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NEVADA'S OPEN MEETING LAW

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INTENT OF OML

- ✘ “[T]he Open Meeting Law is not intended to prohibit every private discussion of a public issue. Instead, the Open Meeting Law only prohibits collective *deliberations* or *actions* where a quorum is present.” (Emphasis added.)

Dewey v. Redevelopment Agency, 119 Nev. 87, 64 P.3d 1070(2003).

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DOES NEVADA'S OPEN MEETING LAW APPLY?

- ✘ Is the entity a public body?
 - Public body must be an administrative, executive, legislative, or advisory body that expends, disburses or is supported by tax revenue;
 - If created by the Constitution, statute, charter, ordinance, resolution;
 - Requires at least 2 people. NRS 241.015(4)
- ✘ Is it a meeting?

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WHAT IS A MEETING?

- ✘ 1. **Quorum** of members of a public body.
(in person or by means of electronic communication)
 - ✘and
- ✘ 2. **Deliberation** amongst the quorum toward a decision.
 - ✘and/or
- ✘ 3. **Action.**

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CRITICAL DEFINITIONS

- **Deliberation** means: “collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion, or exchange of facts preliminary to the ultimate decision.”

NRS 241.015(2)

- **Action** means: a vote (if all members must be elected officials).

NRS 241.015(1)

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A “MEETING” OCCURS WHEN:

- ✘ You have a “serial quorum” or “walking quorum” or “constructive quorum”. All terms are synonymous. Stay away from these.
- ✘ Any series of gatherings of members where: (1) less than quorum present; (2) members attend one or more of the gatherings collectively; (3) with the intent to circumvent OML.

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WHEN OML ALSO APPLIES:

- ✘ The AG's OML Manual states: "...to the extent that a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the OML."
- ✘ When public body delegates *de facto* authority to a committee that stands in shoes of public body, OML may apply.

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WHEN OML DOESN'T APPLY

- ✘ Expressly provided for in NRS Ch. 241.
- ✘ Labor negotiations under NRS Ch. 288.
- ✘ Typical internal agency staff meetings without quorum requirements and no votes taken.
- ✘ Private briefings among staff of a public body and a non-quorum of members of a public body.
- ✘ Attorney briefings on potential or existing litigation but action must be taken in public.
- ✘ Social functions if don't deliberate or take action.
- ✘ Seminars, conferences, conventions, workshops.

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APPOINTMENT OF DESIGNEE/PROXY

- ✘ Designation may occur only if the public body's creating authority specifically allows for designation.
- ✘ A proper designee (1) is deemed a member of the body for quorum purposes and (2) may exercise same powers as regular member.

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IMPORTANT AGENDA NOTICE REQUIREMENTS

- ✘ Fundamental agenda rule—"Clear and complete statement of the topics to be considered at meeting."
 - + Must be specific to alert the public as to what will be discussed.
- ✘ Action items must be labeled "For possible action" or "For possible corrective action" next to the appropriate item .
- ✘ State that items may be taken out of order: and/or
- ✘ Items may be combined or removed at any time.
- ✘ Required periods devoted to comments by the general public.
- ✘ Most importantly: **public comment restrictions must appear on each agenda.**

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NO! IT WAS DETERMINED NOT TO BE CLEAR AND COMPLETE.

Meeting video showed motion was made to direct staff to include mandatory trash service as a part of the bidding process for franchise agreement renewal or perhaps obtaining new services from other contractors.

- ✓ **"higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public."** *Sandoval v. Board of Regents of the University and Community College System of Nevada*, 119 Nev. 148, 154-155, 67 P.3d 902, 905-906 (2003).
- ✓ AG's Office found the matter of mandatory trash pickup and billing issues were of a significant interest to the public. The agenda item was not clear and complete. Public body "cured" violation at next meeting.

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PUBLIC COMMENT YOU HAVE CHOICES...



Choice for public bodies between alternatives:

1. **1st alternative:** two p.c. periods on each agenda; One before any action item has been considered, and another p.c. period before adjournment. **Or**
2. **2nd alternative:** P.c. must be heard before a public body takes action on any action item but after it has discussed the matter. And the public body must allow one more period of p.c. before adjournment.
 - ✘ **But**, public bodies may augment either, or both alternatives with additional opportunity to comment. Statutory alternatives are minimum requirements – a "floor," not a "ceiling".

NRS 241.020(2)(d)(3)

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1ST AMENDMENT: PUBLIC COMMENT ISSUES; THE OML AUTHORIZES A PUBLIC BODY TO:

- ✘ restrict public speakers to the subjects within its supervision, control, jurisdiction or advisory power;
- ✘ limit public comment if the “speech becomes irrelevant or repetitious”;
- ✘ apply reasonable time limitations;
- ✘ limit caustic personal attacks.
- ✘ **But it forbids a public body from limiting public comment based on disagreement with “viewpoint” of the speaker.**

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PUBLIC COMMENT PITFALLS

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

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ACTUAL DISTURBANCE:

- ✘ A person or persons who “willfully disrupts a meeting to the extent its orderly conduct has been made impractical.”
- ✘ “removing an individual from a public meeting does not violate the Constitution *provided that* the individual is sufficiently disruptive and is not removed because of his or her [expressed] views”

Dehne v. City of Reno, 222 Fed. Appx. 560, 562 (9th Cir. 2007)

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PENALTY FOR OML VIOLATION:

- ✓ Member of public body must have participated in action which violated the OML.
- ✓ Fine up to \$500.00
- ✓ 1 year limitations period for bringing an action.
- ✓ This cause of action belongs solely to the Attorney General.

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AVOIDING A VIOLATION

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

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REMEDIES IF VIOLATION OCCURS

- ✘ AG may seek to void action; and/or seek injunctive relief;
- ✘ Corrective action: NRS 241.0365;
- ✘ Private lawsuits: NRS 241.037(2);
- ✘ Civil monetary fines/Criminal misdemeanor: NRS 241.040.

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The OML exists

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

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



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