

Open Meeting Law Basics

- The Nevada Open Meeting Law (OML) was enacted in 1960 to ensure that the actions and deliberations of public bodies be conducted openly. NRS Chapter 241.

When does the OML apply?

- When a quorum of the members of the public body gather to deliberate toward an action or decision.
 - A "quorum" of the members of the public body is a simple majority of the members unless appointed.
 - A "public body" is a governing board or commission or a body which advises or makes recommendations to such a body.
 - A "meeting" is a gathering of a quorum of the members to deliberate toward a decision.
 - "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).

When does the OML apply?

- To serial meetings of less than a quorum, whether in person or by means of electronic communication, where the members attending one or more of the gatherings collectively constitutes a quorum, if deliberation toward decisions occur or if decisions are made with the intent to avoid OML requirements. NRS 241.015(3).

When does the OML not apply?

- To social gatherings, even if a quorum is present, if no deliberation occurs. NRS 241.015(3)(b).
- To meetings with attorneys regarding potential or existing litigation. NRS 241.015(3)(b).
- To receipt of information at briefings so long as no deliberation occurs.

What are the OML's posting and agenda requirements?

- Time, place, and location – meetings are open unless closed session requirements followed. NRS 241.030.
- A list of no fewer than 3 places where agenda posted, including principal place of business or place where meeting to be held.
- A statement regarding assistance and accommodations for disabled.
- Clear and concise statement of the topics, action items designated, new business item.
- Public comment before any action taken and at end of meeting or after each item before action is taken; only reasonable time, place, manner restrictions permitted.

What are the OML's posting and agenda requirements?

- Agenda posted and mailed by 9:00 a.m. of third business day before the meeting.
 - Post notice and agenda on website and on state website.
 - Notice must be provided to all persons who requested notice within 6 months.
 - Name and contact information of person to contact for supporting material.
 - Copy of materials, unless confidential, must be available at meeting or provided to members of public on request.
 - Materials must be made available at the time they were made available to members of the public body.
- Emergencies are defined as disasters caused by fire, flood, earthquake or other natural causes (acts of God) or impairment of public health and safety.

What are the OML's recordkeeping requirements (NRS 241.035)?

- Minutes must be made available which include: date, time, and place of meeting.
- List of members of the public body present and absent.
- Substance of all matters proposed, discussed, decided.
- Substance of remarks of members of public and retain copies of written remarks.
- Record of votes, if member requests.

What are the OML's recordkeeping requirements (NRS 241.035)?

- Meeting must be recorded by audiotape, other sound reproduction or transcribed by certified court reporter.
- Audio recordings must be kept for one year – made available at no cost.
- Minutes or audiotape must be available for public inspection within 30 working days; minutes must be retained for 5 years, then archived.

How are meetings governed by the OML to be conducted?

- Meeting must be public and accessible to public; if held by telephone, all members of public must be able to hear all speakers.
- Members of the public may record meeting if does not interfere.
- **Discussions must remain on topic.**
- Action is taken by majority vote of members present (public body comprised of elected members require majority of elected members). NRS 241.0355.

What privileges apply to OML meetings?

- Absolute privilege for statements made by members during meeting (NRS 241.0353(1)); e.g., no defamation of grounds for civil action.
- Witnesses have privilege to publish defamatory statements if not knowing misrepresentation. NRS 241.035(2).

Consideration of character, alleged misconduct, professional competence, or physical or mental health of a person (NRS 241.031, 241.033, 241.034)

- Special notice requirements and hearing conduct requirements. (NRS 241.033, 241.034).
- Cannot discuss the character, alleged misconduct, professional competence or physical or mental health of a person without giving that person advance written notice.
- Cannot discuss competence (e.g. performance) of employees (other than the Chancellor and President) in public – violation of OML and personnel matters are confidential under BOR Code, Title 2, Ch. 5, Sec. 5.6.

Criminal and civil penalties (NRS 241.0365 – 241.040)

- Attendance of meeting where action taken with knowledge of violation = misdemeanor.
- Wrongful exclusion of anyone = misdemeanor.
- Member attending meeting is not an accomplice of other members.
- Member participating in violation with knowledge subject to civil penalty up to \$500.
- Individuals aggrieved by board action may sue to have action declared void, require compliance or prevent violations of the OML.
- Actions in violation are void or Court may enter injunction against the public body.

Corrective action (NRS 241.0365)

- Public body may correct mistake constituting a violation before adjournment or within 30 days after the alleged violation.

Summary

- Stick to the agenda.
- Deliberate in public meetings.
- Do not discuss the character, competence, alleged misconduct, professional competence, or physical or mental health of a person unless the rules for doing so have been complied with.

Questions?
