

OPEN GOVERNMENT TASK FORCE

Meeting Minutes

Date of Meeting: August 17, 2016.
Time of Meeting: 10:00 a.m.
Location: Office of the Attorney General, 100 N. Carson Street, Mock Court Room, Carson City, Nevada 89701. Videoconference was not available for this meeting. No members or persons of the public attending in Las Vegas.

Carson City Attendees:

Chairman Brett Kandt, Chief Deputy Attorney General
Barry Smith, Executive Director, Nevada Press Association
Doug Ritchie, Chief Deputy District Attorney, Douglas County
Garrett Weir, Esq., Public Utilities Commission
Jeff Fontaine, Executive Director, Nevada Association of Counties

Attending by phone:

Paul Lipparelli, Deputy District Attorney, Washoe County
John Shipman, Assistant City Attorney, City of Reno

Others Attending in Carson City:

George H. Taylor, Senior Deputy Attorney General

Members of the Public:

Kevin Lyons, Citizen, Incline Village

Agenda Item No. 1: Call to order and roll call of task force members.

Chairman Kandt called the meeting of the Open Government Task Force to order at 10:12 a.m. followed by introductions.

Agenda Item No. 2: Public comment, (Discussion Only) Action may not be taken on any matter brought up under public comment until scheduled on an agenda for action at a later meeting.

Chairman Kandt opened the floor for public comments and announced Senior Deputy Attorney General George Taylor participant of this Task Force group is retiring as of September 1st. There was no public comment from Reno or Las Vegas.

Agenda Item No. 3: Discussion and possible action on approval of the June 30, 2016, meeting minutes. **(For possible action)**

Mr. Shipman: I moved to approve the minutes.

Mr. Lipparelli: I second the motion.

Chairman Kandt: No corrections. All in favor please say I, minutes are approved.

Agenda Item No. 4: Review and discussion of recent federal and state court case law on open meeting law.

Mr. Taylor: I have been following a California case, but there are no updates. The lawsuit was filed against San Jose City Council for using their personal email and whether those emails are public record.

Chairman Kandt: The appellate court deemed they were not public record, that the City does not have the responsibility to retain or keep track of personal email of city council members.

Mr. Taylor: The Councilmen were sued under the Public Records Act. As you said, this is susceptible to the Public Records request. This case has been in the California Supreme Court at least ten months.

Mr. Smith: I recently read an article of a new statute and amendment to the Public Records Act from Illinois, which implements a fine for up to \$1000 a day for refusing to respond to a records request.

Mr. Shipman: A recent case the Comstock Resident Association, Joe McCarthy v. Lyon County Board of Commissioners, which was a request for text-mail messages, but the Court denied the request under the Public Records Act, and now it is possibly going before the Supreme Court.

Mr. Taylor: I was not aware of it.

Chairman Kandt: Neither was I. Are you saying the requestor took it to court and the judge sided with the county?

Mr. Shipman: Correct. It is my understanding they are going to appeal it. The appeal is based on the fact that the Lyon County Officials use their private emails, but they were on the City's Website, so they were expressly using private emails for county business. It is entirely different then doing county business off-line.

Agenda Item No. 5: Review and discussion of recent Attorney General Open Meeting Law opinions.

Chairman Kandt: Recently we have issued a few Open Meeting Law (OML) opinions. The two issues we continue to review are whether an agenda item or topic is clear and complete; the other issue is about subcommittees or citizen's advisory groups which continues to come up. Those opinions are posted and available on our website.

Mr. Smith: I understand you have a pending opinion involving the City of Reno, where there is a conflict that calls for open meeting to review the City Manager as opposed to the attorney's ability to meet with city council.

Chairman Kandt: I cannot comment on it because it is a pending complaint.

Mr. Smith: I understand, but I wonder if this group might consider addressing this issue in the future. If we could make a note in the minutes that at some point this issue needs to be clarified.

Agenda Item No. 6: Discussion and possible action on revision of public notice posting requirements set forth in NRS 241.020(3)(a). (**For possible action**)

Chairman Kandt: We talked about the posting notice, NRS 241.020(3), and the minimum posting requirements. If you post the notice at the principal office of the public body—I guess if the public body has offices in the North and the South as an example, they might want to post it in both locations just to be safe. Every notice would be posted at the principal office of the public body, and if they were going to hold that meeting at a different location, it would be posted at that location as well. It would be in addition to the two online posting requirements that already exist on their website and the state’s public notice website.

Mr. Smith: I know when I agreed that the five posting places would come down to three, but I am concerned that we are eliminating other physical postings.

Chairman Kandt: Yes, the only physical posting would be at the place where the meeting is going to be.

Mr. Smith: Which would eliminate other postings such as in the libraries?

Chairman Kandt: As a practical standard, if you are a city council, you are going to post it at City Hall where you hold your meeting. If you are a county commission and you hold your meetings at the county offices, you are going to post it just there. However, these are minimum requirements. It would not prevent the public body from posting it in multiple locations. If for some reason there were an inadvertent failure to post it in three separate prominent places in addition to the meeting location, then they would not be precluded from holding their meeting.

Mr. Lipparelli: I remember several meetings ago we had some concerns about having a verification signed by the person posting the notice. Nevertheless, with this requirement we have had to cancel meetings because the person in the remote location did not get the meeting posted, or we could not confirm it was posted before 9:00 a.m. on the third working day. Those remote posting locations were becoming an obstacle to carrying out public meetings. It is supposed to be a benefit to the public, and now we are canceling meetings because of a technicality. The idea is to modernize it to fit the way people live their lives today. The people coming to our meetings get their notices from the Internet; they are not going to the libraries and the court houses. I think this proposed language strikes a nice balance between the modern reality and the old fashion paper method. The place of the meeting and the principal office will be the place to go if you are looking for the paper notice. I vote in favor of forwarding this language.

Chairman Kandt: I think I am in an odd position, because although we are an informal constituted group, we are missing a lot of people today. I am just asking for a view from those of you that are here as opposed to the group taking some sort of a formal position. Based on prior conversations on this issue, I was under the impression that all the government representatives were supportive of this concept. I get the feeling you still have some concerns.

Mr. Fontaine: I am still in support of it for all the reasons Paul stated, such as, verifying the postings before the deadline in remote locations. When you talk about an association like ours, where we post in four or five locations around the state, we too want to make sure those locations are posted according to the current OML requirements. I suggest adding either/or to allow the public body to continue posting it in three locations.

Mr. Taylor: Remember you have a few advisory bodies out there that may not even have an office in the rural counties, and they would have to post it where the parent body is located.

Mr. Fontaine: That would be a separate issue we would have to discuss. We are a statewide organization; we have a principal office where we post our notice. We had a meeting as part of our annual conference at one of the hotel properties, and they are very reluctant to post our notice outside their meeting room, especially because they were hosting a convention three days before our meeting.

Mr. Smith: One of the fundamental concerns is that a public notice not be entirely controlled by the government agency, that there is some kind of independent third party that would provide an affidavit when posting. Currently all the notices that would be posted would depend on people going to a government website, getting a government email or visiting a government office. Statistics show very clearly those are not high-traffic websites or locations. When you talk about the bulletin board, a good place is the Carson City library. I agree it needs to be modernized and we don't need three other separate postings.

Chairman Kandt: The way it is currently written it says, "Three prominent places." The government agency is not compelled to post it at the library. What if we go back to "or" instead of "and," meaning at the principal office or if there is no principal office at the location of the meeting, and then one other prominent location.

Mr. Lyon: As NRS 241.020(3)(c) is currently written, by posting it on the website it could get buried and for the intent of clarification it should be minimum at one click or zero clicks from the homepage. (*Incomprehensive general discussion*).

Mr. Fontaine: I am trying to figure out the change between the strike-out and existing language in subsection (5), or what has been added under (c). Is there a substance of change or more formatting?

Chairman Kandt: When the posting of your own website was added, it was codified to say it was not a substitute for the minimum posting. This is just me drafting something, thinking it is part of the minimum posting. Perhaps when this was codified, nobody knew how far we were going with the Internet. I just thought stylistically it made more sense, and substantively it made more sense to have it as part of the minimum posting requirements.

Mr. Fontaine: But now we are talking about changing how it is posted on the website in addition to what you just described.

Chairman Kandt: Well, I think the issue here is what is prominent. Some agencies may do a better job with their website.

Mr. Lipparelli: The law should have a trap in it for somebody who posted something at 9:01 instead of the 8:59. I think eliminating those mandatory remote locations and having the Internet will do more good in most cases than posting it on a bulletin board in a building where nobody goes anymore.

Chairman Kandt: That is why it was suggested to reduce it to one other separate prominent place, the principal office or at the place of the meeting, and at least one other separate prominent place.

Mr. Lipparelli: That would be going in the right direction.

Mr. Smith: I would agree.

Mr. Shipman: I agree with Paul and Barry. The problem is when staff can't get it done or the system itself is not working. I am concerned about complaints about the buildings not being a prominent place. I like the posting in one place where people know where to find it; however, the citizen should be responsible for knowing at least where to go. I also like the current language regarding the electronic posting, it makes it very clear that it is supplemental, so it does not become something after the fact, and then have to void the entire meeting because there is a dispute whether or not the posting was a technical difficulty.

Chairman Kandt: Then, would you rather maintain subsection (5) in its current form?

Mr. Shipman: I like the notion of it being supplemental because the last thing you want is to do business and then find out the meeting was not posted properly.

Chairman Kandt: My thought was making it part of the minimum posting requirements. You are saying you still would be getting 3-4 places for posting as opposed to a supplemental where we are back down to fewer minimum postings locations, and even if the public body is not able to do it because of technical problems, but as long as it is posted on the website.

Mr. Shipman: In theory that makes sense. The problem with the website piece is how many systems go into preparing an agenda and posting it. We have an online agenda management system, we have people that are trained to use that system, but because of the complexity of the system, it gives rise to things you don't expect to happen and now you have to setback your meeting.

Chairman Kandt: We talked about the thumbtack on a bulletin board or the website; Paul is saying that three prominent places is a risk, and you are saying putting a notice on the website and making it part of the minimum public notice requirements is a risk because of technical problems and because of how people are involved in posting it on the city's website. Either way you are always going to have a risk. I thought we had agreed we did not need to thumbtack a piece of paper on a bulletin board.

Mr. Shipman: My concern is not so much the thumbtack on the board but the certification piece. You don't know if it was posted unless someone certifies it.

Chairman Kandt: Our office is tasked with enforcing it.

Mr. Shipman: Maybe one prominent place and certified instead of three.

Chairman Kandt: We then are back to one other separate prominent place. Is everyone comfortable with that?

Mr. Fontaine: You have to certify it at your principal office, if you have one, or at the meeting location. Are you also then suggesting that it needs to be certified at one other location?

Chairman Kandt: As of now, the three additional places have to be certified, so we are just taking it down to one.

Mr. Taylor: The court clerks struggle with that issue, they are trying to comply.

Mr. Fontaine: The problem is if you look across the state for public bodies, it is not the clerks that are doing the posting.

Chairman Kandt: What I am hearing is you are comfortable with dropping three to one, right?

Mr. Smith: I am.

Mr. Shipman: Maybe one certified location and up to three supplemental.

Chairman Kandt: We don't need to get into supplemental locations. You already have the ability to post it in as many places as you want, it would be your prerogative as a public body.

Mr. Lipparelli: With city governments there is accountability if someone messes up, but with the county if you rely on somebody that is not in your direct control, which is not a priority for them, it may cost you the opportunity for a public meeting. Consolidating it down to a manageable deal, and then supplementing it with the most usable plan of notice, the Internet is where the focus should be, that is where people get their information. I will support anything to improve it; it does not have to be perfect.

Chairman Kandt: I think we are talking about dropping from three down to one.

Mr. Lipparelli: That would work as long as we are making sure that the electronic postings are as usable and light ranging as they need to be.

Mr. Smith: The six-month lapse provision to request notices, is that still practical? I am signed up for dozens of notices with the Public Utilities Commission (PUC), but they are the only agency that asks me to renew my request every six month.

Chairman Kandt: I believe it is in part because people move, die, or simply don't care anymore. If you don't have the lapse provision, then you are creating another trap for public bodies that are trying to comply with requirements.

Mr. Smith: I don't understand why six month instead of a year.

Chairman Kandt: We have different types of members in public. Generally you have people who follow a particular public body all the time on every issue considered by the public body, then you have those who are interested in a single issue which may or may not come up or get resolved, but once the issue is gone, they no longer care to receive notice.

Mr. Wier: I can only speak for the PUC. Many of our proceedings have 180-day timelines, which work pretty nicely for us.

Barry Smith: I am just saying that there is a statute or a portion here of the law that 90 percent of agencies follow. I am signed up for dozens of notices of meetings with the PUC.

Chairman Kandt: I don't ever remember a complaint being filed for that reason. If we were getting a lot of complaints about it, I may have a concern. (*Incomprehensive general discussion*).

Agenda Item No. 7: Discussion and possible action on creation of an intermediate statutory appeal process for denial of a request made pursuant to Nevada Public Records act (NRS Chapter 239). (**For possible action**)

Chairman Kandt: The amendment of NRS 239.077 regarding the State Records Management Committee (the Committee), which currently handles the schedule for retention and disposition, is to add under their duties the authority, "The Committee may, upon an application of a person deny a request made pursuant to NRS 239.010(1) to inspect or copy or receive a copy of a public book or record, issue a non-binding advisory opinion on whether the basis for denying the request was sufficiently articulated." The biggest concern is when an agency says, "No, we are not giving you the documents," and does not articulate a reason or a basis for denying a record, or simply says, "Donrey balancing test," that the requestor, before going to court, can ask this Committee if the basis for the denial was sufficiently articulated, and this Committee could select to issue a non-binding advisory opinion. If the Committee is inclined to issue an advisory opinion, and thinks the denial was sufficiently articulated, and if it is accepted by the requestor, then they may not pursue litigation; perhaps the requestor will go back to the agency, and in that instance the agency may try to do a better job of explaining why they denied the request.

Mr. Lipparelli: In my fifteen years in Washoe County, I think I have seen maybe two citizens challenge in court a denial for public record. My question is who staffs that committee? Does the Attorney General provide legal counsel to the committee? Are there going to be places that the committee people can go to get help in considering one of these questions? I have seen some really lame decisions coming out of some of these lay boards, and they actually can do more damage if they are not careful about the way they are rendering their non-binding advisory opinions.

Chairman Kandt: It is comprised of a representative of the Secretary of State's Office, a representative of the Attorney General's Office, Sarah Bradley, our public records expert, the director of the Library and Archives, and a state's record manager. They are a state body and subject matter experts. Our office represents them. I don't know that I am in a position to propose restructuring the membership of that group. I will say they have sufficient subject matter expertise that they would not issue something off the wall.

Mr. Lipparelli: I think it is worth a try and get some further refinement on some of these questions. Some of the non-binding opinions may become the basis for recommendations for improvement of the Public Records law or regulations.

Mr. Weir: In the last meeting there was discussion of potentially having language stating that the findings from the advisory opinion can be introduced as evidence in any sort of court action. That would give me a little more comfort. Does anyone have a problem with that?

Mr. Smith: Yes, I would. Why would this not be of interest to you?

Mr. Weir: Well, kind of in line with earlier comments. A lot of these folks aren't necessarily law trained. Yes they receive legal counsel, but this isn't something with a due process in place to fully respond to allegations. Do we want actually to articulate that through the law change? It is something that can kind of be a threshold for folks to know whether they have a legitimate case, to talk to experts, and have somebody provide guidance to them. But as far as it being something to rely upon, it is a little troubling to me.

Mr. Shipman: The problem we have with the Public Records law is the balancing test; that is where all the uncertainty comes from. Those are the questions we are faced with on a daily basis. I am just wondering what is being proposed. This may just be treating the symptom and not the real problem, which is the balancing test and how it gets applied. There are alternatives, you can say we don't have a balancing test and codify everything. I do have some concerns, if that is a legal argument on the balancing test, then I don't want to turn that over to somebody other than a court of competent jurisdiction to rule on the argument. I am afraid it will delay the process even further for the requestor. It may infuriate the public, because now they are stuck in some sort of bureaucratic position which does not get you an answer at the end of the day.

Chairman Kandt: I originally thought the language would say they could issue an advisory opinion, but that would be getting too much into substituting their judgment, and it is why I changed it to "properly articulate." The concern was if there is no reason given, if the request is denied on the Donrey balancing test, is that really a sufficient reason as opposed to when you explain there are certain privacy interest that clearly outweighs the public access to see the records being requested.

Mr. Shipman: I agree. The difficulty is the balancing test. We all know when we see it, but you can't get a definitive rule.

Chairman Kandt: I am becoming increasingly concerned with the overbroad requests asking us to do research projects for them, which is not the basis for public access under the Public

Records law. I saw this non-binding advisory opinion process as beneficial to government agencies, if the requestor goes to the state's Records Management Committee, the Committee could say, "Your request was overboard," now they have sufficiently articulated the denial.

Ms. Smith: I agree with John and Brett, both are substantial concerns, and I do have some reservations on how this might create another layer that would delay the process. It is an issue that the Legislature needs to discuss, address, and resolve and for them to consider and ultimately accept it or come up with a better solution.

Mr. Lyons: It is actually a very good idea. It would generate the data that you need to see what the actual problems are to then make more significant changes to the code. The current threat to citizens is credibility, which may be why we only have had a couple of cases in court in the last fifteen years. Governments ignore it; they figure the citizen is not going to do anything.

Chairman Kandt: Your comment about the 1 to 2 cases in fifteen years is interesting. I know it happens with much greater frequency down south.

Mr. Lipparelli: I think there is a wide range of practice among the local governments and the agencies that respond to public records requests; some of them do a very thorough job, others do not perhaps because of limited resources. It is a big task for a citizen to go to court. Now the little guy who gets turned down can apply to be reviewed by this committee.

Mr. Weir: With the term "sufficiently articulated" I can see someone subjectively reading into it, "Well, if the basis for that articulation is insufficient, then the articulation itself is insufficient." This is a difficult problem. I agree there is a broken process and there is no recourse for people who haven't received an appropriate response. The agency I work for has some very sophisticated entities. Currently we have huge public requests from these folks, and they see it as a way of manufacture standings for legal matters. It troubles me that they could potentially use that as something to leverage their position in some sort of court action.

Mr. Fontaine: As you described, some sort of a small claims court. Isn't the impression here to give the person who was denied the release of public records the opportunity to find out whether the denying agency was correct or not? If that is what we are after, we would be in support, but I am also concerned about the outcome of whatever decision is rendered being used to leverage their position in a judicial proceeding later on.

Chairman Kandt: That is why I changed it from properly denied to sufficiently articulated.

Mr. Weir: But what if they don't like the reason, or the reason is bogus?

Mr. Lipparelli: Maybe instead of giving the committee jurisdiction, what if the law said, if a person who is denied a request, has the right to submit the denial to a centralized government agency whose job is to collect these denials for a later study by the Legislature, or create a bank of public records denials where someone could go through them and recognize why requests are being denied, look for a pattern or reoccurring problem, and perhaps a place to tune up the law.

Mr. Weir: A study would be a good idea.

Chairman Kandt: How many denials are there in any given year by all governmental entities combined?

Mr. Fontaine: We don't know, and maybe that is the first step.

Mr. Weir: I think it would be interesting to find out. I fill multiple public records request a week, and the folks I deal with are always very surprised of how promptly and fully we respond. I get the impression that nobody else is responding.

Mr. Shipman: What if we segregated by counties and populations, and say in the rural areas this may apply, but in the larger jurisdictions it doesn't apply. It may reflect that in the rural areas they may not have the resources, but in the larger jurisdictions maybe you don't need it yet.

Chairman Kandt: The Legislators may be asking why the larger entities should get out of it when they may be the ones who have something to hide.

Mr. Smith: I don't think that is necessarily true. I don't think you can break it down by larger jurisdictions or maybe by larger agencies. I think there are far more request than denials in the larger jurisdictions than there are in smaller areas.

Chairman Kandt: Technically a denial itself is a public record. If somebody wanted to find out how many records request were denied in any given year, all they need to do is submit a public records request to every governmental entity asking for a copy of every denial of a public records request issued in the last four months.

Mr. Shipman: We have one of those going on right now; someone has requested all public records request. My frustration is I am always hearing about some rural county denying requests outright and then the legislature thinks everybody is doing a poor job.

Chairman Kandt: It does not look like we have a solution.

Agenda Item No. 8: Discussion and possible action on restructured statutory exemptions to the Nevada Public Records Act (NRS Chapter 239) modeled on the exemption categories set forth in the Federal freedom of Information Act. **(For possible action)**

Chairman Kandt: This handout is Scott Doyle's proposal to model and restructure our exemptions closer to the Classification System that is employed under the Federal Freedom of Information Act. I think if something like this was presented to the Legislature, once again it is not a comprehensive proposal; it is a conceptual suggestion for consideration, but it would have to be significantly developed in the legislative process as to how it would be installed. I think, from a policy stand point, the concept of having categories of exemptions would work better than trying to have some specific statutory provisions; it would have to be a catch all provision.

Mr. Lipparelli: I appreciate Scott Doyle, and I agree with the concepts that he is suggesting as an improvement. I find that the big massive statutory declarations in the Public Records law are not very useful or friendly. Unless you are working with a computer and you can access the link to those statute references, it does not help trying to categorize these items. Ultimately, I think we can get away from the balancing test, I agree that it is where all the problems stem from. In the end, there is a public official who has a job to do, which may involve protecting information that is in his/her control, and he/she might have to use the balancing test. The approach that Scott suggests will help the process, because it might cause the balancing test to truly become the last resort. I agree you cannot present it to the Legislature the way it is, it will just get turned up.

Mr. Weir: Is there a public records manual created by the Attorney General's Office?

Chairman Kandt: There is a manual published by the Library and Archives. They have the statutory responsibility and authority to promulgate a public records manual.

Mr. Weir: My only concern is, as we discussed in our last meeting, making it very clear this isn't an invitation for other amendments to the chapter, rather for clarification purposes. What scares me is a lot of folks who feel there is no recourse and may want to change the Public Records Act, and if there is a BDR [Bill Draft Request] out there to address the Public Records Act, I can see it turning into a circus. If the primary purpose of this is to provide guidance, then maybe a manual is the appropriate place for it.

Mr. Smith: I think it works hand in hand with previous exemptions. This is a tool to organize and make some sense of all those hundreds of exemptions. The process needs to start, but I am not sure exactly how.

Chairman Kandt: So you want it to place responsibility on the state's Records Management Committee to organize the numerous statutory exemptions into categories?

Mr. Smith: That would be a potential place where this can happen. They already put a lot of effort into that manual.

Chairman Kandt: Are you comfortable presenting the idea to the Legislature that we think it would be more helpful if they took the page and a half of citations and broke them down into categories because we think it would be more helpful for the public or more helpful for the governmental entities that have to comply?

Mr. Smith: Yes.

Mr. Lyons: I think you want to make it easy for the public to understand that whatever you pick, there could potentially be more problems. When you start from the California Brown Act, you start to make clear that this is the intent, then I think even the balancing act starts to clarify. *(Incomprehensible general discussion)*.

Chairman Kandt: When we proposed that list of citations two sessions ago, it was to make it easy for the public by putting them all in one location. However, we realized it really didn't help

because they are just a cluster of numbers. But if they were categorized in some way shape or form, it might make it more user-friendly. I guess the question is would that concept make more sense.

Mr. Shipman: I think we already have something in the law that lists all of those specific NRS provisions. If you go to the Index of the NRS and look up confidentiality and privileges, they now are all categorized and labeled.

Chairman Kandt: Is every single one of those statutory exceptions to the Nevada Public Records Act listed in that section?

Mr. Shipman: Yes.

Agenda Item No. 9: Discussion and possible action amendments to the Nevada Public Records act (NRS Chapter 239) to clarify that “person” includes a governmental entity. **(For possible action)**

Chairman Kandt: Mr. Ritchie brought to my attention an incident where one government entity made a public records request of another government entity and the second entity denied the request on the basis that a government entity is not a “person” under the Public Records Act. I never heard of it before so I looked it up and technically that is the case because a “person” is not defined in Chapter 239, it expressly excludes governmental entities. Maybe we need to clarify that in definitions there is some poor language in NRS 239.0107 and 239.011; it creates confusion if they used the word “person” when they should be referring to governmental entity.

Mr. Lipparelli: I want to make sure we retain in the OML the feature that requires a requestor to go to the custodian of records to get the record, so that in government entities with multiple departments, which may be spread over valleys, that the requestor should be made to go to the place and individual who has the job of keeping that record. I am worried that redefining government entity could create an argument, that if you go to any office of that government entity, you can demand the record, even if you know they don’t have it. We have people who like to stress out governments, and I don’t want to arm those people with the ability to waist taxpayer money with this kind of nonsense.

Chairman Kandt: I don’t have that concern because that is why the qualifier who has legal custody can pierce throughout those statutes.

Mr. Lipparelli: I have had to deal with difficult people. By defining “person,” include corporations and other governmental entities, and then substitute “government entity” for “person,” I can make the argument that now I can go to any agency of the government entity and demand the record. With “person” in there, it was clearly referring to the person who had physical legal custody of the record. Maybe the bill drafters can make this tighter. I just want to make this comment on the record that I don’t want to introduce that new potential problem.

Chairman Kandt: I certainly appreciate it. I guess I am still comfortable that the qualifier who has control or legal custody is going to address that concern.

Mr. Lipparelli: Maybe “government office,” “office of governmental unit,” or the “official of the governmental entity who has custody.”

Chairman Kandt: All right, we can certainly qualify it. You are right, we will have to manipulate it with LCB. You know as well as I do, if you send anything to LCB, half the time you get a draft that turns what you proposed upside down on its head. Nevertheless, I wanted to share my concerns based on Doug Ritchie’s experience. The notion that one government entity can’t request public records from another government entity is absurd. The entire idea is transparency. In this instance, the Sheriff’s Office was the requestor, and Doug got around it by having the Sheriff, as a private citizen, submit the request. Does everyone agree that the Public Records law was always intended to incorporate the ability of governments themselves to request public records?

Mr. Smith: Yes.

Mr. Shipman: Yes.

Chairman Kandt: Secondly, I wanted to clean up this language, but I am mindful of Paul’s concern to the extent maybe to say, “The office for Official of the governmental entity who has legal custody and control,” maybe that would tighten it up. I will work on it. I just wanted to confirm you all agree that governments can access public records as well.

Agenda Item No. 10: Public Comment, (Discussion Only) Action may not be taken on any matter brought up under public comments until scheduled on an agenda for possible action at a later meeting.

Chairman Kandt: As I indicated, my office has to have our BDRs across the street [to the Legislature] by September 1st. I know typically this group is convened during the interim to dialog and come up with some possible proposals for consideration during session; however, during session there are often proposals that will impact all of you, whether it is proposed changes to NRS 239 or NRS 241, is there any interest from the group to get together and discuss any proposals that may come up during session? Would that be helpful?

Mr. Fontaine: Very helpful, absolutely.

Mr. Smith: Yeah.

Mr. Shipman: Yes, definitely.

Mr. Lipparelli: Yes.

No other public comment.

Agenda Item No. 11: Adjournment.

Meeting adjourned at 11:45 a.m.