

NEVADA'S OPEN MEETING LAW

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Legislative Intent of “OML”

NRS 241.010 sets forth a legislative declaration:

- Public bodies exist to aid in the conduct of the people’s business.
- It is the intent of the OML that board deliberations and board actions be conducted openly.

When Does the OML Apply?

- ◆ In general, OML applies to all meetings of a public body at which deliberation takes place and/or action may occur.

Public Body

NRS 241.015(4)

- ◆ Any administrative, **advisory**, executive or legislative **body** of the state or **local government**
- ◆ which expends or disburses or is **supported in whole or in part by tax revenue**
- ◆ or which **advises or makes recommendations** to an entity which expends or disburses or is supported in whole or in part by tax revenue
- ◆ includes any **board**, commission, committee, subcommittee or other subsidiary thereof



Meeting

NRS 241.015(4)

- ◆ In general, a “meeting” is:
 - 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.



What is a Quorum?

NRS 241.015(6)

- ◆ A simple majority of the public body's membership
 - Unless otherwise provided by law, non-voting members are not counted for purposes of determining a quorum (2023 AB 52)
- ◆ Or another proportion as required by specific statute
 - If vacancy occurs for a voting member's position, reduce the quorum & number of votes to take action by number of vacancies (2023 AB 52)
 - ◆ **Exceptions: All members are required to be elected officials OR otherwise provided by statute**

Methods of Holding Meetings

- ◆ If properly noticed and open to the public, meetings may be held:
 - In person
 - Via “remote technology system” (teleconference or videoconference)
 - Hybrid (both in person & remote option)
 - ◆ Exception: If public body comprised of all elected officials, need physical meeting space



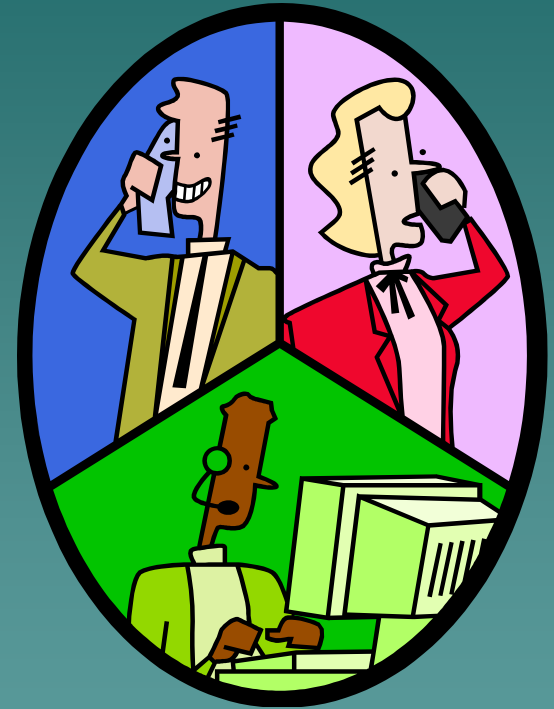
Special Considerations for Virtual Meetings

- ◆ If using “remote technology system” only, the public must be able to:
 - Hear/observe the meeting
 - Provide live public comment during the meeting
 - Have option to attend meeting via telephone
 - ◆ Requires web-based link + phone number
- ◆ **Additional Requirements:**
“Clear and complete” instructions for how member of public can call-in and provide public comment must be read verbally (2023 AB 219)



Special Note

- ◆ Serial Electronic communication must not be used to circumvent the spirit or letter of the Open Meeting Law
 - (NRS 241.016(4))
- ◆ So be careful when communicating over email



Watch Out for “Walking Quorum”

NRS 241.015(4)(2)

- ◆ If a public body’s members engage in a **series** of gatherings at which:
 - (I) Less than a quorum is present at any individual gathering;
 - (II) But, 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 OML= **OML violation**

Exception: Attorney-Client Communications

- ◆ Quorum of board members may gather to:
 - Receive information from the public body's attorney regarding potential or existing litigation, and to deliberate toward a decision=
NOT a meeting (NRS 241.015(4)(c))
- ◆ E-mail communication with the board's attorney= generally NOT a meeting
 - **But do not hit "Reply All"**

Notice of Meeting & Agenda

NRS 241.020

- ◆ Drafted by staff
- ◆ Content reviewed by Board Chair & legal to ensure that:
 - Notice comports with Open Meeting Law; and
 - Agenda gives “clear & complete” notice to public of topics to be considered & what possible action Board may take (stringent standard).
- ◆ Posted at least 3 working days prior to meeting (by 9 a.m.):
 - Principal office of public body **OR building at which meeting is to be held (2023 AB 219)**
 - Websites (public body website & state noticing website))
- ◆ Mailing
 - Subscription- mail or email



Notice of Meeting & Agenda, cont.

- ◆ Types of Agenda items:
 - [Non-action item] = Informational Discussion
 - [For possible action]= Deliberation OR Action
 - ◆ Deliberation:
 - Collectively examining, weighing and reflecting upon the reasons for or against an action
 - Includes collective exchange of facts preliminary to ultimate decision
 - ◆ Action:
 - Decision; commitment or promise; affirmative vote

Important Tip: Stick to the Agenda!!



Action—Voting Minimums

- ◆ 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
 - NRS 241.015(1)(c)
- ◆ Or as required by law

Public Comment

September 21, 2023, E911 Committee Meeting

NRS 241.020

- ◆ Public Comment Periods (2023 AB 219 moved public comment into a separate NRS section- TBD).
 - Block of time at beginning and end of meeting; or
 - During each action item
 - ◆ (After public body has discussed item, but before public body has taken any action on that item)
 - Cannot restrict a speaker's viewpoint
 - However, conduct that disrupts the meeting's order, efficiency or safety may be limited
 - Board cannot deliberate or take action in response to public comment, unless item is already on the agenda

OML Violations

- ◆ AG may bring a legal proceeding to void an action taken in violation of the Open Meeting Law; or to obtain an injunction to prevent violations of the Open Meeting Law
- ◆ A private citizen may also bring a legal proceeding

Corrective Action

- ◆ If an OML violation occurs, the public body may take corrective action within 30 days
- ◆ If appropriate corrective action taken, Attorney General's Office may elect not to prosecute the OML violation.

OML Violations

- ◆ Action taken in violation of the Open Meeting Law is **void** - NRS 241.036
- ◆ OML violations may result in administrative fines against board members
 - 1st offense: \$500; 2nd: \$1,000; 3rd: \$2,500
- ◆ Serious violations of the OML (member has knowledge of violation & participates in violation) can result in **misdemeanor** charges
- ◆ However, if a board member violates the OML because the board member is relying on legal advice of board counsel= no administrative fine or criminal penalty.



Sources of Information

- ◆ NRS Chapter 241
- ◆ Open Meeting Law Manual published by the Attorney General's Office
 - Available online at <http://ag.state.nv.us>
- ◆ Opinions from the Attorney General's Office relating to the OML
 - Available online at <http://ag.state.nv.us>



Any Questions



Where can I find the Code of Ethical Standards?

- ◆ The Ethics Code is a series of rules governing the conduct of certain public officers and employees
- ◆ NRS Chapter 281A

NRS 281A.400

- ◆ No gifts or services that would tend to improperly influence
- ◆ No use of position to get unwarranted privileges
- ◆ No negotiation by employee or officer of contract between government agency and employee's or officer's business
- ◆ No payment from private source for performance of duties

NRS 281A.400, cont...

- ◆ No use of confidential information obtained through position to benefit personal interests
- ◆ No suppression of government info that would tend to be unfavorable to employee or officer
- ◆ No attempts to benefit personal interests through use of subordinate.

NRS 281.400, cont...

- ◆ No seeking of employment or contracts thru use of government job
- ◆ No improper use of government property
 - Exception for de minimis use

Conflicts of Interest

- ◆ DISCLOSE
- ◆ If, at the time a matter is called, a member has a conflict of interest, it must be disclosed
- ◆ Conflicts include commitments in a private capacity to the interests of others in the matter, pecuniary interest in the matter, receipt of a gift or loan in connection with a matter, etc.

Recusal

September 21, 2023, E911 Committee Meeting

- ◆ Recusal is generally disfavored because of the importance of public official in carrying out their duties.
- ◆ Recusal nonetheless is necessary in clear cases where the independence of judgment of a reasonable person in the public officer's situation would be materially affected by the conflict

Any Questions

