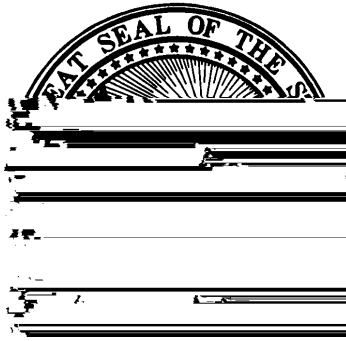


**NEVADA
OPEN MEETING LAW
MANUAL**



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FOREWORD

The 2011 Nevada Legislature enacted significant changes to the Open Meeting Law. This is the newly revised 2011 Open Meeting La

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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](http://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.

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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

_____ 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? [NRS 241.033(1), § 9.06]

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 b

- _____ 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]

Part 2 THE OPEN MEETING LAW, NRS CHAPTER 241

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

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.

NRS 241.040

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 permitte

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

8. As used in this section, “emergenc

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 charac

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

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 confidential member's no

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

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

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

(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

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

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.

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 gr

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).

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,

**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

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

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); *see* 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. *but 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

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 pr

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

**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

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 "0002 Tcr, should thoe tea1 rss0,athear speake39of

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

Serial communication invites abuse of the Open Meeting Law if it is used to

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, ques

§ 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

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

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*: Appointment 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

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

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.

The requirements set out above are mandatory.

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 and then 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.

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

§ 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

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

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

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 indi

emergency item may be added to the agenda at the meeting. The minutes should reflect the nature of the emergency a

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

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 miscon

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

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:

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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

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

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.

- 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

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

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 and later it must 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, but before the public body

§ 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

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

§ 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

(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.

**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 h.225n 43a e

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 not 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*

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,

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 he put2astatute

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

**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

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 agendaized. Multiple matters were rescinded in a public vote.

Failure to agendaize 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 mee

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 as 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 po4.7037(1). -101-

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:

§ 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 reception of the meeting is in violation of the law.

§ 11.12 Filing an OML Complaint; Procedure;

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

§ 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

§ 12.05 Attorney General Opinions

While Attorney General opinions are intended to be helpful in fashioning compliance

**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

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.

AGENDA

Agenda must consist of a clear and complete statement of the topics scheduled to be considered during the meeting.

Agenda must include a list describing the items on which action may be taken and clearly denote “for possible action” on those items.

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.

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.

Action may be taken only on those items denoted “For possible action.”

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)
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.
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 held, another

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

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

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:

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 _____

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