform the Trustees of the Board materials that have been prepared by Staff and to answer any questions each Board member individually may present regarding the Board materials. The Board member is not required to attend these meetings and often there is a member or two who decline. The meetings are strictly informational meetings.

13. I am the only employee of the Board of Trustees so it is usual that other subject matters come up unrelated to the prepared Board materials.

14. I am a member of staff, I never meet with a quorum of the public body, but do participate in a private briefing, with one Board member, prior to public meetings.

15. There is not ever any deliberation, action, commitment, or promise made regarding a public matter during such one-on-one meetings.

16. The only script that is typically provided is for when the Board of Trustees holds a public hearing and that script is included in the Board materials and is fully available to members of the public.

17. This is provided to the Chair of the Board of Trustees who typically conducts these hearings but in the unfortunate event of an emergency, the Vice Chair could take over the meeting using that script.

18. I do not select an individual Board member to make a motion on any General Business slated for action. Rather, I go over the publicly available information with each Trustee and answers any questions they might have regarding the Board materials.

19. District General Counsel is not present at these meeting unless it has been requested by either the Trustee and/or myself and it is well known in advance.

20. In each memorandum prepared by Staff, there is included a recommendation i.e. motion.

21. I do not provide the Trustees with false and misleading information during the one on one meetings.
22. The Board meeting materials are all presented to both the public and the Board in a true and unbiased manner and presented in accordance with the Nevada Open Meeting Law requirements i.e. all at the same time.

23. Former Trustee Jim Smith was fairly elected by the citizens of this community. He served until he resigned from his position.

24. All Trustees have been through Open Meeting Law training conducted by POOL/PACT's Wayne Carlson as well as additional training conducted by District General Counsel.

25. All Trustees have all been provided with a copy of the Nevada Open Meeting Law manual and advised of its location on the Internet. To say that the Trustees have no knowledge of a “walking quorum” is without basis.

26. Briefly, regarding the footnote included within the complaint, the Board of Trustees and its Staff have been open and transparent regarding this requested lease modification. There has been no request to purchase and the Board of Trustees, in open, public meetings, committed to hold a special meeting with this lease modification or whatever it morphs into, as being its only topic and having it well publicized prior to its occurrence.

DATED: This 24th day of June, 2017.

SUBSCRIBED and SWORN to before me This 24th day of June, 2017.

NOTARY PUBLIC
AFFIDAVIT OF KENDRA WONG

STATE OF NEVADA    )
    ) ss.
COUNTY OF WASHOE   )

Under penalty of perjury, I, Kendra Wong, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Kendra Wong.
2. I am a resident of the State of Nevada.
3. I am over 18 years of age.
4. I serve as the Chairwoman of the Board of Trustees for Incline Village General Improvement District ("IVGID").
5. I meet with Steve Pinkerton, General Manager, individually, once every two weeks, unless I (1) request a more frequent schedule of meetings; (2) stop by the office to discuss a matter; or (3) decline to meet with Mr. Pinkerton.
6. At the briefings I attend, there is never a gathering of a quorum, which for the Incline Village General Improvement District Board of Trustees, is a total of three (3) gathered Board Members.
7. Mr. Pinkerton does not poll me as to my opinions or votes at the meetings.
8. I do not provide my opinion regarding any items on upcoming board meeting agendas.
9. I do not attend the briefings with the specific intent to avoid the provisions of the Open Meeting Law Chapter.
10. During the one-on-one meetings, issues are not voted on.
11. Mr. Pinkerton does not relay concerns or questions from another briefing with another Trustee.
12. These meetings are typically to inform me of the Board materials that have been prepared by Staff and to answer any question I may present about the materials. I am not required to attend these meetings, and meetings are strictly informational meetings.

13. There is not ever any deliberation, action, commitment, or promise made regarding a public matter during such one-on-one meetings.

14. The only script that is typically provided is for when the Board of Trustees holds a public hearing and that script is included in the Board materials and is fully available to members of the public.

15. This is provided to me as the Chair of the Board of Trustees, and I typically conduct these hearings but in the unfortunate event of an emergency, the Vice Chair could take over the meeting using that script.

16. Mr. Pinkerton does not select an individual Board member to make a motion on any General Business slated for action. Rather, he goes over the publicly available information with me and answers any questions I may have about Board materials.

17. There are no forced meetings with Board members and I can cancel any scheduled meeting with Mr. Pinkerton.

18. District General Counsel is not present at these meeting unless it has been requested by either Mr. Pinkerton and/or myself and it is well known in advance.

19. In each memorandum prepared by Staff, there is included a recommendation i.e. motion.

20. The accusation that Mr. Morris, our newest Board member, read the motion without locking or acknowledging other Board members was simply because it was Trustee Morris’ intent to get his motion correct the first time. How that is a violation of the Nevada Open Meeting law is hard to understand.
21. I have not collectively or serially deliberated, taken action on issues, or provided my opinions when receiving information at social functions.

22. I have not been presented with false and misleading information by Mr. Pinkerton during our one-on-one meetings.

23. The Board meeting materials are all presented to both the public and the Board in a true and unbiased manner and presented in accordance with the Nevada Open Meeting Law requirements i.e. all at the same time.

24. Former Trustee Jim Smith was fairly elected by the citizens of this community. He served until he resigned from his position.

25. I have been through Open Meeting Law training conducted by POOL/PACT’s Wayne Carlson as well as additional training conducted by District General Counsel.

26. I have been provided with a copy of the Nevada Open Meeting Law manual and advised of its location on the Internet. To say that I have no knowledge of a “walking quorum” is without basis.

27. Briefly, regarding the footnote included within the complaint, the Board of Trustees and its Staff have been open and transparent regarding this requested lease modification. There has been no request to purchase and the Board of Trustees, in open, public meetings, has committed to hold a special meeting with this lease modification or whatever it morphs into, as being its only topic and having it well publicized prior to its occurrence.

DATED: This 28th day of June, 2017.

Kendra Wong

SUBSCRIBED and SWORN to before me This 28th day of June, 2017.

SUSAN A. HERRON
NOTARY PUBLIC
AFFIDAVIT OF PHILIP HORAN

STATE OF NEVADA             ss.
COUNTY OF WASHOE             ss.

Under penalty of perjury, I, Philip Horan, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Philip Horan.
2. I am a resident of the State of Nevada.
3. I am over 18 years of age.
4. I serve as the Vice Chairman of the Board of Trustees for Incline Village General Improvement District (“IVGID”).
5. I meet with Steve Pinkerton, General Manager, individually, once every two weeks, unless I (1) request a more frequent schedule of meetings; (2) stop by the office to discuss a matter; or (3) decline to meet with Mr. Pinkerton.
6. At the briefings I attend, there is never a gathering of a quorum, which for the Incline Village General Improvement District Board of Trustees, is a total of three (3) gathered Board Members.
7. Mr. Pinkerton does not poll me as to my opinions or votes at the meetings.
8. I do not provide my opinion regarding any items on upcoming board meeting agendas.
9. I do not attend the briefings with the specific intent to avoid the provisions of the Open Meeting Law Chapter.
10. During the one-on-one meetings, issues are not voted on.
11. Mr. Pinkerton does not relay concerns or questions from another briefing with another Trustee.
12. These meetings are typically to inform me of the Board materials that have been prepared by Staff and to answer any question I may present about the materials. I am not required to attend these meetings, and meetings are strictly informational meetings.

13. There is not ever any deliberation, action, commitment, or promise made regarding a public matter during such one-on-one meetings.

14. The only script that is typically provided is for when the Board of Trustees holds a public hearing and that script is included in the Board materials and is fully available to members of the public.

15. This is provided the Chair of the Board of Trustees, and the Chair of the Board typically conducts these hearings but in the unfortunate event of an emergency, I, as the Vice Chair could take over the meeting using that script.

16. Mr. Pinkerton does not select an individual Board member to make a motion on any General Business slated for action. Rather, he goes over the publicly available information with me and answers any questions I may have about Board materials.

17. There are no forced meetings with Board members and I can cancel any scheduled meeting with Mr. Pinkerton.

18. District General Counsel is not present at these meeting unless it has been requested by either Mr. Pinkerton and/or myself and it is well known in advance.

19. In each memorandum prepared by Staff, there is included a recommendation i.e. motion.

20. The accusation that Mr. Morris, our newest Board member, read the motion without looking or acknowledging other Board members was simply because as a new Trustee Mr. Morris’ intent was to get his motion correct the first time. How that is a violation of the Nevada Open Meeting law is hard to understand.
21. I have not collectively or serially deliberated, taken action on issues, or provided my opinions when receiving information at social functions.

22. I have not been presented with false and misleading information by Mr. Pinkerton during our one-on-one meetings.

23. The Board meeting materials are all presented to both the public and the Board in a true and unbiased manner and presented in accordance with the Nevada Open Meeting Law requirements i.e. all at the same time.

24. Former Trustee Jim Smith was fairly elected by the citizens of this community. He served until he resigned from his position.

25. I have been through Open Meeting Law training conducted by POOL/PACT’s Wayne Carlson as well as additional training conducted by District General Counsel.

26. I have been provided with a copy of the Nevada Open Meeting Law manual and advised of its location on the Internet. To say that the I have no knowledge of a “walking quorum” is without basis.

27. Briefly, regarding the footnote included within the complaint, the Board of Trustees and its Staff have been open and transparent regarding this requested lease modification. There has been no request to purchase and the Board of Trustees, in open, public meetings, has committed to hold a special meeting with this lease modification or whatever it morphs into, as being its only topic and having it well publicized prior to its occurrence.

DATED: This 28th day of June, 2017.

Philip Horan

SUBSCRIBED and SWORN to before me This 28th day of June, 2017.

SUSAN A. HERRON
NOTARY PUBLIC
AFFIDAVIT OF PETER MORRIS

STATE OF NEVADA )
 ) ss.
COUNTY OF WASHOE )

Under penalty of perjury, I, Peter Morris, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Peter Morris.
2. I am a resident of the State of Nevada.
3. I am over 18 years of age.
4. I serve as Trustee of the Board of Trustees for Incline Village General Improvement District ("IVGID").
5. I meet with Steve Pinkerton, General Manager, individually, once every two weeks, unless I (1) request a more frequent schedule of meetings; (2) stop by the office to discuss a matter; or (3) decline to meet with Mr. Pinkerton.
6. At the briefings I attend, there is never a gathering of a quorum, which for the Incline Village General Improvement District Board of Trustees, is a total of three (3) gathered Board Members.
7. Mr. Pinkerton does not poll me as to my opinions or votes at the meetings.
8. I do not provide my opinion regarding any items on upcoming board meeting agendas.
9. I do not attend the briefings with the specific intent to avoid the provisions of the Open Meeting Law Chapter.
10. During the one-on-one meetings, issues are not voted on.
11. Mr. Pinkerton does not relay concerns or questions from another briefing with another Trustee.
12. These meetings are typically to inform me of the Board materials that have been prepared by Staff and to answer any question I may present about the materials. I am not required to attend these meetings, and meetings are strictly informational meetings.

13. There is not ever any deliberation, action, commitment, or promise made regarding a public matter during such one-on-one meetings.

14. The only script that is typically provided is for when the Board of Trustees holds a public hearing and that script is included in the Board materials and is fully available to members of the public.

15. This is provided the Chair of the Board of Trustees, and the Chair of the Board typically conducts these hearings but in the unfortunate event of an emergency, the Vice Chair could take over the meeting using that script.

16. Mr. Pinkerton does not select an individual Board member to make a motion on any General Business slated for action. Rather, he goes over the publicly available information with me and answers any questions I may have about Board materials.

17. There are no forced meetings with Board members and I can cancel any scheduled meeting with Mr. Pinkerton.

18. District General Counsel is not present at these meeting unless it has been requested by either Mr. Pinkerton and/or myself and it is well known in advance.

19. In each memorandum prepared by Staff, there is included a recommendation i.e. motion.

20. The accusation that I, read the motion without looking or acknowledging other Board members was simply because as a new Trustee my intent was to get my motion correct the first time. How that is a violation of the Nevada Open Meeting law is hard to understand.
21. I have not collectively or serially deliberated, taken action on issues, or provided my opinions when receiving information at social functions.

22. I have not been presented with false and misleading information by Mr. Pinkerton during our one-on-one meetings.

23. The Board meeting materials are all presented to both the public and the Board in a true and unbiased manner and presented in accordance with the Nevada Open Meeting Law requirements i.e. all at the same time.

24. Former Trustee Jim Smith was fairly elected by the citizens of this community. He served until he resigned from his position.

25. I have been through Open Meeting Law training conducted by POOL/PACT's Wayne Carlson as well as additional training conducted by District General Counsel.

26. I have been provided with a copy of the Nevada Open Meeting Law manual and advised of its location on the Internet. To say that I have no knowledge of a "walking quorum" is without basis.

27. Briefly, regarding the footnote included within the complaint, the Board of Trustees and its Staff have been open and transparent regarding this requested lease modification. There has been no request to purchase and the Board of Trustees, in open, public meetings, has committed to hold a special meeting with this lease modification or whatever it morphs into, as being its only topic and having it well publicized prior to its occurrence.

DATED: This 21 day of June, 2017.

Peter Morris

SUBSCRIBED and SWORN to before me this 21 day of June, 2017.

SUSAN A. HERRON
Notary Public - State of Nevada
Affidavit Not Recorded in Washoe County
No. 992722 - Expires December 5, 2018
AFFIDAVIT OF TIM CALRICRATE

STATE OF NEVADA )
) ss.
COUNTY OF WASHOE )

Under penalty of perjury, I, Tim Callicrate, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Tim Callicrate.
2. I am a resident of the State of Nevada.
3. I am over 18 years of age.
4. I serve as the Secretary of the Board of Trustees for Incline Village General Improvement District ("IVGID").
5. I meet with Steve Pinkerton, General Manager, individually, once every two weeks, unless I (1) request a more frequent schedule of meetings; (2) stop by the office to discuss a matter; or (3) decline to meet with Mr. Pinkerton.
6. At the briefings I attend, there is never a gathering of a quorum, which for the Incline Village General Improvement District Board of Trustees, is a total of three (3) gathered Board Members.
7. Mr. Pinkerton does not poll me as to my opinions or votes at the meetings.
8. I do not provide my opinion regarding any items on upcoming board meeting agendas.
9. I do not attend the briefings with the specific intent to avoid the provisions of the Open Meeting Law Chapter.
10. During the one-on-one meetings, issues are not voted on.
11. Mr. Pinkerton does not relay concerns or questions from another briefing with another Trustee.
12. These meetings are typically to inform me of the Board materials that have been prepared by Staff and to answer any question I may present about the materials. I am not required to attend these meetings, and meetings are strictly informational meetings.

13. There is not ever any deliberation, action, commitment, or promise made regarding a public matter during such one-on-one meetings.

14. The only script that is typically provided is for when the Board of Trustees holds a public hearing and that script is included in the Board materials and is fully available to members of the public.

15. This is provided the Chair of the Board of Trustees, and the Chair of the Board typically conducts these hearings but in the unfortunate event of an emergency, the Vice Chair could take over the meeting using that script.

16. Mr. Pinkerton does not select an individual Board member to make a motion on any General Business slated for action. Rather, he goes over the publicly available information with me and answers any questions I may have about Board materials.

17. There are no forced meetings with Board members and I can cancel any scheduled meeting with Mr. Pinkerton.

18. District General Counsel is not present at these meeting unless it has been requested by either Mr. Pinkerton and/or myself and it is well known in advance.

19. In each memorandum prepared by Staff, there is included a recommendation i.e. motion.

20. The accusation that Mr. Morris, our newest Board member, read the motion without looking or acknowledging other Board members was simply because as a new Trustee Mr. Morris’ intent was to get his motion correct the first time. How that is a violation of the Nevada Open Meeting law is hard to understand.
21. I have not collectively or serially deliberated, taken action on issues, or provided my opinions when receiving information at social functions.

22. I have not been presented with false and misleading information by Mr. Pinkerton during our one-on-one meetings.

23. The Board meeting materials are all presented to both the public and the Board in a true and unbiased manner and presented in accordance with the Nevada Open Meeting Law requirements i.e. all at the same time.

24. Former Trustee Jim Smith was fairly elected by the citizens of this community. He served until he resigned from his position.

25. I have been through Open Meeting Law training conducted by POOL/PACT’s Wayne Carlson as well as additional training conducted by District General Counsel.

26. I have been provided with a copy of the Nevada Open Meeting Law manual and advised of its location on the Internet. To say that the I have no knowledge of a “walking quorum” is without basis.

27. Briefly, regarding the footnote included within the complaint, the Board of Trustees and its Staff have been open and transparent regarding this requested lease modification. There has been no request to purchase and the Board of Trustees, in open, public meetings, has committed to hold a special meeting with this lease modification or whatever it morphs into, as being its only topic and having it well publicized prior to its occurrence.

DATED: This \( \text{\textcircled{11}} \) day of June, 2017.

SUBSCRIBED and SWORN to before me this \( \text{\textcircled{11}} \) day of June, 2017.

Tim Callisrate

NOTARY PUBLIC
AFFIDAVIT OF MATTHEW DENT

STATE OF NEVADA

) ss.

COUNTY OF WASHOE

Under penalty of perjury, I, Matthew Dent, hereby swear that the information contained in this Affidavit is true and accurate:

1. My name is Matthew Dent.

2. I am a resident of the State of Nevada.

3. I am over 18 years of age.

4. I serve as the Treasurer of the Board of Trustees for Incline Village General Improvement District (“IVGID”).

5. I meet with Steve Pinkerton, General Manager, individually, once every two weeks, or twice per month, unless I (1) request a more frequent schedule of meetings; (2) stop by the office to discuss a matter; or (3) decline to meet with Mr. Pinkerton.

6. At the briefings I attend, there is never a gathering of a quorum, which for the Incline Village General Improvement District Board of Trustees, is a total of three (3) gathered Board Members.

7. Mr. Pinkerton does not poll me as to my opinions or votes at the meetings.

8. I do not provide my opinion regarding any items on upcoming board meeting agendas.

9. I do not attend the briefings with the specific intent to avoid the provisions of the Open Meeting Law Chapter.

10. During the one-on-one meetings, issues are not voted on.

11. Mr. Pinkerton does not relay concerns or questions from another briefing with another Trustee.
12. These meetings are typically to inform me of the Board materials that have been
prepared by Staff and to answer any question I may present about the materials. I am
not required to attend these meetings, and meetings are strictly informational meetings.

13. There is not ever any deliberation, action, commitment, or promise made regarding a
public matter during such one-on-one meetings.

14. The only script that is typically provided is for when the Board of Trustees holds a
public hearing and that script is included in the Board materials and is fully available to
members of the public.

15. This is provided the Chair of the Board of Trustees, and the Chair of the Board
typically conducts these hearings but in the unfortunate event of an emergency, the
Vice Chair could take over the meeting using that script.

16. Mr. Pinkerton does not select an individual Board member to make a motion on any
General Business slated for action. Rather, he goes over the publicly available
information with me and answers any questions I may have about Board materials.

17. There are no forced meetings with Board members and I can cancel any scheduled
meeting with Mr. Pinkerton.

18. District General Counsel is not present at these meeting unless it has been requested by
either Mr. Pinkerton and/or myself and it is well known in advance.

19. In each memorandum prepared by Staff, there is included a recommendation i.e.
motion.

20. The accusation that Mr. Morris, our newest Board member, read the motion without
looking or acknowledging other Board members was simply because as a new Trustee
Mr. Morris' intent was to get his motion correct the first time. How that is a violation of
the Nevada-Open-Meeting law is hard to understand.
21. I have not collectively or serially deliberated, taken action on issues, or provided my opinions when receiving information at social functions.

22. I have not been presented with false and misleading information by Mr. Pinkerton during our one-on-one meetings.

23. The Board meeting materials are all presented to both the public and the Board in a true and unbiased manner and presented in accordance with the Nevada Open Meeting Law requirements i.e. all at the same time.

24. Former Trustee Jim Smith was fairly elected by the citizens of this community. He served until he resigned from his position.

25. I have been through Open Meeting Law training conducted by POOL/PACT’s Wayne Carlson as well as additional training conducted by District General Counsel.

26. I have been provided with a copy of the Nevada Open Meeting Law manual and advised of its location on the Internet. To say that the I have no knowledge of a “walking quorum” is without basis.

27. Briefly, regarding the footnote included within the complaint, the Board of Trustees and its Staff have been open and transparent regarding this requested lease modification. There has been no request to purchase and the Board of Trustees, in open, public meetings, has committed to hold a special meeting with this lease modification, or whatever it morphs into, as being its only topic and having it well publicized prior to its occurrence.

DATED: This 20th day of June, 2017.

Matthew Dept

SUSAN A. HERRON
Notary Public - State of Nevada
Appointment Recorded In Washoe County
No:16-27852-2 - Expires December 8, 2019

I have not seen or reviewed the OML Complaint.
OPINION
Via U.S. Mail

Frank Wright
P.O. Box 186
Crystal Bay, Nevada 89402

Re: Open Meeting Law Complaint, O.A.G. File No. 13897-233
Incline Village General Improvement District Board of Trustees

Dear Mr. Wright:

The Office of the Attorney General (OAG) is in receipt of your complaint (Complaint) alleging a violation of the Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board) regarding meetings between Trustees and the Board’s General Manager. The Complaint alleges that Trustees conduct “walking quorums” through serial communications with the General Manager during one-on-one meetings prior to public Board meetings.

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. In response to the Complaint, the OAG reviewed the Complaint and attachments, as well as the response to the Complaint from the Board’s counsel, Jason Guinasso, including sworn affidavits from Board staff and all five Trustees.

FACTUAL BACKGROUND

The Board is a “public body” as defined in NRS 241.015(4), subject to the OML. The Trustees meet with the Board’s General Manager, Steve Pinkerton, on an individual basis roughly every two weeks. The purpose of the meetings is for the General Manager to review supporting materials for the next public Board meeting and to answer any questions the Trustees may have. A quorum is never present at these meetings and the Trustees do not discuss the opinions and planned votes of other Trustees.
DISCUSSION AND LEGAL ANALYSIS

The Nevada Legislature intends 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). While the spirit and policy behind the OML favors open meetings, the OML is not intended to prohibit every private discussion of a public issue. Dewey v. Redevelopment Agency of City of Reno, 119 Nev. 87, 95 (2003). The OML only prohibits "collective deliberations or actions where a quorum is present." Id. Thus, absent substantial evidence of serial communications to support a finding of action or deliberation toward a decision, private briefings of less than a quorum of a public body do not violate the OML. Id. at 88-89.

Here, the purpose of the meetings between the Trustees and the General Manager was to provide a period in which the Trustees were presented with information contained in supporting materials and for the Trustees to ask questions. Each Trustee signed an affidavit stating that they did not attend the meetings with the intent to circumvent the OML and that they do not provide their opinions regarding items on upcoming Board meeting agenda. The OAG does not find substantial evidence of serial communications to support a finding of action or deliberation toward a decision. Thus, the meetings do not constitute a violation of the OML.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. Nonetheless, the OAG advises the Trustees and General Manager to be mindful of engaging in any communications that may undermine the public’s faith in transparency and open government. The OAG will close the file regarding this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

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

CB:arz
cc: Jason D. Guinasso, Counsel
Incline Village General Improvement District Board of Trustees