

OPEN MEETING LAW

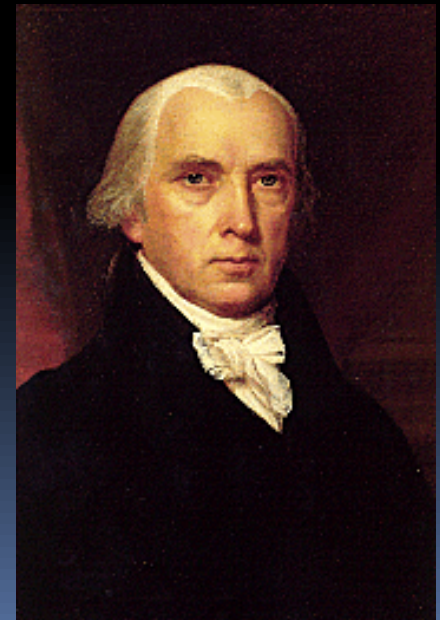
NRS Chapter 241



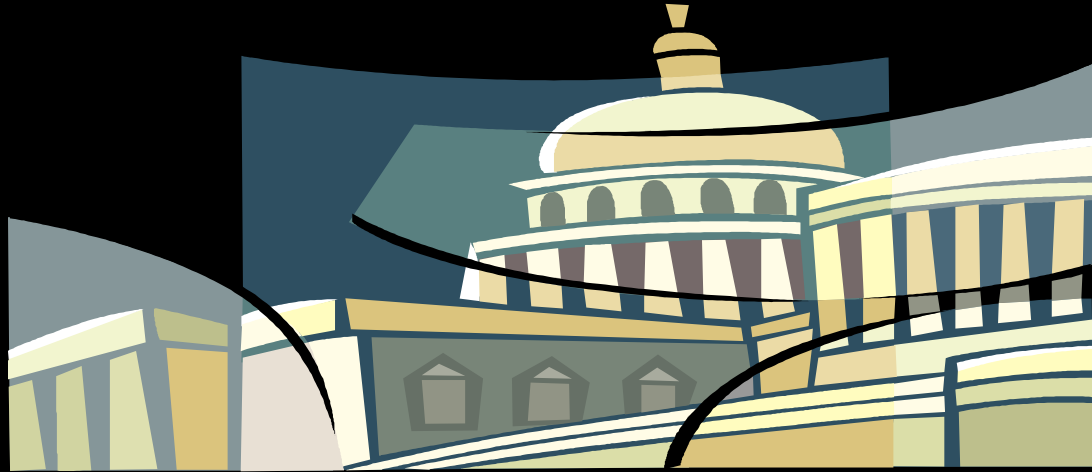
Historical Concept

- *"A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives".*

- James Madison, Fourth President



Legislative Intent



- ▣ All public bodies exist to aid in the conduct of the people's business.
- ▣ Deliberations must be conducted openly
- ▣ Actions must be taken openly
- ▣ Must notify the public and persons subject to administrative action

Public Body Defined

- “Public body” is an entity, with at least two members and is created by:
 - State Constitution
 - NRS or NAC
 - City charter or ordinance
 - Executive order issued by the Governor
 - Resolution by body created by statute
 - Ordinance of a local government
 - Resolution of a political subdivision of the State
 - Board, commission, committee that is appointed by the Governor



What is a “Public Body?”

- Any administrative, advisory, executive or legislative body of a local government
 - which expends or disburses or is supported by tax revenue
 - which advises or makes recommendations to such an entity
 - includes any board, commission, committee, subcommittee or other subsidiary
- A collegial body that has more than one person and whose members share voting powers.
- Must perform a government function
- Does not apply to agency staff meetings where reports go to a superior and decisions are not reached by vote or consensus, except when staff is delegated authority to act on behalf of the public body

What about Safety Committees?

- When delegated authority to act on behalf of the public body in formulation, preparation and promulgation of plans or policies or to make decisions on behalf of the public body (such as, claims settlements), the committee is subject to the Open Meeting Law



Meeting Definition: Gatherings of a Public Body

- When a quorum of the public body is present whether in person or by electronic means to deliberate toward a decision or to take action on a matter
- Any series of gatherings at which
 - Less than a quorum is present whether in person or by electronic means
 - The members attending one or more of the gatherings collectively constitute a quorum
 - The series of gatherings was held with the **specific intent** to avoid the Open Meeting Law
- Meetings of public body that are quasi-judicial in nature are subject to open meeting law.

Electronic Serial Communications

- ▣ If a member of the board emails, faxes or calls a quorum of the board on a board issue, is this a violation?
- ▣ YES!!
- ▣ Why? Because it was no longer a private discussion, but a deliberation that must be done in open session.



Specific Exemptions

- Social gatherings at which a quorum is present, whether in person or by electronic means, and **do not deliberate toward a decision or take action on a matter**
- Hearings by school boards to consider expulsion of pupils
- Local ethics committees for rendering confidential opinions to elected officials, but not to discuss past conduct of officials



Specific Exemptions

- ▣ Meetings between public body and attorney to **discuss and deliberate** on existing or potential litigation at other than a board meeting may occur without any public notice required and are considered “**non-meetings**”
- ▣ Closed sessions during board meetings with attorney to **discuss and deliberate** on existing or potential litigation may be subject to attorney-client privilege, but closed session must be noticed and **action must be taken in open session**



Specific Exemptions: County Hospitals Only (2015)

- **May be Closed to Discuss:**
- **New or Materially Expanding Hospital Services**
- **Acquisition of an Additional Facility or Material Expansion of Existing Facility**

May NOT be Closed to Discuss

- **Change of Management**
- **Ownership or**
- **Dissolution of the Hospital**

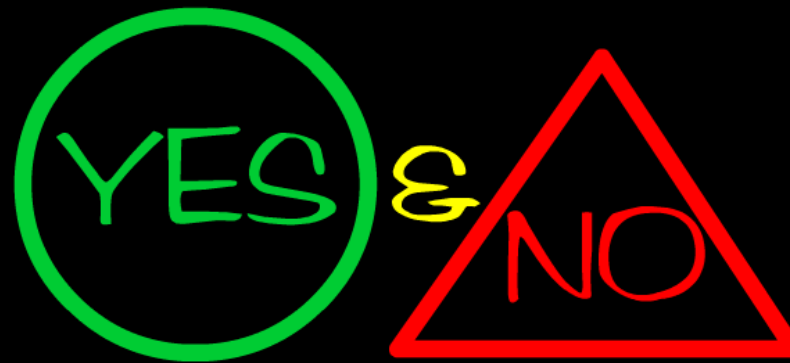


Decisions by Boards



- ▣ A public body that is composed of elected officials may not take action by vote unless at least a majority of *all* of the members of the public body vote in favor of the action. Abstentions do not count as a vote.
- ▣ If a public body has elected officials and members who are not elected officials, an affirmative vote may be taken by a majority of the members present during the meeting.

Can there be Alternates on the Board? (2015)



- *Unless* legal authority under which public body was created authorizes: **NO substitutes** may be designated by either the public body or the member of the public body
- *If* legal authority allows substitutes, designation must be in writing or on the record of the public body; then, substitutes has the status of member of the public body

Agendas

- Items on the agenda of a public meeting that may have action taken must have the designation “for possible action” next to the item.
- Agenda must state that: (1) items on the agenda may be taken out of order, (2) the public body may combine two or more agenda items for consideration, and (3) the public body may remove an item from the agenda or delay discussion at any time.
- Two Public Comment periods must be included, but no action can be taken until properly placed on an agenda
- Restrictions on comments from the general public. The restrictions must be reasonable and may restrict time, place, and manner of the comments, but may not restrict comments based upon viewpoint.
- Notice must include the name and contact information for the person from whom supporting materials may be requested and the list of locations where such material is available
- Should have statement explaining how a person needing special accommodations can obtain assistance

Agenda Basics:

- A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.
- “clear and complete” rule for description of items on every agenda:
- Avoid generic descriptions of items such as “reports by staff” or “items for future meetings”
- 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 for which it cannot be anticipated what specific matters will be considered.

Agenda Basics

A clear and complete statement of the topics scheduled to be considered during the meeting.

- Must provide notice in fact
- Use a standard of reasonableness
- Use specific language
- Do not use generic agenda items
- Also required for retreats



Agenda and Notice

- Meetings must be open and public
- If videoconferenced or teleconferenced, must assure board and public can hear, observe and participate
- Reasonable accommodations required for disabled
- Written notice given at least 3 working days prior to meeting (except in an emergency)
- Notice must include time, place and location; list of locations where notice was posted; agenda
- Post at principal office or meeting place plus three other prominent places and mail copies to subject parties or persons requesting such mailing and Web site if you have one
- Document each posting location, date, time, person(s) doing posting at each location, their title and signature (2015)

State Official Website Posting

- Effective July 1, 2014, all public bodies must post a link to their website or an email address for obtaining agendas and supporting materials on the official state website to be created for this purpose. This is in addition to and subject to all other agenda posting requirements.

<https://notice.nv.gov/>

**NOTICE
OF
PUBLIC
HEARING**

Violations



- Requires that if the State Attorney General finds that a public body violated the Open Meeting Law, then the public body must include an item on the next agenda acknowledging the findings of the Attorney General.
- Allows for the Attorney General to subpoena any records, documents, or materials related to an investigation into a violation of the Open Meeting law.
- For an agenda item regarding an open meeting law violation, “for possible corrective action” should be placed next to that item.
- May take immediate corrective action during meeting if violation occurs during the same meeting

Public Body: Emergency Meeting:

Emergency Meetings:

- “Emergency” is defined as 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
- NRS 241.020(8).



Notice of Emergency Meeting

Emergency meeting notice: (Manual, S. 6.08)

- Meetings scheduled with less than 3 days notice must be limited only to the matter which qualifies as an emergency.
- Notice should be amended whenever possible to comply with the notice requirements or to give the public as much notice as possible.
- Minutes should reflect the nature of the emergency and why notice could not be timely given.

Agenda and Supporting Materials

- One hard copy must be available at the meeting of the public body:
 - Agenda
 - Ordinance or Regulation to be discussed
 - Other Supporting Material for Agenda Items Note:
for a city or county with population over 45,000, must post agenda and supporting material on website at time released to board members or within 24 hours after meeting if distributed at board meeting; may offer electronic version
 - Exceptions (NRS 241.020.6)
 - Confidential proprietary documents
 - Materials for Closed Sessions
 - Materials declared confidential by law



Closed Personnel Sessions: Caution!!!



- ▣ May close session to **consider** the character, alleged misconduct, professional competence or physical or mental health of a person – Exceptions:
 - May not close for elected official or for an appointed public officer who serves at the pleasure of a public body such as a chief executive or administrative officer or comparable positions including city or county manager or school district superintendent
 - May not close to discuss appointment of any person to public office)
 - Person subject to closed session may request that it be open; must then be open unless a relevant person (witness or other person) requests it remain closed
 - Determining who may attend: Chair's discretion or public body can vote on the determination in open session; person subject may attend and have an attorney or representative present
 - Person subject may present evidence (written or testimonial)

- ▣ **Deliberation and Action** must be taken in **OPEN SESSION!**

Closed Personnel Sessions: Agenda and Notice

- Agenda must state that a closed session will be held, **identifying the person subject**
- Agenda must state whether administrative action regarding a person will be considered and name the person subject
- **Notice to the person subject** to closed session or administrative action must be given; proof of service required - 5 working days if personal service, 21 working days if by certified mail (excludes meetings held to consider an applicant for employment from the 21-day meeting notice.
- Notice must list the general topics concerning the person to be considered
- Notice of closed session pursuant to NRS 241.033 that states that administrative action may also occur fulfills both notice requirements (NRS 241.033 and 241.034)
- **Deliberation and Action** must be taken in **OPEN SESSION!**

Closed Sessions: Caution!!!

- Certain labor negotiations
- No Attorney-Client privilege except to receive information or to discuss existing or potential litigation
- Decisions taken in closed session are void
- Quasi-judicial functions limited to *deliberations* on evidence received in a public evidentiary hearing but only about the character, alleged misconduct, professional competence or physical or mental health of a person; vote must be done in open session
- A motion to close any meeting must state the nature of the business to be considered and the statutory authority authorizing closure!

A CLOSED MEETING MAY NOT BE HELD IF:

- A public body seeks:
 - ① to discuss the appointment of any person to a public office or as a member of a public body;
 - ② to consider the character, alleged misconduct, professional competence, or physical or mental health of an elected member of a public body;
(see NRS 241.031)
 - ③ to conduct attorney-client communications, unless to discuss pending or threatened litigation
 - ④ to discuss indebtedness

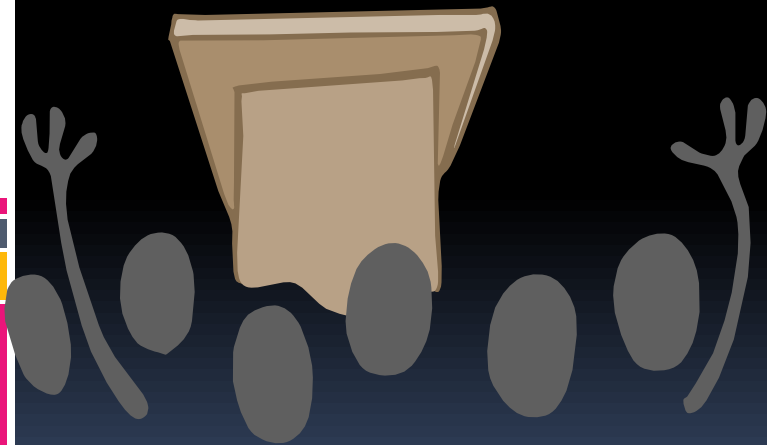
Meeting Basics: two components

- **Deliberate** means collectively to examine, weigh and reflect upon the reasons for or against the action. Includes without limitation the collective discussion, acquisition and exchange of facts preliminary to the ultimate decision. (2013)
- **Action** means decision, promise or commitment (no secret ballots or secret promises)
- Action occurs when a vote is taken
 - If board includes non-elected officials, by a majority of the members present **whether in person or by electronic means (2013)** during a meeting of a public body
 - If board is comprised only of elected officials, by a majority of all of the members

Meeting Basics

Public Comment Period.

- Reasonable rules and regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on the part of those persons attending the meeting may be adopted by a public body.
- A period devoted to comments by the general public, if any, and a discussion of those comments must be included on each agenda meeting.



Public Comment Periods

At a minimum, a public body, during an open meeting, must provide for public comment:

(1) At the beginning of the meeting, and again at the end of the meeting, before adjournment,

OR

(2) Before taking action on each agenda item that is denoted as one which the public body may take action.

In addition the public must be allowed to comment on any matter that is not specifically included on the agenda as an action item. However no action may be taken if it is not included on the agenda.

Comments Made During a Meeting

- ▣ Statement made by member of public body at public meeting is absolutely privileged and does not impose liability for defamation of constitute a ground for recovery in a civil action
- ▣ A witness who is testifying at public meeting is absolutely privileged to publish defamatory matter, except that it is unlawful to misrepresent any fact knowingly when testifying



Minutes & Recordings



- Must note date, time and place of meeting
- Must list members present and absent
- Must include the substance of all matters proposed, discussed or decided
- Upon request of member, must record each members vote on any matter
- Capture the substance of public comment if requested to include in the minutes or, if written remarks, a copy if so requested
- Any other information a member requests to be included
- Minutes are public records
- Minutes must be made available for public inspection within 30 working days after adjournment of the meeting; mark if unapproved
- Meetings **MUST** be recorded and the recording is a public record or must be transcribed by a certified court reporter
- Minutes must be retained for 5 years (audio recording for 1 year); thereafter minutes may be transferred for archival preservation in accordance with [NRS 239.080](#) to [239.125](#), inclusive
- Closed meeting minutes and recordings may be released only with the consent of the person subject
- Closed meetings with attorney: recordings are confidential

Violations & Consequences



- ❑ Action taken in violation of law are void; may be placed on future agenda properly noticed for hearing and action
- ❑ Suit may be brought to declare action void or for injunction

Criminal sanctions:

- ❑ Each member who attends a meeting where action is taken in violation of Open Meeting Law, with knowledge of the fact of a violation, is guilty of a misdemeanor.
- ❑ Wrongful exclusion of person(s) from a meeting is a misdemeanor.
- ❑ Fines up to \$1,000
- ❑ Jail up to six months
- ❑ Removal from office if criminally convicted of violation

Civil penalties:

- ❑ In addition to criminal penalties, a \$500 civil penalty to any member of a public body that attends a meeting of that public body in which action is taken in violation of the Open Meeting Law, and who participates in such action with knowledge of the violation.



It's the Public's Business

- ▣ Open meetings – open agendas
- ▣ Appearance of intent to violate when in closed situation
- ▣ Remember that you serve the public so they have a right to know what you know and actions you are taking
- ▣ Public Comment: you may limit the time but not the content of the speech
- ▣ When in doubt, be open!
- ▣ For more: go to <http://ag.state.nv.us>

