BEFORE THE OPEN MEETING LAW TASK FORCE

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MEETING

Wednesday, May 23rd, 2018

GRANT SAWYER BUILDING
555 East Washington Avenue, Suite 4500
Las Vegas, Nevada

Job No.: 477478

Transcribed from video by: KATE MURRAY, CCR #599
APPEARANCES:

Task Force Members present in Las Vegas:

- CAROLINE BATEMAN, Chair
- MARY ANNE MILLER
- DEAN GOULD
- ANDY MILLER
- MICHAEL OH

Task Force Members present in Carson City:

- VINSON GUTHREAU
- PAUL LIPPARIELLI
- DOUGLAS RICHEL
- BARRY SMITH

1. LAS VEGAS, NEVADA; WEDNESDAY, MAY 23RD, 2018; 10:14 AM

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CHAIRPERSON BATEMAN: Good morning. It is about 10:15 on May 23rd, 2008. We are at the Grant Sawyer Building in Las Vegas, Nevada, in Suite 4500. We are also being videoconferenced to the Attorney's General's Office located at 100 North Carson Street in Carson City, Nevada.

I will call this meeting to order and proceed to roll call.

Mr. Jerbic? Mr. Guthreau?

MR. GUTHREAU: Yeah. I'm right here in Carson. Thanks.

CHAIRPERSON BATEMAN: Ms. Miller?

MS. MILLER: Here.

CHAIRPERSON BATEMAN: Mr. Large?

MR. LARGE: Present.

CHAIRPERSON BATEMAN: Mr. Oh?

MR. OH: Present.

CHAIRPERSON BATEMAN: Mr. Shipman?

Mr. Richie?

MR. RICHEL: Present.

CHAIRPERSON BATEMAN: Mr. Smith?

MR. SMITH: Present.

CHAIRPERSON BATEMAN: Mr. Story?

MR. GOULD: Present.

CHAIRPERSON BATEMAN: And Mr. Moore?

MR. MOORE: Present.

CHAIRPERSON BATEMAN: Are there any other members I haven't called? Great, thank you.

We will move on to Agenda Item No. 2, public comment.

We'll have five minutes set aside for any members of the public who wish to address the task force as a whole.

Are there any members up in Carson City who wish to address the task force?

MALE SPEAKER: We don't have anyone here.

CHAIRPERSON BATEMAN: Anyone in Las Vegas who wishes to address? Yes, ma'am? Will you please state your name for the record?

MS. DEFazio: For the record, Angel DeFazio.

The so-called spirit of the OML really is just an ongoing board/commission requirement that public comments are basically marginalized, dismissive, tolerated as part of the agenda with the attitude that the public has nothing relevant to contribute to the discussion.

Number one, this is an OML meeting, yet it's not being broadcast over the Internet like a majority of the other public meetings. Do you see the irony in that?

Why can't it be videoconferenced into one of the other meeting rooms that has Internet capacity? Why in a room you can claim isn't accessible to Internet capacity?

I know that boards and commissions in the outside rural areas may not have the ability to broadcast over the Internet. This is not to preclude that state agencies in Carson City, Reno, and Vegas can't broadcast their meetings.

I am going to skip through a lot because initially there wasn't any time constraints -- can you quiet that? I can't hear myself think.

CHAIRPERSON BATEMAN: I'm sorry. Up in Carson City, would you mind muting the -- thank you very much.

MS. DEFazio: Okay. If you were really interested in what the public has to say, and I'm using the word "interested" facetiously, you would...
look into seeing how those who are homebound can actively participate.

Don't try to use the option, Oh, they can submit written comments to be incorporated into the record. That is a cop-out. How many people actually look past the agenda and supporting documentation?

Number two, let's discuss accessibility to the disabled where there seems to be an obvious pick-and-choose mentality within each board and commission, which is both shameful and discriminatory let me elaborate.

When any public meeting allows their chosen people to appear telephonically, it confirms that telephonic appearances are available.

Does anyone here besides me know the federal three-prong approach to accommodating under the ADA?

One, will it be a financial burden? Two, will it involve structural modifications? Three, will it alter the purpose of the meeting? Appearing telephonically does not prevent any of these three prong issues.

You have public entities whose members are able to call in, but when the public would like to use that access, they are declined. I do appear telephonically at times as I do it under the ADA, along with having a highly proudly earned reputation of never backing down, and I guess people figure let's just give it to her to shut her up.

Nevertheless, seniors, people who are home-restricted can't gain access. Why not have preapproved access to those who can prove they need this accommodation?

Every notice has this statement at the bottom, "If you need accommodation, please contact us." Fine, but with over 30 percent of the US population having issues with environmental exposure and over 6,000 in Clark County alone, calling in is a non sequitur.

After filing an OML complaint and fighting, I finally got the PUC to incorporate a simple statement sent out on May 6th, 2014.

To accommodate individuals who went to the commission office who are chemically sensitive to fragrances or other scented products, please use sparingly. This is a reasonable accommodation that should be incorporated into the OML.

No one is going to be excluded for wearing anything, but it will address the accommodation issue.

Why should the more visually obvious handicapped people get ramps, visually impaired have larger font on computer screens, hearing impaired have interpreters? Why should this larger segment under the title "invisible disabilities" get sidelined?

Let me give you an example of what I perceive as the most egregious from a flagrant lie that was stated during an open meeting at the PUC.

On January 9th, I commented, The upcoming 10 days of workshops should be archived as the energy choice initiative is highly impacted to every Nevadan, and they should view the proceedings in order to make an informed vote on this constitutional amendment.

Joey Reynolds, Chair of the PUC stated, We don't have the technology. Keep in mind, they archive all of their agenda meetings.

Then on the 16th, he proclaimed, I decided that these workshops are important and will be archived. How do you get technology in a couple of days?

Everything is being done to suppress public comment, public knowledge.

Number three, when an item on an agenda is referenced and there is the first comment period prior to the item being addressed, just how is the public supposed to comment on something that is line item for a discussion? We're not mind readers.

Also, along with the fact that the PUC, they have two public comments, but the first one is restrictive to the agenda items, but the problem is, whatever you say cannot be used to influence them. It's only based on file pleadings. What good is it? It's worthless.

Chairperson Bateman: And thank you, Ms. DeFazio. Your five minutes are up. Thank you. You'll have another opportunity at the end of the meeting if you wish to continue.

Are there any other members of the public in Las Vegas who would like to address the task force? Okay.

Moving on to Agenda Item No. 3, which is approval of the task force August 17th, 2016 meeting minutes, have all the members of the task force had an opportunity to review the minutes?

MR. GUTHREAU: I looked at them. I just had a slight change. This is Vince.

It is just titled as Open Government Task Force. It probably should say -- it's just a small
nuance that it's the Open Meeting Law Task Force.

CHAIRPERSON BATEMAN: Correct.

MR. RICHL: Doug Richie. That title was titled the Open Government because we discussed public records as well as open meeting law.

CHAIRPERSON BATEMAN: Okay. Thank you.

MR. RICHL: Going forward, I don't know if we're going to limit ourselves to just open meeting law or if we're going to discuss public records as well.

CHAIRPERSON BATEMAN: It will be limited to open meeting law for this task force, but my understanding is that our office will be having a separate sunshine law committee or task force that addresses public records as well.

Do any of the members of the task force who were present at the 2016 meeting have any proposed changes or amendments to the minutes?

Yes, sir.

MR. GOLDS: Madam Chair, I just want to comment. This is Dean Gould from the Nevada System of Higher Education. I was not at that meeting so I should probably abstain from voting on it.

CHAIRPERSON BATEMAN: For the record, I was also not at that meeting. I will be abstaining as well.

Obviously, the biggest case in terms of the open meeting law enforcement unit here in the Attorney's General's Office is the Hanson decision out of the Supreme Court regarding appeals and other legal actions that must be undertaken during public meetings.

The Supreme Court placed a special emphasis on those actions involving the use of public funds such as entering a litigation, filing an appeal, settlements, et cetera.

The decision on that case was -- the respondent on the case did request rehearing. That request was denied; however, a request for en banc reconsideration was granted last October.

Oral argument took place on March 5th of this year. We are awaiting that decision.

In terms of any significant open meeting law opinions by the Attorney General's Office, I didn't have anything significant. There were some general ideas that came out that I would like to address under the discussion on a possible BDR from this task force, but I don't see a need to go into any of those specific cases unless any of the members wish to do so.

Okay. Then moving on to Agenda Item No. 5, which is the 2019 OML BDR that may be coming out of this task force should we come to an agreement on one.

My goal for this meeting today is to get some feedback from all the members of the task force. I have some ideas that I don't have a set plan of what I would like to accomplish, but they are repeated issues that we see through all the OML complaints that come to our office, some clarifications that I think are necessary in terms of definitions, and then just a general discussion.

Moving forward, my goal is to have our next meeting in the next two or three weeks with a rough draft BDR for everyone to review.

We'll get comments and feedback on that proposed BDR, revise it, redraft it, and hopefully,
at our third or maybe fourth meeting, adopt that BDR and have it prepared.

The Attorney General has dedicated one of his 20 assigned BDR’s to this task force to have an open meeting law specific BDR going forward next session. Whether or not the new Attorney General goes forward with it or not, it will be up to him, but we can make our best efforts. That is my goal today.

I’ll start off just with some general ideas. I want any members to jump in if you believe I have missed anything, or if we need further discussion on any items, and then at the end, I’ll have just kind of general discussion, issues that you see either in representing your public bodies or in kind of looking out for the public and openness, et cetera.

Moving forward from that, my first point of discussion would be proposed amendments to open meeting law definitions. Those definitions are contained in NRS 241.015, and those are in the meeting packets under the open meeting law packet itself, which just is a current draft of all the open meeting law statutes.

Under 241.015, the first issue, I would like to get some feedback on regarding supporting materials. This has been an ongoing issue with public funds and the topic of discussion of many OML complaints.

We did have recently an open meeting law opinion come out of Boulder City regarding supporting materials, and in that case, the public body had two separate sets of supporting materials.

They didn’t call them that, but they were supporting materials for the public and then materials included in the meeting binder for the members of the body.

When members of the public requested the supporting materials, they only gave out the public section and not the private.

Our office, through our OML open meeting law opinion, or I’m sorry, our open meeting law manual has set forth a general definition for supporting materials. We do not currently have one in NRS 241.015.

The current definition or informal definition that our office utilizes is that supporting materials include any written materials that would reasonably be relied upon by the public body in making a decision.
need for transparency, but I will tell you as someone who has been through several searches for presidents of the universities as well as the chancellor last year, we absolutely lose many candidates, very well qualified candidates because they do not want their names out there two weeks ahead of time.

They understand and we tell them from the very beginning, you will be at a public meeting, your resume will be part of it. Your name will be in the agenda, the way the law is right now.

I know that other states have grappled with this, and they ultimately reached an ability to have an exclusion that both respected the intent and policy of the open meeting law, but recognized that in the real world, especially in the world of academics, you're going to get people who will not go into a search like this because they don't want to lose their jobs.

I'm not suggesting that they never get published. I have no problem with the idea that when we get to the public meeting, but to do it with the agenda, which we post our agendas two weeks before the meeting. We're posting today for our June meeting.

It has a very, very detrimental effect to the point where on the chancellor search, and I can say this because this was said at a public meeting, the five finalists withdrew for that reason.

We had to continue the search. I would strongly urge that we at least look at this subject, keeping in mind that we do want to respect the policy behind the open meeting law.

We're not trying to get around it, but we're just asking for some kind of relief that will not impact our searches so much. Thank you.

CHAIRPERSON BATEMAN: Thank you. Does anyone else wish to discuss this issue?

MS. MILLER: Caroline, on the open meeting manual's kind of rough definition, it seems to be any time our staff provides our commissioners information, that goes out as soon as it's provided, given that it's backup, but we don't always know when third parties are providing brochures or little notebooks, especially like in zoning matters.

It seems like it would fall into that loose definition.

One way to maybe resolve that is to make sure all the members at least by the time the meeting starts have disclosed to you or counsel all the materials they have received from third parties and have copies, at least one available to the public at that time and then provide them upon request.

I think that would cover you in terms of making sure you're in compliance.

MS. MILLER: A little hard to police.

CHAIRPERSON BATEMAN: Correct, it is, and that is -- I mean, that is something we could try to refine through this definition.

MS. MILLER: Yeah.

CHAIRPERSON BATEMAN: Any other discussion on supporting materials?

MR. RICHIE: Doug Richie. I am going to try to define supporting materials. I think that you would say is anything that is provided to the entire board or a quorum of the board has to be disclosed at a public meeting.

I think the law and the AG opinions are kind of clear on how that works.

Boulder City should have known better. I think it was Boulder. To try to say they have two sets of books that they're using to make decisions on this, I don't know if -- I think it may cause more problems if we try and start creating more definition for what supporting material is because for instance, the board may independently go out and get information, and then when they go to the meeting, that information comes out, but again, it's not public forum.

I don't -- it's going to be very difficult, I think, for a public body to be able to figure out what their commissioners or elected officials are gathering because they don't report to us.

We don't know what they're doing, but the open meeting law is always -- the central concept is a quorum. Once there is a quorum to receive information, then it's triggered, not necessarily that they're all looking at the same Newweek article or latest headline upon which they're making their decision.

That kind of information will come out in the public (inaudible). Yesterday, we have
flooding. We need to address that.

CHAIRPERSON BATEMAN: Thank you.

Any other discussion on supporting materials? Okay. The next issue I was grappling with is the definition of a quorum within 241.015. Issues that have come up or questions that our office has received in terms of requests for guidance by public bodies have included issues raised by vacancies in positions. My opinion is if you are a public body and you have a vacancy, that vacancy should not count towards the quorum, obviously, so it would be the existing members of that body. I don't know if anyone has any issues with that.

The second issue regarding quorum that we see is when a member or members of the public body abstain from the vote, what effect that abstention has in terms of establishing a quorum -- establishing a quorum in terms of taking action and approval of any type of agenda item.

We had an issue with that where maybe it's a five-member body. We have had two members abstain, so does it require, you know, the three remaining members to all vote in favor? Does the quorum then go down to three?

My opinion is if there is an abstention, that should not count towards the quorum. Again, that is up for discussion with the group as a whole, so I'll open that up and just kind of get some feedback from all of you.

MS. MILLER: So there is a rule now that if it's totally composed of elected officials, the number is reduced when people abstain for ethical reasons.

Are you just proposing to apply that to all boards?

CHAIRPERSON BATEMAN: Correct.

MS. MILLER: That might be a good move.

CHAIRPERSON BATEMAN: Yes. Thank you.

Any other comments on that?

MR. RICHIE: I think legislature created what is considered a majority of pass, and I am reluctant to say if three of us abstain, then two is -- two people can decide. You don't have a quorum. You cannot take action on that item. For whatever the reason for their abstention, maybe they need to talk to the Ethics Commission to figure out why they're abstaining.

You know, the AG has issued opinions that unless it's a clear conflict, they should not abstain. They should disclose, and to be honest, my experience with public officials is if it's a tough issue, they like to abstain, but that is not what they're elected for.

CHAIRPERSON BATEMAN: Okay.

MR. RICHIE: Again, I think it's problematic if we change the definition of a quorum by that unilateral action of an elected official.

Instead of going from five, it goes to two because three decide to abstain.

MALE SPEAKER: (Inaudible).


MR. LYONS: Sorry. One of the things you'll see if you change a rule like that --

CHAIRPERSON BATEMAN: I'm sorry. Sir?

MR. LYONS: Sorry. Kevin Lyons.

CHAIRPERSON BATEMAN: Thank you.

MR. LYONS: I was at the last meeting.

One of the problems that you will see if you change a rule like that, you'll see strategic abstention, so you'll end up with a lot of abstention for exactly the reason that was just pointed out, so something that works against that rule. Thanks.

CHAIRPERSON BATEMAN: Thank you.

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Dean Gould for the record.

I totally understand where you're coming from. Since I work and represent for an elected body, I don't have that issue in the same way.

I would just say that the problem I see is that you could have legitimate abstentions that then create a situation where you can't vote on a matter because you can never approve it.

It makes the matter -- it's untoward. My thought is we have 281A, which as you indicated, and I agree with you, and I often will say to my clients, You cannot abstain just because you aren't comfortable. You have to have a true conflict.

Otherwise, you're not fulfilling your ethical obligation under 281A.

I think it's incumbent upon that board staff to educate their people about that, but I am concerned about putting us in a position where we just can't vote, if we can't vote without a majority of those who can vote. Thank you.

MS. MILLER: I think that is the way the current rule works. Before it counts -- before it reduces a quorum, they have to have a written opinion from an official legal advisor to that board.
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<td>saying that it's required for ethical reasons rather than they just don't want to participate or they're doing some gamesmanship, which I am sure we have all seen.</td>
<td>meeting with the attorney.</td>
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<td>There are restrictions on that rule that protect it from abuse, and I did have a situation at the county before where so many people were related to the issue, a person's right to have his or her zoning application would not have been able to go forward, but for this type of a rule.</td>
<td>I am not trying to -- I tried to look into the statute why that felt -- why it was described that way, why it fell under, it's not a meeting rather than it's a meeting, but it could be an executive session; it's an exception to the law.</td>
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<td>CHAIRPERSON BATEMAN: Mr. Richie, would it, I guess, help resolve your concerns if we had a similar requirement in there?</td>
<td>If there is any interest on the committee, I would raise that as a potential issue to examine.</td>
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<td>I would like something that involves the Ethics Commission, like you noted, rather than just legal counsel giving his or her own opinion, maybe in consultation with the Ethics Commission, and they determine an abstention.</td>
<td>MR. GOULD: May I comment on that issue?</td>
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<td>At that point, the quorum would reduce, or would you prefer just keeping it as it is?</td>
<td>This is Dean Gould from NSHE.</td>
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<td>MR. RICHEL: For keeping it as it is. If you're talking about as a prerequisite to changing the quorum requirements, getting some sort of letter from Yvonne, from the Ethics Commission, we're going to dramatically increase their workload if every time there is an issue regarding a quorum, they have to get a letter from the Ethics Commission saying, Yeah, we feel it's a bona fide reason to abstain. There is a lot of unintended consequences, I think, from this issue. Again, if it's a zoning matter, to go back to the example, it's a good example, but again, you're only required to abstain if there is a financial interest.</td>
<td>I think it does raise an issue especially when you see issues carried -- potential litigation may go on for years that carries over from one board to another and so on, as to whether there was any record of who was there and how many meetings took place, when they took place, that kind of thing.</td>
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<td>We're still a rural state. We have a lot of small towns, but I can't imagine that there would be so many abstentions because it's their sister or brother on this particular zoning matter that you can never have a decision on that particular issue. I mean, if it's that incestuous, then there are bigger problems than jurisdiction.</td>
<td>That is what I would like to explore, not that there be -- not that you do away with the opportunity for a board to discuss in private pending litigation through attorneys.</td>
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<td>CHAIRPERSON BATEMAN: Okay. I think that is all I have on definitions, unless any of the other members have any specific definition would you like to discuss or any additions that you propose to that list.</td>
<td>MR. RICHEL: Doug Richie. What Barry is talking about is a distinction between closed session and a non -- a meeting that is exempt from the requirements of the open meeting law.</td>
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<td>MR. SMITH: This is Barry Smith. Yeah, I would like to consider, see if there is any interest in figuring the definition of meeting, basically, the nonmeeting aspect of that number two on the</td>
<td>Douglas County has a grand jury that came out. There was a big discussion on non-meetings and closed sessions. I think it's important that we continue to exempt it from the open meeting law, just as if you have two members, less than a quorum, it's not a meeting for purposes of the open meeting law.</td>
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<td>You don't have to agendize two members of the commission got together to discuss something</td>
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<td>1 that is coming up. Again, the key is a quorum.</td>
<td>1 deliberate in those briefings, simply provide</td>
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<td>2 In this case, I didn't bring it with me,</td>
<td>2 information from the attorneys, but I absolutely</td>
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<td>3 but I have the minutes from an earlier open meeting</td>
<td>3 agree.</td>
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<td>4 law task force, but it discusses this very issue.</td>
<td>4 It's vital to the ability for the entity,</td>
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<td>5 They discussed why do we have this, who</td>
<td>5 the group, to function to have that exception to the</td>
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<td>6 can be in those meetings? It all comes back to the</td>
<td>6 open meeting law.</td>
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<td>7 traditional privilege to have confidential</td>
<td>7 MR. RICHIE: If I may, Doug Richie again.</td>
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<td>8 communications with your attorney. That would</td>
<td>8 There is another exception under 281 labor</td>
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<td>9 include -- you don't go out and say it to the world,</td>
<td>9 negotiations that is exempt as well.</td>
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<td>10 we're having a settlement conference about this</td>
<td>10 To be honest, when you're having this</td>
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<td>11 litigation.</td>
<td>11 kind of dialogue back and forth, you make a</td>
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<td>12 That is why I think it's important that</td>
<td>12 proposal, they make a counter proposal. You have to</td>
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<td>13 we keep it exempted from the open meeting law. As a</td>
<td>13 get back to the board if it's outside of the scope</td>
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<td>14 practical matter, sometimes, for instance, a judge</td>
<td>14 of your authority, especially for big ticket items</td>
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<td>15 may request a settlement conference. You have to</td>
<td>15 or very controversial issues. You have to meet with</td>
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<td>16 consult with your client. You don't have a lot of</td>
<td>16 your board fairly quickly on numerous occasions to</td>
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<td>17 time to post, We're going to have a settlement</td>
<td>17 finalize the scope of the proposed deal.</td>
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<td>18 conference, and to be honest, I'm not sure how</td>
<td>18 Noticing it is going to dramatically --</td>
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<td>19 helpful that would be to the public.</td>
<td>19 you said it very well. It will make it impossible</td>
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<td>20 The notice you receive is the board is</td>
<td>20 for public bodies to conduct their business without</td>
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<td>21 going to have a closed session to discuss pending</td>
<td>21 being severely handicapped compared to their</td>
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<td>22 litigation.</td>
<td>22 opposition.</td>
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<td>23 Does that help transparency? I think the</td>
<td>23 CHAIRPERSON BATEMAN: How would the group</td>
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<td>24 key is that once any settlement proposal is</td>
<td>24 feel -- I guess my concern with the definition as it</td>
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<td>25 approved, that happens at a public meeting, and the</td>
<td>25 is now, and that is based just on feelings that I</td>
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<td>1 public can see the proposed settlement agreement.</td>
<td>1 see arising out of the attorney-client meetings, and</td>
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<td>2 They can ask questions about it. It's proprietary.</td>
<td>2 this isn't really any of the local governments, but</td>
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<td>3 That is how the open meeting law, at</td>
<td>3 it's more the smaller public bodies, where the</td>
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<td>4 least in my view, has always been structured. All</td>
<td>4 discussion seems to go past the deliberation, and I</td>
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<td>5 those agreements, like staff thinks that it happened</td>
<td>5 can't prove that.</td>
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<td>6 between staff and, say, the county manager, that is</td>
<td>6 That is -- you know, because they can</td>
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<td>7 not subject to the open meeting law, all that</td>
<td>7 claim attorney-client privilege, but there is an</td>
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<td>8 behind-the-scenes stuff, but when there is a</td>
<td>8 ongoing investigation right now involving a public</td>
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<td>9 decision made, when there is some action to be taken</td>
<td>9 body. There was a quorum of members at an</td>
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<td>10 by the body, that has to occur in a public setting.</td>
<td>10 attorney-client session, and it is unclear whether</td>
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<td>11 MR. GOULD: This is Dean Gould. I</td>
<td>11 there was some sort of delegation of duties or</td>
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<td>12 absolutely agree with you, Mr. Richie.</td>
<td>12 delegation of authority to a staff member or whether</td>
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<td>13 I do this all the time, and it sounds</td>
<td>13 the public body itself took an action during that</td>
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<td>14 like you do. It would be -- we wouldn't be able to</td>
<td>14 meeting, and I can't act -- request for responses</td>
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<td>15 function, and it would potentially, aside from</td>
<td>15 meet with a returned brief stating, We cannot</td>
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<td>16 potentially violating attorney-client privilege, it</td>
<td>16 disclose what happened during this meeting because</td>
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<td>17 would very much expose the potential for the legal</td>
<td>17 it's privileged by -- you know, it's attorney-client</td>
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<td>18 strategy to have to go out, and I'm involved in one</td>
<td>18 privileged.</td>
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<td>19 right now, and it would just be devastating to our</td>
<td>19 There is not much more I can do as the</td>
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<td>20 whole case if we had to say to everyone, No, we</td>
<td>20 investigator. I have -- I can presume. I can</td>
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<td>21 can't brief you because we have to notice it on an</td>
<td>21 infer, but really, it's difficult, and so that is</td>
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<td>22 agenda.</td>
<td>22 the -- it is definitely concerning.</td>
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<td>23 I mean, how many times can these people</td>
<td>23 I don't know what the group would think</td>
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<td>24 meet, realistically? You have to be careful to</td>
<td>24 in terms of refining the deliberation and allowing</td>
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<tr>
<td>25 always stay within the open meeting law, never</td>
<td>25 the group to deliberate, if it would be onerous to</td>
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have it be a -- where the attorney can't provide as
much information as the attorney or attorneys need
to the members in determining the course of
litigation, et cetera, but striking the deliberation
towards a final action.

I haven't represented that side. I do
need some feedback on that, but that is something
that I can share with the group that has been
concerning that there -- you know, that it's being
used as a cover or as a shield for the public body
where it leaves us in a difficult spot.

It leaves the public in a difficult spot
where the public doesn't know when an action took
place, if there was an action, if it was staff
taking its own initiative in doing something.

It's, you know, the most concerning case
I have had since I have, you know, headed up the
enforcement unit here, and so I really am not -- I
am not being facetious. I really do need the
feedback on this one because I am at a loss.

I don't know how to approach, you know,
resolving this issue, or hopefully, clarifying it at
least and striking that balance.

MS. MILLER: I think it's important to
keep the ability to deliberate among the members
because that gives the attorney some guidance.

I think the potential for abuse is when
they just say it's for pending litigation. They're
really talking about something else.

Would recording it, preserving that,
assist the Attorney General's Office?

CHAIRPERSON BATEMAN: That was -- I mean,
that was one thing I was considering, almost
treating it like minutes, but they would be, just as
the information during the closed session, it's
private, and it's not required to be included in --
as part of a meeting as a whole, you don't have to
include it in the minutes.

The supporting materials are not open to
the public, et cetera, but I understand issues that
come from that as well.

MR. GOULD: I would only say we would
never allow deliberation. I think we're not allowed
to do deliberation.

MS. MILLER: The statute allows it.

CHAIRPERSON BATEMAN: You can reach to
deliberation.

MR. GOULD: To deliberate, but we don't
ever allow our members to -- we just use it as a
briefing. We treat it -- it's vertical. It's not
horizontal.

We only talk about what the case is. We
answer questions perhaps, but we do not allow
deliberation, okay? I would never want them
deliberating because then you could cross the line.

I am concerned. Even if we took minutes
or took a recording, I think the minutes -- someone
else, whether it's your office or anyone else,
listens to that, I think you have potentially blown
your attorney-client privilege.

MR. RICHEL: I would agree that you would
have waived the attorney-client privilege unless we
make some other change to NRS that protected that
attorney-client privilege.

Here is the thing, though. In your
example, if staff received direction or delegation
that is easy. You ask staff. Why did you do this?
What authority did you have to do that? Well, I was
told to do this by the board. When?

I mean, there is -- I understand what
you're saying. You have to rely on the good faith
of the people in that meeting.

If you have a bunch of bad actors, it's
going to be hard to prove that except for any
actions that they decide to take within that, to
become effective, has to go out and something has to
be done.

Once it's done, and you can see that,
then you can follow and say, Well, why did you do X,
Y, Z? Who told you to do X, Y, Z?

CHAIRPERSON BATEMAN: I'm sorry. Go
ahead.

MR. LYONS: Kevin Lyons again. There is
one other issue potentially you could raise there is
that when the attorney, and I think I know the case
you're referring to without using it by name.

When the attorney is using that in
assisting to break the law, you do have a waiver of
privilege. So at the attorney level, you can
certainly question that and make that challenge.

In the case that you're referring to, I
think that's an easy one. Like you said, it's bad
actors, so it's an outlier. The general case is
generally going to work pretty well.

On deliberate, I believe the laws,
deliberate towards is included in the meeting, and
it occurs to me that might be a place where you can
draw the line. If you are doing an information-only
meeting, which is clearly the way that some people
treat it, if there is deliberation toward but not
actually action, you can maybe draw a line that that requires an extra level of documentation or something.

CHAIRPERSON BATEMAN: Thank you.

MR. RICHIE: One thing you should remember is for this exemption to occur an attorney has to be present.

An attorney can face disciplinary action for knowingly assisting in the violation of the law.

If they're doing more than what the purpose of that meeting is, then unless you stop it, you are helping them commit a crime.

I don't know of any attorney -- well, I have heard of that, but I don't know that they want to give up their license so these guys can do a backroom deal.

CHAIRPERSON BATEMAN: Yeah.

MR. RICHIE: Particularly government attorneys.

CHAIRPERSON BATEMAN: Well, this is --

MR. RICHIE: There are better ways to make money.

CHAIRPERSON BATEMAN: This is a very unique case that seems to -- I'm just going to stop there.

It's an issue where I think we have now a hindrance because that attorney is claiming privilege for everything that happened during that meeting, including not allowing discussions with any of the members who were present, not -- unless the attorney is present in the room, not allowing any of the staff members to cooperate with the investigation absent his attendance at that meeting.

It's becoming where -- I agree -- it becomes where we, our office is inhibited from even completing a full investigation. It's something we have consulted with the bar counsel's office about.

Is this something where I, personally, or one of the deputies in my division, would we be violating, you know, that privilege by going to this specific members? Who does the attorney represent?

Is it the body as a whole, or is it each individual member or both?

It's become quite an issue, and I think we have a similar issue that has come up again with a different body, and so that is where my concern is coming from.

I agree with you. This is not a prevalent issue. I think it's very unique, but it's concerning that maybe other bodies are learning how to conduct their meetings in this way.

I will take that --

MR. GOULD: May I ask you one question without going into the particulars of your situation?

CHAIRPERSON BATEMAN: Yes.

MR. GOULD: Are those -- is that a situation or situations where the ultimate decision was not made at a publicly agendized meeting?

CHAIRPERSON BATEMAN: That is accurate.

MR. GOULD: Okay.

CHAIRPERSON BATEMAN: Yes.

MR. GOULD: Would you feel the same way if, to go off from what Mr. Richie said, if they had their briefing, and I understand it's difficult for your office because you don't know what goes on in those briefings, but then it goes to a public meeting as it's supposed to do where it's agendized, discussed and voted on? That is different factually than what you're talking about?

CHAIRPERSON BATEMAN: Correct. I guess I have it lower in my list, but it is interconnected with what, if any, limits we should put on the ability of a public body to delegate to a city manager, an HR director, et cetera, in terms of taking action.

Is it -- if we are considering the use of public funds, does that make it where the public body should not be able to delegate, or are we going to consider something such as the State Board of Examiners that reviews all the contracts and approves them, where we set a cap of, let's say, $50,000.

Any contract under $50,000 in value can be approved by the clerk of the board but are presented on a subsequent meeting agenda for the board's review, and you know, as an information item, and the public is able to come forward and comment on that?

Also, a tricky issue, but I think it's one where -- I don't want to say it goes around the inherent purpose of the open meeting law, but at the same time, if there's -- if a public body sets some astronomical number like $200,000, and as long as something doesn't exceed $200,000, we're going to delegate that authority to a staff member, or you know, someone, or counsel, et cetera, to initiate that or represent us, what effect does that have if it's not at any time brought forward to the body as a whole unless it's going to be -- you know, to
The board of county commissioners, in my case, has financial authority, which is $50,000, Douglas County, you have the right to settle that in consultation with the district attorney, and then any one of us members can ask that that be put on the agenda if they want to, but we get sued a lot. A lot of public bodies get sued all the time. In fact, I have a settlement conference tomorrow where a convicted drug dealer is saying he didn't receive proper medical care in jail. You know, it's a public record. It's a $500 offer. It would be crazy for us to have to go to the board every time we have one of these things.

My point is, who gets to decide what is important? Is it us? $500? $1,000? $10,000? No, it's the elected body who decides what is significant to us.
where we find an open meeting law violation and they
four, and the problem is -- it's gotten to the point
it's really -- you know, I would say maybe three or
just kind of actively seeking some roundabouts, and
it's really -- you know, I would say maybe three or
four, and the problem is -- it's gotten to the point
where we find an open meeting law violation and they

25· · · · · · · In that sense, trying to provide some
24· · · · · · · MS. MILLER: So you didn't have to go to
23· · · · · · · CHAIRPERSON BATEMAN: Correct.
22· · · · · · · MS. MILLER: Are you thinking like an
21· · · · · · · MR. LYONS: (Inaudible).
20· · · · · · · MR. RICHIE: (Inaudible).
19· · · · · · · I just don't know what the parameters
18· · · · · · · So I don't know -- it wouldn't be the
case where it's just, you know, the first time a
staffer maybe forgot to send it out to the LISTSERV
or something along those lines, a technical
violation, absolutely.
17· · · · · · · Are we going to bring the hammer down?
16· · · · · · · Of course not, but are we going to force them to
acknowledge it, and if there was action taken, would
15· · · · · · · We're happy to do that, but there are
those handful of bodies where we would like to have
some more teeth to our findings. I just don't know
what the group would feel about that, whether it be
a fine, whether it would be forced training, whether
it would be, you know, someone from the office
being, participating not in the setup for the
meeting, but attending the meeting perhaps and
helping advise counsel.
14· · · · · · · I just don't know what the parameters
would be and what the group thinks about that.
13· · · · · · · MS. MILLER: Are you thinking like an
administrative fine?
12· · · · · · · CHAIRPERSON BATEMAN: Correct.
11· · · · · · · MS. MILLER: You certainly wouldn't hire a broker
10· · · · · · · MR. RICHIE: (Inaudible).
9· · · · · · · MR. LYONS: Certainly, yeah, exactly.
8· · · · · · · MR. RICHIE: (Inaudible).
7· · · · · · · MR. LYONS: Yeah, but they do need a
tangible action at that point.
6· · · · · · · CHAIRPERSON BATEMAN: All right. Any
other discussion on this issue? Okay. I'm going to
have a lot of fun trying to draft this language.
5· · · · · · · Thank you all.
4· · · · · · · In terms of possible penalties for open
meeting law violations, I know this comes up pretty
much every two years prior to the BDR being drafted.
3· · · · · · · That is the extent of what we can do,
absent going to court.
2· · · · · · · So I know in the past, there is some
issues where there were settlements. There were
some fines assessed. I don't really know where that
authority came from. Certainly, that is not the
practice as of now.
1· · · · · · · But that is something that our OML
enforcement unit has been discussing. Would it cut
down, and I say this with the knowledge that for the
most part, it's a handful of public bodies that have
the majority of complaints filed against them.

10· · · · · · · At the local level, it's clear that many
people who elected them, and if they're poor
stewards of the people's money or they're not
transparent, the people will let them know.
9· · · · · · · MR. LYONS: Yeah, but they do need a
tangible action at that point.
8· · · · · · · CHAIRPERSON BATEMAN: All right. Any
other discussion on this issue? Okay. I'm going to
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down, and I say this with the knowledge that for the
most part, it's a handful of public bodies that have
the majority of complaints filed against them.
2· · · · · · · They are bodies that, you know, in my
opinion, are either advised incorrectly, or they're
just kind of actively seeking some roundabouts, and
it's really -- you know, I would say maybe three or
four, and the problem is -- it's gotten to the point
where we find an open meeting law violation and they

1· · · · · · · we hope that they would correct it and put it back
on their agenda, and allow the public to
participate, of course. We see that all the time.
4· · · · · · · I say this with the knowledge that most
public bodies, when we issue a violation or advise
them of an action, are very willing to comply or
want to work with us to learn it or ask us at that
point to come in and train them again or train their
staff.
10· · · · · · · We're happy to do that, but there are
those handful of bodies where we would like to have
some more teeth to our findings. I just don't know
what the group would feel about that, whether it be
a fine, whether it would be forced training, whether
it would be, you know, someone from the office
being, participating not in the setup for the
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helping advise counsel.
19· · · · · · · I just don't know what the parameters
would be and what the group thinks about that.
21· · · · · · · MS. MILLER: Are you thinking like an
administrative fine?
23· · · · · · · CHAIRPERSON BATEMAN: Correct.
25· · · · · · · MS. MILLER: So you didn't have to go to
court? Sort of like the Ethics Commission does?
MS. MILLER: I think that is unobjectionable, really.

CHAIRPERSON BATEMAN: Yeah.

MS. MILLER: Because sometimes as an attorney representing boards, it's easier for me to get compliance, quite frankly, if I say, you know they can fine you, and the statute requires that you pay that individually, that the governmental entity doesn't pay it, is something that gets their attention.

MR. GOULD: I guess as long as it's stratified, so as you're saying, whatever you're going to do meets the crime, so to speak, I don't know that I would have a real problem with that. I obviously would want to see it at a tangible level.

MS. MILLER: Some sort of willful --

CHAIRPERSON BATEMAN: Yeah.

MR. GOULD: I know that I will have to -- not that I have to do it a lot, but I will reiterate, particularly when I have newly elected regents, I will do a whole orientation just on this, and I will tell them that there are criminal penalties. That usually gets them right there, that it can void the action, so any action you take at a meeting could be voided.

I mean, 99 percent of public (inaudible), they want to comply, so if they're not complying, it's usually out of ignorance. You'll have a handful of people who will willfully, but it's very rare, I find.

CHAIRPERSON BATEMAN: Okay.

MR. GOULD: I don't think I would object to something that is reasonable and staggered, so it's not first time you do something, you're hit with this huge fine or something.

MR. RICHIE: Doug Richie. The last task force meeting with Brett and George Taylor, we had a lengthy discussion about different penalties that are available.

In addition, personally, I think NRS 241.036 void, that is a pretty big one. You're joking about it, but guess what, (inaudible) everything, whatever it was.

But NRS 241.040, it's a $500 -- it's a misdemeanor, and it's a fine up to 500 bucks for willful violation. Now, again, willful is tough to prove. If they're laughing about it, most judges are not going to find that very funny.

Then, also, under NRS 197.220, every public officer or person that shall willfully disobey any permission of law shall be guilty of a misdemeanor, and that's punishable up to six months in jail or $1,000.

So whenever I do my open meeting law training, I let them know this is not funny. It's not -- it's very serious. If you're doing this intentionally, that is when you can get into real trouble.

If you just make a mistake, you know, we correct the mistake, we learn, we move on.

What you're talking about is willful misconduct where they're joking about it, and there is plenty of damage right now.

MS. MILLER: But the problem with --

MR. RICHIE: I'm not opposed to administrative penalties, but believe me, going to jail and having that on your record when you go for reelection is a lot bigger than having to pay a $1,000 administrative assessment.

MS. MILLER: The problem in Clark County is that misdemeanors, whether or not they're being put in jail, quite frankly, take so long to process.

Some of these offenders are out of office by the time it would ever get to court. They know that. They're not -- they're much -- I think the last time I did a training on this, I said, When is the last time everybody was ever prosecuted?

Some of them that have been around are aware of that. They're much more aware of the fact that you can get an administrative penalty a lot quicker, maybe even before filing for their next office.

In fact, I can't remember the last time that the AG brought an action, a criminal action.

CHAIRPERSON BATEMAN: I don't recall it having taken place. Yeah, all right.

Okay. So I will consider some language in terms of maybe administrative penalties. We'll see what the group thinks about the language, and we can always strike whatever we need or amend it.

If there isn't any more discussion on that, I will move on to complaint submissions, and timelines for complaint submissions.

One issue that our office is dealing with is the very limited timeframes in terms of, quote, unquote, prosecuting these cases.

I understand, Mr. Richie, the NRS states that any action taken in violation of the OML is void; however, our office to get that void would...
then have to go to court. We would have to initiate a lawsuit within 60 days, and we would have to go through that full process.

Our problem right now is the 60 days starts to run on the date of the violation, so on the date that, let's say, a meeting occurred in violation, on the date that maybe the members of the body met and exceeded a non-meeting exemption, et cetera. We have had multiple complaints come in from the public where the public either, you know, was compiling information, and thus, waited 45 days past the meeting date to submit their complaint, or they found out about a violation well in excess of the 60 or even 120 days, and our hands are tied at that point.

I am not trying to say we shouldn't have time limits because I don't want a complaint coming in from 2005, and we have had those where we just -- there's nothing for us to do.

All the members of that body are now different electeds, et cetera, but considering some amendments to those 60- and 120-day deadlines, or allowing a provision where in extraordinary circumstances there would be an extension of the 60- and 120-day deadlines.

I don't know what the group feels about that, but our office has experienced it. It has been very difficult. We had -- just this year, we have had a couple of cases where we haven't received a complaint until 90 days out, and there was action taken, and there is nothing we can do other than to say, This was a violation. We are angry about it, but we have nothing else to do that we can do.

Additionally, we want to provide public bodies enough time to respond if they have a specific -- going back to the delegation of authority, or if they have a specific statute or county ordinance or something else that allows a certain action. We obviously want that information as well when we're drafting our opinions.

We don't want to issue something without providing everyone an opportunity to respond, and so our timeframe is -- usually, we try to give two weeks to a month to a body for affidavits or anything else they want to submit, but oftentimes, that is just not something that we can do.

We had an issue just recently where we could only give the public body a week, and that left us with two days to decide whether or not we were going to file that complaint, and luckily, the information they provided was enough where we realized we're good, but that puts everyone, I think, in a difficult position.

So I don't know in terms of extending the timelines completely or writing an exception to those timelines would work, and how the group feels about that.

MR. OH: This is Michael. The concern I would have with extending the deadlines is if you would have someone that is just holding on to information as a strategic purpose, for whatever reason.

If the person, elected official is up for reelection and is about to file, then we're going to have complaints coming on beyond the date where -- I mean, it's not fair to the elected officials, and we can never tell whether or not, you know, there is going to be a complaint, and you know, fully have to comply and work with the AG's Office.

So that would be my comment on just a blanket extension of the time. I think it's good to have some timelines, but I just -- you know, that would be my concern.

MS. MILLER: I would have a concern on actions brought to declare something void.

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MS. MILLER: I would have a concern on actions brought to declare something void.
violation, they need to timely submit it, and maybe
the other way to do it is to put a shorter timeframe
on when they can submit and then allow you some
latitude to extend that to the 60 days, so that --
if there is extraordinary circumstances so that it
doesn't always fall on the public body or your
office to deal with that tardiness.

I absolutely agree. I couldn't even
imagine if we had the risk of voiding an action a
year later. I don't know what would happen.

CHAIRPERSON BATEMAN: Would there be a
difference in opinion if it was a member of the
public who couldn't have -- identify the violation,
whether it may be a violation that occurred in a
secret meeting or private meeting where there was
action taken, and the public just -- there was no
way the public would have known for, you know, 90
days, 120 days, and then once they realize it, they
get the complaint filed within two weeks?

Would there be an exception that would be
warranted if that person could establish the fact
that something was -- I'm kind of comparing it to a
criminal, you know, a fraudulent act that they did
in under the guise of concealment, and that allows
the state an additional year or whatever it might
be -- I'm not saying that long of an extension, but
would that be something this group is interested in?

You know, this is -- I feel like a lot of
these issues are aimed at a very small number of
bodies, but it's an issue we have seen as well.

This is, you know, about a year since I
have been heading up this unit, so it's, you know,
not a one-time thing, and it's -- we're kind of
constrained at this point where all we can send out
is -- we have in our open meeting manual, we state
if you submit your complaint past 120 days, since
there is no action we can take, we are not going to
investigate the matter, but that is not in the
statute. That is just something our office has come
up with.

I understand the merit of it, that we
don't want complaints coming in three or four years
late.

Between us, it's been advantageous at
times where we don't have to read 1,000 pages of a
complaint with supporting materials attached to it,
but at the same time, if it's an act by the public
body, I don't know if that would change your opinion
on whether or not even in the case of like an action
taken, if that would be something where --

just complaining that the agenda was not sufficient.
CHAIRPERSON BATEMAN: Correct, exactly,
yes, yes.

So I think there would have to be a
burden to establish some sort of active effort by
the body to conceal it or something along those
lines.

MR. LARGE: This is Michael from Washoe
County. You're essentially asking for discovery
rule. They should have known whether or not some of
the violations, so I mean, it's just simply a
civil -- if there is action taken in a private
meeting that you found out they're deliberating
behind closed doors or whatnot, I mean, there is
going to be a burden that you're going to have to
prove.

You know, whether or not it's general
litigation, you're always going to have to prove a
discovery rule, when the violation occurred, and the
fact of timing.

If there is something that needs to go
into the code in terms of the open meeting law for
that, I think you could -- there is some language
that could probably be worked in, but in terms of
just a regular agendized meeting on X date, that
there is a mistake made, that is when the discovery
occurs, and that has got to be differentiated.

I think if we start legislating for the
exceptions rather than the general, it gets to be
problematic.

MR. RICHE: I think the key is to
distinguish between voiding actions which can hurt
the public like you can't unbuild a sewer plant that
has been built, and actions that are going towards
both the commissioners or the body itself.

I think the limitation of 30 days is
probably appropriate for voiding the action, but
other conduct, basically misconduct of the public
official, whether -- however you find it, just
expand that to some appropriate time period because
I agree it gets problematic.

Well, what do you do, should have known.
Look, we'll just give you more time, however you
discover it, but again, it's not to void the action
but to investigate and take action against the
public officials.

MR. SMITH: This is Barry. I would
certainly welcome that. I think that's a good
approach, and I would like some language to attempt
MR. RICHIE: Again, you want to curb the conduct of the public officials not necessarily punish the public to voiding all these actions that are necessary.

CHAIRPERSON BATEMAN: Okay. Thank you.

I think my last two issues, so I'm going to try to keep this pretty quick.

Like I mentioned before, I think most public bodies, when we have found violations, whether they be technical or a bit more substantive, have been very welcoming in terms of, you know, taking the appropriate action to correct their mistakes.

They have self-initiated those corrections at times, and for the most part, public bodies have, you know, reached out to us, gotten clarification, have done what they're supposed to do, and I believe that would extend to actions, whether or not it included our belief that they required corrective action or even voided actions, and I'm not -- there would have to be a distinction, but not like a contract like say, a meeting that wasn't noticed properly, didn't go out on a LISTSERV or didn't get posted on three locations, maybe just on that.

The body may have taken some actions during that meeting, approving minutes, et cetera, but it is action that should be voided because the notice wasn't, you know, conducted properly, et cetera, and it would be a whole lot more expeditious, I think, for the public body as well as our office in prosecuting to say, we have found a violation. We would like you to take corrective action. Place this back on your next agenda, and you know, and allow the public to comment if necessary, properly notice it, et cetera, rather than having to go to court and initiate a complaint and have -- you know, start that process and have the public body have to come back, and you know, response at the court, make a ruling, and then have that, you know, six months later having the body go back and correct it.

We would have to build something in there where the public body, if it didn't agree with our findings, would have an opportunity to contest it, but I don't know if that is something where the group feels it would be too much authority on the Attorney General's Office, if it is appropriate to require going to court, or if it would be kind of an intermediary step that would be available if, you know, both groups are in agreement that something happened in violation, and if they're willing to correct it, that we can avoid having to, you know, go to court at all.

That is something that has come up where, you know, I don't want to have to be going to these public bodies. Our office at this point has a very solid -- we do not communicate with either the complainant or the public bodies and their representatives absent a complaint, a response, a phone, and say, you know, you screwed up here. Please just put this on your next agenda again. Correct yourself, and then we don't have to do this whole rigmarole.

The public, at that point, gets their opportunity to participate and comment, and issues get resolved quicker, but you know, that is obviously from my perspective. It would make things speedier. It would get things resolved quicker.

I don't know what the group's opinion is on that.

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MR. GOULD: Well, what I'm hearing is when you have consensual relationships, it's happening, so there is really nothing that stops you from picking up the phone and saying, you know, there is an issue here; you want to just deal with it? The person can always just say sure.

If they say no, I think it's important that they have the ability to go to court, so what I heard you expressing is really nothing more than if the parties agree -- because we can always agree, it's only when we don't agree that we need to have the ability to go see a judge, and so I'm not sure what changing it would really affect anything.

CHAIRPERSON BATEMAN: We don't -- at this time, the Attorney General's Office doesn't have the authority to say you need to go correct this or you need to void it.

MR. GOULD: Yeah. You don't have the authority, but you always have the ability to pick up a phone and talk to someone.

CHAIRPERSON BATEMAN: But that would, I guess -- what I envision is, to fix the 120-day deadline staying in place, but having an additional, let's say, 30 days, so our office finds -- you know, makes its finding, you know, you need to take
corrective action and renotice this, and rehear it, or you know, reapprove your minutes from your last meeting, et cetera, and reissue that finding, and the body has 30 days to decide, yes, we agree, we're going to stick it on our next agenda. We acknowledge the issue. Thank you for the information.

Alternatively, the body would have 30 days to say, we do not agree with your findings, and at that point, the onus would go back to our office to file a complaint and get that heard in court.

So it would just give a 30-day window where we wouldn't have to file a complaint within 60 days unless it was very clear that the public body didn't agree with our office and stood firm that they did not commit a violation.

At that point, we would just go court right away.

MALE SPEAKER: So the date would run from the date that they failed to take corrective action?

CHAIRPERSON BATEMAN: It would -- so the 60-day would remain and the 120-day would remain from the date of the violation, but the 30 days would run from the date of our office's finding, either of the violation, or you know -- of the

violation, whether or not it's an action that needs to be voided and revoted on, or if it was an issue where we needed corrective action taken.

MR. LYONS: I was just to add on that another thing you might think about if you think of the analogy of the tentative ruling.

You could work that potentially very early on in the process when it's a straightforward thing and also the consent decree where essentially when you think you're in agreement, just go right to the consent decree. We agree, we both agree.

It's like most prosecutions right?

Ninety-five percent of criminal prosecutions end in a contract, and the other regulatory bodies use the consent decree and the tentative ruling, that way.

Yeah, I didn't miss anything, and it's probably some fact where there is more. Kevin Lyons. Sorry.

CHAIRPERSON BATEMAN: Any other thoughts on that?

MS. MILLER: I don't have any objections to the (inaudible).

CHAIRPERSON BATEMAN: Okay. So I'm going to include it, and then you can all jump on me at the next meeting and say, Take that out. I'm fine with that too.
disorderly conduct, so I don't think it would be in violation of any of those to kind of refine 241.030 to include some of those specifics that I think bodies could rely on rather than, you know, having to rely on any formal opinion by a mediator or another person in our office. I'll work on that, and I'm sure it will require a lot of finagling at the next meeting, and refinement, but hopefully, that will give some more clarification and guidance to counsel and chairs, et cetera, on when and when they cannot prohibit or cut off public comment.

I think —

MR. RICHELIE: Just to record a thought on that, the board is within their jurisdiction and control, so that is one way of limiting it. If they're talking about whatever that is offensive, but always in the back of my mind we're thinking about First Amendment, those kind of claims, and we need to make clear it's a public forum, but it's a public forum for items that are within the jurisdiction and control of this board, and you ranting on a personal vendetta, you're wasting everyone's time, so I don't know if when you draft that -- I'm always worried about the First Amendment issues, but somehow, reinforce it's within the jurisdiction and control of this board. That is why we're here. It's not your time to rant.

MS. MILLER: I think it's a little troublesome to try to write it down in language that won't be subject to attack. That would be my only concern.

CHAIRPERSON BATEMAN: Yeah. Okay. So those were all the main points I had. There was some language for the BDR. I don't know if any of the other members -- I know it was just kind of round-tabled right now, so if there were any other members that wanted any additional items discussed or included for -- at least to address during the BDR, I'm happy to listen to that, to have discussion on it.

We can always do that at the next meeting as well when there is some proposed language in there, and we can see if there is additions that we need to make to it.

Like I said, my goal is to have some sort of draft BDR prepared in the next two to three weeks, have a meeting at that time, the proposed BDR or the draft BDR would be supporting materials for the meeting, and so hopefully, all of you would have an opportunity to review that and then have comment back to the group at the next meeting, and if everything goes swimmingly and there is not a lot of opposition, hopefully, there would be a second refinement period, and we would be able to adopt it or approve it at the third meeting, maybe fourth meeting.

We have -- not we. I am under a not super close deadline, but by -- I would like to have something prepared by, you know, July 1st and have it approved at that time during a meeting. Obviously, that can be extended. Our BDR final drop dead date is September 1st, just like anyone else's BDR deadline, but it would have to go through certain review channels as well, so we'll send out the next meeting date in the next few weeks and have, hopefully, some more discussion to be had at that time.

If there is no other issues, I'll move on to the next agenda item, which is our second public comment. If there is any members of the public in Las Vegas who would like to speak? Ms. DeFazio?

MS. DEFAZIO: Could you have them turn off the mics?
CHAIRPERSON BATEMAN: Yes. Would you mind muting? Thank you.

MS. DEFAZIO: Thank you. Well, listening here has confirmed every one of my fears about the OML.

Okay. So apparently, I’m going to have to get involved, and I know Mr. Smith is highly aware of when I get involved, what it entails.

Now, following, it’s not a recommendation. You will do this because when you hear what the problem is, either you fix it, or I am going to do it, and it’s advisable for you to do it.

When the public is notified of a meeting in a building, we expect it to be a safe environment. You put up sandwich signs when the floor is wet, but you never, ever inform the public of the water damage, mold issues in this building.

It only came to light when the media picked it up. I complained and requested accommodations since 2011.

I have an e-mail to the LCB dated 2013 about this. I complained why were there air filters, and the people are telling me there is a funny odor.

Now, your office knew full well of the toxicity of this building because seven of your employees got sick, one of them was moved over five times, and the prime information and belief, he is not working in the building.

Also, the Secretary of State is looking to move her office out of this building. When I confronted her about it, she said she doesn’t comment on SOS activities.

I’m the barometer for toxic buildings. My head trembling happens when I walk in to a building that has poor indoor air quality.

Now, years ago -- to give you another example of how you do not protect the public. I complained about the PUC building being toxic. No one paid attention. I finally tracked down the new owner, spoke with him, and he had the building tested.

I have got copies of the reports, and the cancer causing chemicals that were found in the building such as formaldehyde in an elevated level and methylene chloride additionally found in a public building where you invite people to come in, EPA known hazardous chemicals such as benzene, polystyrene, methylbenzene, styrene, all of these are showing as elevated.

The owner went out and bought four of the top line air filters to try to remediate the problem.

I want you to do, in the OML, that your agenda notices should reference if there has been water damage in a building, mold, building modifications or pesticides being sprayed, that persons adversely affected are put on notice.

Why should we walk into a building and get struck with this? No. You have got over 100 people from what I have been told who have filed C1 workers' comp complaints.

I already know some of them retained an attorney, and I know some of them because they called my foundation for help.

So this is a sick building. You negated your fiduciary duties by notifying us that you knew there was mold here, and now all this money is being spent on it.

People have a right to know. Your employees, 700 people, why should they get sick and why should the public get sick? You invite us here, you make sure it’s open and safe.

Thank you. I was cut off with time. I want all my papers submitted along with the printouts from Prism Analytical Technology, proving the elevated formaldehyde, the EPA hazardous pollutants and the total VOC.

Protect the public. What I heard today was more skimming down of the OML. Oh, no, no, no. This is not acceptable. It should be more broader, not protecting.

By the way, the language and everything, I agree with you. Profanity has no place in a public meeting, but -- I just exemplify, it can get emotional, but if somebody calls someone an idiot, that is not a violation, or I think your proposal is dumb or stupid. That does not violate it.

There is a fine line with the First Amendment as the gentleman up there said.

How are you going to craft it? I don't know, but people have a right to express their opinions. I'll see you at the next meeting. Thank you.

CHAIRPERSON BATEMAN: Ms. DeFazio, if you'll leave the documents that you wanted included in the minutes just on that table, we'll be sure to include them.

MS. DEFAZIO: Okay. Thank you.
there any members of the public who wish to speak up in Carson City?

MR. RICHIE: We have someone here.

CHAIRPERSON BATEMAN: Would you please state your name.

MR. HUMMER: Jake Hummer, J-a-k-e, H-u-m-m-e-r. This is my first public comment. I wasn't planning on giving one today, but I do hope what I have to say will be helpful.

One of the things you brought up for the BDR's was trying to deal with some of these cases where citizens are coming to a public meeting and using the opportunity at public comment to personally attack some of the elected officials.

I think -- I don't think there is really a way around that. The First Amendment does protect someone's, you know, right to free speech, but it also protects the government so long as residents and citizens feel they can express themselves in a public meeting, it won't take more dramatic action.

Losing five minutes to someone calling someone an idiot, a moron, a baboon, whatever it is, doesn't seem like a really big cost in order to just keep everything civil, to make sure it doesn't escalate from there.

The other thing I wanted to bring up that I also brought up during the BDR was the issue of enforcement, that I do think that open meeting law, public records law are absolutely crucial to the function of any government, and I think it's unfortunate that the state isn't able to better control or better enforce instances where public officials try in a gray area or try and work their way in and around open meeting, public record laws.

To give an example, I graduated from college last year, and while I was in college, I served on the Harvard College Honor Council. We voted on cases of students violating the honor code, academic integrity, things like that, and early on, we only would do severe punishments if we could prove it was willful.

We found that was just not practicable. It was so easy for -- I didn't understand the law, the issues with the honor code, the code didn't make this clear, so we actually changed it to negligent and willful because the students had a responsibility to understand academic integrity at the college, understand the honor code, and failing to understand that in itself, if it manifested in something so bad as breaching academic integrity,

violating the honor code, that the result was the same, the consequence would be.

It didn't matter if it was willful or negligent. The results of their action was the same, so the response by the university to the student was the same.

So applying this to what has been brought up with OML law and public records law, a suggestion that I would have is I don't think it's the responsibility of the state to inform public officials of what OML -- of open meeting laws and public records laws.

It's the official -- it's their responsibility to learn the law. It's their responsibility to make sure that, okay, what am I allowed to do and what am I not allowed to do. Then failing to learn that, that in itself, to me, seems like a problem.

I think it's great that all the OML task or workshops that you guys do with local governments. I think they're very effective, but I still think the responsibility to understand what is and isn't allowed as public officials for open meeting law, for public records law, should fall on that public official.

If then failing to understand the OML law, or excuse me, open meeting law or public records law results in something so bad that the effects of it are the same as if it was a willful violation of it, then I think that the consequence of it should be the same as well, and that's it.

Thank you.
STATE OF NEVADA

COUNTY OF WASHOE

I, KATE MURRAY, Certified Court Reporter of the Second Judicial District Court, in and for the County of Washoe, State of Nevada, do hereby certify:

That I was provided a video recording and said video recording was transcribed by me, a Certified Court Reporter, in the matter entitled herein;

That the foregoing transcript was taken in stenotype notes by me from the video recording and thereafter transcribed into typewriting as herein appears to the best of my knowledge, skill and ability and is a true record thereof.

DATED: At Reno, Nevada, this 12th day of June, 2018.

KATE MURRAY, CCR #599