

NEVADA OPEN MEETING LAW

For: Washoe County Advisory
Boards

By: Washoe County District
Attorney's Office

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Learning Objectives

- ◆ Introduce you to or re-acquaint you with the Nevada Open Meeting Law
- ◆ Enable you to spot Open Meeting Law ("OML") issues



Legislative Intent of "OML"

The Nevada Legislature declares in NRS 241.010 the Intent of the OML:

- All public bodies exist to aid in the conduct of the people's business.
- Their **actions** be taken openly and that their **deliberations** be conducted openly.

5 Basic

Pillars of the OML

- ◆ Public Body
- ◆ Meeting
- ◆ Notice
- ◆ Agenda
- ◆ Minutes



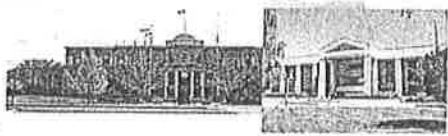
Pillar: Public Body

NRS 241.015(3)

- ◆ Any **administrative, advisory, executive or legislative** body of the state or local government
- ◆ which **expends or disburses** or is supported in whole or in part by **tax revenue**
- ◆ or which **advises or makes recommendations** to any entity which expends or disburses or is supported in whole or in part by tax revenue
- ◆ Includes **subcommittee** or other **subsidiaries** of boards, commissions, committees



What is NOT a "Public Body"?



- ✓ NRS 241.015(3): "public body" does **not** include the **Legislature** of the State of Nevada
- ✓ **Courts** are outside definition of administrative/legislative/executive
- ✓ Most non-profits and private boards

Staff Meetings—not yet!



Pillar: Meeting--Definition

NRS 241.015(2)(a)(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.



Gathering

- > Including if **present electronically**
- > Everywhere and anywhere—(except)
- > During **breaks** of meetings
 - > Parking lots, water cooler, bathroom

What is a Quorum?

NRS 241.015(4)

- **A simple majority of the constituent membership of a public body or another proportion established by law**

- **Or as required by specific statute**

Deliberate

NRS 241.015(2)—AB 85 of 2013 Nevada Legislature

"Deliberate" means collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.

➤

Action

NRS 241.015

- ◆ **A decision made by a majority of the members present during a meeting of a public body;**
- ◆ **A commitment or promise made by a majority of the members present during a meeting of a public body**

Methods of Holding Meetings

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



Special Notes

- ◆ Electronic communication must **not** be used to circumvent the spirit or letter of the Open Meeting Law—NRS 241.030(4)
- ◆ Public must be able to hear or observe



Closed Meetings —NRS 241.030

- ◆ To consider character, alleged misconduct, professional misconduct, physical or mental health *of person*
- ◆ Prepare or grade exams
- ◆ Does not include discussion of appointment of any person to a public office or as member of body



Attorney Conferences—NRS 241.015



- ◆ Outside the definition of meeting
- ◆ To receive information from the attorney regarding potential or existing litigation and to deliberate toward a decision on the matter, or both.

Social Function

NRS 241.015(2)(b)(1)

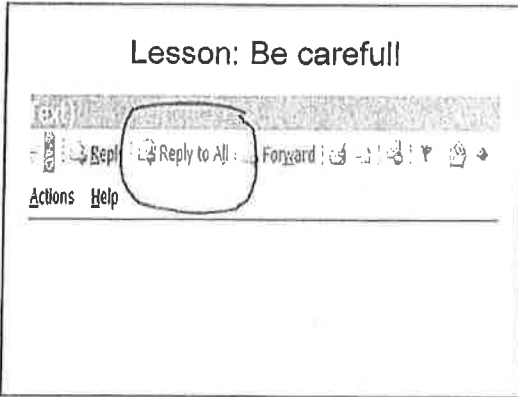
- ◆ Not always a meeting
- ◆ If the members do **not deliberate** toward a decision or take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.



Definition of Meeting—"walking quorum"

- ◆ 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.
- ◆ NRS 241.015(2)(a)(2)

Lesson: Be careful



Pillar: Notice--NRS 241.020

- ◆ Content
 - Right of the public to know
 - Day, Time, Place (Include room)
- ◆ Posting
 - Four prominent places—with proof
 - Including place of meeting—counts 1
 - Website—if you use one
 - Name and contact info for supporting material
- ◆ Mailing
 - subscription
- ◆ Three Working Days
 - Not day of the meeting
 - Not weekends and holidays



Pillar: Agenda--NRS 241.020

- ◆ Clear and Complete
 - Right of the public to know
- ◆ Action
 - Action vs. Discussion
 - ◆ "for possible action"
 - Decision or consensus (motion and votes)
 - Deliberation
- ◆ Stick to the Agenda
- ◆ Public Comment—beginning and end



Materials Available to the Public

- ◆ Agenda
- ◆ Packet (Backup Material)
 - Before the meeting, over the counter at the office
 - On the day of the meeting
 - Upon being available to the "public body" back-up material must be made available to the public.
 - Confidential support material must relate to proprietary information under NRS 332.025, and does not need to be disclosed to the public.
 - On website if website used
- ◆ Can be made available by e-mail if the requester approves

Pillar: Minutes--NRS 241.020

- ◆ Minutes:
 - A meeting must be audio recorded or transcribed by a certified court reporter
 - May be taken by hand
 - Must be available within 30 working days after the meeting
 - Must be retained for five years (audio for one year)
- ◆ Minutes of closed meetings may be released only with the consent of the person - NRS 241.035



Violations

- ◆ Action taken in violation of the Open Meeting Law is void - NRS 241.036
- ◆ Attorney General's Office has primary jurisdiction to enforce OML
- ◆ Violations of the OML can result in misdemeanor charges
- ◆ If convicted of an OML violation, a member of a public body vacates their seat - NRS 283.040(1)(d)



Violations

If AG finds violation, the public body must **include an item on the next agenda** posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law and includes the opinion as supporting material. NRS 241.0395

Enforcement

- ◆ Attorney General's Office may bring a legal proceeding to void an action allegedly taken in violation of the Open Meeting Law
- ◆ Attorney General's Office may also bring a legal action to obtain an injunction to prevent violations of the Open Meeting Law
- ◆ A private citizen may also bring a legal proceeding

Golden Rule of OML

- ◆ If not sure whether a certain act should be done in the open, it should ALWAYS happen at properly noticed open meeting.



Sources of Information



- ◆ Review the provisions of NRS Chapter 241 often
- ◆ Don't assume that other public body members will be able to spot every issue
- ◆ Rely on your knowledge and discuss issues with the public body legal counsel

Additional Sources of Information

- ◆ Case law in the annotations to NRS Chapter 241
 - Available in your local law library
- ◆ Opinions relating to the Open Meeting Law published by the Attorney General's Office
 - Available in your local law library or on line at <http://ag.state.nv.us>

But Wait! There's More...

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

Any Questions



◆ **Contact Information**

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- ◆ **Special Thanks to Paul Upparelli**
- ◆ **Assistant District Attorney**
- ◆ **Original Author of this Power Point**
