

A PowerPoint presentation
(training) on the Nevada Open
Meeting Law given by IVGID's
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The following material was adapted from
the Nevada Open Meeting Law Manual.
For more in depth explanation, go to
[http://ethics.nv.gov/COE_website_files/coe_publications_and_media/
OML%20Manual.pdf](http://ethics.nv.gov/COE_website_files/coe_publications_and_media/OML%20Manual.pdf)

Public Bodies

What is a “Public Body” that must conduct its meetings in compliance with the Open Meeting Law?

- General
- Commissions and executive committees
- Agency staff
- Committees and advisory bodies
- Legislative committees
- Members-elect
- Public body entities
- Not public body entities
- Private nonprofit organizations
- Quasi-judicial proceedings

General: discussion of statutory definition of public body

The definition of a public body - which must have at least two members - is based on how the entity was established.

Public bodies include bodies that are or advise bodies that are supported by or spend tax revenues (in the broadest sense), bodies that are appointed by the Governor or an entity/officer under the Governor, and bodies that are limited-purpose associations created for rural agricultural communities. The state legislature is exempt from the definition of a public body.

Quorum for public bodies is a simple membership of the constituent membership or any other percentage specified by law.

Blue Ribbon Commissions; Governor appointed committees; Executive agency boards, committees

Since a public body must have at least two members, the Governor is not considered to be a public body when he/she is acting in his/her executive capacity. Also, staff meetings that advise a single city manager who will ultimately make decisions and act independently, are not public bodies.

Any boards appointed by mayors, county managers, etc. are not public bodies since they are not appointed by the Governor or an entity/officer under the Governor.

Exercise

Scenario:

Applicants for the Fernley City Manager position were interviewed and screened by a citizens' recruitment committee appointed by the Mayor. The Fernley City Council received the finalists' resumes and applications to determine who to appoint to the position.

Q: Which or both of the citizens' recruitment committee and the Fernley City Council are public bodies?

Exercise

Scenario:

Applicants for the Fernley City Manager position were interviewed and screened by a citizens' recruitment committee appointed by the Mayor. The Fernley City Council received the finalists' resumes and applications to determine who to appoint to the position.

Q: Which or both of the citizens' recruitment committee and the Fernley City Council are public bodies?

A: Only the Fernley City Council is a public body.

Explanation:

The Fernley City Council is a public body, but since the Council didn't play a role in the initial interviews and screening or deny a request for access to the initial candidate's resumes, the citizens' recruitment committee does not fall under the definition of a public body.

AG File No. 09-026

Agency staff

Meetings of agency staff members are not subject to the Open Meeting Law as long as the members are making reports and recommendations to a superior, quorum doesn't apply, and decisions are not reached by a vote or consensus.

When a public body assigns *de facto* authority to a body of agency staff members to create plans or policies, Open Meeting Law applies since the staff committee is fulfilling the role of the public body.

Committees, subcommittees; advisory bodies

OML applies to committees, subcommittees, or advisory bodies if they make a decision for or recommendation to a public body. If a group is appointed by a public body solely for the purpose of fact-finding, however, it may not be subject to OML.

If a public body committee wants to break up into study groups, each study group should have a recorder or a secretary and the groups' assignment should be noticed on the agenda.

Commissions or committees appointed by Legislature

Since the Legislature is exempt from the public body definition, none of its committees and subcommittees are required to follow OML. However, the Nevada Constitution was amended to require all legislative committees to be open to the public, except for meetings that consider the character, alleged misconduct, professional competence, or physical or mental health of a person.

Members-elect of public bodies

The Open Meeting Law does not explicitly state that members of public bodies are subject to OML outside of meetings, but the Office of the Attorney General has consistently interpreted OML to mean that members-elect of public bodies are subject to Open Meeting Law. Otherwise, members could meet privately and come to decisions on issues that will soon be brought up in a public meeting.

Specific examples of entities which have been deemed to be public bodies

- Nevada Interscholastic Activities Association (Non-profit corporation authorized by NRS 286.420)
- Nevada Board of Architecture (Created by NRS 623.050)
- Board of Dental Examiners (Created by NRS 6331.120)
- Community Development Corporation and the Eureka County Economic Development Council
- Storey County Cemetery Board

Specific examples of entities which have been deemed not to be public bodies

- Committee to prepare arguments advocating and opposing approval of ballot for a city
- A private, not-for-profit electric utility company
- Non-profit community senior citizen's center
- Economic Development Authority of Western Nevada
- Faculty Senate at the Community College of Southern Nevada
- Clark County Civil Bench/Bar Committee: Eighth Judicial District Court
- Nevada Department of Corrections Psychological Review Panel
- Nevada Discovery Museum
- Head Start of Northeastern Nevada
- Nevada State Board of Parole Commissioners
- Elko County Juvenile Probation Committee
- Nevada Humane Society (a non-profit corporation not created by ordinance or statute)
- Nevada Sheriffs and Chiefs Association: (a domestic non-profit corporation whose creation has no statutory connection to state or local government)

Private, nonprofit organizations

If a government body establishes a non-profit organization, even one made up of private citizens, that organization may fall under OML if it acts in an administrative, advisory, or executive capacity and if it is supported, at least partly, by tax revenue from the public body. Grants of public money to private nonprofit organizations doesn't necessarily make the organization subject to OML, nor does having public officials on the board necessarily subject it to OML.

Quasi-judicial proceedings

All quasi-judicial public body meetings are subject to OML except for the Parole Board of Commissioners when it is trying to modify, grant, deny, continue, or revoke the parole of a prisoner. A proceeding is quasi-judicial when it refers to the proceeding as a trial, takes evidence, weighs evidence, and makes findings of fact and conclusions of law from which a party may appeal an adverse decision to a higher authority.

Exempt Activities

What activities are exempt
from the Open Meeting Law?

- General
- Statutory exemptions
- Gaming Control Board and Commission
- Quasi-judicial proceedings
- Attorney-Client non-meeting
- Student governments
- Pre-meeting discussion

General

The open meeting law applies to public bodies “except as otherwise provided by specific statute.” The word *specific* means that there are no exceptions except for those explicitly stated in the NRS. There are no exemptions for public bodies that have misinterpreted the OML.

Exemption means that certain, but not necessarily all, activities of a public body do not have to be conducted according to OML because the legislature has determined that other interests - privacy, secrecy, etc. - take precedent over the OML policy of openness.

Statutory Exemptions

- Judicial proceedings
- Legislature
- State Ethics Commission
- Local Ethics
- Hearings by public school boards to consider expulsion of pupils; hearings by charter school boards to consider expulsion of pupils
- Certain labor negotiations proceedings
- Nevada Commission on Homeland Security
- Committee on Catastrophic Leave
- Committees formed to present arguments on ballot questions
- Board of Medical Examiners
- Occupational Licensing Boards
- Nevada Tax Commission

Certain confidential investigative proceedings of the Gaming Control Board and Commission

All meetings of the Gaming Control Board are open to the public except for investigative hearings that may be conducted in private at the discretion of the board or hearing examiner. However, once the proceeding moves from receiving information into deliberations or taking actions, the investigative proceeding is not longer exempt from Open Meeting Law.

Quasi-judicial proceedings no longer exempt from OML

All meetings of a public body that are quasi-judicial are subject to the OML, except for the Nevada Board of Parole Commissioners when it is granting, denying, continuing, modifying, or revoking parole for a prisoner.

Attorney-client non-meeting

A meeting does not have to follow the OML when an attorney attends a quorum meeting of a public body to give that body legal information “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.”

No agenda needs to be posted and no notice needs to be provided. IF the non-meeting takes place during an open meeting, the Office fo the Attorney General advises that the interruption be placed on the agenda. A public body may even deliberate - “examine, weigh, and reflect upon the reasons for or against the choice” - without following OML.

Student Governments

The Open Meeting Laws requires the Board of Regents of the University of Nevada to establish equivalent requirements to the OML for university and community college student governments. Since the OML mandates that the Board of Regents enforce the policies, the Office of the Attorney General does not have the jurisdiction to investigate or enforce student government violations.

Pre-meeting discussion to remove or delay discussion of items from agenda

Since a public body can remove or refuse to consider an agenda item at any time, the Nevada Supreme Court decided that pre-meeting discussions about removing an item from the agenda does not violate the OML.

Public Meetings

What gatherings must be conducted in compliance with the open meeting law?

- General; statutory definition
- Informal gatherings
- Social gatherings
- Seminars, conferences
- Telephone/video conferences
- Electronic polling
- Mail polls
- Serial communications
- “Private briefings”
- Out-of-state meetings
- Non-meetings
- Other public bodies
- Public officer appointments

General; statutory definitions

A meeting is a gathering of members where a quorum is present to deliberate toward a decision or take action on a matter. There are several key aspects to defining a meeting. A quorum is a simple majority of members; even if a series of non-quorum meetings is held over the course of which a quorum of members attends, that series of meetings would have quorum. To be present, a member must be in view or immediately within reach, sight, or call. Deliberating includes collective discussion, collective acquisition, or the exchange of facts preliminary to the ultimate decision. Action includes decisions, commitments, and votes.

However, even if quorum is present, if the meeting is a social function at which no deliberation or action occurs or if the meeting is an attorney-client non-meeting, the meeting is not subject to OML.

Informal gatherings and discussions that constitute deliberation

Rarely do any nonpublic, pre-meeting conferences not violate the OML because most such conferences conduct some part of the decisional process behind closed doors. For example, a luncheon between a city council gathering and county officials to discuss a union strike against the county would violate the OML.

The point of requiring deliberation (collective discussion and collective fact acquisition or exchange) to be public is to allow as many viewpoints as possible to be heard and to allow the community to understand the premises of the public body's decision.

Exercise

Scenario:

A quorum of the City Council discussed public business with a volunteer firefighter. Two members constituted a quorum of the City Council and these two were employed by the same employer. However, after interview with the witness firefighter, no evidence was uncovered which indicated that a commitment or promise about a matter within the City Council's supervision, control, jurisdiction, or advisory power had been made.

Q: Was the informal meeting subject to the OML?

Exercise

Scenario:

A quorum of the City Council discussed public business with a volunteer firefighter. Two members constituted a quorum of the City Council and these two were employed by the same employer. However, after interview with the witness firefighter, no evidence was uncovered which indicated that a commitment or promise about a matter within the City Council's supervision, control, jurisdiction, or advisory power had been made.

Q: Was the informal meeting subject to the OML?

A: Since no evidence was uncovered, it indicated that a commitment or promise about a matter within the City Council's supervision, control, jurisdiction, or advisory power had been made. Thus a warning was issued to the Council.

Social gatherings

The distinction between a social occasion and one arranged for pursuit of the public's business will usually be obvious. There is nothing in the OML that restricts the attendance of members of a public body at purely social functions.

However, if a social function is scheduled or designed, even partly, for the purpose of having a majority of the members of the public body deliberate or take action, then the social function would be subject to OML.

Seminars, conferences, conventions

Even if presentations at seminars, conferences, and conventions touch on subjects within the ambit of a public body's jurisdiction or advisory power, such events do not fall under the definition of "meeting" since their purpose is general education and social interaction.

However, if the gathering has the purpose of or in fact exhibits the characteristics of deliberating toward a decision or taking action on any matter over which their public body has supervision, control, jurisdiction, or advisory power.

Telephone conferences/video conferences

The OML doesn't prevent a quorum of members from deliberating or taking action on public business via a telephone conference call or video conference in which they are simultaneously linked to one another. However, since this is a "meeting," OML applies and the public must be able to listen to the discussion and votes of all members.

Electronic polling

The OML prevents using electronic communications to circumvent the spirit or letter of the law. For example, the Board of Regents was found in violation of the OML by sending a draft advisory to a majority of members, asking the members to respond as to whether or not the advisory should be released to the press. Since the members responded via telephone to the chairman and their responses were not made private, the requirement to deliberate and take action in public meetings was violated.

Mail polls

Similar to the interpretations regarding electronic (fax, email, phone, etc.) 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.

Serial communications, or “walking quorums”

Serial communications are defined as a series of meetings at which less than a quorum is present at any individual gathering, the 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 the provisions of this chapter.

However, in previous cases on serial communications, the Nevada Supreme Court has not determined that OML was violated when two serial briefings were held but no members were polled on their opinions and that no members opinions from one briefing were shared with the members of the other briefing.

“Private Briefings” among staff of public body and non-quorum of members

The Nevada Supreme Court stated that private briefings among staff of a public body and a non-quorum of members of a public body are not meetings for purposes of the Open Meeting Law, and such a meeting is not prohibited by law.

Meetings held out-of-state or out of local jurisdiction

The OML applies even if meetings occur outside of Nevada. When meeting outside the jurisdictional boundaries of the public body, all requirements of the Open Meeting Law must be met. Furthermore, while the Open Meeting Law does not prohibit out-of-jurisdiction meetings, other statutes might.

Non-meetings to confer with counsel

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.”

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.

Meetings held with another public body

A meeting of two or more public bodies must be conducted in accordance with the Open Meeting Law and each public body must give notice of its meeting even if the meeting is also publicly noticed as a meeting of another public body.

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, then the OML does not apply to the parent public body.

Appointment of Public Officer

Meetings that appoint a public officer (a person whose office 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 involves the continuous exercise, as part of the regular and permanent administration of the government, of a public power, trust or duty) or a person to a position for which the person serves at the pleasure of a public body must obey the OML.

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.

Notice Requirements

What are the notice requirements under the Open Meeting Law?

- General
- Contents of notice
- Posting of the notice
- Mailing list
- “Three working days”
- Copies of agenda and material upon request
- Fees
- Emergencies
- Individual notice
- Administrative action

General

Except in an emergency, written notice of all meetings of all public bodies must be posted in at least four places within the jurisdiction of the public body and mailed at least three working days before the meeting is to occur as specified below.

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.

Contents of notice including new 2011 mandatory notice requirements

- Placing the phrase “for possible action” next to the appropriate agenda item.
- Notice on the agenda that items may be taken out of order, combined for consideration by the public body, and pulled or removed at any time.
- Notice to the public of reasonable restrictions on time, place, and manner - but not viewpoint - of public comment.
- Having multiple periods of public comment by: (1) agendizing comment period before any action items are heard by the public body and then provide for another period of public comment before adjournment or (2) agendizing multiple periods of public comment but only after discussion of each agenda action item and before the public body takes action on the item.
- Time, place, and location of the meeting.
- A list of locations where the notice has been posted.
- An agenda with a clear and complete statement of the topics scheduled to be considered during the meeting, a list describing the items on which action may be taken, multiple periods of public comment, portions of the meeting which may be closed, and/or names of people against whom administrative action may be taken.
- A notice 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.

Posting the Notice

A copy of the notice must be posted in at least four places (including the body's principal office and three other separate, prominent places within its jurisdiction) not later than 9 a.m. of the third working day before the meeting. Supplemental notice on the Internet is required if the body has a functional Internet website. "Certificates of posting" are recommended by the Office fo the Attorney General.

The Office of the Attorney General suggests posting the notices in places where they can be read or obtained by members of the public and media who seek them out, avoiding posting the notices in buildings that will be closed during the notice period, posting additional notices at trade or professional associations for industries invovled in meeting business, and using community bulletin boards at city halls and county administration buildings.

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. The notice be postmarked before 9 a.m. on the third working day before the meeting.

Unless the individual waived his or her statutory right to personal notice by regular mail and instead elected to receive notice by e-mail, e-mail doesn't satisfy this requirement. A request for mailed notice of meetings automatically lapses six months after it is made to the public body and that the public body must inform the requestor of this fact by enclosure or notation upon the first notice sent.

Calculating “three working days”

Working days include every day of the week except Saturday, Sunday, and holidays declared by law or proclamation of the President. The actual day of a meeting is not to be considered as one of the three working days referenced in the statute.

For example, a Thursday meeting should be noticed by 9 a.m. on Monday of the same week, while a Tuesday meeting must be noticed no later than 9 a.m. Thursday of the preceding week; if the Monday before a Tuesday meeting were a legal holiday, notice would be posted no later than 9 a.m. on Wednesday of the prior week.

Providing copies of agenda and supporting material upon request

A public body is required, upon request, to provide at least one copy of agendas, proposed ordinances or regulations up for discussion at a meeting, and any other supporting materials provided to members of the body except materials submitted to the public body pursuant to a nondisclosure or confidentiality agreement, pertaining to the closed portion of a meeting, or declared confidential by law.

However, confidential communication between counsel and the public body is subject to Nevada Supreme Court Rule 1.6, which prohibits disclosure of confidential information related to representation of the public body client.

Exercise

Scenario:

An e-mail communication from Superintendent to his staff and to the public body, the Board of School Trustees, was not included in supporting materials for the meeting nor was it released to a reporter prior to the meeting even though it was relevant to a pending agenda item.

Q: Is the email communication considered “supporting material”?

Exercise

Scenario:

Member of public body independently distributed a proposed budget document to other members shortly before meeting. It should have been included in supporting material, but once distributed to the public body members discovered it was not included in agenda packet.

Q: What should the public body do?

A: The e-mail communication was determined to be privileged and shielded by “executive privilege” as it was both predecisional and deliberative under a common law doctrine recognized.

Exercise

Scenario:

Member of public body independently distributed a proposed budget document to other members shortly before meeting. It should have been included in supporting material, but once distributed to the public body members discovered it was not included in agenda packet.

Q: What should the public body do?

Exercise

Scenario:

Member of public body independently distributed a proposed budget document to other members shortly before meeting. It should have been included in supporting material, but once distributed to the public body members discovered it was not included in agenda packet.

Q: What should the public body do?

A: The public body should treat the proposed budget document as a fugitive document and the board should not consider it during the meeting.

Fees for providing notice of copies of supporting material

A requested public notice, agenda, a proposed ordinance or regulation must be provided at no cost to the requester prior to the meeting for which the notice, agenda and supporting material were prepared. However, the OML does not obligate public bodies to provide minutes or audio recordings free of charge.

Emergencies

An emergency is “an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) Disasters caused by fire, flood, earthquake or other natural causes; or (b) Any impairment of the health and safety of the public.”

The Office of the Attorney General has a strict interpretation of emergency: (1) the need to discuss or act upon an item must be truly unforeseen at the time of agenda posting and (2) the item is truly of such a nature that immediate action is required.

If more than three business days remain, the agenda may be amended and re-posted and mailed. If less than three business days remain before a scheduled meeting or an emergency meeting is scheduled, the minutes must explain what the emergency was and why notice could not be timely given.

Providing individual notice to persons whose character is to be considered

A public body cannot hold a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it provided written notice to the person of the time and place of the meeting and received proof of service of the notice. Such meetings are closed meetings.

The agenda item must include a list of general topics to be discussed and a notice that the person being considered may attend, have an attorney or other representative, and present evidence, testimony, and witnesses. The notice must be either delivered personally to that person at least five working days before the meeting or must be sent by certified mail at least 21 working days before the meeting.

Providing individual notice to persons whose character is to be considered (continued)

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. Discussions of lawsuits involving a particular person do not require written notice.

Notice requirements apply to applicants for professional licenses if their character, alleged misconduct, professional competence, or physical or mental health is to be considered at the meeting.

Administrative action against a “person”, or from whom the public body may acquire real property by the exercise of the power of eminent domain

A notice that administrative action may be taken must be delivered personally to the person at least 5 working days before the meeting; or (2) sent by certified mail to the last known address of the person at least 21 working days before the meeting.

The Nevada Supreme Court interpreted administrative action “to include only those actions involving an individual’s characteristics or qualifications, not those of real property.”

Exercise

Scenario:

A public body decides against an applicant for a barber's license for the individual practitioner and decides against an applicant for a barbershop license.

Q: Which or both of the scenarios are required to provide notice?

Exercise

Scenario:

A public body decides against an applicant for a barber's license for the individual practitioner and decides against an applicant for a barbershop license.

Q: Which or both of the scenarios are required to provide notice?

A: The first scenario - a decision against an applicant for a barber's license for the individual practitioner - is required to provide written notice.

The second scenario - a decision against an applicant for a barbershop license - is not.

The Agenda

What are the requirements for preparing and following the agenda?

- General
- Clear and complete
- Stick to the agenda
- Public comment
- Meetings that must be continued

General

An agenda must include the following:

- A clear and complete statement of the topics to be considered
- A list of items clearly denoted “for possible action”
- Periods for public comment
- If any portion of the meeting will be closed to consider a person’s character
- If any administrative action may be taken against a person
- Notice that (1) items on the agenda may be taken out of order, (2) two or more agenda items may be combined for consideration, and (3) the public body may remove an item from the agenda or delay discussion at any time
- Any restrictions on comments by the general public

Agenda must be clear and complete

Every agenda item must include a clear and complete description. The phrase “and all matters related thereto” is not clear or complete and therefore cannot be used. Public bodies must recognize that a “higher degree of specificity [for agenda items] is needed when the subject to be debated is of special or significant interest to the public.” Below are guidelines from the Office of the Attorney General:

- Merely indicating “Licensing Board” on an agenda without listing the names of the licensees who will be considered is not proper.
- An agenda item for consideration of business permits should include the name and, where appropriate, the address of the proposed business and/or applicants.
- 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.

Agenda must be clear and complete (continued)

- Use a standard of reasonableness in preparing the agenda and keep in mind the spirit and purpose of the Open Meeting Law.
- 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.
- The use of general or vague language as a mere subterfuge is to be avoided.
- 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.
- 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.

Agenda must be clear and complete (continued)

- 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.
- 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.
- Agendas for retreats should identify the event as a retreat, give the objectives to be accomplished, and include the specific topics for discussion.
- Public bodies should not “approve” or take action on administrative reports by staff unless the agenda clearly denotes the report is an item for possible action and specifically sets out the matter to be acted on from the report.

Agenda must be clear and complete (continued)

- Generic items such as “reports” or “general comments by board members” invite trouble because discussions spawned under them may be of great public interest and may lead to deliberations or actions without the benefit of public scrutiny or input. Generic items should be used sparingly and carefully, and actual discussions should be tightly controlled. Matters of public interest should be rescheduled for further discussion at later meetings.
- Agenda descriptions for resolutions, ordinances, regulations, statutes, rules, or other such items to be considered by public bodies, should describe what the statute, ordinance, regulation, resolution, or rule relates to, so that the public may determine if it is a subject in which they have an interest which might lead to their attendance at the public meeting.

Exercise

Scenario summary:

The NSHE Board of Regents agenda item read, “Chairman Tom Kilpatrick will present a report... including a schedule of topics for the remainder of the year.” Regent Kilpatrick properly reported the topics to be discussed for the remainder of the year, and he 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. 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.

Q: Did the agenda item clearly explain what was to be discussed at the meeting?

Exercise

Scenario summary:

The NSHE Board of Regents agenda item read, “Chairman Tom Kilpatrick will present a report... including a schedule of topics for the remainder of the year.” Regent Kilpatrick properly reported the topics to be discussed for the remainder of the year, and he 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. 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.

Q: Did the agenda item clearly explain what was to be discussed at the meeting?

A: No. The agenda statement was too broad to place the public on notice that the Board would take informal action to obtain a redacted NDI report and discuss an examination of disarming the UNLV police, both issues of public interest.

Exercise

Scenario:

The agenda item stated: “Legislative Update— this item may be discussed at Monday’s Caucus Meeting and/or Tuesday’s Board Meeting and may involve discussion by [WCBC] and direction to staff on various bill draft requests (BDRs).” The agenda also instructed the public that a list of specific bills which staff would seek direction from the WCBC would be posted online on the County’s website after 6:00 p.m. on Friday before the Monday caucus meeting. Hard copies would be placed in the County Manager’s office by 9 a.m. on Monday.

Q: Is this agenda item clear and complete?

Exercise

Scenario:

The agenda item stated: “Legislative Update—this item may be discussed at Monday’s Caucus Meeting and/or Tuesday’s Board Meeting and may involve discussion by [WCBC] and direction to staff on various bill draft requests (BDRs).” The agenda also instructed the public that a list of specific bills which staff would seek direction from the WCBC would be posted online on the County’s website after 6:00 p.m. on Friday before the Monday caucus meeting. Hard copies would be placed in the County Manager’s office by 9 a.m. on Monday.

Q: Is this agenda item clear and complete?

A: Yes. The item noticed the public that WCBC and staff planned to discuss certain BDRs at its Caucus meeting or the following day’s regular meeting and the Court found the WCBC had provided a list of specific BDR’s on the County’s website three days before the Caucus.

Activity

Create a clear and complete agenda item for the meeting topic provided by the lecturer.

Stick to the agenda

Discussion and action that occurs during a meeting must stay within the parameters of “clear and concise” agenda items. 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

A public body may not raise an unagendized issue at any time even if 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.

Matters brought up during public comment; meeting continued to another date

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, must be noticed on the agenda, and 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.

Where a meeting is continued to a future date, the reconvened meeting must have the same agenda or portion thereof at the later date.

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 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.

Conducting a Meeting

What are the requirements for conducting an open meeting?

- General
- Facilities
- Accommodations
- Public comment
- Reasonable time, place, and manner
- Disruptive people
- Excluding witnesses
- Vote by secret ballot
- Audio/video recordings

General

The intent of the OML with regard to conducting a meeting is as follows: “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.”

Facilities

Public meetings should be held in facilities that are reasonably large enough to accommodate anticipated attendance by members of the public. If an issue is more controversial than expected, reasonable efforts (video transmission to adjoining rooms, change of location, etc.) must be made to accommodate those persons seeking attendance.

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. It is unlawful to start a meeting before the public is allowed into the room.

Accommodations for physically handicapped persons

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.

Public comment: multiple periods of public comment

There must be at least two periods of public comment using one of the following options: (1) agendizing one period before any action items are heard by the public body and later hearing another period of public comment before adjournment or (2) having multiple periods of public comment which must be heard after discussion of each agenda action item, but before the public body takes action on the item.

The public body must allow periods devoted to discussion of public comments, if the public body chooses to engage the public in discussion. However, no matter raised in public comment may be the subject of either deliberation or action.

Reasonable time, place, and manner restrictions apply to public meetings

A public body can place reasonable restrictions regarding time, place, and manner on public comment but it cannot place restrictions regarding the viewpoint expressed. Except during the public comment period, the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings; however, once a person is allowed to speak by the public body, the full panoply of First Amendment rights is effective. The public's freedom of speech during public meetings is vigorously protected. The Office of the Attorney General believes that any restriction 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 requiring members of the public to sign up three and one-half hours in advance.

Excluding people who are disruptive

There is no First Amendment right to remain in a public meeting. If a person willfully disrupts a meeting, to the extent that its orderly conduct is made impractical, the person may be removed from the meeting. The chair of the public body may, without vote of the body, declare a recess to remove a person who is disrupting the meeting.

Excluding witnesses from testimony of other witnesses

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 of the state agency that is prosecuting the case. Unless otherwise stipulated, the witness may continue to be excluded after he testifies. The witness should be allowed entrance after all other witnesses have testified.

However, the public body cannot exclude the person whose character etc. is being considered at any time during the closed meeting, as well as his/her representative or attorney.

Votes by secret ballot; voting requirements for elected and appointed public bodies

Vote by secret ballot is forbidden. The Open Meeting Law is satisfied if a vote is by roll call, show of hands, or any other method so that the vote of a public official is made known to the public at the time the vote is cast. The Legislature encourages appointed or elected members of public bodies to vote – not abstain

A public body that is required to be composed only of elected officials may not take action by vote unless at least a majority of all members of the public body vote in favor of the action. A public body may not count an abstention as a vote in favor of an action. For example, if only three members of a five person county commission (elected body) are present at a meeting, the three cannot take action by a 2 to 1 vote; the vote must be 3 to 0, since a majority (3) must be in favor of the action.

Audio and/or video recordings of public meetings by members of the public

Members of the public may be allowed to record on audio tape or any other means of sound or video reproduction if it is a public meeting and the recording in no way interferes with the conduct of the meeting.

Closed Meetings

When are closed meetings authorized and how are they to be handled?

- General
- When permissible
- When permitted
- Closed meeting
- Appointment to “public office”
- Closed sessions

General

It is very important that there be statutory authority before a meeting may be closed, as long as there is 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 should be strictly construed. Closed sessions should be allowed only when specifically authorized and their scope must be tightly controlled.

When closed sessions may be held

- By any public body to consider character, alleged misconduct, professional competence, or the physical or mental health of a person, with some exceptions, or to prepare, revise, administer or grade examinations administered on behalf of the public body, or to consider an appeal by a person of the results of an examination administered on behalf of the public body.
- By the Certified Court Reporters' Board to deliberate on a decision about any contested hearing and to prepare, administer, or grade examinations.
- By the Public Employees Retirement Board: (1) to meet with investment counsel, provided the closed session is limited to planning future investments or the establishment of investment objectives and policies, and (2) to meet with legal counsel provided the closed session is limited to advice on claims or suits by or against the system.

When closed sessions may be held (continued)

- 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.
- By any public body to take up matters or conduct activities that are exempt under the Open Meeting Law.
- 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.
- As authorized by a specific statute.

When closed sessions may not be held

- To discuss the appointment of any person to public office or as a member of a public body.
- 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 unless does not pertain to his role as an elected member of a public body or an appointed public officer or other officer described above.

When closed sessions may not be held (continued)

- When a request to open the meeting is made by the person whose character etc. 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. If a necessary witness requests the meeting remain close, the public body must close that portion of the meeting, and open subsequent portions at the request of the person being considered.
- To conduct attorney-client communications, unless the communications fall under the exemption in the OML.

When closed sessions may not be held (continued)

- To select possible recipients for awards. To the extent that a public body is considering the character, alleged misconduct, professional competence, or physical or mental health of a person under consideration for receipt of a public award, a public body may meet in closed session to discuss such matters. However, any vote taken with respect to granting the award must be in a public meeting.
- To consider indebtedness of individuals to a hospital. The Office of the Attorney General has determined that county hospital board meetings that relate to indebtedness of individuals to the hospital are required to be open and public.
- By a local ethics board to discuss past conduct of a public official.
- Where not authorized by law.

Closed Meeting; Definition of “character” and “competence”; employment interviews

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. Closed sessions may only consider, but not take action on, the character etc. of a person.

While it can be difficult to properly describe an action item relating to a closed personnel session, one can describe 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’.”

Closed Meeting; Definition of “character” and “competence”; employment interviews (continued)

“Character” means a person’s general reputation including such personal traits as honesty, loyalty, integrity, reliability, and such other characteristics, good or bad, which make up one’s individual personality.

While the delineated attributes of individual employment candidates may be discussed in closed session, the public body may not use the closed session to narrow down candidates or begin the selection process.

The statutes do not authorize closure for general “personnel sessions.” 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.

The appointment to “public office” closed meeting prohibition

The definition of “public officer” includes “(1) all elected public officers, and (2) all persons appointed to positions created by law whose duties are specifically set forth in law and who are made responsible by law for the direction, supervision, and control of their agencies.”

Closed sessions may not be held “for the discussion of the appointment of any person to public office or as a member of a public body.”

Exercise

Scenario:

The city council conducted employment interviews for the city clerk position in the open and then held a brief closed meeting to discuss the character and professional competence of candidates. The council went back into open session to make the selection.

Q: Was the closed session in violation of the OML?

Exercise

Scenario:

The city council conducted employment interviews for the city clerk position in the open and then held a brief closed meeting to discuss the character and professional competence of candidates. The council went back into open session to make the selection.

Q: Was the closed session in violation of the OML?

A: Yes. The prohibited “discussion of the appointment” includes “all consideration, discussion, deliberation and selection done by a public body in the appointment of a public officer.” This covers all aspects of the appointment process.

How to handle closed sessions to consider character etc. of a person

- Start with a duly noticed open meeting.
- It is recommended the matter be indicated on the agenda as a closed session under NRS 241.030(1).
- The person's name being considered must be included on the agenda
- The closed session should not be listed as an "action" item on the agenda because action cannot be taken during the closed session.
- If action might be taken on the matter, be sure to include a separate item on the agenda for action to be taken.
- Give proper notice to the subject person.

How to handle closed sessions to consider character etc. of a person (continued)

- At the meeting, a motion must be made to go into closed session and the motion must specify the business to be considered during the closed session and the statutory authority pursuant to which the public body is authorized to close the meeting
- Permit the person being considered and his/her representative to attend
- Before proceeding with the discussion, make sure that proof of service of the notice to the person has been received
- The closed session must be tape-recorded
- Minutes must be kept and prepared for the closed session

How to handle closed sessions to consider character etc. of a person (continued)

- Allow the subject 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
- Allow the subject to record the closed session

Public Records

What records must be kept and made available to the public?

- General
- Written minutes
- Retention and disclosure of minutes
- Audiotapes
- Fees

Requirement for and content of written minutes

- The date, time, and place of the meeting
- The names of the members of the public body who were present and the names of those who were absent
- 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
- 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
- Any other information that any member of the body requests be included or reflected in the minutes.

Retention and disclosure of minutes

Minutes or audio records must be available for inspection by the public within 30 working days after the meeting is adjourned. The minutes are deemed to have permanent value and must be retained by the public body for at least five years, after which they may be transferred for archival preservation

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 30 working days 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.

At closed meetings, the subject has a right to a copy of the minutes and may allow the minutes to become public.

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.

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.

Fees for inspecting or copying minutes and tapes

The OML does not authorize charging a fee for inspection, since fees for inspection are not authorized by statute. However, if a person wants a copy of the minutes or audio recordings, public records law determines the fee that may be charged.

If minutes and tapes of closed sessions become public record in accordance with statute, a fee may be charged for making copies.

Violations

What happens if a violation occurs? Publication of Attorney General opinion on agenda

- General
- Containing and correcting
- Void actions
- Rescheduling void actions
- Civil suits
- Office of Attorney General
- Time limits
- Jurisdiction and venue
- Standards for injunctions
- Criminal sanctions
- Removal from office
- Filing OML complaint
- Attorney General publications
- Monetary penalty

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.

Containing and correcting violations

- Improper notice given for meeting: Stop the meeting. The meeting may be rescheduled before adjournment. Discussions of any public significance which were held before the discovery of the improper notice should be repeated at a later meeting.
- Discussion of items not clearly on agenda: Stop the discussion and schedule it for a future meeting under a more comprehensive agenda. At the subsequent meeting, it would be advisable to summarize or repeat the conversations that occurred at the previous meeting.
- Taking action on items listed as discussion items only: The action is void but may be reconsidered at a future duly noticed meeting.

Containing and correcting violations (continued)

- 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 on subject person and the person is not present, the item must be postponed. If the person is present, he or she may waive the notice requirements.
- Public Body voted to rescind earlier votes on items that had not been agendaized. Multiple matters were rescinded in a public vote: If action was taken previously in a meeting where OML was violated, the previous action must be rescinded before corrective action can be taken.
- Effective Cure can be taken at a meeting even when a serious but inadvertent violation occurs: i.e. if during a recess, a quorum of members discusses an action item, by immediately disclosing what had been discussed, a public body can cure violations.

Actions taken in violation are void

The action of any public body taken in violation of any provision of the Open Meeting Law is void, i.e., the action has no legal force or binding effect. However, lawsuits to obtain a judicial declaration that an action is void must be commenced within 60 days after the offending action occurred.

Rescheduling an action that is void

A public body that takes action in violation of the Open Meeting Law, which action is null and void, is not forever precluded from taking the same action at another legally called meeting. However, mere perfunctory approval at an open meeting of a decision made in an illegally closed meeting does not cure any defect of the earlier meeting or relieve any person from criminal prosecution for the same violation.

Any person denied a right under the Open Meeting Law may bring a civil suit

Any person denied a right conferred by the Open Meeting Law may bring civil suit:

- To have an action taken by the public body declared void
- To require compliance with or prevent violations of the Open Meeting Law
- To determine the applicability of the law to discussions or decisions of the public body

The Office of the Attorney General may bring a civil suit

The Office of the Attorney General may also bring suit:

- To have an action taken by a public body declared void
- 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
- 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

Time limits for filing lawsuit; Policy for enforcement of OML complaints

Any suit which seeks to void an action must be brought within the statutory 60/120 day limitations. If the A.G. has not brought a suit to void a public body's action within 60 days of the alleged violation, thereafter the A.G. is barred from seeking to void the action. But the Attorney General still has jurisdiction under the 120 day limitations period which continues to run for 60 more days. Should a suit be brought during this period of time, the A.G. may seek injunctive relief to force compliance with the OML. Furthermore, the Attorney General will not issue an OML opinion after the 120-day statute of limitations.

Jurisdiction and venue for suits

A suit may be brought by an aggrieved citizen in the district court in the district in which the public body ordinarily holds its meetings or in which the plaintiff resides. A suit brought by the Office of the Attorney General may be brought “in any court of competent jurisdiction.” However, even though a court has jurisdiction, a defendant may raise objections as to proper venue.

Standards for injunctions and enforcing injunctions

For a discussion of the standards for imposing injunctions and enforcing them, see *City Council of City of Reno v. Reno Newspapers, Inc.*

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. Further, wrongful exclusion of any person or persons from a meeting is a misdemeanor.

There are two requirements before a criminal prosecution may be commenced: (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 and (2) knowledge by a member of a public body that the meeting is in violation of the Open Meeting Law.

Public officers may be removed from office

Under the NRS, a person's office becomes vacant upon a conviction of a violation of Nevada Open Meeting Law.

Filing an OML Complaint; Procedure; Attorney General Subpoena power; Public Records

The Office of the Attorney General must investigate and prosecute alleged violations of the Open Meeting Law. The complaint is sent to the public body along with any supporting documents attached to the complaint. The public body is given time to respond to the allegation(s) by written statements, copies of the agenda, minutes, (even if in draft form), video or audio recordings of the meeting and the Attorney General may subpoena additional relevant documents, records or materials for purposes of the investigation. After review of the complaint and the public body's response, the Attorney General may issue a written opinion that resolves the matter, or she may initiate a civil or criminal suit seeking compliance with the OML.

Filing an OML Complaint; Procedure; Attorney General Subpoena power; Public Records (cont.)

The Attorney General has the power to issue subpoenas when conducting an OML investigation. 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.

While the complaints themselves are considered public records, investigative files will be held confidential until the investigation is complete and then the file will become a public record, unless the records are of a closed meeting.

Publication of Attorney General Opinion finding violation by public body

If a published Attorney General publication makes findings of fact and conclusions of law that a public body has violated OML, the public body must include an item on its next agenda which acknowledges the Attorney General's findings of fact and conclusions of law.

Monetary penalty for willful violation: One year limitations period

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. Such an action must be commenced within one year after the date of the action taken in violation of this chapter.

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 unless the member attempted comply with the OML.

Interpretations

How is the Open Meeting Law interpreted and applied?

- Legislative intent
- Standards of interpretation
- Standard of reasonableness
- Attorney General Opinions

Legislative declaration and intent

The Legislature declared 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.” This spirit has been a guiding consideration in several cases.

Standards of interpretation

A statute enacted for the public benefit such as a sunshine or public meeting law should be construed liberally in favor of the public, even though it contains a penal provision. The Open Meeting Law is entitled to a broad interpretation to promote openness in government, while any exceptions thereto should be strictly construed. A construction which frustrates all evasive devices is preferred for an open meeting law.

Use of standard of reasonableness

In circumstances where the Open Meeting Law provides no clear standards or guidelines, public bodies must consider themselves as being governed by a standard of reasonableness.

Attorney General Opinions

While Attorney General opinions are intended to be helpful in fashioning compliance with the Open Meeting Law, they are not binding on the courts even though the Office of the Attorney General is given the duty of investigating and prosecuting Open Meeting Law complaints.

Where the Legislature has had reasonable time to amend the law to reverse the opinion of the Attorney General, but does not do so, it is presumed the Legislature has acquiesced to the opinion of the Attorney General.

Miscellaneous

What else do I need to know about the Open Meeting Law?

- Administrative Procedures Act
- First Amendment
- Defamation

Relationship of Open Meeting Law to Administrative Procedures Act, NRS 233B

The OML applies 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.

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. OML regulations regarding closed meetings still apply.

Relationship of Open Meeting Law to the First Amendment to the United States Constitution

Once the right to speak has been granted by the Legislature, the full panoply of First Amendment rights attaches to the public's right to speak. This constitutional safeguard was fashioned to assure unfettered interchange of ideas for bringing about political and social changes desired by the people.

Preventing members of a public body from discussing items not on the agenda has been ruled to be not overly burdensome on the Regents' right to free speech because the Regents could discuss what they wanted, whenever they wanted, just not at a meeting governed by the Open Meeting Law at which the issue for discussion was not agendaized.

Relationship of Open Meeting Law and Defamation

The OML provides immunity from an action alleging defamation to members of a public body for statements made during the meeting and the Legislature also provided immunity to witnesses testifying before a public body:

- 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.
- 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.

Nevada Open Meeting Law
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Part 1
Compliance Checklist Review