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September 8, 2020

Via Electronic Mail-

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

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

**Re: CASE UPDATE – DECISION OF OFFICE OF THE ATTORNEY GENERAL
INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT BOARD OF TRUSTEES
OPEN MEETING LAW COMPLAINT
Wright, Frank O.A.G. FILE NO. 13897-278**

On August 25, 2020, this office received from the State of Nevada Office of the Attorney General its Decision regarding the Open Meeting Law Complaint filed by Frank Wright under OAG File No. 13897-278. Provided below is the procedural process related to the aforementioned Open Meeting Law Complaint. It is important to note that the Office of the Attorney General rendered its decision more two years after sending its initial notification to Incline Village General Improvement District (herein referenced as “IVGID” or “District”) regarding the subject Complaint.

Procedural history

On May 4, 2020, this office received correspondence notifying IVGID of the above referenced complaint by Frank Wright alleging that IVGID has violated the Nevada Open Meeting Law (“OML”). **See Attachment 1 (May 4, 2018 letter from the Office of the Attorney General)**. In Mr. Wright’s Complaint, we concluded that he presented the following issue:

1. Whether the IVGID Board of Trustees have demonstrated a recognition of the importance of public comment periods to the fulfillment of the spirit of the OML.

On May 23, 2018, this office prepared a response to the OML Complaint of Mr. Wright. **See Attachment 2 (May 23, 2018 response to Open Meeting Law Complaint of Frank Wright under OAG File No. 13897-**

278). *available upon request*

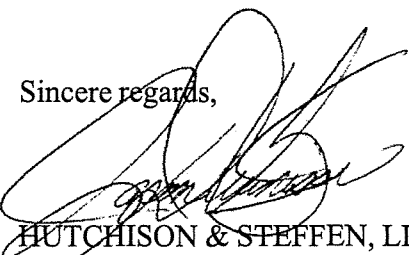
No violation of the Open Meeting Law

As stated above, on August 25, 2020, this office received from the State of Nevada Office of the Attorney General its Decision regarding the Complaint filed by Frank Wright under OAG File No. 13897-278. See **Attachment 3 (Decision from Office of the Attorney General dated July 20, 2020)**. The OAG's investigation of the Complaint included, "a review of the agenda, the public comment advisory statement, and Complaint with attachments, the October 2017 Findings, Complaints 13897-224& 226, together with the written response to the Complaint and the supporting material provided by IVGID." After such review, the OAG concluded that:

The Legislative intent behind the OML is for all action of all public bodies to be taken openly and their deliberations to be conducted openly. This creates a natural tension between the rights of those choosing to attend a public meeting desiring to interact with their public officers and the rights of those who would not be alerted to those discussions because of their absence on the posted agenda. The OML balanced these competing interests by allowing Boards to discuss public comment but not to deliberate toward a decision on any item not properly agendized. IVGID is not the first Board to have been advised to refrain from discussion of public comment, and Complainant is not the first member of the public to feel aggrieved by that policy. Previously, this office has twice found a Board with an overly restrictive view of its own ability to discuss comments was not in violation of the OML, but also recommended a policy of canvassing Board members to determine if anyone wished to discuss a comment. Having reviewed the available evidence, we again caution the Board from having an overly restrictive view of its ability to engage in discussion with its public. Have determined no violations of the OML have occurred, the OAG will close the file regarding this matter.

Since the OAG has concluded that there are no violations in this matter. No further action is needed.

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 Frank Wright, A.G. File No. **13897-278**. This matter will now be closed.

Sincere regards,

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

JDG:bf

ATTACHMENT 1

ATTACHMENT 1

ADAM PAUL LAXALT
Attorney General



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

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

May 4, 2018

via U.S. Mail

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

**Re: Incline Village General Improvement District –
Open Meeting Law Complaint, OAG File No. 13897-278**

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 (Board).

The OAG requests that the Board prepare a response and/or defense to the allegations contained in the attached Complaint. Please include any records or documentation that support the Board's response.

Due to the time limitations set forth in NRS 241, the OAG asks that you respond on or before May 23, 2018.

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

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: /s/ Caroline Bateman
Chief Deputy Attorney General
Boards and Open Government Division

CB:arz
Enclosure

SECTION 3.

BUSINESS OR INDIVIDUAL COMPLAINT IS AGAINST

Business/Provider Name: _____

Individual/Contact: _____
Last First Job Title (Example: CEO)

Individual/Business Address: _____
Address City State Zip

Individual/Business Phone: _____
Work Mobile Fax

Individual/Business Email: _____

Individual/Business Web Site: _____

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

My complaint is:

The Public Comment Advisory Statement issued by Incline Village General Improvement District is seriously flawed and discourages Public Comment!

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: *Incline Village General Improvement District*
(i.e., specific board, commission, agency, or person(s) etc.) *Kendra Wong, Board Chair*

Date of meeting where alleged violation occurred (mm/dd/yyyy): *Bi-monthly*

Please detail the specific violations against the board, commission, or agency or person listed in Section 3. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

My complaint is:

see attached pages

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

Official's Name: Kendra Wong - IUGIO Board Chair
Title: and rest of Board of Trustees
Official's Government: _____
Agency or Body: Incline Village General Imp. Dist
Official's Work Address: 985 Southwood Incline NV 89451
(Street / PO Box) Blvd (City) Village (State) (ZIP Code)
Official's Telephone: 775-831-1100

SECTION 4.

PAYMENTS

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

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

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

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

Financed Wire Transfer Money Order Cashier's Check Other: _____

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

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

OTHER AGENCIES

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

Have you contacted an attorney? Yes No If so, what is the attorney's name, address, and phone number?

Last _____ First _____ Phone _____
Address _____ City _____ State _____ Zip _____

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

SECTION 5.

EVIDENCE

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

SECTION 6.

WITNESSES

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

*The whole community of
Inactive Voters
Crystal Bay*

SECTION 7.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints. IF YOUR COMPLAINT IS SUBMITTED WITHOUT A SIGNATURE, IT WILL BE RETURNED TO YOU.

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

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

[Signature]
Signature FRANK WRIGHT
Print Name
4-6-18
Date (mm/dd/yyyy)

SECTION 8. (Optional)

The following section is optional and is intended to help our office better serve Nevada consumers. Please check the categories that apply to you.

Gender: Male Female

Have you previously filed a complaint with our office? Yes No

If yes, enter in the approximate filing date (mm/dd/yyyy) of your original complaint: _____

I am (mark all that apply):

- Income below federal poverty guideline
- Disaster victim
- Person with disability

- Medicaid recipient
- Military service member
- Veteran
- Immediate family of service member/veteran

Ethnic Identification:

- White/Caucasian
- Black/African American
- Hispanic/Latino
- Native American/Alaskan Native
- Asian/Pacific Islander
- Other: Senior Citizen

Primary Language:

- English
- Spanish
- Other:

May we provide your name and telephone number to the media in the event of an inquiry about this matter?

Yes No

How did you hear about our complaint form (please choose only one):

- Called/visited Las Vegas AG Office Called/visited Carson City AG Office Called/visited Reno AG Office
- Attended AG Presentation/Event Another Nevada State Agency/Elected Official Search Engine AG Website
- AG Social Media Sites Media: Newspaper/Radio/TV
- Other _____

IF YOUR COMPLAINT IS SUBMITTED WITHOUT A SIGNATURE, IT WILL BE RETURNED TO YOU.

Nevada Attorney General
100 North Carson St
Carson City, Nevada

Open meeting Law Complaint

Dear Deputy Attorney General Bateman,

The Incline Village General Improvement District Public Advisory Statement is seriously flawed and intimidating to those who wish to give public comment. And it relegates the board to assume a role of a Mime, and it reduces the comments made by the public to irrelevant mumbo jumbo. This current advisory statement is the product of a previous decision of the Attorney General forcing Incline Village General Improvement District to revise this document, rather than creating a document fostering free and open dialog, the current Public Advisory Statement restricts free speech, and intimidates those who wish to speak.

Mr. Jason Guinasso, the districts legal counsel, having been instructed by the Attorney General to revise the Public Advisory Statement has made a mockery of those instructions. Although there were some edits to the former advisory statement, the intimidating language remains. As noted below:

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. 1. Generally, it can be on any topic. 2. whether 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. 3. 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. 4. Finally, please remember that just because something is stated in public comment that does not make the statement accurate, valid, or even appropriate. 5. 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. 6. Counsel has advised the Staff and the Board of Trustees not to respond to even the most ridiculous statements. 7. Their non-response should not be 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.

I have # the places in the public advisory statement which relate to #s below

- ① • After defining public comment can be on any topic, the advisory statement clouds the issue with "whether or not" it is included in the meeting agenda. What difference does it make?
- ③ • This statement takes the board out of the meeting, if a board member wants clarification or wants to add a comment he/she has been regulated to a mime. The chair giving the general manager the power to respond to public comment over an elected public official is just wrong, if not illegal.
- ② • This statement is a pre-condition to voiding a presentation by a member of the community.
- ② • It goes so far as to discredit any statement. It is an attempt to marginalize public comment.
- ⑤ • This statement infers public comment is "nonsense", or "outrageous", so a member of the community reading this pre-set condition will be intimidated and possibly refrain from speaking. It is just unnecessary to have such a comment in an advisory statement.
 - This statement is also a pre-condition to intimidation. TOTALLY unnecessary. And equally a hidden restraint on free speech. The statement references a "LAW", what law, is the district legal counsel suggesting a Nevada Statute on restraint of free speech? This is again a method to restrain public comment. The statement in the public comment advisory "thus even nonsensical and outrageous statements can be made", it assumes public comments are or could be not worthy of consideration.
 - ⑤ • In this statement legal counsel has eliminated the board from doing their elected duties, by not engaging the public, and again tainted the public comments as being not worthy of consideration. "Staff and the Board of Trustees are advised; not to respond to even the most ridiculous statements".
 - Here counsel has again taken the board out of the mix, by not responding! And having the board act like a "mime" and legal counsel goes as far as to identifying this conduct as "being professional." What is professional when a board member has a question and can't ask for clarification. Is sitting on your hands professional?
- ⑦

Conclusion: After a diatribe of intimidating instructions, the advisory statement concludes with a condescending and rather obnoxious **"IVGID appreciates the public taking the time to make public comment and will do its best to keep the lines of communication open."** There are no lines of communication! Communication is not always a one-way street, a street loaded with obstacles and hidden secret caverns.



And to add insult to injury, the speaker must sign an affidavit agreeing to the Public Comment Advisory statement, which further compounds the right to free speech, and open dialog by intimidating the speaker into believing if they don't agree with the Advisory Statement and adhere to the controlling language, they can't speak. (Although I have never signed the request to speak and checked the box that I will agree to everything in the Advisory Statement, I have always been allowed to speak. But for those new to the system it would be intimidating and cause some to remain silent.)

Frank Wright

P.O Box 186

Crystal Bay, Nevada 775-253-4919

IVGID BOARD OF TRUSTEES
REQUEST TO SPEAK/PUBLIC COMMENT FORM

Meeting of April 25, 2018

Please print legibly when completing the information below.

Turn in your request to speak/public comment form to the District Clerk prior to the beginning of the meeting to ensure your opportunity to speak/comment.

THANK YOU FOR COMING TO TODAY'S MEETING!

NAME: _____
 ADDRESS: _____
 TELEPHONE #: _____
 E-MAIL ADDRESS: _____

OML "Amendment 1"

13897-278

SIGN ME UP TO RECEIVE IMPORTANT NEWS AND INFORMATION BY E-MAIL

WHICH OF THE FOLLOWING ITEMS DO YOU WISH TO SPEAK ON?

AGENDA ITEM	BRIEF AGENDA ITEM DESCRIPTION	Speak on (v)
C.	Public Comments	
M.	Public Comments	

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.

Please initial in the box below to indicate that you have read, understand, and agree to the above Public Comment Advisory Statement.



** This Is Intimidating to Any Speaker*

April 19, 2018

ATTACHMENT 3

ATTACHMENT 3

AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES
BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

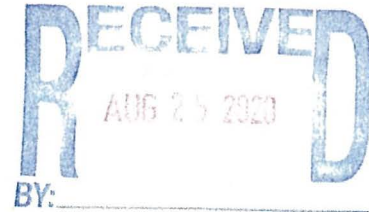
100 North Carson Street
Carson City, Nevada 89701

July 20, 2020

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

Via U.S. Mail

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



Re: Open Meeting Law Complaint, O.A.G. File No. 13897-278

Dear Mr. Wright:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) filed on April 9, 2018 alleging a violation of the Open Meeting Law (“OML”) by the Incline Village General Improvement District (“IVGID”) at an unspecified date and time.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (“NRS”) 241.037; NRS 241.039; and NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint, response from IVGID (“Response”), prior open meeting law decisions, recorded video from the meeting in question, and portions of the Nevada Revised Statutes relevant to the Complaint.

FACTUAL BACKGROUND

Previously, Mr. Wright filed two separate complaints on February 16, 2017 and April 3, 2017 complaining of conduct at prior IVGID meetings.¹ In response to those complaints the Office of the Attorney General issued Findings of Fact and Conclusions of Law on October 19, 2017 (the “October 2017 Findings”). Amongst the various issues discussed in the October 2017 Findings was IVGID’s public comment advisory statement, which had been read into the record by IVGID’s counsel.² IVGID’s use of a

¹ OAG file Nos 13897–224 & 226.

² The present complaint contains specific allegations against Board counsel, who is alleged to have “made a mockery of [the Office of the Attorney General’s] instructions.” While Board counsel is

public comment advisory statement in that instance was not found to have constituted a violation of the OML.³

The Complaint now alleges that the public comment advisory statement issued by IVGID “is seriously flawed and discouraged public comment.” The Complaint also includes a copy of the advisory statement with separate allegations of impropriety.

LEGAL ANALYSIS

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; and NRS 241.040. The OML applies only to a “public body” as defined in NRS 241.015(4). Here the Complaint is alleged against IVGID, which is a General Improvement District organized and operating under Chapter 318 of the Nevada Revised Statutes.⁴ As such it is a public body as defined in NRS 241.015(4).

The OAG’s investigation of the Complaint included a review of the agenda, the public comment advisory statement, and Complaint with attachments, the October 2017 Findings, complaints 13897–224 & 226, together with the written response to the Complaint and the supporting material provided by IVGID.⁵

The specific allegations of the Complaint can be broken down into two separate categories: 1) IVGID’s public comment advisory statement does not allow the Board to fully consider public comments and engage with the public; and 2) IVGID’s public comment advisory statement intimidates the public into refraining from comment. Each will be considered separately.

IVGID’s public comment advisory statement does not prevent the Board from fully

not a public body within the meaning of NRS 241.020(4), a Board may violate the OML by allowing its counsel to take improper actions, thus actions of Board counsel taken in the name of the Board may be the basis of violations.

³ The Office of the Attorney General advised IVGID to revise the statement consistent with those Findings but found no formal violation of the OML based on the content or use of the statement.

⁴ <https://www.yourtahoeplace.com/ivgid/about-ivgid>

⁵ IVGID presents an allegation that the Complaint was brought in bad faith and requests the OAG review an electronic video of Mr. Wrights’ various public comments to the Board at the IVGID meetings. That video was not reviewed and the OAG did not investigate IVGID’s allegation of bad faith against the Complainant. IVGID did not present any argument relating to the legal consequences of a finding of bad faith, thus it is unclear what legal effect a substantiated finding of bad faith would have. As such, the Complainant’s motivations, and IVGID’s bad faith allegation were not considered relevant to this investigation and are not reached by this analysis.

considering public comment or engaging with the public.

The Complaint alleges that several portions of IVGID's public comment advisory statement prevent consideration or engagement with the public. Specifically, the Complaint alleges the following about various portions of the public comment advisory statement:

Allegation #1: "This statement is a pre-condition to voiding a presentation by a member of the public."

Allegation #2: "It goes so far as to discredit any statement, it is an attempt to marginalize public comment."

There is no support for these allegations. The public comment advisory statement does not indicate that public comment will be voided, ignored or otherwise diminished except for several narrow restrictions consistent with Nevada law. The quotation simply explains legal requirements placed on the body regarding public comment and expresses a request for politeness and respect during the public comment period. Nevada law further establishes that any restrictions on public comment must be placed on the agenda.⁶ There is no requirement for a public comment advisory statement, however, the public must be apprised of any restrictions on public comment. IVGID's decision to include such restrictions in its advisory statement are reasonable and consistent with the OML. Additionally, the public comment advisory statement specifically informs the public that their right to make negative or positive comments is protected and only indicates that willful disruption of the meeting will not be allowed while encouraging politeness and civil discourse. IVGID did not violate the Open Meeting Law by including lawful restrictions on public comment in its public comment advisory statement.

Allegation #3: "This statement takes the board out of the meeting, if a board member wants clarification or wants to add a comment he/she has been regulated [sic] to a mime. The chair giving the general manager the power to respond to public comment over an elected public official is just wrong, if not illegal."

Here IVGID's public advisory statement attempts to explain to the public the prohibition on engaging in Board deliberation of public comments which have not been properly agendized.⁷ The difficulty for IVGID is that a public body's ability to engage

⁶ NRS 241.020(2)(d)(7)

⁷ OMLO 10-07, AG File No. 10-037 (October 19, 2010)

in discussion with the public during public comment is specifically protected by statute.⁸ However, this ability to discuss matters does not allow a public body to deliberate, as defined by NRS 241.015(2), on matters that have not been properly agendaized. This tension and the legislative history behind it has been previously addressed in OMLO 10-07. Here, the public comment advisory statement does not state that discussion of public comment is legally prohibited, just that public comment is not generally a question and answer period. The record does not show that the Board holds the mistaken impression that discussion of public comments is legally prohibited, nor that it has advised the public of such. Though they may engage in discussion of public comment if they choose to, "if members decide discussion with the public is not warranted, no OML violation occurs."⁹ The record does not demonstrate IVGID incorrectly advised the public that it was prohibited from discussing public comment with speakers. IVGID did not violate the Open Meeting Law by indicating that generally public comment is not a question and answer period in its public comment advisory statement.

IVGID's public comment advisory statement does not violate the OML by intimidating the public into refraining from comment.

The Complaint further alleges that the public comment advisory statement intimidates the public into refraining from comment.

Allegation #4: "The statement infers public comment is "nonsense", or "outrageous", so a member of the community reading this pre-set condition will be intimidated and possibly refrain from speaking. It is just unnecessary to have such a comment in an advisory statement."

Allegation #5: "This statement is also a pre-condition to intimidation. TOTALLY unnecessary. And equally a hidden restraint on free speech. The statement references a "LAW"; what law; Is the district legal counsel suggesting a Nevada Statutes [sic] on restraint on free speech? This is again a method to restrain public comment. The statement in the public comment advisory [sic] "thus even nonsensical and outrageous statements can be made", it assumes public comments are or could be not worthy of consideration."

The public comment statement informs the public that their right to make statements will not be restricted even if the statements are nonsensical. Contrary to

⁸ Discussion of Public comment is specifically allowed. NRS 241.020(2)(d)(3)

⁹ OMLO 10-07, AG File No. 10-37 (October 19, 2010), quoting OMLO 2003-13 (March 21, 2003)

the Complaint's allegation that this implies that the public comment is nonsense, the statement actually confirms that even nonsensical and outrageous comments would be allowed. There is no evidence that this statement has the effect of intimidating the public to refrain from speaking. IVGID did not violate the Open Meeting Law by specifically including notice that outrageous and nonsensical statements can be made in its public comment advisory statement.

Allegation #6: "In this statement legal counsel has eliminated the board from doing their elected duties, but not engaging the public, and again tainted the public comments as being not worthy of consideration. "Staff and the Board of Trustees are advised; not to respond to even the most ridiculous statements"

Allegation #7: "Here counsel has again taken the board out of the mix, by not responding! And having the board act like a "mime" and legal counsel goes as far as to identifying this conduct as "being professional." What is professional when a board member has a question and can't ask for clarification. Is sitting on your hands professional?"

The public comment advisory statement includes notice that counsel has advised the staff and the Board not to respond to comments. As discussed above and in previous decision OMLO 10-07, the Board is allowed to discuss public comments so long as they stop short of deliberation. The Board has been advised by its counsel to refrain from any responses to public comment. The Office of the Attorney General has previously recommended a different practice regarding public comment. Our prior recommendation was "that at the conclusion of the public comment period or after each individual public member's comments, the Chairperson ask the Board members whether they would like to address the comments made by the public."¹⁰ This practice was again recommended to a board struggling with the natural tension between the preference toward public engagement and its inability to deliberate toward a decision of a non-agendized item.¹¹ Neither prior decision of this office recommending a public body adjust its public comment practice found an OML violation in the first instance, but left open the possibility that the continued practice could result in a future finding of violation. Thus, the inclusion of these statements in the public comment advisory statement do not constitute an OML violation in this instance, but could result in a future finding of violation.

¹⁰ OMLO 2005-17, AG File No. 05-033 (August 26, 2005) Footnote #2.

¹¹ OMLO 10-07, AG File No. 10-37 (October 19, 2010)

CONCLUSION

The Legislative intent behind the OML is for all actions of all public bodies to be taken openly and their deliberations be conducted openly. This creates a natural tension between the rights of those choosing to attend a public meeting desiring to interact with their public officers and the rights of those who would not be alerted to those discussion because of their absence on the posted agenda. The OML balances these competing interests by allowing Boards to discuss public comment but not to deliberate toward a decision on any item not properly agendized. IVGID is not the first Board to have been advised to refrain from discussions of public comment, and Complainant is not the first member of the public to feel aggrieved by that policy. Previously, this office has twice found a Board with an overly restrictive view of its own ability to discuss public comments was not in violation of the OML, but also recommended a policy of canvassing Board members to determine if anyone wished to discuss a comment. Having reviewed the available evidence, we again caution the Board from having an overly restrictive view of its ability to engage in discussion with its public. Having determined that no violations of the OML have occurred, the OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD,
Attorney General

By: /s/ Gregory D. Ott
GREGORY D. OTT
Chief Deputy Attorney General

cc: Jason Guinasso, Board Counsel to IVGID

Frank Wright
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CERTIFICATE OF SERVICE

I certify that on the 19th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage prepaid, first class mail, to the following:

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

Jason Guinasso, Board Counsel to IVGID
Hutchison & Steffen
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Reno, NV 89521

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