

Open Meeting Law

Statewide Council for the Coordination of
Regional Training Programs
February 7, 2014

Introduction

- NRS Chapter 241 codifies the Open Meeting Law (“OML”).
- The intent of the law is that public bodies deliberate and take their actions openly. NRS 241.010.
- Thus, if a public body holds a meeting, the meeting must be noticed properly under the OML, it must be open to the public, and the meeting must not stray from the agenda.
- The Statewide Council for the Coordination of Regional Training Programs is a “public body” under the OML. *See* 241.015(3); NRS 391.516.
- Possible penalties for violation include that any action taken could be voided, and the next agenda would include notice of the violation. NRS 241.037; NRS 241.0395.
- Each member who attends a meeting where action is taken in violation, with knowledge of the fact that the meeting is in violation, is guilty of a misdemeanor. A civil penalty up to \$500 could be imposed. NRS 241.040.
- Wrongful exclusion of any person or persons from a meeting is a misdemeanor. NRS 241.040.

What is a meeting?

- **NRS 241.015(3) defines a meeting as follows:**

(a) Except as otherwise provided in paragraph (b), means:

(1) The gathering of members of a public body at which a **quorum** is present, **whether in person or by means of electronic communication**, 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, whether in person or by means of electronic communication, 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, whether in person or by means of electronic communication:

(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.

[Emphases added.]

“Meeting”

- The Nevada Supreme Court has concluded that “a meeting is a gathering of a public body quorum at which it acquires information, discusses the information, or makes decisions regarding that information within its jurisdiction.” *Chanos v. Nevada Tax Com'n*, 124 Nev. 232, 239, 181 P.3d 675, 680 (2008).
- A meeting may be deliberation or action. *Id.*

What is action?

- NRS 241.015(1) defines “action” as follows:
 - (a) A **decision** made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;
 - (b) A **commitment or promise** made by a majority of the members present, whether in person or by means of electronic communication, 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, whether in person or by means of electronic communication, 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.[Emphasis added.]

What does it mean to “deliberate”?

“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.

NRS 241.015(2).

For this Council, what is a quorum?

- A quorum is a simple majority. NRS 241.015(4).
- NRS 391.516 provides for 9 members, so a quorum is 5, even if some seats are vacant.
 - Note: The Superintendent, or his designee, is a member and counts toward the quorum. Other members of Department staff do not count toward the quorum because they are not members of the Council.
- This does not mean Council members cannot be friends!

Walking/Constructive Quorum

Pitfalls that could become a “Meeting”

- Electronic polling
- Serial communications
- Walking/Constructive quorum

Situations that generally are NOT a “Meeting”

- Briefings/information from staff (as long as staff does not carry the quorum)
 - What if you have informational items to communicate to other council members?
- Discussions with counsel
- *See exceptions found in NRS 241.015(3)(b).*
- Attending an information or training conference (just don't make any decisions)

Did the discussion at the luncheon violate of the OML?

- Five members (quorum) of the county board of directors went to a luncheon with county counsel, a county executive, and some union leaders to discuss a strike against the county.
- Newspaper reporters were not allowed to sit in on the luncheon.

Yes, it was a violation.

- Deliberation 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 decision 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, which is evasive.
- The term “meeting” extends to informal sessions or conferences of board members designed for the discussion of public business.
- *Sacramento Newspaper guild v. Sacramento County Board of Supervisors*, 69 Cal. Rptr. 480 (Cal. Ct. app. 1968)

Did the back-to-back staff briefings violate of the OML?

- A redevelopment agency (quorum is 4), issued an RFP for redevelopment of a building and to determine whether to demolish the building instead.
- The staff to the agency met with 2 members to discuss the RFP responses and the staff's evaluation of the responses.
- Then, the staff met with 3 other members to discuss the same thing.
- The briefings were designed to permit the agency members to gather information and discuss the highly complex RFP proposal process.
- During each briefing, RFP ratings were discussed, and agency members asked questions or made comments.
- Agency members did not provide their opinions or vote on the issues, and the staff did not poll the members as to opinions or votes. The purpose of the briefings was to provide agency members with information regarding a complex policy issue.
- Agency staff did not communicate questions or comments made by the agency members from the first briefing to those who attended the second briefing.

Did the back-to-back staff briefings violate of the OML?

- Two days before the public meeting, the newspaper reported that 3 agency members intended to vote for demolition.
- At the public meeting, there were staff presentations, public testimony, and substantial discussion among agency members.
- The Agency voted to demolish the building.

No, there was not a violation.

- No quorum was present for each briefing.
- There was not a constructive quorum, as there were not any serial communications of the discussions.
- Requiring members of a board to consider only information obtained through public comment and staff recommendations presented in formal sessions would cripple the board's ability to conduct business.
- *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 64 P.3d 1070 (2003).

Agenda Requirements

NRS 241.020(2) provides the following:

2. Except in an emergency, written notice of all meetings must be given at least 3 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) The name and contact information for the person designated by the public body from whom a member of the public may request the supporting material for the meeting described in subsection 5 and a list of the locations where the supporting material is available to the public.
 - (d) An agenda consisting of:
 - (1) A clear and complete statement of the topics scheduled to be considered during the meeting.
 - (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 the term “for possible action” next to the appropriate item or, if the item is placed on the agenda pursuant to [NRS 241.0365](#), by placing the term “for possible corrective action” next to the appropriate item.
 - (3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:
 - (I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or
 - (II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.
- The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-subparagraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-subparagraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting. No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).
- (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.
- (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.

Notice Requirements

- Action items must be “for possible action.”
 - Do you have to make a motion if the item is labeled as “for possible action”?
 - Can the motion go beyond the agenda item if something new comes up in the discussion and it relates to the issues?
- Items may be taken out of order.
- Items may be combined or removed at any time.
- Agenda must indicate any public comment restrictions, *i.e.* “limited to 3 minutes,” must appear on the agenda.
- Agenda should indicate if any portion of the meeting will be closed.
- Agenda must be “clear and complete.”

Posting Requirements

- Post agenda by 9 a.m. at least 3 working days before the meeting
- Post at principal office, plus three other separate prominent places within the jurisdiction
- Post on the official website of the State pursuant to NRS 232.2175 (Department of Administration)
- Provide copy to any person who has requested notice of the meetings. (Request lapses after 6 months.)
- If public body maintains a website, the agenda shall be posed on the website. NRS 241.020.

Providing Copies to the Public

Upon any request, a public body shall provide

- at least one copy of the agenda
- Supporting materials
 - If provided to members before the meeting, copies must be made available at the time the material is provided to the members.
 - If provided to members at the meeting, copies must be made available at the meeting. NRS 241.020.

Public Comment

- Alternatives for minimum requirements for providing public comment on the agenda:
 - Two public comment periods, one before any action item and another before adjournment
- OR
- Public comment before body takes action on any action item but after it has discussed the matter, and before adjournment
- May always provide more public comment.

NRS 241.020(2)(d)(3).

Restricting Public Comment

- May place reasonable restrictions on public comment. Restrictions may be related to time, place, and manner and may not be based on viewpoint.
- May restrict public speakers to the subjects within the public body's control and jurisdiction
- May limit public comment if the speech becomes irrelevant or repetitious
- May apply reasonable time limitations
- May not stop comment based on belief that defamation is occurring

Questions?

- For more detailed information, please see NRS Chapter 241 and/or the Attorney General's Open Meeting Law Manual,
<http://ag.state.nv.us/opengovt/oml/omlmanual.pdf>
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Ethics and Conflicts of Interest

Statewide Council for the Coordination of
Regional Training Programs
February 7, 2014

NRS Chapters 281 & 281A

Ethics in Government

- NRS 281A.400 outlines the general requirements related to a code of ethical standards to govern the conduct of public officers and employees.
- NRS 281A.410 outlines limitations on representing or counseling private persons before public agencies.

“Public Officer”

NRS 281.005(1) “provides the following:

“Public officer” means 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.

Conflicts of Interest

- NRS 281A.420 explains requirements regarding disclosure of conflicts of interest and abstention from voting because of certain types of conflicts, the effect of abstention on quorum and voting requirements, and exceptions.

Gift, Service, Favor, Employment...

NRS 281A.400 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in the public officer's or employee's position to depart from the faithful and impartial discharge of the public officer's or employee's public duties.

2. A public officer or employee shall not use the public officer's or employee's position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for the public officer or employee, any business entity in which the public officer or employee has a significant pecuniary interest, or any person to whom the public officer or employee has a commitment in a private capacity to the interests of that person. As used in this subsection, "unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any business entity in which the public officer or employee has a significant pecuniary interest.

4. A public officer or employee shall not accept any salary, retainer, augmentation, expense allowance or other compensation from any private source for the performance of the public officer's or employee's duties as a public officer or employee.

5. If a public officer or employee acquires, through the public officer's or employee's public duties or relationships, any information which by law or practice is not at the time available to people generally, the public officer or employee shall not use the information to further a significant pecuniary interest of the public officer or employee or any other person or business entity.

6. A public officer or employee shall not suppress any governmental report or other official document because it might tend to affect unfavorably a significant pecuniary interest of the public officer or employee.

7. Except for State Legislators who are subject to the restrictions set forth in subsection 8, a public officer or employee shall not use governmental time, property, equipment or other facility to benefit a significant personal or pecuniary interest of the public officer or employee. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer or employee who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of the public officer's or employee's public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

→ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

8. A State Legislator shall not:

(a) Use governmental time, property, equipment or other facility for a nongovernmental purpose or for the private benefit of the State Legislator or any other person. This paragraph does not prohibit:

(1) A limited use of state property and resources for personal purposes if:

(I) The use does not interfere with the performance of the State Legislator's public duties;

(II) The cost or value related to the use is nominal; and

(III) The use does not create the appearance of impropriety;

(2) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(3) The use of telephones or other means of communication if there is not a special charge for that use.

(b) Require or authorize a legislative employee, while on duty, to perform personal services or assist in a private activity, except:

(1) In unusual and infrequent situations where the employee's service is reasonably necessary to permit the State Legislator or legislative employee to perform that person's official duties; or

(2) Where such service has otherwise been established as legislative policy.

9. A public officer or employee shall not attempt to benefit a significant personal or pecuniary interest of the public officer or employee through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of the public officer's or employee's official position.

Disclosure re: Gift, Loan, Interest, or Commitment

NRS 281A.420(1) provides that “[e]xcept as otherwise provided in this section, a public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon a matter:

(a) Regarding which the public officer or employee has accepted a gift or loan;

(b) In which the public officer or employee has a significant pecuniary interest; or

(c) Which would reasonably be affected by the public officer’s or employee’s commitment in a private capacity to the interests of another person,

→ without disclosing Such a disclosure must be made at the time the matter is considered....”

“Commitment in a private capacity to the interests of others”

NRS 281A.065 “Commitment in a private capacity” defined. “Commitment in a private capacity,” with respect to the interests of another person, means a commitment, interest or relationship of a public officer or employee to a person:

1. Who is the spouse or domestic partner of the public officer or employee;
2. Who is a member of the household of the public officer or employee;
3. Who is related to the public officer or employee, or to the spouse or domestic partner of the public officer or employee, by blood, adoption, marriage or domestic partnership within the third degree of consanguinity or affinity;
4. Who employs the public officer or employee, the spouse or domestic partner of the public officer or employee or a member of the household of the public officer or employee;
5. With whom the public officer or employee has a substantial and continuing business relationship; or
6. With whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described in subsections 1 to 5, inclusive.

Abstention re: Gift, Loan, Interest, or Commitment

Even after disclosure, NRS 281A.420(3) provides that “a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the **independence of judgment of a reasonable person in the public officer’s situation would be materially affected** by:

(a) The public officer’s acceptance of a gift or loan;

(b) The public officer’s pecuniary interest; or

(c) The public officer’s commitment in a private capacity to the interests of others.”

[Emphasis added.]

Questions?

- For more detailed information, please contact the Nevada Ethics Commission,
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