

**STATE OF NEVADA
OPEN MEETING LAW TASK FORCE**

Draft Minutes of Meeting
(Subject to revision and correction by the
Open Meeting Law Task Force)

Tuesday, November 9, 2010 at 2:00 p.m.

Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

1. Call to order and roll call of members

Committee Members Present

Catherine Cortez Masto
George Taylor
Keith Munro
Barry Smith
Mark Hinueber
Tom Mitchell
Scott Doyle
Sen Terry Care
Maggie McLetchie
Art Mallory
Paul Lipparelli
John Shipman
Tracy Chase, Reno City Atty
John Shipman, Reno City Atty
Jeff Fontaine, NACO
Gene Brockman, NV League of Cities
Mary Anne Miller

Public Present

Karen Gray with NRPI

Catherine Cortez Masto called the meeting to order 2:00 p.m. Roll call was taken and it was determined that a quorum was present.

2. Review and approval of minutes from the August 16, 2010 meeting.

George had a change on page 11. He stated there are references to Chapter 382 and 383. All references should be to NRS Chapter 383. No other changes. Keith Munro moved to approve corrections, seconded by Terry Care. Jeff Fontaine abstained. Tracy Chase and John Shipman abstained since Randy Munn had attended the last meeting and is no longer with the Reno City Attorney's office. All ayes, unanimously approved.

3. Legislative Agenda

3.a. Proposed concepts for amending the Open Meeting Law

3.a.1. Create administrative power or amend limitations periods to allow an extension where a public body has not been responsive to a request for documents or information. **George** indicated there are two concepts suggested in this agenda item and in the handout. The first concept is a proposed amendment which would expand the AG's enforcement power to require public bodies to comply with lawful discovery requests through the use of an administrative subpoena, or the second concept would amend OML statutory limitations periods for the purpose of extending those periods because of noncompliance with investigative requests. The purpose for presenting two concepts in one handout was to give the Task Force the opportunity to weigh the relative merits of both concepts.

Maggie – It seems that perhaps we should look at the other proposals first. I don't think this can be considered without looking at why you have proposed that only the AG be able to enforce the OML because this obviously has to do with details of enforcement and civil suits. It denies anybody else but the AG the right of action.

Catherine – Let me clarify this. The one we are looking at right now is just to address the issue of the statutory timelines and if an individual or a board for some reason delays us from receiving information within that statutory timeline which runs from the date of the action, this give us subpoena power to allow us to get that information immediately and/or extend those deadlines so an individual board or individual cannot run the time out.

George – The way I have it written is in the disjunctive with and/or, however that is a permissible reading.

Catherine – That's the intent here. It wasn't the intent to prevent anybody else from having the authority or even being able to bring an action on their own. This is just to give us the opportunity to really take action if there is somebody out there that doesn't get us the information in a timely fashion and we don't have the ability to extend those timelines, they are automatic, and they start running from the minute the board action is taken.

Maggie – So this is before any civil suit is filed.

Catherine – Correct. The two things we talked about in the past is – one to give my office administrative subpoena power and putting a timeline in there, or if people were uncomfortable with that, to allow us to extend the limitation periods because of noncompliance with the investigative request or subpoena and the public body had notice of that investigation and the request of discovery. So if you look on the next page it actually sets forth the language that we would potentially use depending on which one people would be comfortable with.

Tracy – Just an overall thought for consideration. In looking at the language on extending the limitation period. I think that probably is a tolling of the limitation period and it would be better procedurally to have a solid limitation period. Most statute of limitations are basically, 60 days, 120 days, 2 years, etc., but if you are extending it by one day for every day that the public body doesn't respond to you, I think the court almost has to hold a hearing on when that limitation period would expire and I have a concern in why would a private person not have the same ability to toll the statute of limitations if a public body is not responding. I don't know why it is selective only as to AG.

George – Subpart (b) was designed because the AG has the right to ask for investigative reports, agendas, recordings of meeting, and things like that. This is a response to that. I'm not sure the public has that right unless or until they file a civil suit in state court.

Catherine – So once they file a civil suit in civil court they do have the right to ask for that information – correct?

George – Yes as a matter of discovery.

Keith – And pursuant to the NRCP.

Tracy – They also have a right to do a public records request that we have to respond to in accordance with state law.

Catherine – So there are other avenues where they can get this information without having the time periods run. Is that what you are saying?

Tracy – Yes, and I think that if there is an issue with discovery that could be heard in the case itself. The private person would bring it up as a discovery matter. I personally think you are mixing tolling of the limitations period with a discovery matter.

Catherine – What we are looking for is the opportunity in the office to move forward with our investigation and still preserve the opportunity to bring a lawsuit

without the other party having delayed that opportunity by not replying in a timely manner.

Terry – Does this mean you can issue a subpoena prior to an action being commenced? The second alternative is only after the action is commenced. The way I read the first one is that you may subpoena records because you just are not sure yet and you want to conduct an investigation to determine whether there is a basis.

Keith – That is correct. I think the intent with this is if there is a complaint filed it is an opportunity for the office of the attorney general to timely get the records to make a prompt determination about whether or not there is an OML violation.

Paul – Keith for clarification, you said complaint did you mean a letter complaint from a citizen rather than a formal complaint filed in district court.

Keith – Correct. Once the complaint is filed in district court then the NRCP takes over and our office already has that authority as does a private individual.

Catherine – Is this something we would look to put in our legislative package. Supportive, non-supportive, do we want to take a vote on this?

Jeff – Under (b) where the AG may issue a subpoena for records and materials to a public body to conduct an investigation into any action, what if the complaint is filed or the letter is received by your office within 118 days. What does that mean and how would that be handled in this case. I understand the intent in trying to get the public bodies to respond with the information you request but I guess I wonder about how that would work in a case where you received a letter from the public many, many days after the violation.

George – This is a good point. I have this captioned as either/or but as we have already discussed there may be a way of blending these two, and one way of blending these two – to answer your question, would be to add the word SUBPOENA at the end of the second line after the word “investigative,” then at the 118th day there would be an extension of the limitations period while the subpoena is issued or this matter goes in front of the court. Maybe there is a way of blending these two issues.

Keith – Jeff, I think you are kind of highlighting the need for potential subpoena authority because without subpoena authority to get those records promptly, if we get it on the 118th day, you are going to have a tough time complying with the timelines period. The main thrust is subpoena power to get timely records so a timely decision can be made.

Tom - Often the public doesn't learn of the violation until months after it takes place. It happened with us. We filed a complaint about an action by a public body only to be told you are too late.

Catherine – I am assuming the Legislature put these timeframes in because they wanted definite times within which you have to take action.

John – That kind of scares me especially with things like bond indebtedness and so you are potentially to come back years in the future to revisit whether you can issue a bond or something like that. I think that is opening up a can of worms.

Barry - That is the original reason for those limits so there had to be a certainty to that government action that was taken and was complete. So it couldn't extend forever.

Maggie – What if it was from date of discovery but no later than some certain number of days after the action.

John – Once the bond is sold, you have got a problem. I think it is a good idea just in terms of certainty but I think in practice it would bear out.

Catherine – Going back then to where we are leaving it the way it is, then the only other option is to try to get to allow the investigation to occur in a timely fashion so the timeframes do not run and the thought process was give us administrative subpoena power or allow those timeframes to be extended depending on how long the delay occurred and that is kind of where we are right now. Anyone concerned with administrative subpoena power giving us administrative power to get an investigation under way immediately and get that information back in an expeditious fashion.

Maggie – I move that we grant the AG's office subpoena power.

John – I think I am okay with that but maybe someone can clarify for me – if a subpoena is issued and somebody doesn't respond to it – what happens?

Keith - Then you are into court on show cause.

John – I just don't know if it gets you anything at the end of the day quite frankly. Does the statute still run even though you have got a subpoena that they are not responding to?

Keith – I guess it potentially could run and the point I made with Jeff Fontaine is that this is the kind of the need for subpoena power. You have got a certain period of time and one gentlemen said you don't discover these things timely so let's say you don't find it out until the 115th day, how do you expect the office of the AG to timely enforce these things when we are under a time crunch and there

is no ability to compel the public body to produce the records quickly so a decision can be made. John I think your question is a good one but I think it points to what do we do with those complaints that are filed near the back end of the 120 days and not to whether we need subpoena power. It sounds like you think we need subpoena power because there is a need because of the 120 days to get the records in a timely fashion.

John – The subpoena power, either way, is not a make or break for me because you have got things like the public records law and other avenues to get the bulk of the material that you want anyway. To the extent that the complaint comes in on the late end of that 120 day period, at a certain point I'm thinking that is a risk the public citizen bears in general. I don't know if we need to go out of our way drawing a burden on the AG to get it administered in a time that really they can't do it.

Keith – We are looking for some benefit to get these records in a timely fashion because our office deals with these things on a daily basis and getting the records from the bodies who have them seems to be a problem for us and we are trying to remedy that.

John – The City of Reno is okay with the subpoena issue. It is just once we start tolling the statute or getting late filed complaints I don't know if the AG wants to go out its way to try to prosecute those.

Keith – We do if they are valid.

Maggie – Is the concern with tolling the statute of limitations just that it is too late to do any corrective action because you could toll the statute of limitations for either a private action or an AG action to do certain things and not others.

John – That is a good point and I think Agenda Item 3.a.3 talking out the cure provisions. I think the question is, is the AG going to take the approach that we want to prosecute everything or is the AGs approach really we want to help local government make sure everybody is complying with the law. What about a notice then the local government has 30 days to cure before any suit could be filed.

Catherine – When we get the complaint we are just doing an investigation to determine if there has been a violation, but if we don't get that material back within a certain timeframe whether it is 60 or 120 days and we have the opportunity to look at that investigative material our time could have run to take legal action. That is our concern. We want to make sure we get that investigatory material and documents back in a timely manner so we can take a look at it and see if there was violation and if there was, be able to take legal action within the timeframe that is allotted. This is why we are trying to put additional teeth or strength in this office. With an administrative subpoena at least that's an

additional tool we can use to say if you are in violation we can bring you into court, and if they are in violation of our subpoena. The option was to allow us to add additional days on the back end, we know our timeframe has run, we didn't get the materials back in a timely manner and so we are going to add that time on the back end to allow us to take a look at the documents, see if there is a violation and take appropriate legal action if warranted.

So, we have a motion on the table – (at this point the audio recorder stopped).

Tracy – The Reno City Attorney's office to give some samples of what I would include as a quasi-judicial proceeding at the City of Reno, it could be as low as parking ticket infractions and hearings on those because we have civil judicial proceedings and we have a hearing officer system set up so to post as public meetings, all of those mini judicial proceedings that occur at the City and they are not at the governing body level, I think would be problematical.

Scott – Those types of judicial proceedings have been protected since the late 1970s under Goldberg vs. District Court. There is a complete exclusion for judicial proceedings that has been around now for 30+ years that would cover all those sorts of things and the Supreme Court is very zealous in guarding what they think is a judicial proceeding and defining that. As George pointed out there is a string of decisions that the Nevada Supreme Court has come out with in the last five years where they have started to define what a quasi-judicial proceeding is and determining what is subject to the OML and what is not. At this point a contested case under Chapter 233B the Nevada Administrative procedures act is probably excluded because of the procedural safeguards that are present and that is a notice of the nature of the hearing, opportunity to be heard, opportunity to present evidence, requirement of the decision in which includes written findings and conclusions to justify the ultimate result reached. Those are the hallmarks in quasi-judicial proceedings and so any State proceedings that fit those types of criteria are articulated by the court as well as any proceedings engaged in by local government that fit those criteria right now arguably come within the protections of the quasi-judicial proceeding doctrine are articulated by the Nevada Supreme Court. You have court protection right now you just don't know what the extent of that court protection is because they haven't decided a case in every context.

Catherine – Here's my suggestion from listening to the discussion. With the level of discussion we are having just trying to define "public body," what is going to happen when we get this Bill before the Legislature and there are public hearings on it. Our intent here is to kind of come together with some consensus on what we hope we can define as public body to clarify some of the concerns that will be easy enough for us to present to the Legislature and have them support it without a lot of controversy and a lot of unintended consequences. We are not going to be able to think of every single scenario that applies here. We

just can't. So I think we need to figure out what makes sense that we can definitely put in here as a public body and I think you have all made good points and we've had a good discussion. How do we control it at the Legislature and how do we further define what it is we think is the easiest to put in place that clarifies it for everyone?

Catherine – I would like to ask **Scott Doyle, Paul Lipparelli, Barry Smith, George Taylor and Keith Munro** to take the discussion we have had and see if you can come up with some language that makes sense. Does anyone disagree with the concept of what we are trying to do here?

Mary – I guess I'm not sure what the concept is and what problem we are trying to address.

George – Two things, for example in the governor's office, the way I have it drafted is any body created by an executive board would be covered, and the second thing and one that affects us mainly on a day to day basis in complaints is covered in (c)1 – any multimember board, commission, or committee appointed by a chief executive authority of a political subdivision. This is an effort to clarify the definition of committee even at a local government level.

Mary – I just think that (c)1 is way too broad.

Catherine – Based on what George just said and those criteria that he talked about is everybody comfortable about moving in that direction and is there anything else that should be addressed because right now those are the concerns on the table and that's what we can hopefully look to targeting our language.

Tom – I have one question and I don't know if it should be addressed in this discussion but what about local government bodies that hire someone to perform a function, such as hiring a head hunter to reduce the number of candidates for a managerial position.

Catherine – I'm not sure that would even apply under the OML by itself. You are just hiring one person to do a job. There is no committee involved, there is no discussion – unless I'm missing something that would be occurring, you are just hiring a professional to perform a function for the local government.

Tom – Just raising the question.

Catherine – I don't see how it falls under the OML.

Jeff – Back to the point I raised earlier regarding the quasi-judicial proceedings and I understand what George has said and I guess what I would ask is if there is

some way that we can get information relative to the case law so that we can have a better idea of exactly what that case law says so we know a little bit better what the situation is.

George – What I can do with Jeff is provide him with either copies and/or cites for the two Stockmeier cases, 2005 and 2006, which define quasi-judicial bodies.

Catherine - Let's move on to discussion of the next item.

Item 3.a.5. Create "civil infraction" for violation of OML, accompanying fee schedule, and appeal process.

George – This is a concept that would provide a civil infraction and a fine and fee schedule. I looked at several state statutes. My pattern for this was taken from the Florida statutes. I want to draw your attention to subsection (c). That language is taken directly from Nevada statutes from Chapter 283 and it is defined as a summary proceeding that we already use in Chapter 283.440 and it is a removal proceeding for any public officer that is not being impeached or being accused. There are three methods of removing a public officer. I just lifted it in total and inserted it in this concept.

Mary – I would just say in 8th JD there is very little chance of getting this in front of a district judge in this court.

Scott – I think you have an excellent statement of statutory priority with the time frames but Mary Ann is correct. I think you are going to have trouble getting in front of a district judge in about any of the judicial districts under this timeframe, so I would suggest considering the magnitude of the penalty and the fact that it does not culminate in any other statutory disability such as removal or subsequent criminal prosecution that you consider in the first line of paragraph (b) of subsection 4 inserting the words justice or municipal court of competent jurisdiction. That would probably allow you a better shot at complying with the timeframes. You probably face the problem of having to educate those jurists to a higher degree about the parameters of the OML but it would be something that is doable and probably would comply with your timeframes in sub (c).

George – Scott, as I said sub (c) was lifted directly from the statute. The summary proceedings statute has been in there for years and years and it probably doesn't reflect the timeframes that modern day practice demands and certainly those timeframes can be amended or changed.

Scott – To my way of thinking you want fast but you also want fair. I think you could get both if you go to a court of limited jurisdiction. I don't know that you are trying to make law by using this particular provision. If you want to make law use the remedies under 241.037 declaratory relief and injunctive relief because those are in district court. They do have the right of direct appeal to the Nevada

Supreme Court. Here you are simply admonishing on a monetary basis that is not criminal in nature and I think you can do that in a justice or municipal court effectively. You have a right of appeal to district court under general court rules and if somebody feels strongly about the fairness of the procedure and it is still a relatively new law, they have got the ability to try and get the Supreme Court of the state to entertain it on a discretionary writ after there has been an appeal in the district court. I do think there are fair hearing procedures in place if you are to try to place in a court of limited jurisdiction rather than in the district court.

George – So you would eliminate the language “in a court of competent jurisdiction” and substitute “a court of limited jurisdiction.”

Scott – No, I would just say in that first line **“The Attorney General may file a complaint in a justice or municipal court of competent jurisdiction”** and then that way it may not be the correct terminology but then really all you are picking is which township or city depending on where the person is or where their particular public body is functioned that they are a member of and on whose behalf they are alleged to have violated the provisions of Chapter 241. The other thing I would do **over on the second page in sub (c) where the line starts with the word “appears” I would put after that the words “by a preponderance of the evidence.”** The reason being is that you have already said that it is civil. Preponderance of the evidence is the standard in civil cases but an argument could be made that because this is a penalty that a higher standard like “clear and convincing” is the order of the day and my thought is to try and remove as much of that interpretive question mark in this type of a summary proceeding as possible by specifying the rules ahead of time.

Paul – I think the timeframes that George borrowed from the removal statutes are important in a removal context because that is something that has the potential to cause a lot of problems for a government although I don’t think they are appropriate to this situation and I would leave it in the district court and leave it to the scheduling of the district court to adjudicate. I lack the confidence Scott has in the justice and muni courts to handle a case like this without a lot of resources on education.

Scott – So under 4(c) you would want to strike it where it says “The court shall cite the party charged in the Attorney General’s complaint to appear before it on a certain day.”

Paul – Yes, and I would leave the language in the last sentence starting **“If, on the hearing, it appears that the charge or charges of the complaint are sustained, the court shall find the party complained of guilty of a non criminal infraction subject to a fine as set forth in this subsection.”** I agree with Scott’s suggestion on the evidentiary standard.

George – So you would eliminate quite a bit of language.

Paul – As Keith indicated striking at the word “not” in the last line and keep going until you get to “If” on the hearing. . .

Keith – And all of you would be okay with the preponderance of the evidence?

Paul – Yes.

Scott – I understand what Paul is saying but I think you are going to end up with a remedy that is going to be honored in its nonuse more than its use and one of the things we were discussing was the fact that now your declaratory judgment and injunctive relief actions are lengthy proceedings if no other reason because of your 16.1 requirements as well as the fact that these actions are not entitled to any type of statutory priority and so if we start slicing timeframes from here you may end up with this remedy being in the same boat that those two existing district court remedies are. That would be my concern and I have one more thought. That is if the group considers adding a new subparagraph (f) to the bottom of the text that says something to the effect that:

(f) Any civil remedy imposed pursuant to this subsection is the personal responsibility of the persons recommended for it and not the obligation of the public entity that they serve.

Scott – There is no sense in shifting from one entity to another through the penalty process. Let’s put the responsibility where it belongs with the violator.

Mary – It is probably that the entity provides a defense it is the entity that is going to suffer the financial burden in the action.

Scott – If the person is alleged to have violated their statutory duties are they entitled to an official attorney defense? I can see defending the body in a civil action for declaratory or injunctive relief but this citation is person to that particular individual. It is an action taken outside the course and scope of their official duties because it alleges that they violated Chapter 241. So I’ve raised the question that they probably should retain their own attorney.

Mary – If the legal counsel for the entity either gave them advice or believes that the allegations are not sustainable they might have an obligation and that the accused parties acted in good faith, they might have an obligation under Chapter 41 to provide a defense.

Scott – In a penalty proceeding, if an individual is relying on the advice of counsel, counsel won’t be there to defend them, counsel will be there as a witness.

Mary – My point is that the entity would have to provide outside counsel then. It is still a Chapter 41 issue when we are talking about a single action.

Scott – That is tort damages, which are not civil penalties.

Mary – It doesn't exclude civil penalties. This is civil infraction, it is not a criminal penalty. I still think in practice if there is a good faith defense to this that the onus is really going to be on the person side of this.

Terry – You may want to consult with the judge's association concerning some of the issues that have been raised here about municipal court and justice court. I don't even know if all the municipal court judges in this state are actually attorneys when you get out to some parts of the state. Secondly, we talked about in subsection 4(a) . . . each member of a public body who violates any provision of this chapter. . . is it possible there would be repeated violations during the same meeting if the meeting is not properly noticed. Can this be interpreted to mean that at one meeting not properly noticed because of a series of actions it constitutes a violation of the statute?

Catherine – So it is on the violation and not the individual and not the individual body?

Terry – What I mean is let's say that the meeting is not properly noticed and the body takes action, let's say it is unanimous, they vote on five actions and the meeting is not properly taken, do we have five violations or just one.

Scott – It is in the discretion of the party charging it because you can have a number of criminal transactions consolidated into a single count, or you can charge them on a count by count. The way this law is written that would be within the discretion of the AG in the complaint writing and charging process. So I think it could be either.

Catherine – This is an additional penalty we are looking at. Not something that takes the place of any of the other penalties or remedies that are available to us. So as a practical application, how would this occur, how would this play out if we were to move forward and try to seek civil penalties based on the complaint that comes in?

George – One thing I want to emphasize is that this is discretionary on the part of the AG about when to bring a complaint alleging a non criminal violation. You are asking about a couple of factual scenarios that might be applicable. I have had a few recently in the last year. Some comments made during a public meeting that obviously implicated one member and I thought that some kind of fine or fee or some civil infraction would have been appropriate in that instance. It is not always appropriate but it is certainly discretionary with this office. I can't think of any specific factual instances other than that one.

Catherine – So play it out for me. We get a complaint for a violation, there is a violation but we haven't filed a complaint with the court. But in this instance to get a penalty you have to file a complaint with the court.

George – Yes.

Catherine – I'm trying to understand at what point in time do you file a complaint with the court on the other issues where there is an injunction or stop them. What point in time do you decide this is a penalty we are going to go after.

George – That is discretionary with this office. It depends on the facts of each situation. Some of them are more egregious than others. A technical violation, no. I don't think that in most instances technical violations would be appropriate here, but there are more egregious circumstances which we would consider. How it plays out is that once it appears to this office that the facts are more egregious then this would come into play and there would be a decision to be made about filing a complaint for a summary proceeding and seeking a fine. That would occur early in the evaluation process of any complaint.

Catherine – Are you saying there are instances where you envision a fact scenario occurring where it wasn't enough of a violation where we filed a complaint for an injunction, or the body had not done anything to enjoin to go to court to avoid it, but we would file a complaint for a civil penalty.

George – Yes.

Mary – Is there a statutory time period in which a suit has to be filed.

George – There is nothing inserted in this concept however I would think we are still constrained by our limitations periods in the OML. Any kind of complaint would probably have to be brought before 60 days. There is nothing specific or explicit in the statute.

Keith – I assumed it was in there so to the extent there is any concern, we could add it.

Jeff – Does this only apply to willful violations?

Paul – No that is just paragraph one for the criminal penalty.

Jeff – So any violation even if it not a willful violation.

George – Yes, that's right.

Tracy – We were reading a recent article out of the International Municipal Lawyers Association magazine that related to criminal violations and there is a

case going out of Texas that may go up to the U.S. Supreme Court that relates to whether or not criminal penalties for open meeting violations are unconstitutional. Just thought you should be aware.

George – I'm aware of this case. I know the 5th circuit dismissed it as moot. However, I was waiting to find out if the three Alpine County supervisors were going to take this up or seek a writ of certiorari in the Supreme Court. It is a first amendment case.

Catherine – Does anyone object to putting these additional civil penalties in place in addition to our existing remedies? Anyone oppose?

Jeff – I guess this is the first time I have read this and I assumed it was just for willful violations and I guess my concern is you have a lot of public bodies out there particularly in rural areas, citizens that volunteer to be on these types of bodies whether they are fire districts or mosquito abatement district, but a lot of those types of committees. They do have a responsibility to understand OML requirements but they are doing the best they can and through a technical glitch they are in violation and the next thing you know they are possibly slapped with a \$100 fine and I guess I just point that out because it could have the effect of chilling in terms of getting people particularly in areas where you just don't have a lot of folks willing to step up and do these kinds of things and now with the specter of a fine if you make a technical violation of the OML it just seems like something we need to consider.

Maggie – I share those concerns. I just don't see the justification drafting a law that includes penalties.

Paul – It may be pretty hard for the AG to put the resources necessary into prosecuting one of these civil infraction cases if the fine is \$100. If you are not going to go so far as to prosecute them criminally because the violation is so egregious they have declined all invitations to modify their conduct and thumbed their nose at the AG and the law, you are probably going to go to the criminal level, are you going to use the intermediate step of \$100 fine if you have got to get on a district court calendar and as Scott said go through the civil discovery processes. I favor giving the AG the tools to get more compliance but I just wonder if this is ever going to get used.

Catherine – I agree, that is my concern here is the practical application as I read this. I am going to suggest that we bring this back to the next board meeting and in the mean time I will meet with George and Keith and go through some of the cases we have had through the office for the last three or four years and find those cases where we think, if any, this would be applicable and just see if there is a practical application for this. I understand we want additional tools or penalties available to us to hold hopefully board members who may be violating the OML blatantly accountable but let me go back and look and see if there is a

practical application and place it on some of the cases and we will bring that back to the task force.

Barry – The premise behind this was that no one ever gets prosecuted criminally for this and therefore we already had a statute that doesn't ever get used and so is there one we can craft that would provide a penalty but not at the same level of punishment, or proof, or prosecution as the criminal statute. So that's the concept that went into this and that is how I would hope we would approach it from now on.

Catherine – I think we have to look at what our civil remedies are already which is the injunction. If we are going to add this to the civil remedies how do we incorporate it into that process of procedure already without having an additional step of filing a separate complaint than what we already use through the civil injunction process. So that's my concern.

Catherine – It is 4:00 p.m. We have been here two hours and I don't want to keep anyone any longer. Here is what I suggest. These items on the agenda are other items that were up for discussion as to whether you want to incorporate some of these items into legislation. We are going to bring these items back on the next agenda. Please take a look at these. If there is something in here that you want to incorporate into legislation let us know but we will talk about these at the next board meeting and then bring back those two agenda items that we talked about. **We are going to bring back items b and c in 4.**

4. AG's administrative agenda.

Catherine – bring these items back for discussion at next meeting.

5. Discussion/suggestions for future agenda items.

Catherine – Any discussion from board members for future agenda items”?

6. Comments from the public.

Karen Gray with Nevada Policy Research Institute. I just wanted to give one example on 3.(a).4. Mr. Smith talked about the word “and” between (a) and (b), so I just wanted to give two examples of two current public bodies that would no longer meet the definition with the word and here. That would be the Clark County School District Zoning Committees and their Bond Oversight Committee. If you look at the language currently they exist as a subcommittee under (a). They are advisory to the school board trustees and they support tax revenue and make recommendations. However, when you put the “and” they are not created by any of these on the list. They are created by the school board, their own policy and their own actions. They are not created by the constitution, a statute, a county or municipal charter, an ordinance, or a resolution the county legislative

body, an executive order of the governor and I'm assuming #7 their chief executive authority as a superintendent and so it excludes the school board. I just wanted to bring that to the attention of the group when they are looking at that statute.

Agenda Item No. 7: Adjourn.

Adjourned at 4:15 p.m.