

Advisory Committee on
Medicaid Innovation

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OPEN MEETING LAW IN NEVADA

OPEN ACTION, OPEN DELIBERATION

- A public body exists “to aid in the conduct of the people’s business” and the law intends “that their actions be taken openly and that their deliberations be conducted openly.” NRS 241.010
- Seems simple enough...
 - What is a public body?
 - What is an action?
 - What counts as deliberation?
 - What is a meeting?
 - Could a well-meaning committee member accidentally have a meeting or take an action?

DELIBERATE

Collective examination, weighing, and reflection upon reasons for or against an action. This includes discussion and exchange of facts, even if preliminary.

QUORUM

- Simple majority of membership or another proportion established by law. (For example, some committees require a majority of voting members for quorum.)

ACTION

- A decision, a promise, or a vote involving a majority of members present (including electronically).
- Watch for...
 - Inadvertent action
 - Impromptu meetings or email threads with action
 - Action in a meeting without quorum or without notice

PUBLIC BODY

- Administrative, advisory, executive, or legislative state or local government entity with at least two people which spends or distributes or is supported even in part by tax revenue.
 - This includes entities created by state or local law or regulation, a formal resolution, executive order.
- A board, commission, or committee with at least two people appointed by the Governor (or the Governor's direction) if it has at least two members who are not employees of the executive branch, or which otherwise meets the public body definition, or a public officer under direction from the executive branch if at least two members are not employed by the public officer.

PUBLIC BODY (CONT.)

- A limited purpose association for creation of a rural agricultural residential common interest community
- A subcommittee or working group where two or more persons would fall under one of the other definitions of a public body if:
 - The group is supported by staff members of the public body or
 - The working group is authorized to make a recommendation to the public body for action.



MEETING

- In person or virtual (telephone, email, etc.) gathering of members of a public body with a quorum to take action or deliberate on a subject the public body can cover (supervise, control, advise or have jurisdiction).



MEETING (CONT.)

- Any series of such gatherings without a quorum where the cumulative events were taken to avoid open meeting law and the members as grouped between events constitute a quorum.
- Social functions are okay if no deliberation or action takes place.
- Receiving information from the public body's counsel relating to potential or existing litigation related to the public body's function or control.
- To receive trainings about legal obligations of public bodies.

DEFINITIONS

Action: A decision, promise, or vote

Deliberate: Considering or reflecting on a subject, including fact exchanges

Meeting: In person or virtual gathering to deliberate or take action where the Public Body has power

Public Body: Two or more people funded or using tax revenue or appointed through state or local government mechanisms

Quorum: A simple majority of members unless otherwise specified

OPENNESS



Public notice requirements

At least 3 working days notice
Posting and sharing notice



Content of notices including

Clear and complete statement of topics
Public comment



Accessibility/space



E-mails, texting, and other electronic communication

- Once before first action item and again before the meeting's end or
- On all action items before each action along with a general public comment period about general topics within the public body's jurisdiction.
- Time limits must be on the agenda.
 - Watch for accommodation of disabilities (an individual may require additional time to share their comment).



PUBLIC
COMMENT



PUBLIC COMMENT (CONT.)

- Do not take action based on public comment unless in relation to an action item on the agenda.
- If the agenda has action set for inclusion of future agenda items, this may be a good place to incorporate public comment.

DESIGNEES NOT ALLOWED

- Unless specified in the mechanism (such as a statute) creating the meeting, proxies are not allowed.
- If you believe you cannot make a meeting where this is the case (such as with ACMI, make sure there will still be quorum or the meeting may need to be rescheduled).

SUBCOMMITTEES/WORKING GROUPS

- Subject to Open Meeting Law as well.

PENALTIES

Action taken in violation of Open Meeting Law is void.

A public body may try to correct a violation but there are related steps and considerations (it is still a good idea to try, however).

Misdemeanor (NRS 241.040)

Each member of the public body who attends the meeting where the violation happens, has knowledge of the violation, and participates in the violation.

Wrongful exclusion of individuals from a meeting.

PENALTIES (CONT.)

Administrative fine for attendance and knowing participation in a violation not to exceed:

\$500 for a first offense;

\$1,000 for a second offense; and

\$2,500 for a third or subsequent offense.

No criminal penalty or administrative fine if the member violates provisions “as a result of legal advice provided by an attorney employed or retained by the public body.”

OPEN ACTION,
OPEN
DELIBERATION



The agenda is your friend.

Use it to plan for future meetings.
Use it as a roadmap for current meetings.



Clear communication and expectations.

Use committee staff support to share information and avoid the “reply all” temptation.



Would a member of the public be able to have notice and involvement in this deliberation or action?

OPEN MEETING LAW RESOURCES

- NRS Chapter 241
www.leg.state.nv.us/NRS/NRS-241.html
- Attorney General's Office Portal
ag.nv.gov/About/Governmental_Affairs/OML/
 - Open Meeting Law Opinions
 - Open Meeting Law Enforcement Unit
 - Open Meeting Law Manual
 - General Complaint Form
- The NRS has been updated with 2019 legislative information and will be your best/most up to date resource.
- The Open Meeting Law Manual includes cites to notable opinions that can help offer examples.
- The Open Meeting Law Opinions are organized by date but can make for interesting reading.
- Inquiries to counsel.

QUESTIONS?

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