

# NEVADA'S OPEN MEETING LAW



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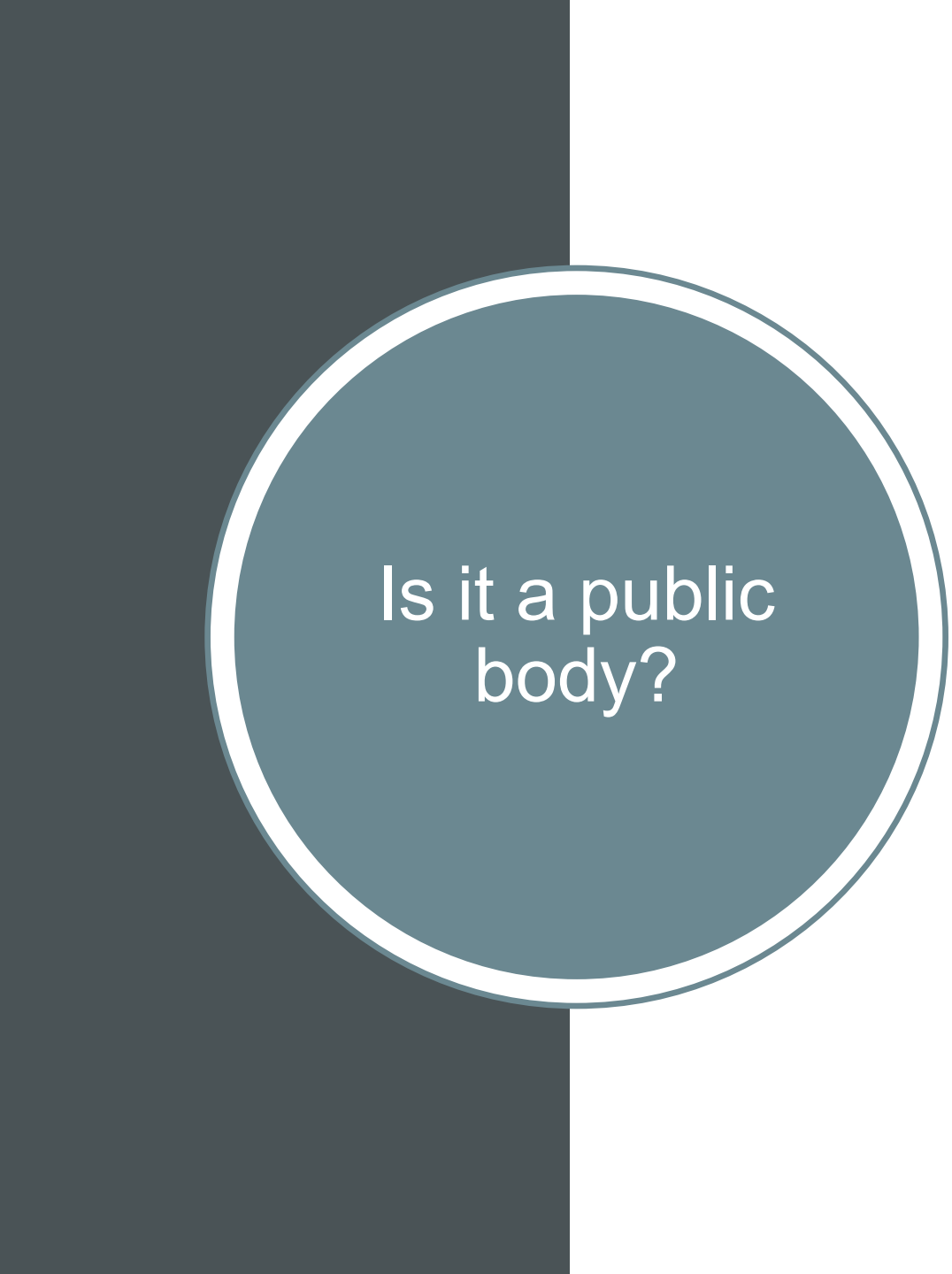
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- Public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. NRS 241.010.

Applies to meetings of public bodies, including subcommittees.



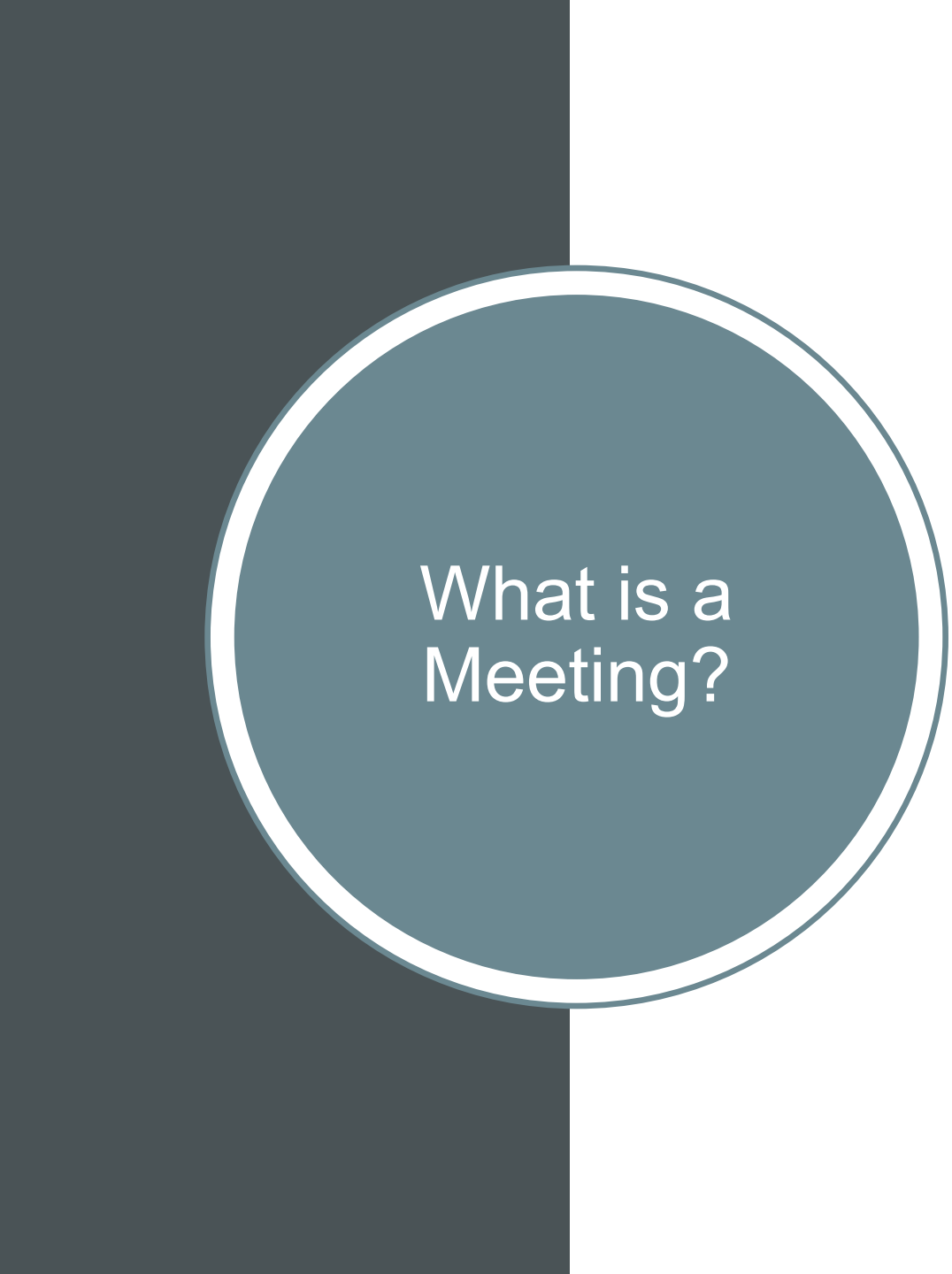
Is it a public  
body?

- Body of local government consisting of at least two persons
- Expends or disburses or is supported by tax revenue or advises such an entity
- Is created by:
  - Constitution, statute, ordinance, admin code, executive order, or
  - Another public body
  - Governor or Executive Department public officer
  - NRS 241.015(4)

## Subcommittees

- The definition of a “public body” includes “A subcommittee or working group consisting of at least two persons who are appointed by a public body if:
  1. A majority of the membership of the subcommittee are members or staff members of the public body that appointed the subcommittee; or
  2. The subcommittee is authorized by the public body to make a recommendation to the public body for the public body to take any action

NRS 241.015(5)(d)



## What is a Meeting?

- Meeting = Quorum + Deliberation or Action
- Quorum means simple majority of members (minus any abstentions for all public bodies, or vacant seats for appointed bodies)
- Deliberate means collectively examine or weigh pros and cons
- Action means a majority vote of the members

## What is not a meeting?

- Gathering of a quorum at a social function, as long as no deliberation or action (neighborhood meetings?)
- Training regarding the legal obligation of the public body, so long as no deliberation
- Attorney client conference regarding pending or existing litigation, can include deliberation. NRS 241.015(4)(c). But, can still be treated as a closed session meeting if board elects to do so.
- Deliberating without a quorum

## Serial Meeting

- Electronic communication between a quorum of members can constitute a meeting.
  - Don't reply all or forward deliberations of members
- A constructive quorum can exist with less than a quorum speaking together at any given time if opinions are relayed between members.

# Social Media

- While there are Attorney General opinions as to the use of emails in serial communications, social media is less clear in Nevada.
- Best practices:
  - Do not “friend” or “follow” members of the board (might make a quorum)
  - Do not comment on or post about issues before the board (deliberation)
  - Be mindful what groups you belong to, what other members are in that group, if the group is small, it may indicate targeted communication
  - If you do post about an issue before your board or are friends with your fellow members, post generally and direct your message to the general public
  - If a fellow board member posts about an issue that is before the board, do not reply to it directly or indirectly





## Notice and Agenda

- Must include:
  - Time, place and location (or information on remote technology system)
  - Name, contact and business address for supporting material, plus location (physical or electronic)
  - Clear and complete statements of topics
  - Actions items denoted as “for possible action”
  - Public comment periods and restrictions
  - NRS 241.020



## Posting Notice of Agenda

- Must post notice of agenda:
  - (1) at the office of the public body or location of the meeting,
  - (2) on the public body's website, and
  - (3) on the Nevada notice website.
- Must post no later than 9 AM of the 3<sup>rd</sup> working day before the meeting. (do not count Fridays).
- There are exceptions to the timing of the posting if a true emergency
- Notice must be sent to persons who have requested notice of meeting.

## Additional Requirements

- Shall make reasonable efforts to assist and accommodate persons with physical disabilities
- Additional notice required when considering a person's character or misconduct or to take administrative action against a person
- Supporting material must be available to the public at the time it is provided to the members
- Meetings must be recorded or transcribed
- Minutes must be kept in conformance with NRS 241.035
  - Must be written and approved within 45 days or next meeting, whichever is later

# Public Comment

- Minimum requirement:
  - Two options – general or limited to agenda items prior to any action item or on each action item after discussion, but prior to vote.
  - General public comment period at some time prior to adjournment
- Restrictions must be reasonable time, place, and manner restrictions. NRS 241.020(3)(d)(3)
- Can remove any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical.
- New in 2023: If using a remote technology system, must offer at least telephonic public comment, see also slide on Virtual Meetings.

# Violations

- Actions taken in violation of Open Meeting Law are void.
- Attorney General's Office can investigate and prosecute violations.
- Corrective action is recommended and while it may not eliminate the violation, it can mitigate severity.



## Virtual Meetings

- Entirely virtual meetings are permitted, for non-elected public bodies.
- When members are all elected officials, the meeting can be virtual, but a physical location must still be provided for public to use. NRS 241.023(2).
- Additional requirements for entirely virtual meetings:
  - Post agenda and supporting material to website.
  - Accept live public comment
  - Offer a call-in number to the public
  - Reasonably ensure that any person is able to participate.
- Members can attend virtually even if public is not, as long as there is a physical location for the public
- Public Comments During Virtual Meetings:
  - Entirely virtual meetings must have clear and complete instructions on the agenda for how to call in for public comment
  - If offering virtual public comment, must read instructions for public comment prior to first comment period
  - Must offer at least telephonic comment if meeting is being conducted via remote technology
- Meetings to consider regulations or contested cases under NRS 233B must have a physical location for public



# ETHICS

- Members serve at the pleasure of the BCC and may be removed at the BCC's discretion.
- TAB/CAC Bylaws, Art. III, F.: requires all members to follow ethical standards.
- Acting ethically includes:
  - Being open, honest and fair
  - Not using your position to gain any personal or business advantage for yourself or your family or other persons with whom you have a close relationship. (political endorsement?)
- NRS 281A.020: must commit yourself to avoid conflict between private interest of public officer and those of general public (lobbying job vs. official member duties?)
- Not accepting gifts or employment
- Disclosing financial contributions and spending to Nevada Secretary of State



## Disclosure and Abstention

- Disclosure is mandatory for any interest created by: gift or loan, substantial pecuniary interest, commitment in a private capacity, or representation of a private client.
- Disclosure must be made at the time the matter is considered and prior to discussion.
- Disclosure must be sufficient to inform the public of the nature and scope.
- Abstention is required only in clear cases where the independence of judgment of a reasonable person in the member's situation would be materially affected.
- This determination should be made by the member and explained on the record.
- Ok to vote if resulting benefit or detriment is no greater to public officer than to anyone else
- Quorum is reduced if abstention. NRS 281A.420
- What if you get a card?



## Questions and Answers

- How much detail do agenda items need to have?
  - Agenda must have “clear and complete statement of the topics” and which actions may be taken. NRS 241.020(2)(c). Must be specific enough to give the public clear notice of the topics to be discussed and decided and not use broad or generic terms such as “committee reports” or “permit approvals”. Examples can be found on pages 59-64 of the Nevada Open Meeting Law Manual published by the AG’s office.

[https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental Affairs/2019-03-26\\_OML\\_12TH\\_AGOMANUAL.pdf](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/2019-03-26_OML_12TH_AGOMANUAL.pdf)

## Can members talk to members of the public during public comment?

It is possible for board members to talk with public commenters during their comment period, but it often leads to violations of open meeting law, so it is best avoided. However, the law clearly allows for discussion of public comments. NRS 241.020(3)(d)(3). The Attorney General has found that a public body may not inform the public that it legally is prohibited from discussing or responding to public comments either among themselves or with speakers from the public. AG 10-037. However, when members respond to public comment they may, interrupt the speakers limited time to comment without providing additional time, restrict comments based on viewpoint, deliberate on a subject not properly on the agenda, or provide impromptu inaccurate information that causes further controversy. If any response is made, it should be after the comment is completed and it should be something factual which is not critical of the comment, which could appear as discouraging further comments based on viewpoint. A board may impose reasonable time, manner and place restrictions on public comments, but they have to put those restrictions on their agendas before the meetings. NRS 241.020(3)(7); AG 10-021.



New in  
2023, last  
legislative  
session

- “Quorum” Definition:
  - Only voting members count
  - Quorum requirement reduced by vacancies
  - Quorum not reduced when someone can’t attend
- All elected bodies may now take advantage of NRS 281A.420(5)’s quorum reduction for abstentions.
- Attorney-Client Meetings are not a Meeting for OML
- Public Comment for Multi-Day Meetings: need at least two comment periods for each day.
- Agenda Posting: location of meeting is alternative posting location if there is a physical location.
- Meetings to consider regulations or contested cases under NRS 233B must have a physical location for public
- Public Comments During Virtual Meetings:
  - Entirely virtual meetings must have clear and complete instructions on the agenda for how to call in for public comment
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# Resources

- Training Materials:
- [https://ag.nv.gov/Hot\\_Topics/Training\\_Materials/](https://ag.nv.gov/Hot_Topics/Training_Materials/)
  
- Open Meeting Law Opinions:
- [https://ag.nv.gov/About/Governmental\\_Affairs/OML\\_Opinions/](https://ag.nv.gov/About/Governmental_Affairs/OML_Opinions/)
  
- Nevada Open Meeting Law Manual, has examples and detailed summaries:
- [https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental\\_Affairs/2019-03-26\\_OML\\_12TH\\_AGOMANUAL.pdf](https://ag.nv.gov/uploadedFiles/agnv.gov/Content/About/Governmental_Affairs/2019-03-26_OML_12TH_AGOMANUAL.pdf)