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Via First Class Mail

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Dear Mr. Parker:

You are asking whether the Nevada Open Meeting Law (Nevada OML), Nevada Revised Statute (NRS) Chapter 241¹ applies to Southern Nevada Regional Housing Authority's (SNRHA) standing and ad hoc committees. As you will see after reading this

¹ NRS 241.015 Definitions.

4. Except as otherwise provided in NRS 241.016, "public body" means:
- (a) Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive or legislative body is created by:
 - (1) The Constitution of this State;
 - (2) Any statute of this State;
 - (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;
 - (4) The Nevada Administrative Code;
 - (5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;
 - (6) An executive order issued by the Governor; or
 - (7) A resolution or an action by the governing body of a political subdivision of this State;

letter, the answer to your question is somewhat complicated, especially since multiple states define answers to similar questions based on the facts of the individual case. I've chosen to send you a broadly based answer, so that you can determine whether SNRHA's various committees are subject to the Nevada OML. This reply is not an official opinion; it has not been reviewed by my supervisors.

SNRHA bylaws (the Bylaws) (revised December 5, 2013: section 3) allow the Chairperson of the Board (Board) to create an ad hoc committee to review, among other tasks: proposals, programs, activities, and/or operations such as insurance plans, personnel and budget, real estate, etc. The Bylaws do not indicate what authority, if any, was bestowed on the ad hoc committee, but the question to be answered is whether it has authority to act, such as making recommendations and/or making decisions.

No more than six SNRHA board commissioners may serve on each ad hoc committee or standing committee. Standing committees must be created by the Board, and its duties and function also prescribed by the Board; standing committees are subject to the Nevada OML.

An ad hoc committee created by the Board only to gather facts about a matter or issue within the jurisdiction of the SNRHA, but not assigned to submit a recommendation to the Board, is not subject to the Nevada OML. Pure fact-finding activity excludes the making of recommendations; it excludes deliberation, and it explicitly excludes a delegated task that encompasses making a choice, i.e. decision. (NRS 241.015(2)).

We presume for purposes of this letter, based on the tasks enumerated in SNRHA bylaws, that an ad hoc committee makes recommendations to the Board. Any ad hoc committees or any subsidiaries thereof are public bodies if they make recommendations or make decisions which are then presented to a public body for ratification or other action.²

Many state court jurisdictions agree with our view. Florida Court decisions leave no doubt that its sunshine law casts a wide net. The Florida Supreme Court long ago

² If a sub-committee recommendation to a parent body is more than mere fact-finding because the sub-committee had to choose or accept options, or decide to accept certain facts while rejecting others, or if it has to make any type of choice in order to create a recommendation, then it has participated in the decision-making process and is subject to the Nevada OML. Negotiations with unions, private contractors and others conducted by a subcommittee of a public body, which result in a recommendation to the parent body, are subject to the Nevada OML unless specifically exempted by statute. Nevada OML Manual §3.04;

made clear that public bodies cannot delegate authority to a subcommittee or to an ad hoc committee to do indirectly that which the parent body cannot do directly.³ California's Attorney General, interpreting the Ralph M. Brown Act (open meetings law), reached the same interpretation as we do in this letter.⁴ Nevada Attorney General's OML Manual (Nevada OML Manual), section 3.04, requires the application of the OML to any "committee, subcommittee or subsidiary thereof," if it makes recommendations or decisions to a parent body that is subject to the OML.

The Nevada OML does not define "committee, subcommittee or subsidiary thereof," so counsel for the public body should be consulted for a determination of whether the Open Meeting Law extends to a particular group of persons. Review of the Nevada OML Manual §§ 3.01–3.02 is recommended.

To the extent that a group is appointed by a public body and is given the task of making decisions for, or recommendations to the public body, the group would be governed by the Open Meeting Law. See Open Meeting Law Opinion (OMLO) 2002–017 (April 18, 2002); OMLO 2002–27 (June 11, 2002); cf. AG File No. 07–030 (September 10, 2007) (opining that the Nevada OML does not apply to the appointment of a citizen advisory panel to advise Las Vegas City Manager when acting in his official capacity).

Advisory bodies are subject to Nevada's OML. NRS 241.015(4). A public body subject to the OML is any "administrative, legislative, executive, or advisory body of the state, or local government." Both types of committees created by SNRHA fit within the definition of "public body." But, the statutory definition is not the only source for my opinion. There are substantive factors identified from several other jurisdictions that may also be considered helpful to determining whether an ad hoc committee is subject to the OML.⁵

³ *Town of Palm Beach v. Gradison*, 296 So. 2d 473 (Fla. 1974) *on remand*, 298 So. 2d 443 (Fla. App. 1974) *cert. denied*, 423 U.S. 868 (1975).

⁴ The meetings of a standing committee composed of less than a quorum of the legislative body of a local public agency [SNRHA] are subject to the notice, agenda, and public participation requirements of the Ralph M. Brown Act [California OML], if the committee has the responsibility of providing advice concerning budgets, audits, contracts, and personnel matters to and upon request of the legislative body. *Cal. Ops. Atty. Gen. 95–614* (June 10, 1996).

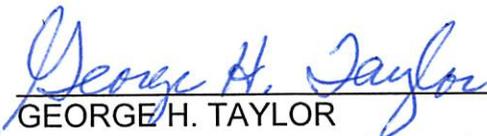
⁵ Factors include: •whether the committee is in the executive, legislative, or judicial branch of government; •whether the committee is empowered to exercise traditional governmental powers such as the power to tax; •whether and the extent to which the parent entity has delegated policy-making or decision making power to the committee; •whether the subordinate entity or committee exercises actual or de facto decision making authority or conversely performs purely advisory, administrative, or ministerial tasks or acts in a purely fact finding capacity; •whether the committee is composed of members of the parent public body and whether those members consists of a quorum of the parent body or the extent of

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The answer ultimately requires consideration of whether any input or assistance from a source outside of the public body "committees, subcommittees, or any subsidiary thereof," regarding a matter under its (SNRHA) control and jurisdiction is deemed a "decision" within the meaning of the OML. Analysis of this issue is necessary because a fundamental tenet of the OML is that the public is entitled to witness its government in action and allowed to participate. NRS 241.010 is the Legislative declaration of intent, "It is the intent of the law that [public body] actions be taken openly and that their deliberations be conducted openly."

Sincerely,

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involvement by the parent in the membership of the subordinate body; •whether the members of a public body serving on a committee do so in their official capacity; •whether the parent entity is itself a public body; •whether the committee was created pursuant to statute, ordinance or other formal action, or whether it came into being informally; •whether there is evidence the committee was deliberately created to enable the public body to do public business in private; •whether the committee is permanent or an ad hoc body that performs a specific task and then dissolves; •whether and to what extent the committee is supported by public funds (tax revenues in Nevada); • whether the committee is required to hold open meetings by statute. Ann Taylor Schwing, Open Meeting Laws 2nd § 4.42 (2000)