

# 2015

# OPEN MEETING LAW and Legislative Amendments

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Presented by  
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2015

# Legislative Declaration of Intent

- 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.  
NRS 241.010

# What Is a Meeting? NRS 241.015(3)

- Quorum of members of a public body present to:
- Deliberate toward a decision OR
- Take Action, which means making a decision, commitment or promise,

Over a matter within the public body's supervision, control, jurisdiction or advisory power.

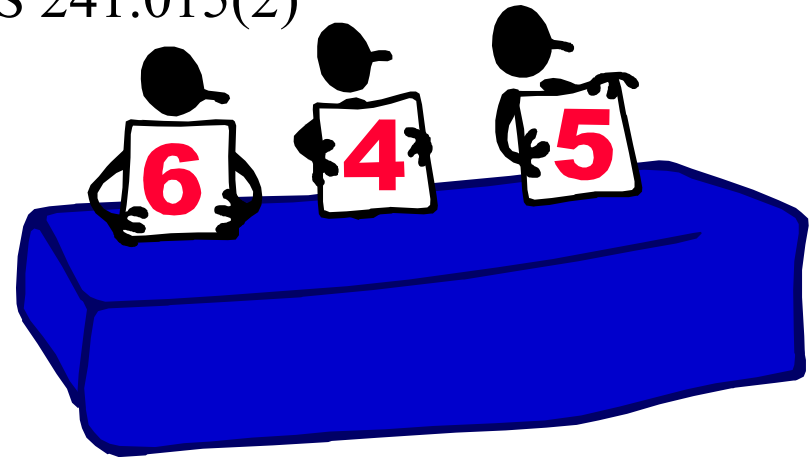
# OML Critical Definitions

- **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)

- **Action** means voting:

See AG Manual section 5.01

- includes promise or commitment
- No secret ballots or secret promises
- Action is an affirmative vote by a majority of members during a public meeting; there is a difference between elected body and appointed body requirements for action.



# Are Serial Briefings a Meeting?

- No! In *Dewey*, 119 Nev. at 94, the Nevada Supreme Court stated that private briefings among staff of a public body and a non-quorum of members of a public body is not a meeting for purposes of the Open Meeting Law, and such a meeting is not prohibited by law.
- **But** stay away from “serial quorum” or “walking quorum” or “constructive quorum.” All terms are synonymous.

# Constructive Quorum

Meeting includes any series of gatherings of members of a public body at which:

- less than a quorum is present at any individual gathering
- members of the public body attending one or more of the gatherings collectively constitute a quorum, and
- the series of gatherings was held with the specific intent to avoid OML.

Serial communication amongst a quorum of a public body is prohibited



**OPENNESS IS THE NORM,  
NOT THE EXCEPTION**

The OML is

“...for the public benefit and should be liberally construed and broadly interpreted to promote openness in government.”

*Dewey v. Redevelopment Agency of City of Reno, 119 Nev. 87, 94 (2003)*

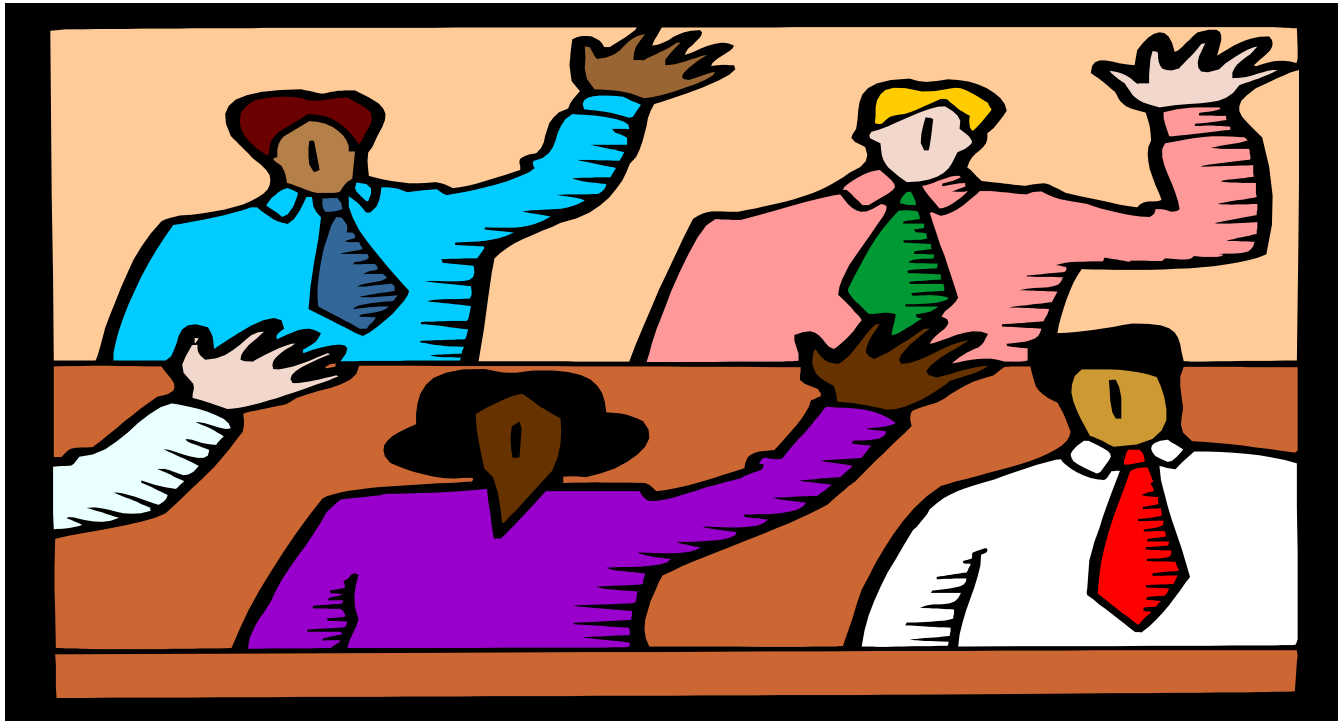


## But the *Dewey* Court also said:

- OML does not prohibit every private discussion of a public issue by members of public body or even forbid lobbying for votes, but;
- ... a quorum must not be involved.
- See *McKay v. Bd. of County Commissioners*, 103 Nev. 490 (1987). Members of public bodies may discuss matters with colleagues, but the “OML only prohibits collective deliberations or actions where a quorum is present.”

# Committee or no committee:

- AG's Manual states: "...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."



“Committees/subcommittees/... or any subsidiary thereof.” No matter what name it is known by

- ... It may be a sub-committee. If a **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. (unless specifically exempted by statute.)
- OML Manual: section 3.04

# Agenda Basics

A clear and complete statement of the topics scheduled to be considered during the meeting and clearly denoting that action may be taken on those items

- Must provide notice in fact
- Use a standard of reasonableness
- Use specific language
- Do not use generic descriptions such as “...and all matters related thereto”

# Agenda Basics

- “Clear and complete” rule for description of items on every agenda.
- Avoid generic descriptions of items such as “reports by staff”
- Give the public as much notice about what will be discussed under the description of the item as is then known by the public body.
- Use of broad unspecified categories in an agenda should be restricted only to items in which it cannot be anticipated what specific matters will be considered.
- “higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Sandoval v. Bd. of Regents*, 119 Nev. 148, 154 (2003)

# Another Important Public Meeting Basic Rule

**Stick to the Agenda:** Members and/or counsel must prevent public body discussion from wandering to related topics;

Example: Board of Regents agenda item:

*"Review state, federal statutes, regulations, case law and policies that govern the release of materials, documents, and reports to the public."*

So far, so good. But ...[next slide]

# Board strayed from topic despite warning from counsel!



- Board discussed details of a Nevada Division of Investigation report into an incident on the UNLV campus; Board criticized the UNLV police department, and commented on the impact of drug use on campus among other items of discussion. Counsel warned the Board that they were straying from the agenda on several occasions.
- Supreme Court opinion said: Agenda did not inform public that these matters would be topic of discussion.
- Court rejected the “germane” standard for agenda items.
- *Sandoval v. Board of Regents of the University and Community College System of Nevada*, 119 Nev. 148 (2003).



# Public Comment

It's all about choice

Choice for public bodies between alternatives:

1. **First alternative:** two public comment periods on each agenda; one before any action item has been considered, and another public comment period before adjournment.
  2. **Second alternative:** Public comment must be heard before a public body takes action on any action item but after it has discussed the matter. And the public body must allow one more public comment period before adjournment.
- **And,** public bodies may augment either, or both alternatives with additional opportunity to comment. Statutory alternatives are minimum requirements – a “floor” not a “ceiling”.



# First Amendment: Public Comment Issues

Currently the OML authorizes a public body to:

- restrict public speakers to the subjects within its control and jurisdiction;
- limit public comment if the “speech becomes irrelevant or repetitious.”
- apply reasonable time limitations,
- and limit caustic personal attacks.
- **But a public body may not limit public comment based on disagreement with the “viewpoint” of the speaker.**

NRS 241.020(2)(d)(7)

# Public comment pitfalls



- Halting a citizen's comment based on belief defamation is occurring.
- Halting comment based on viewpoint of speaker.
- Halting critical comment of public official.
- But, comment can be stopped if it strays from scope of agenda topic or if an actual disturbance occurs

# Remedies if OML Violation Occurs

- Void action; and/or seek injunctive relief;
- Corrective Action: AG's OML Manual, section 11
- Private Lawsuits: NRS 241.037(2)
- Criminal Misdemeanor: NRS 241.040
- Civil monetary fines: NRS 241.0395
- All of these remedies are now supported by subpoena authority!! (NRS 241.039)

# PENALTY For OML Violation

**Violator must have knowledge of the OML violation**

He/she must have participated in action which violated the OML.

Fine: up to \$500.00

1 year limitations period for bringing an action.

This cause of action belongs solely to the Attorney General.

(see next slide )



# Avoiding violation

- Enforcement against a member of a public body based on “participation” may only occur when the member makes a commitment, promise, or casts an affirmative vote to take action on a matter under the public body’s jurisdiction or control when the member knew his/her commitment, promise, or vote was taken in violation of the OML.

# 2015 OML Amendments

- Administrative action regarding a person, which includes public body's appointment process, requires name of person to be placed on agenda
- Compliance with minimum public notice must be documented in writing (date and time of posting, address of location, and name, title and signature of person who posted notice)
- Minutes must be approved within 45 days after the meeting or at public body's next meeting. Minutes or audio recordings of a public meeting must be available for public inspection within 30 working days after meeting is adjourned
- Designation of alternate may occur only if the public body's creating authority specifically allows for designation. If the legal authority creating the public body expressly authorizes a designee, the process of designation may occur either in written document or may be made on record at a meeting of the public body

# AG's Open Meeting Law Manual

- Statutory provisions
- Explanation of requirements
- Examples
- Compliance checklists
- Forms
- Available on web at  
[http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/OML%20MANUAL%202015%20\(Wi%20Edits\)X.pdf](http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/OML%20MANUAL%202015%20(Wi%20Edits)X.pdf)

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