NEVADA
OPEN MEETING LAW
MANUAL

ATTORNEY GENERAL
CATHERINE CORTEZ MASTO

100 NORTH CARSON STREET
CARSON CITY, NEVADA 89701-4717
Telephone (775) 684-1100; Fax (775) 684-1108
Las Vegas: Telephone (702) 486-3420; Fax (702) 486-3768
Reno: Telephone (775) 688-1818; Fax (775) 688-1822
This manual is published online at ag.state.nv.us

Eleventh Edition
June 2012

FOREWORD

The 2011 Nevada Legislature enacted significant changes to the Open Meeting Law. This is the newly revised 2011 Open Meeting Law Manual. It reflects Legislative changes enacted following the 76th Session and it incorporates short summaries of Open Meeting Law Opinions (OMLOs) issued since the last OML edition, to assist the reader searching for assistance with problems or issues or with interpretation of new subject matter. We are pleased to offer this new 2011 revision. Comments and suggestions are welcome regarding this revision or future revisions.

In addition, we encourage the reader to visit the Attorney General's web page at http://ag.state.nv.us. There you will find a link to the Attorney General's OML Task Force, a volunteer group which provided input for the Attorney General's 2011 legislative agenda, culminating in the enactment of AB 59. The Attorney General's OML Task Force is comprised of volunteers from government and the public who continue to meet to review the OML with a goal of improving the public's confidence in its enforcement as well as clarifying the public's understanding of it.

You will also find a link to "Opinions" containing Open Meeting Law Opinions. These are issued as guidance to OML compliance for public bodies. OMLO's are also annotated in statute by Legislative Counsel Bureau. Other opinions are labeled "AG File No." and are also published on our webpage, which is searchable by the reader. Together, these opinions provide the reader with a multitude of factual scenarios and are a useful guide to this office's interpretation and application of the OML.

Below is a short summary of the 2011 Legislative changes to the OML.

SUMMARY OF 2011 LEGISLATIVE CHANGES (AB 59)

- **Quasi judicial meetings of a public body become subject to the OML**
- **Public body must agendize an AG opinion finding it violated the OML.**
- **Enactment of Investigative subpoena authority for the OML**
- **The definition of "public body" has been clarified and its scope expanded.**
- **Important agenda notice requirements have been made mandatory.**
- **Notice requirement of NRS 241.033 not applicable to an applicant for employment.**
- **Enactment of authority to seek a monetary penalty up to $500.00 against member(s) of public body.**

2011 LEGISLATIVE CHANGES (AB 257)

THE OML NOW REQUIRES PUBLIC BODIES TO AGENDIZE MULTIPLE PERIODS OF PUBLIC COMMENT.

TABLE OF CONTENTS

Reference is made throughout the manual to OMLO (Open Meeting Law Opinions), which are opinions rendered by the Office of the Attorney General as a guideline for enforcing the Open Meeting Law and not as a written opinion requested pursuant to NRS 228.150. OMLO opinions can be found at: **ag.state.nv.us/open government.** Additional reference may be found at Attorney General Opinions, (Op. Nev. Att'y Gen.) which is opinions rendered pursuant to NRS 228.150.

PART 1 COMPLIANCE CHECKLIST 8

PART 2 THE OPEN MEETING LAW, NRS CHAPTER 241 14

PART 3 WHAT IS A "PUBLIC BODY" THAT MUST CONDUCT ITS MEETINGS IN COMPLIANCE WITH THE OPEN MEETING LAW? 27

§ 3.01 General: discussion of statutory definition of public body. 27

§ 3.02 Blue Ribbon Commissions; Governor appointed committees; Executive agency boards, committees 29

§ 3.03 Agenda staff 30

§ 3.04 Committees, subcommittees; advisory bodies 30

§ 3.05 Commissions or committees appointed by Legislature 32

§ 3.06 Members-elect of public bodies 32

§ 3.07 Specific examples of entities which have been deemed to be public bodies 33

§ 3.08 Specific examples of entities which have been deemed not to be public bodies 33

§ 3.09 Private, nonprofit organizations 34

§ 3.10 Quasi-judicial proceedings 35

PART 4 WHAT ACTIVITIES ARE EXEMPT FROM THE OPEN MEETING LAW? 36

§ 4.01 General 36

§ 4.02 Statutory exemptions 37

§ 4.03 Certain confidential investigative proceedings of the Gaming Control Board and Commission 40

§ 4.04 Quasi-judicial proceedings no longer exempt from OML 40

§ 4.05 Attorney-Client non–meeting 40

§ 4.06 Student governments.....41

§ 4.07 Pre-meeting discussion to remove or delay discussion of items from agenda 41

PART 5 WHAT GATHERINGS MUST BE CONDUCTED IN COMPLIANCE WITH THE OPEN MEETING LAW?.....42

§ 5.01 General; statutory definitions.....42

§ 5.02 Informal gatherings and discussions that constitute deliberation 43

§ 5.03 Social gatherings.....45

§ 5.04 Seminars, conferences, conventions 46

§ 5.05 Telephone conferences/video conferences 46

§ 5.06 Electronic polling.....46

§ 5.07 Mail polls 47

§ 5.08 Serial communications, or "walking quorums" 48

§ 5.09 "Private Briefings" among staff of public body and non-quorum of members.....51

§ 5.10 Meetings held out-of-state or out of local jurisdiction.....51

§ 5.11 Non-meetings to confer with counsel 51

§ 5.12 Meetings held with another public body.....52

§ 5.13 Appointment of Public Officer 53

PART 6 WHAT ARE THE NOTICE REQUIREMENTS UNDER THE OPEN MEETING LAW?.....55

§ 6.01 General.....55

§ 6.02 Contents of notice including new 2011 mandatory notice requirements.....55

§ 6.03 Posting the notice.....58

§ 6.04 Mailing the written notice; mailing list.....59

§ 6.05 Calculating "three working days" 59

§ 6.06 Providing copies of agenda and supporting material upon request 60

§ 6.07 Fees for providing notice of copies of supporting material 63

§ 6.08 Emergencies 64

§ 6.09 Providing individual notice to persons whose character, alleged misconduct, professional competence, physical or mental health are to be considered; waivers of notice; exemption from OML for meetings held to consider individual applications for employment (NRS 241.033) 66

§ 6.10 Administrative action against a "person," or from whom the Public body may acquire real property by the exercise of the power of eminent domain (NRS 241.034) 68

PART 7 WHAT ARE THE REQUIREMENTS FOR PREPARING AND FOLLOWING THE AGENDA? 71

§ 7.01 General 71

§ 7.02 Agenda must be clear and complete 72

§ 7.03 Stick to the agenda 77

§ 7.04 Matters brought up during public comment; meeting continued to another date 78

§ 7.05 Meeting that must be continued to a future date 79

PART 8 WHAT ARE THE REQUIREMENTS FOR CONDUCTING AN OPEN MEETING? 80

§ 8.01 General 80

§ 8.02 Facilities 80

§ 8.03 Accommodations for physically handicapped persons 81

§ 8.04 Public comment: Multiple periods of public comment 81

§ 8.05 Reasonable time, place and manner restrictions apply to public meetings 82

§ 8.06 Excluding people who are disruptive 84

§ 8.07 Excluding witnesses from testimony of other witnesses 85

§ 8.08 Vote by secret ballot is forbidden; voting requirements for elected public bodies; voting requirements for appointed public bodies (NRS 241.0355) 85

§ 8.09 Audio and/or video recordings of public meetings by members of the public 86

§ 8.10 Telephone conferences.....86

PART 9 WHEN ARE CLOSED MEETINGS AUTHORIZED AND HOW ARE THEY TO BE HANDLED?.....87

§ 9.01 General.....87

§ 9.02 When closed sessions may be held.....87

§ 9.03 When closed sessions may <u>not</u> be held.....88

§ 9.04 Closed meeting; definition of "character" and "competence"; employment interviews and performance evaluations; notice requirements.....89

§ 9.05 The appointment to "public office" closed meeting prohibition 91

§ 9.06 How to handle closed sessions to consider character, allegations of misconduct, professional competence, or physical and mental health of a person.....92

PART 10 WHAT RECORDS MUST BE KEPT AND MADE AVAILABLE TO THE PUBLIC? 94

§ 10.01 General.....94

§ 10.02 Requirement for and content of written minutes 94

§ 10.03 Retention and disclosure of minutes.....95

§ 10.04 Making and retaining audiotapes or video recordings of meetings 95

§ 10.05 Fees for inspecting or copying minutes and tapes 96

PART 11 WHAT HAPPENS IF A VIOLATION OCCURS? PUBLICATION OF ATTORNEY GENERAL OPINION ON AGENDA 97

§ 11.01 General.....97

§ 11.02 Containing and correcting violations.....97

§ 11.03 Actions taken in violation are void.....99

§ 11.04 Rescheduling actions that are void 99

§ 11.05 Any person denied a right under the Open Meeting Law may bring a civil suit 100

§ 11.06 The Office of the Attorney General may bring a civil suit 101

§ 11.07 Time limits for filing lawsuit; Policy for enforcement of OML complaints 101

§ 11.08 Jurisdiction and venue for suits 102

§ 11.09 Standards for injunctions and enforcing injunctions 102

§ 11.10 Criminal sanctions 103

§ 11.11 Public officers may be removed from office 103

§ 11.12 Filing an OML Complaint; Procedure; Attorney General Subpoena power; Public Records 104

§ 11.13 Publication of Attorney General Opinion finding violation by public body 105

§ 11.14 Monetary penalty for willful violation: one year limitations period 106

PART 12 HOW IS THE OPEN MEETING LAW INTERPRETED AND APPLIED? 107

§ 12.01 General 107

§ 12.02 Legislative declaration and intent 107

§ 12.03 Standards of interpretation 107

§ 12.04 Use of standard of reasonableness 107

§ 12.05 Attorney General Opinions 108

PART 13 WHAT ELSE DO I NEED TO KNOW ABOUT THE OPEN MEETING LAW? 109

§ 13.01 General 109

§ 13.02 Relationship of Open Meeting Law to Administrative Procedures Act, NRS Chapter 233B 109

§ 13.03 Relationship of Open Meeting Law to First Amendment to the Constitution of the United States 110

§ 13.04 Relationship of Open Meeting Law and Defamation 110

SAMPLE FORM 1: NOTICE AND AGENDA OF PUBLIC MEETING (WITH COMMENTS) 112

SAMPLE FORM 2: MINUTES.....116

SAMPLE FORM 3: NOTICE OF INTENT TO CONSIDER CHARACTER, MISCONDUCT, COMPETENCE OR HEALTH OF A PERSON. NRS 241.033 120

PROOF OF SERVICE 122

INDEX.....123

Part 1 COMPLIANCE CHECKLIST

This is a checklist to reference when applying the Open Meeting Law. References in brackets are to the NRS and sections of this manual.

Does the Open Meeting Law apply?

_____ Is the entity a public body? [NRS 241.015(3), §§ 3.01-3.10]

_____ Is the activity exempt from the Open Meeting Law? [§§ 4.01-4.07]

_____ Is a meeting going to occur? [NRS 241.015(2), §§ 5.01-5.13]

_____Will a quorum of the members of the public body be present? [§ 5.01]

_____Will a quorum deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction, or advisory power? [§ 5.01]

Agenda (*See* Sample Form 1)

_____ Has a clear and complete agenda of all topics to be considered been prepared? [NRS 241.020(2)(c) §§ 6.02, 7.02]

_____ Does the agenda list *all* topics scheduled to be considered during the meeting? [§§ 6.02, 7.02]

_____ Have all the topics been clearly described in the agenda in order to give the public adequate notice? [§§ 6.02, 7.02]

_____ Does the agenda include designated periods for public comment? Does the agenda state that action may not be taken on the matters considered during this period until specifically included on an agenda as an action item? [§§ 6.02, 7.04, 8.04]

_____ Does the notice inform the public that (1) items may be taken out of the order listed on the agenda, and (2) agenda items may be combined for consideration, and (3) items may be delayed or removed at any time? [§ 6.02]

_____ Does the agenda describe the items on which action may be taken and clearly denote that these items are for possible action? [§§ 6.02, 7.01, 7.02]

_____ Has each closed session been denoted including the name of the person being considered in the closed session, and if action is to be taken in an open session after the closed session, was it indicated on the agenda? [§§ 7.02, 9.06, NRS 241.020(4)]

Notice, posting and mailing (*See* Sample Form 1)

_____ Has written notice of the meeting been prepared? [NRS 241.020(2), § 6.01]

_____ Does the notice include:

_____ The time, place, and location of the meeting? [§ 6.02]

_____ An agenda as prepared in accordance with the above standards?

_____ A list of places where the notice was posted? [§ 6.03]

_____ A statement regarding assistance and accommodations for physically handicapped people? [§ 6.02]

_____ Was the written notice [NRS 241.020(3)(a), § 6.03]

_____ Posted at the principal office of the public body (or if there is no principal office, at the building in which the meeting is to be held)? [§ 6.03]

_____ Posted at not less than three other separate, prominent places within the jurisdiction of the public body? [§ 6.03]

_____ Posted no later than 9 a.m. of the third working day before the meeting? (Do not count day of meeting) [§§ 6.03, 6.05]

_____ Was the written notice mailed at no charge to those who requested a copy? [§§ 6.04, 6.07]

_____ Was it mailed in the same manner in which the notice is required to be mailed to a member of the body? [§ 6.04]

_____ Was it delivered to the postal service used by the body no later than 9 a.m. of the third working day before the meeting? [§ 6.04]

_____ Have persons who requested notices of the meeting been informed with the first notice sent to them that their request lapses after six months? [NRS 241.020(3)(b), § 6.04]

_____ If a person's character, alleged misconduct, professional competence, or physical or mental health is going to be considered at the meeting, has that person been given written notice of the time and place of the meeting? [NRS 241.033(1), § 6.09]

_____ Does the notice contain a list of the general topics concerning the person, inform the person that he/she may attend the closed session, bring a representative, present evidence, provide testimony, and present witnesses? [NRS §241.033(4)]

_____ Does the notice inform the person that the public body may take administrative action against the person? If so, then the requirements of NRS 241.034 have been met. [NRS §241.033(2)(b)]

_____ Was the notice personally delivered to the person at least *five working days* before the meeting *or* sent by certified mail to the last known address of that person at least *21 working days* before the meeting? (Nevada Athletic Commission is exempt from these timing requirements.) [NRS 241.033(1)-(2)]

_____ Did the public body receive proof of service of the notice before holding the meeting? (Nevada Athletic Commission not exempt from this requirement.) [NRS 241.033(1) (a) and (b)]

Agenda support material made available to public

_____Upon request, have at least one copy of an agenda, a proposed ordinance or regulation that will be discussed at the meeting, and any other supporting material (except confidential material as detailed in the statute) been provided at no charge to each person who so requests? [NRS 241.020(5)and (6) §§ 6.06, 6.07]

Emergency Meeting

_____ Is this an emergency meeting? [NRS 241.020(2) and (8), § 6.08]

_____ Were the circumstances giving rise to the meeting unforeseen?

_____ Is immediate action required?

_____ Has the entity documented the emergency?

_____ Has an agenda been prepared limiting the meeting to the emergency item?

_____ Has an attempt been made to give public notice?

_____ While the notice and agenda requirements may be relaxed in an emergency, are other provisions of the Open Meeting Law complied with (e.g., meeting open and public, minutes kept, etc.)?

Closed Session (*See* Sample Form 3)

_____ Is a closed session specifically authorized by statute?
[NRS 241.020(1), §§ 9.01-9.07]

_____ Have all the requirements of that statute been met?

If a closed session is being conducted to consider character, misconduct, competence, or physical or mental health of a person under NRS 241.033:

_____ Is the subject person an elected member of a public body? If so, a closed session is not authorized. [NRS 241.031, § 9.04]

_____ Is the closed session to consider the character, alleged misconduct or professional competence of an appointed public officer or a chief executive of a public body (i.e. president of a university or community college within the UCCSN system, county school superintendent, or city or county manager)? If so, a closed meeting is prohibited. [NRS §241.031(1)(b)]

_____ Is the closed session to discuss the appointment of any person to public office or as a member of a public body? If so, a closed session is not authorized. [NRS 241.030(5)(e), § 9.03]

_____ Has the subject been notified as provided above? Has proof of service been returned to the public body? NRS 241.033(1), [§ 6.09]

_____ If a recording was made of the open session, was a recording also made of the closed session? [NRS 241.035(5), § 9.06]

_____ Was the subject person given a copy of the recording of the closed session if requested? [NRS 241.035(5), NRS 241.033(6), § 9.06]

_____ Have minutes been kept of the closed session? [NRS 241.035(5) § 10.02]

_____ Have minutes and recordings of the closed session been retained and disposed of in accordance with NRS 241.035(2)? [§ 10.03].

_____ Was a motion made to go into closed session which specifies the nature of the business to be considered and the statutory authority pursuant to which the public body is authorized to close the meeting? [NRS 241.030(3), § 9.06]

_____ Was the discussion limited to specific matters specified in the motion? [§9.06]

_____ Did the public body go back into open session to take action on the subject discussed? (this must be done unless otherwise provided in a specific statute) [§ 9.06]

_____ Has the subject requested the meeting be open? If so, the public body must open the meeting unless another person appearing before the public body requests that the meeting remains closed. [NRS §241.030(2)(a) and (b)].

Meeting open to public; accommodations

_____ Have all persons been permitted to attend? [NRS 241.020, § 8.01]

_____ Was exclusion of witnesses at hearings during the testimony of other witnesses handled properly? [NRS 241.033(5) § 8.06]

_____ Was exclusion of persons who willfully disrupt a meeting to the extent that its orderly conduct is made impractical handled properly? [NRS 241.030(5)(b), § 8.06]

_____ Have members of the public been given an opportunity to speak during the public comment period? [NRS 241.020(2)(c)(3), § 8.04]

_____ Are facilities adequate and open? [§ 8.02]

_____ Have reasonable efforts been made to assist and accommodate physically handicapped persons desiring to attend? [NRS 241.020(1), § 8.03]

_____ If the meeting is by telephone or video conference, can the public hear each member of the body? [§ 5.05]

_____ Have members of the general public been allowed to record public meetings on audiotape or other means of sound reproduction as long as it in no way interferes with the conduct of the meeting? [NRS 241.035(3), § 8.08]

Stick to agenda; emergency agenda items

_____ Have actual discussions and actions at the meeting been limited to only those items on the agenda? [§ 7.03]

_____ If an item has been added to the agenda as an emergency item: [NRS 241.020(2) and (8), § 6.08]

- _____ Was it due to an unforeseen circumstance?
- _____ Was immediate action required?
- _____ Has the emergency been documented in the minutes?
- _____ Did the body refrain from taking action on discussion items or public comment items? [NRS 241.020(2)(c)(3), § 7.04]

Recordings

_____ The public body shall record its public meeting: [NRS 241.035(4), § 10.04]

- _____ Have recordings been made of the closed session as well as open sessions? [NRS 241.035(4), § 9.06]

_____ Recordings of public meetings must be made available to the public within 30 workings days? [NRS 241.035(2)]

_____ Recordings must be retained for at least one year after the adjournment of the meeting? [NRS 241.035(4)(a)]

_____ Recordings of public meetings must be treated as public records in accordance with public records statutes. [NRS 241.035(4)(b)]

_____ Have recordings of closed sessions been made available to the subjects of those sessions, if requested? [NRS 241.033(6)]

Minutes (*See* Sample Form 2)

_____ Have minutes or an audio recording been made available for both open and closed sessions? [NRS 241.035(2) and (4), § 10.02]

_____ Do they include at a minimum the material required by NRS 241.035(1)? [§ 10.02]

_____ Are minutes of open sessions kept as public records under the public record statutes and NRS 241.035(2)?

_____ Have minutes of open sessions been made available for inspection by the public within 30 working days after the adjournment of the meeting, retained for at least five years, and otherwise treated as provided in NRS 241.035(2)?

_____ Have minutes of closed sessions been made available to the subjects of those sessions if requested? [NRS 241.033(6)]

Noncompliance

_____ Have any areas of noncompliance been corrected? [§§ 11.01, 11.02, 11.03, 11.04]

_____ If litigation is brought to void an action or seek injunctive or declaratory relief, was it brought within the time periods in NRS 241.037(3)? [§ 11.07]

In order to assist members of the public, public bodies, and legal counsel, the current 2011 Open Meeting Law, including the changes made by AB 59 and AB 257, is set out below.

2011

CHAPTER 241 - MEETINGS OF STATE AND LOCAL AGENCIES

NRS 241.010	**Legislative declaration and intent.**
NRS 241.015	**Definitions.**
NRS 241.017	**Board of Regents to establish requirements for student governments.**
NRS 241.020	**Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.**
NRS 241.030	**Exceptions to requirement for open and public meetings; waiver of closure of meeting by certain persons. [Effective through December 31, 2011.]**
NRS 241.030	**Exceptions to requirement for open and public meetings; waiver of closure of meeting by certain persons. [Effective January 1, 2012.]**
NRS 241.031	**Meeting to consider character, misconduct or competence of elected member of public body or certain public officers.**
NRS 241.033	**Meeting to consider character, misconduct, competence or health of person or to consider appeal of results of examination: Written notice to person required; exception; public body required to allow person whose character, misconduct, competence or health is to be considered to attend with representative and to present evidence; attendance of additional persons; copy of record.**
NRS 241.034	**Meeting to consider administrative action against person or acquisition of real property by exercise of power of eminent domain: Written notice required; exception.**
NRS 241.035	**Public meetings: Minutes; aural and visual reproduction; transcripts.**
NRS 241.0353	**Absolute privilege of certain statements and testimony.**
NRS 241.0355	**Majority of all members of public body composed solely of elected officials required to take action by vote; abstention not affirmative vote; reduction of quorum.**
NRS 241.036	**Action taken in violation of chapter void.**
NRS 241.037	**Action by Attorney General or person denied right conferred by chapter; limitation on actions.**
NRS 241.038	**Board of Regents to establish requirements for student governments. [Replaced in revision by NRS 241.017.]**
NRS 241.039	**Enforcement by Attorney General; subpoenas; penalty for failure or refusal to comply with subpoena.**

<u>NRS 241.0395</u> **Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.**

<u>NRS 241.040</u> **Criminal and civil penalties; members attending meeting in violation of chapter not accomplices.**

NRS 241.010 Legislative declaration and intent. In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

(Added to NRS by 1960, 25; A 1977, 1099)

NRS 241.015 Definitions. As used in this chapter, unless the context otherwise requires:

1. "Action" means:

(a) A decision made by a majority of the members present during a meeting of a public body;

(b) A commitment or promise made by a majority of the members present during a meeting of a public body;

(c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body; or

(d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

2. "Meeting":

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

(1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.

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

(I) Less than a quorum is present at any individual gathering;

(II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and

(III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

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

(1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power?

(2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

3. Except as otherwise provided in this subsection, "public body" means:

(a) Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an

educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive or legislative body is created by:

(1) The Constitution of this State;

(2) Any statute of this State;

(3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;

(4) The Nevada Administrative Code;

(5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;

(6) An executive order issued by the Governor; or

(7) A resolution or an action by the governing body of a political subdivision of this State;

(b) Any board, commission or committee consisting of at least two persons appointed by:

(1) The Governor or a public officer who is under the direction of the Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department of the State Government;

(2) An entity in the Executive Department of the State Government consisting of members appointed by the Governor, if the board, commission or committee otherwise meets the definition of a public body pursuant to this subsection; or

(3) A public officer who is under the direction of an agency or other entity in the Executive Department of the State Government consisting of members appointed by the Governor, if the board, commission or committee has at least two members who are not employed by the public officer or entity; and

(c) A limited-purpose association that is created for a rural agricultural residential common-interest community as defined in subsection 6 of NRS 116.1201.

"Public body" does not include the Legislature of the State of Nevada.

4. "Quorum" means a simple majority of the constituent membership of a public body or another proportion established by law.

(Added to NRS by 1977, 1098; A 1993, 2308, 2624; 1995, 716, 1608; 2001, 1123, 1836; 2009, 2214; 2011, 2384)

NRS 241.017 Board of Regents to establish requirements for student governments. The Board of Regents of the University of Nevada shall establish for the student governments within the Nevada System of Higher Education requirements equivalent to those of this chapter and shall provide for their enforcement.

(Added to NRS by 1983, 1013; A 1993, 369)—(Substituted in revision for NRS 241.038)

NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.

1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and the public and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend.

2. Except in an emergency, written notice of all meetings must be given at least three working days before the meeting. The notice must include:

(a) The time, place and location of the meeting.

(b) A list of the locations where the notice has been posted.

(c) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term "for possible action" next to the appropriate item.

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

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

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

(4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken.

(6) Notification that:

(I) Items on the agenda may be taken out of order;

(II) The public body may combine two or more agenda items for consideration; and

(III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

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

3. Minimum public notice is:

(a) Posting a copy of the notice at the principal office of the public body or, if there is no principal office, at the building in which the meeting is to be held, and at not less than three other separate, prominent places within the jurisdiction of the public body not later than 9 a.m. of the third working day before the meeting; and

(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses six months after it is made. The public body shall

inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

4. If a public body maintains a website on the Internet or its successor, the public body shall post notice of each of its meetings on its website unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter.

5. Upon any request, a public body shall provide, at no charge, at least one copy of:

(a) An agenda for a public meeting;

(b) A proposed ordinance or regulation which will be discussed at the public meeting; and

(c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the public body for an item on the agenda, except materials:

(1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;

(2) Pertaining to the closed portion of such a meeting of the public body; or

(3) Declared confidential by law, unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.

Ê The public body shall make at least one copy of the documents described in paragraphs (a), (b) and (c) available to the public at the meeting to which the documents pertain. As used in this subsection, “proprietary information” has the meaning ascribed to it in NRS 332.025.

6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:

(a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or

(b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the requester at the same time the material is provided to the members of the public body.

If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

7. A public body may provide the public notice, information and material required by this section by electronic mail. If a public body makes such notice, information and material available by electronic mail, the public body shall inquire of a person who requests the notice, information or material if the person will accept receipt by electronic mail. The inability of a public body, as a result of technical problems with its electronic mail system, to provide a public notice, information or material required by this section to a person who has agreed to receive such notice, information or material by electronic mail shall not be deemed to be a violation of the provisions of this chapter.

8. 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.

(Added to NRS by 1960, 25; A 1977, 1099, 1109; 1979, 97; 1989, 570; 1991, 785; 1993, 1356, 2636; 1995, 562, 1608; 2001, 2395; 2003, 488; 2005, 2243; 2007, 1122; 2009, 2288; 2011, 2386, 2838)

NRS 241.030 Exceptions to requirement for open and public meetings; waiver of closure of meeting by certain persons. [Effective through December 31, 2011.]

1. Except as otherwise provided in this section and NRS 241.031 and 241.033, a public body may hold a closed meeting to:

(a) Consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

(b) Prepare, revise, administer or grade examinations that are conducted by or on behalf of the public body.

(c) Consider an appeal by a person of the results of an examination that was conducted by or on behalf of the public body, except that any action on the appeal must be taken in an open meeting and the identity of the appellant must remain confidential.

2. A person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. A request described in this subsection:

(a) May be made at any time before or during the meeting; and

(b) Must be honored by the public body unless the consideration of the character, alleged misconduct, professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public.

3. A public body may close a meeting pursuant to subsection 1 upon a motion which specifies:

(a) The nature of the business to be considered; and

(b) The statutory authority pursuant to which the public body is authorized to close the meeting.

4. This chapter does not:

(a) Apply to judicial proceedings.

(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

5. The exceptions provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

(Added to NRS by 1960, 25; A 1977, 1100; 1983, 331; 1993, 2637; 2005, 977, 2244)

NRS 241.030 Exceptions to requirement for open and public meetings; waiver of closure of meeting by certain persons. [Effective January 1, 2012.]

1. Except as otherwise provided in this section and NRS 241.031 and 241.033, a public body may hold a closed meeting to:

(a) Consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

(b) Prepare, revise, administer or grade examinations that are conducted by or on behalf of the public body.

(c) Consider an appeal by a person of the results of an examination that was conducted by or on behalf of the public body, except that any action on the appeal must be taken in an open meeting and the identity of the appellant must remain confidential.

2. A person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by a public body during a meeting may waive the closure of the meeting and request that the meeting or relevant portion thereof be open to the public. A request described in this subsection:

(a) May be made at any time before or during the meeting; and

(b) Must be honored by the public body unless the consideration of the character, alleged misconduct, professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public.

3. A public body may close a meeting pursuant to subsection 1 upon a motion which specifies:

(a) The nature of the business to be considered; and

(b) The statutory authority pursuant to which the public body is authorized to close the meeting.

4. Except as otherwise provided in this subsection, meetings of a public body that are quasi-judicial in nature are subject to the provisions of this chapter. The provisions of this subsection do not apply to meetings of the State Board of Parole Commissioners when acting to grant, deny, continue or revoke parole of a prisoner or to establish or modify the terms of the parole of a prisoner.

5. This chapter does not:

(a) Apply to judicial proceedings.

(b) Prevent the removal of any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.

(c) Prevent the exclusion of witnesses from a public or private meeting during the examination of another witness.

(d) Require that any meeting be closed to the public.

(e) Permit a closed meeting for the discussion of the appointment of any person to public office or as a member of a public body.

6. The exceptions provided by this section, and electronic communication, must not be used to circumvent the spirit or letter of this chapter to act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers.

(Added to NRS by 1960, 25; A 1977, 1100; 1983, 331; 1993, 2637; 2005, 977, 2244; 2011, 2384, effective January 1, 2012)

NRS 241.031 Meeting to consider character, misconduct or competence of elected member of public body or certain public officers.

1. Except as otherwise provided in subsection 2, a public body shall not hold a closed meeting to consider the character, alleged misconduct or professional competence of:

(a) An elected member of a public body; or

(b) A person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position, including, without limitation, a president of a university, state college or community college within the Nevada System of Higher Education, a superintendent of a county school district, a county manager and a city manager.

2. The prohibition set forth in subsection 1 does not apply if the consideration of the character, alleged misconduct or professional competence of the person does not pertain to his or her role as an elected member of a public body or an appointed public officer or other officer described in paragraph (b) of subsection 1, as applicable.

(Added to NRS by 1993, 2636; A 2005, 2245).

NRS 241.033 Meeting to consider character, misconduct, competence or health of person or to consider appeal of results of examination: Written notice to person required; exception; public body required to allow person whose character, misconduct, competence or health is to be considered to attend with representative and to present evidence; attendance of additional persons; copy of record.

1. Except as otherwise provided in subsection 7, a public body shall not hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person or to consider an appeal by a person of the results of an examination conducted by or on behalf of the public body unless it has:

(a) Given written notice to that person of the time and place of the meeting; and

(b) Received proof of service of the notice.

2. The written notice required pursuant to subsection 1:

(a) Except as otherwise provided in subsection 3, must be:

(1) Delivered personally to that person at least five working days before the meeting; or

(2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting.

(b) May, with respect to a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, include an informational statement setting forth that the public body may, without further notice, take administrative action against the person if the public body determines that such administrative action is warranted after considering the character, alleged misconduct, professional competence, or physical or mental health of the person.

(c) Must include:

(1) A list of the general topics concerning the person that will be considered by the public body during the closed meeting; and

(2) A statement of the provisions of subsection 4, if applicable.

3. The Nevada Athletic Commission is exempt from the requirements of subparagraphs (1) and (2) of paragraph (a) of subsection 2, but must give written notice of the time and place of the meeting and must receive proof of service of the notice before the meeting may be held.

4. If a public body holds a closed meeting or closes a portion of a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person, the public body must allow that person to:

(a) Attend the closed meeting or that portion of the closed meeting during which the character, alleged misconduct, professional competence, or physical or mental health of the person is considered;

(b) Have an attorney or other representative of the person's choosing present with the person during the closed meeting; and

(c) Present written evidence, provide testimony and present witnesses relating to the character, alleged misconduct, professional competence, or physical or mental health of the person to the public body during the closed meeting.

5. Except as otherwise provided in subsection 4, with regard to the attendance of persons other than members of the public body and the person whose character, alleged misconduct, professional competence, physical or mental health or appeal of the results of an examination is considered, the chair of the public body may at any time before or during a closed meeting:

(a) Determine which additional persons, if any, are allowed to attend the closed meeting or portion thereof; or

(b) Allow the members of the public body to determine, by majority vote, which additional persons, if any, are allowed to attend the closed meeting or portion thereof.

6. A public body shall provide a copy of any record of a closed meeting prepared pursuant to NRS 241.035, upon the request of any person who received written notice of the closed meeting pursuant to subsection 1.

7. For the purposes of this section:

(a) A meeting held to consider an applicant for employment is not subject to the notice requirements otherwise imposed by this section.

(b) Casual or tangential references to a person or the name of a person during a closed meeting do not constitute consideration of the character, alleged misconduct, professional competence, or physical or mental health of the person.

(Added to NRS by 1993, 2636; A 2005, 977, 2246, 2248; 2011, 2388).

NRS 241.034 Meeting to consider administrative action against person or acquisition of real property by exercise of power of eminent domain: Written notice required; exception.

1. Except as otherwise provided in subsection 3:

(a) A public body shall not consider at a meeting whether to:

(1) Take administrative action against a person; or

(2) Acquire real property owned by a person by the exercise of the power of eminent domain, unless the public body has given written notice to that person of the time and place of the meeting.

(b) The written notice required pursuant to paragraph (a) must be:

(1) Delivered personally to that person at least five working days before the meeting; or

(2) Sent by certified mail to the last known address of that person at least 21 working days before the meeting. A public body must receive proof of service of the written notice provided to a person pursuant to this section before the public body may consider a matter set forth in paragraph (a) relating to that person at a meeting.

2. The written notice provided in this section is in addition to the notice of the meeting provided pursuant to NRS 241.020.

3. The written notice otherwise required pursuant to this section is not required if:

(a) The public body provided written notice to the person pursuant to NRS 241.033 before holding a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of the person; and

(b) The written notice provided pursuant to NRS 241.033 included the informational statement described in paragraph (b) of subsection 2 of that section.

4. For the purposes of this section, real property shall be deemed to be owned only by the natural person or entity listed in the records of the county in which the real property is located to whom or which tax bills concerning the real property are sent.

(Added to NRS by 2001, 1835; A 2001 Special Session, 155; 2005, 2247).

NRS 241.035 Public meetings: Minutes; aural and visual reproduction; transcripts.

1. Each public body shall keep written minutes of each of its meetings, including:

(a) The date, time and place of the meeting.

(b) Those members of the public body who were present and those who were absent.

(c) The substance of all matters proposed, discussed or decided and, at the request of any member, a record of each member's vote on any matter decided by vote.

(d) 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.

(e) Any other information which any member of the public body requests to be included or reflected in the minutes.

2. Minutes of public meetings are public records. Minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken. The minutes shall be deemed to have permanent value and must be retained by the public body for at least 5 years. Thereafter, the minutes may be transferred for archival preservation in accordance with NRS 239.080 to NRS 239.125, inclusive. Minutes of meetings closed pursuant to:

(a) Paragraph (a) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters discussed no longer require confidentiality and the person whose character, conduct, competence or health was considered has consented to their disclosure. That person is entitled to a copy of the minutes upon request whether or not they become public records.

(b) Paragraph (b) of subsection 1 of NRS 241.030 becomes public records when the public body determines that the matters discussed no longer require confidentiality.

(c) Paragraph (c) of subsection 1 of NRS 241.030 become public records when the public body determines that the matters considered no longer require confidentiality and the person who appealed the results of the examination has consented to their disclosure, except that the public body shall remove from the minutes any references to the real name of the person who appealed the results of the examination. That person is entitled to a copy of the minutes upon request whether or not they become public records.

3. All or part of any meeting of a public body may be recorded on audiotape or any other means of sound or video reproduction by a member of the general public if it is a public meeting so long as this in no way interferes with the conduct of the meeting.

4. Except as otherwise provided in subsection 6, a public body shall, for each of its meetings, whether public or closed, record the meeting on audiotape or another means of sound

reproduction or cause the meeting to be transcribed by a court reporter who is certified pursuant to Chapter 656 of NRS. If a public body makes an audio recording of a meeting or causes a meeting to be transcribed pursuant to this subsection, the audio recording or transcript:

(a) Must be retained by the public body for at least one year after the adjournment of the meeting at which it was recorded or transcribed;

(b) Except as otherwise provided in this section, is a public record and must be made available for inspection by the public during the time the recording or transcript is retained; and

(c) Must be made available to the Attorney General upon request.

5. Except as otherwise provided in subsection 6, any portion of a public meeting which is closed must also be recorded or transcribed and the recording or transcript must be retained and made available for inspection pursuant to the provisions of subsection 2 relating to records of closed meetings. Any recording or transcript made pursuant to this subsection must be made available to the Attorney General upon request.

6. If a public body makes a good faith effort to comply with the provisions of subsections 4 and 5 but is prevented from doing so because of factors beyond the public body's reasonable control, including, without limitation, a power outage, a mechanical failure or other unforeseen event, such failure does not constitute a violation of the provisions of this chapter.

(Added to NRS by 1977, 1099; A 1989, 571; 1993, 449, 2638; 2005, 978, 1404).

NRS 241.0353 Absolute privilege of certain statements and testimony.

1. Any statement which is made by a member of a public body during the course of a public meeting is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

2. A witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public meeting, except that it is unlawful to misrepresent any fact knowingly when testifying before a public body.

(Added to NRS by 2005, 2242)

NRS 241.0355 Majority of all members of public body composed solely of elected officials required to take action by vote; abstention not affirmative vote; reduction of quorum.

1. A public body that is required to be composed of elected officials only may not take action by vote unless at least a majority of all the members of the public body vote in favor of the action. For purposes of this subsection, a public body may not count an abstention as a vote in favor of an action.

2. In a county whose population is 45,000 or more, the provisions of subsection 5 of NRS 281A.420 do not apply to a public body that is required to be composed of elected officials only, unless before abstaining from the vote, the member of the public body receives and discloses the opinion of the legal counsel authorized by law to provide legal advice to the public body that the abstention is required pursuant to NRS 281A.420. The opinion of counsel must be in writing and set forth with specificity the factual circumstances and analysis leading to that conclusion.

(Added to NRS by 2001, 1123; A 2003, 818; 2011, 1155)

NRS 241.036 Action taken in violation of chapter void. The action of any public body taken in violation of any provision of this chapter is void.

(Added to NRS by 1983, 1012)

NRS 241.037 Action by Attorney General or person denied right conferred by chapter; limitation on actions.

1. The Attorney General may sue in any court of competent jurisdiction to have an action taken by a public body declared void or for an injunction against any public body or person to require compliance with or prevent violations of the provisions of this chapter. The injunction:

(a) May be issued without proof of actual damage or other irreparable harm sustained by any person.

(b) Does not relieve any person from criminal prosecution for the same violation.

2. Any person denied a right conferred by this chapter may sue in the district court of the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit may seek to have an action taken by the public body declared void, to require compliance with or prevent violations of this chapter or to determine the applicability of this chapter to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this subsection.

3. Any suit brought against a public body pursuant to subsection 1 or 2 to require compliance with the provisions of this chapter must be commenced within 120 days after the action objected to was taken by that public body in violation of this chapter. Any such suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken.

(Added to NRS by 1983, 1012; A 1985, 147).

NRS 241.038 Board of Regents to establish requirements for student governments. [Replaced in revision by NRS 241.017.]

NRS 241.039 Enforcement by Attorney General; subpoenas; penalty for failure or refusal to comply with subpoena.

1. The Attorney General shall investigate and prosecute any violation of this chapter.

2. In any investigation conducted pursuant to subsection 1, the Attorney General may issue subpoenas for the production of any relevant documents, records or materials.

3. A person who willfully fails or refuses to comply with a subpoena issued pursuant to this section is guilty of a misdemeanor.

(Added to NRS by 2011, 2384).

NRS 241.0395 Inclusion of item acknowledging finding by Attorney General of violation by public body on next agenda of meeting of public body; effect of inclusion.

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.

(Added to NRS by 2011, 2384).

NRS 241.040 Criminal and civil penalties; members attending meeting in violation of chapter not accomplices.

1. Each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor.

2. Wrongful exclusion of any person or persons from a meeting is a misdemeanor.

3. A member of a public body who attends a meeting of that public body at which action is taken in violation of this chapter is not the accomplice of any other member so attending.

4. In addition to any criminal penalty imposed pursuant to this section, each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, and who participates in such action with knowledge of the violation, is subject to a civil penalty in an amount not to exceed $500. The Attorney General may recover the penalty in a civil action brought in the name of the State of Nevada in any court of competent jurisdiction. Such an action must be commenced within 1 year after the date of the action taken in violation of this chapter.

(Added to NRS by 1960, 26; A 1977, 1100; 1983, 1013; 2011, 2390).

Part 3 WHAT IS A "PUBLIC BODY" THAT MUST CONDUCT ITS MEETINGS IN COMPLIANCE WITH THE OPEN MEETING LAW?

---

§ 3.01 General: discussion of statutory definition of public body.

The definition of "public body" has been clarified and its scope expanded. (AB 59, effective on July 1, 2011, Act of June 15, 2011, Ch. 383, § 4, 2011 Nev. Stat. 2383, section 4 of AB 59 amended the definition of "public body", so that a public body's manner of creation rather than its function is the new touchstone of its definition.

NRS 241.015(3)(b) is a new definitional amendment to the OML. It ensures that the actions and deliberations of certain multimember groups appointed by the Governor or a public officer and/or a public entity under his direction and control are subject to the OML, as long as at least two members of the appointed body are not employees of the Executive Department of State Government. The Legislature deemed this expansion of the scope of the OML appropriate given the growing role such groups play in formulation of public policy.

Although AB 59 clarified the scope of the existing statutory definition of public body, existing law (NRS 241.015(3)) was not amended or changed. NRS 241.015(3)(a) requires a public body to be connected to state or local government in order to be subject to the OML. Set out below is the new definition of "public body." New definitional sections of NRS 241.015 from AB 59 are set out below in bold.

NRS 241.015(3) defines a public body as:

> (3) Except as otherwise provided in this subsection, "public body" means:
>
> (a) Any administrative, advisory, executive or legislative body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive, or legislative body is created by:
>
> (1) The Constitution of this State;
>
> (2) Any statute of this State;
>
> (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;
>
> (4) The Nevada Administrative Code;

(5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;
(6) An executive order issued by the Governor; or
(7) A resolution or an action by the governing body of a political subdivision of this State;

(b) Any board, commission or committee consisting of at least two persons appointed by:

(1) The Governor or a public officer who is under the direction of the Governor, if the board, commission or committee has at least two members who are not employees of the Executive Department of the State Government;
(2) An entity in the Executive Department of the State Government consisting of members appointed by the Governor, if the board, commission or committee otherwise meets the definition of a public body pursuant to this subsection; or
(3) A public officer who is under the direction of an agency or other entity in the Executive Department of the State Government consisting of members appointed by the Governor, if the board, commission or committee has at least two members who are not employed by the public officer or entity; and

(c) A limited-purpose association that is created for a rural agricultural residential common-interest community as defined in subsection 6 of NRS 116.1201. "Public body" does not include the Legislature of the State of Nevada.

4. "Quorum" means a simple majority of the constituent membership of a public body or another proportion established bylaw.

The new definition of "public body" is not a drastic change; rather it codifies prior Attorney General Opinions, so that the definition of public body is explicitly dependent on its manner of creation rather than its function. It has always been true that a public body must be collegial, that is, it must consist of more than two persons. AB 59, 2011, makes this requirement explicit. Section 4 of AB 59 requires at least two persons to comprise a public body. The Open Meeting Law concerns itself with meetings, gatherings, decisions, and actions obtained through the collective consensus of a quorum of the public body membership. *See also Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87(2003) (collective process of decision making must be accomplished in public). The Court emphasized that public bodies may only **act** collectively. Similarly, in *Del Papa v. Bd. of Regents of University and Community College System of Nevada*¸114 Nev. 388, 400, 956 P.2d 770, 778–779 (1988) the Court said: "the constraints of the Open Meeting Law apply only where a quorum of a public body, in its official capacity as a body, deliberates toward a decision or makes a decision."

In a letter opinion, the Office of the Attorney General opined that when determining if a body is supported by tax revenues, the term "tax revenues" should be construed in its broadest possible sense to include not only those items traditionally thought of as taxes but also the license fees paid to various professional licensing boards pursuant to state

law. *See* Attorney General letter opinion addressed to Mr. Arne R. Purhonen, Nevada State Board of Architecture, dated September 1, 1977.

§ 3.02 Blue Ribbon Commissions; Governor appointed committees; Executive agency boards, committees

Following the principle that a "public body" must be a multi-member entity, the Office of the Attorney General opined that the Open Meeting Law does not apply to the Governor when he is acting in his official executive capacity because the Governor is not a multi-member body. *See* Op. Nev. Att'y Gen. No. 241 (August 24, 1961).

As explained in §3.01 above, any commission, committee, or board appointed by the Governor with at least two members who are not employees of the State Executive Department are now defined as a public body and subject to the Open Meeting Law. But all other bodies regardless of composition, which are appointed by executive heads of local governments, or agencies including, but not limited to, mayors, city and county managers continue to be exempt from the Open Meeting Law.

An executive officer of a board or commission who carries out the directives, orders and policies of a board or commission in day-to-day administration of an agency of government is not considered the alter ego of the board or commission so as to require him to comply with the Open Meeting Law. *Bennett v. Warden*, 333 So. 2d 97 (Fla. Dist. Ct. App. 1976) (meetings between college president and his advisors or staff personnel not covered).

Along this line, the Office of the Attorney General held that staff meetings to advise a city manager who, in turn, arrives at his own decision and recommendation on an insurance claim were not within the ambit of the Open Meeting Law. *See* Op. Nev. Att'y Gen. No. 79-5 (February 23, 1979).

OMLO 2010-02 (April 7, 2010) ("committee, subcommittee or subsidiary thereof," is not defined in statute, but the OML Manual interprets the statute to mean that to the extent a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the OML). For further treatment of this issue, *see* § 3.04 NEVADA OPEN MEETING LAW MANUAL (11th ed. 2011); OMLO 2002-017 (April 18, 2002) and OMLO 2002-27 (June 11, 2002). *See also* OMLO 2007-03, (July 17, 2007)(Walker Basin Project Stakeholder's Group found not to be public body: it was created by UNR Vice-Chancellor's steering committee, it was not advisory to any other body, and it was not created by statute). *See also* OMLO 2007-04 (September 10, 2007) (OML does not apply to Douglas Selby, Las Vegas City Manager, when acting in his official capacity, he appointed a citizens advisory body).

The Open Meeting Law applies only to public bodies; the Fernley City Council is a public body, but the citizens' recruitment committee formed by the Mayor was not a public body. Council played no role in the initial interviews and screening of applications for appointment to City Manager position. Council did not deny a request

for access to the initial candidate's resumes. Once initial screening was accomplished by the Mayor and his citizen's recruitment committee, and names were forwarded to the Council, then the OML applied. The Council complied with the OML; the finalists' applications and resumes were made public before the meeting. AG File No. 09-026 (June 14, 2009)

§ 3.03 Agency staff

The Open Meeting Law does not usually apply to the typical internal agency staff meetings where staff members make individual reports and recommendations to a superior, where the technical requirements of a quorum do not apply, and where decisions are not reached by a vote or consensus. *See* OMLO 2004-02 (January 20, 2004) for a further discussion and analysis on this topic.

However, when a public body delegates *de facto* authority to a staff committee to act on its behalf in the formulation, preparation, and promulgation of plans or policies, the staff committee stands in the shoes of the public body and the Open Meeting Law may apply to the staff meetings. *See News-Press Publishing Company, Inc. v. Carlson*, 410 So.2d 546 (Fla. Dist. Ct. App. 1982). (When governing authority of a hospital district delegated responsibility of preparation of a proposed budget to an internal budget committee, the open meeting law applied to the committee, even though it consisted of staff personnel.)

Following the above principles, the Office of the Attorney General opined that the Open Meeting Law did not apply to internal staff meetings of an executive agency or interagency staff meetings except where a public body delegates policy formulation or planning functions to a staff committee and these policies or plans are the subject of foreseeable action by the public body. *See* Letter Opinion to Mr. William A. Molini dated February 11, 1985.

§ 3.04 Committees, subcommittees; advisory bodies

NRS 241.015(3) specifically includes committees, subcommittees, or subsidiaries thereof within the definition of a "public body." A committee or subcommittee is covered by the law whenever a quorum of the committee or subcommittee gathers to deliberate or make a decision including taking action to make a recommendation to the parent body. NRS 241.015; Lewiston *Daily Sun, Inc. v. City of Auburn*, 544 A.2d 335 (Me. 1988); *Arkansas Gazette Co. v. Pickens*, 522 S.W.2d 350 (Ar. 1975).

Legislative committees are exempt from the OML. In 1994 the Nevada Constitution was amended to exempt legislative committees from the OML. Nevada Constitution article 4, § 15.

The Open Meeting Law does not define "committee, subcommittee or subsidiary thereof," so counsel for the public body should be consulted for a determination of whether the Open Meeting Law extends to a particular group of persons. Review of §§ 3.01–3.02 above is recommended. Following the principles of the cases cited above and

in § 3.03, to the extent that a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the Open Meeting Law. *See* OMLO 2002-017 (April 18, 2002) and OMLO 2002-27 (June 11, 2002). *But see* AG File No. 07-030 (September 10, 2007)(OML does not apply to the appointment of a citizen advisory panel to advise Las Vegas City Manager when acting in his official capacity (*see* infra at § 3.03.).

If a sub-committee recommendation to a parent body is more than mere fact-finding because the sub-committee has to choose or accept options, or decide to accept certain facts while rejecting others, or if it has to make any type of choice in order to create a recommendation, then it has participated in the decision-making process and is subject to the OML. Negotiations with unions, private contractors and others conducted by a subcommittee of a public body, which result in a recommendation to the parent body, are subject to the OML unless specifically exempted by statute.

Failure to notice on its agenda the break-up of an advisory body into study groups, and failure to provide the study groups with recorders or designate someone to keep minutes of the meeting, was a violation of NRS 241.015(3)(a). The facilitator's strategy for dividing the committee into study groups coupled with that group's assignment should have been noticed on the agenda and real minutes should have been kept along with a tape recording. AG File No. 07-027 (August 15, 2007).

NRS 241.015(3) specifically includes within the definition of public body an "advisory body of the state or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue. . . ."

For additional guidance, *see* the following: § 3.07 *infra*; OMLO 98-03 (July 7, 1998), where the Office of the Attorney General opined that a subcommittee informally appointed by the president of a school board was a public body as defined in NRS 241.015(3) where, even though the subcommittee was not formally appointed, its members shared equal voting power, formed a consensus to speak to the school board with one voice, and the school board knew of its existence and treated it as a board subcommittee; and OMLO 98-04 (July 7, 1998) where the Office of the Attorney General opined that two school board members, while self-appointed and initially acting as individuals, became a public body as defined in NRS 241.015(3) when the school board began recognizing them as a subcommittee and encouraging them to meet with staff to formulate a school safety proposal to be presented to the board, after which they met as a collegial body with staff to form a proposal which was formally presented to the board in the name of the "School Safety Subcommittee." The Office of the Attorney General opined that formality in appointment is not the sole dispositive factor in determining what constitutes a public body under the Open Meeting Law, and informality in appointment should not be an escape from it; to hold otherwise would encourage circumvention of the Open Meeting Law through the use of unofficial committees.

An elected Public Body, subject to NRS 241.0355, which statute forbids action by the body unless a majority of all the members of the elected body vote affirmatively for the action asserted that NRS 241.0355 does not apply to its committees because its bylaws do not require any committee to be composed of elected officials only. Bylaws do not rise to the level of statute and bylaws do not have the force and effect of law. Standing and Special committees of this public body were elected public bodies for purposes of the OML. AG File No. 09-017 (May 29, 2009); See also OMLO 2001-57 and AGO 2001-25 for further discussion of the two-tiered voting requirement found in NRS 241.0355.

The Legislature intended that **"committee, sub-committee, or any subsidiary thereof"** be applied to any gathering that makes a decision or recommendation to a parent body. The label given to the sub-group is immaterial and will not prevent the application of the OML to groups with other labels besides "committee" or "sub-committee." Even in the absence of a formal appointment process (see NRS 241.015(3)(a)(7)), the Open Meeting Law applies to a staff committee with *de facto* authority from the parent public body to act on its behalf. The staff committee stands in the shoes of the public body. Legislative intent and explicit language mean the OML applies **whenever a quorum of committee, sub-committee, or any subsidiary thereof,** meets to deliberate or take action. AG File No. 08-014 (July 2, 2008).

§ 3.05 Commissions or committees appointed by Legislature

NRS 241.015(3) excludes the Legislature from the definition of public body. Since the Legislature, is not a public body, none of its various committees or subcommittees had been considered to be subject to the OML.

However, the Nevada Constitution was amended in 1993 after a vote by the people to ensure that meetings of all legislative committees must be open to the public, except meetings held to consider the character, alleged misconduct, professional competence, or physical or mental health of a person. NEV. CONST. ART. 4, §15.

§ 3.06 Members-elect of public bodies

Although the literal language of the Open Meeting Law appears to limit its application to actual members of a public body, the Office of the Attorney General believes the better view is set forth in *Hough v. Stembridge*, 278 So. 2d 288 (Fla. Dist. Ct. App. 1973), where the court held that members-elect of boards and commissions are within the scope of an open meeting law. Otherwise, members-elect could gather with impunity behind closed doors and make decisions on matters soon to come before them in clear violation of the purpose, intent, and spirit of our Open Meeting Law. Application of the provisions of the statute to members-elect of public bodies is consistent with the liberal interpretation mandated for the Open Meeting Law. *See* OMLO 99-06 (March 19, 1999) and AG File Nos. 01-003, 01-008 (April 12, 2001).

§ 3.07 Specific examples of entities which have been deemed to be public bodies

If a group or body was a public body under interpretation of the definition of "public body" prior to the 2011 legislative session it only had to be connected to state or local government and it must expend or disburse tax revenue. The 2011 Legislature clarified the scope of the definition of public body so that our prior interpretation of the definition is still true **if** the body was created by statute, constitution, ordinance, the NAC, resolution or other formal designation by a parent public body, Governor's executive order, and resolution or action by the governing body of a political subdivision of this State.

Nevada Interscholastic Activities Association	Non-profit corporation authorized by NRS 386.420
Nevada Board of Architecture	*Created by NRS 623.050: see* Attorney General Letter Opinion dated September 1, 1977
Board of Dental Examiners	Created by NRS 631.120. *See* Attorney General Letter Opinion dated November 20, 1979
Community Development Corporation and the Eureka County Economic Development Council	*OMLO 2001-17;* (April 12, 2001)
Storey County Cemetery Board	*See* OMLO 2002-27 (June 11, 2002)

§ 3.08 Specific examples of entities which have been deemed not to be public bodies

The following entities have specifically been deemed not to be public bodies under interpretation of "public body" prior to the 2011 legislative session. These bodies should carefully review the 2011 changes to the law made by AB59 to ensure continuing compliance:

Committee to prepare arguments advocating and opposing approval of ballot for a city.	*See* Op. Nev. Att'y Gen. No. 2000-18 (June 2, 2000).
A private, not-for-profit electric utility company.	*See* AG File No. 00-055 (March 12, 2001).

Non-profit community senior citizen's center.	*See* OMLO 99-035 (April 3, 2000).
Economic Development Authority of Western Nevada	*See* OMLO 99-05 (January 12, 1999).
Faculty Senate at the Community College of Southern Nevada	*See* OMLO 2003-19 (April 21, 2003).
Clark County Civil Bench/Bar Committee: Eighth Judicial District Court.	*See* AG File No. 10-011; (April 12, 2010).
Nevada Department of Corrections Psychological Review Panel	*See* OMLO 2003-21 (May 21, 2003) and OMLO 2004-15 (May 5, 2004).
Nevada Discovery Museum	*See* OMLO 2008-01 (January 30, 2008).
Head Start of Northeastern Nevada	*See* OMLO 2004-20 (May 18, 2004).
Nevada State Board of Parole Commissioners	*See* 2011: NRS 241.030(4)(not a public body when acting to grant, deny, continue or revoke parole of a prisoner.
Elko County Juvenile Probation Committee	*See* OMLO 2004-25 (June 29, 2004).
Nevada Humane Society (a non-profit corporation not created by ordinance or statute).	*See* AG File No. 10-051 (January 4, 2011).
Nevada Sheriffs and Chiefs Association: Domestic non-profit corporation. Its creation has no statutory connection to state or local government.	*See* AG File No. 09-038 (September 23, 2009).

§ 3.09 Private, nonprofit organizations

Where a government body or agency itself establishes a civic organization, even though it is composed of private citizens, it may well constitute a "public body" under the law. OMLO 2001-17 citing *Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974). In Nevada,

this would be true if the civic organization is intended to perform any administrative, advisory, executive or legislative function of state or local government and it expends or disburses or is supported in whole or in part by tax revenue, or if it is intended to advise or make recommendations to any other Nevada governmental entity which expends or disburses or is supported in whole or in part by tax revenue. *See* e.g., *Seghers v. Community Advancement, Inc.*, 357 So. 2d 626 (La. Ct. App. 1978); *Raton Public Service Co. v. Hobbes*, 417 P.2d 32 (N.M. 1966).

The mere receipt of a grant of public money does not by itself transform a private, nonprofit civic organization into a "public body" for purposes of the Open Meeting Law, nor does the membership of a few government officials on the organization's board of directors, *per se*, make the organization a "public body." *See* OMLO 2004-03 (February 10, 2004) and OMLO 2004-20 (May 18, 2004). A private, non-profit corporation is a public body if it is formed by a public body, acts in an administrative, advisory and executive capacity in performing local governmental functions, and is supported in part by tax revenue from the public body. *See* OMLO 2001-17 (April 12, 2001); *but see* AG File No. 10-051 (January 4, 2011)(non-profit corporation did not act in administrative, advisory, or executive capacity nor was it supported in part by tax revenue).

§ 3.10 Quasi-judicial proceedings

The 2011 Legislature subjected all public body meetings of a quasi-judicial nature to the OML. Only meetings of the Parole Board of Commissioners are exempt, but only when acting to grant, deny, continue, or revoke parole of a prisoner, or when modifying the terms of the parole of a prisoner.

"Quasi-judicial proceedings are those proceedings having a judicial character that are performed by administrative agencies." *Stockmeier v Nev. Dep't of Corr. Psychological Review Panel*, 122 Nev. 385, 390 (2006). The Court in *Stockmeier* stated that an administrative body acts in a quasi-judicial manner when it refers to a proceeding as a trial, takes evidence, weighs evidence, and makes findings of fact and conclusions of law from which a party may appeal an adverse decision to a higher authority. *Id*. at 391-92. The *Stockmeier* Court *citing Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983), stated that "'the taking of evidence only upon oath or affirmation, the calling and examining of witnesses on any relevant matter, impeachment of any witness, and the opportunity to rebut evidence presented against the employee' was 'consistent with quasi-judicial administrative proceedings.'''

Part 4 WHAT ACTIVITIES ARE EXEMPT FROM THE OPEN MEETING LAW?

§ 4.01 General

The opening clause in NRS 241.020(1) provides that the Open Meeting Law applies "except as otherwise provided by specific statute." The word "specific" is an important one. The Nevada Supreme Court is reluctant to imply exceptions to the rule of open meetings. *See McKay v. Bd. of County Comm'rs.*, 103 Nev. 490, 746 P.2d 124 (1987). *See also* Op. Nev. Att'y Gen. No. 150 (November 8, 1973).

Some public body proceedings or hearings are exempt from the Open Meeting Law by specific statute, or it may have a limited statutory exception from the OML. A non-exclusive list of exempt entities is set out below in § 4.02.

Exemption means that certain public business may be conducted without regard to any requirement of the Open Meeting Law because the Legislature has weighed the benefits of secrecy with the OML's policy of openness, while other statutes merely allow certain activities to be closed to the public. These statutes create exceptions to the OML, but a public body must still record and keep minutes of closed meetings under statutes allowing for exceptions. The distinction is important because openness is still the norm; openness will be strictly enforced, so a public body must ensure that its statute either creates an exemption or an exception, because the OML still applies to exceptions. Any action taken in violation of the Open Meeting Law is void. But even though some statutes permit or require "deliberations" of certain matters to be closed to the public, that statutory authority does not necessarily imply that action taken after deliberations is exempt from the Open Meeting Law.

The distinction is sometimes obfuscated by statutory language that is not as specific as contemplated by NRS 241.020(1). In those cases, interpretation of the statutes should be employed using the standards discussed in Part 12 of this manual.

Because the OML still applies to all public body activities outside its statutory exception, a government body advising the public body may not be estopped from performing its governmental function even where the public body had wrongly interpreted the exception for several years. The Nevada Supreme Court in *Chanos v Nevada Tax Comm'n.*, 124 Nev. 232, 238, 181 P.3d 675, 679 (2008) *citing, Foley v. Kennedy*, 110 Nev. 1295, 1302, 885 P.2d 583, 587 (1994), after review of legislative intent, decided that the Nevada Tax Commission's statutory exception had not been correctly applied to taxpayer refund applications, despite earlier advice from the Attorney General's office that its hearing procedure was in violation of the OML. The Attorney General brought suit against the Tax Commission. The Supreme Court held that the statutory exception (NRS 360.247) allowed the Tax Commission to close only the portion of its hearing at which it received confidential evidence, questioned parties, and heard argument concerning confidential information. The Court found an OML violation even after a lengthy period of

misinterpretation resulting in closed meetings upon only a request by an affected taxpayer. The Court also held that estoppel does not apply to estop the Attorney General from enforcing an interpretation of the OML, which may have been contradictory with past practices at the Nevada Tax Commission for two reasons: first, the Tax Commission and Edison (defendants) failed to prove that they were ignorant of the true state of the facts, and, secondly, a government body may not be estopped from performing its governmental function.

Below is a discussion of some governmental body proceedings, meetings, and other activities that are statutorily exempt from the Open Meeting Law, and some that are not.

§ 4.02 Statutory exemptions

The following public body proceedings, meetings and hearings are either exempt from the Open Meeting Law or the public body has an exception under the statutes cited. Because the statutes may change after the printing of this manual, be sure to check the statutes and make sure all the conditions or requirements of the statutes are followed.

Should a body choose to conduct any of these proceedings as part of an open meeting, the Office of the Attorney General recommends the proceedings be included on the agenda as an exempt proceeding, citing the provision that provides the exemption; but the exemption from the open meeting requirements still applies to the proceeding whether or not the exemption was placed on the agenda.

Judicial Proceedings	*See* NRS 241.030(3)(a), and *Goldberg v. Eighth Judicial District Court*, 93 Nev. 614, 572 P.2d 521 (1977). Note that since the definition of "public body" under NRS 241.015(3) does not include a judicial body, it appears the Open Meeting Law does not apply to the Judicial Selection Commission and the Commission on Judicial Discipline.
Legislature	NRS 241.015(3) excludes the Legislature from the definition of public body. *See* Article 4 § 15 of the Nevada Constitution. *See* discussion in § 3.05.
State Ethics Commission	Meetings or hearings to receive information or evidence concerning the propriety of the conduct of any public officer or employee under NRS Chapter 281 are exempt under NRS 281.511(13).
Local Ethics	NRS 281.541 provides a specific statutory exception to the Open Meeting Law that allows a local ethics committee to render a confidential opinion to an elected city councilperson. *See* Op. Nev. Att'y Gen. No. 94-10 (May 24, 1994).

	A local ethics board may not meet in closed session to discuss the past conduct of a public official due to lack of a statutory exception to the open meeting requirements. *See* Op. Nev. Att'y Gen. No. 94-21 (July 29, 1994).
Hearings by public school boards to consider expulsion of pupils; hearings by charter school boards to consider expulsion of pupils	*See* NRS 392.467(3), *Davis v. Churchill County School Board*, 616 F. Supp. 1310 (D. Nev. 1985), and OMLO 99-04 (January 11, 1998); s*ee* NRS 386.585(2).
Certain labor negotiations proceedings	The following proceedings conducted under NRS Chapter 288 are exempt: (1) any negotiation or informal discussion between a local government employer and an employee organization or individual employees whether conducted by the governing body or through a representative or representatives; (2) any meeting of a mediator with either party or both parties to a negotiation; (3) any meeting or investigation conducted by a fact finder; (4) any meeting of the governing body of a local government employer with its management representative or representatives, and (5) deliberations of the board toward a decision on a complaint, appeal or petition for declaratory relief. *See* NRS 288.220. b*ut see AG File No. 10-020 (June 22, 2010)* Even exempt meetings should be limited by statutory authority. The legislative intent underlying an exemption is to allow these meetings as long as the meetings confine discussion to negotiations between local government employer and an employee organization and/or the defined exceptions in NRS 288.220. Exempt meetings cannot be used to circumvent the legislative intent expressed in NRS 241. Exempt meetings under NRS 288.220 cannot be used as a shield to improperly discuss persons or any other issue not within the scope of the exemption.
Nevada Commission on Homeland Security	239C.140(2) states: The Commission may hold a closed meeting to: (a) Receive security briefings;

	(b) Discuss procedures for responding to acts of terrorism and related emergencies; or (c) Discuss deficiencies in security with respect to public services, public facilities and infrastructure, if the Commission determines, upon a majority vote of its members, that the public disclosure of such matters would be likely to compromise, jeopardize or otherwise threaten the safety of the public.
Committee on Catastrophic Leave	A meeting or hearing held by the Committee to carry out the provisions of this section (an appeal of the appointing authority) and the Committee's deliberations on the information or evidence received are not subject to any provision of chapter 241 of NRS. *See* NRS 284.3629(7).
Committees formed to present arguments on ballot questions.	Committees created pursuant to NRS 295.121 to present the arguments on a ballot question are exempt from the Open Meeting Law. *See* NRS 295.121(13) and Op. Nev. Att'y Gen. 2000-18 (June 2, 2000).
Board of Medical Examiners	Any deliberations conducted or vote taken by the Board or any investigative committee of the Board regarding its ordering of a physician, physician assistant or practitioner of respiratory care to undergo a physical or mental examination or any other examination designated to assist the Board or committee in determining the fitness of a physician, physician assistant or practitioner of respiratory care are not subject to the requirements of NRS 241.020. *See* NRS 630.336(1).
Occupational Licensing Boards Nevada Tax Commission	NRS 622.320 states: 1. The provisions of NRS 241.020 do not apply to proceedings relating to an investigation conducted to determine whether to proceed with disciplinary action against a licensee, unless the licensee requests that the proceedings be conducted pursuant to those provisions. 2. If the regulatory body decides to proceed with disciplinary action against the licensee, all proceedings that are conducted after that decision and are related to that disciplinary action are subject to the provisions of NRS 241.020.

> NRS 360.247 states:
> 1. Except as otherwise provided in this section, any appeal to the Nevada Tax Commission which is taken by a taxpayer concerning his or her liability for tax must be heard during a session of the Commission which is open to the public. Upon request by the taxpayer, a hearing on such an appeal must be closed to the public to receive proprietary or confidential information.

§ 4.03 Certain confidential investigative proceedings of the Gaming Control Board and Commission

NRS 463.110(2) holds that all meetings of the Gaming Control Board are open to the public except for investigative hearings that may be conducted in private at the discretion of the board or hearing examiner. NRS 463.110(4) holds that investigative hearings of the board or hearing officer may be conducted without notice.

Also, the Office of the Attorney General opined in Op. Nev. Att'y Gen. No. 150 (November 8, 1973) that certain investigative proceedings involving the Gaming Commission receiving information that is confidential by law may be exempt from the Open Meeting Law up to the point where the proceeding moves into deliberations or taking action. *See* Op. Nev. Att'y Gen. No. 150 (November 8, 1973). *Cf. Marston v. Gainesville Sun Publishing Co., Inc.*, 341 So. 2d 783 (Fla. Dist. Ct. App. 1976).

§ 4.04 Quasi-judicial proceedings no longer exempt from OML

Assembly Bill 59, 2011 made all meetings of a public body that are quasi-judicial in nature subject to the OML. Only the Nevada Board of Parole Commissioners is exempt, but only when acting to grant, deny, continue, or revoke parole for a prisoner or to establish or modify the terms of the parole of a prisoner.

§ 4.05 Attorney-client non-meeting

NRS 241.015(2)(b)(2) excepts from the definition of "Meeting," for purposes of the Open Meeting Law, a meeting of a quorum of a public body "[t]o receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both."

A non meeting held for the purpose of having an attorney-client discussion of potential and existing litigation pursuant to NRS 241.015(2)(b)(2) is not a meeting for purposes of the Open Meeting Law and does not have to be open to the public. In fact, no agenda is required to be posted and no notice is required to be provided to any member of the

public. *See* OMLO 2002-21 (May 20, 2002). However, the Office of the Attorney General advises that if the public body interrupts its meeting to conduct a non-meeting with its legal counsel, the public body should place this interruption of the open meeting on the agenda to avoid any confusion. *See* § 5.11 of this manual for more information regarding non-meetings to confer with counsel.

It is important to note that a public body may deliberate, which is "to examine, weigh and reflect upon the reasons for or against the choice," which connotes collective discussion in an attorney-client conference. *See Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003), OMLO 2001-09 (March 28, 2001) and OMLO 2002-13 (March 22, 2003). However, NRS 241.015(2)(b)(2) does not permit a public body to take action in an attorney-client non meeting.

§ 4.06 Student governments

NRS 241.038 requires the Board of Regents of the University of Nevada to establish requirements equivalent to the Open Meeting Law for student governments in the University and Community College System and provide for their enforcement. *See* OMLO 2004-09 (March 19, 2004) where the Office of the Attorney General opined that pursuant to NRS 241.038 it did not have jurisdiction to investigate or enforce an alleged violation by the UNLV Rebel Yell Advisory Board.

§ 4.07 Pre-meeting discussion to remove or delay discussion of items from agenda

The Nevada Supreme Court decided that pre-meeting discussions by a public body to remove an item from its agenda did not violate the OML because a public body may remove or refuse to consider an agenda item at any time, therefore, pre-meeting discussions regarding whether to remove an agenda item do not implicate the OML. *Schmidt v. Washoe County and the Washoe County Board of County Commissioners*, 123 Nev. 128, 135, 159 P.3d 1099, 1104 (2007).

See, NRS 241.020(2)(c)(6)(iii)(public body may remove an item from its agenda at any time.)

Part 5 WHAT GATHERINGS MUST BE CONDUCTED IN COMPLIANCE WITH THE OPEN MEETING LAW?

---

§ 5.01 General; statutory definitions

NRS 241.015(2)(a)(1) and (2) define "meeting" as:

> (1) The gathering of members of a public body at which a quorum is present to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.
> (2) Any series of gatherings of members of a public body at which:
> (I) Less than a quorum is present at any individual gathering;
> (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and
> (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

As discussed in §4.05, NRS 241.015(2) excludes from the definition of meeting:

> Any gathering or series of gatherings of members of a public body, as described in paragraph (a), at which a quorum is actually or collectively present:
> (1) Which occurs at a social function if the members do not deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.
> (2) To receive information from the attorney employed or retained by the public body regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both.

Some of the key words in that definition are:

"Gathering" In Op. Nev. Att'y Gen. No. 85-19 (December 17, 1985), the Office of the Attorney General defined "gathering" to mean to bring together, collect, or accumulate and to place in readiness. Accordingly, a "gathering" of members of a public body within the conception of an open meeting would include any method of collecting or accumulating the deliberations or decisions of a quorum of these members.

"Quorum" A "quorum" of a public body is defined in NRS 241.015(4) as a simple majority of the constituent membership of a public body or another proportion established by law.

"Present" The Office of the Attorney General believes the term "present" means being in view or immediately at hand, being within reach, sight or call, being in a certain place and not elsewhere, ready at need. Presence may be either actual or constructive and a quorum of the membership of a public body is constructively present whenever the attendant acts, circumstances, and conduct demonstrate that the members should be deemed by the law as being together for the purpose of conducting the business of the public. Op. Nev. Att'y Gen. No. 85-19 (December 17, 1985).

"Deliberate" To "deliberate" is to examine, weigh, and reflect upon the reasons for or against the choice. . . . Deliberation thus connotes not only **collective discussion**, but also the **collective acquisition** or the exchange of facts preliminary to the ultimate decision. *See Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003) and *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 69 Cal. Rptr. 480 (Cal. Ct. App. 1968) discussed in § 5.02 below. *See* OMLO 2010-06 (September 10, 2010) (collective deliberation is required to constitute a meeting of Board of School trustees.

"Action" Under NRS 241.015(1), "action" means: (a) a decision made by a majority of the members present during a meeting of a public body; (b) a commitment or promise made by a majority of the members present during a meeting of a public body; (c) if a public body may have a member who is *not* an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body; or (d) if all the members of a public body *must* be elected officials, an affirmative vote taken by a majority of all the members of the public body.

Application of the definitions to common circumstances follows.

§ 5.02 Informal gatherings and discussions that constitute deliberation

The Nevada Supreme Court cited *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, (see § 5.01 above, for citation) for clarification of the meaning of "deliberation." All five members of the Sacramento County Board of Supervisors went to a luncheon gathering with the county counsel, a county executive, the county director of welfare, and some AFL-CIO labor leaders to discuss a strike of the Social Workers Union against the county. Newspaper reporters were not allowed to sit in on the luncheon, and litigation resulted. The board of

supervisors contended that the luncheon was informal and merely involved discussions that were neither deliberations nor actions in violation of California's open meeting law.

The California Court of Appeals disagreed and upheld an injunction against the board, ruling that California's open meeting law extended to informal sessions or conferences designed for discussion of public business. Among other things, the Court observed:

> "Recognition of deliberation and action as dual components of the collective decision-making process brings awareness that the meeting concept cannot be split off and confined to one component only, rather it comprehends both and either."
>
> "To **deliberate is to examine, weigh and reflect upon the reasons for or against the choice. . . . Deliberation thus connotes not only collective discussion, but the collective acquisition or the exchange of facts preliminary to the ultimate decision**."
>
> "An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. **There is rarely any purpose to a nonpublic, pre-meeting conference except to conduct some part of the decisional process behind closed doors**. Only by embracing the collective inquiry in discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, disposing it to the very evasions it was designed to prevent. Construed in light of the Brown Act's objectives, **the term "meeting" extends to informal sessions or conferences of board members designed for the discussion of public business.** The Elks Club luncheon . . . was such a meeting."

Id.

There are important objectives to be achieved from requiring the deliberations and actions of public agencies to be open and public. As stated in the article Access to Government Information in California:

> "The goal in requiring that deliberations take place at meetings that are open and public is that committee members make a conscientious effort to hear viewpoints on each issue so that the community can understand on what their premises are based, add to those premises when necessary, and intelligently evaluate and participate in the process of government."

54 Cal. L. Rev. 1650 (1966).

The Office of the Attorney General agrees with the foregoing and believes that if a majority of the members of a public body should gather, *even informally*, to discuss any matter over which the public body has supervision, control, jurisdiction, or advisory power, it must comply with the Open Meeting Law. *Cf.* Op. Nev. Att'y Gen. No. 241 (August 24, 1961), and Op. Nev. Att'y Gen. No. 380 (January 1, 1967), certain aspects of which were written before the statutory definition of "meeting" was established.

For an example of the foregoing discussion of informal meeting:

A quorum of the City Council discussed public business with a volunteer firefighter. Two members constituted a quorum of the City Council and these two were employed by the same employer. However, after interview with the witness firefighter, no evidence was uncovered which indicated that a commitment or promise about a matter within the City Council's supervision, control, jurisdiction, or advisory power had been made. Warning was issued to the Council. AG File No. 08-003 (April 7, 2008).

Under some city charters, the mayor is not a member of the city council, and the mayor's powers are usually limited to a veto or casting a tie-breaking vote. In such cases, the presence of the mayor is not counted in determining the presence of a quorum of the council. *See* Op. Nev. Att'y Gen. No. 2001-13 (June 1, 2001).

§ 5.03 Social gatherings

Nothing in the Open Meeting Law purports to regulate or restrict the attendance of members of public bodies at purely social functions. A social function would only be reached under the law if it is scheduled or designed, at least in part, for the purpose of having a majority of the members of the public body deliberate toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction, or advisory power. As described by the California Court of Appeals in *Sacramento Newspaper Guild, supra* at § 5.02:

> There is a spectrum of gatherings of public agencies that can be called a meeting, ranging from formal convocations to transact business to chance encounters where business is discussed. However, neither of these two extremes is an acceptable definition of the statutory word "meeting." Requiring all discussions between members to be open and public would preclude normal living and working by officials. On the other hand, permitting secrecy, unless there is a formal convocation of a body, invites evasion. Although one might hypothesize quasi-social occasions whose characterization as a meeting would be debatable, the difference between a social occasion and one arranged for pursuit of the public's business will usually be quite apparent.

The definition of meeting now explicitly excludes a gathering or series of gatherings of members of a public body at which a quorum is actually or collectively present which occurs at a social function, if the members do not deliberate toward a decision or take

action on any matter over which the public body has supervision, control, jurisdiction or advisory power. *See* NRS 241.015(2)(b)(1).

§ 5.04 Seminars, conferences, conventions

When a majority of the members of a public body attend a state or national seminar, conference, or convention to hear speakers on general subjects of interest to public officials or to participate in workshops with their counterparts from around the state or nation, it usually may be assumed they are there for the purpose of general education and social interaction and not to conduct meetings to deliberate toward a decision or to take action on any matter over which their public body has supervision, control, jurisdiction, or advisory power, even if presentations at the seminar touch on subjects within the ambit of the public body's jurisdiction or advisory power. Thus, such seminars, conferences and conventions do not fall under the definition of "meeting" found in NRS 241.015(2). However, should the gathering have the purpose of or in fact exhibit the characteristics of a "meeting" as defined in NRS 241.015(2), then the provisions of the Open Meeting Law apply. *See* Op. Nev. Att'y Gen. 2001-05 (March 14, 2001).

§ 5.05 Telephone conferences/video conferences

Nothing in the Open Meeting Law prohibits a quorum of the members of a public body from deliberating toward a decision or taking action on public business via a telephone conference call or video conference in which they are simultaneously linked to one another telephonically. However, since this is a "meeting," the notice requirements of the Open Meeting Law must be complied with and the public must have an opportunity to listen to the discussions and votes by all the members through a speaker phone or video conference equipment. This may be accomplished by including in the meeting notice the location and address of a place where members of the public may appear and listen to the meeting discussion over a telephone speaker device or other electronic media. *See Del Papa v. Board of Regents of the Community College System of Nevada*, 114 Nev. 388, 956 P.2d 770 (1998) for a discussion regarding the applicability of the Open Meeting Law to a public body's use of telephones, fax machines and other electronic devices to deliberate and/or take action.

Although a telephone conference may be a lawful method of conducting the public's business, it should never be used as a subterfuge to avoid compliance with the Open Meeting Law and its stated intent that the actions of public bodies are to be taken openly and their deliberations conducted openly. NRS 241.030(4).

§ 5.06 Electronic polling

NRS 241.030(4) specifically provides that electronic communications must not be used to circumvent the spirit or letter of the Open Meeting Law in order to discuss or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory powers.

This statute applies to telephone polls (unless done as a part of an open meeting as discussed above), and to polls by facsimile or e-mail.

In *Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998), the Chairman of the Board of Regents of the University of Nevada sent by facsimile a draft advisory to all but one regent rebutting public statements made by that regent to the press. The draft advisory was accompanied by a memo requesting feedback on the advisory and sought advice from the other regents on whether to release the advisory to the press. The memo stated that no press release would occur without board approval. Of the ten regents who received the fax, five responded in favor of releasing the advisory, one wanted it released under the chairman's name only, one was opposed, two had no opinion, and one did not respond. The regents who responded did so by telephone calls to either the chairman or the interim director of public information for the University. In finding that the Board violated the Open Meeting Law by deciding whether to release the draft advisory privately by "facsimile" and telephone rather than by public meeting, the Nevada Supreme Court stated:

> [A] quorum of a public body using serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory power violates the Open Meeting Law. That is not to say that in the absence of a quorum, members of a public body cannot privately discuss public issues or even lobby for votes. However, if a quorum is present, or is gathered by serial electronic communications, the body must deliberate and actually vote on the matter in a public meeting.

Id. at 400.

Where two county commissioners (three were a quorum) discussed the termination of the County Manager between themselves, the OML was not offended because no other commissioner acknowledged discussion about termination with them. The failure to create a constructive quorum barred application of the OML. AG File No. 07-011 (June 11, 2007); NRS 241.015(2) sets the serial communication bar at "collective deliberations or actions" (exchange of facts that reflect upon reasons for or against the choice) involving a quorum of members of a public body. *Dewey* 119 Nev. at 87. *See* also AG File No. 07-015 (September 10, 2007) (allegation that Board of School Trustees created constructive quorum through emails and private meetings).

§ 5.07 Mail polls

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

§ 5.08 Serial communications, or "walking quorums"

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

Nevada is a "quorum state," which means that the gathering of less than a quorum of the members of a public body is not within the definition of a meeting under NRS 241.015(2). Where less than a quorum of a public body participates in a private briefing with counsel or staff prior to a public meeting, it may do so without violating the Open Meeting Law. *Dewey* 119 Nev. at 99, 64 P.3d at 1078.

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

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

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

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

> [A] quorum of a public body using serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory power violates the Open Meeting Law. *That is not to say that in the absence of a quorum, members of a public body cannot privately discuss public issues or even lobby for votes*. (Emphasis added.)

Del Papa, 114 Nev. at 400, 956 P.2d at 778.

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

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

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

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

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

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

On appeal, the Nevada Supreme Court stated, "[W]e have . . . acknowledged that the Open Meeting Law is not intended to prohibit *every* private discussion of a public issue. Instead, the Open Meeting Law only prohibits collective *deliberations* or *actions* where a quorum is present." (Emphasis added.) *Dewey*, 119 Nev. at 94–95, 64 P.3d at

1075. The Court stated, in part, that deliberations meant the collective discussion by a quorum. (*See* §5.01 *infra* for the full definition of deliberations.) Since a quorum of the Agency did not attend the back-to-back briefings, a collective discussion equaling deliberations could not have occurred. In order for a constructive quorum to exist, the Agency members or staff would have to participate in serial communications. The trial court shifted the burden to the Agency to prove that the Agency did not participate in serial communications. The Supreme Court held that shifting the burden was inappropriate because a quorum of the public body did not attend the briefings. Thus, the burden was on Dewey to provide substantial evidence that the Agency conducted serial communications.

The Court then reviewed the record to determine whether substantial evidence existed to prove serial communications occurred. The Court stated that the record did not provide substantial evidence that the Agency member's thoughts, questions, or opinions from one briefing were shared with the members of the other briefing. There was also no evidence of polling by the Agency's staff to determine the opinions or votes of the Agency's members. Further, there was no evidence in the record that the briefings resulted in the Agency taking action or deliberating on the issue. Finally, the record indicated that the Agency's staff intended to comply with the Open Meeting Law in conducting the briefings in the non-quorum back-to-back fashion. As a result, the Court held that substantial evidence did not exist to prove the briefings resulted in serial communications creating a constructive quorum, and that the Agency's back-to-back briefings were not "meetings" for purposes of the Open Meeting Law.

Further citations illustrating the discussion above:

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

See OMLO 2004-26 (July 21, 2004) for an example of "serial communications" in violation of the Open Meeting Law, and *see* OMLO 2003-11 (March 6, 2003) for an analysis finding no "serial communication" consistent with *Dewey*.

See OMLO 2008-010: Public body quorum met to discuss District business immediately following adjournment of noticed meeting. The meeting had been arranged without notification to the public that a quorum would remain after adjournment of the regularly scheduled meeting. The fact that the meeting only concerned discussion of matters not appearing on a public body's agenda did not exempt the discussion from the application of the OML. OML is applicable whenever a quorum of a public body deliberates or takes action on any matter over which the public body has supervision, control, jurisdiction or advisory power. AG File No. 08-010 (July 23, 2008); AG File No. 08-035 (November 17, 2008) (two members of public body were mistaken in their belief that a quorum can only be achieved by a physical gathering of a quorum at the same time and place.)

§ 5.09 "Private Briefings" among staff of public body and non-quorum of members

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

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

The Office of the Attorney General believes that the Open Meeting Law applies even if the meeting occurs outside of Nevada.

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

See also § 4.05, Attorney-Client conferences.

When meeting outside the jurisdictional boundaries of the public body, all requirements of the Open Meeting Law must be met. For example, minutes must be kept, and a clear and complete agenda must be properly noticed.

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

§ 5.11 Non-meetings to confer with counsel

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

Now, the public body's attorney no longer needs to engage in a series of gatherings when it is necessary to provide information regarding litigation or potential litigation to his client. In addition, the law specifically allows the members to deliberate, but not act, on information obtained from its counsel in the non-meeting. *See* § 4.05 *supra*.

The receipt of information from the attorney and deliberation may both occur in the non-meeting." However, any decision must be made in public at the reopened meeting. The agenda *should note* that the public body would interrupt the open meeting and exclude the public from the meeting for the limited purpose of receiving the information

and for deliberation. (Emphasis added.) The meeting must be recommenced in order to take action.

Alternatively, the public body may gather with the attorney at times other than the time noticed for a normal meeting. In such instances, there is no notice or agenda required. However, the usual notice and agenda will be required in order to later convene an open meeting in order to take action on the information received from the attorney. A decision on whether to settle a case or to make or accept an offer of judgment must be made in an open meeting. *See* OMLO 2002-21 (May 20, 2002).

Some or all members of a public body may now attend non-meeting conferences without complying with the notice requirements for an open meeting because such gatherings are not within the definition of "meeting." NRS 241.015(2)(B)(2).

However, where confidential communication between the counsel and a quorum of a public body is sought to be protected from disclosure by holding a non-meeting, but the communication does not concern litigation or potential litigation, the Nevada Supreme court has rejected protection of this gathering from the OML. [*see* § 4.02 for examples of other statutory exemptions from the OML] The court rejected protection of a closed meeting from the OML simply because a public body was meeting with its counsel. The Open Meeting Law bans closed meetings in all cases not specifically excepted by statute. *McKay*, 103 Nev. at, 495–496, 746 P.2d at 127–128; NRS 241.020(1).

Unless a public body has specific statutory authority to meet in closed session with its attorney, then regardless of whether the meeting concerned a confidential communication, the communication may not be heard in closed session. NRS 241.020(1) (closure of meeting may not exceed the scope of specific statutory authority). The Supreme Court explained that the OML requires strict adherence: "Any detriment suffered by the public body in this regard [inability to meet with counsel in closed session to share confidential information] must be assumed to have been weighed by the Legislature in adopting this legislation. The Legislature has made a legitimate policy choice – one in which this court cannot and will not interfere." *Id*. at 103 Nev. At 496, 746 P.2d at 127.

§ 5.12 Meetings held with another public body

Whenever a quorum of a public body gathers and collectively discusses, deliberates or takes action on matters over which the body has supervision, control, jurisdiction, or advisory power, a meeting of that body takes place within the meaning of NRS 241.015(2) even if the public body is meeting with another public body at the same time and place. A meeting of two or more public bodies must be conducted in accordance with the Open Meeting Law and each public body must give notice of its meeting even if the meeting is also publicly noticed as a meeting of another public body. *See* Op. Nev. Att'y Gen. No. 2001-05 (March 14, 2001). Notice of meeting of each public body may utilize one agenda, combined to indicate to the public that two or more public bodies are meeting and may take action separately.

However, even if a quorum of a parent public body attends a meeting of its own standing subcommittee, where the quorum of the parent body merely listens, does not participate, does not ask questions, does not deliberate, and does not take action or collectively discuss any matter within the parent's jurisdiction or control, no meeting within the meaning of NRS 241.015(3) has occurred and no violation of the OML has occurred. OMLO 2010-06 (September 10, 2010).

§ 5.13 Appointment of Public Officer

NRS 241.031 prohibits a closed meeting for the purpose of appointing a public officer or a person to a position for which the person serves at the pleasure of a public body. Public officer is defined in NRS 281.005 to mean a person elected or appointed to a position which: (a) is established by the Constitution or a statute of this State, or by a charter or ordinance of a political subdivision of this State; and (b) involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty." *University and Community College System of Nevada v. DR Partners*, 117 Nev. 195, 201, 18 P.3d 1042, 1046 (2001)(NRS 281.005 is in harmony with judicial definition of "public officer"). For further treatment of this issue *see § 9.05 infra: A*ppointment to public office; closed meeting prohibition. *See* NRS 281A.160, Ethics in Government, for a similar definition of public officer which also clarifies the scope of the phrase, "public power, trust or duty."

The OML prohibits holding a closed meeting for the discussion of the appointment of any person to public office, or appointment as a member of a public body. If a public body participates in any part of the selection process for the position of public officer or for a person who serves at the pleasure of the public officer, or for the appointment of a person to a public body, then all discussion of the appointment process must occur in a public meeting. NRS 241.030(5)(e). In *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989) the Court stated that the phrase "discussion of appointment" in NRS 241.030(5)(e) means "all consideration, discussion, deliberation, and selection" of a public officer or one who serves at the pleasure of a public body.

The Nevada Supreme Court explicitly stated that the OML applies only to an appointment process conducted by a public body. The Fernley City Council is a public body, but the citizen recruitment committee formed by the Mayor was not a public body. The Open Meeting Law did not apply to it and consequently complainant's demand for access to all the original candidates' applications and resumes is not supported by the OML. AG File No. 09-026 (June 14, 2009).

Where the remaining members of a public body selected the new member to fill a vacancy following the resignation of one member, no OML violation occurred where there was no discussion among the members of the public body before it voted on appointment of the new member. NRS 241.015 does not require verbal discussion, assessment, or verbal deliberation among the members of a public body before it takes action. NRS 241.015 states that a meeting occurs where a public body deliberates **or**

takes action. The Legislature intended that deliberations be conducted openly, but it did go so far as to void action in the absence of verbal discussion or deliberation by members prior to action. AG File No. 09-029 (November 4, 2009).

Part 6 WHAT ARE THE NOTICE REQUIREMENTS UNDER THE OPEN MEETING LAW? (*See* Sample Forms 1 and 3)

---

§ 6.01 General

The right of citizens to attend open public meetings is greatly diminished if they are not provided with an opportunity to know when the meeting will take place and what subject or subjects will be considered. One of the primary objectives of the Open Meeting Law is to allow members of the public to make their views known to their representatives on issues of general importance to the community. This type of communication would be impossible if the public were denied the opportunity to appear at the meeting through lack of knowledge that a meeting would be held.

Except in an emergency, written notice of all meetings of all public bodies must be posted in at least four places within the jurisdiction of the public body and mailed at least three working days before the meeting is to occur as specified below.

Details about how the notice is to be prepared, posted, and mailed are discussed below. **A sample form of a notice is included as Sample Form 1.** This sample is intended only as a sample, and public bodies may use whatever form or format they wish.

In S*andoval v. The Board of Regents*, 119 Nev. 148, 150, 67 P.3d 902, 903 (2003), the Supreme Court of Nevada stated that Nevada's Open Meeting Law "clearly includes stringent agenda requirements." *See* § 7.02.

Additionally, NRS 241.033 requires personal notice be given to individuals whose character, alleged misconduct, professional competence, or physical or mental health are to be considered at a meeting. *See* § 6.09.

NRS 241.034 requires personal notice must also be given to individuals against whom the public agency is going to take certain administrative actions or from whom real property will be taken by eminent domain. *See* § 6.10.

§ 6.02 Contents of notice including new 2011 mandatory notice requirements. (*See* Sample Form 1)

I. The 2011 Legislature made significant revisions to agenda notice requirements. NRS 241.020(2)(c)(6) and (7). These important agenda notice requirements are mandatory and must appear on every public body agenda.

NRS 241.020(2)(c)(6) and (7) require certain notifications on every agenda, including important information for the public. The purpose of these mandatory requirements is to inform the public about how the public meeting will be conducted, what they may expect and how and when public comment will be allowed.

NRS 241.020 requires:

- Placing the phrase "for possible action" next to the appropriate agenda item. It is no longer appropriate to indicate "action" items with an asterisk.

- Notice on the agenda that:
  (1) Items may be taken out of order;
  (2) Items may be combined for consideration by the public body; and
  (3) Items may be pulled or removed from the agenda at any time.

- Notice to the public of reasonable restrictions on time, place, and manner of public comment and notice that comment based on viewpoint may not be restricted.

<u>The requirements set out above are mandatory.</u>

II. Multiple periods of public comment; Minimum requirements.

Section 1 of AB 257 amended NRS 241.020 to require that public bodies adopt one of two alternative public comment agenda plans.

First, a public body may comply with the new requirement by agendizing one public comment period before any action items are heard by the public body <u>and then</u> provide for another period of public comment before adjournment.

The second alternative also involves multiple periods of public comment but only after discussion of each agenda action item and before the public body takes action on the item.

Finally, regardless of which alternative is selected, the public body must allow the public time to comment on any matter not specifically included on the agenda as an action item some time before adjournment.

A public body may combine these two public comment alternatives, or take portions of one to add to the requirements of the other. NRS 241.020(2)(c)(7) represents the minimum Legislative requirements regarding public comment.

III. Subjects the meeting notice must include:

- The time, place, and location of the meeting. *See* OMLO 2004-27 (July 13, 2004) where the Office of the Attorney General opined that starting a meeting late after staff took extraordinary measures to ensure that the public received notice that the meeting would start late was not a violation of the Open Meeting Law.

- A list of locations where the notice has been posted. *See*, e.g., OMLO 99-06 (March 19, 1999).

- An agenda consisting of:

  (1) A clear and complete statement of the topics scheduled to be considered during the meeting. *See* § 7.02.

  (2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items, by placing next to the item on the agenda the phrase "for possible action". It is no longer sufficient to place "action" next to the item or to place an asterisk next to the item to signify an action item. The phrase "for possible action" must be used. *See*, e.g., OMLO 2003-13 (March 21, 2003).

  (3) Multiple periods of public comment: one before any action item and one before adjournment, and discussion of those comments, if any. NRS 241.020(2)(c)(3) alternatively allows the public body to hear comment prior to taking action on each and every agenda action item. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken. *See*, e.g., OMLO 2003-13 (March 21, 2003).

  (4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the name of the person whose character, alleged misconduct or professional competence will be considered. NRS 241.020(2)(c)(4)

  (5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken. 241.020(2)(c)(5)

IV. Accommodation for members of the public with physical disabilities

In addition an agenda must inform the public that the public body and employees responsible for the meeting shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend a meeting. *See* NRS 241.020(1). The notice should include the name and telephone number of a person who may be contacted so arrangements can be made in advance to avoid last minute problems. *See* § 7.02 of this manual for guidance in preparing the agenda.

§ 6.03 Posting the notice

NRS 241.020(3)(a) requires:

A copy of the notice must be posted in at least four places not later than 9 a.m. of the third working day before the meeting.

The notice must be posted at the principal office of the public body, or if there is no such office, then at the building in which the meeting is to be held.

The notice must be posted at a minimum of three other separate, prominent places within the jurisdiction of the public body. Thus, a state agency must post in at least three prominent places within the state, and a local government must post in at least three prominent places within the jurisdiction of the local government (e.g., county, city, town, etc.).

The notice must be posted in "prominent" places. The statute does not define "prominent," and whether a notice is properly posted must be judged on the individual circumstances existing at the time of the posting. As a general proposition, the Office of the Attorney General offers the following suggestions:

- Try to post the notices in places where they can be read or obtained by members of the public and media who seek them out.

- Unless required by the statute, avoid posting the notices in buildings that will be closed during the notice period.

- If the meeting concerns a regulated industry or profession, post additional notices at trade or professional associations for the industry.

- Community bulletin boards at city halls and county administration buildings may be used.

- Supplemental notice on the Internet is required if the public body maintains an Internet website. NRS 241.020(4). A public body is not required to create a website if it does not already have one. Inability to post notice of a meeting on its website as a result of a technical problem is not a violation of the law. Website notice is not a substitute for the minimum notice required by NRS 241.020(3). *See* OMLO 2004-16 (May 6, 2004) in which this office opined that a public body, which usually posted its agenda on the website of another government agency or public body, did not violate the Open Meeting Law when it failed to post its agenda on that website because it did not "maintain" the website.

The Office of the Attorney General also suggests that the person posting the required notices routinely execute a simple "certificate of posting" indicating the time the notice was posted, its location and signed by the person actually posting the notice. This

certificate should be retained by the public body as proof that this requirement of law was satisfied.

§ 6.04 Mailing the written notice; mailing list

In addition to posting the notice, a public body must mail a copy of the notice to any person who has requested notice of meetings. NRS 241.020(3)(b). A public body should implement internal record keeping procedures to keep track of those who have requested notice.

The mailing requirement of the law does not require actual receipt of the notice by the person to whom the notice must be mailed; it only requires that the notice be postmarked before 9 a.m. on the third working day before the meeting. *See* AG File No. 00-015 (April 7, 2000).

The written notices must be mailed to the requestors "in the same manner in which notice is required to be mailed to a member of the body" and must be "delivered to the postal service used by the body not later than 9 a.m. of the third working day before the meeting." NRS 241.020(3)(b)(1). A public body does not satisfy the requirements of the Open Meeting Law by sending an e-mail to an individual who has requested personal notice of public meetings, unless the individual waived his or her statutory right to personal notice by regular mail and instead elected to receive notice by e-mail. *See* NRS 241.020(3)(b)(2) and Op. Nev. Att'y Gen. No. 2001-01 (February 9, 2001).

NRS 241.020(3)(b) states that a request for mailed notice of meetings automatically lapses six months after it is made to the public body and that the public body must inform the requestor of this fact by enclosure or notation upon the *first* notice sent. (Emphasis added.) Members of the public do not have to make separate written request for notice of each meeting, but a request for both written and electronic notice lapses after six months unless the requestor renews the request.

§ 6.05 Calculating "three working days"

Working days include every day of the week except Saturday, Sunday, and holidays declared by law or proclamation of the President. The actual day of a meeting is not to be considered as one of the three working days referenced in the statute. *See* OMLO 99-06 (March 19, 1999).

For example, a Thursday meeting should be noticed by 9 a.m. on Monday of the same week, while a Tuesday meeting must be noticed no later than 9 a.m. Thursday of the preceding week; if the Monday before a Tuesday meeting were a legal holiday, notice would be posted no later than 9 a.m. on Wednesday of the prior week.

§ 6.06 Providing copies of agenda and supporting material upon request

NRS 241.020(5) states:

> 5. Upon any request, a public body shall provide, at no charge, at least one copy of:
> (a) An agenda for a public meeting;
> (b) A proposed ordinance or regulation which will be discussed at the public meeting; and
> (c) Subject to the provisions of subsection 6, any other supporting material provided to the members of the body except materials:
> (1) Submitted to the public body pursuant to a nondisclosure or confidentiality agreement which relates to proprietary information;
> (2) Pertaining to the closed portion of such a meeting of the public body; or
> (3) Declared confidential by law**,** unless otherwise agreed to by each person whose interest is being protected under the order of confidentiality.
>
> As used in this subsection "proprietary information" has the meaning ascribed to it in NRS 332.025.

NRS 241.020(6) states:

> 6. A copy of supporting material required to be provided upon request pursuant to paragraph (c) of subsection 5 must be:
> (a) If the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; or
> (b) If the supporting material is provided to the members of the public body at the meeting, made available at the meeting to the members of the public body.

If the requester has agreed to receive the information and material set forth in subsection 5 by electronic mail, the public body shall, if feasible, provide the information and material by electronic mail.

Confidential communication between public body and counsel, is not supporting material

Confidential communication between counsel and the public body is subject to Nevada Supreme Court Rule 1.6, which prohibits disclosure of confidential information related to

representation of the public body client. The lawyer has a duty to not reveal client information. Clearly, confidential client information is not supporting material, under NRS 241.020(5). *McKay v. Board of County Commissioners*, 103 Nev. 490, 746 P.2d 124 (1987).

A public body may not convene in closed session as long as its attorney is present. Unless a public body has specific statutory authority to meet in closed session with its attorney, then regardless of whether the proposed meeting would be to discuss a confidential communication, the communication may not be heard in closed session. Confidential client information not involving litigation or potential litigation may be conveyed to the members of a public body individually or in a group containing less than a quorum, but not in closed session. *Id.* 103 Nev. at 496, 746 P.2d at 127. *See also* NRS 241.020(1)(closure of meeting may not exceed the scope of specific statutory authority). For further discussion of this issue see § 5.11 above.

Other examples of how the requirement to make supporting materials available to the public has been applied:

In AG File No. 08-040 (May 8, 2009) an e-mail communication from Superintendent to his staff and to the public body, the Board of School Trustees, was not included in supporting materials for the meeting nor was it released to a reporter prior to the meeting even though it was relevant to a pending agenda item. The e-mail communication was determined to be privileged and shielded by "executive privilege" as it was both predecisional and deliberative under a common law doctrine recognized by the Nevada Supreme Court in *DR Partners v. Board of County Commissioners of Clark County*, 116 Nev. 616, 621, 6 P.3d 465, 468 (2000).

The Office of the Attorney General has opined that drafts of proposed orders of the Public Utilities Commission are agenda supporting material under NRS 241.020(5), formerly NRS 241.020(4), and copies must be furnished upon request at the time that they are made available to commission members. *See* OMLO 98-02 (March 16, 1998). Drafts of minutes of previous meeting to be approved at upcoming meeting are agenda supporting material under NRS 241.020(5), and must be provided upon request. *See* OMLO 98-06 (October 19, 1998); AG File No. 10-047 (November 8, 2010).

Member of public body independently distributed a proposed budget document to other members shortly before meeting. It should have been included in supporting material, but once distributed to the public body members discovered it was not included in agenda packet; it was treated as a fugitive document; board did not consider it during the meeting. AG File No. 10-027 (July 20, 2010).

Where the Chair of public body independently obtains a document and discusses it during public meeting, although it was not provided to any other member of the public body, or the public, the independent action of the Chair does not entangle the Commission with NRS 241.020. Unless the document had been provided to the Commission as support

material, pursuant to NRS 241.020(5) and (6), complainant's request for its disclosure must be under NRS 239. AG File No. 10-028 (July 8, 2010).

Inability to provide supporting material to the public because the public body's clerk, staff, or other custodian of materials does not have a copy, because the clerk, staff, or other custodian was not provided a copy is a violation of NRS 241.020(5) and (6). It does not matter that the source of supporting material is a private person, the city manager, or any other person. If all members of the public body receive supporting material for a future agenda item, that material must be available to the public upon request. AG File No. 09-021 (August 21, 2009).

Requests to provide agenda supporting material under NRS 241.020(5), are treated separately from standing requests to mail notices of meetings under NRS 241.020(3)(b). *See* OMLO 99-06 (March 19, 1999). Agenda supporting material need not be mailed but must be made available over the counter when the material is ready and has been distributed to members of the public body and at the meeting. *See* OMLO 98-01 (January 21, 1998) and OMLO 2003-06 (February 27, 2003).

The OML does not require supporting materials, such as a settlement agreement, to be appended to or attached to the publication of the public body's meeting Notice and Agenda. Members of the public must request copies of supporting materials before or during the meeting; the public body has no duty to provide copies of supporting materials except when requested. AG File No. 10-008 (May 3, 2010).

When a public body is interviewing candidates for a vacant position in an open session, a request for a copy of candidate resumes may not be refused by the public body because the resume of the chosen applicant would become part of the personnel file if hired, or on the grounds that refusal was necessary to accommodate an applicant's concern that he/she might suffer an adverse employment reaction from his/her current employer if the applicant's interest in the position became known to his/her current employer. *See* AG File No. 00-035 (August 31, 2000). *See also* Opinion in AG File No. 08-005 (March 7, 2008)(beginning with a presumption in favor of open government and public access, disclosure of applicants' names, application for employment and proposed contracts of employment should be deemed public unless there is sufficient justification, such as an identifiable privacy or law enforcement interest, or other exigent circumstances for keeping the record confidential.

Agenda supporting materials are not required to be provided until after the appointment of a person if a separate statute or regulation declares the materials to be confidential during the selection and appointment process. *See* AG File No. 00-036 (September 25, 2000).

In situations where a request for agenda supporting materials is made at the meeting, a public body does not have to stop or delay its meeting to provide the materials if the supporting material requested had been available at the time the agenda was posted. In this circumstance, a public body can satisfy the Open Meeting Law requirement of

providing supporting materials "upon any request" by having one "public" copy of the supporting materials available for review at the meeting. NRS 241.020(5).

As to materials that were not available on the agenda posting date, a member of the public is justified in asking for such materials at the meeting, and the public body must interrupt its meeting to provide the requested copies. *See* NRS 241.020(6)(b) and AG File No. 00-025 (October 3, 2000).

Unapproved draft minutes that are on the agenda for approval are agenda support material which must be provided upon request.

Public body was advised that proposed revised bylaws were supporting materials for the meeting and a public copy should have been made available at the meeting and upon any request. AG File No. 09-010 (June 10, 2009).

The Open Meeting Law does not require a public body to honor a blanket request for supporting materials for multiple meetings. *See* OMLO 2003-12 (March 11, 2003). The Legislature intended to treat requests for support material differently than requests for notice and agenda under NRS 241.020(5).

When all subsections of NRS 241.020 are read together, it is clear that the legislative purpose behind the phrase "Upon any request" refers only to the period of time before or during a public meeting. Subsection 6 provides direct evidence of legislative purpose. Parts (a) and (b) explicitly state when the public body's duty to provide a "no-charge" copy is applicable. Part (a) states that the public may request a copy before the meeting and part (b) states the circumstances under which the public body must provide it during the meeting. There is no subsection authorizing a "no-charge" copy after adjournment of a public meeting. It is also clear that in order to harmonize the OML and the public records act, the Legislature intended that supporting materials become a public record following adjournment of the public meeting. Supporting materials pass to the legal custodian (in this case the County Clerk) when it becomes subject to public record law—NRS Chapter 239. AG File No. 2011-01 (April 4, 2011); AG File No. 09-046 (February 11, 2010).

§ 6.07 Fees for providing notice of copies of supporting material

Under NRS 241.020(5) a requested public notice, agenda, a proposed ordinance or regulation must be provided at no cost to the requester prior to the meeting for which the notice, agenda and supporting material were prepared. *See* §6.06 above. Other requested supporting materials which are not confidential, or subject to a non-disclosure agreement, or which do not pertain to a closed portion of a meeting must be made available to the public at the time the materials are provided to the members of the public body.

No charge may be made for sending copies of notice and agenda required by NRS 241.020(3)(b). *See* OMLO 99-07 (February 4, 1999). Generally, governmental bodies may exercise only those powers that are conferred upon them by the Legislature.

There is no grant of power to public bodies in the Open Meeting Law which authorizes them to legislate or charge a fee to a person who has requested individual notice of the meetings. Further, charging a fee under such circumstances could have the effect of chilling the right of all Nevada citizens to receive notice of public meetings. We note that mailing a copy of the meeting notice to anyone who requests such notices is deemed by the law to be a part of the "minimum public notice" requirements which all public bodies must meet. The only restriction contemplated by the law is a six-month limitation on the request unless it is renewed by the requestor.

Minutes and audio recordings of public meetings become public records once prepared following public meetings. The OML does not obligate public bodies to provide minutes or audio recordings free of charge. NRS 241.035(2). *See* AG File No. 2011-01 (April 4, 2011); *see* § 6.06 above.

§ 6.08 Emergencies

When emergencies occur a public body may not be able to wait three days to call a meeting and post a notice and agenda in order to act, or the public body may have already sent out a notice and agenda and cannot amend the agenda and give three days' notice of the emergency item before the meeting.

NRS 241.020(2) provides that *except in an emergency*, written notice of all meetings must be given at least three working days before the meeting. NRS 241.020(8) defines an emergency as: "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."

An emergency meeting may be called or an item may be taken up on an emergency basis only:

- Where the need to discuss or act upon an item is truly unforeseen at the time the meeting agenda is posted and mailed, or before the meeting is called; and

- Where an item is truly of such a nature that immediate action is required at the meeting.

In an emergency:

- A meeting may be scheduled with less than three days' notice if the meeting is limited only to the matter which qualifies as an emergency. The minutes of the meeting should reflect the nature of the emergency and why notice could not be timely given.

- If a meeting has already been scheduled, notice has already been posted and mailed, and less than three working days remain before the meeting, the

emergency item may be added to the agenda at the meeting. The minutes should reflect the nature of the emergency and why notice could not be timely given.

- If a meeting has been scheduled, and it is possible to amend the notice and agenda and to post and mail the amended notice (or a notice of an emergency item to be added to the agenda) more than three working days before the meeting, the notice and agenda should be so amended.

In all cases, whenever a matter is taken up as an emergency, the Office of the Attorney General recommends that the public body provide as much supplementary notice to the public and the news media as is reasonably possible under the circumstances. Further, all other requirements of the Open Meeting Law must be observed.

The Office of the Attorney General cautions, however, that a true emergency must exist and the rule must not be invoked as a subterfuge by a public body to avoid giving notice of that agenda item to the public. Op. Nev. Att'y Gen. No. 81-A (February 23, 1981) gives an example of when an emergency did not exist. This opinion discusses a situation where, in a regularly scheduled meeting of a public body, dissention quickly arose between the members so much so that the meeting became acutely tense and emotional. In an attempt to relieve the pressure, the board went into an unscheduled executive session to "discuss the professional competence and character of a person" (including some its members). Noting that the dissention on the board had been known for months, the Office of the Attorney General determined that a sufficient emergency did not exist to go into the unscheduled executive session because there was ample time to provide written public notice of the need for an executive session during a regularly scheduled meeting to discuss the matters.

See OMLO 99-10 (August 24, 1999), where the Office of the Attorney General opined that administrative error did not establish grounds to hold an emergency meeting without giving proper notice. A statutory deadline for action by a county commission to submit a ballot question is not an unforeseen circumstance. *See* AG File No. 00-029 (August 9, 2000). The need to seize records of a development authority is foreseeable and, therefore, not an emergency. *See* AG File No. 01-039 (August 20, 2001). *See* OMLO 2004-22 (June 15, 2004) where the unforeseen resignation of the General Manager of the sewer treatment plant created an emergency because, in order to protect public health, safety and welfare, the public body needed to keep the plant operating, and thus, an emergency meeting to employ a new manager was appropriate.

Where the financial health of the School District was at stake and where there was threatened loss of revenue and apparent loss of revenue, District's characterization of the emergency as an "unforeseen" event was appropriate. The Board's decision to hire a licensed administrator after a public meeting during which the Superintendent had been unexpectedly fired was an unforeseen event. AG File No. 07-028 (September 18, 2007).

§ 6.09 Providing individual notice to persons whose character, alleged misconduct, professional competence, physical or mental health are to be considered; waivers of notice (*See* Sample Form 3); exemption from OML for meetings held to consider individual applications for employment (NRS 241.034).

NRS 241.033 prohibits a public body from holding a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it provided *written* notice to the person of the time and place of the meeting *and* received proof of service of the notice. *See* NRS 241.033(1)(a) and (b). This applies whether the meeting will be open or closed.

NRS 241.033(2)(c) requires a properly drafted agenda item to include a list of the general topics concerning the person that will be considered by the public body during the closed meeting; and a statement of the provisions of subsection 4.

Subsection 4 states:

> That the person being considered by the public body must be permitted to attend the closed meeting;
>
> That the person being considered may have an attorney or other representative of his choosing present during the closed meeting; and
>
> That the person being considered may present written evidence, provide testimony and present witnesses relating to his character, alleged misconduct, professional competence, or physical or mental health to the public body during the closed meeting.

NRS 241.033(2)(b) states that a public body may include an informational statement on the agenda that administrative action may be taken against the person after the public body considers his/her character, alleged misconduct, professional competence, or physical or mental health. If the notice pursuant to NRS 241.033 includes this informational statement, no further notice is required pursuant to NRS 241.034.

The notice must be either delivered personally to that person at least five working days before the meeting or must be sent by certified mail to the last known address of that person at least 21 working days before the meeting. A similar notice is required by NRS 241.034 to persons against whom administrative action will be taken or whose real property will be acquired by eminent domain unless the public body includes an informational statement that administrative action may be taken against the person in the notice under NRS 241.033. *See* discussion above.

The public body must receive proof of service of the notice before the meeting may be held.

Notice provisions of NRS 241.033 do not apply to applicants for employment with a public body. NRS 241.033(7) exempted public meetings held to consider applicants for employment with the public body from the provisions of NRS 241.033.

OML complainant alleged public body member made comments during the public meeting to consider his appointment to an advisory body. It was alleged the comments impugned complainant's character, effectively calling him a person "of less than truthful character." Public body member made comments about complainant not being a team player, which caused the public body to focus the discussion on complainant's character. This was a violation of NRS 241.033. Public bodies must carefully consider the ramifications of discussion of any person's character, even if it is unintentional and even if it suddenly arises during any agenda item. Remember to stick to the agenda. AG File No. 10-061 (March 29, 2011).

The Nevada Athletic Commission is exempt from the timing requirements (e.g., five working days for personal service or 21 days for certified mail) but must still give written notice of the time and place of the meeting and must receive proof of service before conducting the meeting. NRS 241.033(2).

"Casual or tangential references to a person or the name of a person during a closed meeting do not constitute consideration of the character, alleged misconduct, professional competence, or physical or mental health of the person." NRS 241.033(7)(b); *See also* OMLO 2004-14 (April 20, 2004); OMLO 2003-18 (April 21, 2003); and OMLO 2003-28 (November 14, 2005) where the public body violated the Open Meeting Law by considering an employee's character or alleged misconduct without providing notice, but the mere mention of other employees did not require notice to the other employees.

Notice requirements of NRS 241.033 only apply to natural persons because non-natural persons cannot have "physical or mental health." Thus, proper statutory construction dictates that the notice under NRS 241.033 must only be provided to natural persons. *See* OMLO 2004-13 (April 19, 2004).

If a public body discusses a pending lawsuit involving a particular person, a discussion of that lawsuit which mentions the name of that person, does not require the public body to provide notice under NRS 241.033. *See* OMLO 2003-14 (March 21, 2003).

Notice requirements apply to applicants for professional licenses if their character, alleged misconduct, professional competence, or physical or mental health is to be considered at the meeting. *See* Attorney General Letter Opinion to Jerry Higgins, Nevada Board of Professional Engineers and Land Surveyors, dated October 28, 1993 (licensing board which will consider applicant's character and professional competence must properly notice each applicant in accordance with NRS 241.033).

There is no prohibition against waivers of the notice, and the courts consistently recognize that an individual may, by express or implied waiver, relinquish a known statutory right. However, a waiver carries legal consequences, and therefore must be a

valid waiver. A waiver of a statutory right is deemed valid if it is clear and unambiguous, given voluntarily, and intended to relinquish a known statutory right. *CBS, Inc. v. Merrick,* 716 F.2d 1292 (9th Cir. 1983); *State Board of Psychological Examiners v. Norman,* 100 Nev. 241, 679 P.2d 1263 (1984).

It is recommended the waiver be obtained in writing expressing: (1) the voluntary nature of the waiver; (2) the applicant's knowledge about the statutory right; and (3) the applicant's intention to relinquish that right. *See* Attorney General Letter Opinion to Jerry Higgins, Nevada Board of Professional Engineers and Land Surveyors, dated October 28, 1993.

Sample Form 3 satisfies NRS 241.033 notice requirement when a person's character or professional competence or alleged misconduct or physical or mental health is to be discussed by the public body.

§ 6.10 Administrative action against a "person", or from whom the public body may acquire real property by the exercise of the power of eminent domain (NRS 241.034).

Under NRS 241.034, a public body may not hold a meeting to take administrative actions against a person or to acquire real property by condemnation from a person unless the public body has given written notice to that person. The written notice must be either: (1) delivered personally to the person at least 5 working days before the meeting; or (2) sent by certified mail to the last known address of the person at least 21 working days before the meeting. Written notice to the person is required in addition to the notice of meeting required by NRS 241.020. *See* § 6.02.

A public body must receive proof of service of the written notice before the public body may consider the matter. Proof of receipt of the notice is not required.

The terms "take," "administrative action," and "person" are not defined by Chapter 241 or by NRS 241.034. With respect to the eminent domain provision, the terms "acquire," "owned," and "person" are not defined. The terms "administrative action" and "against a person," if interpreted and defined broadly, would encompass a myriad of actions performed by local governments and state agencies, which were not all intended to be covered.

In *Harris v. Washoe County Board of Equalization*, 1290 Nev. 1246, 131 P.3d 606 (2004), Case No. 42951 (Nev. Sup. Ct. 2004), which was an order of the Supreme Court of Nevada and not an opinion, the Supreme Court agreed with the above interpretation of the Office of the Nevada Attorney General. In that case, the petitioners challenged the assessor's valuation of their property. The County Board contacted the petitioners one working day before the meeting to consider their petition, but the County Board properly posted a public notice three working days before the meeting. The County Board did not provide a personal notice to the petitioners pursuant to NRS 241.034. The petitioners filed for a preliminary injunction against the County Board for failing to provide notice

pursuant to NRS 241.034. The District Court denied the injunction and the petitioners appealed to the Nevada Supreme Court.

The Court stated, "In this case, the language 'administrative action against a person,' which triggers the five-day personal notice requirement, is subject to more than one interpretation." The property owners argued that the language should be read broadly to "include all administrative actions directed at specific individuals," and thus, the County Board's land valuation hearings. The County Board asserted that the phrase should be more narrowly tailored "to include only those actions involving an individual's characteristics or qualifications, not those of real property."

The Court stated that the rules of statutory construction compel the Court to adopt the County Board's more narrow approach. The broad view advocated by the property owners would render the notice requirement for eminent domain "nugatory" because any action with regard to a person's realty would require notice. The Court determined that such an interpretation was not the appropriate construction of the statute. **The Court then defined the phrase "administrative action against a person" as "those actions involving an individual's characteristics or qualifications, not those of real property."** Therefore, the Court held that the County Board did not violate the Open Meeting Law.

For purposes of enforcement actions under NRS 241.037(1), this office will follow these guidelines:

1. Except as noted below, "person" includes natural persons and inanimate entities such as partnerships, corporations, trusts, and limited liability companies. "Person" includes essentially anything legally capable of holding an interest in property or legally capable of receiving a permit or license.

2. "Administrative action against a person" does not occur unless the matter being acted on is uniquely personal to the individual or entity. "Administrative action against a person" does not occur when the legal basis of the action is consideration of the inanimate characteristics of a facility or property and no consideration of the characteristics or qualifications of the individual or entity (the person) that has sought the governmental approval. *See* the discussion of *Harris* above.

For example, a decision against an applicant for a barber's license for the individual practitioner is subject to NRS 241.034, but a decision against an applicant for a barbershop license is not.

Certain business and occupational licenses issued by state and local governments may depend on an analysis of a blend of personal factors as well as real and personal property. Some statutes, regulations and ordinances grant, condition, or deny a particular license solely on the adequacy of the premises (sanitation, fire codes, square footage, and zoning) without reference to the personal aspects of the business person seeking the license. These types of business licenses are not subject to NRS 241.034. But if a business

license is granted or denied in part by reference to the personal aspects of the applicant, then NRS 241.034 applies.

(a) "Action against a person" within the meaning of NRS 241.034 does not include adoption of ordinances or regulations; the granting or denying of petitions for declaratory orders or advisory opinions; action on zoning requests, building permits, most variances, and other land use decisions that do not depend on the identity, status, personal qualifications, or characteristics of the person. These decisions are "against" the entire population, whole neighborhoods, industries, and other interest groups. Notice to such large numbers of persons is not required by NRS 241.034.

(b) An act is not subject to the additional notice requirements of NRS 241.034 if the action depends on the application of either objective or discretionary standards and criteria to land, water, air, or other inanimate matters unrelated to the personal qualities and characteristics of the owner of the property that is subject to the authority of the public body.

(c) Note that other statutes and ordinances typically have extensive notice provisions for the special subject matter covered. Those laws must be complied with but failure to do so will not be a violation of chapter 241.

(d) Imposing discipline on a person is an "action against a person." Most penalties (except for taxation) are uniquely personal because they are based on the misconduct of a person and, therefore, are "actions against a person."

3. Decisions to accept gifts and to purchase, sell, encumber, or lease any interest in real or personal property are examples of non-personal, inanimate-subject decisions that are not within the meaning of "administrative action against a person," even though each decision may be, in a very real sense, "against" someone, unless the purchase involves eminent domain in which case the owner of the property must be notified.

Part 7 WHAT ARE THE REQUIREMENTS FOR PREPARING AND FOLLOWING THE AGENDA? (*See* Sample Form 1)

---

§ 7.01 General

A public body's failure to adhere to agenda requirements will result in an Open Meeting Law violation. *Sandoval v. Board of Regents*, 119 Nev. 148, 156, 67 P.3d 902, 906 (2003). If a matter is acted upon which was not clearly and completely described on the agenda, the action is void under NRS 241.036.

NRS 241.020(2)(c) requires public body agendas include the following at a minimum:

> 2. Except in an emergency, written notice of all meetings must be given at least three working days before the meeting. The notice must include:
>
> (a) The time, place and location of the meeting.
>
> (b) A list of the locations where the notice has been posted.
>
> (c) An agenda consisting of:
>
> (1) A clear and complete statement of the topics scheduled to be considered during the meeting.
>
> (2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term "for possible action" next to the appropriate item.
>
> (3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:
>
> (I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or
>
> (II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item. The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).
>
> (4) If any portion of the meeting will be closed to consider the character, alleged misconduct or professional competence of a person, the

name of the person whose character, alleged misconduct or professional competence will be considered.

(5) If, during any portion of the meeting, the public body will consider whether to take administrative action against a person, the name of the person against whom administrative action may be taken.

(6) Notification that:

(I) Items on the agenda may be taken out of order;

(II) The public body may combine two or more agenda items for consideration; and

(III) The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.

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

§ 7.02 Agenda must be clear and complete (*See* Sample Form 1)

In *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003), the Nevada Supreme Court analyzed three related issues under Nevada's Open Meeting Law: (1) the "clear and complete" standard required for agenda statements by NRS 241.020(2)(c)(1), (2) discussion which exceeds the scope of a properly noticed agenda statement, and (3) whether the Open Meeting Law violates the First Amendment by improperly restricting members right to free speech. The analysis of the "clear and complete" standard will be discussed in this section of the manual, the analysis regarding exceeding the scope of the agenda statement will be discussed in § 7.03 of this manual, and the analysis regarding the First Amendment will be discussed in § 13.03 of this manual.

In *Sandoval*, the Court considered the actions of two different public bodies related to the University and Community College System of Southern Nevada, the Campus Environment Committee (Committee) and the Board of Regents (Board). Since the analysis regarding the Board discussed the "clear and complete" standard under NRS 241.020(2)(c)(1), this section of the manual will discuss only the facts, circumstances, and analysis surrounding the Board. For a discussion regarding the facts, circumstances, and analysis regarding the Committee exceeding the agenda statement, *see* § 7.03 below.

In September of 2000, the Board held a public meeting and noticed an item that stated:

> Committee Reports:
>
> Campus Environment Committee
>
> Chairman Tom Kilpatrick will present a report on the Campus Environment committee meeting held September 7, 2000 and requests Board action on the following recommendations of the committee:
>
> Round Table Discussion of Actions and Schedule of Topics to be Discussed with Campus Representatives--The committee reviewed

> previous actions and unfinished business of the committee and compiled a schedule of topics for the remainder of the year.

Id, 119 Nev. at 152, 67 P.3d at 904. Regent Kilpatrick properly reported the topics to be discussed for the remainder of the year, and he discussed the law governing the release of documents. He then informed the Board that a request was made for the University of Nevada, Las Vegas (UNLV) report regarding a dormitory raid, and a document regarding disarming the UNLV police department. After Regent Kilpatrick's presentation, Regent Aldean suggested that the Board make available a redacted version of the NDI report regarding the raid, and the Board agreed with this suggestion. As a result, the Office of the Attorney General filed suit alleging a violation of the "clear and complete" standard in NRS 241.020(2)(c)(1). The district court granted summary judgment for the Board holding that the "germane standard" should apply to Nevada's Open Meeting Law, and since the discussion by the Board of the NDI report was germane to the agenda statement, there was no violation of the Open Meeting Law. The Office of the Attorney General appealed this decision.

The Supreme Court's analysis immediately rejected the "germane standard" as too lenient a standard in Nevada. The Court stated, "[T]he legislative history of NRS 241.020(2)(c)(1) illustrates that the Legislature enacted the statute because 'incomplete and poorly written agendas deprive citizens of their right to take part in government.'" *Id.* 119 Nev. at 154, 67 P.3d at 905. The Court also stated, "Nevada's Open Meeting Law seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed." *Id.* 119 Nev. at 155, 67 P.3d at 906. As a result, the Court held that the Board violated the Open Meeting Law because the agenda statement was too broad to place the public on notice that the Board would take informal action to obtain a redacted NDI report and discuss an examination of disarming the UNLV police, both issues of public interest.

In 2007, following the *Sandoval* decision, the Nevada Supreme Court issued another decision impacting the "clear and complete" rule. In *Schmidt v. Washoe County and Washoe County Board of County Commissioners*, 123 Nev. 128, 159 P.3d 1099 (2007), the Court decided an issue regarding whether an agenda item on the BOCC's agenda was clear and complete. The agenda item stated: "Legislative Update—this item may be discussed at Monday's Caucus Meeting and/or Tuesday's Board Meeting and may involve discussion by [WCBC] and direction to staff on various bill draft requests (BDRs)." The agenda also instructed the public that a list of specific bills which staff would seek direction from the WCBC would be posted online on the County's website after 6:00 p.m. on Friday before the Monday caucus meeting. Hard copies would be placed in the County Manager's office by 9 a.m. on Monday. The *Sandoval* Court stated that this factual issue was a close question. However it determined the WCBC's agenda item met the "clear and complete" standard, because the item noticed the public that WCBC and staff planned to discuss certain BDRs at its Caucus meeting or the following day's regular meeting and the Court found the WCBC had provided a list of specific BDR's on the County's website three days before the Caucus.

In an Attorney General opinion, this office reviewed agenda item to determine whether it was clear and complete: The disputed agenda item stated: "5(C) Discussion regarding election of CEO to receive contractual bonus based upon FY 08 positive evaluation." The issue was whether it was legally sufficient to impart notice to the CEO that his character and professional competence would be considered by the Board. This office opined that the Board exceeded the scope of the agenda item. Among the matters impermissibly discussed and beyond the scope of the item, were the person's "ongoing communication skills," discussion of an earlier professional evaluation, discussion of his character trait for honesty and integrity. The person's general reputation was denigrated before the Board in a significant and substantive fashion so as to constitute a violation of both the OML's notice requirement and its "clear and complete" rule. See AG File No. 10-014 (February 25, 2010).

In another Attorney General Opinion we reviewed a public body agenda "action" item which stated in part: "Consideration to Approve Advertisement of Irrigation Water Shares and to Set Time for Said Auction." After investigation it was determined to be incomplete. This item was not clear and complete so as to indicate to the public that the advertisement was for the lease of irrigation water shares. Similarly, another agenda item from another meeting of the same public body did not disclose to the public body that a provision for the lease-back of water was a condition of sale. Because the issue of fair market value of water rights was of significant interest to the public body and the public, the absence of disclosure of a lease-back provision from the agenda item was a violation of the OML's requirement that agenda topics be expressed clearly and completely. NRS 241.020(2)(c)(1). AG File No. 09-014 (June 30, 2009); See also AG File No. 09-032 (December 3, 2009).

In AG File No. 09-044 (December 17, 2009), Complainant's allegation was that the text of agenda item 31 was not clear and complete because it did not inform the public that (in complainant's view) it committed taxpayers to contingent liabilities beyond current taxing authority. The OML does not provide oversight to the decision making process of public bodies. It does not allow this office to second guess decisions or actions by public bodies even if the decision might have been improvident. AG File No. 09-044 (December 17, 2009).

The Office of the Attorney General has written several opinions on agendas. *See* Op. Nev. Att'y Gen. No. 79-8 (March 26, 1979), and Op. Nev. Att'y Gen. No. 91-6 (May 23, 1991); OMLO 99-01 (January 5, 1999); OMLO 99-02 (January 15, 1999); OMLO 99-03 (January 11, 1999); OMLO 2003-09 (March 4, 2003); OMLO 2003-13 (March 21, 2003); and OMLO 2003-23 (June 24, 2003). AG File No. 08-007 (June 12, 2008)

The following guidelines are gleaned from these opinions regarding agenda items and the clear and complete rule:

a. Merely indicating "Licensing Board" on an agenda without listing the names of the licensees who will be considered is not proper.

b. An agenda item for consideration of business permits should include the name and, where appropriate, the address of the proposed business and/or applicants.

c. Agenda items must be described with clear and complete detail so that the public will receive notice in fact of what is to be discussed by the public body.

d. Use a standard of reasonableness in preparing the agenda and keep in mind the spirit and purpose of the Open Meeting Law.

e. Always keep in mind the purpose of the agenda is to give the public notice of what its government is doing, has done, or may do.

f. The use of general or vague language as a mere subterfuge is to be avoided.

g. Use of broad or unspecified categories in an agenda should be restricted only to those items in which it cannot be anticipated what specific matters will be considered.

h. An agenda must never be drafted with the intent of creating confusion or uncertainty as to the items to be considered or for the purpose of concealing any matter from receiving public notice.

i. Agendas should be written in a manner that actually gives notice to the public of the items anticipated to be brought up at the meeting.

j. Generic agenda items such as "President's Report," "Committee Reports," "New Business," and "Old Business" do not provide a clear and complete statement of the topics scheduled to be considered. Such items must not be listed as for possible action items as they do not adequately describe matters upon which action is to be taken. *See* OMLO 99-03 (January 11, 1999).

k. Agendas for retreats should identify the event as a retreat, give the objectives to be accomplished, and include the specific topics for discussion. *See* OMLO 99-02 (January 15, 1999). *See* § 6.02 for items that must be included in the notice and agenda if not covered in the notice for the meeting.

Additionally, based on some of the complaints received by the Office of the Attorney General, the following suggestions are offered:

a. Public bodies should not "approve" or take action on administrative reports by staff unless the agenda clearly denotes the report is an item for possible action and specifically sets out the matter to be acted on from the report.

b. Generic items such as "reports" or "general comments by board members" invite trouble because discussions spawned under them may be of great public interest and may lead to deliberations or actions without the benefit of public scrutiny or input. Generic items should be used sparingly and carefully, and actual discussions should be tightly controlled. Matters of public interest should be rescheduled for further discussion at later meetings.

c. Agenda descriptions for resolutions, ordinances, regulations, statutes, rules, or other such items to be considered by public bodies, should describe what the statute, ordinance, regulation, resolution, or rule relates to, so that the public may determine if it is a subject in which they have an interest which might lead to their attendance at the public meeting. *See* OMLO 99-01 (January 5, 1999); OMLO 99-03 (January 11, 1999).

Below are synopses of three recent Attorney General Opinions which applied the "clear and complete" rule.

Public body's use of phrase "and all matters related thereto" was a violation of the OML because use of the phrase allows the public body to stray into discussion on matters not specifically listed in the item. Use of the phrase "and all matters related thereto" does not comply with the statute's requirement that every agenda item contain a clear and complete statement of topics to be considered. AG File No. 10-049 (December 17, 2010); AG File No. 10-052 (December 21, 2010).

Public body must recognize that a "higher degree of specificity [for agenda items] is needed when the subject to be debated is of special or significant interest to the public," *Sandoval*, 119 Nev. at 154-155, 67 P.3d at 906 citing *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex.App.2000). Mandatory trash service and billing was and is an item of significance in the City of Fernley requiring greater agenda item specificity. A Council agenda item merely stated that "special provisions for inclusion of [sic] a new franchise agreement(s)" would be discussed at the meeting, but this generic description was too broad. The public was not alerted that mandatory billing and trash pickup was the special provision. AG File No. 09-003 (March 27, 2009).

Public Body rejected staff recommendation for naming a new Las Vegas area Career and Technical Academy. Agenda item 7.01: **"**NAMING OF DISTRICT FACILITIES, VETERANS MEMORIAL CENTRAL CAREER AND TECHNICAL ACADEMY. Discussion and possible action on approval to name a school the Veterans Memorial Central Career and Technical Academy, is recommended." Item 7.01 was not in

violation of "clear and complete" rule. Nothing in the OML prohibits a public body from rejecting or amending staff's recommendation regarding school name, or that requires the public body to vote up or down on exact wording of any proposal brought before it. This is too narrow an interpretation of NRS 241.020(2)(c)(1)—the "clear and complete" rule. AG File No. 09-006 (February 2, 2009).

§ 7.03 Stick to the agenda

As discussed in § 7.02, *supra*, *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003) provided analysis of a public body's failure to only discuss matters within the scope of its agenda. In that case, the Campus Environment Committee (Committee) held a meeting on September 7, 2000. The agenda item stated: "Review of UCCSN Policies on Reporting" It further described the item's scope as:

> "Review UCCSN, state and federal statutes, regulations, case law, and policies that govern the release of materials, documents, and reports to the public."

Id. 119 Nev. at 151, 67 P.3d at 903–904. At this meeting, the Committee discussed a controversial NDI report regarding a dormitory raid by UNLV police. Regent Hill discussed the details of the raid, criticized the UNLV police department, and recommended the police department be disarmed. This discussion occurred against the advice of legal counsel. The office of the Attorney General sued the Regents for exceeding the scope of the agenda item. The district court granted summary judgment for the Committee after applying a "germane standard" to the discussion, concluding the discussion was germane to the agenda item. The Office of the Attorney General appealed.

The Supreme Court stated that the agenda statement was "clear and complete" under NRS 241.020(2)(c)(1), and, in the abstract, the Committee could have discussed the NDI report. However, the Court held, "[t]he plain language of NRS 241.020(2)(c)(1) requires that discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic." *Id*, 119 Nev. at 154, 67 P.3d at 905. Here, the Committee violated the Open Meeting Law by exceeding the scope of the agenda statement "when it discussed the details of the report, criticized the UNLV police department, and commented on the impact of drug use on the campus." The Court said the Committee's agenda statement did not inform the public that these matters would be a topic of discussion. *Id.* 119 Nev. at 155, 67 P.3d at 906.

Many other complaints received by the Office of the Attorney General have to do with public bodies wandering off their agendas. Discussions may start on an agenda item but then drift off into other matters. (*See* AG File No. 10-014 (February 25, 2010) for an example of a deliberate discussion of a person's character without notice and beyond the scope of the agenda item.) The chair for a public meeting or its counsel should be vigilant to stop the discussion from drifting in order to prevent Open Meeting Law violations. *See* OMLO 98-03 (July 7, 1998) for an example of how a public body can

violate the Open Meeting Law by wandering off its meeting agenda. *See also* OMLO 99-09 (July 28, 1999) for an example of how a budget workshop designated for discussion and review of a proposed budget resulted in several violations of the Open Meeting Law when members of the public body made decisions on various items within the proposed budget.

Deviating from the agenda by commencing a meeting prior to its noticed meeting time violates the spirit and intent of the Open Meeting Law and nullifies the purpose of the notice requirements set forth in NRS 241.020(2). *See* OMLO 99-13 (December 13, 1999).

In this Open Meeting law opinion, the public body's Chairman brought up new subjects unrelated to agenda item. A Commissioner interjected a call for a parliamentary point-of-order. Even though the Chair's remarks strayed beyond the agenda item, which was "review and discussion of written items sent or received by the Commission since the last regular meeting and to send correspondence copies for the exhibit file," the Chair ignored the point of order. His refusal to acknowledge the point-of-order and return to the subject matter of the agenda was a violation of the OML. A public body may not raise an unagendized issue at any time as long as no action is taken. The OML clearly states that each agenda item must be "clearly and completely" set forth. It is not conditional on whether it is an informational item or an action item. AG File No. 09-031 (October 22, 2009)

§ 7.04 Matters brought up during public comment; meeting continued to another date

The Open Meeting law now requires multiple periods of public comment on each public body agenda. No action may be taken upon a matter raised in public comment or anywhere else on the agenda, until the matter itself has been specifically included on a future agenda as an item upon which action may be taken.

Restrictions on public comment must be reasonable and must be noticed on the agenda, i.e. time limitations. NRS 241.020(2)(c)(3) *see* § 8.04 infra. Restrictions must be viewpoint neutral. At least one of the multiple periods of public comment must allow the public to speak about any matter within the public body's jurisdiction, control, or advisory power. *See* § 8.04 for the requirements for conducting the public comment period. The Open Meeting Law does not limit a public body's discretion to refuse to place on the agenda an item requested by a member of the public. Any limits are a matter of general administrative law. *See* AG File No. 00-047 (April 27, 2001).

Where a meeting is continued to a future date, the reconvened meeting must have the same agenda or portion thereof at the later date. The new date is a second, separate meeting for purposes of notice and public comment, and a member of the public is entitled to make public comment on the same subject at both meetings. [For explanation of the public comment requirement, *See* AG File No. 01-012 (May 21, 2001).]

§ 7.05 Meeting that must be continued to a future date.

A meeting which is continued to a future date where the continuation date does not appear on the original agenda must be re-noticed as a new meeting. The agenda must be posted according to NRS 241.020(2)(three working days before the noticed meeting) whether the new agenda carries over items from the prior agenda or whether it adds new items. The new date is a second, separate meeting for purposes of notice and public comment, and a member of the public is entitled to make public comment on the same subject at both meetings.

Meetings may be recessed and reconvened on the same date it was noticed without violation of the notice provisions of the OML.

Part 8 WHAT ARE THE REQUIREMENTS FOR CONDUCTING AN OPEN MEETING?

§ 8.01 General

In conducting meetings, one should always remember the message in NRS 241.010: "In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." In interpreting a similar provision in California's open meeting law, the court of appeals delivered a humbling message when it said:

> The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over instruments they have created.

Stockton Newspapers, Inc. v. Redevelopment Agency, 214 Cal. Rptr. 561 (Cal. Ct. App. 1985).

Accordingly, NRS 241.020 requires that, except as otherwise provided by statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies; NRS 241.040 makes wrongful exclusion of any person from a meeting a misdemeanor.

§ 8.02 Facilities

Public meetings should be held in facilities that are reasonably large enough to accommodate anticipated attendance by members of the public.

Sometimes controversial public issues generate a larger than expected crowd and a change of location or other methods (e.g., video transmission in adjoining rooms or areas) may have to be employed in order to accommodate those persons seeking to attend a particular meeting. But even if reasonable efforts like these prove inadequate to accommodate everyone, the meeting still would qualify as a public meeting for purposes of the Open Meeting Law. *Gutierrez v. City of Albuquerque*, 631 P.2d 304 (N.M. 1981).

Public bodies should avoid holding public meetings in places to which the general public does not feel free to enter, such as a restaurant, private home, or club. While perhaps not in violation of the letter of the Open Meeting Law, a meeting in such a location may be in violation of the law's spirit and intent. *Cf. Crist v. True*, 314 N.E.2d 186 (Ohio Ct. App.

1973). It is unlawful to start a meeting before the public is allowed into the room. The public body must wait until the public has been admitted to the meeting facility before commencing the meeting. *See* AG File No. 01-002 (April 5, 2001).

§ 8.03 Accommodations for physically handicapped persons

NRS 241.020(1) provides that public officers and employees must make "reasonable efforts to assist and accommodate physically handicapped persons desiring to attend" meetings of a public body. In order to comply with this statute, it is required that public meetings be held, whenever possible, only in buildings that are reasonably accessible to the physically handicapped, i.e., those having a wheelchair ramp, elevators, etc., as may be appropriate. *See Fenton v. Randolph*, 400 N.Y.S.2d 987 (N.Y. Sup. Ct. 1977).

§ 8.04 Public comment: multiple periods of public comment

AB 257: (**Act of June 16, 2011, Ch. 459, §1, 2011 Nev. Stat. 2838.) 2011**

The OML now requires multiple periods of public comment.

NRS 241.020(2)(c)(3) requires that public bodies adopt one of two alternative public comment agenda procedures.

First, a public body may comply with the new requirement by agendizing one public comment period before any action items are heard by the public body <u>and later it must</u> hear another period of public comment before adjournment.

The **second** alternative also involves multiple periods of public comment which must be heard after discussion of each agenda action item, <u>but</u> before the public body takes action on the item.

Finally, regardless of which alternative is selected, the public body must allow the public, some time before adjournment, to comment on any matter within the public body's jurisdiction, control or advisory power. This would include items not specifically included on the agenda as an action item.

Discussion of public comment is specifically allowed under NRS 241.020(2)(c)(3). This statute was amended in 1991. Now, it allows discussion of public comment with the public body.

NRS 241.020(2)(c)(3) provides that the public body must allow periods devoted to comments by the general public, if any, and **discussion of those comments**, if the public body chooses to engage the public in discussion. The statute does not mandate discussion with the public, but it does allow discussion.

Public body may not inform the public that it is legally prohibited from discussing public comments, either among themselves, or with speakers from the public. NRS 241.020(2)(c)(3) clearly allows discussion with members of the public. Of course, no matter raised in public comment may be the subject of either deliberation or action. AG File No. 10-037 (October 19, 2010); *See* § 5.01 for definition of "deliberation."

§ 8.05 Reasonable time, place, and manner restrictions apply to public meetings

Except during the public comment period required by NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings; however, once the right to speak has been granted by the Legislature (NRS 241.020(2)(3)), the full panoply of First Amendment rights attaches to the public's right to speak. The public's freedom of speech during public meetings is vigorously protected by both the U.S. Constitution and the Nevada Constitution. Freedom of expression upon public questions is secured by the First Amendment. *New York Times Co. v. Sullivan,* 376 U.S. 254, 269 (1964). This constitutional safeguard was fashioned to assure unfettered interchange of ideas for bringing about political and social changes desired by the people.

The *New York times* Court said that: "[a] rule compelling the critic of official conduct to guarantee the truth of all his factual assertions and to do so on pain of libel judgment . . . leads to . . . self censorship and would deter protected speech." *See* AG File No. 11-024 (November 21. 2011) (chairman of public body may not forbid public comment based on his disagreement with the speaker about the truthfulness of his comment).

Both California and Nevada Constitutional provisions (Nevada Constitution Article 1, section 9) regarding freedom of speech are identical. The California Supreme Court expressed the strength of these constitutional provisions when in 1896 it observed that "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right…." In *Dailey v. Superior Court of City and County of San Francisco,* 112 Cal. 94, 44 P. 458 (1896), the court continued and said that "the wording of this section is terse and vigorous, and its meaning so plain that construction is not needed. It is patent that these rights to speak, write, and publish, cannot be abused until it is exercised, and before it is exercised there can be no responsibility." (*Id.* at p. 97, 44 P. 458).

It is also settled law that reasonable rules and regulations during public meetings ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those persons attending the meeting. Public bodies may adopt reasonable restrictions, including time limits on individual comment, but AB 59 now requires all restrictions on public comment to be clearly expressed on each agenda. **Act of June 15, 2011, Ch. 383, § 1.5, 2011 Nev. Stat. -----.) 2011: AB 59.**

See AG File No. 10-021 (July 6, 2010): The OML allows considerable discretion to the public body as to length of time allowed to speakers. There is no statutory or constitutional requirement that each speaker's time be correlated mathematically. However, any public comment limitation, including when public comment will be allowed and whether public comment will be allowed on current items on the agenda, must be clearly articulated on the public body's agenda. *See* § 8.03 above, for more detailed discussion of 2011 Legislative changes and requirements. OMLO 99-08 (July 8, 1999); *See also* AG. File No. 07-019 (July 17, 2007)(Board put an "as time allows"

restriction on the public's right to speak, this restriction was unreasonable ; *see* also AG File No. 07-020 (October 25, 2007)(public body was advised that the absence of any statement of policy regarding public comment was a violation).

See OMLO 99-08 (July 8, 1999). Requiring prior approval of the use of electronic devices during public comment is reasonable and not in violation of the Open Meeting Law. *See* AG File No. 00-046 (December 11, 2000).

See OMLO 99-11 (August 26, 1999) The Office of the Attorney General believes that any practice or policy that discourages or prevents public comment, even if technically in compliance with the law, may violate the spirit of the Open Meeting Law such as where a public body required members of the public to sign up three and one-half hours in advance to speak at a public meeting. This practice can have the effect of unnecessarily restricting public comment and therefore does not comport with the spirit and intent of the Open Meeting Law.

A public body's restrictions must be neutral as to the viewpoint expressed, but the public body may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority of, the public body, or if the content of the comments is willfully disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks or interfering with the rights of other speakers. *See* AG File No. 00-047 (April 27, 2001).

See AG File No 11-035, (December 23, 2011) In fact, the Ninth Circuit has long recognized that First Amendment rights of expression are more limited during a meeting than in a public forum, such as, for example, a street corner. *See Norse v. City of Santa Cruz,* 586 F.3d 697, 699 (9th Cir.2009), rev'd on other grounds 629 F.3d 966 (9th Cir. 2010), cert. denied *City of Santa Cruz, Cal. V. Norse*, 132 S.Ct. 112 (2011) Moreover, government officials performing discretionary functions are entitled to qualified immunity where they reasonably believe their actions to be lawful. *Id.* (citing *Saucier v. Katz,* 533 U.S. 194, 202 (2001)). The interpretation and the enforcement of rules during public meetings are highly discretionary functions. *Id.* (citing *White v. City of Norwalk,* 900 F.2d 1421, 1426 (9th Cir.1990) ("[T]he point at which speech becomes unduly repetitious or largely irrelevant is not mathematically determinable. The role of a moderator involves a great deal of discretion.")).

There is no First Amendment right to remain in a public meeting. "Citizens are not entitled to exercise their First Amendment rights whenever and wherever they wish." *Kindt v. Santa Monica Rent Control BD.,* 67 F.3d 266, 269 (9th Cir. 1995) (upholding a rent control board's action in ejecting a speaker several times because his conduct disrupted the orderly processes of meetings). The Court of Appeals for the Ninth Circuit has held that "limitations on speech at [city council and city board] meetings must be reasonable and viewpoint neutral, but that is all they need to be." *Id.* at 271. A public body may not, in effect, close an open meeting by declaring that the public has no First Amendment right whatsoever once the public comment period has closed. *Norse v. City of Santa Cruz,* 629 F.3d 966,975 (9th Cir. 2010). As the Court had previously explained

in *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990) the entire meeting held in public is a limited public forum, from beginning to the end, not just portions of it. The fact that a city may impose reasonable time, place and manner limitations on speech does not mean that by doing so it can transform the nature of the forum; much less extinguish all First Amendment rights. In *Santa Cruz* a provocative gesture that was made after the public comment period closed was still subject to a determination of whether it enjoyed First Amendment viewpoint protection.

Right to public comment was denied when Chair made the individual choose between public comment at the meeting or possibly lose her promised chance to have a future agenda topic devoted to her issue. This choice meant the individual could speak only once about a matter within the body's jurisdiction and control. Public comment during a public meeting has been bestowed by statute but once bestowed may only be restricted or limited in a constitutional manner. An individual's right to comment is subject to reasonable time, place, and manner restrictions, but the Chair's offer of a choice to this speaker was not based on constitutionally valid time, place, or manner restrictions. *See* AG File No. 10-012 (May 18, 2010).

A member of the public may not be excluded from a tour taken by a public body during a meeting, for example, where a jail advisory committee scheduled a tour of the county jail. While the sheriff may have authority to exclude persons, if persons are excluded, the public body violates the Open Meeting Law if the tour is taken without the excluded member of the public. *See* AG File No. 00-013 (March 30, 2001).

When public comment is allowed during the consideration of a specific topic, the chairperson may require public comment to be relevant to the topic, provided the restriction is viewpoint neutral. When public comment is not allowed during the consideration of a specific topic on the agenda, the public body must allow at least one general period of public comment during that meeting where the public may speak on any subject within the jurisdiction, control or advisory authority of the public body. *See* AG File No. 01-022 (May 31, 2001) and AG File No. 00-047 (April 27, 2001).

§ 8.06 Excluding people who are disruptive

If a person willfully disrupts a meeting, to the extent that its orderly conduct is made impractical, the person may be removed from the meeting. NRS 241.030(5)(b). *See* AG File No. 10-006 (April 13, 2010) Complainant's removal from the room by security was justified based on an intentional disturbance generated by the volume of comments which were audible to the Board and which prevented orderly conduct of the meeting. The chair of the public body may, without vote of the body, declare a recess to remove a person who is disrupting the meeting. *See* AG File No. 00-046 (December 11, 2000). *See* § 8.04 above, for further detailed discussion of reasonable restrictions during a public meeting.

§ 8.07 Excluding witnesses from testimony of other witnesses

Under NRS 241.030(5)(c), a witness may be removed from a public or private meeting during the testimony of other witnesses. This applies even if the witness is an employee of the state agency that is prosecuting the case. Unless otherwise stipulated, the witness may continue to be excluded after he testifies. *See* Op. Nev. Att'y Gen. No. 93 (November 21, 1963). The witness should be allowed entrance after all other witnesses have testified. Aside from these witness exclusion rules remember that, NRS 241.033(4) prohibits the public body from excluding the person being considered under NRS 241.030 at any time during the closed meeting, as well as his/her representative or attorney.

§ 8.08 Votes by secret ballot forbidden; voting requirements for elected public bodies; voting requirements for appointed public bodies (NRS 241.0355)

Since a secret ballot defeats the accountability of public servants, vote by secret ballot is not permitted under the Open Meeting Law. *Cf. News & Observer Publ'g Co. v. Interim Bd. of Educ.,* 223 S.E.2d 580 (N.C. Ct. App. 1976); *Olathe Hosp. Found., Inc. v. Extendicare, Inc.,* 539 P.2d 1 (Kan. 1975); *State ex rel. Wineholt v. Laporte Super. Ct No 2,* 230 N.E.2d 92 (Ind. 1967).

But that does not mean all votes must be by roll call. The Open Meeting Law is satisfied if a vote is by roll call, show of hands, or any other method so that the vote of a public official is made known to the public at the time the vote is cast. *Esperance v. Chesterfield Twp. of Macomb County,* 280 N.W.2d 559 (Mich. Ct. App. 1979).

A public body that is required to be composed only of elected officials may not take action by vote unless at least a majority of all members of the public body vote in favor of the action. A public body may not count an abstention as a vote in favor of an action. NRS 241.0355(1).

In a letter opinion construing public body voting requirements set out in NRS 241.0355, this office determined that the Regional Transportation Commission of Southern Nevada was composed of elected officials from statutorily designated public bodies in Clark County; therefore it is an elected public body subject to the voting requirements of NRS 241.0355. Before action can be taken by RTC, NRS 241.0355 requires a majority of the RTC members to vote affirmatively. There can be no reduction in quorum due to absence of one or more commissioners where the public body is required to be composed of elected officials, even if they are appointed to the RTC by the membership of another elected public body. Letter opinion to Chairman Larry Brown, Regional Transportation Commission of Southern Nevada, July 8, 2011.

"Action" means:

> (a) If a public body has a member who is not an elected official, an affirmative vote taken by a majority of the members present during a meeting of the public body, but;

(b) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body. *See* NRS 241.015.

For example, if only three members of a five person county commission (elected body) are present at a meeting, the three cannot take action by a 2 to 1 vote; the vote must be 3 to 0, since a majority (3) must be in favor of the action.

The Open Meeting Law can never force a public body to take action on any agenda topic. *See* AG File No. 00-018 (June 8, 2000). NRS 241.020(2)(c)(6)(III)(public body may remove an item from the agenda at any time or delay its discussion at any time.)

The Legislature encourages appointed or elected members of public bodies to vote – not abstain. NRS 281A.420(4)(b) states: "Because abstention by a public officer disrupts the normal course of representative government and **deprives the public and the public officer's constituents of a voice in governmental affairs** the provisions of NRS 281A.420 are intended to require abstention only in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the public officer's acceptance of a gift or loan, the public officer's pecuniary interest, or the public officer's commitment in a private capacity to the interests of others."

§ 8.09 Audio and/or video recordings of public meetings by members of the public

Under NRS 241.035(3), members of the public may be allowed to record on audio tape or any other means of sound or video reproduction if it is a public meeting and the recording in no way interferes with the conduct of the meeting.

§ 8.10 Telephone conferences

See § 5.05 for a discussion of the proper way to conduct telephone conferences.

Part 9 WHEN ARE CLOSED MEETINGS AUTHORIZED AND HOW ARE THEY TO BE HANDLED?

---

§ 9.01 General

This part discusses when closed meetings (sometimes referred to as "executive sessions" or "personnel sessions") may be held and how they should be conducted.

The opening clause in NRS 241.020(1) provides that all meetings must be open and public "except as otherwise provided by specific statute." The words "specific statute" are important ones. The Nevada Supreme Court is reluctant to imply exceptions to the rule of open meetings and looks for a specific statute mandating the exception or exemption. *See McKay v. Board of County Commissioners*, 103 Nev. 490, 746 P.2d 124 (1987). *See also* Op. Nev. Att'y Gen. No. 150 (November 8, 1973). In 2009, the Legislature strengthened these OML precepts. NRS 241.020(1) was amended with additional clarifying language. The 2009 amendment not only emphasized the importance of statutory authority before a meeting may be closed, but it also requires strict adherence to the statutory limits imposed on scope of the meeting. The Open Meeting Law is entitled to a broad interpretation to promote openness in government and any exceptions thereto should be strictly construed. *McKay v. Board of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986). Thus, closed sessions should be allowed only when specifically authorized and their scope must be tightly controlled.

§ 9.02 When closed sessions may be held

Closed sessions may be held:

- By any public body to consider character, alleged misconduct, professional competence, or the physical or mental health of a person, with some exceptions, or to prepare, revise, administer or grade examinations administered on behalf of the public body, or to consider an appeal by a person of the results of an examination administered on behalf of the public body. *See* NRS 241.030 and § 9.04.

- By the Certified Court Reporters' Board to deliberate on a decision to be reached upon any contested hearing and to prepare, administer, or grade examinations. *See* NRS 656.090.

- By the Public Employees Retirement Board: (1) to meet with investment counsel, provided the closed session is limited to planning future investments or the establishment of investment objectives and policies, and (2) to meet with legal counsel provided the closed session is limited to advice on claims or suits by or against the system. NRS 286.150(2).

- By the State Board of Pharmacy to deliberate on the decision in an administrative action (subsequent to a public evidentiary hearing) or to prepare, grade, or administer examinations. *See* NRS 639.050(3) and Op. Nev. Att'y Gen. No. 81-C (June 25, 1981).

- By any public body to take up matters or conduct activities that are exempt under the Open Meeting Law. *See* Part 4 of this manual. If the public body has other matters that must be considered in an open meeting, the Office of the Attorney General believes that a public body may take up an exempt matter during the open meeting if it desires. However, by virtue of the exemption, none of the open meeting requirements will apply to the exempt activity although it is recommended that a motion or announcement be made identifying the activity as an exempt activity to avoid confusion between an exempt activity and a closed session to which certain open meeting requirements may otherwise apply.

- By public housing authorities when negotiating the sale and purchase of property, but the formal acceptance of the negotiated settlement should be made in an open meeting. *See* Op. Nev. Att'y Gen. No. 372 (December 29, 1966).

- As authorized by a specific statute. NRS 241.020(1).

§ 9.03 When closed sessions may <u>not</u> be held

Closed sessions may not be held:

- To discuss the appointment of any person to public office or as a member of a public body. NRS 241.030(5)(e). *See* discussion in § 9.04.
- To consider the character, alleged misconduct, professional competence, or physical or mental health of an elected member of a public body, or a person who is an appointed public officer or who serves at the pleasure of a public body as a chief executive or administrative officer or in a comparable position, including, without limitation, a president of a university or community college within the University and Community College System of Nevada, a superintendent of a county school district, a county manager and a city manager. *See* NRS 241.031(1)(a) and (1)(b) and *cf.* Op. Nev. Att'y Gen. 81-A (February 23, 1981), written before NRS 241.031 was enacted.

  [Note: The above prohibition does not apply if the consideration of the character, alleged misconduct or professional competence of the person does not pertain to his role as an elected member of a public body or an appointed public officer or other officer described above. *See* Act of June 17, 2005, Ch. 466, § 4, 2005 Nev. Stat. 2245.]

- When a request to open the meeting is made by the person whose character, alleged misconduct or professional competence or physical or mental health is

being considered, the public body must open the meeting at that time unless the consideration of the character, alleged misconduct professional competence, or physical or mental health of the requester involves the appearance before the public body of another person who does not desire that the meeting or relevant portion thereof be open to the public. The request to open the meeting may be made at any time during the hearing. *See* Act of June 17, 2005, Ch. 466, § 3, 2005 Nev. Stat. 2245. If a necessary witness requests the meeting remain close, the public body must close that portion of the meeting, and open subsequent portions at the request of the person being considered. NRS 241.030.

- To conduct attorney-client communications, unless the communications fall under the exemption in NRS 241.015(2)(b)(2). *See* discussion in § 4.05 of this manual.

- To select possible recipients for awards. To the extent that a public body is considering the character, alleged misconduct, professional competence, or physical or mental health of a person under consideration for receipt of a public award, a public body may meet in closed session to discuss such matters. However, any vote taken with respect to granting the award must be in a public meeting. NRS 241.030.

- To consider indebtedness of individuals to a hospital. The Office of the Attorney General has determined that county hospital board meetings that relate to indebtedness of individuals to the hospital are required to be open and public. *See* Op. Nev. Att'y Gen. No. 148 (October 2, 1973).

- By a local ethics board to discuss past conduct of a public official. *See* Op. Nev. Att'y Gen. No. 94-21 (July 29, 1994).

- Where not authorized by law.

§ 9.04 Closed Meeting; Definition of "character" and "competence"; employment interviews and performance evaluations; Notice requirements.

NRS 241.030(1) states: "Except as otherwise provided in this section and NRS 241.031 and 241.033, a public body may hold a closed meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of a person."

The Open Meeting Law does not *require* a public body to close a meeting to the public pursuant to Chapter 241. *See* NRS 241.030(4)(d).

It is important to remember that NRS 241.033 requires personal notice be provided to the person being considered before closing a meeting pursuant to NRS 241.031, and as a practical matter, a notice pursuant to NRS 241.033 should contain the informational

statement regarding administrative action under NRS 241.034. *See* § 6.09, and § 6.10 *supra*.

A public body must start its public meeting in the open and then it may close the meeting after passing a motion specifying the nature of the business to be considered in closed session *and* the statutory authority pursuant to which the public body is authorized to close the meeting. In 2009 the Legislature added an important emphasis to the scope of a closed meeting putting parameters on the business that can be considered in closed session. NRS 241.020(1) was amended emphasizing that a meeting must not exceed the scope of the statutory authorization for closure. A public body may not stray from the statutory authorization to close a meeting. A public body may not set the parameters of the meeting; it must follow and obey statutory parameters.

The exceptions to closed meetings under NRS 241.030 are discussed *supra* in § 9.03.

The word **"character"** was defined in *Miglionico v. Birmingham News. Co.*, 378 So. 2d 677 (Ala. 1979) to include one's general reputation. It might also include such personal traits as honesty, loyalty, integrity, reliability, and such other characteristics, good or bad, which make up one's individual personality.

In Op. Nev. Att'y Gen. No. 81-A (February 23, 1981), the Office of the Attorney General opined that *character* encompassed that moral predisposition or habit or aggregate of ethical qualities, which is believed to attach to a person on the strength of the common opinion and report concerning him . . . a person's fixed disposition or tendency, as evidenced to others by his habits of life, through the manifestation of which his general reputation for the possession of a character, good or otherwise is obtained. Op. Nev. Att'y Gen No. 81-A also defined the word *competence* to include: ". . . being duly qualified . . . answering all requirements . . . having sufficient ability or authority . . . possessing the natural or legal qualifications . . . able . . . adequate . . . suitable . . . sufficient . . . capable . . . legally fit. *Also see* OMLO 2004-28 (September 9, 2005)."

Closed sessions may be held only to *consider* the character, alleged misconduct, professional competence, or physical or mental health of a person. The Open Meeting Law does not permit taking *action* in closed session on such matters. This distinction was drawn in *McKay v. Bd. of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986), where it was held the board did not violate the Open Meeting Law when it went into closed session to discuss the character, alleged misconduct and professional competence of the city manager, but terminating the city manager in closed session violated the law. *See also* Op. Nev. Att'y Gen. No. 81-A (February 23, 1981), and Op. Nev. Att'y Gen. No. 81-C (June 25, 1981).

The *McKay* decision has important implications for employment interviews and performance evaluations. (*See* § 4.05 infra). While the delineated attributes of individual employment candidates may be discussed in closed session, the public body may not use the closed session to narrow down candidates or begin the selection process. *See Brown v. East Baton Rouge Parish School Bd.*, 405 So. 2d 1148 (La. Ct. App. 1981). Similarly,

while the delineated attributes of existing employees may be discussed in closed session, evaluation forms may not be filled out during the closed session, nor may the public body form recommendations or decisions about a rating or an action to take. Those tasks must be done in an open meeting or delegated to a member to handle. The closed session must be limited to specific discussions about the specific person. General discussions about general policies or practices may not be held during a closed session. *See Hudson v. Sch. Dist. of Kansas City*, 578 S.W.2d 301 (Mo. Ct. App. 1979).

While it can be difficult to properly describe an action item relating to a closed personnel session because one cannot anticipate the outcome of the closed session, one can describe, on the agenda, the parameters of allowable action by stating "possible action including, but not limited to, termination, suspension, demotion, reduction in pay, reprimand, promotion, endorsement, engagement, retention, or 'no action'." *See* AG File No. 00-007 (June 1, 2000).

The statutes do not authorize closure for general "personnel sessions." Closed sessions are only authorized for discussion of the matters specifically listed in NRS 241.030 or in another specific statute elsewhere in the NRS. *See* § 4.02, Statutory exemptions infra; *See* AG File No. 00-043 (January 24, 2001). It is not adequate to vaguely state that the closed session is regarding an individual (such as a manager). The agenda description must specifically state the nature of the business to be considered and the statutory authority authorizing the closed session. If a person's character, professional competence, alleged misconduct or physical or mental health is the topic of the discussion, the person's name must appear on the agenda. NRS 241.020(2)(c)(4); *See* AG File No. 00-050 (March 28, 2001).

See AG File No. 08-037 (February 26, 2009). Board members and the public engaged in a discussion of a county employee's character, and professional competence without providing the employee notice as required under NRS 241.033.

See OMLO 2004-01 (January 13, 2004) where the Office of the Nevada Attorney General opined that *deliberations* as defined in §5.01, *supra*, are not allowed in a closed meeting pursuant to NRS 241.030.

§ 9.05 The appointment to "public office" closed meeting prohibition

Under NRS 241.030(5)(e), closed sessions may not be held "for the discussion of the appointment of any person to public office or as a member of a public body." This prohibition was discussed in *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 784 P.2d 974 (1989). In that case, the city council conducted employment interviews for the city clerk position in the open and then held a brief closed meeting to discuss the character and professional competence of candidates. The council went back into open session to make the selection, but it was held the closed session was still a violation of the Open Meeting Law. The Nevada Supreme Court construed the prohibited "discussion of the appointment" to include "all consideration, discussion,

deliberation and selection done by a public body in the appointment of a public officer." The ruling seems to cover all aspects of the appointment process.

The Open Meeting Law does not define "public officer," but the Nevada Supreme Court (see below) has approved the use of the definition of public officer found in NRS 281.005. NRS 281.160 also provides a definition of public officer and it also construes the meaning of "the exercise of a public power, trust or duty." In Op. Nev. Att'y Gen. No. 193 (September 3, 1975), the Office of the Attorney General opined that NRS 241.030(3)(e) encompasses: (1) all elected public officers, and (2) all persons appointed to positions created by law whose duties are specifically set forth in law and who are made responsible by law for the direction, supervision, and control of their agencies. Also *see* OMLO 2004-01 (January 14, 2004). In *City Council of Reno*, 105 Nev. 886, 784 P.2d 974 (1989), NRS 281.005 was used by stipulation of the parties to define public officer.

§ 9.06 How to handle closed sessions to consider character, allegations of misconduct, professional competence, or physical and mental health of a person

For closed sessions under NRS 241.030(1), the following procedures are required or recommended:

Start with a duly noticed open meeting. Closed meetings are still "meetings" within the definition and ambit of the Open Meeting Law.

To assure compliance with the spirit of NRS 241.020(2)(c)(1), it is recommended the matter be indicated on the agenda as a closed session under NRS 241.030(1) and the person's name being considered must be included on the agenda pursuant to NRS 241.020(c)(4). An agenda item of "Executive Session" does not adequately describe a closed session. *See* AG File No. 00-021 (September 7, 2000).

The closed session should not be listed as an "action" item on the agenda because action cannot be taken during the closed session. *See* discussion in § 9.04.

If action might be taken on the matter, be sure to include a separate item on the agenda for action to be taken during open session. *See* discussion in § 9.04.

Give notice to the subject person as required by NRS 241.033(1). *See* § 6.09 of this manual.

At the meeting, a motion must be made to go into closed session and the motion must specify the business to be considered during the closed session and the statutory authority pursuant to which the public body is authorized to close the meeting. NRS 241.030(3). *See* AG File No. 01-021 (May 14, 2001), which was drafted prior to the 2005 Legislative Session. Only the business identified in the

motion may be discussed. As stated in Op. Nev. Att'y Gen. No. 81-A (February 23, 1981), the purpose of the motion is two-fold: (1) so members of the public body understand the parameters of what can be discussed in closed session so as not to deviate from the strict requirements of the law, and (2) to assure that notice is given to the person being discussed so he or she can obtain a copy of the minutes.

The public body must permit the person being considered and his/her representative to attend the closed meeting. It is up to the chairperson to decide who else shall be included in the closed session, or the chairperson can determine who may attend through a majority vote of the public body, which occurs in an open meeting. NRS 241.033(3).

Before proceeding with the discussion, make sure that proof of service of the notice to the person has been received. If not, the closed session may not proceed, absent waiver. *See* NRS 241.033(1) and § 6.09.

The closed session must be tape-recorded. NRS 241.035(4). As the recordings of closed sessions are treated differently than those of open sessions, NRS 241.035(2), it is recommended the closed session be recorded on a separate tape.

The person being considered must be permitted to present written evidence, testimony and present witnesses relating to his character, alleged misconduct, professional competence or physical or mental health to the public body. NRS 241.033(4).

If the subject desires to record the closed session, the Office of the Attorney General recommends that he or she be permitted to do so. NRS 241.035(3).

Minutes must be kept of the closed session, and they must be prepared with the same detail as minutes of the open session. NRS 241.035(2).

Op. Nev. Att'y Gen. No. 81-A (February 23, 1981) contains a lengthy discussion about the improper use and conduct of an executive session, and the possible remedy.

Part 10 WHAT RECORDS MUST BE KEPT AND MADE AVAILABLE TO THE PUBLIC? (*See* Sample Form 2)

---

§ 10.01 General

This part discusses the requirements for preparing, preserving, and disclosing minutes of meetings.

§ 10.02 Requirement for and content of written minutes (*See* Sample Form 2)

NRS 241.035 requires that written minutes be kept by all public bodies of each meeting they hold regardless of whether the meeting was open or closed to the public. The minutes must include:

a. The date, time, and place of the meeting;

b. The names of the members of the public body who were present and the names of those who were absent;

c. The substance of all matters proposed, discussed, or decided and, at the request of any member, a record of each member's vote on any matter decided by vote;

d. The substance of remarks made by any member of the general public who addresses the body if he or she requests that the minutes reflect his or her remarks, or if he or she has prepared written remarks, a copy of his or her written remarks if he or she submits a copy for inclusion; and

e. Any other information that any member of the body requests be included or reflected in the minutes.

See OMLO 98-03 (July 7, 1998) for an example of how a public body may violate the Open Meeting Law by failing to reflect in its meeting minutes the substance of the discussion by the members of the public body of certain relevant matters.

Verbatim minutes are not required by OML. There is no requirement in NRS 241.035(1) that verbatim remarks be included in the minutes at the request of any person. NRS 241.035(1) use of the phrase "any other information" does not include the right to have the public body insert verbatim remarks in the text of the minutes. Appending prepared written remarks to the minutes is an accommodation which serves the public interest just as efficiently as the insertion of verbatim remarks into the text of the public body's minutes and it also furthers the goal of openness in government. OMLO 2008-03; *See* AG File No. 08-011 (June 9, 2008)

§ 10.03 Retention and disclosure of minutes

Minutes or audio recordings of public meetings are declared by the Open Meeting Law to be public records and must be available for inspection by the public within 30 working days after the meeting is adjourned. *See* NRS 241.035(2) and OMLO 99-06 (March 19, 1999).

In the case of a public body that meets infrequently, formal approval of the minutes of a previous meeting may be delayed several months**.** The unapproved minutes must be made available within the time specified in NRS 241.035(2) to any person who requests them, together with a written statement that such minutes have not yet been approved and are subject to revision at the next meeting.

The minutes are deemed to have permanent value and must be retained by the public body for at least five years, (NRS 241.035(2)) after which they may be transferred for archival preservation in accordance with NRS 239.080-239.125.

Minutes of meetings closed pursuant to NRS 241.030 become public records whenever the public body determines that the matters discussed no longer require confidentiality *and* the person whose character, conduct, competence, or health was discussed has consented to their disclosure. NRS 241.035(2)(a)-(c).

Under NRS 241.033(6) the subject person is always entitled to a copy of the minutes of the closed session upon request, whether or not they ever become public records. In *Davis v. Churchill County Sch. Bd. of Trustees,* 616 F. Supp. 1310, 1314 (D. Nev. 1985), the court suggested that a student who was the subject of closed hearings may release "any information he or she chooses," which presumably includes minutes or tapes of closed sessions.

§ 10.04 Making and retaining audiotapes or video recordings of meetings

It is a requirement of the Open Meeting Law that each public meeting is audio or video taped or transcribed by a reporter who is certified pursuant to Chapter 656 of NRS. NRS 241.035(4). A public body must make a good faith effort to comply with this provision, and if the public body makes a good faith effort to comply, but, for some reason beyond the control of the public body fails to comply, the public body's failure to comply with the provision does not result in a violation of the Open Meeting Law. NRS 241.035(6).

See OMLO 99-09 (July 28, 1999) for an example of the pitfalls associated with using a tape recorder as the sole source for the record of the meeting.

Recordings of closed sessions made by public bodies must also be retained for at least one year but are given the same protection from public disclosure as minutes of closed sessions set out in NRS 241.035(2). The tapes must be made available to the subject of

the closed session, and under NRS 241.035(5), must also be made available to the Office of the Attorney General upon request.

§ 10.05 Fees for inspecting or copying minutes and tapes

The Open Meeting Law requires that minutes and tapes be made available "for inspection" once prepared following a public meeting and does not authorize charging a fee for inspection, since fees for inspection are not authorized by statute.

However, if a person wants a copy of the minutes or audio recordings public records law determines the fee that may be charged. Public bodies should consult the public records law or other statutes dealing with fees to determine what, if any, fees may be charged. *See* NRS Chapter 239.

Minutes and tapes of closed sessions become public record only in accordance with NRS 241.035(2)(a)–(c). If such recordings of closed meetings become a public record in accordance with the statute, a fee may be charged for making copies as provided by NRS Chapter 239.

Part 11 WHAT HAPPENS IF A VIOLATION OCCURS? PUBLICATION OF ATTORNEY GENERAL OPINION ON AGENDA

---

§ 11.01 General

When a violation of the Open Meeting Law occurs, the Office of the Attorney General recommends that the public body immediately cure the violation. Although it may not obliterate the violation, corrective action should be taken so that the business of government is accomplished in the open.

The following sections discuss the possible remedies available to the public body for inadvertent violations of the Open Meeting Law and a new amendment to the OML that requires publication of an Attorney General opinion finding an OML violation by the public body. Publication of the opinion must be on the public body's next agenda. NRS 241.0395.

§ 11.02 Containing and correcting violations

Some examples of ways to stop, contain, and correct violations follow. Of course, as circumstances vary, so may the remedies.

a. Improper notice given for meeting.

If proper notice has not been given for a meeting, the meeting must be stopped. *See* OMLO 99-06 (March 19, 1999). To remedy the violation, the Office of the Attorney General believes that the meeting may be convened or continued solely for the purpose of rescheduling a meeting and adjourning. To otherwise continue a meeting after it is discovered the meeting was not properly noticed could be viewed as evidence of a willful violation of the Open Meeting Law. Discussions of any public significance which were held before the discovery of the improper notice should be repeated at a later meeting. All actions taken before adjournment are void but may be taken again at a subsequent meeting as discussed below.

b. Discussion of items not clearly on agenda.

If a public body begins discussion on an item that is not clearly stated on the agenda, it is recommended the public body stop the discussion and schedule it for a future meeting under a more comprehensive agenda. At the subsequent meeting, it would be advisable to summarize or repeat the conversations that occurred at the previous meeting.

c. Taking action on items listed as discussion items only.

Remembering the expanded definition of "action" in NRS 241.015(1), if a public body takes action on an item which has not been identified on the agenda as an action item, the action is void but may be taken up again at a future duly noticed meeting where the former action may be rescinded to indicate that the public body understands prior action was void. At the subsequent meeting, the rationale for the action should be discussed again or at least the record of the previous meeting made available.

d. No proof of service on the subject of a meeting to consider character, alleged misconduct, competence, or health.

If there is no proof of service of notice on a person whose misconduct, character, professional competence, or mental or physical health is being considered, and the person is not present, the item must be postponed to another meeting, and the subject must be notified again about the new meeting. If the person is present, he or she may be asked if he or she would be willing to waive the notice requirements. The right to notice must be thoroughly explained to the person, and the person should be given the opportunity, free of threat or pressure, to postpone consideration of the matter or to waive the right to notice. As explained in § 6.09 of this manual, any waiver of the right to notice must be knowing and voluntary. A complete record should be made to resolve allegations that may later arise.

e. Public Body voted to rescind earlier votes on items that had not been agendized. Multiple matters were rescinded in a public vote.

Failure to agendize item(s) upon which action was taken are void and must be rescinded by public vote during the same meeting, or in another future public meeting. Otherwise the public may be confused about the legal status of the offending prior action. Corrective action or cure is not possible absent rescission of the offending action or litigation from this office may be required so that the action is declared void by a court of competent jurisdiction. *See* § 11.03 below. Following rescission matters or items that were the subject of illegal action may then be placed on a future agenda for lawful consideration and possible action. AG File No. 08-002 (May 12, 2008).

f. Effective Cure can be taken at a meeting even when a serious but inadvertent violation occurs.

Our opinion in OMLO 2008-02: AG File No. 07-051 (February 7, 2008) is an example of how a public body may cure even a serious violation. The Douglas County Board of County Commissioners quickly cured a violation of the OML during its public meeting. A quorum of the Board had gathered in an unscheduled non-noticed meeting during the Board's recess while Counsel was absent researching a legal issue. A member of the public brought the violation to the attention of the Board at the end of the recess. There had been

> no recording or minutes taken of this gathering. Board Counsel immediately asked members to explain what had occurred during the recess. In response to questions from counsel, it became clear that the gathering of a quorum to discuss a matter on the agenda was inadvertent. No promises or decisions had been given or made during the recess. To the extent there was deliberation among the quorum, it was cured by immediate disclosure of what had been discussed during the inadvertent meeting. When the Board reconvened and disclosure had been made, the Chairman reopened public comment to allow anyone to comment about the violation or anything else. Public comment was not restricted. This prompt action satisfied the legislative mandate found in NRS 241.010. The Douglas County Planning Commission took effective remedial action to cure an acknowledged violation.

However, even though a violation may have been stopped and contained and corrective action taken, the violation may still be the subject of the sanctions below.

§ 11.03 Actions taken in violation are void

The action of any public body taken in violation of any provision of the Open Meeting Law is void, i.e., the action has no legal force or binding effect. NRS 241.036.

However, lawsuits to obtain a judicial declaration that an action is void must be commenced within 60 days after the offending action occurred. NRS 241.037(3).

It appears that only those actions defined in NRS 241.015(1)(decisions, commitments, or affirmative votes by a majority of the members) are voided by NRS 241.036.

§ 11.04 Rescheduling an action that is void

A public body that takes action in violation of the Open Meeting Law, which action is null and void, is not forever precluded from taking the same action at another legally called meeting. *Valencia v. Cota*, 617 P.2d 63 (Ariz. Ct. App. 1980); *Cooper v. Arizona W. Coll. Dist. Governing Bd.*, 610 P.2d 465 (Ariz. Ct. App. 1980); *Spokane Education Ass'n v. Barnes*, 517 P.2d 1362 (Wash. 1974). However, mere perfunctory approval at an open meeting of a decision made in an illegally closed meeting does not cure any defect of the earlier meeting or relieve any person from criminal prosecution for the same violation. *Scott v. Town of Bloomfield*, 229 A.2d 667 (N.J. Super. Ct. Law Div. 1967). The matter should be put on an agenda for an open meeting and reheard.

The following examples illustrate a few methods used by public bodies to correct OML violations.

A public body cured a violation almost two months following the violation. Trustee subcommittee had met in private without notice or agenda to summarize the Superintendent's evaluation and backup materials for formal presentation to the Trustees

at a later meeting. At the later meeting Trustees voted to approve Superintendent's evaluation. Complainant said the earlier private non-noticed meeting had constituted a subcommittee under the OML and should have been subject to public oversight. Corrective action (despite denial by the Chair that a violation had occurred) was taken 55 days later when the sub-committee met for a special meeting prior to the Trustee's regular meeting during which the sub-committee formally approved the evaluation materials and compilation process in a publicly noticed meeting and it again voted on the Superintendent's evaluation so at to remove any conflict with the OML. AG File No. 09-024 (October 13, 2009).

Private attorney filed a petition on behalf of public body. The petition had not been approved or voted on by the public body in open session before it was filed. Public body then agendized the petition for public meeting and voted to ratify the earlier filing of the petition. Even if the complainant's charge that the filing of the Petition was an illegal act on behalf of the public body, the OML does not forbid corrective action to either ratify the action complained of, or to reject the action. AG File No. 10-038 (August 24, 2010).

Public body took immediate corrective action prior to an OML complaint, when it redrafted and revised possibly defective agenda items and re-agendized them to future meeting agenda. AG File No. 10-045 (November 2, 2010).

Allegation was that City Council's process to fill a vacancy within its own membership kept the public in the dark as to its deliberations and assessments of the various candidates and that it violated the letter and spirit of the Open Meeting Law. The Henderson City Council took corrective action after this office contacted the City attorney. It released to the public recertified ballots cast by the Council members, each with the signature of the corresponding voting member. The Council's selection process had been defective because it failed to make known the identity of each member's ballot at the time it was cast or at some time during the meeting. But, failure to verbally deliberate and/or assess the candidates before each ballot was cast was not a violation of the OML. AG File No. 09-029 (November 4, 2009).

§ 11.05 Any person denied a right under the Open Meeting Law may bring a civil suit

Under NRS 241.037(2), any person denied a right conferred by the Open Meeting Law may bring civil suit:

a. To have an action taken by the public body declared void;

b. To require compliance with or prevent violations of the Open Meeting Law, or

c. To determine the applicability of the law to discussions or decisions of the public body.

Additionally, it may be possible for an aggrieved person to seek injunctive relief as explained in *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 784 P.2d 974, 976 (1989).

If the plaintiff prevails, the court may award him reasonable attorney's fees and court costs. NRS 241.037(2).

§ 11.06 The Office of the Attorney General may bring a civil suit

The Office of the Attorney General may also bring suit:

a. To have an action taken by a public body declared void, or

b. To seek injunctive relief against a public body or person to require compliance with or prevent violations of the Open Meeting Law. The injunction may issue without proof of actual damage or other irreparable harm sustained by any person.

c. To seek a monetary civil fine not to exceed $500.00 in a court of competent jurisdiction for a violation of the OML where the person(s) participated (took affirmative action) in a knowing violation of the OML. NRS 241.040.

If an injunction is obtained, it does not relieve any person from criminal prosecution for the same violation. NRS 241.037(1). *See* §11.07 for further discussion of the A.G.'s policy of enforcement of the OML.

§ 11.07 Time limits for filing lawsuit; Policy for enforcement of OML complaints

Any suit which seeks to void an action, and/or to require compliance with the provisions of the Open Meeting Law, and/or to seek injunctive relief must be brought within the statutory 60/120 day limitations periods after the action objected to was taken. NRS 241.037(3). There are two limitations periods – 60 days and 120 days. They run concurrently from the date of an alleged OML violation. If the A.G. has not brought a suit to void a public body's action within 60 days of the alleged violation, thereafter the A.G. is barred from seeking to void the action. But the Attorney General still has jurisdiction under the 120 day limitations period which continues to run for 60 more days. Should a suit be brought during this period of time, the A.G. may seek injunctive relief to force compliance with the OML.

Any suit brought to have an action declared void must be commenced within 60 days after the action objected to was taken by the public body. NRS 241.037(3). In *Kennedy v. Powell*, 401 So. 2d 453 (La. Ct. App. 1981), the court observed that the Legislature limited suits to challenge actions of public bodies for violation of the Open Meeting Law to a short period of 60 days to ensure a degree of certainty in the actions of public bodies. The 60-day limitation is absolute and is in no way dependent upon knowledge of a

violation. According to the court, running of the 60-day time period destroys the cause of action completely. A complaint brought in a court of competent jurisdiction beyond the running of the OML's concurrent 60/120 day limitations periods, as expressed in NRS 241.037 is subject to dismissal. NRS 11.010.

A suit by the Attorney General seeking monetary civil penalties (NRS 241.040(4)) is subject to a one year limitations period following the date of the action taken in violation of this chapter.

The Attorney General's policy for enforcement of Open Meeting Law complaints is:

- The Attorney General may proceed with an appropriate legal action, issue an Open Meeting Law Opinion pursuant to its prosecutorial discretion, or choose not to prosecute an Open Meeting issue prior to the running of the 120-day statute of limitations.

- The Attorney General will not investigate or act upon a complaint alleging an Open Meeting Law violation received after the 120-day statute of limitations unless it is relevant to an existing action or the attorney is commencing a criminal prosecution pursuant to NRS 241.040.

- The Attorney General will not issue an Open Meeting Law Opinion pursuant to his or her prosecutorial discretion after the 120-day statute of limitations.

§ 11.08 Jurisdiction and venue for suits

A suit may be brought by an aggrieved citizen in the district court in the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. NRS 241.037(1).

A suit brought by the Office of the Attorney General may be brought "in any court of competent jurisdiction." NRS 241.037(1).

However, even though a court has jurisdiction, a defendant may raise objections as to proper venue. *Bd. of County Comm'rs of Nye County v. Del Papa*, 108 Nev. 170, 825 P.2d 1231 (1992).

§ 11.09 Standards for injunctions and enforcing injunctions

For a discussion of the standards for imposing injunctions and enforcing them, *see City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 784 P.2d 974 (1989).

§ 11.10 Criminal sanctions

Each member of a public body who attends a meeting of that body where action is taken in violation of any provision of the Open Meeting Law, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor. NRS 241.040(1).

Further, wrongful exclusion of any person or persons from a meeting is a misdemeanor. NRS 241.040(2).

However, a member of a public body who attends a meeting of that public body at which action is taken in violation of the Open Meeting Law is not the accomplice of any other member so attending. NRS 241.040(3).

Upon conviction, punishment may include a jail term of up to six months, a fine not to exceed $1,000, or both.

In Op. Nev. Att'y Gen. No. 81-A (February 23, 1981), the Office of the Attorney General opined there are two requirements before a criminal prosecution may be commenced under the Open Meeting Law. Those requirements are:

1. Attendance of a member of a public body at a meeting of that public body *where action is taken* in violation of any provision of the Open Meeting Law. The opinion recognized the distinction in the Open Meeting Law between actions and deliberations and concluded that criminal sanctions may be appropriate when actions are taken in violation of the Open Meeting Law, but where procedural violations occur involving a meeting where no action is taken, civil remedies are made available to compel compliance or prevent such violations in the future.

2. *Knowledge by a member of a public body* that the meeting is in violation of the Open Meeting Law. The opinion held that, when members of a public body rely on advice of counsel, they should not be held to know that a violation occurred.

While the Open Meeting Law does not require the attorney for the public body to be present at a meeting (AG File No. 00-013 (April 21, 2000)), the presence of the attorney may allow the member to receive advice upon which a member can rely as to whether the member knows that the meeting is in violation of the Open Meeting Law.

§ 11.11 Public officers may be removed from office

Under NRS 283.040(1)(d), a person's office becomes vacant upon a conviction of a violation of NRS 241.040, which is discussed in § 11.10 above.

§ 11.12 Filing an OML Complaint; Procedure; Attorney General Subpoena power; Public Records

FILING A COMPLAINT: A person alleging that the OML has been violated by a public body or that his/her public comment right has been denied may seek redress in the courts as explained above. That person may also complain to the Office of the Attorney General, but filing a complaint with the Office of the Attorney General does not toll the time periods for the person to take his own action

Under NRS 241.040(4), the Office of the Attorney General must investigate and prosecute alleged violations of the Open Meeting Law. The Office of the Attorney General believes that any person may file a complaint with the Office of the Attorney General even if that person is not directly aggrieved by the offense. S*ee* §11.07, above, for an explanation of the Attorney General's policy regarding enforcement of the OML.

All such complaints must be in writing, signed by the complaining person, and contain a full description of the facts known to the complainant. The Office of the Attorney General considers all such complaints to be public records and may release them accordingly. Complaints must be sent to:

Open Meeting Law Coordinator
Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

They may be sent by facsimile to (775) 684-1108.

INVESTIGATION PROCESS: Complaints which allege a cognizable violation of the OML will be investigated. The complaint is sent to the public body along with any supporting documents attached to the complaint. The public body is given time to respond to the allegation(s) by written statements, copies of the agenda, minutes, (even if in draft form), video or audio recordings of the meeting and the Attorney General may subpoena additional relevant documents, records or materials for purposes of the investigation. After review of the complaint and the public body's response, the Attorney General may issue a written opinion that resolves the matter, or she may initiate a civil or criminal suit seeking compliance with the OML.

Considering the time limits for bringing lawsuits, it is important that complaints be promptly filed with the Office of the Attorney General to allow sufficient time for investigation and evaluation. Investigation of an OML complaint must occur within the 60/120 day limitations periods described in §11.07.

SUBPOENA POWER: The Legislature (2011, AB 59 § 3) authorized the Attorney General to issue subpoenas when conducting an investigation pursuant to NRS Chapter 241.039. It states: "The Attorney General shall investigate and prosecute any violation of this chapter. In any investigation conducted pursuant to subsection 1, the Attorney

General may issue subpoenas for the production of any relevant documents, records, or materials. A person who willfully fails or refuses to comply with a subpoena issued pursuant to this section is guilty of a misdemeanor."

Records, relevant documents, or other materials now subject to discovery may include emails among members of a public body; records of their phone calls; and other electronic communications made by a member of a public body while engaged in the public body's public business. NRS 241.039.

It is important to remind a public body of the Open Meeting Law's prohibition against "walking quorums," or "constructive quorums," that can be created through conversations with other members or through electronic communication shared among a quorum of a public body. NRS 241.015(2)(a)(2). Subpoena of relevant records may reveal emails or phone calls among members which could have to be explained or justified to avoid a violation of the Open Meeting Law.

PUBLIC RECORDS: While the complaints themselves are considered public records, investigative files will be held confidential until the investigation is complete and then the file will become a public record, Records of closed sessions which are obtained as a part of the investigation will remain confidential until made a public record through the process in NRS 241.035(2)(a)–(c).

§ 11.13 Publication of Attorney General Opinion finding violation by public body

AB 59, 2011 Legislature, amended the Open Meeting Law with a new requirement for public bodies designed to provide information and transparency to all members of the public.

NRS 241.0395 requires publication of an Attorney General opinion 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 its next which acknowledges the Attorney General's 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.

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.

NRS 241.0395 serves the OML's central tenet—transparency. Publication of the opinion is simply an acknowledgment of a finding by the Attorney General that the public body has taken an action in violation of the OML. The opinion of the Attorney General must be included in supporting materials for that agenda item. The item may be an informational item as there is no statutory requirement that any action be taken. The underlying reason for this change is to provide notice to the public of the Attorney General's opinion and to provide a forum for discussion, if any, between the public and the public body.

§ 11.14 Monetary penalty for willful violation: One year limitations period

NRS 241.040(4) provides that each member of a public body is subject to a civil penalty not to exceed $500.00 for participation in a willful violation of the OML. It states:

> In addition to any criminal penalty imposed pursuant to this section, each member of a public body who attends a meeting of that public body where action is taken in violation of any provision of this chapter, and who participates in such action with knowledge of the violation, is subject to a civil penalty in an amount not to exceed $500. The Attorney General may recover the penalty in a civil action brought in the name of the State of Nevada in any court of competent jurisdiction. . . .

Such an action must be commenced within one year after the date of the action taken in violation of this chapter. A civil penalty is applicable only when a member of a public body, who attends a meeting of that public body where action is taken in violation of any provision of the OML, participates in such action with knowledge of the violation.

The key to understanding how this penalty will be enforced depends on an understanding of the act of "**participation**" a requirement of the statute. Enforcement against a member of a public body based on "participation" may only occur when the member makes a commitment, promise, or casts an affirmative vote to take action on a matter under the public body's jurisdiction or control when the member knew his/her commitment, promise, or vote was taken in violation of the OML.

The civil penalty amendment requires that a public body take action in order for the civil penalty to be potentially applicable. "Action" is defined in NRS 241.015(1) as an affirmative act; mere silence or inaction by members is not sufficient to rise to the level requiring enforcement.

This office would not seek to punish individual members who attempt to comply with the OML, only those that actually violate it. Even then, enforcement under NRS 241 requires discretion based on investigation and review of the facts. Evidence in the record that an individual attempted to comply and/or sought to avoid violating the OML would put them outside the scope of liability for the civil penalty, even if the other members of their public body proceeded to knowingly violate the OML.

Part 12 HOW IS THE OPEN MEETING LAW INTERPRETED AND APPLIED?

---

§ 12.01 General

As with any statute, courts use many principles of statutory construction to construe the Open Meeting Law and apply it to circumstances before them. Discussion of those principles is beyond the scope of this manual, but the Office of the Attorney General has some observations that may be useful in determining how to comply with the Open Meeting Law.

§ 12.02 Legislative declaration and intent

The Legislature declared in NRS 241.010, "In enacting this chapter, the legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." This spirit was a guiding consideration in several cases. *See McKay v. Bd. of Supervisors*, 102 Nev. 644, 647, 730 P.2d 438, 441 (1986). *McKay v. Bd. of County Comm'rs*, 103 Nev. 490, 493, 746 P.2d 124, 125 (1987). *Del Papa v. Board of Regents of the UCCSN*, 114 Nev. 388, 393, 956 P.2d 770, 774 (1998); *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 94, 64 P.3d 1070, 1075 (2003);

§ 12.03 Standards of interpretation

A statute enacted for the public benefit such as a sunshine or public meeting law should be construed liberally in favor of the public, even though it contains a penal provision. *Wolfson v. State*, 344 So. 2d 611 (Fla. Dist. Ct. App. 1977); *City of Miami Beach v. Berns*, 245 So.2d 38 (Fla. 1971); *Laman v. McCord*, 432 S.W.2d 753 (Ark. 1968). The Open Meeting Law is entitled to a broad interpretation to promote openness in government, while any exceptions thereto should be strictly construed. *McKay v. Bd. of Supervisors*, 102 Nev. 644, 730 P.2d 438 (1986)*; Wexford County Prosecuting Attorney v. Pranger*, 268 N.W.2d 344 (Mich. Ct. App. 1978). A construction which frustrates all evasive devices is preferred for an open meeting law. *Florida Parole & Prob. Comm'n v. Thomas*, 364 So.2d 480 (Fla. Dist. Ct. App. 1978). *See also* Op. Nev. Att'y Gen. No. 85-19 (December 17, 1985).

§ 12.04 Use of standard of reasonableness

In circumstances where the Open Meeting Law provides no clear standards or guidelines, public bodies must consider themselves as being governed by a standard of reasonableness. *See* Op. Nev. Att'y Gen. No. 79-8 (March 26, 1979).

§ 12.05 Attorney General Opinions

While Attorney General opinions are intended to be helpful in fashioning compliance with the Open Meeting Law, they are not binding on the courts even though the Office of the Attorney General is given the duty of investigating and prosecuting Open Meeting Law complaints. *See Tahoe Reg'l Planning Agency v. McKay*, 590 F. Supp. 1071, 1074 (D. Nev. 1984), *aff'd* in *Tahoe Reg'l Planning Agency v. McKay*, 769 F.2d 534, 539 (9th Cir. 1985). However, the Nevada Supreme Court in *Del Papa v. Board of Regents of UCCSN*, 114 Nev. 388, 956 P.2d 770 (1998), stated that the opinions of the Office of the Attorney General will receive the same deference as an administrative body interpreting a law that it is responsible for enforcing. Thus, where the Legislature has had reasonable time to amend the law to reverse the opinion of the Attorney General, but does not do so, it is presumed the Legislature has acquiesced to the opinion of the Attorney General. *Hughes Properties, Inc. v. State*, 100 Nev. 295, 298, 680 P.2d 970, 972 (1984).

In addition, the Office of the Attorney General has a long-standing policy of reserving opinions regarding Open Meeting Law complaints that are in litigation even though NRS 241.040(4) gives the Office of the Attorney General investigative and prosecutorial powers. *See* OMLO 98-05 (September 21, 1998).

Part 13 WHAT ELSE DO I NEED TO KNOW ABOUT THE OPEN MEETING LAW?

---

§ 13.01 General

This part covers special questions or topics not discussed elsewhere in this manual.

§ 13.02 Relationship of Open Meeting Law to Administrative Procedures Act, NRS Chapter 233B

The 2009 Legislature made changes to the method of adopting regulations by agencies that are subject to Nevada's Administrative Procedures Act. (APA). SB 267 amended NRS 233B.061 to apply the OML to agency workshops and hearings. SB 267 also amended NRS 233B regarding the holding of workshops and hearings only after LCB has returned proposed regulations to the agency. Act of June 3, 2009, Ch. 419, § 2, 2009 Nev. Stat. 2283.

All workshops and public hearings must be conducted in accordance with the OML. NRS 233B.061 now applies the OML to **all** executive branch agencies subject to the APA, whether the agencies adopt regulations by board, commission or other public body, or by an individual. Agencies headed by a single person such as the Insurance Commissioner are included.

The notice requirements for both NRS 233B and NRS 241.020 may be met in the same notice document so that duplication of notices at different times may be avoided. The OML's minimum notice requirement is before 9:00am three working days before the meeting

The Nevada Administrative Procedure Act (APA), chapter 233B of NRS, requires some agencies to give notice and conduct public hearings before adopting rules and regulations. The 2011 Legislature amended the rules of conduct of some bodies which meet or operate under NRS 233B. NRS 241.030(4) subjects all meetings of public bodies when meeting as a quasi-judicial body to the OML. *See* § 3.01 above.

If the agency is a "public body" (*see* Part 3 of this manual), both the Open Meeting Law and the APA will apply, and it will be necessary to coordinate the proceedings. The Office of the Attorney General recommends the APA notice be prepared and distributed as required by the APA, that a meeting of the public body be noticed and put on the agenda under the Open Meeting Law, and the hearings be included as an action item on the agenda.

The APA also governs the hearings of "contested cases" before administrative agencies and, again, if the agency is a "public body," the Open Meeting Law will also apply to the hearings. Public comment must be conducted to satisfy both the OML and the

requirement in NRS 233B. Prior to the commencement and conclusion of a contested case or a quasi-judicial proceeding that may affect the due process rights of an individual the public body may refuse to consider public comment. See NRS 233B126. Once the Board or Commission has rendered a decision on the contested case, it may entertain public comment on the proceeding at that time. The specific statute governing the activities of the agency may have to be considered as well.

If the Open Meeting Law applies to a contested case hearing, a question arises whether a closed session may be held. Absent a specific statute to the contrary, the contested case must be heard in an open meeting context, and the public body may go into closed session under NRS 241.030 only to consider the character, alleged misconduct, professional competence, or mental or physical health of a person, as discussed in Part 9 of this manual. *See* Op. Nev. Att'y Gen. No. 81-C (June 25, 1981). If the public body is going to conduct a closed session under NRS 241.030(1), the notice requirements of NRS 241.033(1) must be met. If the notice of hearing prepared under NRS Chapter 233B or other relevant statute provides for timing and notice requirements equivalent to NRS 241.033(1), the notices may be coordinated.

§ 13.03 Relationship of Open Meeting Law to the First Amendment to the Constitution of the United States.

Once the right to speak has been granted by the Legislature (NRS 241.020(2)(3)), the full panoply of First Amendment rights attaches to the public's right to speak. The public's freedom of speech during public meetings is vigorously protected by both the U.S. Constitution and the Nevada Constitution. Freedom of expression upon public questions is secured by the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). This constitutional safeguard was fashioned to assure unfettered interchange of ideas for bringing about political and social changes desired by the people. *See* §§ 8.04 and 8.05 above, for detailed discussion of the scope of public comment.

In *Sandoval*, 119 Nev. at 156, 67 P. 3d at 906-907 (2003), the Board of Regents alleged that limiting the discussion of the Regents to the topics on the agenda unlawfully limited the Regents' right to free speech. The Supreme Court denied this argument and stated that the Open Meeting Law was not overly burdensome on the Regents' right to free speech because the Regents could discuss what they wanted, whenever they wanted, just not at a meeting governed by the Open Meeting Law at which the issue for discussion was not agendized.

§ 13.04 Relationship of Open Meeting Law and Defamation

In 2005 the Legislature amended the OML to provide immunity from an action alleging defamation to members of a public body for statements made during the meeting and the Legislature also provided immunity to witnesses testifying before a public body:

> 1. Any statement which is made by a member of a public body during the course of a public meeting is absolutely privileged

and does not impose liability for defamation or constitute a ground for recovery in any civil action.

2. A witness who is testifying before a public body is absolutely privileged to publish defamatory matter as part of a public meeting, except that it is unlawful to misrepresent any fact knowingly when testifying before a public body.

SAMPLE FORM 1: Notice and Agenda Of Public Meeting (With Comments)

Comments ***See* Parts 6 and 7** of the NEVADA OPEN MEETING LAW MANUAL, Eleventh Edition, 2012, for details.	**Sample Form** (This is only a sample. Other formats may be used.)
Name of public body	**NOTICE OF PUBLIC MEETING** **of the** **COMMISSION FOR OPEN GOVERNMENT**
Must state the time, place, and location of meeting.	The Commission for Open Government will conduct a public meeting on November 14, 1997, beginning at 9 a.m. at the following locations:
This shows how a meeting to be held at multiple locations may be noticed. Sites should be connected by speaker phone or other device where all persons at all locations may hear all persons at all other locations.	at its principal office at 1801 North Carson Street, Suite 104, Carson City, Nevada, and at its Las Vegas office in the Grant Sawyer Building, 2501 Washington Street, Suite 401, Las Vegas, Nevada. The sites will be connected by speaker telephones. The public is invited to attend at either location.
Notification pursuant to NRS 241.020(2)(c)(6) and (7)	**NOTICE** 1. Items may be taken out of order; 2. Two or more items may be combined; 3. Items may be removed from agenda or delayed at any time; 4. Any restrictions on public comment must be set out and this notice must state that comment can't be restricted based on viewpoint.
See NRS 241.020(1). Giving the name and telephone number of a contact person is not required, but may avoid time delays or embarrassment.	Reasonable efforts will be made to assist and accommodate physically handicapped persons desiring to attend the meeting. Please call number listed in advance so that arrangements for attendance may be made.
Reasonable restrictions on public comment must be set out in notice form on the agenda.	Public comment is limited to (set out the allowed time) minutes per person.

AGENDA

Agenda must consist of a clear and complete statement of the topics scheduled to be considered during the meeting.

Action may be taken only on those items denoted "For possible action."

Agenda must include a list describing the items on which action may be taken and clearly denote "for possible action" on those items.

1. Call to Order and Roll Call. (For possible action)

2. Approval of minutes of previous meeting. (For possible action)

3. Report by Committee on Abuse of Open Meeting Laws.
   (Discussion)

See Part 9 of the Nevada Open Meeting Law Manual for discussion of when closed sessions are authorized and how they are to be handled.

4. Closed session to consider the character, alleged misconduct, professional competence of John Doe, a staff employee of the Commission. (Discussion). Before closing a meeting, the public body must approve a member's motion to close the meeting which specifies the nature of the business to be considered and the statutory authority on which the meeting will be closed. If closure is pursuant to NRS 241.030(3) the name of the person to be considered must appear on the agenda.

No action may be taken in a closed session. These are examples of how to notice an item where the public body may go into closed session. Okay to list only the attributes before taking action in open session (i.e., character, professional competence, health, etc.) that will be considered.

5. Performance Evaluation of Sue Smith including, but not limited to, termination, suspension, demotion, reduction in pay, reprimand, promotion, endorsement, engagement, retention, or "no action." (Action) (Closed session may be held to consider character, alleged misconduct, professional competence, and physical or mental health pursuant to NRS 241.030.)
   But see § 6.09: Notice provisions of NRS 241.033 do not apply to applicants for employment with a public body. NRS 241.033(7)(a) exempts public meetings held to consider applicants for employment from the provisions of NRS 241.033.

If action is to be taken, it must be in an open session, and the names of the subject persons should be listed.

6. Disciplinary Hearings for possible action)
   Public Body may take administrative action against the following persons which might include employment termination, suspension, demotion, reduction in pay, reprimand, promotion, retention, or no action.

   a. Sam Smith
   b. Harry Brown

If there are topics of known public interest upon which the public body may deliberate, it should be identified. If action might be taken (including approval of a report), this should be listed as "for possible action" and must contain a description of the items on which action will be taken.

7. Report by Executive Officer (Discussion) including:
   (formal approval of Report: for possible action; all other matters in this item are informational only)
   a. Salary of executive director
   b. Legislative audit of Division

Multiple periods of public comment are mandatory. There are now two alternatives for public comment available to a public body. The alternatives may be combined for even more transparency.
NRS 241.020(2)(c)(3).

8. Public comment and discussion. (Discussion) No action may be taken on a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken.

9. Adjournment. (Action)

Notice and agenda must be posted not later than 9 a.m. on the third working day before the meeting. Do not count the day of the meeting as one of the three working days.

This notice and agenda has been posted on or before 9 a.m. on the third working day before the meeting at the following locations:

Notice and Agenda must be posted at the principal office of the public body, or if it has no principal office, then at the building where the meeting will

(1) The Commission's principal office at 1801 North Carson Street, Suite 104, Carson City, Nevada
(2) Grant Sawyer Building, 2501 Washington Street, Las Vegas, Nevada

be held, and at least three other separate, prominent places within the jurisdiction of the public body.

(3) Las Vegas City Hall, 1401 Main Street, Las Vegas, Nevada

(4) Reno City Hall, 490 South Center Street, Reno, Nevada

SAMPLE FORM 2: MINUTES

Other formats or styles may be used. This is not intended to be a complete set of minutes, only to show how certain matters listed on Sample Form 1 might be handled in the minutes in order to comply with the Open Meeting Law. The public body must take into account other statutory, procedural, or record keeping requirements.

MINUTES

of the meeting of the

COMMISSION FOR OPEN GOVERNMENT

(Date of the Meeting)

The Commission for Open Government held a public meeting on (date), beginning at (time) a.m. at the following locations:

> at its principal office at 1801 North Carson Street, Suite 104, Carson City, Nevada and at its Las Vegas office in the Grant Sawyer Building, 2501 Washington Street, Suite 401, Las Vegas, Nevada.

The sites were connected by speaker telephones.[1]

1. Call to order, roll call

The meeting was called to order by Chairman Shirley Brown. Present were commissioners Harry Smith, Peter Knowitall, Roger Dodger, Mike Brown, and Sue Doe. Absent was Commissioner Henry.

Also present were Executive Director Sue Smith and various staff members of the commission. Members of the public were asked to sign in, and the sign in sheet is attached to the original minutes as Exhibit A.

2. Public comment (1st period);

However, if the public body chooses the second alternative set forth in NRS 241.020 and if it allows public comment for each "for possible action" agenda item, it still must allow a period of general public comment before adjournment for any and all matters within the jurisdiction or control of the public body, i.e. non-agenda items.

---

[1] The date, time, and place of meeting as well as the members of the public body who were present and absent, is required. NRS 241.035(1). Listing others present is not required by the Open Meeting Law but may be helpful in resolving Open Meeting Law and other complaints regarding the proceeding.

2. Approval of minutes of previous meeting

The minutes of the October 10 meeting were approved with changes.[2]

3. Report by the Committee on Abuse of Open Meeting Laws

Mr. Rodgers reported that the Committee had completed its report on abuse of Open Meeting Laws. A copy of the report is attached to the original minutes as Exhibit B.

Commissioner Dodger asked about the incident involving Mayor Smith in Little Town on August 17 and wanted the Commission to file litigation. He was reminded that the report was listed on the agenda as a discussion item, and action may not be taken. Further, Mayor Smith would have to be notified if the Commission was going to discuss his misconduct.

Commissioner Knowitall thanked the Committee for its fine work.[3]

4. Closed session to discuss the character, alleged misconduct, and professional competence of a staff employee of the Commission

On motion by Commissioner Dodger, seconded by Commissioner Brown, and approved with a unanimous vote, a closed session was conducted to discuss the character, alleged misconduct, and professional competence of a staff employee of the Commission. The Commission received proof that the employee was notified as required by law. Separate minutes of the session have been prepared.[4] No action was taken.

5. Performance Evaluation of Sue Smith

The Commission received proof that Mrs. Smith was notified as required by law.[5]

Mrs. Smith objected to comments regarding her professional competence indicating that she was new on the job and shouldn't be held to the standards of an experienced employee.

A member of the public addressed the Commission and asked that her remarks be included in the record. A copy of her remarks is attached to the original of these minutes as Exhibit C.[6]

---

[2] If requested by a member, the minutes must record each member's vote. NRS 241.035(1)(c). Otherwise, for Open Meeting Law purposes, a matter like this may be handled this way. For other purposes, it may be advisable to give details about who made and seconded motions and how votes were cast. Consult with counsel.

[3] The substance of the discussion must be reported. NRS 241.035(1)(c).

[4] The minutes should reflect that all the procedural requirements and limitations of a closed session have been followed. *See* § 9 for a discussion.

[5] The agenda suggested that the Commission may go into closed session, but in this instance, it handled the whole matter in an open session. Even if it does so in an open meeting, the Commission must still receive proof of service required by NRS 241.033(1).

[6] *See* NRS 241.035(1)(d). If the commentator does not have written remarks, then his or her oral remarks must be reflected.

On motion by Commissioner Dodger, seconded by Commissioner Brown, and approved with a unanimous vote, the evaluation attached to the original of these minutes as Exhibit D was approved.

6. Disciplinary Hearing re Harry Brown

A disciplinary hearing was held regarding alleged misconduct of Harry Brown. Opening remarks were made by Deputy Attorney General Joe Smith and by counsel for Mr. Brown, Gerry Spence.

Six witnesses testified and were cross-examined. Fifteen exhibits were received into evidence. A record of the proceeding was made by a court reporter and a transcript is available.[7]

On motion by Commissioner Dodger, seconded by Commissioner Brown, and approved with a unanimous vote, a closed session was conducted to discuss the character, alleged misconduct, and professional competence of Mr. Brown. The Commission received proof that the employee was notified as required by law. Separate minutes of the session have been prepared.

Following the closed session, the Commission went back into open session to take action. On motion by Commissioner Dodger, seconded by Commissioner Doe, and upon a vote of 4-2, the Commission found that Mr. Brown had violated various provisions of the Open Meeting Law as alleged in the complaint. Mr. Brown was ordered to pay a $1,000 fine. Counsel for the Commission was instructed to prepare Findings of Fact, Conclusions of Law, and Order to be approved and signed by Chairman Brown, and it will be filed with the original of these minutes.

7. 2nd period of Public Comment and Discussion

Mrs. Henrietta Cobb addressed the Commission, indicating there is a serious flaw in the Open Meeting Law regarding serial communications, and asked the Commission to propose legislation to plug up the gap. She gave an example of Brown County, where the County Manager approved a contract with Henry's Construction Company after discussing it with each Commissioner one at a time. At the meeting, the County Commission voted to ratify the contract without any discussion or input from the community. Commissioner Brown said he would consider having the matter put on an agenda for a future meeting, and Mrs. Cobb would be invited to participate.

///

///

///

[7] More detail may be required by the law that governs hearings by the body. For Open Meeting Law purposes, this shows what happened in the open and closed sessions and that a separate record has been made.

Commissioner Dodge presented to the Commission a report by the Greenpeace organization regarding the massacre of thousands of people in Uganda. He commented that something should be done about it and asked that the report and his remarks be included in the record of this meeting. The report is attached to these minutes but was not read by other Commissioners, and there was no discussion about his remarks.[8]

8. Adjournment was unanimously approved at nine p.m.

[8] Any other information that is requested to be included or reflected in the minutes by any member of the body must be included, even if not relevant or discussed. NRS 241.035(1)(e).

SAMPLE FORM 3: NOTICE OF INTENT TO CONSIDER CHARACTER, MISCONDUCT, COMPETENCE OF HEALTH OF A PERSON. NRS 241.033

COMMISSION FOR OPEN GOVERNMENT
1801 North Carson Street, Suite 104
Carson City, Nevada 89701

December 10, 2005

Ms. Sue Smith
1102 Center Street
Reno, Nevada 89504

Re: Notice of meeting of the Commission to consider your character, alleged misconduct, competence, or health.

Dear Ms. Smith:

In connection with your performance evaluation, the Commission may consider your character, alleged misconduct, competence or health at its meeting on January 14, 2005.[1] The meeting will begin at 9 a.m. at 1801 North Carson Street, Suite 104, in Carson City, Nevada. The meeting is a public meeting, and you are welcome to attend. The Commission may go into closed session to consider the following general topics: your performance as administrative assistant to the executive director, your job description, your job duties, and matters properly related thereto.[2] You are welcome to attend the closed session, have an attorney or other representative of your choosing present during the closed meeting, and present written evidence, provide testimony, and present witnesses relating to your character, alleged misconduct, professional competence, or physical or mental health.[3]

If the Commission determines it necessary after considering your character, alleged misconduct, professional competence, or physical or mental health whether in a closed meeting

---

[1] If requested by a member, the minutes must record each member's vote. NRS 241.035(1)(c). Otherwise, for Open Meeting Law purposes, a matter like this may be handled this way. For other purposes, it may be advisable to give details about who made and seconded motions and how votes were cast. Consult with counsel.

[2] The list of general topics should be as inclusive as possible. Act of June 17, 2005, ch. 467, § 1, 2005 Nev. Stat. 2248.

[3] The substance of the discussion must be reported. NRS 241.035(1)(c). The minutes should reflect that all the procedural requirements and limitations of a closed session have been followed. *See* §§ 6.09 and 9 for a discussion. This sentence meets the requirements of the Act of June 17, 2005, ch. 467, § 1, 2005 Nev. Stat. 2248.

or open meeting, it may also take administrative action against you at this meeting.[4] This informational statement is in lieu of any notice that may be required pursuant to NRS 241.034.[5]

This notice is provided to you under NRS 241.033.[6]

Very truly yours,

_____

Commission Secretary

[4] NRS 241.020 requires agenda statement both for the closed meeting consideration and the administrative action item, which must occur in an open meeting. *See* NRS 241.010.

[5] See Act of June 17, 2005, ch. 466, § 6, 2005 Nev. Stat. 2247.

[6] *See* NRS 241.035(1)(d). If the commentator does not have written remarks, then his or her oral remarks must be reflected.

PROOF OF SERVICE

I, _____, hereby swear or affirm under penalty of perjury, that in accordance with NRS 241.033, I served the foregoing Notice of Meeting of the Commission to consider character, alleged misconduct, competence, or health

_____ By personally serving it on Sue Smith at _____

_____ By depositing it in the United States Mail, postage prepaid, certified mail # addressed to Sue Smith at _____ on this _____ _____ day of _____, 1997.

_____
Signature of person making service

State of Nevada)
ss:
_____ County)

Signed and sworn to (or affirmed) before me by _____
(name)
on _____.
(date)

_____
Notary Public

----------Notes----------

This is only a sample format. Other formats, styles, or preprinted forms may be used as long as they contain all the information required by NRS 241.033. This document must be entered into the record before a public body may proceed with the meeting pursuant to NRS 241.033(1)(b).

INDEX

-A-
Accommodations for physically handicapped 9,81
Action
defined 15,106
must be in open meeting 80
rescheduling void actions 99
Administrative Procedure Act 109
hearings are open meetings 109
regulation making 109
relationship to Open Meeting Law 110
Advisory bodies 30
Agency heads 30
Agency staff meetings 30
Agenda 72
clear and complete 72
closed sessions, agenda items 71
fees for providing copy 63
general requirements 71
items taken out of order 56
listing action items 57
matters brought up during public comment 78
providing copy on request 60
Sample Form 1 112
sticking to 77,97
support material, providing on request 10,60
Appointment of public officer, closed sessions to consider 53
Attorney-client privilege 40,51,89
Attorneys' fees 101
Attorney General
civil actions 100
complaints to 104
opinions 108
prosecution 103
venue of actions by 102
Audiotapes of meetings, *see* Tapes of meetings 95

-B-
Board of Architecture 29,33
Board of Dental Examiners 33
Board of Pharmacy, closed sessions 88
Bodies headed by one person may not be covered by law 28

-C-

Certified Court Reporters Board, closed sessions of 87
Character, defined 90
Circumventing the law 32,46
Civil actions 100,101
Closed meetings 87
court reporters 87
disclosures of minutes, tapes 94
how to handle 92
minutes 94
motions 92
no action may be taken during some 90,91
preserving confidentiality on agenda and motions 92
proof of service 92
recordings of 92
to consider character, alleged misconduct, professional competence, or mental health of a person 92
when may be held 87
when may not be held 88
when not authorized 88,89
Competence, defined 90
Compliance Checklist, Part 1 8
Committees 30
Commissions 32
Confidential
agenda, preserving confidentiality for closed sessions 92
attorney-client memorandums 48,51,60
gaming proceedings 40
information which need not be provided 61
minutes, tapes 94,95
Containing and correcting violations 97
Complaint to the Attorney General 100
Conferences 46
Conventions 46
Costs 101
Criminal prosecutions 103

-D-

Definitions
action 43,85
character 90
competence 90
deliberate 43
emergency 64
gathering 42

present 43
public body 27
quorum 43
working days 59
Defamation, defined 110
Deliberate, defined 43
Deliberations must be in open meeting 44,80,90
Deliberation vs. taking action 36,43
Disruptive people, removing 84

-E-
Educational foundations covered 28
Electronic polling 46
Elected member of public body, closed sessions for 91
Emergency meetings or items on agenda 64
defined 64
how to handle 64
Employment interviews 89
Ethics commissions 37
Exclusion of persons from meetings
disruptive people 84
witnesses 85
Executive sessions, *See* Closed Meetings 87
Executive officers not covered 29
Exemptions
activities exempt 37
express 37
Governor 29
Gaming Control Board and Commission 40
hearings for suspension or expulsion of pupils 38
implied by statute 36
judicial proceedings 36
medical, dental screening panels 39
labor negotiations 38
local ethics committees 37
Legislature 37
statutory 37
State Ethics Commission 37
strict construction, exemptions 107

-F-
Facilities 80
Fees 63
for providing notice and agenda 63
for providing support material 63

First Amendment 110
Forms, sample
minutes, **Sample Form 2**.....116
notice of public meeting, **Sample Form 1** 112
notice of intent to consider character, misconduct, competence, or
health of a person and proof of service, **Sample Form 3**.....120

-G-
Gaming Control Board.....40
Gathering, defined.....42
Governor exemption 29

-H-
Handicapped, *see* Accommodations of physically handicapped 81
Health, consideration in closed session 87,88,89

-I-
Implied exceptions to rule of open meetings 37,87
Informal gatherings and discussions.....43
Injunctions
actions by individuals for.....100,101
actions by Office of the Attorney General for 101
standards for issuing and enforcing 101
time limits for bringing actions.....101
Interpretations of Open Meeting Law.....107
attorney general opinions.....108
implied exceptions 37,87
standards for.....107
standard of reasonableness.....107

-J-
Judicial exemption 37

-L-
Labor negotiations 38
Legislative declaration and intent of Open Meeting Law.....107
Legislative exemptions 37
License applicants, licensees, consideration of character, allegations of misconduct,
professional competence.....66
Limitations on actions.....101
Local ethics commissions 37

-M-
Mailing
ballots.....47
fees 63

notices 59
timing 59
Mail polls 47
Meetings
defined.....42,45
closed meetings.....87
held out-of-state 51
informal gatherings and discussions 43
seminars, conferences, conventions.....46
social gatherings.....45
which “meetings” must be open 42
Medical, Dental Screening Panels 39
Members elect of public bodies 32
Minimum notice, *see* Notice Requirements
Minutes
closed session.....92
fees for copying.....96
general.....94
inspection by public 94
public records.....94
request for copies 94
required contents.....94
retention and disclosure 95
Sample Form 2 116
Misdemeanor.....103
Motion to go into closed session.....92

-N-

Nevada Athletic Commission 67
Nevada Interscholastic Association 33
Non-profit entities.....33,34
Notice Requirements
agenda must be included.....55
calculating 3 working days 59
fees 63
general requirements.....55
improper notice, containing and correcting 97
mailing 59
posting.....58
required contents.....55
recommended contents.....55
Sample Form 1 112
to persons whose character, alleged misconduct, professional competence,
physical or mental health is being considered 68,89,92,99

Sample Form 3 120
to persons against whom the public body may take certain administrative actions or from whom the public body may acquire property through eminent domain.....66

-O-
Open Meeting
facilities.....80
general requirements.....80
notice and agenda requirements.....55,71
Out-of-State meetings.....51

-P-
Performance evaluations.....91
Personnel sessions.....87
PERS (Public Employees Retirement System).....87
Penalties.....99,101,103
Persons whose character, alleged misconduct, professional competence, physical or mental health is to be considered.....68,89,92,99
Physically handicapped, accommodations.....81,112
Polling.....47
Posting
locations must be listed on notice.....58
prominent place, posting guidelines.....58
requirements.....58
Present, defined.....43
Private briefings.....51,52
Privilege, attorney-client.....2740,51,89
Proof of Service, Sample Form 3.....120
Private non-profit organizations.....34
Public
awards, considering candidates.....89
record, minutes and tapes.....94
recording of meetings.....86
remarks, *see* Public comment
Public body
bodies headed by one person.....27,28
definition.....27
examples.....33
must be administrative, advisory, executive or legislative body of state or local government.....27
must be collegial body.....28
Public comment
allowing members of public to speak.....78
item required on notice and agenda.....55,72
matters brought up during.....78

reasonable rules and regulations 55,81
remarks to be put in minutes 94
Public officers
closed meetings not authorized to select 53
may be removed from office for violating Open Meeting Law 103
Pupils, closed sessions for expulsion hearings 38

-Q-
Quasi-judicial functions 40
Quorum, defined 43
Quorum, mayor not counted in determining 45
Quorum, meetings held with another public body 52
Quorum, walking 48,52

-R-
Reasonableness, standard of, ...74,107
Records 94
Recordings of meetings
closed sessions 94
providing copy to members of public 95,96
providing copy to subjects of closed sessions 96
retention 95
who may record sessions 86
Removal from office for violating Open Meeting Law 103
Requests for public notice 60
Requests for agenda, ordinances, regulations or support materials 60,61,62

-S-
Sample Form 1 112
Sample Form 2 116
Sample Form 3 120
Sanctions 99,101
Secret ballots 85
Seminars 46
Serial communications 48
Social gatherings 45
Standards of interpretation 79
Staff meetings 29
State Ethics Commission 37
Statute of limitations 101
Strict construction of exceptions to open meeting requirements 107
Student governments 41
Subcommittees 30
Support material, providing on request 60

-T-

Tape recordings of meetings 95
fees for copying 96
of closed sessions 93
retention of tapes 95
Tax revenues, broadly interpreted 28
Telephonic meeting 46,86
Telephonic voting 46
Time periods
3 working days 59
30 days for minutes, tapes 95
60 days to void actions 99
120 days for injunctive relief 101

-U-

University foundations are public bodies 27
University and Community College System, student governments 41

-V-

Venue of actions 102
Video tapes, *see* Tape recordings of meetings
Video conferences 46
Violations 97
actions taken in violation are void 99
attorney general to investigate and prosecute 101
containing and curing violations 97
criminal sanctions 103
rescheduling void actions 99
right of citizens to bring lawsuits for 100
time limits for bringing suit 101
what happens if one occurs 97
Void actions 99
Voting
agenda to reflect action items 55,71
action items must be denoted on items on agenda 55,71
by mail 47
majority voting requirements 85
polling 46,47
prohibited in closed session 92
reflected in minutes 94
secret ballot 85
telephonic 46

-W-

Walking quorums....48
Waiver of personal notice requirements....66
Witness exclusion....85
Working days....59
Wrongful exclusion of person from meeting....83,101