



500 DAMONTE RANCH PARKWAY, SUITE 980
RENO, NEVADA 89521
775.853.8746
FAX 775.201.9611
HUTCHLEGAL.COM

JASON D. GUINASSO
PARTNER
[JGUINASSO@HUTCHLEGAL.COM](mailto:jguinasso@hutchlegal.com)

September 9, 2020

Via Electronic Mail-

Indra Winquest, IVGID Interim General Manager, ISW@ivgid.org
Susan Herron, District Clerk, sah@ivgid.org
Joshua Nelson, Esq., IVGID General Counsel, joshua.nelson@bbklaw.com

IVGID Board of Trustees:

Chairman Tim Callicrate, callicrate_trustee@ivgid.org
Vice Chairman Matthew Dent, matthew.ivgid@gmail.com
Trustee Sara Schmitz, trustee_schmitz@ivgid.org
Trustee Kendra Wong, kwong.ivgid@gmail.com
Trustee Peter Morris, pmorris.ivgid@gmail.com

**Re: CASE UPDATE – DECISION OF OFFICE OF THE ATTORNEY GENERAL
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES
OPEN MEETING LAW COMPLAINT
KATZ, AARON O.A.G. FILE NO. 13897-330**

On August 21, 2020, this office received from the State of Nevada Office of the Attorney General its Decision regarding the Open Meeting Law Complaint filed by Aaron Katz under OAG File No. 13897-330. Provided below is procedural history related to the aforementioned Open Meeting Law Complaint. It is important to note that the Office of the Attorney General rendered its decision almost exactly one year after sending its initial notification to Incline Village General Improvement District (hereinafter referenced as “IVGID” or the “District”) regarding the subject Complaint.

Procedural history

On August 1, 2019, this office received correspondence notifying IVGID of the above referenced Complaint submitted by Aaron Katz alleging that IVGID had violated the Nevada Open Meeting Law (“OML”). **See Attachment 1 (August 1, 2019 letter from the Office of the Attorney General).** In Mr. Katz’s Complaint, we concluded that he presented the following issue:

1. Whether IVGID violated Nevada Open Meeting Law by including in its May 1, 2019, meeting minutes, which were approved on May 22, 2019, written comments that were filed by members of the public with the District Clerk prior to the May 1, 2019, meeting in accordance with the Notice of Intention to Authorize a Medium-Term Installment Purchase Agreement published in the Tahoe Tribune on April 19, 2019, and again as an agenda item on April 26, 2019.

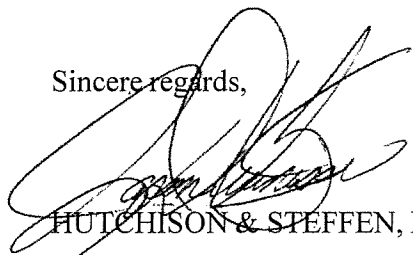
On August 23, 2019, this office prepared a response to the OML complaint of Mr. Katz. **See Attachment 2 (August 23, 2019 response to Open Meeting Law Complaint of Aaron Katz under OAG File No. 138971-330).** *available upon request*

No violation of the Open Meeting Law

As stated above, on August 21, 2020, this office received from the State of Nevada Office of the Attorney General its Decision regarding the Complaint filed by Aaron Katz under OAG File No. 13897-330. **See Attachment 3 (Decision from Office of the Attorney General dated July 29, 2020).** We are happy to report that “after the [Office of the Attorney General’s] review of [Aaron Katz’s] Complaint; the Board’s response; video from the Board’s May 1, 2019 meeting; Attorney General Open Meeting Law Opinion 13897-263; and relevant legal authorities; the OAG conclude[d] the Board did not violate the Open Meeting Law. The Office of the Attorney General concluded that “[t]he Board’s decision to include in its meeting minutes written statements from persons who were not physically present at a public meeting did not violate Nevada’s Open Meeting Law.” No further action is required to be taken.

Thank you for the opportunity to serve the Incline Village General Improvement District before the Office of the Attorney General regarding Open Meeting Law Complaint of Aaron Katz, A.G. File No. **13897-330**. This matter will now be closed.

Sincere regards,



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

JDG:bf

ATTACHMENT 1

ATTACHMENT 1

AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



JESSICA L. ADAIR
Chief of Staff
RACHEL J. ANDERSON
General Counsel
HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101
August 1, 2019

Via U.S. Mail

Incline Village General Improvement District
Board of Trustees
893 Southwood Blvd.
Incline Village, NV 89451

Re: Incline Village General Improvement District Board of Trustees –
Open Law Complaint, OAG File No. 13897-330

Dear Board:

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 (“IVGIDBT”).

The OAG requests that the IVGIDBT, 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 August 19, 2019.

Should you have any questions, please contact Debra Turman via email at dturman@ag.nv.gov.

Sincerely,

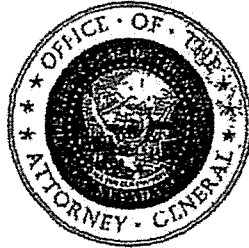
AARON D. FORD
Attorney General

By: /s/ Jared M. Frost
JARED M. FROST
Senior Deputy Attorney General

JMF:dkt

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@aa.nv.gov with COMPLAINT in the subject line.

COMPLAINTS THAT ARE SIGNED WILL BE

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

SECTION 1: COMPLAINANT INFORMATION

LASTNAME: KATZ		FIRST NAME AARON		M I	
ORGANIZATION:					
ADDRESS: P.O. BOX 3022		CITY: Incline Vlg	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"/> X OVER 65	
PRIMARY LANGUAGE:					

SECTION 2: TYPE OF COMPLAINT

<input type="checkbox"/> GENERAL INVESTIGATIONS	<input type="checkbox"/> MISSING CHILDREN	<input type="checkbox"/> TICKET SALES
---	---	---------------------------------------

HIGH TECH CRIME	MORTGAGE FRAUD	WORKERS COMP FRAUD
INSURANCE FRAUD	OPEN MEETING LAW	OTHER
MEDICAID FRAUD	PUBLIC INTEGRITY	

SECTION 3: MY COMPLAINT IS AGAINST

<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> v' BUSINESS / GOVERNMENT AGENCY / REPRESENTATIVE	
NAME OF PERSON / BUSINESS / AGENCY: INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES		
ADDRESS: 893 Southwood Blvd.	CITY: Incline Village	STATE: NV
TELEPHONE NUMBER: 832-1 100 (775)	EMAIL: • herron@ivgid.org	
WEBSITE: yourtahoep lace.com		
DATE ALLEGED VIOLATION OCCURRED: May 22, 2019		
WAS A CONTRACT SIGNED? YES NO X		
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? YES NO X NO INFORMATION: IF SO, PROVIDE ATTORNEY'S CONTACT		
IS COURT ACTION PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
DID YOU MAKE ANY PAYMENTS TO THE INDIVIDUAL OR BUSINESS? <input type="checkbox"/>		
HOW MUCH WERE YOU ASKED TO PAY?	HOW MUCH DID YOU ACTUALLY PAY?	
DATE OF PAYMENT:	PAYMENT METHOD:	

Continue to Section 4 to describe complaint.

Facebook: /NVAttorneyGeneral Twitter: @NevadaAG YouTube: NevadaAG

SECTION 4: DESCRIBE YOUR COMPLAINT:

► (to add attachments, see Section 5)

See attached written statement with exhibits.

EMAIL AGCOMPLAINT@ag.nv.gov to submit any additional Infol motion

SECTION5: EVIDENCE

List and attach photocopies of any relevant documents, agreements, correspondence or receipts that support your complaint 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 address and website information
Board Trustees, Clerk and GM all present at May 22, 2019 meeting.

SECTION 7: SIGN AND DATE THIS FORM

(The Attorney General's Office will not process any unsigned, incomplete or illegible complaint forms)

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

ONLY COMPLAINTS THAT ARE SIGNED WILL BE PROCESSED

JRE:
NAME: AARON L. KATZ
JUNE 14, 2019

knowledge.

SIGNATURE:
PRINTNAME:
DATE:

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

> SECTION 8: OPTIONAL INFORMATION

> GENDER

MALE	FEMALE	OTHER
------	--------	-------

> ETHNICITY

WHITE/CAUCASIAN	<input type="checkbox"/>	BLACK/AFRICAN AMERICAN	<input type="checkbox"/>	HISPANIC LATINO	<input type="checkbox"/>
NATIVE AMERICAN/ALASKAN NATIVE	<input type="checkbox"/>	ASIAN/PACIFIC ISLANDER	<input type="checkbox"/>	OTHER:	

> HOW DID YOU HEAR ABOUT OUR COMPLAINT FORM
(CHOOSE ONE):

CALLED/VISITED CARSON OFFICE	<input type="checkbox"/>	SEARCH ENGINE	<input type="checkbox"/>
CALLED/VISITED LAS VEGAS OFFICE	<input type="checkbox"/>	ATTORNEY GENERAL WEBSITE	<input type="checkbox"/>
CALLED/VISITED RENO OFFICE	<input type="checkbox"/>	ATTORNEY GENERAL SOCIAL MEDIA SITE	<input type="checkbox"/>
ATTENDED AG PRESENTATION	<input type="checkbox"/>	MEDIA/NEWSPAPER/RADIO/TV	<input type="checkbox"/>
NV AGENCY OFFICIAL/ELECTED OFFICIAL	<input type="checkbox"/>	OTHER	<input type="checkbox"/>

> MARK ALL THAT APPLY

INCOME BELOW FEDERAL POVERTY GUIDELINE	<input type="checkbox"/>	MILITARY SERVICEMEMBER	<input type="checkbox"/>
DISASTER VICTIM	<input type="checkbox"/>	VETERAN	<input type="checkbox"/>
PERSON WITH DISABILITY	<input type="checkbox"/>	IMMEDIATE FAMILY OF SERVICEMEMBER/VETERAN	<input type="checkbox"/>
MEDICAID RECIPIENT	<input type="checkbox"/>	OTHER:	<input type="checkbox"/>

EMAIL AGCOMPLAINT@ag.nv.gov to submit any additional information

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

ADDITIONAL COMMENTS: What are you hoping the Attorney General's office can do for

Find an OMI- violation and then because there have been so many, seek court injunction restraining the IVGID Board from committing future violations of the OML.

EMAIL AGCOMPLAINT@aa.nv.gov to submit any additional information

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)]. Thus it is an "administrative...executive or legislative body...created by...a...statute of this State" [see NRS 241.015(3)(a)(2)] and thus a "public body" for purposes of NRS 241¹ [the Open Meeting Law ("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 conducted, and currently conducts, biennial elections for the election of trustees who serve for terms of four (4) years each. Elections for trustees are staggered so that in 2018, for instance, two trustees were elected. And in 2016, three trustees were elected [see NRS 318.095(3)].

IVGID's Board of trustees ("Board") regularly conducts "meetings" subject to the OMI- 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)].

IVGID's POWERS ARE LIMITED TO THOSE
EXPRESSLY GRANTED IN (ITS) INITIATING
ORDINANCE...AS SUPPLEMENTED (PURSUANT TO
NRS 318.077) BY...SECTIONS OF...
CHAPTER (NRS 318) DESIGNATED THEREIN"

Unlike true municipalities, GIDs have few powers and expressly no power to pass laws, policies, procedures nor to provide for the general health, safety and welfare of their inhabitants. NRS 318.055(4)(b) instructs that once initiated, a GID's basic powers are expressly limited to those "stated in (its) initiating ordinance (as long as)...one or more of those authorized in NRS 318.116, as supplemented by the sections of this chapter designated therein."

IVGID IS A LIMITED PURPOSE SPECIAL
DISTRICT BECAUSE IT HAS ONLY BEEN
GRANTED THE BASIC POWRS OF:
PAVING, CURBS AND GUTTERS, SIDEWALKS,
STORM
DRAINAGE, SEWER DISPOSAL, WATER SUPPLY,
STREET LIGHTING, GARBAGE AND REFUSE,

PUBLIC RECREATION, ELECTRIC
LIGHT AND POWER, AND NONE
OTHERS

IVGID's initiating ordinance granted it the basic powers to furnish facilities for paving, curbs

¹ See NRS 241.015(4)(a)(2) and (7).

and gutters, sidewalks, storm drainage, sewer disposal and water supply. On March 5, 1964 IVGID was granted "additional (basic) powers (pursuant to NRS 318.077) relating to street lighting, garbage and refuse" (see County Board Bill No. 102, Ordinance No. 97). On November 15, 1965 it was granted the additional basic power (pursuant to NRS 318.077) to furnish facilities for public recreation (see County Board Bill No. 132, Ordinance No. 97). And on May 5, 1969 it was granted additional basic powers relating to electric light and power (see County Board Bill No. 227, Ordinance No. 97). Given Nevada has adopted Dillon's Rule² [Ronnow v. City of Las Vegas, 57 Nev. 332, 341-43, 65 P.2d 133 (1937)], GIDs in general and IVGID in particular exist to only exercise these expressly enumerated powers³, and none other [A.G.O. 63-61, p. 103 (August 12, 1963)]. And should there be "any fair, reasonable (or) substantial doubt concerning the existence of power (it) is (to be) resolved...against the (municipal) corporation...(and) all acts beyond the scope of...powers granted are void" (Id., at 57 Nev. 343).

This means that unlike true municipalities, GIDs have no power to pass laws, policies nor procedures. At best, their Boards may "adopt and amend bylaws, not in conflict with the Constitution and laws of the State: (1) for carrying on the business, objects and affairs of the board and of the district; (and, 2) Regulating the use or right of use of any project or improvement" (see NRS 318.205). The OAG will find this latter point to be germane to complainant's arguments insofar as a GID's power to exercise discretion to include written remarks in the minutes of the meetings its governing board adopts, notwithstanding they do not comply with statutory requisites.

A PUBLIC BODY'S OBLIGATION TO ATTACH
PREPARED WRITTEN REMARKS TO THE MINUTES
OF ITS MEETINGS

NRS 241.035(1)(d) instructs that "each public body shall keep written minutes of each of its meetings, including...the substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks (and)...if the member of the general public has prepared written remarks, a copy of *th(ose)* prepared remarks if the member of the general public submits a copy for inclusion."

OFFICE OF AITORNEY GENERAL ("OAG") FILE NO.
13897-263

On February 12, 2018 complainant filed a complaint with the OAG against IVGID alleging three (3) OML violations, each associated with the Board's failure to include proffered written remarks to the minutes of three (3) meetings (September 13, 2017, September 26, 2017 and February 21, 2018). On June 26, 2018 the OAG issued a letter determining no OMI- violations ("letter"). The letter construed NRS 241.035(1)(d) as follows:

Which declares that a municipal government has authority to act only when: (1) the power IS granted in the express words of a statute, (2) the power is necessarily or fairly Implied In, or incident to, the powers expressly granted; or, (3) the power IS one that is neither expressly granted nor fairly Implied from the express grants of power, but is otherwise Implied as essential to the government's declared objects and purposes.

Unlike counties, cities, and towns (NRS 244, 266, 269) which are granted police powers (to provide for the general health, welfare and safety of their Inhabitants).

"NRS 241.035(1)(d) requires inclusion of the prepared written remarks of a member of the general public in the minutes of a public body only if the member of the general public makes remarks to the public body during a meeting and requests his (written) remarks be (included) in the minutes." ⁴

Based upon this construction of NRS 241.035(1)(d) the OAG determined that:

1. Since Frank Wright did not expressly ask that his proffered written statement be included in the minutes, that statement was not required to be included in the minutes of the Board's September 13, 2017 meeting;
2. Since complainant's proffered written statement was not physically submitted in person, that statement was not required to be included in the minutes of the Board's September 26, 2017 meeting; and,
3. Since Linda Newman's and Cliff Dobler's joint proffered written statement was not physically submitted in person, that statement was not required to be included in the minutes of the Board's February 21, 2018 meeting.

PROLOGUE

This complaint addresses a similar state of facts where the Board included written remarks made by five (5) members of the public in the minutes of its May 1, 2019 meeting, notwithstanding their authors were neither physically present to address the Board on May 1, 2019, nor did they request their remarks be included in the minutes of that meeting.

In a prior OMI- complaint (OAG No. 13897-260), complainant accused IVGID staff of intentionally omitting written statements submitted by members of the public expressly requested to be included in Board meeting minutes, based upon the identity of the author, as a means of censorship. He alleged that the intent of staff was to deprive members of the public from learning of material facts and arguments included in such written statements, which were intended to counter staff's deceitful and one-sided facts and arguments on important public issues. And here we have further evidence this is exactly what is occurring.

THE IVGID BOARD'S MAY 1, 2019 MEETING

Gerald "Gerry" Eick is the District's Finance Director⁵. At the Board's May 21, 2019 meeting Mr. Eick gave a presentation to the Board in support of Agenda Item C⁶; staff's request the Board approve entry into a medium term installment agreement for the purchase of a Championship Golf Course

See page 3 at [http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental Affairs/AGO_File_13897-263.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental%20Affairs/AGO_File_13897-263.pdf)

Go to <https://www.yourtahoeplace.com/ivgid/departments/senior-management,,team>.

Go to https://www.yourtahoeplace.com/uploads/pdf-iWd/BOT_Packet_Regular_5-1-2019.pdf.

mower, 58 carts for use at the Mountain Golf Course, and a snow cat for Diamond Peak. During Mr. Eick's presentation he made the following statement:

I would like to note for the record that the District has received five (5) written public comments which I will provide to the clerk so they can be included in the minutes." ⁷

At 20:19 of the 5/1/2019 livestream one can see Mr. Eick handing these written public comments to the District's Clerk, Susan Herron.

Although Mr. Eick did not disclose the identities of the authors of these written statements, nor did complainant know whether any was present at that meeting, complainant knows none spoke to the Board at that meeting nor did he/she physically submit any of these five (5) written statements. He knows this because there were only five (5) members of the public who spoke on this agenda item and they were: complainant, Judith Miller, Michael Abel, Tony Lillios, and Sara Schmitz⁸. When the identities of the authors of the subject written statements were subsequently revealed in the packet of materials prepared by staff in anticipation of the Board's May 22, 2019 meeting ("the 5/22/2019 Board packet"), and compared to those persons who addressed the Board on May 1, 2019, complainant was able to determine that none of the five (5) was physically present.

On/about May 16, 2019 staff posted the 5/22/2019 Board packet online⁹. Agenda item K(2) noticed possible approval of the minutes of the Board's May 1, 2019 meeting (those proposed minutes appear at pages 421-489 of the 5/22/2019 Board packet). The five (5) written statements at issue appear at pages 454-458 of the 5/22/2019 Board packet. The OAG can now see the identities of the six (6) authors of those written statements: Kirk Hardie, Lindsay Fletcher Hardie, Clifford F. Dobler, Mark and Carolyn Alexander, and Jim Croley.

In contrast, the 5/1/2019 livestream confirms that three (3) of those members of the general public who physically spoke to the Board on this agenda item submitted written statements; complainant, Michael Abel, and Tony Lillios. Although Ms. Schmitz read from a petition signed by eighteen (18) residents she stated had previously been sent to the Board and she would be submitting again ¹⁰, the 5/1/2019 livestream does not evidence that Ms. Schmitz actually handed that petition to the Board Clerk.

Notwithstanding complainant was the only one who addressed the Board at its May 1, 2019 meeting and requested his written statement be included in the minutes of that meeting, the five (5) written statements at issue in addition to those of complainant, Mr. Abel and Mr. Lillios are all attached to the minutes of the Board's May 1, 2019 meeting¹¹. Since this complaint deals with the

The District livestreams its Board meetings (<https://livestream.com/accounts/3411104>), and this testimony can be viewed at 18:43-54 of the livestream of the Board's May 1, 2019 meeting [<https://livestream.com/IVGID/events/8663894> ("the 5/1/2019 "vestream")].

The OAG can view the comments of those addressing the Board at 20:38-35:20 of the 5/1/2019 livestream

The OAG can View these materials at https://www.yourtahoeplace.com/uploads/pdf-lvgEd/BOT_Packet_Regular_5-22-19.pdf.

See 32:14-33:55 of the 5/1/2019 Itvstream.

11 See pages 459-472 of the 5/22/2019 Board packet.

subject five (5) written statements, I have marked them collectively as Exhibit "A," and attached them as an exhibit to this complaint. They reveal the following:

Statement of Kirk Hardie: Besides the fact Mr. Hardie was not physically present at the Board's May 1, 2019 meeting and did not submit this statement to the Board Clerk, nowhere in the statement does he ask it be attached to the minutes of the meeting;

Statement of Lindsay Fletcher Hardie: Besides the fact Ms. Hardie was not physically present at the Board's May 1, 2019 meeting and did not submit this statement to the Board Clerk, nowhere in the statement does she ask it be attached to the minutes of the meeting;

Statement of Clifford F. Dobler: Besides the fact Mr. Dobler was not physically present at the Board's May 1, 2019 meeting and did not submit this statement to the Board Clerk, nowhere in the statement does he ask it be attached to the minutes of the meeting;

Statement of Mark and Carolyn Anderson: Besides the fact Mr. and Mrs. Alexander were not physically present at the Board's May 1, 2019 meeting and did not submit this statement to the Board Clerk, nowhere in the statement does either ask it be attached to the minutes of the meeting; and,

Statement of Jim Croley: Besides the fact Mr. Croley was not physically present at the Board's May 1, 2019 meeting and did not submit this statement to the Board Clerk, nowhere in the statement does he ask it be attached to the minutes of the meeting.

THE IVGID BOARD'S MAY 22, 2019 MEETING

As referenced above, Agenda Item 1<(2) for this meeting was labeled possible approval of the minutes of the Board's May 1, 2019 meeting. And the subject five (5) written statements were attached to the proposed minutes. During public comment complainant objected to the Board approving those minutes with the subject written statements attached expressly because of the OAG's construction of NRS 241.035(1)(d) in File No. 13897-263¹². Complainant also objected to the Board's uneven handed treatment of written statements submitted by members of the public not physically present at Board meetings nor expressly requesting that their statements be included in the minutes of the meetings¹². While the Board's attorney was present and could have stepped in to avert an OMI- violation, complainant warned the Board that if it approved the proposed minutes with the subject five (5) written statements included over his objections, he would be filing an OML complaint. Notwithstanding, the Board approved the proposed minutes as presented¹³ with the subject written statements included.

ARGUMENTS

Based upon the OAG's construction of NRS 241.035(1)(d), it was improper for the subject five (5) written statements to be attached to the minutes of the Board's May 1, 2019 meeting. Although

See 47:10-47:44 of the livestream of the Board's May 22, 2019 meeting
[<https://vestream.com/IVGID/events/8690184/videos/191596067> ("the 5/22/2019 livestream").

see 1:49:41-4:50:25 of the 5/22/2019 livestream.

any Board trustee could have requested that the subject statements be attached to the minutes of the Board's May 1, 2019 [see NRS 241.035(1)(e)] and thus avoid an OML violation, none did. Given Mr. Eick is not an IVGID Board trustee, he couldn't.

In response to what complainant suspects is going to be an argument that nothing prohibits staff from submitting someone else's written statements for inclusion in the minutes of a Board meeting, notwithstanding that someone else is neither present nor asks his/her statement be included, I submit the following arguments:

Dillion's Rule — declares that a municipal government has authority to act only when: (1) its power is granted in the express words of a statute; (2) that power is necessarily or fairly implied in, or incident to, those powers expressly granted; or, (3) that power is one that is neither expressly granted nor fairly implied from the express grants of power, but is otherwise implied as essential to the government's declared objects and purposes (*Ronnow v. City of Las Vegas*, supra, at 57 Nev. 341-43). And should there be "any fair, reasonable (or) substantial doubt concerning the existence of power (it is (to be) resolved...against the (municipal) corporation...(and) all acts beyond the scope of... powers granted are void" (*Id.*, at 57 Nev. 343).

Here the express words of NRS 241.035(1)(d) do not permit the IVGID Board to include the written statement of a member of the general public who neither makes remarks to the Board during a meeting, nor requests his/her written remarks be included in its minutes. Nor does anything in NRS 241.035(1)(d) imply such authority. Nor is it essential to government's declared objects and purposes.

IVGID's attorney, Jason Guinasso, is notorious for promoting the notion that unless a statute expressly prohibits a GID from exercising some power, IVGID has the power to fill the void. Thus he will likely argue that the Board has the discretion to attach written remarks to the minutes of its meetings from members of the general public neither present at those meetings, nor requesting their remarks be included in the minutes. If so, such action violates Dillion's Rule. And should there be "any fair, reasonable (or) substantial doubt concerning the (Board's)...power (to exercise such discretion, it) is (to be) resolved...against" the IVGID Board (*Ronnow*, supra, at 57 Nev. 343).

Expressio Unius est Exclusio Alterius — is a Latin maxim which means to express one thing is to necessarily exclude another [this maxim has been expressly adopted in Nevada by *SFR Investments Pool 1, LLC v. U.S. Bank*, 130 Nev. Adv. op. 75, 334 P.3d 408, 419 (2014)]. Basically what this maxim means is that since the Legislature knows how to allow two classes of persons¹⁴ to request that written statements be included in the minutes of a public body's meetings, yet here it did not expressly allow other classes of persons to make similar request, it is implied that the Legislature expressly intended those other classes of persons not be allowed to request inclusion of the subject five (5) written statements in the minutes of its May 1, 2019 meeting.

Members of the governing body of a public body, and members of the general public who make remarks to the public body during a meeting, request their written remarks be included in the minutes, and submit copies of those written remarks for inclusion in the minutes.

Exercise of Discretion — There is nothing in NRS 241.035 which gives a public body the discretion to include written statements from members of the general public where submitted by

persons other than their author(s), those persons are not physically present at the meeting of the Board, those persons have not addressed the Board, and their written statements do not expressly request they be included in the minutes of that meeting. Given IVGID is a limited purpose special district without implied powers to include such proffered written statements, Dillon's Rule instructs the Board has no discretion to exercise.

Disparate Exercise of Discretion — One of the hallmarks of the OMI- is that "a public body's restrictions (on public comment) must be neutral as to the viewpoint expressed."¹⁵ Since a public body doesn't know the nature of a member of the general public's comment ahead of time, included within the requirement of neutrality, would be the identity of the member of the general public giving comment based upon the perceived nature of his/her comment. Given it is no secret that complainant is IVGID's number one critic, for the Board to have exercised discretion to include the subject five (5) written statements in the minutes of its May 1, 2019 meeting, yet not included similar written statements in the minutes of its September 13, 2017, September 26, 2017 and February 21, 2018 meetings, is evidence of the Board's lack of neutrality which amounts to nothing short of censorship based upon the identity of the author and the perceived nature of his/her remarks.

Stated differently, assuming arguendo a GID Board has the discretion to include written statements from members of the general public in the minutes of its meetings, notwithstanding those members are neither present, do not physically address the Board, nor expressly request their written statements be included in the minutes of a meeting, that discretion must be exercised uniformly to in essence allow all such written statements to be included¹⁶. To rule otherwise "leads to...self-censorship and would deter protected speech" [see OAG File No. 11-024 (November 21, 2011)]. "It is patent that th(is)...right...to speak, write, and publish, cannot be abused until it is exercised, and before it is exercised there can be no responsibility" [Dailey v. Superior Court, 112 Cal. 94, 97, 44 P. 458 (1896)].

CONCLUSION

According to the OAG, "any practice or policy that discourages or prevents public comment, even if technically in compliance with the law...does not comport with the spirit of the OMI- (because it has)...the effect of unnecessarily restricting public comment."¹⁷ Assuming arguendo GIDs have the discretion to allow or refuse written statements to be attached to the minutes of its meetings, it must allow all proffered written statements to be attached to the minutes of its meetings, even where: they are submitted by persons other than their author(s), those persons are not physically present at a meeting of the Board, those persons do not address the Board, and their written statements do not

See §6.04 at page 65 and §7.05 at pages 70-71 of the OAG's OML Manual ["the OMI- Manual" (http://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/OML_Portal/2016-0125_OML_12TH_AGOMANUAL.pdf)].

See §7.05 of the OMI- at page 69: "Once the right to speak (or submit written statements for inclusion in the minutes) has been granted by the Legislature...the full panoply of (constitutional) rights attaches to the public's right to speak" and submit written statements, expressly including the Equal Protection Clause to the U.S. Constitution

See §7.05 of the OML at pages 69-70.

expressly request they be included in the minutes of that meeting. Anything short represents an OMIviolation.

As a consequence, complainant suggests the OAG revisit the complaint filed in OAG File No. 13897-263 given he feels it can no longer stand given the facts and determination of this complaint.

Complainant has shared his views of IVGID on several past occasions; an enterprise run by nonelected and mostly nonresident staff which has a callous disregard for the rights of its citizens. In the words of the late George Carlin, its "arrogance is stunning." Part of the reason is because IVGID staff do not consider IVGID to be a "public agency." According to them IVGID is only "quasi-public" and for this reason, staff can pretty much do anything they want without repercussion or consequence. Moreover, this complaint does not represent the first instance of IVGID's OMI- violations¹⁹ and others believe something more is required to "get its attention" and protect the public.

For these reasons in addition to reversing the IVGID Board's approval of the minutes of its May 1, 2019 meeting which includes the five (5) written statements the subject hereto, and/or to revisit and reverse the substance of its June 26, 2018 letter in OAG File No. 13897-263, the time has come to subject IVGID, its public officers, its staff and attorneys (as accessories) to which the Board has abdicated all powers, to real consequence. Given only "the Attorney General shall investigate and prosecute any violation of...(NRS) chapter" 241 [NRS 241.039(1)]; and, 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 the time has come to obtain an injunction which permanently enjoins future violations of NRS Chapter 241 by IVGID. This way should they continue, the perpetrator(s) will be in contempt of court and for the first time face very real consequence.

See <https://www.yourtahoeplace.com/lvgd/about-ivgid>. A screenshot of this page With an asterisk next to the referenced language IS attached to this complaint as Exhibit "B." See OAG File Nos. 13897-257 and 13897-260.

EXHIBIT

Eick, Gerald W.

From: Herron, Susan
Sent: Wednesday, May 01, 2019 2:29 PM
To: Pinkerton, Steve J; Eick, Gerald W.
Subject: Fwd: Comment re: May 1st Regular Meeting Agenda item C

Begin forwarded message:

From: Kirk Hardie Date:

May 1, 2019 at To: PM PDT wong_mxstee@ivgid.org, [callicrate trustee@ivgid.org](mailto:callicrate_trustee@ivgid.org), [mortis dent trustee@ivgid.org](mailto:mortis_dent_trustee@ivgid.org), frustee@ivgid.org,
Cc: "Herron, Susan" <Susan.Herron@ivgid.org>
Subject: Comment re: May 1st Regular Meeting, Agenda item C

Dear Trustees,

I strongly recommend and encourage you to approve the proposed leases for golf carts, mowers and a grooming machine. Especially with such a low interest rate available to IVGID, it is prudent and financially responsible to spread the cost of these assets over their service life. Thanks to the IVGID staff for managing our money well enough to have one of the best credit ratings in NV. The lease vs. buy decision has been a staple of business leaders forever; and overwhelmingly businesses decide to lease. The golf and ski operations are more similar to business than to government. Unless you are aware of specific facts unique to IVGID, it would be foolish and irresponsible to purchase instead of lease.

Additionally, reducing our cash has a cost: it limits our ability to do additional work. For example, the community has voiced strong opinions about making improvements to Incline Village, both rehabbing existing assets, and developing new services. In order to make sound decisions about any improvements, assessments are required (e.g., architectural work, design analysis, etc. necessary to develop a real cost estimate). That takes cash. By voting against the leases you are essentially saying "I don't want to make improvements." If you vote no, please be up front and tell the residents who you represent and that you are not interested in moving Incline Village forward.

Thank you for being open to input and listening,

Kirk Hardie

"Not everything that counts can be counted, and not everything that can be counted counts."
Sign hanging in Einstein's office at Princeton

Eick, Gerald W.

~~From: Herron, Susan Sent:~~

1

To: Wednesday, May 1st 2019 8:56 AM
Eick, Gerald W; Pinkerton, Steve J.
Subject: Fwd: Comment re: May 1st Regular Meeting, Agenda
Item C

Begin forwarded message:

From: Lindsay Fletcher Hardie
Date: May 1, 2019 at AM PDT
To: horan_wong_trustee@ivgid.org, calliccate@ivgid.org, morris_trustee@ivgid.org, dent_trustee@ivgid.org Cc: "Herron, Susan" <Susan.Herron@ivgid.org>
Subject: Comment re: May 1st Regular Meeting, Agenda item C

Dear Trustees:

I strongly recommend and encourage you to approve the proposed leases for golf carts, mowers and a grooming machine. Especially with such a low interest rate available to IVGID, it is prudent and financially responsible to spread the cost of these assets over their service life. Thanks to the IVGID staff for managing our money well enough to have one of the best credit ratings in NV. The lease vs- buy decision has been a staple of business leaders forever; and overwhelmingly businesses decide to lease. The golf and ski operations are more similar to business than to government. Unless you are aware of specific facts unique to IVGID, it WOULD be foolish and irresponsible to purchase instead of lease.

Additionally, reducing our cash has a cost: it limits our ability to do additional work. For example, the community has voiced strong opinions about making improvements to Incline Village, both rehabbing existing assets, and developing new services. In order to make sound decisions about any improvements, assessments are required (e.g., architectural work, design analysis, etc. necessary to develop a real cost estimate). That takes cash. By voting against the leases you are essentially saying "I don't want to make improvements." If you vote no, please be up front and tell the residents who you represent and that you are not interested in moving Incline Village forward.

Thank you for being open to input and listening.

2019 7:21 PM

To: Pinkerton, Steve J.; Eick, Gerald W.
Fwd: Objection to the Districts Issuance of an \$800,000 Medium-Term Installment Purchase Plan and Proposed Resolution 1869

Eick, Gerald W.

From: Herron, Susan
Sent: Tuesday, April 30,
FYI

Begin forwarded message:

From: <linda@marknewman.net>
Date: April 30, 2019 at 7:11:00 PM PDT
To: wong_trustee <wong_trustee@ivgid.org>, horan_trustee <horan_trustee@ivgid.org>, callicrate_trustee <callicrate_trustee@ivgid.org>, dent_trustee <dent_trustee@ivgid.org>, Peter Morris <Peter Morris@ivgid.org>
Cc: Susan Herron <Susan_Herron@ivgid.org>
Subject: Objection to the District's Issuance of an \$800,000 Medium-Term Installment Purchase Plan and Proposed Resolution 1869

Dear Trustees Wong, Horan, Callicrate, Dent and Morris;

We oppose the District's issuance of an \$800,000 Medium-Term Installment Purchase Plan for the mower, Mountain Course Golf Carts and Snow Cat.

As the Community Services Fund has a surplus of \$6 million over and above the \$4.7 million targeted fund balance, there is more than adequate cash available to fund these purchases. It is a waste of our taxpayer money to incur \$30,000 for contingencies above the \$770,000 needed for this purchase and imprudent to unnecessarily pay close to \$100,000 of interest expense.

We request that you vote against Resolution 1869 and exercise proper financial management of our public money by paying cash for these purchases.

Very Truly Yours,

Mark and Carolyn Alexander

Eick, Gerald W.

From: Herron, Susan
Sent: Tuesday, April 30, 2019 8:54 PM
To: Pinkerton, Steve J; Eick, Gerald W
Subject: Fwd: Objection to the District's Issuance of an \$800,000 Medium-Term Installment Purchase Plan and Proposed Resolution 1869

Begin forwarded message:

From: cfdobler@aol.com
Date: April 30, 2019 at PM PDT
To: linda@marknewman.net wong.trustee@ivgid.org, horan.trustee@ivgid.org, callicrate.trustee@rvgid.org,
dent.trustee@ivgid.org, Peter.Morris@ivgid.org Cc: Susan Herron@ivgid.org
Subject: Re: Objection to the District's Issuance of an \$800,000 Medium-Term Installment Purchase Plan and Proposed Resolution 1869

While I oppose borrowing any money to purchase operating equipment, it should be noted that on page 235 of the Board Packet for tomorrow's meeting, the Community Services Fund balance at the end of this fiscal year is expected to be \$12,692,482. Subtracting the targeted fund balance of \$4,493,000 there is \$8,199,482 in excess fund balance which is far in excess of the \$6,000,000 you indicated in the e mail below. Also according to page 235 at the end of fiscal year 2023/2024 the excess funds over the targeted fund balance would be over \$4,000,000. To compare an apple with an apple and see actual consequences I have excluded \$2,279,800 which Staff, being disingenuous, added expenditures for design of Community Services projects to the ^RALTERNATIVE - NO LEASING scenario but did not include them in the LEASING scenario. Therefore the IVGID staff apparently cannot even find a need to borrow money over the next five years. Borrowing should only be required if no money is available.

The reality is that assuming this Board approves the borrowing they do not want to comply with their own Board Policy for an appropriate level of fund balance and want to waste money on interest. Does this in anyway seem APPROPRIATE.

Thanks for sending me this e mail

Clifford F. Dobler

Eick, Gerald W.

From: Herron, Susan

Sent: Tuesday, April 30,

2019 9:57 AM Susan A. Herron, CMC

To: Eick, Gerald W.; Pinkerton, Steve J. Executive Assistant/District Clerk/public Records Officer

Subject: FW: Recommendation for lease vs. cash
Incline Village General Improvement District
893 Scuthwood Boulevard, Incline Village, NV 89451
P: 775-832-1207

F: 775-832-1122
M: 775-846-5158
sah@ivgid.org
http://ivgid.org

From: jim croley <jim.a.croley@gmail.com>

Sent: Tuesday, April 30, 2019 9:55 AM

To: Kendra Wong <Kwong.ivgid@gmail.com>; Matthew Dent <matthew.ivgid@gmail.com>;
<Horan_Trustee@ivgid.org>; Peter Morris <Peter_Morris@ivgid.org>

Tim Callicrate <tim_callicrate2@ivgid.org>; Horan,
Phil

Cc: Herron, Susan <Susan_Herron@ivgid.org>

Subject: Recommendation for lease vs. cash

Dear Trustees:

I strongly recommend and encourage you to approve the proposed leases for golf carts, mowers and a grooming machine. Especially with such a low interest rate available to IVGED, it is prudent and financially responsible to spread the cost of these assets over their service life. Thanks to the IVGID staff for managing our money well enough to have one of the best credit ratings in NV. The lease vs. buy decision has been a staple of business leaders forever; and overwhelmingly businesses decide to lease. The golf and ski operations are more similar to business than to government- Unless you are aware of specific facts unique to (V)GID, it would be foolish and irresponsible to purchase instead of lease.

Additionally, reducing our cash has a cost: it limits our ability to do additional work. For example, the community has voiced strong opinions about making improvements to our existing assets. In order to make sound decisions about any improvements, assessments are required (e.g., architectural work, design

EXHIBIT "B"

01

C https://www.yourplace.com/

get the most
the (a

but, document
contain

document in a
files

ABOUT IVGID

The Incline Village General Improvement District, commonly referred to as IVGID, a public utility under Nevada Revised Statutes (Chapter 181B) which sewer trash and collection communities of Incline Village and Crystal Bay, Nevada.

(In the strategies for the its

both Incline Village and Crystal Bay, Nevada

Washoe County the entity that had the authority to create IVGID and they

both areas within Washoe County

Within the limits of the statutes IVGID empowered to establish rates that precept or enhance the general health, safety and welfare of the community may set rates, tolls and fees to be charged (OE the permission of those salaries and services, and it raise funds to construct and maintain facilities and to the community finally IVGID has the power to and collect taxes necessary to sustain its

Apr

Special Announcements

(Updates

Local Eng * Job?

Master plan

Station

AARON KATZ

Type here to search

ATTACHMENT 3

ATTACHMENT 3



AARON D. FORD
Attorney General

KYLE E. N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

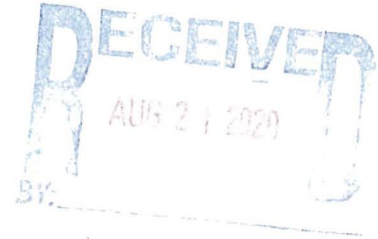
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

July 29, 2020

Via U.S. Mail

Aaron Katz
P.O. Box 3022
Incline Village, Nevada 89450



**Re: Open Meeting Law Complaint, OAG File No. 13897-330,
Incline Village General Improvement District**

Mr. Katz:

The Office of the Attorney General (“OAG”) has received your Complaint alleging the Incline Village General Improvement District Board of Trustees (hereafter “the Board”) violated Nevada’s Open Meeting Law (“OML”) at public meetings held on May 1, 2019, and May 22, 2019. Pursuant to Nevada statute, the Office of the Attorney General is authorized to investigate and prosecute violations of the OML. See Nevada Revised Statutes (“NRS”) 241.037, 241.039, and 241.040.

Following a review of your Complaint; the Board’s Response; video from the Board’s May 1, 2019 meeting; Attorney General Open Meeting Law Opinion 13897-263; and relevant legal authorities; the OAG concludes the Board did not violate the OML.

FACTUAL BACKGROUND

On May 1, 2019, the Board held a public meeting to consider various agenda items. Agenda Item C involved the question of whether to authorize the lease of a golf course fairway mower, golf carts, and a snowcat vehicle. Eleven days before the meeting, the Board published notice of Agenda Item C and invited written public comment via email. In response to its publication, the Board received five (5) written statements prior to the commencement of the meeting. Three of these statements expressed support for the agenda item, and the other two opposed the item.

Aaron Katz
Page 2
July 29, 2020

During his presentation at the May 1, 2019 meeting, Director of Finance Gerry Eick noted that the Board had received the five written statements and provided the statements to the clerk for inclusion in the minutes. The statements were subsequently attached to the meeting minutes, and the Board approved the minutes at another meeting held on May 22, 2019.

Following an extended discussion of the merits of Agenda Item C at the May 1, 2019 meeting, there was insufficient support from the Board and a related motion failed to clear a vote.

DISCUSSION AND LEGAL ANALYSIS

In the Complaint, you argue the Board's decision to include the five written statements resulted in a violation of the OML because none of the persons who submitted the statements were physically present at the meeting or made an affirmative request to include their statement with the minutes.

Minutes of public meetings are governed by NRS 241.035. Pursuant to NRS 241.035(1)(d), the minutes must include:

The substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion.

As you correctly note, the OAG interpreted this statute in an opinion dated June 26, 2018. *See* Attorney General OML Opinion (File No. 13897-263). There, you complained the same Board had failed to include written statements of the general public in its minutes of meetings held in September 2017 and February 2018. *See id.* at 1. In determining no violation occurred, the opinion concluded NRS 241.035(1)(d) requires inclusion of written statements "only if the member of the general public makes remarks to the

Aaron Katz
Page 3
July 29, 2020

public body during a meeting and requests his [or her] remarks be reflected in the minutes." *Id.* at 2.

While both decisions relate to the public meeting minutes statute, the issue presented here is with a public body's decision to *include* in its minutes the written statements of persons who were not physically present at the meeting. This distinction matters. Although Nevada law did not require the Board to include written statements of persons who did not attend the meeting, its decision to nevertheless include the statements is not prohibited and is consistent with the legislative intent that public actions be "taken openly and that [a public body's] deliberations be conducted openly." See NRS 241.010(1). The OAG therefore concludes that the inclusion of the five statements did not violate the OML.

You also assert the Board's decision to include the statements exceeded its limited powers and shows favoritism when contrasted with its decision not to include other statements. However, these assertions fall outside the scope of the OML and thus are not addressed in this opinion.

CONCLUSION

The Board's decision to include in its meeting minutes written statements from persons who were not physically present at a public meeting did not violate Nevada's Open Meeting Law.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Jared M. Frost
JARED M. FROST
Senior Deputy Attorney General

Aaron Katz
Page 4
July 29, 2020

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. first class mail, properly addressed to the following:

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

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

/s/ Debra Turman
An employee of the State of Nevada
Office of the Attorney General