

NEVADA'S OPEN MEETING LAW

Presented by: Trenton Ross
Washoe County District Attorney's Office



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.

Pillars of the OML

- ◆ Public Body
- ◆ Meeting
- ◆ Notice
- ◆ Agenda
- ◆ Minutes
- ◆ **AB 253 (2021):**
 - No major revisions
 - However, AB 253 put some structure around “remote technology” meetings



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



Who is NOT a “Public Body”?



- ◆ NRS 241.016(2) provides that a “public body” does not include the Nevada Legislature or the Parole Board
- ◆ Most private non-profit corporations

Meeting

NRS 241.015(3)(a)(1)

- ◆ 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(5)

- ◆ A simple majority of the public body's membership
- ◆ Or another proportion as required by specific statute

Methods of Holding Meetings

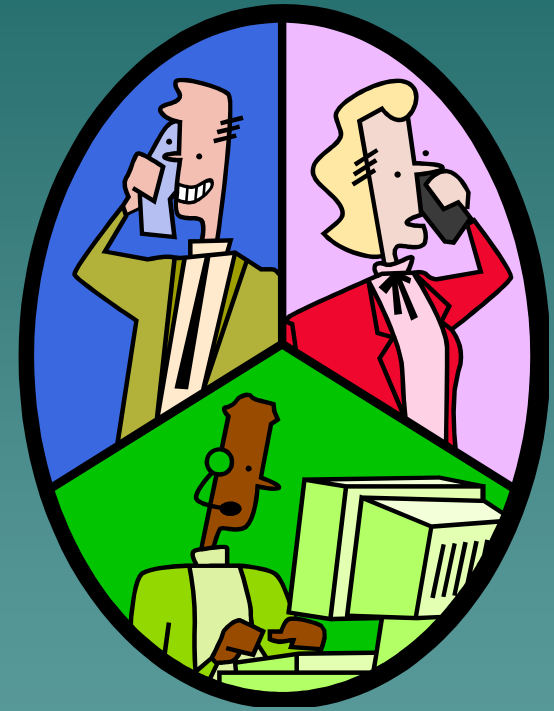
- ◆ If properly noticed and open to the public, meetings may be held:
 - In person
 - Via “remote technology system” (teleconference or videoconference)
 - Hybrid (both in person & remote option)
 - ◆ Exception: If public body comprised of all elected officials, need physical meeting space

Qualification: 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)



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(3)(a)(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(3)(b)(2))
 - Receive training from the public body's attorney regarding legal obligations, if public body does NOT deliberate toward a decision=**NOT a meeting**
- ◆ E-mail communication with the board's attorney= generally NOT a meeting
 - **But do not hit "Reply All"**

Exception: Social Function

NRS 241.015(3)(b)(1)

- ◆ Even if a quorum is present, social functions are NOT meetings, as long as 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.

Don't turn a party into a meeting!!



Notice of Meeting

NRS 241.020



◆ Content

- Day, Time, Location (include room)
- **If a meeting location is offered**, must make reasonable efforts to ensure meeting location is large enough to accommodate anticipated number of attendees. (Capacity limits O.K.)
- **If meeting held using “remote technology system” ONLY:**
 - ◆ How public can use system to hear/observe meeting
 - ◆ How public can participate in meeting via telephone
 - ◆ How public can provide live public comment (and if authorized by public body, pre-recorded public comment)
- List of locations where notice posted
- Contact info (**including business address**) for person who can provide supporting materials
- Means of providing public comment (options)
- Agenda

Notice of Meeting cont...

NRS 241.020

- ◆ Posting
 - Principal office of public body + 3 prominent places (No longer a requirement)
 - Websites (public body website (if there is one) & state noticing website)
- ◆ Additional requirement for “Remote Technology” meetings only:
 - Public body MUST have website & post notice, supporting materials to the website.
- ◆ Mailing
 - Subscription- mail or email
- ◆ 3 Working Days prior to meeting (by 9 a.m.)

Agenda

NRS 241.020

- ◆ Clear and Complete statement of topics to be considered (stringent standard)
 - Could your neighbor understand what is going to happen at the meeting?

- ◆ Notation “For Possible Action” if action item
 - Informational Discussion
 - 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



Agenda cont...

NRS 241.020

- ◆ Public Comment Periods
 - 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

- ◆ Notice that agenda items may be:
 - Taken out of order
 - Combined
 - Removed or delayed discussion

Materials Available to the Public

- ◆ Agenda
- ◆ Supporting Materials
 - Must be posted on public body's website
 - Upon being **available** to the "public body" supporting materials must be made available to the public.
 - ◆ Can be before meeting or on the day of the meeting
 - ◆ If on day of meeting, post to website within 24 hours
- ◆ Can be made available by e-mail or emailed link if the requester approves

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)
- ◆ If all the members of a public body are elected officials, an affirmative vote taken by a majority of all the members of the public body
 - NRS 241.015(1)(d)

Minutes

NRS 241.035

- ◆ Minutes must contain:
 - Date, time, location of meeting
 - Members present
 - Substance of all matters discussed or decided
 - Remarks made by member of public (if person requests minutes reflect remarks)
- ◆ Meetings must be audio-recorded or transcribed by certified court reporter. Recordings retained for 3 years.
- ◆ Minutes must be available within **30 working days** after meeting. Can post **draft** minutes on website prior to approval. Retained for 5 years.
- ◆ Approved w/in 45 days or at the next meeting (whichever later)

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.

Enforcement

- ◆ Person may make OML complaint to Nevada Attorney General's Office
 - AG notifies public body of complaint w/in 14 days
 - If complaint submitted w/in 120 days of alleged violation, AG MUST investigate.
 - If complaint submitted after 120 days, AG will NOT investigate
 - ◆ Exception: Alleged violation not previously discoverable & complaint submitted w/in 1 year.
 - AG not required to investigate an alleged OML violation if person's interests are not "significantly affected" by alleged violation.
 - ◆ Example: Person doesn't live within public body's geographic area

Enforcement, cont...

- ◆ If AG conducts investigation, it will inform public body
- ◆ After investigation complete, AG will issue:
 - A finding that NO violation occurred; OR
 - A finding that a violation occurred + an explanation for this finding
- ◆ Public body submits response w/in 30 days
- ◆ If AG finds an OML violation, public body must acknowledge finding on next 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

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.



Advice

- ◆ Don't assume that other public body members will be able to spot every issue!
- ◆ Discuss any questions/issues with legal counsel

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

To Whom Does it Apply?

- ◆ **Public employees**-- which include any person who performs public duties under the direction and control of a public officer for compensation paid by the state or any county, city or other political subdivision.
- ◆ **Public officers**-- which include a person elected or appointed to a position which:
 - Is established by law
 - Involves the exercise of public power, trust or duty.
 - ◆ Doesn't technically include advisory board members

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

- ◆ 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

Ethics Acknowledgement

- ◆ 281A.500 requires public officers to file a form with the Nevada Ethics Commission acknowledging review of ethical standards

Any Questions

