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
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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. RICHIE:** Present.

**CHAIRPERSON BATEMAN:** Ms. Miller?

**MS. MILLER:** Present.

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**MR. RICHIE:** Present.

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**MR. SMITH:** Present.

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**MR. GOULD:** Present.

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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,

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

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Mr. Richie?

**MR. RICHIE:** Present.

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**MR. SMITH:** Present.

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**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,

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1. look into seeing how those who are homebound can  
   actively participate.  
2. 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?  
3. 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.  
4. When any public meeting allows their  
   chosen people to appear telephonically, it confirms  
   that telephonic appearances are available.  
5. Does anyone here besides me know the  
   federal three-prong approach to accommodating under  
   the ADA?  
6. One, will it be a financial burden? Two,  
   will it involve structural modifications? Three,  
   will it alter the purpose of the meeting?  
7. Appearing telephonically does not prevent  
   any of these three prong issues.  
8. 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.  
9. 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?  
10. 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.  
11. After filing an OML complaint and  
    fighting, I finally got the PUC to incorporate a  
    simple statement sent out on May 6th, 2014.  
12. 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.  
13. No one is going to be excluded for  
    wearing anything, but it will address the  
14. accommodation issue.  
15. 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?  
16. 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.  
17. 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.  
18. Joey Reynolds, Chair of the PUC stated,  
    We don't have the technology. Keep in mind, they  
    archive all of their agenda meetings.  
19. 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?  
20. Everything is being done to suppress  
    public comment, public knowledge.  
21. 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.  
22. 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.  
23. It's only based on file pleadings. What good is it?  
24. It's worthless.  
25. CHAIRPERSON BATEMAN: And thank you,  
    Ms. DeFazio. Your five minutes are up. Thank you.  
26. You'll have another opportunity at the end of the  
    meeting if you wish to continue.  
27. Are there any other members of the public  
    in Las Vegas who would like to address the task  
    force? Okay.  
28. 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?  
29. MR. GUTHREAU: I looked at them. I just  
    had a slight change. This is Vince.  
30. 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. Richie: 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. Richie: 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. Gould: 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.

Chairperson Bateman: I will entertain a motion on approval of the minutes.

Mr. Smith: This is Barry Smith. I'll
move for approval.

Chairperson Bateman: Is there a second?
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.

So something along those lines would be a recommendation I would make to the group. I would like some feedback on it, but to provide some guidance to public bodies so that they can either be more informed or may be encouraged to not try to go around the definitions, I think, would be helpful.

I don't know if anyone has any suggestions on that or any recommendations for that?

MR. SMITH: This is Barry Smith. Just don’t limit it to written.

CHAIRPERSON BATEMAN: Okay.

MR. SMITH: Because it could be any format.

CHAIRPERSON BATEMAN: I guess, Mr. Smith, how would we provide non-written materials to the public?

MR. SMITH: If the board or commission received a video as far as their packet or they received digital data. Those would be a couple of examples I wouldn’t want to preclude.

CHAIRPERSON BATEMAN: Great. Thank you.

One item that I am sure is going to cause some disagreement is we have heard some feedback from public bodies, specifically when they are hiring for a prominent position within the body, like let's say, a city attorney or a city manager, and they don't have an issue with releasing, let's say, the names of the candidates prior to the meeting, but they are concerned when they believe that having the resumes, having writing samples, anything else associated with the application is made public two weeks before the meeting, so on, and maybe their current employer doesn’t realize that they are seeking new employment.

I don't have any experience with that, so I would like to get some feedback from the members in terms of how you feel about that, if that is something that we should consider on the alternate. I think it may lead to, and I hate the word, but some level of cronyism where you’re able to kind of handpick someone and not have to disclose, so I think it's a balance that I am hoping to reach, but I would love to get some feedback on that.

MR. GOULD: This is Dean Gould from NSHE. I am very glad you raised it because this is what I wrote down.

I know that my board, this has become an issue that is very important, and we try to always respect the open meeting law, and we understand the
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 it would cover information provided by third parties, which is sort of hard to govern, and that is -- 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.

CHAIRPERSON BATEMAN: My opinion is it would if the public body is going to rely on it to any degree.

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.

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 what 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 Newsweek 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
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.

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

CHAIRPERSON BATEMAN: Thank you.

One of the things

MR. GOULD: I just want to say -- this is 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
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.

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.

CHAIRPERSON BATEMAN: Mr. Richie, would it, I guess, help resolve your concerns if we had a similar requirement in there?

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.

At that point, the quorum would reduce, or would you prefer just keeping it as it is?

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.

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.

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.

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
that is coming up. Again, the key is a quorum.
In this case, I didn't bring it with me,
but I have the minutes from an earlier open meeting
task force, but it discusses this very issue.
They discussed why do we have this, who
can be in those meetings? It all comes back to the
traditional privilege to have confidential
communications with your attorney. That would
include -- you don't go out and say it to the world, we're having a settlement conference about this
litigation.
That is why I think it's important that
we keep it exempted from the open meeting law. As a
practical matter, sometimes, for instance, a judge
may request a settlement conference. You have to
consult with your client. You don't have a lot of
time to post, We're going to have a settlement
conference, and to be honest, I'm not sure how
helpful that would be to the public.
The notice you receive is the board is
going to have a closed session to discuss pending
litigation.
Does that help transparency? I think the
key is that once any settlement proposal is
approved, that happens at a public meeting, and the
public can see the proposed settlement agreement.
They can ask questions about it. It's proprietary.
That is how the open meeting law, at
least in my view, has always been structured. All
those agreements, like staff thinks that it happened
between staff and, say, the county manager, that is
not subject to the open meeting law, all that
behind-the-scenes stuff, but when there is a
decision made, when there is some action to be taken
by the body, that has to occur in a public setting.
MR. GOULD: This is Dean Gould. I
absolutely agree with you, Mr. Richie.
I do this all the time, and it sounds
like you do. It would be -- we wouldn't be able to
function, and it would potentially, aside from
potentially violating attorney-client privilege, it
would very much expose the potential for the legal
strategy to have to go out, and I'm involved in one
right now, and it would just be devastating to our
whole case if we had to say to everyone, No, we
can't brief you because we have to notice it on an
agenda.
I mean, how many times can these people
meet, realistically? You have to be careful to
always stay within the open meeting law, never
deliberate in those briefings, simply provide
information from the attorneys, but I absolutely
agree.
It's vital to the ability for the entity,
the group, to function to have that exception to the
open meeting law.
MR. RICHE: If I may, Doug Richie again.
There is another exception under 281 labor
negotiations that is exempt as well.
To be honest, when you're having this
kind of dialogue back and forth, you make a
proposal, they make a counter proposal. You have to
get back to the board if it's outside of the scope
of your authority, especially for big ticket items
or very controversial issues. You have to meet with
your board fairly quickly on numerous occasions to
finalize the scope of the proposed deal.
Noticing it is going to dramatically --
you said it very well. It will make it impossible
for public bodies to conduct their business without
being severely handicapped compared to their
opposition.
CHAIRPERSON BATeman: How would the group
feel -- I guess my concern with the definition as it
is now, and that is based just on feelings that I
see arising out of the attorney-client meetings, and
this isn't really any of the local governments, but
it's more the smaller public bodies, where the
discussion seems to go past the deliberation, and I
can't prove that.
That is -- you know, because they can
claim attorney-client privilege, but there is an
ongoing investigation right now involving a public
body. There was a quorum of members at an
attorney-client session, and it is unclear whether
there was some sort of delegation of duties or
delegation of authority to a staff member or whether
the public body itself took an action during that
meeting, and I can't act -- request for responses
meet with a returned brief stating, We cannot
disclose what happened during this meeting because
it's privileged by -- you know, it's attorney-client
privileged.
There is not much more I can do as the
investigator. I have -- I can presume. I can
infer, but really, it's difficult, and so that is
the -- it is definitely concerning.
I don't know what the group would think
in terms of refining the deliberation and allowing
the group to deliberate, if it would be onerous to
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, etcetera, 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, etcetera, but I understand issues that may 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. RICHIE: 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
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 authority based on the people elected them to run the county.

If they want to delegate to the county manager the authority to buy pencils without coming to them, they have that right. If they want to delegate to him the right to approve any contracts of under $100,000, they have that right.

I would say that they have the right to delegate to him their authority to do anything under a million or $10 million, or basically, you do whatever you want and just report to us what you think is important.

So the open meeting law is -- again, it's where there is a quorum of elected body for taking action, deliberating or taking action. The public had their shot when they -- the board met, deliberated and passed a resolution or ordinance delegating to the county manager authority to do whatever it is he is authorized to do.

I think it's inappropriate for the state or this body to say, Oh, wait a minute, that is -- whatever you want. Obviously, the public doesn't know what that is, and so it hasn't been authorized.

As for the $550,000 contract or this project that is defined as one thing, then the board is actually saying, Okay, take public money, do this with it to serve the public, but when you get around and try to find the loopholes where you say, Oh, well, you can do whatever you want with $1 million. Well, you can't, right, because no staff member can unilaterally authorize the expenditure of public money. Only the body can, right?

So that is really the way to sort of balance both of those perspectives and drill that into what the real issue is. Has the money been approved? The numbers that are over 50 are actually approved twice. They're approved once as a budget and then the actual contract when they find the vendor. The sub $50,000 is only approved once by the board, and then the staff has been delegated to the (inaudible) on it.

Mr. Riche: Also, in every meeting, the county treasurer publishes all the claims against the county, the body. So again, that is difficult, but a person...
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
stewards of the people's money or they're not
transparent, the people will let them know.
MR. LYONS: Yeah, but they do need a
tangible action at that point.
MR. RICHIE: (Inaudible).
MR. LYONS: Certainly, yeah, exactly.
The elections aren't very good.
You certainly wouldn't hire a broker
based on the ability to have an election and fire
them two years later, right?
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.
Thank you all.
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.
In that sense, trying to provide some
teeth to a finding of an open meeting law violation,
as of now, if there isn't an action to void or there
isn't an action where we're requiring a body to take
corrective action, the only teeth that our office
currently has is to require a public body to place
an item on its next agenda and acknowledge the fact
that we found an open meeting law violation.
That is the extent of what we can do,
ascent going to court.
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.
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.
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
CHAIRPERSON BATEMAN: Correct, yes.

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.

CHAIRPERSON BATEMAN: Okay.

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 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.

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.

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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 at a 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
does not have your action, 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 --
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 two.

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 deal.

There have been times it would have been a whole lot easier if I could have picked up the 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.
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.
Mr. Richie: 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-table 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.

CHAIRPERSON BATEMAN: Thank you. Are
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.

CHAIRPERSON BATEMAN: Thank you. Are there any other members of the public up in Carson City?

MALE SPEAKER: No one else up here.

CHAIRPERSON BATEMAN: Great. If that is it, I believe we can move on to adjournment. If I have a motion?

MR. GOULD: So moved.

MS. MILLER: Seconded.

CHAIRPERSON BATEMAN: All in favor?

Thank you all so much.

(End of video at 11:57 a.m.)
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, OCR #599
EXHIBIT A
OPEN MEETING LAW TASK FORCE MEETING

MAY 23, 2018

ANGEL DE FAZIO STATEMENT AND DOCUMENTS
May 23 2019 AG OML Meeting- Angel De Fazio- 1st Comment Period

Since this agenda item is suppose to elicit comments from the public, on what changes might be made to the OML, I welcome this opportunity, even though in my opinion, they are not going to be taken into consideration, but at least it will be on the record, so to speak.

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

On the agenda notice it referenced: The OML Task Force may place reasonable restrictions on the time, place and manner of public comments but it will not restrict comments based upon viewpoint', I guess we shall see, just how truthful that statement was when it comes to my comments.

1. This is an OML meeting, yet, it is not being broadcasted over the internet like a majority of other public meetings, do you see the irony in that? Why can't it be video conferenced into one of the other meeting rooms that has internet capacities? Why in a room that you can claim isn't accessible to internet capability? Why restrict what is actually being discussed in this meeting to those who can't attend at one of your sites?

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 or Las Vegas can't broadcast their meetings, when they are held in state office buildings, that other agencies use to broadcast over the internet.

Along with the fact there are no archived videos of this committee's prior meetings, nothing since the first referenced meeting of March 18, 2010.

Are there audio recordings that the public can request or are we stuck with just a transcript of the minutes?

If you were really interested in what the public has to say and I am using the word interested, facetiously, you would look into seeing how those who are home bound can actively participate.

Don't try to use the option, oh, they can submit written comments to be incorporated into the record, that's a cop-out, how many people actually look past the agenda and supporting documentation?

2. Lets discuss accessibility to the disabled, whereby, there seems to be a pick/choose mentality within each board, commission etc., 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 beside me, know the federal 3-prong approach to accommodating under the ADA? 1. Will it be a financial burden; 2. Will it involve structural modification; 3. Will it alter the purpose of the meeting. Appearing telephonically does not present any of these 3 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 proudly earned reputation of never backing down and I guess people figure, lets just give it to her to shut her up, nevertheless, but seniors, people who are home restrictive can’t gain access via this route.

Why not have pre-approved access to those who can prove they need this accommodation, so that they can call in and participate? Along with viewing it online?

Every notice has a statement at the bottom, if you need accommodations please contact us. That’s fine, but, with over 30% of the US population having issues with environmental exposures, 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 on their consumer notifications to wit:

Sent out on May 6, 2014,

"To accommodate individuals who enter the Commission office who are chemically sensitive to fragrances and other scented products, please use sparingly or not at all: perfume, aftershave, scented hand lotion, fragranced hair products, and/or similar products."

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 persons get ramps, visually impaired have larger fonts on computer screens, hearing impaired have interpreters? Why should the larger segment under the title invisible disabilities get sidelined? This simple statement does not violate any of the 3 prongs that can be considered problematic.

Having archived videos allows those who work during public meetings times, are afforded the opportunity to watch them at a later time, as I highly doubt employers are going to allow employees to listen during work hours.

It should be mandated that all public meetings be either aired over the internet or audio recordings made and archived.
Let me give you, what I perceive as the most egregious, flagrant lie that was stated during a PUC public meeting/workshop. On January 9th, I commented that the upcoming 10 days of workshops should be archived, as the Energy Choice Initiative is highly impactive to every Nevadan and they should be able to 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 to archive them'. Keep in mind they archive all of their agenda meetings, and their workshop days are in the same rooms as the agenda meeting. Then on January 16th, he proclaimed, 'I decided that these workshops are important and will be archived'. So just how in the span of a couple days did he acquire the technology?

Because of the ongoing lack of archived videos of PUC meetings I have videotaped all the ones I have attended, without a problem, then all of a sudden it was a distraction. As I was cited for trespassing, as I refused to turn off the camera, forced the DA to go to trial and of course I won. I know for a fact that the AG’s Office was fully aware of this and as usual, your office protected a state commission, rather than look into seeing if it was an OML violation.

3. When an item on an agenda is referenced and there is a first comment period prior to the items being addressed, just how is the public suppose to comment on something that you just line item as ‘for discussion’? We aren’t mind readers.

One would extrapolate that a meeting convened regarding OML would actually be open, not cloaked under the guise of the phrase ‘for discussion only’, do you see the ambiguity of this?

Along with the fact, and let me use the PUC as an example, when there is an agenda item, they have 2 public comment periods. The first one is restricted to the items on the agenda, but, any comments made, are NOT ALLOWED to be considered, only formally filed pleadings by named parties, so why is there a public comment period? Apparently, to satisfy the 2 public comment periods, a sham to say the least.

There should be an adjustment to the OML, that if items delineated in the agenda notice can’t be influenced by public comment, then the closing public comment period should incorporate those 2 time periods. Along with an adjustment if a member of the public is confused and asks a question, the panel is obligated to respond. This one way interaction just reaffirms that the public are irrelevant.

The usual 3 minute comment time frame, when there are massive items on an agenda, just reinforces, the ‘we don’t care what you have to say, but will nod our head and thank you for your comment’ mentality.

Years ago, I had a conversation with a very senior member of the AG’s staff regarding public comments. No, I will not disclose the name nor gender of the person, nevertheless, it was mentioned by me, that these so called public comment periods are tantamount to verbal masturbation, they agreed, that they have to endure the public
speaking and are not obligated to take the comments into consideration, nor do they
even pay attention to them. They are there to look attentive, nod, and thank you for your
comments.

4. Lets discuss your handling of OML complaints, another sham, with the AG’s
department that handles it, just sides with their sister agency et al.

I have filed quite a few OML complaints, with highly documented exhibits and the go
along, get along approach to protect a state agency, committee, board, commission is
not acceptable.

First I dealt with George Taylor, then Brent Kandt. With each complaint I was able to
reply to the PUC’s lies, deceptive responses. The last one was handled by a female, I
can’t recall her name, who stated she JUST came into the position and wasn’t familiar
with the complaint process but would be handling my complaint. When I saw the PUC’s
response, I did my usual reply and she refused to address it, claiming that it wasn’t
allowed? WASN’T ALLOWED? Why did 2 prior experienced attorneys allow it? In any
legal action there is always allowed a reply to refute the opposing party’s assertions. So
basically your OML department takes the word of a sister agency as if it’s the pure
unvarnished truth! This ongoing go along get along mantra, protect each other approach
is a sham under what it is suppose to be an unbiased review of what it is overseeing.

5. Last but not least the most UNACCEPTABLE problem with the OML is the LACK of
concern and safety of both the public and state employees.

When the public is notified of a meeting at a building, they expect it to be in a safe
environment, you put up sandwich signs when the floor is wet, but you NEVER EVER
informed the public of the water damaged, mold issues in the Grant Sawyer building.

The only time it came to light was when the media just recently started covering it.

I have complained and requested accommodations since 2011, citing that the Sawyer
Building was toxic. If requested, I can produce an email I sent to the LCB in 2013, about
acquiring air filters.

I complained that there were wick air fresheners on the 4th floor and when I asked the
receptionist why it was there, her response was, the office has a ‘funny odor’.

I was given a small conference room to utilize when I came to the building, but I still got
sick, once it was made public about the building, the dots were finally connected.

The AG’s office knew FULL WELL of the toxicity of the building as 7 of their employees
got sick, one of them was moved over FIVE times and now upon information and belief
works outside of the building.
I was informed that the Secretary of State is looking to move her office out of the Sawyer building. When I confronted her about it, she said that she doesn't comment on SOS activities.

I am the only true barometer regarding a buildings toxicity, as I demonstrate highly visible neurological symptoms, like right now, with the shaking of my head.

Years ago, I complained about the PUC’s building being toxic, no one paid attention. I finally tracked down the new owner, spoke with him and he had the building tested. I got copies of the reports and cancer causing chemicals were found in their office, such as formaldehyde and methylene chloride. Additionally, EPA known hazardous chemicals such as benzene, toluene, ethylbenzene, styrene, naphthalene and the 2 forms of xylene p and o. All of these are showing as ELEVATED! The owner went out and purchased 4 top of the line air filters to remove these and other problematic chemicals to protect me while I am in there also the employees.

Your agenda notices should reference, if there is/has been water damage or building modifications or pesticides being sprayed, that persons adversely affected by such are put on notice, prior to entering the building.

Would it kill you to express concern for public health and safety, when you invite them to a public meeting to comment?

That's enough for now, as I know you will not address them, I just want it on the record and that you have been apprised of them.
May 23 2019 AG OML Meeting- Angel De Fazio- 2nd Comment Period

Ok, lets get into the Open Records Request issue.

This again is a sham. Agencies like the PUC to PUNISH PEOPLE who request records, they respond in the 5 day period, then tell you, that you have to wait MONTHS for the information. I didn't have time to pull all of these examples from the PUC, but if you request them, I will produce them and they number well over an acceptable amount of time. They feign that they are over-worked, but when you review their calendar for said time, there are no hearings that said person who signed the request response letter was involved with.

Now, the AG's Office pulled this recently. On March 9th I requested an in-person inspection of their internal handbook for employees, a list of all committee members from 2015 to the present, of members of the Sexual Assault Working Group/Committee. On March 15th, I get an email telling me they will be responding by April 26th.

So we have a handbook that ALL employees are required to read is not available? You hold meetings and there is no list of members of a major issue for the AG's Office?

April 27th I get a letter stating: That they have provided my request, problem was, it was incomplete, which of course I informed them of such, in my usual 'don't screw with me rhetoric'.

May 3rd, I get a follow up letter, which I find a complete joke, farce to say the least stating: "The OAG does not possess a list of members of the Sexual Assault Working Group because the meetings consist of invitees only. There are no appointed members. As a result our office is releasing the email distribution for this working group, which is included with this communication. The OAG will now close this matter."

A working group with no appointed members, just a generic list of invitees? So just what does a free for all gathering actually accomplish regarding a matter of this magnitude?

So many problems that are ignored and meetings being promulgated by those who seek to deceive the public over so-called concerns of their issues.

Page 8 of your minutes, Mr. Shipman's comment about balancing is right on track. Treating the symptom and not the real problem, which is the balancing test and how it get applied. The reference to a court of competent jurisdiction and delaying the process further, that may infuriate the public, as they are stuck with some sort of bureaucratic position which doesn't get an answer at the end of the day.

The use of the get of complying within the 5 day time frame, of being over-worked etc., contradicts the requirement to have an open records official, isn't it?
Total Volatile Organic Compound (TVOC) Summary

Your TVOC Level is: **1600 ng/L**

**ELEVATED**

IAQ needs improvement; effect on occupants is possible; reduce potential sources and increase ventilation.

**Your Indoor Air Quality Level (Highlighted)**

- Normal: < 500 ng/L
- Moderate: 500 - 1500 ng/L
- Elevated: 1500 - 3000 ng/L
- Severe: > 3000 ng/L

---

The chart above shows the TVOC levels for all locations tested using IAQ Survey. Results for this air sample are displayed on the chart as a yellow circle. The blue curved line represents the relationship between the percentage of locations (indicated on the vertical y-axis) and the TVOC level (indicated on the horizontal x-axis). The green, yellow, orange, and red vertical bars represent divisions between Normal, Moderate, Elevated, and Severe TVOC levels. As the TVOC value increases, individuals may experience aggravated health problems, and therefore, the need to address VOC issues becomes more critical. However, reductions in VOCs can be made at any level.

The U.S. federal government has not specified a TVOC limit for indoor air. However, the U.S. Green Building Council (USGBC) has recommended 500 ng/L as the upper TVOC limit. As the TVOC increases, the probability of adverse effects increases. The levels are based on observed health effects and have been determined from a combination of published journal articles (1, 2, 3) and the statistical distribution of TVOC concentrations from the IAQ Survey methodology.

The presence of chemicals in your sampled location can cause a wide range of problems, ranging from an unpleasant odor to physical symptoms (burning and irritation in the eyes, nose, and throat; headaches; nausea; nervous system effects; severe illness; etc.). In some cases, these conditions may make the location uninhabitable. Anyone with respiratory issues like asthma and allergies, as well as children, the elderly, and pregnant women are more susceptible to poor indoor air quality than healthy individuals. However, at higher TVOC levels even healthy individuals are likely to experience ill effects. The following websites can offer more information:

- US EPA Indoor Air Quality (IAQ)
- American Lung Association Healthy Air at Work
- World Health Organization (WHO) Guidelines for Indoor Air Quality
- Lawrence Berkeley National Laboratory Indoor Volatile Organic Compounds (VOCs) and Health

The EPA Hazardous Air Pollutants (HAPs)

Hazardous air pollutants, also known as toxic air pollutants or air toxics, are those pollutants that are known or suspected to cause cancer or other serious health effects, such as reproductive effects or birth defects, or adverse environmental effects. Listed below are those HAPs that are reported in this air sample. This list does not include all HAPs. For more information about HAPs visit the EPA Air Toxics website. The exposure limits listed below can also be found in the NIOSH Guide to Chemical Hazards.

<table>
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<tr>
<th>Compound</th>
<th>CAS</th>
<th>Estimated VOC Level (ng/L)</th>
<th>Estimated VOC Level (ppb)</th>
<th>NIOSH Exposure Limit</th>
<th>Description</th>
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<tbody>
<tr>
<td>Methylene Chloride</td>
<td>75-09-2</td>
<td>0.3</td>
<td>0.09</td>
<td>Carcinogen</td>
<td>Automotive products; degreasing solvent; paint stripper; adhesive remover; aerosol propellant; insecticide</td>
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<tr>
<td>Benzene</td>
<td>71-43-2</td>
<td>0.3</td>
<td>0.1</td>
<td>320 ng/L (100 ppb)</td>
<td>Gasoline. Less common sources include some discontinued solvents; printing and lithography; paints and coatings; rubber; dry cleaning; adhesives; detergents</td>
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<td>Toluene</td>
<td>108-88-3</td>
<td>2.6</td>
<td>0.7</td>
<td>375,000 ng/L (100,000 ppb)</td>
<td>Gasoline; adhesives (building and arts/crafts); contact cement; solvent; heavy duty cleaner</td>
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<tr>
<td>Ethylbenzene</td>
<td>100-41-4</td>
<td>0.4</td>
<td>0.09</td>
<td>435,000 ng/L (100,000 ppb)</td>
<td>Gasoline; paints and coatings; solvent; pesticide</td>
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<td>m,p-Xylene</td>
<td>108-38-3; 106-42-3</td>
<td>1.1</td>
<td>0.3</td>
<td>435,000 ng/L (100,000 ppb)</td>
<td>Gasoline; paints and coatings; adhesives and cements; solvent; print cartridges</td>
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<tr>
<td>o-Xylene</td>
<td>95-47-6</td>
<td>0.4</td>
<td>0.08</td>
<td>435,000 ng/L (100,000 ppb)</td>
<td>Gasoline; paints and coatings; adhesives and cements; solvent; print cartridges</td>
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<td>Styrene</td>
<td>100-42-5</td>
<td>1.1</td>
<td>0.3</td>
<td>215,000 ng/L (50,000 ppb)</td>
<td>Polystyrene foam; synthetic rubber; flavoring agent</td>
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<td>Naphthalene</td>
<td>91-20-3</td>
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<td>0.05</td>
<td>50,000 ng/L (10,000 ppb)</td>
<td>Gasoline; diesel; Melt balls/crystals; insecticide</td>
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These results pertain only to this sample as it was collected and to the items reported.
These results have been reviewed and approved by the Laboratory Director or authorized representative.

Alice E. Delia, Ph.D., Laboratory Director

This analysis was performed by Prism Analytical Technologies, Inc. (Prism). Prism Analytical Technologies, Inc. (800-582-722) is accredited by the AIHA Laboratory Accreditation Programs (AIHA-LAP). LLC in the Industrial Hygiene accreditation program for GC/MS Field of Testing as documented by the Scope of Accreditation Certificate and associated Scope. The results contained in this report are dependent upon a number of factors over which Prism has no control, which may include, but are not limited to, the sampling technique utilized, the size or source of sample, the ability of the sampler to collect a proper or suitable sample, the compounds which make up the TVOC, and/or the type of media/presence. Therefore, the opinions contained in this report or may be inadmissible and cannot be considered or construed as definitive and neither Prism, nor its agents, officers, directors, employees, or successors shall be liable for any claims, actions, losses of profits, costs, legal fees, medical or other expenses or any compensation whatsoever which may accrue or result from or occur based upon the information or opinions contained herein.

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Formaldehyde Sample

<table>
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<tr>
<th>Client Sample ID:</th>
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<tr>
<td>Sample Volume (L):</td>
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Formaldehyde Concentration: 54 ng/L (43 ppb)

Your Formaldehyde Level (Highlighted)

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<th>Low</th>
<th>Moderate</th>
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<td>&lt; 20 ng/L</td>
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<tr>
<td>&lt; 18 ppb</td>
<td>16-40 ppb</td>
<td>40-80 ppb</td>
<td>&gt; 80 ppb</td>
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Recommendation: Consider locating and removing formaldehyde sources. See formaldehyde sources section for more information.

Formaldehyde Exposure Limits

The National Institute for Occupational Safety and Health (NIOSH) has set a recommended exposure limit (REL) of 20 ng/L (16 parts per billion). The Occupational Health and Safety Administration (OSHA) has set a workplace permissible exposure limit (PEL) of 936 ng/L (750 parts per billion). For more information on exposure limits, see this report about Environmental Health.

Because of the number and range (from a few ppb to almost one ppm) of published exposure limits, the levels displayed above are based on the statistical distribution of concentrations Prism has gathered rather than exposure limits.

Formaldehyde Sources

The main sources of formaldehyde are composite or engineered wood products that contain urea-formaldehyde (UF) resins (e.g., particleboard, hardwood plywood paneling, medium density fiberboard). Products that contain phenol-formaldehyde (PF) resin also emit formaldehyde but at lower concentrations (e.g., softwood plywood, flake or oriented strand board). Formadhyde is also present in other building products such as pre-finished engineered flooring, insulation, glues and adhesives, and paints and coatings, as well as textiles, disinfectant cleaning products and soaps, preservatives, cosmetics, some air fresheners, pet care products, bactericides and fungicides. Formaldehyde is also a byproduct of many combustion processes, such as tobacco smoke and fuel-burning appliances (gas stoves, kerosene space heaters and fireplaces).

The resources listed below provide additional information about formaldehyde:

US Environmental Protection Agency
http://www.epa.gov/iaq/formaldehyde.html
http://www.epa.gov/tn/ukw/fibhs/formalde.html

Agency for Toxic Substances and Disease Registry (ATSDR)

National Institutes of Health (NIH)
http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2855161/

Note: This analysis was performed using the Hanisch method. This test method has been correlated with or to compliant with the California Air Resources Board (CARB) § 3120, European DIN Standard EN-717, and ASTM methods D-5592 and E-1823. It has also been compared with DNPH testing used in NIOSH 2016 and found to be in good agreement.
Ms. De Fazio,

Please see attached. Thank you.

Althea Zayas
Assistant to:
First Assistant Attorney General J. Brin Gibson
Chief Deputy Caroline Bateman
Deputy Attorney General Dariene Caruso
Deputy Attorney General Edward Magaw
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101
P: (702) 486-3224

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<td>Mock Courtroom - Office of the Attorney General, 100 N. Carson St. - Carson City</td>
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