

INTRODUCTION TO THE OPEN MEETING LAW

Washoe County District Attorney's
Office

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Learning Objectives

- ◆ Introduce you to the Open Meeting Law ("OML")
- ◆ Enable you to recognize OML issues

Legislative Intent of “OML”

NRS 241.010 sets forth a legislative declaration, as follows:

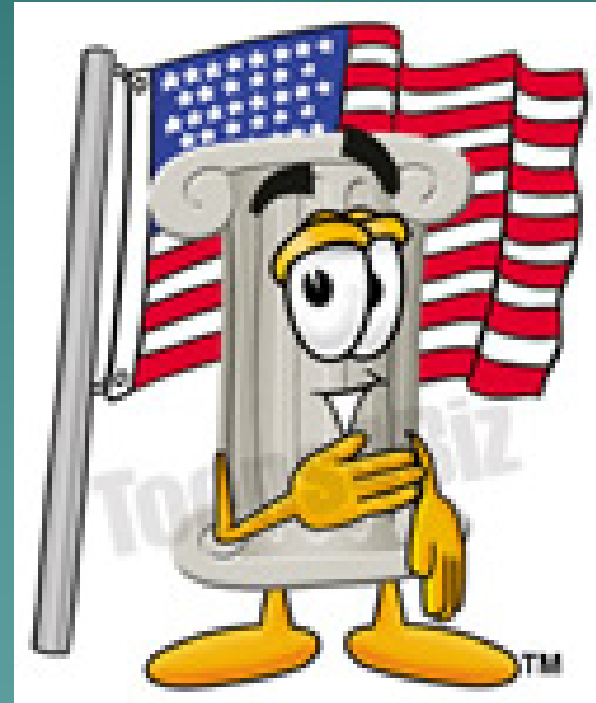
- All public bodies exist to aid in the conduct of the people’s business.
- It is the intent of the OML that board deliberations and board actions be conducted openly.

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



Public Body

NRS 241.015(3)

- ◆ 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
- ◆ 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
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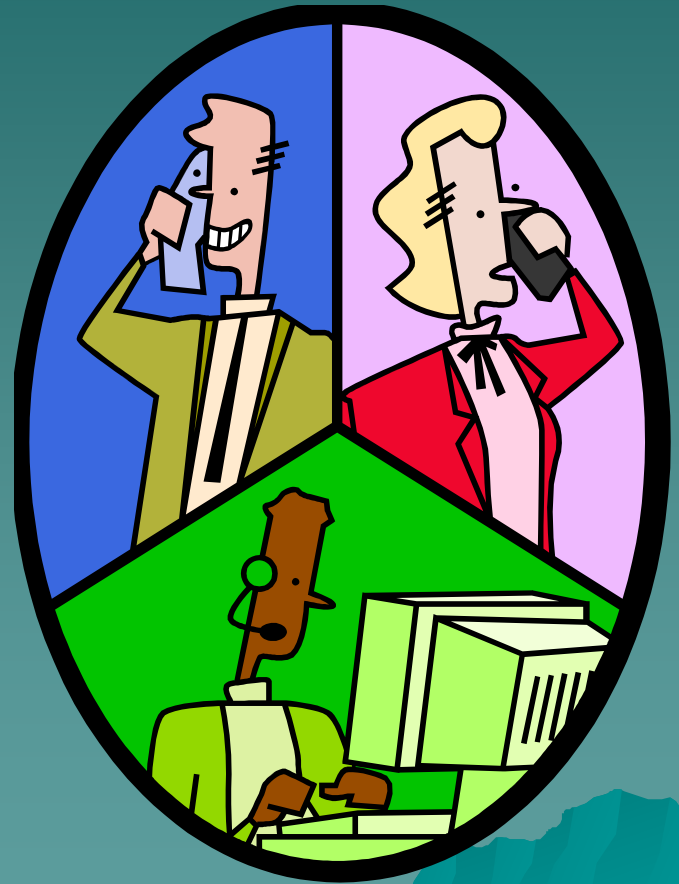
Methods of Holding Meetings

- ◆ In addition to standard meetings, and if properly noticed and open to the public:
 - Via telephone
 - Video conference



Special Note

- ◆ Electronic communication must not be used to circumvent the spirit or letter of the Open Meeting Law
- ◆ NRS 241.016(4)



Serial Communications Prohibited

"[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."

Del Papa v. Board of Regents, 114 Nev. 388, 400 (1998)

Watch Out for “Walking Quorum”

NRS 241.015(3)(a)(2)

- ◆ If public body’s members engage in **series** of gatherings 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 OML.

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)
- ◆ E-mail communication with the board's attorney= generally NOT a meeting
 - **But do not hit "Reply All"**

Social Function

NRS 241.015(3)(b)(1)

Don't turn a party into a meeting!

- ◆ 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.



Notice

NRS 241.020

- ◆ Content
 - Remember: Right of the public to know
 - Day, Time, Place (include room)
- ◆ Posting
 - Four prominent places
 - Including place of meeting
 - Websites
- ◆ Mailing
 - subscription
- ◆ 3 Working Days (by 9 a.m.)
 - Not day of the meeting
 - Not weekends and holidays



Agenda

NRS 241.020


- ◆ Clear and Complete (stringent standard)
 - Could your neighbor understand what is going to happen at the meeting?
- ◆ Information v. Deliberation v. Action
 - Informational Discussion
 - Deliberation
 - ◆ Collectively examining, weighing and reflecting upon the reasons for or against the action.
 - ◆ Includes collective exchange of facts preliminary to ultimate decision.
 - Action
 - ◆ Decision, commitment or promise, affirmative vote
- ◆ Stick to the Agenda



Action—Voting Minimums

- ◆ 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
 - 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)

Public Comment

- ◆ Public comment is welcomed during a block of time at the beginning and end of the meeting
 - ◆ Cannot restrict a speaker's viewpoint
 - ◆ But 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 it's already on the agenda
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Materials Available to the Public

- ◆ Agenda
- ◆ Supporting Materials
 - Before the meeting
 - On the day of the meeting
 - Upon being available to the “public body” supporting materials must be made available to the public.
 - Confidential support material must relate to proprietary information under NRS 332.025, and does not need to be disclosed to the public.
- ◆ Can be made available by e-mail if the requester approves

Minutes

NRS 241.035

- ◆ Minutes:
 - A meeting must be audio recorded or transcribed by a certified court reporter
 - May be taken by hand
 - Must be available within 30 working days after the meeting
 - Must be retained for five years (audio for one year)
- ◆ Minutes of closed meetings may be released only with the consent of the person




OML Violations

- ◆ Action taken in violation of the Open Meeting Law is **void** - NRS 241.036
- ◆ If convicted of an OML violation, a member of a public body **vacates their seat** – NRS 283.040(1)(d)
- ◆ Serious violations of the OML can result in **misdemeanor** charges



Corrective Action

- ◆ If an OML violation occurs, the public body may take corrective action within 30 days
 - ◆ Violations, as determined by the Attorney General's Office, must be reported on the next agenda
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Enforcement

- ◆ Attorney General's Office has primary jurisdiction to enforce OML
- ◆ AG may bring a legal proceeding to void an action allegedly 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

Golden Rule of OML

- ◆ If the public body is not sure whether a certain act should be done in the open, it should ALWAYS perform that act at a properly noticed open meeting.

Sources of Information


- ◆ NRS Chapter 241
 - Google NV Legislature– Law Library– Nevada Revised Statutes
- ◆ NRS Chapter 241 case law annotations
 - Available at local law library
- ◆ Published opinions from the Attorney General's Office relating to the OML
 - Available online at <http://ag.state.nv.us>



Additional Sources of Information

- ◆ Letters issued by the Attorney General's Office after investigation of OML complaints
 - Available on line at <http://ag.state.nv.us>
- ◆ Open Meeting Law Manual published by the Attorney General's Office
 - Available on line at <http://ag.state.nv.us>

But wait... there's more!

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




Ethics in Government

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

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.

281A.400

- ◆ No gifts that would tend to influence improperly
 - ◆ 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
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- ◆ 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
- ◆ No attempts to benefit personal interests through use of subordinate.

- ◆ 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

Recusal

- ◆ Recusal is generally disfavored because of the importance of public official in carrying out their duties.
- ◆ Recusal nonetheless necessary 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 conflict

Ethics Acknowledgement

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

Any Questions

