

## MEMORANDUM

**TO:** Audit Committee Members  
Phil Horan, Kendra Wong and Peter Morris

**FROM:** Susan A. Herron  
District Clerk

**SUBJECT:** Open Meeting Law (OML) Opinion 13897-316 – Inclusion on the Audit Committee Agenda as requested by the Office of the Attorney General (OAG), State of Nevada – Finds of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of the Attorney General File No. 13897-316 and as a requirement of NRS 241.0395

**DATE:** November 22, 2019

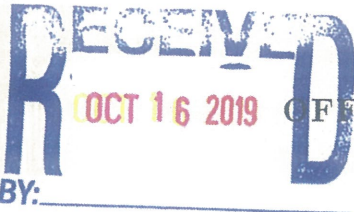
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As required by Nevada Revised Statutes 241.0395 and the Office of the Attorney General, the facts and findings of Attorney General File No. 13897-316 along with the initial complaint and the District's response, are attached hereto. Further, the facts and findings of Attorney General File No. 13897-260 are also attached hereto as they are referenced in the Attorney General File No. 13897-316.

These were also included in the Board of Trustees packet for its March 13, 2018 meeting.

No action is required by the Audit Committee on this item.

Opinion – AG  
File No. 13897-  
316



OFFICE OF THE ATTORNEY GENERAL  
STATE OF NEVADA

In the matter of:  
INCLINE VILLAGE GENERAL  
IMPROVEMENT DISTRICT BOARD  
OF TRUSTEES AUDIT COMMITTEE

AAG FILE NO.: 13897-316  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

BACKGROUND

Aaron Katz filed a Complaint (Complaint) with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Incline Village General Improvement District (IVGID) Board of Trustees Audit Committee (Committee). The Complaint alleges that the Committee violated the OML by failing to include an OAG opinion on its agenda and in its supporting materials as required by NRS 241.0395(1).

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 Complaint included a review of the Complaint and attachments, the Response from the Committee's legal counsel and attachments, the agenda for the IVGID Board of Trustee's March 13, 2018, meeting, and the agenda and supporting material for the Committee's December 12, 2018, meeting.

After investigating this matter, the OAG determines that the Committee violated the OML by failing to include as an item on its December 12, 2018, agenda the Findings of Fact and Conclusions of Law for Attorney General File No. 13897-260 as required by NRS 241.0395(1).

FINDINGS OF FACT

1. The Committee is comprised of three of the five members of the IVGID Board of Trustees (Board) and advises the Board concerning IVGID financial matters.
2. The Board and Committee are a "public bodies" as defined in NRS 241.015(4) and are subject to the OML.

1           3.     On February 21, 2018, the OAG issued its Findings of Fact and Conclusions  
2 of Law in Attorney General File No. 13897-260 (FFCL), finding that the Board and the  
3 Committee had each violated the OML with respect to untimely approval of meeting  
4 minutes.

5           4.     The FFCL stated the following:  
6           “[T]he Board and Committee must place on their next meeting agendas these  
7 Findings of Fact and Conclusions of Law and include them in the supporting  
8 material for the meetings. The agenda items must acknowledge these  
9 Findings of Fact and Conclusions of Law to be the result of the OAG  
investigation in the matter of Attorney General File No. 13897-260, and that  
it has been placed there as a requirement of NRS 241.0395.”

10          5.     The Board placed an acknowledgement of the FFCL on its March 13, 2018,  
11 agenda and included the FFCL in its supporting materials.

12          6.     The first meeting of the Committee following the FFCL was held on December  
13 12, 2018.

14          7.     The agenda for the Committee’s December 12, 2018, meeting did not list the  
15 FFCL and the FFCL were not included in the supporting materials.

16                           **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

17           The legislative intent of the OML is that actions of public bodies “be taken openly,  
18 and that their deliberations be conducted openly.” NRS 241.010(1); *see also McKay v. Board*  
19 *of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind  
20 NRS chapter 241 favors open meetings”). Public bodies working on behalf of Nevada  
21 citizens must conform to statutory requirements in open meetings under an agenda that  
22 provides full notice and disclosure of discussion topics and any possible action. *Sandoval*  
23 *v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

24           NRS 241.0395(1) requires public notice of an OAG opinion if the OAG makes findings  
25 of fact and conclusions of law that a public body has violated any provision of NRS Chapter  
26 241. The public body must include an item on its next agenda which acknowledges the  
27 OAG’s findings of fact and conclusions of law. The opinion of the OAG must be treated as  
28 supporting material for the item on the agenda. The inclusion of an item on an agenda

1 pursuant to NRS 241.0395(1) is not an admission of wrongdoing for the purposes of a civil  
2 action, criminal prosecution or injunctive relief. NRS 241.0395(2).

3 The Committee contends that because the Board acknowledged the FFCL at its  
4 March 13, 2018, meeting and the Committee members are also members of the Board, it  
5 was not necessary for the Committee to acknowledge them separately. However, because  
6 the Committee is a separate public body and was found to have violated the OML itself,  
7 the Committee was required to acknowledge the FFCL at its next meeting. Thus, the OAG  
8 finds that the Committee violated the OML by failing to acknowledge the FFCL at its  
9 December 12, 2018, meeting and include the FFCL in the supporting material for that  
10 meeting.

### 11 SUMMARY

12 Because the OAG finds that the Committee has violated the OML, the Committee  
13 must place both these Findings of Fact and Conclusions of Law and the Findings of Fact  
14 and Conclusions of Law for OAG File No. 13897-260 on its next meeting agenda and include  
15 them in the supporting material. The agenda item must acknowledge the instant Findings  
16 of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of  
17 the Attorney General File No. 13897-316, and that they have been placed on the agenda as  
18 a requirement of NRS 241.0395.

19 Dated: October 2, 2019.

20 AARON D. FORD  
Attorney General

21  
22 By:   
23 ROSALIE BORDELOVE  
Chief Deputy Attorney General

CERTIFICATE OF SERVICE


I hereby certify that on the 10<sup>th</sup> day of October, 2019, 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:

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

Certified Mail No. 7014 2470 0001 8497 5634

Jason D. Guinasso, Esq.  
Hutchinson & Steffen  
500 Damonte Ranch Pkwy., Suite 980  
Reno, NV 89521

Certified Mail No. 7014 2470 0001 8497 5641

  
An Employee of the  
Office of the Attorney General  
State of Nevada

**Complaint – AG  
File No. 13897-  
316**

AARON D. FORD  
Attorney General



STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
555 East Washington Avenue, Ste. 3900  
Las Vegas, Nevada 89101

January 23, 2019

Via U.S. Mail

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

**Re: Incline Village General Improvement District – Board of Trustees  
Open Meeting Law Complaint, OAG File No. 13897-316**

Dear Chair Wong:

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

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

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before February 6, 2019.

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

Sincerely,

AARON D. FORD  
Attorney General

By: /s/ Rosalie Bordelove  
ROSALIE BORDELOVE  
Deputy Attorney General

RB:arz  
Enclosures  
cc: Bernadette Francis (via email)  
Jason Guinasso (via email)



**STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL**

100 N. CARSON ST., CARSON CITY, NV 89701 – TEL# 775-684-1100 – FAX# 775-684-1108  
555 E. WASHINGTON AVE., STE 3900, LAS VEGAS, NV 89101 – TEL# 702-486-3420 – FAX# 702-486-3768



**COMPLAINT FORM**

*The information you provide on this form may be used to help us investigate violations of state laws. Please be sure to complete all required fields. The length of this process can vary depending on the circumstances and information you provide. The Attorney General's office may contact you if additional information is needed. Supplemental materials can be attached to Section 6 of this complaint form, and if additional supplemental materials are acquired after submitting this form, please email them to [AGCOMPLAINT@ag.nv.gov](mailto:AGCOMPLAINT@ag.nv.gov) with COMPLAINT in the subject line.*

**\*\*\*ONLY COMPLAINTS THAT ARE SIGNED WILL BE PROCESSED\*\*\***

HAVE YOU PREVIOUSLY FILED A COMPLAINT WITH OUR OFFICE?  YES  NO  
If so, what are the approximate dates of previously filed complaint(s)?

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**SECTION 1: COMPLAINANT INFORMATION**

LAST NAME: KATZ		FIRST NAME: AARON		M.I. L	
ORGANIZATION:					
ADDRESS: P.O. BOX 3022		CITY: Incline Village	STATE: NV	ZIP: 89450	
PHONE/MOBILE: (775) 833-1008		EMAIL: s4s@ix.netcom.com			
AGE GROUP	<input type="checkbox"/> UNDER 21	<input type="checkbox"/> 21-39	<input type="checkbox"/> 40-65	<input checked="" type="checkbox"/> OVER 65	
PRIMARY LANGUAGE: English					

**SECTION 2: TYPE OF COMPLAINT**

<input type="checkbox"/> GENERAL INVESTIGATIONS	<input checked="" type="checkbox"/> OPEN MEETING LAW – skip to section 4
<input type="checkbox"/> HIGH TECH CRIME	<input type="checkbox"/> PUBLIC INTEGRITY – against public officials or employees – skip to section 5
<input type="checkbox"/> INSURANCE FRAUD	<input type="checkbox"/> WORKERS COMP FRAUD
<input type="checkbox"/> MEDICAID FRAUD	<input type="checkbox"/> TICKET SALES
<input type="checkbox"/> MORTGAGE FRAUD	<input type="checkbox"/> OTHER

Facebook: [/NVAttorneyGeneral](#) Twitter: [@NevadaAG](#) YouTube: [NevadaAG](#)

Complaint Form: Rev. 10/2018rw  
1 | Page

**SECTION 4: ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST**

NAME OF PUBLIC BODY: (SPECIFIC BOARD, COMMISSION, AGENCY OR PERSON, ETC.) <b>INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT AUDIT COMMITTEE</b>
DATE OF MEETING WHERE ALLEGED VIOLATION OCCURRED: <b>December 12, 2018</b>
HAVE YOU CONTACTED ANOTHER AGENCY FOR ASSISTANCE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF SO, WHICH AGENCY?
HAVE YOU CONTACTED AN ATTORNEY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF SO, PROVIDE ATTORNEY'S CONTACT INFORMATION:
MY COMPLAINT IS: <b>See attachment together with exhibits</b>

**SECTION 5: PUBLIC OFFICIAL'S INFORMATION (WHOM YOUR COMPLAINT IS AGAINST)**

OFFICIAL'S NAME AND TITLE:
GOVERNMENT AGENCY:
ADDRESS, CITY, STATE, ZIP:
OFFICIAL'S TELEPHONE NUMBER:
HAVE YOU CONTACTED ANOTHER AGENCY FOR ASSISTANCE? <input type="checkbox"/> YES <input type="checkbox"/> NO IF SO, WHICH AGENCY?
HAVE YOU CONTACTED AN ATTORNEY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF SO, PROVIDE ATTORNEY'S CONTACT INFORMATION:
MY COMPLAINT IS:

Facebook: [/NVAttorneyGeneral](#) Twitter: [@NevadaAG](#) YouTube: [NevadaAG](#)

# ATTACHMENT TO NEVADA ATTORNEY GENERAL OPEN MEETING LAW COMPLAINT FORM

## INTRODUCTION

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

After the Washoe County Board of Commissioners ("the County Board") adopted IVGID's initiating ordinance it appointed "five persons to serve as the first board of trustees of the district" [NRS 318.080(3)]. Thereafter, IVGID has conducted, and currently conducts, biennial elections for the election of trustees who serve for terms of 4 years each. Elections for trustees are staggered so that in 2018, for instance, two trustees were elected. And in 2020, three trustees will be elected [see NRS 318.095(3)].

IVGID's Board of trustees ("the Board") regularly conducts "meetings" subject to the OML in that three or more "gather...to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power" [see NRS 241.015(2)(a)(1)]. Those meetings are typically noticed in writing ("the notice") "at least 3 working days before th(os)e meeting(s and)...include: (a) the time, place and location(s) of the meeting(s); (b) a list of the locations where the notice has been posted; (and for purposes of this complaint,) (c) *an agenda*" [NRS 241.020(2)].

Three members of the Board<sup>2</sup> are members of the Board's Audit Committee<sup>3</sup> ("the Committee"). NRS 241.015(4)(a) instructs that the Committee is a "public body" for purposes of the OML given it is "an advisory, executive or legislative body of...a local government...(a) *committee*, subcommittee or other subsidiary thereof...consisting of at least two persons which...advises or makes recommendations to any entity (here the IVGID Board) which expends or disburses or is supported in whole or in part by tax revenue<sup>4</sup> (as long as)...the...advisory, executive or legislative body is created by...(5) a resolution or other formal designation by such a body created by a statute of this State<sup>5</sup> or an ordinance of a local government... or (7) a resolution or an action by the governing body

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<sup>1</sup> See NRS 241.015(4)(a)(2) and (7).

<sup>2</sup> Phil Horan, Kendra Wong and Peter Morris [see the second page of the agenda for the Committee's December 12, 2018 meeting ([https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Audit\\_Committee\\_12-12-18.pdf](https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Packet_Audit_Committee_12-12-18.pdf))].

<sup>3</sup> See the asterisk on page two of the Audit Committee's agenda for its September 13, 2017 meeting ([https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT\\_Audit\\_Committee\\_Packet\\_9-13-17.pdf](https://www.yourtahoeplace.com/uploads/pdf-ivgid/BOT_Audit_Committee_Packet_9-13-17.pdf)).

<sup>4</sup> IVGID is financially supported, in part, by general *ad valorem* tax revenue (NRS 318.225).

<sup>5</sup> IVGID was created pursuant to a statute of this State; i.e., NRS 318.070(1).

be the result of the OAG investigation in the matter of Attorney General File No. 13897-260, and (acknowledge) that it has been placed there as a requirement of NRS 241.0395.”<sup>17</sup>

The next Committee meeting after issuance of the Opinion took place on December 12, 2018<sup>18</sup>. The agenda for that meeting<sup>19</sup> did not:

1. Agendize the Findings of Fact and Conclusions of Law issued in OAG File No. 13897-260;
2. Include those Findings and Conclusions in the support material for that meeting;
3. Acknowledge those Findings and Conclusions were the result of the OAG investigation in the matter of OAG File No. 13897-260;
4. Declare that those Findings and Conclusions were placed there as a requirement of NRS 241.0395.

Committee members, in their capacity as IVGID Board members, were present at the Board’s special meeting of May 13, 2018<sup>20</sup>. At that meeting the OAG’s findings and conclusions were presented to and included in the packet of materials prepared by staff in anticipation of that meeting<sup>21</sup>. Therefore Committee members had knowledge of the OAG’s directive that:

1. “The...Committee must place on their next meeting agenda...th(o)se Findings of Fact and Conclusions of Law and include them in the support material for the meeting;”
2. “Acknowledge th(o)se Findings of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of OAG File No. 13897-260;” and,
3. Acknowledge that the matter “has been placed there as a requirement of NRS 241.0395.”

Hence this complaint.

## LEGAL ARGUMENT

The Opinion found fifteen (15) OML violations<sup>16</sup>. Thirteen (13) of those violations were found to have been committed by the Board. Two (2) were found to have been committed by the Committee<sup>22</sup>. “Therefore (*both*) the Board *and* Committee” were directed to place the OAG’s findings and conclusions “on their next meeting *agendas*,” and to “acknowledge th(o)se findings...and conclusions...to be the result of the OAG(s) investigation.”<sup>17</sup>

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<sup>17</sup> See page 9, lines 8-10, of the Opinion. A copy of this page is attached as Exhibit “B” to this complaint.

<sup>18</sup> See <https://www.yourtahoepalace.com/ivgid/board-of-trustees/meetings-and-agendas>.

<sup>19</sup> See [https://www.yourtahoepalace.com/uploads/pdf-ivgid/Agenda\\_Special\\_-\\_Audit\\_Committee\\_12-12-18.pdf](https://www.yourtahoepalace.com/uploads/pdf-ivgid/Agenda_Special_-_Audit_Committee_12-12-18.pdf). A copy of that agenda is attached as Exhibit “C” to this complaint.

<sup>20</sup> See page 244 of the packet of materials prepared by staff in anticipation of the Board’s meeting of March 28, 2018 ([https://www.yourtahoepalace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Regular\\_3-28-18.pdf](https://www.yourtahoepalace.com/uploads/pdf-ivgid/BOT_Packet_Regular_3-28-18.pdf)).

<sup>21</sup> See pages 47-58 of the packet of materials prepared by staff in anticipation of the Board’s meeting of March 13, 2018 ([https://www.yourtahoepalace.com/uploads/pdf-ivgid/BOT\\_Packet\\_Special\\_3-13-2018.pdf](https://www.yourtahoepalace.com/uploads/pdf-ivgid/BOT_Packet_Special_3-13-2018.pdf)).

<sup>22</sup> See page 4, lines 16-25, of the Opinion. This portion of the Opinion is attached as Exhibit “D” to this complaint.

Isn't the subject violation an extension of (i.e., "similar") the OML violations in OAG File Nos. 13897-260 and 13897-282? Didn't the OAG state in its File No. 13897-282 letter that it would "consider taking action for future, similar OML violations...pursuant to NRS 241.040?" Wasn't each Committee member present at its December 12, 2018 meeting where action was taken in violation of NRS 241<sup>26</sup>? Given each Committee member was present at the Board's March 13, 2018 meeting<sup>20</sup> where the subject findings and conclusions were included in the Board packet for that meeting<sup>21</sup>, each had knowledge of the fact that the Committee's meeting of December 12, 2018 was in violation of NRS 241.0395<sup>27</sup>? Hasn't the time now come to "consider taking action for future, similar OML violations?" In other words, subjecting IVGID's public officer Committee members to *real* consequences for their repeated OML violations? Given *only* "the Attorney General shall investigate and prosecute any violation of... (NRS) chapter" 241 [NRS 241.039(1)]; and, only he "may sue in any court of competent jurisdiction... *for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter*" [NRS 241.037(1)]; amongst other remedies, complainant feels an injunction is required which permanently enjoins future violations of NRS Chapter 241. This way should they continue, the perpetrator(s) will be in contempt of court and for the first time, face very real consequence.

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<sup>26</sup> IVGID livestreams the meetings of the Board and the Committee (go to <https://livestream.com/accounts/3411104>). The livestream of the Committee's December 12, 2018 meeting appears at: <https://livestream.com/IVGID/events/8489930/videos/184709391>. There the OAG will see where all Committee members were present at its December 12, 2018 meeting.

<sup>27</sup> Thus constituting the basis for a NRS 241.040(1) violation.

**EXHIBIT "A"**

1 concocted reasons seeking to avoid compliance with the statute. The OAG finds each of  
2 these three (3) instances of claimed good cause to actually be good cause.

3 The Board further claims the failure of the Board trustee requesting revisions to  
4 provide all of the requested revisions to the Board's clerk by January 22, 2018, was good  
5 cause not to approve the minutes of August 22, 2017, at the Board's meetings held on  
6 January 10, 2018, and January 24, 2018. The Board trustee discussed the desired  
7 changes at the meeting held on December 13, 2017. If any additional information was  
8 required to make the requested changes to the minutes, the trustee should have provided  
9 it as soon as practicable after the meeting. A member of a public body must provide any  
10 information necessary to make the member's requested changes to the public body's  
11 minutes as soon as practicable after the meeting at which the member requests the  
12 changes. Thus, the OAG finds good cause did not exist to excuse approval of the minutes  
13 of August 22, 2017, at the meetings of January 10, 2018, and January 24, 2018. The  
14 Board did not offer any claim of good cause excusing its failure to approve the minutes of  
15 August 22, 2017, at its meetings of September 13, 2017, and September 26, 2017.  
16 Further, the Board and Committee did not claim good cause in the other fourteen (14)  
17 instances when they failed to timely approve minutes.

18 Based on the Findings of Fact and Legal Standard and Conclusions of Law as set  
19 out above, the OAG finds the Board and Committee failed to approve minutes as required  
20 by NRS 241.035(1) fifteen (15) times.

21 It should be noted, however, that there are no allegations or findings concerning  
22 the Board or Committee being out of compliance with NRS 241.035(2) concerning the  
23 production of minutes and making such minutes available to the public. This finding is a  
24 finding that the Board and Committee failed to formally approve the minutes as required  
25 by statute.

#### 26 SUMMARY AND INCLUSION OF AGENDA ITEM

27 If the Attorney General investigates a potential OML violation and makes findings  
28 of fact and conclusions of law that a public body has taken action in violation of the OML,

**EXHIBIT "B"**



1 "the public body must include an item on the next agenda posted for a meeting of the  
2 public body which acknowledges the findings of fact and conclusions of law." NRS  
3 241.0395. The public body must treat the opinion of the Attorney General as supporting  
4 material for the agenda item in question for the purpose of NRS 241.020. *Id.*

5 Here, upon investigating the present Complaint, the OAG makes findings of fact  
6 and conclusions of law that the Board and Committee committed violations of the OML  
7 by failing to approve meeting minutes within the statutorily required time fifteen (15)  
8 times. Therefore, the Board and Committee must place on their next meeting agendas  
9 these Findings of Fact and Conclusions of Law and include them in the supporting  
10 material for the meetings. The agenda items must acknowledge these Findings of Fact  
11 and Conclusions of Law to be the result of the OAG investigation in the matter of  
12 Attorney General File No. 13897-260, and that it has been placed there as a requirement  
13 of NRS 241.0395.<sup>2</sup>

14 DATED this 21<sup>st</sup> day of February, 2018.

15  
16 ADAM PAUL LAXALT  
17 Attorney General

18  
19 By:   
20 JOHN S. MICHELA (Bar. No. 8189)  
21 Senior Deputy Attorney General  
22 Gaming Division  
23 5420 Kietzke Lane, Suite 202  
24 Reno, Nevada 89511  
25 Telephone: (775) 687-2126

26 <sup>2</sup> Complainant expressed concern that the OAG and counsel for the Board and  
27 Committee might be negotiating the penalty for these findings during the OAG's  
28 examination of this matter. However, with the exception of requesting responses, the OAG  
did not communicate with the Board, Committee, or their counsel. The OAG has a strict  
non-communication policy outside of the complaint/response/fact-gathering process during  
its examinations of OML complaints.

**EXHIBIT "C"**



# NOTICE OF MEETING

The Audit Committee Meeting of the Incline Village General Improvement District will be held starting at 4:30 p.m. on Wednesday, December 12, 2018 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

- A. ROLL CALL OF THE AUDIT COMMITTEE MEMBERS\*
- B. 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 Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open.*

- C. APPROVAL OF AGENDA *(for possible action)*
- D. REPORT TO AUDIT COMMITTEE\*
  - 1. Verbal Report from Chairman of the Audit Committee on the status of the updated Policy 15.1.0, sub-paragraph 2.4
- E. GENERAL BUSINESS ITEM *(for possible action)*

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**Incline Village General Improvement District**

*Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.*

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • FAX (775) 832-1122

[www.yourtahoeplace.com](http://www.yourtahoeplace.com)

**EXHIBIT "D"**

1           12.    The Board approved the minutes for its meeting held on September 26, 2017,  
2 on December 13, 2017, approximately seventy-eight (78) days after the meeting and  
3 thirty-three (33) days after the time period mandated by statute for approval of the  
4 minutes. The Board held one (1) meeting prior to the expiration of the time mandated by  
5 statute at which it could have approved the minutes.

6           13.    The Board approved the minutes for its meeting held on October 25, 2017,  
7 on January 24, 2018, approximately ninety-one (91) days after the meeting and forty-six  
8 (46) days after the time period mandated by statute for approval of the minutes. The  
9 Board held two (2) meetings prior to the expiration of the time mandated by statute at  
10 which it could have approved the minutes.

11           14.    The Board approved the minutes for its meeting held on November 15, 2017,  
12 on January 24, 2018, approximately seventy (70) days after the meeting and twenty-five  
13 (25) days after the time period mandated by statute for approval of the minutes. The  
14 Board held one (1) meeting prior to the expiration of the time mandated by statute at  
15 which it could have approved the minutes.

16           15.    The Committee approved the minutes for its meeting held on May 10, 2017,  
17 on November 15, 2017. The Committee did not hold a meeting within forty-five (45) days  
18 of May 10, 2017. The Committee held its next meeting after May 10, 2017, on September  
19 13, 2017. Statute required the Committee to approve its May 10, 2017, meeting minutes  
20 at its meeting of September 13, 2017.

21           16.    The Committee approved the minutes for its meeting held on November 15,  
22 2017, on January 24, 2018, approximately seventy (70) days after the meeting and  
23 twenty-five (25) days after the time period mandated by statute for approval of the  
24 minutes. The Committee held one (1) meeting prior to the expiration of the time  
25 mandated by statute at which it could have approved the minutes.

26           17.    As of January 30, 2018, the Board has not approved the minutes for its  
27 meeting held on August 22, 2017. Prior to the expiration of the time mandated by  
28 statute, the Board held two (2) meetings at which it could have approved the minutes.

**Response – AG  
File No. 13897-  
316**

February 6, 2019

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

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

**Re: RESPONSE OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES - OPEN MEETING LAW COMPLAINT  
KATZ, AARON - O.A.G. FILE NO. 13897-316**

Dear Ms. Bordelove:

We received your January 23, 2019 correspondence notifying the Incline Village General Improvement District (herein referenced as "IVGID" or "District") of the above referenced complaint by Aaron Katz alleging that IVGID has violated the Nevada Open Meeting Law ("OML"). Please accept this correspondence and the referenced enclosures as IVGID's response.

**Issue Presented**

1. Whether IVGID violated Nevada Open Meeting Law by failing to include and acknowledge the Attorney General File No. 13897-260 Findings of Fact and Conclusion of Law in the IVGID Audit Committee December 12, 2018 Agenda.

**IVGID's Position**

NRS 241.0395 provides as follows:

"1. If the Attorney General makes findings of fact and conclusions of law that a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law. The opinion of the Attorney General must be treated as supporting material for the item on the agenda for the purposes of NRS 241.020.

2. The inclusion of an item on the agenda for a meeting of a public body pursuant to subsection 1 is not an admission of wrongdoing for the purposes of a civil action, criminal prosecution or injunctive relief."

The Incline Village General Improvement District Audit Committee ("Committee") is a "public body" pursuant to NRS 241.015(4)(a). The Committee consists of three of the five Board members and was created by the Board to advise and provide relevant recommendations to the IVGID Board of Trustees. **See Exhibit 1**

**(Policy 15.1.0 Audit Committee).** The Audit Committee must meet annually to consider the appointment of the District's Auditor, receive the Comprehensive Annual Audit Report and related communications. Meetings may be combined with regularly scheduled Board of Trustees meetings or may be held more frequently as circumstances may require. The Audit Committee is required to keep adequate minutes of its meetings and must report on its actions and activities at the next regular meeting of the District's Board of Trustees. Audit Committee members must be furnished with copies of the minutes of each Committee meeting. The Audit Committee must comply with the Nevada Open Meeting law when it convenes for meetings and engages in the work delegated to it.

On December 18, 2017, Mr. Aaron Katz filed an Open Meeting Law Complaint with the Office of the Attorney General alleging the Committee violated Nevada OML by failing to timely approve the minutes for its meeting held May 10, 2017. Similarly, Mr. Katz also alleged the Board violated OML for failing to timely approve past meeting minutes.

On February 2, 2018, OAG published its Findings of Fact and Conclusions of law finding that the Board and the Committee violated the OML and instructing the Board and Committee to include the OAG Findings of Fact and Conclusion of Law on the subsequent meeting's Agenda and include the decision as supporting material. **See Exhibit 2 (Office of the Attorney General File No. 13897-260 - Findings of Fact and Conclusions of Law).**

On March 13, 2018 the IVGID Board of Trustees held its first meeting subsequent to receiving the OAG Findings of Fact and Conclusions of Law. At this meeting the Board and Staff properly:

(1) placed the Findings of Fact and Conclusion of Law into the Agenda and included the decision as supporting materials;

(2) acknowledged on the Agenda the Findings of Fact and Conclusion of Law to be a result of the respective OAG investigation; and,

(3) declared the information had been placed there in accordance with NRS 241.0395.

**See Exhibit 3 (IVGID Board of Trustees Notice of Meeting dated March 13, 2018).**

Unlike the Board, the Committee typically meets only once per year. The Committee's first meeting subsequent to the OAG decision was held December 12, 2018. While it is true that the Findings of Fact and Conclusion of Law were not included in the Committee's December 12, 2018, Agenda and supporting material, this was not required given IVGID had included the agenda item and supporting material in the March 13, 2018, Board Agenda. This action satisfied the statutory requirement for both the Board and Committee because: (a) the Committee is comprised of 3 of the 5 Board members; (b) the public and the Board received notice of the Findings of Fact and Conclusions of Law at the March 13, 2018, Board meeting; and (c) the posting of the Findings of Fact and Conclusions of Law a second time, nine months later, on December 12, 2018, would have been redundant.

In this regard, the public was fully informed of the OAG's decision as required by NRS 241.0395. Because IVGID properly noticed and agendaized the Findings of Fact and Conclusion of Law immediately following the publication of OAG decision, it is evident IVGID did not violate the statute or act in a manner to misinform, deceive, or delude the public or to willfully disregard the requirements of the OML.



Ms. Rosalie Bordelove, Deputy Attorney General  
State of Nevada Office of The Attorney General  
February 6, 2019

**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 any vagueness or ambiguity of Mr. Katz's Complaint, IVGID denies that any such violation has occurred. IVGID has a record of abiding by the provisions of NRS Chapter 241 and has worked diligently over the years to make sure that District business is conducted with openness and transparency.

**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 Aaron Katz, A.G. File No. 13897-316.

Sincere regards,



HUTCHISON & STEFFEN, LLC

Jason D. Guinasso, Esq.

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

JJDG:ts

# EXHIBIT 1

# EXHIBIT 1



**Accounting, Auditing, and Financial Reporting**  
**Audit Committee**  
**Policy 15.1.0**

The Incline Village General Improvement District is committed to be proactive, informed, and providing the highest form of financial accountability to its parcel owners. Achieving this goal requires clear rules and procedures for making decisions and their impact on financial results. As required by Nevada Revised Statute (NRS) 354.624, each local government shall provide for an annual independent audit of all of its financial statements.

**POLICY:** Each year, the Board of Trustees may establish the need for an Audit Committee and appoint no less than three members to such committee. Members of the Committee shall remain in place until successors are appointed. Members of the Audit Committee should be current Board members. As a general rule, no one having managerial responsibilities that fall within the scope of the audit should serve as a committee member.

**1.0 Independent auditor reports directly to the Audit Committee**

The independent auditor reports directly to the Audit Committee. The Audit Committee is expected to maintain free and open communication with the independent auditor and District Staff. This communication may include periodic executive sessions with each of these parties. The independent auditor should not engage in any work that will result in billing a fee, unless authorized by the Audit Committee. This includes response to items brought forward by any internal or external source. This does not preclude the work they must perform to meet their professional responsibility.

**2.0 Scope of Audit Committee's authority and responsibilities**

The Audit Committee at a minimum shall have the following authority and responsibilities:

- 2.1 To select, evaluate and, if necessary, replace the District's independent auditor; and to approve all audit engagement fees and terms, subject to Board of Trustees approval.

Adopted November 15, 2017



**Accounting, Auditing, and Financial Reporting  
Audit Committee  
Policy 15.1.0**

- 2.2.2 To review, with management and the auditors, the District's annual auditor's planning, process and engagement decisions.
- 2.2.3 To review procedures for the receipt, retention, and treatment of complaints received by the District regarding accounting, internal accounting controls, auditing matters, or suspected fraud. Review any submissions that have been received, monitor their current status, and the document handling or disposition.
- 2.2.4 To review confidential and/or anonymous submission by the District's employees of concerns regarding questionable accounting or auditing matters, or suspected fraud that cannot be handled by other appropriate levels of management.
- 2.2.5 The Audit Committee must meet annually to consider the appointment of the District's Auditor, receive the Comprehensive Annual Audit Report and related communications. Also, if necessary to consider circumstances that arise beyond the scope of the Audit Engagement letter that could result in additional fees, and otherwise as determined by the Audit Committee Chair. Meetings may be combined with regularly scheduled Board of Trustees meetings, or may be held more frequently as circumstances may require. The Audit Committee may ask members of management or others to attend the meetings and provide pertinent information as necessary.
- 2.2.6 To submit a written annual Audit Committee Report to the District's Board of Trustees in conjunction with the presentation of the annual audit.
- 2.2.7 To review and reassess, the adequacy of the Audit Committee responsibilities and recommend any proposed changes to the Board of Trustees for approval.
- 2.2.8 To appoint a Chair for the Audit Committee who will act as the primary contact with the independent auditor and District staff.

Adopted November 15, 2017



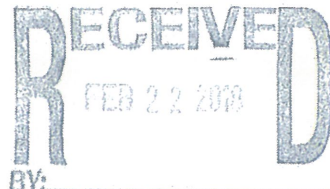
**Accounting, Auditing, and Financial Reporting  
Audit Committee  
Policy 15.1.0**

- 2.9 All members of the Audit Committee should possess or obtain a basic understanding of governmental financial reporting and auditing.
- 2.10 The Audit Committee will keep adequate minutes of its meetings and will report on its actions and activities at the next regular meeting of the District's Board of Trustees. Audit Committee members will be furnished with copies of the minutes of each Committee meeting.
- 2.11 The Audit Committee is governed by the same open meeting laws NRS 241 as long as three current District Board of Trustees members are on the Audit Committee and in attendance at the Audit Committee meetings.

Adopted November 15, 2017

# EXHIBIT 2

# EXHIBIT 2



OFFICE OF THE ATTORNEY GENERAL  
STATE OF NEVADA

In the Matter of:  
INCLINE VILLAGE GENERAL  
IMPROVEMENT DISTRICT - BOARD  
OF TRUSTEES;  
INCLINE VILLAGE GENERAL  
IMPROVEMENT DISTRICT - AUDIT  
COMMITTEE.

A.G. FILE NO.: 13897-260

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

On or about December 18, 2017, Aaron L. Katz filed a complaint (Complaint) with the Office of the Attorney General (OAG) pursuant to Nevada Revised Statutes (NRS) 241.039 alleging violations of the Nevada Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board) and by the Incline Village General Improvement District Audit Committee (Committee). Mr. Katz filed a supplement (Supplement) to his Complaint on January 16, 2018. The Complaint and Supplement allege the Board and Committee violated the OML as follows:

ALLEGATION: The Board and Committee failed to timely approve their meeting minutes for fifteen (15) meetings held between December 14, 2016, and November 15, 2017.

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, having reviewed the meeting schedules, minutes, and actions for Board and Committee meetings occurring between December 14, 2016, and January 24, 2018, together with the Complaint, Supplement thereto, and the Board's Responses<sup>1</sup> to

<sup>1</sup> In its Responses to the Complaint, the Board and Committee included recitations of criminal history; references to prior filings deemed frivolous or alleged to be frivolous; references to prior, unrelated, dismissed OML complaints; and references to unrelated

1 the Complaint and Supplement, issues the following FINDINGS OF FACT AND  
2 CONCLUSIONS OF LAW.

3 FINDINGS OF FACT

4 1. The Board is the governing body of the Incline Village General Improvement  
5 District (IVGID). The Washoe County Board of County Commissioners formed IVGID  
6 pursuant to NRS Chapter 318. The Committee advises the Board concerning IVGID  
7 financial matters.

8 2. The Board and Committee are public bodies as defined in NRS 241.015(4)  
9 and are subject to the OML.

10 3. The Board approved the minutes for its meeting held on December 14, 2016,  
11 on February 18, 2017, approximately sixty-six (66) days after the meeting and twenty-one  
12 (21) days after the time period mandated by statute for approval of the minutes. The  
13 Board held one (1) meeting prior to the expiration of the time mandated by statute at  
14 which it could have approved the minutes.

15 4. The Board approved the minutes for its meeting held on March 23, 2017, on  
16 May 10, 2017, approximately forty-eight (48) days after the meeting and three (3) days  
17 after the time period mandated by statute for approval of the minutes. The Board held  
18 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
19 have approved the minutes.

20 5. The Board approved the minutes for its meeting held on May 10, 2017, on  
21 June 28, 2017, approximately forty-nine (49) days after the meeting and four (4) days  
22 after the time period mandated by statute for approval of the minutes. The Board held  
23 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
24 have approved the minutes.

25 6. The Board approved the minutes for its meeting held on May 24, 2017, on  
26 July 20, 2017, approximately fifty-seven (57) days after the meeting and twelve (12) days

27  
28 litigation. The OAG did not consider these items during its investigation as they are not  
relevant to the examination of the Complaint in this matter.



1 after the time period mandated by statute for approval of the minutes. The Board held  
2 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
3 have approved the minutes.

4 7. The Board approved the minutes for its meeting held on June 12, 2017, on  
5 August 22, 2017, approximately seventy-one (71) days after the meeting and twenty-six  
6 (26) days after the time period mandated by statute for approval of the minutes. The  
7 Board held two (2) meetings prior to the expiration of the time mandated by statute at  
8 which it could have approved the minutes.

9 8. The Board approved the minutes for its meeting held on June 28, 2017, on  
10 August 22, 2017, approximately fifty-five (55) days after the meeting and ten (10) days  
11 after the time period mandated by statute for approval of the minutes. The Board held  
12 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
13 have approved the minutes.

14 9. The Board approved the minutes for its meeting held on July 20, 2017, on  
15 September 13, 2017, approximately fifty-five (55) days after the meeting and ten (10) days  
16 after the time period mandated by statute for approval of the minutes. The Board held  
17 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
18 have approved the minutes.

19 10. The Board approved the minutes for its meeting held on August 2, 2017, on  
20 September 26, 2017, approximately fifty-five (55) days after the meeting and ten (10) days  
21 after the time period mandated by statute for approval of the minutes. The Board held  
22 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
23 have approved the minutes.

24 11. The Board approved the minutes for its meeting held on September 13, 2017,  
25 on December 13, 2017, approximately ninety-one (91) days after the meeting and forty-six  
26 (46) days after the time period mandated by statute for approval of the minutes. The  
27 Board held two (2) meetings prior to the expiration of the time mandated by statute at  
28 which it could have approved the minutes.

1           12.    The Board approved the minutes for its meeting held on September 26, 2017,  
2 on December 13, 2017, approximately seventy-eight (78) days after the meeting and  
3 thirty-three (33) days after the time period mandated by statute for approval of the  
4 minutes. The Board held one (1) meeting prior to the expiration of the time mandated by  
5 statute at which it could have approved the minutes.

6           13.    The Board approved the minutes for its meeting held on October 25, 2017,  
7 on January 24, 2018, approximately ninety-one (91) days after the meeting and forty-six  
8 (46) days after the time period mandated by statute for approval of the minutes. The  
9 Board held two (2) meetings prior to the expiration of the time mandated by statute at  
10 which it could have approved the minutes.

11           14.    The Board approved the minutes for its meeting held on November 15, 2017,  
12 on January 24, 2018, approximately seventy (70) days after the meeting and twenty-five  
13 (25) days after the time period mandated by statute for approval of the minutes. The  
14 Board held one (1) meeting prior to the expiration of the time mandated by statute at  
15 which it could have approved the minutes.

16           15.    The Committee approved the minutes for its meeting held on May 10, 2017,  
17 on November 15, 2017. The Committee did not hold a meeting within forty-five (45) days  
18 of May 10, 2017. The Committee held its next meeting after May 10, 2017, on September  
19 13, 2017. Statute required the Committee to approve its May 10, 2017, meeting minutes  
20 at its meeting of September 13, 2017.

21           16.    The Committee approved the minutes for its meeting held on November 15,  
22 2017, on January 24, 2018, approximately seventy (70) days after the meeting and  
23 twenty-five (25) days after the time period mandated by statute for approval of the  
24 minutes. The Committee held one (1) meeting prior to the expiration of the time  
25 mandated by statute at which it could have approved the minutes.

26           17.    As of January 30, 2018, the Board has not approved the minutes for its  
27 meeting held on August 22, 2017. Prior to the expiration of the time mandated by  
28 statute, the Board held two (2) meetings at which it could have approved the minutes.

1 The Board initially considered approving the minutes at its meeting held on October 25,  
2 2017, approximately sixty-four (64) days after the meeting and nineteen (19) days after  
3 the time period mandated by statute for approval of the minutes.

4 18. At the October 25, 2017, meeting, a member of the public requested  
5 modifications to the minutes of the August 22, 2017, meeting. The Board chair asked the  
6 Board clerk to review the minutes with the member of the public and approval of the  
7 minutes was deferred to the meeting of November 15, 2017.

8 19. At the November 15, 2017, meeting, a power outage caused the cancellation  
9 of the meeting prior to the Board's consideration of the minutes for the meeting of August  
10 22, 2017, and approval of the minutes was deferred to the meeting of December 13, 2017.

11 20. At the December 13, 2017, meeting, a Board trustee had more adjustments  
12 to the minutes for the meeting of August 22, 2017, and the approval was tabled. As of  
13 January 22, 2018, the Board trustee had not provided the Board's clerk with all of the  
14 information necessary to complete the requested adjustments to the minutes.

15 21. The Board did not consider approval of the minutes for the meeting of  
16 August 22, 2017, at its meetings held on January 10, 2018, and January 24, 2018.

#### 17 LEGAL STANDARDS AND CONCLUSIONS OF LAW

18 The legislative intent of the OML is that the actions of public bodies "be taken  
19 openly, and that their deliberations be conducted openly." NRS 241.010(1); *see also*  
20 *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit  
21 and policy behind NRS Chapter 241 favors open meetings"). Minutes of a public meeting  
22 "must be made available for inspection by the public within 30 working days after  
23 adjournment of a meeting." NRS 241.035(2). A "working day" is "every day of the week  
24 except Saturday, Sunday and any day declared to be a legal holiday pursuant to NRS  
25 236.015." NRS 241.015(6). "Unless good cause is shown, a public body shall approve the  
26 minutes of a meeting within 45 days after the meeting or at the next meeting of the  
27 public body, whichever occurs later." NRS 241.035(1). A "day" is a calendar day. *See*  
28 NRS 676A.120 and NRS 107A.070.

1           The term “public body” includes any “administrative, advisory, executive or  
2 legislative body of the State or a local government . . . which expends or disburses or is  
3 supported in whole or in part by tax revenue . . .” NRS 241.015(4)(a).

4           The Complaint alleges the Board and Committee did not timely approve the  
5 minutes for fifteen (15) meetings held December 14, 2016, through November 15, 2017.  
6 The Board and Committee make two (2) arguments concerning time in which minutes  
7 must be approved. One, the statutory time by which a public body must approve the  
8 minutes for a meeting does not expire until the next meeting of the public body occurring  
9 after the expiration of forty-five (45) days from the date of the meeting for which  
10 approved minutes are required. Two, the forty-five (45) days set out in statute are  
11 working days. These arguments are erroneous.

12           The statutory time by which a public body must approve the minutes for a meeting  
13 is not the next meeting after the expiration of forty-five (45) days from the meeting.  
14 “When a statute is clear on its face, we will not look beyond the statute’s plain language.”  
15 *Washoe Medical Ctr. v. Second Judicial Dist. Court*, 112 Nev. 1298, 1302 (2006). The  
16 plain language of NRS 241.035(1) sets out “a public body shall approve the minutes of a  
17 meeting within 45 days after the meeting or at the next meeting of the public body,  
18 whichever occurs later.” The statute states the later of 45 days or the “next meeting.” If  
19 counsel’s argument were correct, the disjunctive nature of the statute would not be  
20 required; statute would have designated the time period in which minutes could be  
21 approved as “no later than the first meeting following the expiration of 45 days from the  
22 meeting.” If the “next meeting” occurs inside of forty-five (45) days from the meeting,  
23 then the later of forty-five (45) days or the “next meeting” is forty-five (45) days from the  
24 meeting.

25           The forty-five (45) days designated for approval of minutes is calendar days and  
26 not working days. “Generally, when the legislature has employed a term or phrase in one  
27 place and excluded it in another, it should not be implied where excluded.” *Coast Hotels*  
28 *and Casinos, Inc. v. Nevada State Labor Com’n*, 117 Nev. 835, 841 (2001). A “working

11 day” is “every day of the week except Saturday, Sunday and any day declared to be a legal  
12 holiday pursuant to NRS 236.015.” NRS 241.015(6). A “day” is a calendar day. See NRS  
13 676A.120 and NRS 107A.070. The legislature was clearly aware of the distinction  
14 between a working day and a calendar day when it enacted NRS Chapter 241. In fact,  
15 the legislature explicitly recognized working days in NRS 241.035(2), concerning making  
16 minutes available to the public. However, the legislature, in the same statute, declined to  
17 specify the forty-five (45)-day requirement for a public body to approve minutes was  
18 “working” days. NRS 241.035(1). Instead, it only specified “days,” which are calendar  
19 days, and the OAG will not imply “working day” when the legislature only specified “day.”  
20 The forty-five (45) days in which a public body has to approve minutes clearly refers to  
21 calendar days.

22 The Board also argues it had good cause not to approve the minutes from the  
23 meeting of August 22, 2017, within the statutory time. The required approval period set  
24 out in NRS 241.035(1) contains an exception: “unless good cause is shown.” Good cause is  
25 a “legally sufficient reason.” BLACK’S LAW DICTIONARY 213 (7<sup>th</sup> ed. 1999). Basically, good  
26 cause is a real reason.

27 In the case of the minute approval for the Board’s meeting of August 22, 2017, the  
28 Board indicated it had good cause to delay approval of the minutes at its meetings of  
October 25, 2017; November 15, 2017; and, December 13, 2017. The good cause claimed  
for the meeting held on October 25, 2017, was a member of the public requested revisions  
to the minutes while the Board clerk was on vacation and the Board clerk was still on  
vacation on October 25, 2017. The good cause claimed for the meeting held on November  
15, 2017, was a power outage during the meeting causing the meeting items occurring  
after the power outage, including approval of the minutes, to be moved to the next  
meeting. The good caused claimed for the meeting held on December 13, 2017, was a  
recently discovered apparently important missing period of time from the minutes. All of  
these appear to be real reasons supporting a delay in approving the minutes and not

1 concocted reasons seeking to avoid compliance with the statute." The OAG finds each of  
2 these three (3) instances of claimed good cause to actually be good cause.

3 The Board further claims the failure of the Board trustee requesting revisions to  
4 provide all of the requested revisions to the Board's clerk by January 22, 2018, was good  
5 cause not to approve the minutes of August 22, 2017, at the Board's meetings held on  
6 January 10, 2018, and January 24, 2018. The Board trustee discussed the desired  
7 changes at the meeting held on December 13, 2017. If any additional information was  
8 required to make the requested changes to the minutes, the trustee should have provided  
9 it as soon as practicable after the meeting. A member of a public body must provide any  
10 information necessary to make the member's requested changes to the public body's  
11 minutes as soon as practicable after the meeting at which the member requests the  
12 changes. Thus, the OAG finds good cause did not exist to excuse approval of the minutes  
13 of August 22, 2017, at the meetings of January 10, 2018, and January 24, 2018. The  
14 Board did not offer any claim of good cause excusing its failure to approve the minutes of  
15 August 22, 2017, at its meetings of September 13, 2017, and September 26, 2017.  
16 Further, the Board and Committee did not claim good cause in the other fourteen (14)  
17 instances when they failed to timely approve minutes.

18 Based on the Findings of Fact and Legal Standard and Conclusions of Law as set  
19 out above, the OAG finds the Board and Committee failed to approve minutes as required  
20 by NRS 241.035(1) fifteen (15) times.

21 It should be noted, however, that there are no allegations or findings concerning  
22 the Board or Committee being out of compliance with NRS 241.035(2) concerning the  
23 production of minutes and making such minutes available to the public. This finding is a  
24 finding that the Board and Committee failed to formally approve the minutes as required  
25 by statute.

#### 26 SUMMARY AND INCLUSION OF AGENDA ITEM

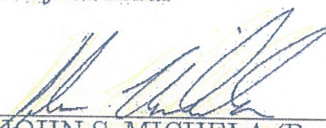
27 If the Attorney General investigates a potential OML violation and makes findings  
28 of fact and conclusions of law that a public body has taken action in violation of the OML,

1 "the public body must include an item on the next agenda posted for a meeting of the  
2 public body which acknowledges the findings of fact and conclusions of law." NRS  
3 241.0395. The public body must treat the opinion of the Attorney General as supporting  
4 material for the agenda item in question for the purpose of NRS 241.020. *Id.*

5 Here, upon investigating the present Complaint, the OAG makes findings of fact  
6 and conclusions of law that the Board and Committee committed violations of the OML  
7 by failing to approve meeting minutes within the statutorily required time fifteen (15)  
8 times. Therefore, the Board and Committee must place on their next meeting agendas  
9 these Findings of Fact and Conclusions of Law and include them in the supporting  
10 material for the meetings. The agenda items must acknowledge these Findings of Fact  
11 and Conclusions of Law to be the result of the OAG investigation in the matter of  
12 Attorney General File No. 13897-260, and that it has been placed there as a requirement  
13 of NRS 241.0395.<sup>2</sup>

14 DATED this 21<sup>st</sup> day of February, 2018.

15  
16 ADAM PAUL LAXALT  
17 Attorney General

18  
19 By:   
20 JOHN S. MICHELA (Bar. No. 8189)  
21 Senior Deputy Attorney General  
22 Gaming Division  
23 5420 Kietzke Lane, Suite 202  
24 Reno, Nevada 89511  
25 Telephone: (775) 687-2126

26 <sup>2</sup> Complainant expressed concern that the OAG and counsel for the Board and  
27 Committee might be negotiating the penalty for these findings during the OAG's  
28 examination of this matter. However, with the exception of requesting responses, the OAG  
did not communicate with the Board, Committee, or their counsel. The OAG has a strict  
non-communication policy outside of the complaint/response/fact-gathering process during  
its examinations of OML complaints.

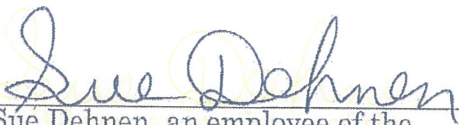
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CERTIFICATE OF SERVICE

I, Sue Dehnen, certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on February 21, 2018, I served a copy of the foregoing *FINDINGS OF FACT AND CONCLUSIONS OF LAW* by placing said document in the U.S. Mail, postage prepaid, addressed to the following:

Jason D. Guinasso, Esq.  
Hutchison & Steffen  
500 Damonte Ranch Parkway, Suite 980  
Reno, Nevada 89521

Aaron L. Katz  
Post Office Box 3022  
Incline Village, Nevada 89450-3022

  
\_\_\_\_\_  
Sue Dehnen, an employee of the  
Office of the Nevada Attorney General



# EXHIBIT 3

# EXHIBIT 3



# NOTICE OF MEETING

The special meeting of the Incline Village General Improvement District will be held starting at 11:30 a.m. on Tuesday, March 13, 2018 in the Chateau, 955 Fairway Boulevard, Incline Village, Nevada.

**Time Certain - 11:30 a.m.** - A presentation will be given to the Board of Trustees by State of Nevada, Ethics Commission, Executive Director Nevarez-Goodson. This presentation is informational/educational in nature.

- 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 Chair may cut off public comment deemed in their judgment to be slanderous, offensive, inflammatory and/or willfully disruptive. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. Their non-response should not be seen as acquiescence or agreement just professional behavior on their part. 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.

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**Incline Village General Improvement District**

Incline Village General Improvement District is a fiscally responsible community partner which provides superior utility services and community oriented recreation programs and facilities with passion for the quality of life and our environment while investing in the Tahoe basin.

893 Southwood Boulevard, Incline Village, Nevada 89451 • (775) 832-1100 • FAX (775) 832-1122

[www.yourtahoeplace.com](http://www.yourtahoeplace.com)



# NOTICE OF MEETING

Agenda for the Board Meeting of March 13, 2018 - Page 2

E. APPROVAL OF MINUTES *(for possible action)*

1. Regular Meeting of February 7, 2018

F. GENERAL BUSINESS *(for possible action)*

1. Order of Affirmance from the Supreme Court of the State of Nevada, Aaron L. Katz, Appellant vs. Incline Village General Improvement District, Respondent, No. 70440 dated February 26, 2018 (Chairwoman Kendra Wong)
2. Open Meeting Law Results – Acknowledgement of the Findings of Fact and Conclusions of Law as the result of the State of Nevada Office of the Attorney General investigation in the matter of Attorney General File No. 13897-260, Open Meeting Law Complaint – Placed on this agenda in accordance with Nevada Revised Statutes 241.0395 (Chairwoman Kendra Wong)
3. Adoption of District Boundary Map as presented by the Washoe County Registrar of Voters – Map dated January 24, 2018 (Requesting Staff Member: General Manager Steve Pinkerton)
4. Review, discuss, and possibly provide input to the Overview of 2018/2019 Operating Budget Presentation ((Requesting Staff Member: District General Manager Steve Pinkerton)

Order of Presentation:

Beaches  
Recreation Programming  
Community Services Administration  
Tennis  
Parks  
Diamond Peak Ski Resort  
Golf Courses at Incline Village (Championship and Mountain)  
Facilities  
General Fund  
Internal Services  
Utilities

- G. 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.

- H. ADJOURNMENT *(for possible action)*



# NOTICE OF MEETING

Agenda for the Board Meeting of March 13, 2018 - Page 3

## CERTIFICATION OF POSTING OF THIS AGENDA

I hereby certify that on or before Thursday, March 8, 2018 at 9:00 a.m., a copy of this agenda (IVGID Board of Trustees Session of March 13, 2018) was delivered to the post office addressed to the people who have requested to receive copies of IVGID's agendas; copies were either faxed or e-mailed to those people who have requested; and a copy was posted at the following seven locations within Incline Village/Crystal Bay in accordance with NRS 241.020:

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

*/s/ Susan A. Herron, CMC*

Susan A. Herron, CMC

District Clerk (e-mail: [sah@ivgid.org](mailto:sah@ivgid.org)/phone # 775-832-1207)

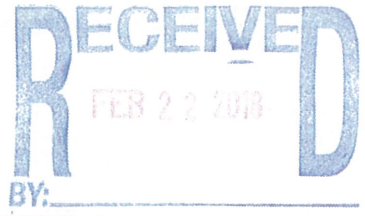
**Board of Trustees:** Kendra Wong, Chairwoman, Tim Callicrate, Peter Morris, Phil Horan, and Matthew Dent.

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

**IVGID'S agenda packets are now available at IVGID's web site, [www.yourtahoeplace.com](http://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.**

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

**Opinion – AG  
File No. 13897-  
260**



OFFICE OF THE ATTORNEY GENERAL  
STATE OF NEVADA

In the Matter of:

INCLINE VILLAGE GENERAL  
IMPROVEMENT DISTRICT - BOARD  
OF TRUSTEES;

INCLINE VILLAGE GENERAL  
IMPROVEMENT DISTRICT - AUDIT  
COMMITTEE.

A.G. FILE NO.: 13897-260

FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

On or about December 18, 2017, Aaron L. Katz filed a complaint (Complaint) with the Office of the Attorney General (OAG) pursuant to Nevada Revised Statutes (NRS) 241.039 alleging violations of the Nevada Open Meeting Law (OML) by the Incline Village General Improvement District Board of Trustees (Board) and by the Incline Village General Improvement District Audit Committee (Committee). Mr. Katz filed a supplement (Supplement) to his Complaint on January 16, 2018. The Complaint and Supplement allege the Board and Committee violated the OML as follows:

ALLEGATION: The Board and Committee failed to timely approve their meeting minutes for fifteen (15) meetings held between December 14, 2016, and November 15, 2017.

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, having reviewed the meeting schedules, minutes, and actions for Board and Committee meetings occurring between December 14, 2016, and January 24, 2018, together with the Complaint, Supplement thereto, and the Board's Responses<sup>1</sup> to

<sup>1</sup> In its Responses to the Complaint, the Board and Committee included recitations of criminal history; references to prior filings deemed frivolous or alleged to be frivolous; references to prior, unrelated, dismissed OML complaints; and references to unrelated

1 the Complaint and Supplement, issues the following FINDINGS OF FACT AND  
2 CONCLUSIONS OF LAW.

3 FINDINGS OF FACT

4 1. The Board is the governing body of the Incline Village General Improvement  
5 District (IVGID). The Washoe County Board of County Commissioners formed IVGID  
6 pursuant to NRS Chapter 318. The Committee advises the Board concerning IVGID  
7 financial matters.

8 2. The Board and Committee are public bodies as defined in NRS 241.015(4)  
9 and are subject to the OML.

10 3. The Board approved the minutes for its meeting held on December 14, 2016,  
11 on February 18, 2017, approximately sixty-six (66) days after the meeting and twenty-one  
12 (21) days after the time period mandated by statute for approval of the minutes. The  
13 Board held one (1) meeting prior to the expiration of the time mandated by statute at  
14 which it could have approved the minutes.

15 4. The Board approved the minutes for its meeting held on March 23, 2017, on  
16 May 10, 2017, approximately forty-eight (48) days after the meeting and three (3) days  
17 after the time period mandated by statute for approval of the minutes. The Board held  
18 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
19 have approved the minutes.

20 5. The Board approved the minutes for its meeting held on May 10, 2017, on  
21 June 28, 2017, approximately forty-nine (49) days after the meeting and four (4) days  
22 after the time period mandated by statute for approval of the minutes. The Board held  
23 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
24 have approved the minutes.

25 6. The Board approved the minutes for its meeting held on May 24, 2017, on  
26 July 20, 2017, approximately fifty-seven (57) days after the meeting and twelve (12) days

27 \_\_\_\_\_  
28 litigation. The OAG did not consider these items during its investigation as they are not  
relevant to the examination of the Complaint in this matter.

1 after the time period mandated by statute for approval of the minutes. The Board held  
2 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
3 have approved the minutes.

4 7. The Board approved the minutes for its meeting held on June 12, 2017, on  
5 August 22, 2017, approximately seventy-one (71) days after the meeting and twenty-six  
6 (26) days after the time period mandated by statute for approval of the minutes. The  
7 Board held two (2) meetings prior to the expiration of the time mandated by statute at  
8 which it could have approved the minutes.

9 8. The Board approved the minutes for its meeting held on June 28, 2017, on  
10 August 22, 2017, approximately fifty-five (55) days after the meeting and ten (10) days  
11 after the time period mandated by statute for approval of the minutes. The Board held  
12 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
13 have approved the minutes.

14 9. The Board approved the minutes for its meeting held on July 20, 2017, on  
15 September 13, 2017, approximately fifty-five (55) days after the meeting and ten (10) days  
16 after the time period mandated by statute for approval of the minutes. The Board held  
17 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
18 have approved the minutes.

19 10. The Board approved the minutes for its meeting held on August 2, 2017, on  
20 September 26, 2017, approximately fifty-five (55) days after the meeting and ten (10) days  
21 after the time period mandated by statute for approval of the minutes. The Board held  
22 two (2) meetings prior to the expiration of the time mandated by statute at which it could  
23 have approved the minutes.

24 11. The Board approved the minutes for its meeting held on September 13, 2017,  
25 on December 13, 2017, approximately ninety-one (91) days after the meeting and forty-six  
26 (46) days after the time period mandated by statute for approval of the minutes. The  
27 Board held two (2) meetings prior to the expiration of the time mandated by statute at  
28 which it could have approved the minutes.



1           12.    The Board approved the minutes for its meeting held on September 26, 2017,  
2 on December 13, 2017, approximately seventy-eight (78) days after the meeting and  
3 thirty-three (33) days after the time period mandated by statute for approval of the  
4 minutes. The Board held one (1) meeting prior to the expiration of the time mandated by  
5 statute at which it could have approved the minutes.

6           13.    The Board approved the minutes for its meeting held on October 25, 2017,  
7 on January 24, 2018, approximately ninety-one (91) days after the meeting and forty-six  
8 (46) days after the time period mandated by statute for approval of the minutes. The  
9 Board held two (2) meetings prior to the expiration of the time mandated by statute at  
10 which it could have approved the minutes.

11           14.    The Board approved the minutes for its meeting held on November 15, 2017,  
12 on January 24, 2018, approximately seventy (70) days after the meeting and twenty-five  
13 (25) days after the time period mandated by statute for approval of the minutes. The  
14 Board held one (1) meeting prior to the expiration of the time mandated by statute at  
15 which it could have approved the minutes.

16           15.    The Committee approved the minutes for its meeting held on May 10, 2017,  
17 on November 15, 2017. The Committee did not hold a meeting within forty-five (45) days  
18 of May 10, 2017. The Committee held its next meeting after May 10, 2017, on September  
19 13, 2017. Statute required the Committee to approve its May 10, 2017, meeting minutes  
20 at its meeting of September 13, 2017.

21           16.    The Committee approved the minutes for its meeting held on November 15,  
22 2017, on January 24, 2018, approximately seventy (70) days after the meeting and  
23 twenty-five (25) days after the time period mandated by statute for approval of the  
24 minutes. The Committee held one (1) meeting prior to the expiration of the time  
25 mandated by statute at which it could have approved the minutes.

26           17.    As of January 30, 2018, the Board has not approved the minutes for its  
27 meeting held on August 22, 2017. Prior to the expiration of the time mandated by  
28 statute, the Board held two (2) meetings at which it could have approved the minutes.

1 The Board initially considered approving the minutes at its meeting held on October 25,  
2 2017, approximately sixty-four (64) days after the meeting and nineteen (19) days after  
3 the time period mandated by statute for approval of the minutes.

4 18. At the October 25, 2017, meeting, a member of the public requested  
5 modifications to the minutes of the August 22, 2017, meeting. The Board chair asked the  
6 Board clerk to review the minutes with the member of the public and approval of the  
7 minutes was deferred to the meeting of November 15, 2017.

8 19. At the November 15, 2017, meeting, a power outage caused the cancellation  
9 of the meeting prior to the Board's consideration of the minutes for the meeting of August  
10 22, 2017, and approval of the minutes was deferred to the meeting of December 13, 2017.

11 20. At the December 13, 2017, meeting, a Board trustee had more adjustments  
12 to the minutes for the meeting of August 22, 2017, and the approval was tabled. As of  
13 January 22, 2018, the Board trustee had not provided the Board's clerk with all of the  
14 information necessary to complete the requested adjustments to the minutes.

15 21. The Board did not consider approval of the minutes for the meeting of  
16 August 22, 2017, at its meetings held on January 10, 2018, and January 24, 2018.

#### 17 LEGAL STANDARDS AND CONCLUSIONS OF LAW

18 The legislative intent of the OML is that the actions of public bodies "be taken  
19 openly, and that their deliberations be conducted openly." NRS 241.010(1); *see also*  
20 *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit  
21 and policy behind NRS Chapter 241 favors open meetings"). Minutes of a public meeting  
22 "must be made available for inspection by the public within 30 working days after  
23 adjournment of a meeting." NRS 241.035(2). A "working day" is "every day of the week  
24 except Saturday, Sunday and any day declared to be a legal holiday pursuant to NRS  
25 236.015." NRS 241.015(6). "Unless good cause is shown, a public body shall approve the  
26 minutes of a meeting within 45 days after the meeting or at the next meeting of the  
27 public body, whichever occurs later." NRS 241.035(1). A "day" is a calendar day. *See*  
28 NRS 676A.120 and NRS 107A.070.

1 The term “public body” includes any “administrative, advisory, executive or  
2 legislative body of the State or a local government . . . which expends or disburses or is  
3 supported in whole or in part by tax revenue . . .” NRS 241.015(4)(a).

4 The Complaint alleges the Board and Committee did not timely approve the  
5 minutes for fifteen (15) meetings held December 14, 2016, through November 15, 2017.  
6 The Board and Committee make two (2) arguments concerning time in which minutes  
7 must be approved. One, the statutory time by which a public body must approve the  
8 minutes for a meeting does not expire until the next meeting of the public body occurring  
9 after the expiration of forty-five (45) days from the date of the meeting for which  
10 approved minutes are required. Two, the forty-five (45) days set out in statute are  
11 working days. These arguments are erroneous.

12 The statutory time by which a public body must approve the minutes for a meeting  
13 is not the next meeting after the expiration of forty-five (45) days from the meeting.

14 “When a statute is clear on its face, we will not look beyond the statute’s plain language.”

15 *Washoe Medical Ctr. v. Second Judicial Dist. Court*, 112 Nev. 1298, 1302 (2006). The  
16 plain language of NRS 241.035(1) sets out “a public body shall approve the minutes of a  
17 meeting within 45 days after the meeting or at the next meeting of the public body,  
18 whichever occurs later.” The statute states the later of 45 days or the “next meeting.” If  
19 counsel’s argument were correct, the disjunctive nature of the statute would not be  
20 required; statute would have designated the time period in which minutes could be  
21 approved as “no later than the first meeting following the expiration of 45 days from the  
22 meeting.” If the “next meeting” occurs inside of forty-five (45) days from the meeting,  
23 then the later of forty-five (45) days or the “next meeting” is forty-five (45) days from the  
24 meeting.

25 The forty-five (45) days designated for approval of minutes is calendar days and  
26 not working days. “Generally, when the legislature has employed a term or phrase in one  
27 place and excluded it in another, it should not be implied where excluded.” *Coast Hotels*  
28 *and Casinos, Inc. v. Nevada State Labor Com’n*, 117 Nev. 835, 841 (2001). A “working

1 day” is “every day of the week except Saturday, Sunday and any day declared to be a legal  
2 holiday pursuant to NRS 236.015.” NRS 241.015(6). A “day” is a calendar day. See NRS  
3 676A.120 and NRS 107A.070. The legislature was clearly aware of the distinction  
4 between a working day and a calendar day when it enacted NRS Chapter 241. In fact,  
5 the legislature explicitly recognized working days in NRS 241.035(2), concerning making  
6 minutes available to the public. However, the legislature, in the same statute, declined to  
7 specify the forty-five (45)-day requirement for a public body to approve minutes was  
8 “working” days. NRS 241.035(1). Instead, it only specified “days,” which are calendar  
9 days, and the OAG will not imply “working day” when the legislature only specified “day.”  
10 The forty-five (45) days in which a public body has to approve minutes clearly refers to  
11 calendar days.

12 The Board also argues it had good cause not to approve the minutes from the  
13 meeting of August 22, 2017, within the statutory time. The required approval period set  
14 out in NRS 241.035(1) contains an exception: “unless good cause is shown.” Good cause is  
15 a “legally sufficient reason.” BLACK’S LAW DICTIONARY 213 (7<sup>th</sup> ed. 1999). Basically, good  
16 cause is a real reason.

17 In the case of the minute approval for the Board’s meeting of August 22, 2017, the  
18 Board indicated it had good cause to delay approval of the minutes at its meetings of  
19 October 25, 2017; November 15, 2017; and, December 13, 2017. The good cause claimed  
20 for the meeting held on October 25, 2017, was a member of the public requested revisions  
21 to the minutes while the Board clerk was on vacation and the Board clerk was still on  
22 vacation on October 25, 2017. The good cause claimed for the meeting held on November  
23 15, 2017, was a power outage during the meeting causing the meeting items occurring  
24 after the power outage, including approval of the minutes, to be moved to the next  
25 meeting. The good caused claimed for the meeting held on December 13, 2017, was a  
26 recently discovered apparently important missing period of time from the minutes. All of  
27 these appear to be real reasons supporting a delay in approving the minutes and not  
28

1 concocted reasons seeking to avoid compliance with the statute. The OAG finds each of  
2 these three (3) instances of claimed good cause to actually be good cause.

3 The Board further claims the failure of the Board trustee requesting revisions to  
4 provide all of the requested revisions to the Board's clerk by January 22, 2018, was good  
5 cause not to approve the minutes of August 22, 2017, at the Board's meetings held on  
6 January 10, 2018, and January 24, 2018. The Board trustee discussed the desired  
7 changes at the meeting held on December 13, 2017. If any additional information was  
8 required to make the requested changes to the minutes, the trustee should have provided  
9 it as soon as practicable after the meeting. A member of a public body must provide any  
10 information necessary to make the member's requested changes to the public body's  
11 minutes as soon as practicable after the meeting at which the member requests the  
12 changes. Thus, the OAG finds good cause did not exist to excuse approval of the minutes  
13 of August 22, 2017, at the meetings of January 10, 2018, and January 24, 2018. The  
14 Board did not offer any claim of good cause excusing its failure to approve the minutes of  
15 August 22, 2017, at its meetings of September 13, 2017, and September 26, 2017.  
16 Further, the Board and Committee did not claim good cause in the other fourteen (14)  
17 instances when they failed to timely approve minutes.

18 Based on the Findings of Fact and Legal Standard and Conclusions of Law as set  
19 out above, the OAG finds the Board and Committee failed to approve minutes as required  
20 by NRS 241.035(1) fifteen (15) times.

21 It should be noted, however, that there are no allegations or findings concerning  
22 the Board or Committee being out of compliance with NRS 241.035(2) concerning the  
23 production of minutes and making such minutes available to the public. This finding is a  
24 finding that the Board and Committee failed to formally approve the minutes as required  
25 by statute.

#### 26 SUMMARY AND INCLUSION OF AGENDA ITEM

27 If the Attorney General investigates a potential OML violation and makes findings  
28 of fact and conclusions of law that a public body has taken action in violation of the OML,

1 "the public body must include an item on the next agenda posted for a meeting of the  
2 public body which acknowledges the findings of fact and conclusions of law." NRS  
3 241.0395. The public body must treat the opinion of the Attorney General as supporting  
4 material for the agenda item in question for the purpose of NRS 241.020. *Id.*

5 Here, upon investigating the present Complaint, the OAG makes findings of fact  
6 and conclusions of law that the Board and Committee committed violations of the OML  
7 by failing to approve meeting minutes within the statutorily required time fifteen (15)  
8 times. Therefore, the Board and Committee must place on their next meeting agendas  
9 these Findings of Fact and Conclusions of Law and include them in the supporting  
10 material for the meetings. The agenda items must acknowledge these Findings of Fact  
11 and Conclusions of Law to be the result of the OAG investigation in the matter of  
12 Attorney General File No. 13897-260, and that it has been placed there as a requirement  
13 of NRS 241.0395.<sup>2</sup>

14 DATED this 21<sup>st</sup> day of February, 2018.

15  
16 ADAM PAUL LAXALT  
17 Attorney General

18  
19 By:   
20 JOHN S. MICHELA (Bar. No. 8189)  
21 Senior Deputy Attorney General  
22 Gaming Division  
23 5420 Kietzke Lane, Suite 202  
24 Reno, Nevada 89511  
25 Telephone: (775) 687-2126

26 <sup>2</sup> Complainant expressed concern that the OAG and counsel for the Board and  
27 Committee might be negotiating the penalty for these findings during the OAG's  
28 examination of this matter. However, with the exception of requesting responses, the OAG  
did not communicate with the Board, Committee, or their counsel. The OAG has a strict  
non-communication policy outside of the complaint/response/fact-gathering process during  
its examinations of OML complaints.


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**CERTIFICATE OF SERVICE**

I, Sue Dehnen, certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on February 21, 2018, I served a copy of the foregoing *FINDINGS OF FACT AND CONCLUSIONS OF LAW* by placing said document in the U.S. Mail, postage prepaid, addressed to the following:

Jason D. Guinasso, Esq.  
Hutchison & Steffen  
500 Damonte Ranch Parkway, Suite 980  
Reno, Nevada 89521

Aaron L. Katz  
Post Office Box 3022  
Incline Village, Nevada 89450-3022

  
\_\_\_\_\_  
Sue Dehnen, an employee of the  
Office of the Nevada Attorney General