

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

Wednesday, March 28, 2012 @ 1:30 p.m.

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

1. Call to order and roll call of members

Committee Members Present

Keith Munro, Chairman
Gene Brockman
Terry Care (LV)
Judy Caron
Edie S. Cartwright
Dane Claussen (LV)
Scott Doyle
Jeff Fontaine
Paul Lipparelli (phone)
Mary Anne Miller (LV)
Barry Smith
George Taylor

Public Present

None

Chairman Munro called the meeting to order at 1:30 p.m. Roll call was taken and it was determined a quorum was present.

2. Comments from the public – please limit comments to 5 minutes.

No public present.

3. Discussion, possible revision and correction of December 19, 2011 meeting minutes. For possible action.

Chairman Munro asked if everyone had reviewed the minutes and asked if there were any additions or corrections. Mr. Claussen, ACLU, stated that he should be listed as a member of the Task Force instead of a member of the public on page 1, section 1 of the minutes. Mr. Doyle made a motion to approve, Mr. Smith seconded. Passed.

4. **Discussion Topic: “Nevada ranks low in study on transparency of state government;” Las Vegas Review Journal, March 19, 2012 (Ed Vogel) (article is included in supporting materials).**

Chairman Munro stated that he asked this to be included just for information but feels that it shows the topical nature of the work we are doing and how closely Nevada’s being scrutinized. Asked if anyone has had a chance to review the newspaper article by Ed Vogel in the March 19, 2012 paper of the LV Review Journal? I just had a few thoughts and that is it looks like we might need to do some work to improve our openness and this is probably a list we do not want to be at the bottom of for Nevada. Any thoughts?

Mr. Doyle stated he is teaching the Legal Ethics section at the Government Civil Conference on May 18th. One of the subject I will be talking about is the need for a law revision project on Nevada’s ethics in government legislation and one of the models that we will be talking about briefly is the one developed by the Council on Government Ethics legislation, it is a nonprofit organization out of Washington, DC. They have a very interesting approach to their model law which addresses many of the things in this study because it ties ethics and government legislation with campaign finance disclosure and lobbyist registration so it seems to get many of the things that were brought up in this study and Mr. Vogel’s article.

Mr. Brockman – As I read through that article, I got the impression that it was basically aimed at the Legislature and the fact that they are not under the OML and I am wondering if anyone else got that same impression.

Mr. Smith – Certainly that is one of the key factors that they expound on. The ethics laws are the other main factors where we fall down and as it pointed out, there are a lot of states that do not do very well, but that was certainly one of the key issues.

Ms. Caron stated she got the same impression as Mr. Brockman. She stated she is glad to hear that Mr. Scott is going to teach a class on ethics and hopes to attend.

Mr. Care stated he is out of the Legislature so it doesn’t matter to him but for example expenditures . . . for the 4-month legislative session. To begin with there is nothing that says the legislator has to agree to go to dinner or allow the lobbyist to pick up the tab. If you go back and look at the reporting, a lot of legislators have zeros going back several sessions. The one thing I don’t understand . . . on this committee is that a part-time legislator can have people who are meeting with candidates and later get elected and then that person who has met with the candidate will then later register as a

lobbyist. So let's say you have an incumbent who is coming up for re-election and somebody meets with that incumbent, it is not . . . because he essentially has not started, then the session starts and that person has to register as a lobbyist. Has that person lobbied the incumbent by taking that candidate/incumbent out to dinner, the session has not started yet, is that a lobbyist – I don't know.

Chairman Munro – Good points. Anyone else. We will close this agenda item and move on to agenda item #5.

5. **Supporting materials: modernize the OML: discussion of possible new statutory requirement for any public body with a website to upload agendas, minutes of previous meetings and supporting materials to its webpage. Currently, supporting materials need only be “made available” over the counter. For possible action.**

Chairman Munro – I am going to ask Mr. Taylor to discuss this and I asked this to be put on the agenda. I wanted to talk about the small aspects of this but then also the larger aspects as well. I will ask George to talk about the smaller parts of it and the larger aspects are this: The Attorney General's office issues an OML manual where we make interpretations of the OML, so we set guidelines for public bodies to follow. We are also in charge of enforcing those rules and it seems to me that we should either be formulating the rules or enforcing the rules and not doing both. One of the reasons I think is this and I might ask Mary Anne Miller of the Clark County DA's office to speak up on this, but if you have got an AG's opinion that is written on an issue and local governments follow it and then there may be a new attorney general or there may be a public challenge to the local public body following it, they rely on what is in the AG's opinion and the court may come up and say, nope that is not the status of the law, and so one of the things I wanted to discuss with respect to this one particular item and then maybe we should talk about it further than that, is should we try to take some of the attorney general opinions that are guidelines, goalposts for public bodies to follow, and present them to the Legislature; and as is this the status of the law, is this what you want public bodies to follow? Because then we all know what the rules are and it is not just based on some AG opinion lying out there.

Mr. Taylor – In 2010 this office issued an opinion which said that attendance by a quorum of a public body at a meeting of its own subcommittee was not in violation of the OML. It came up in the context of the Clark County Board of School Trustees when a quorum of the Board of School Trustees attended a meeting of its standing committee, a bond oversight committee. The facts are that a quorum showed up separately, individually, did not speak during the meeting, did not speak to each other, and left separately. When we were asked to investigate, we obtained statements and affidavits from each of the members of the board of trustees which corroborated what had appeared in the complaint. The problem with this was there were two conflicting AG opinions on this matter. There was one from 1997 and one from 2001. The one from 1997 essentially said that it defined deliberation as some kind of inner communications among the members, otherwise there couldn't be deliberation. In 2001

we issued an opinion which said that where a quorum of a public body merely sits and listens to information at another meeting, they have in effect, deliberated. We have looked at this carefully and decided that the opinion was that even if a quorum of a parent public body attends a meeting of its own standing subcommittee where a quorum of a public body merely listens, does not participate, does not ask questions, does not deliberate, does not take action or collectively discuss any matter within the parent's jurisdiction or control, then there is no meeting within the meeting of the OML. What caused me to go in that direction and what caused the office to issue this opinion was that in the meantime, Dewey was issued by the Nevada Supreme Court. Dewey intervened and defined deliberation as "the collective discussion of an issue with the goal of reaching a decision." That obviously did not happen here and then we looked a little further and I found that in other states, notably California which has three OML bodies of law, the Brown Act and the Bagley-Keene Act. They had exemptions for this very thing. Those exemptions arose because the California Attorney General had issued an opinion that merely sitting at a board meeting of your own standing subcommittee was a violation of the OML. The California Legislature overrode that and put it in the Bagley-Keene and the Brown Act. Then finally our own Nevada Supreme Court in 1998 and the Board of Regents said, "that the constraints of the OML apply only to a quorum when it is acting in its official capacity deliberating and taking action, and obviously by sitting there, they did none of those things. So that in a nutshell is the small issue, but there are many other opinions we have written over a period of time, this is just an example of some things that we could bring back to the board and have you discuss and see what your ideas are about putting this in statute.

Chairman Munro – Any thoughts on the smaller or larger issue?

Mr. Fontaine – So on the larger issue, how many such opinions have been issued?

Chairman Munro – There are a lot of opinions out there, written formal AGO's.

Mr. Fontaine – So the discussion here is whether or not we should recommend taking all or some of those AGO's to have them codified as statute.

Chairman Munro - Yes, you are a representative of NACO, it would seem to me that would be a better framework for local governments to work under, say I can read it right there in the statute, that's the law, as opposed to I have an AG opinion that says that is what we are supposed to do and later run the risk of being challenged in court. As George mentioned, he had two conflicting AG opinions out there; one from 1997 and one from 2001.

Ms. Miller – When George issues opinions he takes into consideration the evolving law not just statutory but when we see change in Nevada it usually happens at the Nevada Supreme Court level. If the Legislature doesn't like the way the Supreme Court has interpreted the law, then they react. I am skeptical about bringing a body of attorney's decisions to the Legislature, I just think it will be so hard to reach consensus.

The smaller boards and counties that might have so many different bodies, rely to a large extent on the OML opinions issued. I would hate to put those unnecessarily under question.

Chairman Munro – You would hate to bring them under question and have the rule makers, the Legislature come in and say, no that is what we need.

Ms. Miller – I think that if the Legislature says they don't like the direction the AG is seeking, like they have in the past, the Supreme Court decisions, I don't think that the Attorney General opinions should be lessened in their value by any kind of indication that they don't have much weight unless they are approved by the Legislature.

Chairman Munro – That's a fair point of view.

Mr. Lipparelli – I couldn't hear everything that was said because of the echo so I apologize if I repeat. I am a believer in don't fix it if it is not broken. I don't have the sense that the system we have is broken and if some rogue AG were to go crazy and change interpretations that have worked for years or render opinions that most people thought were well outside what the law intended, there would be nothing to stop the Legislature from acting on those few instances of bad decision making by the AG but to turn the whole program over to the Legislature is worrisome to me given that 1) they don't have any general indication that the system is not working well and 2) it is a real tough issue for the Legislature to make progress on judged by the many times they have tried things like public records and have really struggled with it, so I think there is more stability in the present system, I think the AG's have done a good job and it works for us.

Mr. Smith – One thing I see is that the Attorney General opinions are most, if not all, written in response to complaints of particular situations that consider the facts of each individual case and they are very helpful that way, but I don't see that they necessarily translate into statutes, and I agree that you will have an endless number of examples no matter how much verbiage you put in the law of well here is another example, how does this fit. We are going to have to interpret it. I think they are very useful, they are helpful the way they are. I also agree that if an opinion comes out on a particular circumstance and the Legislature says, no that is not what we intended at all, then that is the point the initiative should be made to change the statute to be more clear. I think it is the same if a case goes to court and there is a court ruling on interpretation of a statute that they look at the legislative intent and then if the ruling comes out and the Legislature says, that is not really the way we want things to work, they change the law.

Chairman Munro – So you would look at some of the brighter line opinions as opposed to some of the more extraneous ones?

Mr. Smith – Right.

Chairman Munro – I very much like Mr. Lipparelli and Ms. Miller’s comments that they like the guidance this office gives, so that means we are doing a good job and I take that as a compliment, but I would ask this question—the attorneys like it, what about the public out there and the perception that the rules are not out there for everybody to see?

Mr. Claussen – I am not so sure that the situation isn’t broken, I mean when the policy manual from the AG office requires about a hundred pages just to explain what the law says, I think that by definition is an extreme case. In many states, journalists, members of the public and others rely on the open meeting statutes and get all the guidance they need without consulting a hundred page manual from the AG’s office. I am concerned about the fact that the manual on the AG’s website is dated 2006 or something like that. Perhaps the content has been updated since then and the date wasn’t changed, but it is not very reassuring.

Chairman Munro – Let’s make a note to check our website and get the most recent version up there.

Mr. Fontaine – So there is a legal remedy for someone who would file a complaint and would first go to your office and then there is also a remedy to go through district court, is that correct? So how many times have complaints that have been filed at the district court level based upon opinion rendered by your office been overturned, if any?

Chairman Munro – I can think of one a few years ago and it resulted in something that is on our current agenda and that is why we start the agenda by giving the public an opportunity to speak. It used to be that they would have public comment at the very end and that was deemed permissible by AG opinion. I think it was the Board of Medical Examiners who relied upon that opinion, relied upon the advice of counsel and went into court, and said there is our opinion, it has been on the books for a good 15 years, and they are legal. This district court judge said, “No, it is not.” It does not happen a lot, but it can happen.

Mr. Care – AGO’s, of course, are just opinions, they don’t have the force of the law but they do get cited sometimes in case law. When the AG issues an opinion, is it on her to put a statement in there that says, conflicts with and cites to a previous AGO and makes reference to another opinion.

Chairman Munro – Yes, we have done that.

Mr. Doyle – In a perfect world we would have the OML statutory text and probably about 35 or 40 published Nevada Supreme Court opinions and that would be the source of law because that’s the traditional framework from which we derive our law in this state. When the OML was put into a form comparable to what it is today back in 1977, the AG’s office started publishing the OML Manual at that point as a guide and it was put in because at that time the AG was issuing two forms of opinions – letter

opinions, which were not published and were not annotated into the NRS, and formal published opinions assigned a number and published in a booklet on an annual basis. That practice has changed over time because now we have the OML opinions that are annotated into the NRS. We may be at a point where using George Taylor's example of the Clark County School District where we are feasting on information and may be creating a confusing situation because you have the statute, you don't have opinions from the Nevada Supreme Court on that particular subject that George mentioned, but you do have text in the manual that addresses it and then you also have the 1997, 2001, as well as the 2010 opinions, which reflect changes in the office's interpretation of the act based on Nevada Supreme Court opinions from 1998, and when Dewey was decided in 2003 or 2004. My thought would be something in between not, not doing anything at all and trying to respond to this type of a situation that has been approached by this agenda item. I don't think I am in favor of bringing full scale the OML's to this committee and trying to codify everything because I think we would still be working on it in hopes of getting it timely presented to the 2019 session of the Legislature, but where there are situations where the combination of the statute, the manual, and the published opinions are confusing, then you are going to have to do something like either Senator Care has suggested, which is properly footnote the opinions, and then get the annotators to subtract those opinions that have been overruled out of the annotations, or alternatively, codify the interpretation. If there is a relatively simple amendment that we could borrow from either the Brown Act or the other California Act to clarify this one situation that George Taylor has mentioned, as one task force member I would be interested in considering it, but I don't know we do ourselves any good by bringing the project forward in a wholesale fashion. Maybe a few of these more confusing issues would be the best way to go. I have always been in favor of evolutionary change in the law instead of revolutionary change unless the situation has become extremely unworkable. So, I guess I would place myself somewhere in the middle on this one as far as the many attitudes that have been expressed at this point.

Chairman Munro – How about this Mr. Doyle? I will leave it to you if you want to make a motion, but how about if a motion is made that Mr. Taylor and I will try to figure out some of the brighter line confusing issues and try to bring a limited number to this committee for consideration?

Mr. Doyle – Mr. Chairman I will make a motion to that effect based on your remarks if I could incorporate them by reference for complicity sake.

Chairman Munro – Is that okay Mr. Taylor?

Mr. Taylor – Yes, certainly.

Chairman Munro – Do we have a second? Mr. Smith seconded. All in favor, no one opposed. Motion passed.

6. **Discussion Topic: (continued discussion from Dec. 19th meeting)
Whether the OML be amended to require public bodies of local**

governments, cities, towns and state government to expand technical capabilities and resources to upload to a website, its agendas, minutes of previous meetings and supporting materials. Discussion of the applicability of this concept to public bodies based on population distinctions. Currently, supporting materials need only be “made available” over the counter. (Fontaine, Brockman and Lipparelli). For possible action.

Chairman Munro – I see a trio of folks to make a presentation on this – Mr. Fontaine, Mr. Brockman, and Mr. Lipparelli. I provided some handouts, a couple of statutes, 241.020 and 241.035, which may help in some of the discussion.

Mr. Fontaine – After our last meeting, I sent an email out to all the county managers asking if they would have the capability to upload all of this information if this was a requirement and I heard back from 9 or 10 and as you can imagine most of the counties that responded indicated they were currently doing it or could do it with few exceptions, so even for counties that are currently uploading all their agenda backup material, a couple noted that there are maybe one or two meetings when the amount or sheer quantity of the information would prevent them from doing so because they don't have the capability to upload things like draft budgets, things of that nature. I did hear from a couple of rural counties that stated they cannot do it and if they were required to it would require them to increase or add new technical capabilities, some staff time, and the issue for them would be cost for whatever technical equipment and software they would need, plus staff time to manually scan the documents. The other issue that came up was with the various bodies within the county governments; for example, planning commissions, and so a number of counties commented that to try to upload applications for zoning variances, master plans, things of that nature would be well beyond their capabilities. In summary it appears that a good number of the counties are currently doing it or would likely be able to do it with perhaps a few exceptions for certain meetings and certain types of materials and then as we probably could have guessed, a number of rural counties, at least two that I heard from, said they couldn't. I guess this is good representative sample of a little bit more than half of the counties that responded.

Mr. Brockman – We have not done a poll like Jeff did amongst the cities and towns, but taking a look at the number of government agencies and other bodies that are under the OML, the larger ones already have the necessary technology to do this and are in fact probably already doing it. One source I looked at said there are roughly 150 smaller agencies that could come under the OML and many of them simply do not have the technology to do this kind of thing. As an example, the Palomino Valley GID which is the rural area north of Sparks about 15 miles. That GID consists of three board members, one part-time clerk, and one part-time road grader operator. The GID was organized to grade the roads in Palomino Valley. That is all they have. To bring them under this kind of a rule would be ridiculous, but there are many of these smaller agencies that simply cannot do it with existing technology and those are the ones I'm concerned about. Some of them would be subsidiary to counties, an unincorporated

town as an example, is a subsidiary to the county government and probably could work through that. Like Minden and Gardnerville are subsidiary to Douglas County. There are major ones in Clark County, there are eight or ten subsidiary governments to Clark County that are unincorporated towns, some with more than 100,000 people in them. I don't know how you would put the requirement for one and not all. All of them cannot do it without major upheaval.

Chairman Munro – We did talk about population caps and identifying types of public entities.

Mr. Lipparelli – I guess I would add that a quick count is that Washoe County has approximately 50 public bodies. I have to disagree with Mr. Brockman in one regard, I think the law could be written to impose the requirement on governing bodies of every county and maybe every city or town with the assumption that there are at least enough resources for those bodies to comply with the law, but I agree with Mr. Brockman's assessment that it would be an extreme burden for some of the smaller boards who do not have staff or the resources to try to comply. As I said at the last meeting when we discussed this, Washoe County already puts its agendas and supporting materials on line for the governing bodies. It is a good service for the community as it does provide the public access to the information. It would not be a burden for us to continue to do what we are already doing, but it would be a considerable burden to add that to every single public body we have.

Chairman Munro – Paul is saying to basically determine particular groups or governing bodies and that is why I provided these two statutes because I started looking at this agenda item thinking what statutes need to be fiddled with and I thought 241.020 subsection 5 on page 2 – “Upon any request, a public body shall provide at no charge, at least one copy of an agenda for a public meeting, a proposed ordinance or regulation which will be discussed,” so there seems to be some requirement already to provide this information. With respect to the minutes, if you look at 241.035 subsection 2 where it says “Minutes of public meetings are public records.” So public bodies already have to provide this information and it might be just trying to figure out the dividing line at this point, which type of bodies could easily do it to assist the public and which ones may not quite be ready.

Mr. Brockman – I think that is going to be the crux of the problem. The Incline Village GID is an example as an IT department. They are already doing this so it would be no difficulty, but as a category, some of them can and some can't. How do you set the dividing lines? There are districts, there are authorities, there are irrigation districts, water districts, libraries, fire districts, a whole range of agencies – some big, some small. I don't know how you do it.

Mr. Smith – First let me point out the language on page 2 in paragraph 4 “If a public body maintains a website on the Internet. . .” We are not asking you to create something you are not already doing. Secondly, I want to diffuse the notion that this is somehow expensive or difficult. I am a one person office with a part-time assistant. We

operate three websites that we update almost every day, but we certainly update them every week. If the minutes and agendas are prepared on a computer they are already in digital form and it takes seconds to upload something. When they are asked for public records, they are emailing them before they are copying them. This is not an expensive or difficult thing to do. It may be that if the county or the governing body operates a website, any jurisdiction that falls under it that those agendas could be posted there. As a practical matter, where would people go for information? Would they literally look for a GID website, or would they logically start with the county website. I have been through the number of board, commissions and agencies that we have in the state and there are over 350. So, to have people trying to search 350 websites for what they need is also not logical. But, to go back, the way it is structured now it is not asking people to create something they don't have, although doing that does not require staff, having a website is \$50.00 a year, so I think it is entirely doable. It is just in my mind a question of how it needs to be organized for the public access.

Ms. Caron – I can address some of those concerns asked. Being from the public, of the boards that I participate in actively and trying to find information, most of them are state appointed boards or commissions. Some of the state boards have lost their search engines because of technology or not enough staff. One in particular that I use all of the time, I cannot find past meeting minutes, so where I have started going is the Governor's website that now lists roughly 115 to 120 state appointed boards and commissions for the public. That takes me to the direct link to that state agency and if they have a website, most of them do, put up the minutes and the support material and the agendas. I have found some state boards agendas on the website but you don't have the minutes or you don't continue through, and when you pick up the telephone or write an email as they suggest, you will get different answers from the executive office who handles that. If want you to get your support material, they say they don't provide it so it is clarification or misclarification how they interpret OML support material, that you have to get it directly from one of the commissioners or the chairman, that they don't release their support material to the public. Another answer that has come back is that if you send a request in writing, we will guarantee it for six months that is acceptable to the public I put out to a few friends and acquaintances that I have met on these different boards, the question – would it be beneficial to the public. All the answers I got is that if it wasn't cost prohibitive, if they had enough staff, it is beneficial to the public to be able to be engaged to read the support material to comment because you can't attend every meeting, so they would like to see something. I think it is doable by what I have read in the OML and participated on boards but I think maybe if we start with all the state boards that have a direct link from the state website, they are not creating it, that maybe something could be looked for these boards to first have an open period to get it up to date within a year, if that is feasible, and then tailor it down like we did our smog checks. If you look at this with a broader extension for the smaller ones to add onto it. I think it is something that is beneficial to keep the public aware of what's going on in government and to be transparent. I think is needed.

Mr. Doyle – I don't think this is a coach and body of thought, but it is kind of a string of observations and it is based on our previous discussion and the comments that

have been made to date to this point in today's meeting. Number one is some thoughts on population classifiers. Those are created in law to avoid our constitutional prohibitions on local and special legislation. Generally they are used on either a municipality-wide basis or a county-wide basis. One of the places where we had one of the most creative population classifier scheme set up is in what I term the fair and recreation board legislation that is applicable to the various jurisdictions and there if you are between "X" and "Y" you have this type of a fair and recreation board; "Y" and "Z" is a different type of recreation board; and if it is "A to B," it is a third variety. We are treading very close to something that probably if someone wanted to challenge it, might be suspect from a constitutional standpoint. From this point today in our discussion, one of the concerns that I have heard is comment particularly I think from Mr. Brockman and Mr. Fontaine that if you were to try and attempt a population classifier even on a county by county basis, you would run into a situation in many jurisdictions where, take for example Washoe County, you might have the capability for providing this sort of website based support for GID's that are very close to the metropolitan area but do not have the same capability if you move out into rural portions of Washoe County, so a population classifier of say 400,000 or greater or whatever the magic number is for Washoe County now, may not be workable. If you start to classify then on the basis of characterizing certain types of governmental entities subject to regulation and others are not, you start to tread even closer to the constitutional prohibition of local and special legislation and the requirement that we make a general law applicable, then the findings that we would have to make to support the distinctions that we might try to draw in the law become difficult. We have special laws that are, the Lander County Airport Authority or something like that, that is sprinkled throughout the chapter laws and even have their own volume or two in the NRS publication now, but at the outset of each one of those acts we have comprehensive findings that justify the adoption of the special act. We would need the same comprehensive findings if we were to try and adopt an OML amendment that would exempt certain people based on the characteristics of that particular unit, for example, GIDs. If some are in and some are not, the findings to support that type of a differentiation under state constitutional requirements becomes quite complex and difficult and probably beyond the scope of time we have available to us between now and the start of the 2013 legislative session. I guess that would be my second observation. I am probably going to incur the wrath of Mr. Smith with my next comments, but in reading subsection 4 of NRS 241.020, the proviso does start out "If the public body maintains a website on the Internet or its successor, the public body shall post. . ." and then it puts the requirements, but then we have an escape clause that says ". . . unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website." My reading of the law right now would be that even though there is a shall in the first part of the proviso, there is an escape clause in the second part of the proviso but the law places the burden of proving technological difficulty or impossibility on the entity is my interpretation. My final thought would be perhaps we need to leave well enough alone and if we enforce the law on a complaints made basis, then part of the investigation would be that the entity complained of would have to justify why they cannot do it if they do have a website. They have taken the first step of creating a website and now they are claiming we can't post to it, then the burden is on them to prove technological difficulty. If they can't make

that burden, then they may be on the receiving end of an OML opinion or worse from the AG's office saying clean up your act, either make a better showing on technological difficulty in the next go around or start doing what the law requires, your choice based on the results of the investigation.

Chairman Munro – A suggestion of an evidentiary nature.

Mr. Fontaine – So, the discussion here so far is that there shouldn't be a problem uploading agendas and minutes and that it should not be an issue, the issue here is all the supporting material and again it may be that with a one person operation it is pretty easy to upload relatively small number of documents which we all can do, but when it comes to uploading things like digital photographs, planning documents, maps and things of that nature, for a very small county becomes problematic, both from and technical standpoint and a resource standpoint. The other sort of technical issue related to this is how much storage capacity some of these small local government bodies have on their servers. You have seen some of these agendas for some of these planning commission documents. How long do they need to be retained and what are the storage requirements for such documents?

Chairman Munro – Mr. Fontaine what if there was a statute similar to number 4 that said, "a county, city or town board shall post on the internet prior to a public meeting the following information" and then have something like "the failure to do so because of technical difficulties shall be explained" or there shall be some type of notice posted why it was not possible to do.

Mr. Fontaine – My response to that would be I have never felt comfortable with demonstrating technical problems. I think that it is just so subjective and what does that mean, does that mean if one person in that county or city that is responsible for doing that calls in sick that day, is that a technical problem? There is just a whole host of issues and putting the burden on the local government body to justify what a technical problem is, I quite frankly so not agree.

Mr. Brockman – Paragraph 4 seems to zero in on the agenda only. If they are doing the agenda, it would seem to me that they could very easily do the minutes of the meetings. When you come to the other parts, supporting information that seems to be where the real problem could be depending upon the type of agency it is. In some cases it would be no problem at all, in others it would be a major problem. Planning commissions and people that are dealing with land use, etc. are probably the most complicated. Maybe not, but they are complicated. The provision relating to the minutes of the meeting could be very easily added to this existing wordage. There may be some way that you could delineate what kinds of supporting materials are necessary, but I think that would become very difficult to do because there is such a wide variety.

Mr. Smith – I don't agree or disagree because as I said at the last meeting, you don't want to discourage people from providing as much as they can and as the testimony on the bill was, there were people who said we will just take down our website

and that doesn't help. Here is my question; the law says if material is provided to the public body in advance of the meeting, does it have to be provided to any requestor?

Chairman Munro – There is a distinction there, one is section 4 says if you have a website, you have to get an agenda on it; section 5 is if I come in and ask you, you have to give me the information.

Mr. Smith – Right, but my question is, so a developer goes to a planning commission a week in advance and says, I am sending to the planning commission my power point presentation, my 200 page analysis, my slideshow, it is all in a packet an inch thick with DVDs and brochures and so on, how would you now provide that to a requestor if that were the circumstance? You would not be able to say, gee we don't have the technology to do that, but the law says you need to provide a copy of that to a requestor at the same time it goes to a member of the public body.

Chairman Munro – They would go to the copy machine.

Mr. Smith – For the slide show and the power point presentation.

Chairman Munro – If it were up to me, I would just say, we will show them to you, come take a look at them.

Mr. Claussen – I like your idea of thinking about a list of actual materials that would be required by statute to be uploaded on a website. I don't want to let anybody off the hook but it just seems from a position of the general public that the general public has a greater vested interest in being able to see these; for example, the entire proposed budget of city government or the entire proposed budget of county government, then a 300 page environmental impact statement on a half acre piece of property in the middle of nowhere. So I think there are some documents that are much more critical than others. I think we should make a list.

Chairman Munro – Am I hearing that as an offer to volunteer to bring us back a proposed list?

Mr. Claussen – Yes, sure.

Chairman Munro – So on the next agenda we are going to have you bring back that list. Let me ask another question. If you look at subsection 4 where it says if a public body maintains you have to do the agenda and then you look at the other statute 241.035, what would be the general thoughts of, if you have minutes and you have a website, that you put them on your website.

Mr. Smith – Is there some kind of a sub clause to supporting material that anything that is provided as supporting material must be provided, but are there certain minimum things of that supporting material that must be on the website.

Chairman Munro – Yes, and he is going to bring back the list and then I kind of pivoted because that might be one of the things that should be provided. I pivoted a little bit to 241.035 because if you read 241.020 subsection 4 that says if you have an agenda and you have a website, you have to get it up. NRS 241.035 says the minutes are public record and my question was should we say something within 241.035 that if you have a website and it is a public record, you have to get it up there. Am I being clear on that? A parallel to section 4.

Mr. Care – Stated he had to leave the meeting for another meeting. I just wanted to leave you with this. Next time on the agenda . . . legislative committee meetings of the interim finance committee I will just leave you with that thought.

Chairman Munro – I think those are fair thoughts and in agenda item 7 we are going to talk about that very issue and I did my homework and I talked with Lorne Malkiewich about that issue.

Mr. Smith – Your suggestion is a good one, what I'm contemplating is that this is just one of the areas where the OML over lapses with the . . . law and so it would be good to examine how it is working, There is definitely an interplay.

Ms. Caron – One problem I see and other people have commented on is on section 241.020, section 6 on the second page, subsection A, from a public perspective when a copy of supporting material required to be provided upon request pursuant to paragraph (c) must be (a) if the supporting material is provided to the members of the public body before the meeting, made available to the requester at the time the material is provided to the members of the public body; the public doesn't know that until they walk into the meeting room and the board sits down and when they are discussing the topic item or reference their support material, there is no way members of the public would know that material has been give out to that board or commission as support material to research prior to coming into the meeting room. There is no clarification in that language or for us to know to request it to be as educated has done the research, as those members serving on the board. I just wanted to bring that to your attention if there is any way we could clarify that.

Chairman Munro – I think if we start talking about the minimal things that are posted that would be a start in getting the public that type of information.

Ms. Caron – I sat on a board two weeks ago, I was given support material and I saw that it was also posted on the website as support material so the whole public had everything I had until I walked into the meeting room and we are discussing, then there is a map and another piece of supporting material at the table. I did stop and say does the public have these. I think it is important that anything an agency can do to get all the materials to the public is important so the can be just as educated as the agencies and boards.

Chairman Munro – No further discussion. Moved to agenda item 7.

7. **CONTINUATION OF DECEMBER 19TH TASK FORCE DISCUSSION OF POTENTIAL APPLICATION OF THE OML TO LEGISLATIVE INTERIM COMMITTEES WHETHER CREATED BY STATUTE OR LEGISLATIVE RESOLUTION. TOPICS: APPLICABILITY OF OML TO OTHER STATE LEGISLATURES, SEPARATION OF POWERS, FEASIBILITY OF APPLYING OML RULES TO SUCCEEDING LEGISLATURES, ADOPTION OF RULES, CONSTITUTIONAL AMENDMENT: (BARRY SMITH, TAYLOR, DOYLE, AND LIPPARELLI). FOR POSSIBLE ACTION.**

Chairman Munro – As Senator Care mentioned . . . a representative or assemblyman from Washoe County has made a recommendation that the OML apply to the Interim Legislative Committees. At the last meeting I said I would contact Mr. Malkiewich at the Legislature and see if he would come or have someone from his office come to this meeting. He was very polite to me and very nice but he respectfully declined but he did say he believed that our interim committees are complying with the OML and that he believes there are some constitutional protections that apply to the full Legislature so I thought I would go over a few things with respect to the Legislature because it is easy to just jump in and say they are not doing the right thing because I do think they have an awful lot of openness in this. They put their bills up on their website so people know what they are. There is a constitutional requirement that their committee meetings be open to the public, they have a requirement that there be a one subject so it is clear for the public. Before bills are voted on they are read three times, the votes on the bills are public. They have an enacting clause. The bills are presented to the Governor and he has five days to look at them before he signs, so I think there is a lot of openness for the Legislature and the question is should the OML apply? I had George Taylor do a little bit of research on SJR 7 and the Nevada Supreme Court case talking about the OML and how it applies to the Legislature.

Mr. Taylor – I obtained the legislative history for Senate Joint Resolution 7 and it was interesting reading. There is only a few pages that are worth reading, it is not going to take a long time to do this. The proposed legislation in 1991 which added this language to the Constitution is “The meetings of all legislative committees must be open to the public, except meetings held to consider the character, alleged misconduct, professional competence, or physical or mental health of a person. It went to the Senate Committee first, Senator Adler moved it through. The problem that I saw in here was there was a great amount of confusion about the scope of this language, about what it meant to open legislative committees; for example, Lieutenant Governor Wagner, who in 1989 brought this forward, the same bill, thought that SJR7 included the Legislature in OML regulations. Senator Adler said no it only addresses session meetings and then the Press Association said their idea was the Legislature falls under the OML for 18 or 19 months between sessions, so there were a lot of competing ideas going through here and then in the meantime there was a lot of comment from other people who had their own ideas, so I can see where the end result, the matter that was approved in 1991, then 1993, and then finally went to the voters in 1994 which said the same language, but the argument for passage in 1994 for the voters, which by the way

passed 285,000 to 79,000, was this: “Argument for Passage – The Legislature is not subject to the divisions of Nevada’s OML, although it would be difficult to conduct a legislative session in an efficient manner and still comply with certain provisions of that law, it is essential that there be a guarantee in the Constitution that all legislative committee meetings, except personnel sessions, be open to the public.” So, while giving a little lip service to the OML, it is clear that the public was notified in the arguments for passage that the Legislature is not subject to the OML. Essentially it only means that legislative committees during the session are open, there are no notice provisions, and that is what many people brought up to both the senate and assembly committees – hey, we need notice provisions, put that in the bill, even put it in a statutory form to give the public an idea. So all that constitutional amendment meant was when they are conducting business its open, but they have the right to not publish notice provisions. I have a letter from Lorne Malkiewich dated May 2, 1989 to Senator Sue Waggoner. In relevant part it says “It has been suggested that the OML, Chapter 241 of the NRS, could be amended to make that law apply to the Legislature. It is the opinion of this office that a constitutional amendment is necessary to make the requirement binding upon subsequent legislatures.” I know at the last meeting you and Scott were talking about how each legislature is different from the one before. He goes on to say “A subsequent legislature could by rule provide for closed committee meetings. If the constitution is amended specifically to require open meetings of legislative committees, that decision would be an exception to the House’s power to determine the rules of its proceedings.” That is Exhibit D to one of the committee meetings.

Chairman Munro – So it sounds like the people of the state of Nevada said we are going to create an exception and that is you are going to have open committee meetings.

Mr. Taylor – That’s right and it is very limited. They don’t have to follow the three days before 9:00 a.m. type thing from the OML. All it has to be is open no matter when they meet.

Chairman Munro – Is there a difference between the interim study committees, the legislative commission, and the interim finance committee?

Mr. Taylor – At the last meeting Mr. Doyle mentioned that there are ways of creating these meetings statutorily, like this was a senate concurrent resolution and there are ways of doing those things. The legislative commission of court is in statute.

Mr. Smith – The key word being that the Legislature is under a 120-day time constraint and that is why although they do operate openly, Mr. Hickey’s proposal would clarify that, would end any doubt. He would just add three words; “while in session” the public body does not include the Legislature of the state of Nevada while in session to make sure there was no doubt.

Chairman Munro – While in general or special session.

Mr. Smith – I'm sure that will be the first question that comes up, so the Legislature while in session and this is the way I understand it and I think this is the way it operates. The Legislature, while in session, exempts itself from the OML. It operates openly in many ways, committee meetings must be open by that amendment, but the notice requirements and the other facets of it are not in play.

Chairman Munro – Let me ask two questions and throw it out for discussion purposes. I don't speak for the AG, she is ultimately going to determine any of our bills. What about the thought of, since this is such a topical discussion at every session, all the time about why the OML doesn't apply to the Legislature, what about the idea of bringing something like Mr. Hickey suggested and having a public debate about it, and maybe not asking this committee . . . and is it a good thing, is it a bad thing and maybe just say, is it something we should talk about? Another thing I wanted to throw out to the committee is – do we have a potential separation of powers issue and that is it is easy to say the OML applies to the Legislature, but who is going to enforce that? Is it going to be the AG's office? I am not sure that could be an executive branch agency doing that.

Mr. Doyle – Some thoughts on your last point. I think it is well taken. We have a judicially created concept in the context of ethics legislation in cases like *Dumphee vs. Sheehan* in 1976 and *Hardy vs. Commission on Ethics* from 2009, where our court pretty zealously guards the separation of power between the executive and the legislative branch under Article 3, Section 1, but the *Hardy* case is interesting because it creates this new concept of core legislative function and so far the court has said that applies in ethics legislation but there is nothing to prevent the concept in the proper factual circumstance from being extended by the court to apply to something else like the OML if the Supreme Court chooses to extend their judicially created concept that far. The problem with that is then is the court going to extend core legislative function to legislative functions outside of regular and special sessions to some of these other groups that we have mentioned, such as interim finance, legislative commission, and things like that, and the short answer is – I don't know. I am going to offer up that possibility and Assemblyman Hickey can discuss this or share with us whatever research from the Legislative Counsel Bureau legal division that he wishes to share with us, but in theory you could even have the bill that Assemblyman Hickey is proposing for passage and approval if passed and approved, subjected to the same kind of after the fact disablement or voiding that the Supreme Court imposed on the joint membership of the Ethic's Commission in the 2009 *Hardy* Case where they said we are not going to have the Ethic's Commission as an executive branch agency basically pass upon the core legislative activities of legislators during a regular legislative session. They may take that same logic and bring it to OML compliance and my concern is they may extend it beyond regular session or special session analysis to some of these other standing groups that function in the place of core legislative session when the Legislature is in adjournment. We are standing in the bottom of a sand pit and we have a real small shovel to shovel it out and it is sliding back in on us faster than we are pushing it back out.

Chairman Munro – What if the Legislature was required to appoint somebody to a termed appointment to evaluate OML complaints?

Mr. Doyle – I think they would tackle that under their standing rules. If they are going to somehow, either legislatively or by rule, make them subject to one degree or another to a requirement comparable to the OML in compliance with SJR7 or even maybe extend the scope of that, the discipline would rest with the membership of the Legislature. In other words, they would either appoint themselves as a committee of the whole or one or more as a special group to take care of discipline and enforcement within their branch of government. I don't think they would look to the AG's office for that type of thing because that would be going across from the legislative branch to the executive branch.

Chairman Munro – Right, I get that, but could they do it by statute, create a framework by statute as opposed to a standing rule.

Mr. Doyle – I go back to the problem that each legislative session reconstitutes itself and they are the judge of their own qualifications and membership and so I have concern about them trying to do that in statutory form and it probably will only be good as long as somebody withstanding doesn't challenge it. To me it seems like it is a concept that under the current state of the law that needs to be embodied at the outset of each session in the Legislature's rules. I may be wrong on that but that's what I shared with you last meeting and I haven't seen anything yet to change my mind but I welcome to be educated because you have got the statute book open.

Chairman Munro – No I've got the Constitution out.

Mr. Smith – I would reiterate also that I honestly think all a statute could do is instruct the Legislature to adopt open meeting standing rules prior to each session. There is nothing that says they have to do that. I think there could be a statute that lays out some broad standards and then leave it to each session to adopt rules specific to that session satisfying the statute. Does that make sense? You would not be able to get very specific, such as notes.

Chairman Munro – It does. To continue the discussion a little bit with Mr. Doyle, I believe the Secretary of State's office regulates elections and public disclosures and they fine legislators. Are you saying that is something outside the core of legislative function and I won't hold you to it?

Mr. Doyle – It may well be because as I remember the facts in Hardy were that the conflict arose in a committee hearing process during a regular session so the court was being pretty conservative and had a nice fact pattern there when it developed this concept. It may well be that campaign finance disclosure thereof; the court would be very comfortable with saying that is not a court legislative function and the conduct of elections is an executive function, the responsibility for which is positive in the Secretary

of State's office, this is ancillary to that so we are fine with them. My speculation and \$3.50 will buy you a small cup of coffee on this one.

Chairman Munro – Fair enough. I guess my thoughts on this agenda is that it is so complicated that I'm not sure if we can come to a resolution at least quickly, but is it something that it would be fair to say would be a good thing for the Legislature to discuss. They did 20+ years ago.

Mr. Smith – Assuming that Mr. Hickey introduces this bill, that at least will be a topic and I discussed with him that we had had these discussions on a number of things and we had this task force and so on and said that anything that might come out of this committee is probably going to get lumped in with his bill anyway.

Mr. Doyle – In one of my campaigns for public office in Douglas County I had a local attorney make me an offer where he said that he would either talk for me or against me depending on which I thought would do me the most good. It seems to me that maybe this group could consider making the same or a comparable offer to Assemblyman Hickey that we would either talk in favor of his bill or talk against it depending on what he thought would help the bill make the most progress through both houses of the Legislature.

Chairman Munro – That's a great suggestion. What about if we invited Mr. Hickey to come join us and at least make a presentation on this. The members thought that would be a good idea.

Mr. Fontaine – I am not sure we can come to any quick resolution on this issue but I think we need to go back to our prior meeting and remember why we are even talking about this and the reason is because there was concern that things were happening in the Legislature that would tend to disenfranchise certain groups, in my case county governments and things were being done where we felt hearings were held and decisions were being made that had a tremendous impact on our members yet really wouldn't have an opportunity to get involved in those discussions and again for our membership, we have got county commissioners that live eight hours away. To be able to drive in on a moments notice to participate on a public hearing that affects them directly is something that we felt like we needed to have the opportunity to do, and so I would personally prefer just to at least continue this conversation to try to engage Mr. Hickey and others to see if there is any appetite whatsoever and if maybe at the end of the day we can compel the Legislature to do anything, but if nothing else maybe there needs to be some message or some consensus of this group that we are concerned and we feel like something needs to change.

Chairman Munro – Fair enough and I will bring an example up in conjunction with your point and ask Mr. Taylor if he would go get for our next meeting a copy of the interim finance committee minutes, I believe it is for January or February of this year where there was an agenda item and it was labeled as "withdrawn." They voted to amend their agenda item not to be withdrawn and then took a vote on it. I won't pass

any judgment on that I will just say that maybe that ought to be looked at. When we put our report together and people want to know what we looked at, that might be in line. If the counties had done something like that, they may have some trouble coming their way and Mr. Miller, Mr. Lipparelli, and Mr. Doyle formally when he was District Attorney for Douglas County might have been trying to figure things out if something like that had happened and so your point about two sets of rules may be applicable. We will probably bring this item back at the very least to take a look at the minutes of the interim finance committee meeting.

8. **DISCUSSION OF “PERFORMANCE REVIEW” FOR APPOINTED PUBLIC OFFICERS. IS THERE ANY ROOM OR NEED FOR ANY SHIELD FOR THIS PROCESS AND FROM THE PUBLIC EYE AND THE OML? TREVOR HAYES, FOR POSSIBLE ACTION. (ITEMS 7 AND 8 MAY BE CONSIDERED TOGETHER).**

Chairman Munro – Mr. Hayes is not in attendance, so we will move forward to agenda item 9.

9. **DISCUSSION OF EXEMPTION FROM OML FOR THE PROCESS OF APPOINTING OR HIRING COUNTY CEO/COUNTY MANAGER. JEFF FONTAINE. FOR POSSIBLE ACTION. (ITEMS 8 AND 9 MAY BE CONSIDERED TOGETHER).**

Mr. Fontaine – I am not sure how I got attacked with this agenda item, but I think it has to do with bill draft request that NACO submitted back in 2009 and it wasn't related necessarily to the point of hiring a county CEO or county manager, it was related to the performance evaluations of those chief or appointed officials in the counties and cities but I think during the discussion by this group it sort of got mucked together so I think the discussion really is somewhat two-fold; one is what I just described the requirement that the chiefs and CEO of the county or city have their performance evaluations done in a public meeting and also now this piece which is when a county or city or other governing body is going through a hiring process, is that subject to the OML so I can really only speak to the first part of it.

Chairman Munro – So I guess we will consider 8 and 9 together. Mr. Lipparelli submitted a letter and Paul could you tell us about the letter you sent for consideration.

Mr. Lipparelli – After our last meeting I became aware of the position of the ICMA, which is the International City and County Manager's Association, the perspective that they have on the public evaluation of county and city executives, this is an organization that trains and provides credentials to these professionals and sort of speaks through them. They did in their letter point out some of the negative consequences of public evaluations of these executives. There was apparently an article that was offered by a professor at the University of North Carolina describing the purposes of the review of executives to give the managers feedback on their performance to clarify the strength in their relationship with their governing board and to

make decisions about the manager's salary for the upcoming year and the finding if there is not an opportunity for open lines of communication that help to develop cooperation and an effective working relationship, it is detrimental to the relationship and doing those evaluations in public is just undoubtedly leading to more restrained communication, a more carefully worded, maybe some might even say benign and meaningless level of communication, instead of the real open dialogue that would help develop this relationship, so the recommendation for Nevada's law is certainly conduct the votes on compensation and votes on changing the contracts with the managers in a public session but to give the opportunity that used to exist prior to the change in the law where those evaluations could be done privately by every other employee of both government . . . and allow that dialogue to be encouraged, so I provide this letter as at least one perspective on the wisdom of the policy decision embedded in Nevada's law that requires the evaluation to be public.

Chairman Munro – I get what you are saying about bifurcating maybe a little bit of it. Paul, do you think you could bring us some language for our next committee meeting that would have a type of a bifurcation, and food for thought it could be that maybe the ultimate evaluation whether it be good or positive or whatever that it be public. That is food for thought. Mr. Lipparelli stated he would be happy to do so.

Mr. Fontaine – I think that was pretty much the essence of the NACO bill draft request was a bifurcated process including a general summary of the evaluation results as well as any reporting of an adjustment to compensation or anything like that, but I will go back and dig that up. Mr. Fontaine will send it to Chairman Munro and Mr. Lipparelli.

Mr. Brockman – At the February meeting of the Nevada League of Cities where 22 members were represented this issue was discussed, there was very strong opinion from the entire group that steps be taken along the lines that Mr. Lipparelli has suggested and it would certainly get that organization's strong support to be able to do a closed for the purposes of discussing, but not taking action, and then have an open meeting immediately following where action could be taken relating to anything that came out of the closed meeting.

Chairman Munro – My sense of open government has always the intent that open government is better government, but part of being and having a good government is good folks that perform well and sometimes some constructive advice can help people perform better on behalf of the citizens, so it certainly is not without merit what you are requesting.

Mr. Lipparelli – I don't know if I mentioned it at our last meeting but I am familiar with a county executive who was informed that a perspective employer somewhere else was able to quickly locate comments that were made in a public session during her evaluation period by a member of the public which resulted in her perspective employer having a concern about her abilities or reputation. Of course as the head of the local government you are somewhat a public figure and you are exposed to and rightly so to criticisms and comments from the public, but the point of her bringing it to my attention

was that it happened during her evaluation period and these people may not completely comprehend the potential effect they are having on the reputation of these people in the job market and maybe unfairly jeopardizing their professional futures. So it is a very powerful thing to get up in a public meeting, put something on the record, and have that follow someone around. I am not suggesting in any way that there should be no public comment during the vote that must be taken to change the compensation and contract terms of the executive, it is just that this comment came up during the public evaluation and was prompted by comments that were made during that evaluation period and it had a very long lasting negative affect.

Mr. Doyle – My experience after the 2005 change in this law was relatively limited but as a matter of anecdotal history I will tell you that there was a significant change in the type of constructive comment that would be shared in a closed session versus what was shared in an open session in a county executive context because of this change in the law for the very reasons that Mr. Lipparelli just pointed out. I have not been in public office since January 1, 2007 so I don't know if that trend has continued but from Mr. Brockman's comments that he brought forward from the League of Cities meeting, it seems like that trend has continued. I didn't know if Ms. Miller is still with us, but if this is a problem in Southern Nevada. I know when we propose or at least consider proposing a change to the law where we are taking a process that is open currently and perhaps recommending that part of it be moved back into a closed session, that it can be a difficult proposal to convince Legislators, is good public policy, but to put it scenically, what we have created right now in all honesty is a situation where there is going to be relatively insignificant constructive criticism given to a CEO right up until the time that there is a sense on the part of at least a majority of the CEO's appointing authority that this individual has to go and then at that point everything is going to come forth, a decision on that CEO's continued presence with that entity, a decision is usually going to be made as soon as that can be noticed and the public as well as the CEO are going to be left with the impression – what happened, what went wrong, why did it go wrong, why weren't there some sign posts along the way? We have that situation right now with this very public process and I think that if we could constructively move back to a bifurcated process similar to that proposed, I think it was in the NACO bill of 2009, that it will not only save reputations of people who are CEO's that decide to make a change, we may allow many of those CEO's to continue to provide meritorious service to many of our jurisdictions here in Nevada before legitimate reasons for making a change are made. Right now I think frankly we are shooting ourselves in the foot and cutting ourselves off from good talent perhaps under less than optimum circumstances, we should always be optimizing the tenure of our good CEO's and I don't think we are doing that currently with the present structure that was placed in the law in 2005.

Mr. Smith – I do want to say that I am open minded, I will look at something that is brought here to consider, but I did go to ICMA's website and looked at some of their best practices for evaluations and so forth and either I didn't see it or it is not there. All of the discussion was between how effective was between the governing body and the manager and I found very little discussion of how the public gets involved in the

process. When the evaluation takes place in private behind closed doors all the dirty laundry is aired, the decisions are made, and then you come out and put on a show for the public and you have a hearing, you have a public evaluation process, but it has all been decided. The article I read is a neighboring state where they do not have open evaluations but the city manager was fired. He was gone. His previous evaluation, the numbers filled out on the charts, the comments made by the council members were all positive. Something happened in a closed personnel evaluation meeting that caused them to fire the city manager and there was not public discussion, they came out, the vote was taken in public, but there was no discussion of why, what happened, and there was a lot of discussion from both sides. This is better for the reputation, in fact the city manager if I recall correctly said something about, "yes, I wanted to be able to exit with my dignity." Well that did not serve the public whatsoever. It helped the governing body, it helped the city manager, as for the public – they don't know what happened. That is what I want to avoid, so if there is some process that I haven't seen and I'm not familiar, that meaningful public input happens during this evaluation process and not one where all the decisions are made behind closed doors and there is a show for the public, yeah we will listen to you, but it is already over. I'd be interested in see it.

Chairman Munro – Mr. Lipparelli is going to bring something. I think what Mr. Doyle may be saying and he speaks more eloquently than I do, is the alternative is what is happening now is people are making decisions without any input and somehow those things get on an agenda and usually those things don't get on agenda unless there is the votes.

Mr. Smith – That's why I'm interested, can we come up with something because there is a problem one way or the other at the two extremes, so if there something that will actually work, I would like to see it.

Chairman Munro – I read the paper pretty closely and I have never seen the city manager whose tenure is up for a vote beat the vote.

Mr. Claussen – I agree largely with Mr. Smith on this and I think that if the governing body is not required to make sort of at least public . . . and the evaluation is done in private, the public doesn't learn anything. I have also been in situations where there are certain facts given, a choice between the decision being made completely in private versus being forced to do it in public and it is just a dog and pony show in public. If there is no requirement for a public disclosure at least a summary of what happened in public. I also would point out that someone used the phrase a few minutes ago that say a county manager or city manager is something of a public figure. They are a public figure. **NOTE – HARD TO UNDERSTAND ALL OF WHAT MR. CLAUSSEN WAS SAYING.**

Mr. Brockman – I need to ask Barry a question. Would written comments into a closed session suffice to get public input into the closed session, written communication submitted from the public? I can see the point of getting public input into a closed

session, but I don't know how to do that other than some sort of a written communication to the chair to be considered during the closed session.

Mr. Smith – Part of my argument is always that this evaluation, it is arguably the most important thing a city council or county commission is the hiring of the county manager. Part of the public's interest is in seeing what their elected officials are doing, how they are interacting. That is the part that the law intends us to get but we are not actually getting because the officials are reluctant to do that, to talk frankly in public about their evaluation. Take public input into the closed session but the other part that I see is making sure that what happens in the closed meeting comes out. That's the other part.

Mr. Fontaine – I was going to suggest that it is really two pieces that we are interested in, one is the public input piece and the other is the actual violation, and again going back to the SB32 from the 2009 session, there was a requirement for an analysis within thirty days of evaluation again along with any of the changes in the contract or conditions of employment, but as far as public input is concerned we could actually just require prior to the evaluation, a public comment period so that prior to going into closed session to do the actual evaluation, you could have a public comment period and those comments could be taken under consideration as part of the evaluation.

Mr. Fontaine – The other part of this was the hiring and firing of chief executive officers and I don't know if that is still something you want to discuss or that should be part of this or how do you want to handle this?

Chairman Munro – I think Mr. Lipparelli's bringing this to us is going to cover that but if you want to add some more points you are welcome to.

(unrecognizable voice) – I think it is a distinct issue, I think there are different policy reasons why you would want to consider doing that in closed session other than what you are doing with an evaluation. People who might be interested in a particular position who are very well qualified might be reluctant because they fear that their current employer might find out, so I think that you might inhibit some really good candidates for positions from applying because of the possibility that they might be one of three finalists.

Mr. Smith – I have a totally opposite viewpoint but I do agree that this is an issue because the issue as I see it is that local governments hire private search firms to conduct the initial phase in order to get around those names of the initial applicants being published.

Mr. Fontaine – Finalists are identified and interviews are conducted in public. Is that true and accurate. It is just kind of a question of what do you define as a finalist, the last three, the last five.

Chairman Munro – Mr. Fontaine do you want to bring us a recommendation for the next meeting?

Mr. Fontaine – I would be happy to but I just want to make clear that this a NACO initiative, but if the group is interested in pursuing this I would be happy to look at some alternatives.

Chairman Munro – What's the pleasure of the group?

Mr. Brockman – I think it is of sufficient importance that it needs to be looked at. If Jeff is willing to do this, please ask him to do this.

Mr. Fontaine agreed to bring a recommendation to the next meeting.

Chairman Munro – Any other thoughts on this?

10. SUMMARY AND DISCUSSION OF LEGISLATIVE 2011 OML LEGISLATIVE ENACTMENTS: AB 59 AND AB 257:

AB 59, was enacted on June 23, 2011.

Section 1.5: Quasi-judicial bodies become subject to OML.

Section 2: publication of an Attorney General opinion finding a violation of the OML.

Section 3: administrative subpoena power.

Section 4: definition of "public body."

Section 5: additional agenda informational items.

Section 6: monetary penalties for violations of the OML.

AB 257: new public comment requirements.

(Taylor)

Chairman Munro – I think I am not going to bring this up for discussion. It is just a summary of last year's legislation and we have had good discussion here so I want to make sure we don't have meetings that are too long. I will go to public comment, agenda item 11.

11. COMMENTS FROM THE PUBLIC – PLEASE LIMIT COMMENTS TO 5 MINUTES.

Chairman Munro – Anyone from the public in Carson City or Las Vegas. No one from the public present.

12. Adjourn. For possible action.

Meeting adjourned at 4:30 p.m.