

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

Draft Minutes of Meeting
(Subject to revision and correction by the
Open Meeting Law Task Force)

Thursday, August 16, 2010 at 1:00 p.m.

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

Committee Members Present in Carson City

Keith Munro, Asst. Attorney General, Chair
Scott Doyle
Paul Lipparelli
Arthur Mallory
Barry Smith
Judy Caron
Gene Brockman, Nevada League of Cities (for David Fraser)
Randy Munn (for John Kadlic)

Committee Members Present by Phone

Trevor Hayes
Maggie McLetchie
Senator Terry Care
Tom Mitchell
Mark Hinueber

Committee Members Absent

Catherine Cortez Masto, Attorney General
Debbie Smith, Assemblywoman
Mark Lundahl
Brad Jerbic
Mark Lundahl
Jeff Fontaine
David Roger

Public Present

Diane Belding

Attorney General's Office staff present

George Taylor, Senior Deputy Attorney General
Keith Marcher, Senior Deputy Attorney General
Jim Spencer, Chief of Staff
Edie Cartwright, PIO
Brett Kandt, Senior Deputy Attorney General

1. Call to order, roll call of members, and introduction.

Keith Munro called the meeting to order at 1:00 p.m. and explained that General Masto is ill and he would be conducting the meeting in her absence. Roll call was taken and it was determined that a quorum was present.

2. Review and Approval of Minutes from the June 10, 2010 meeting.

Keith Munro asked if everyone has reviewed the minutes.

Judy Caron asked for clarification on page 9 where it is stated that over the last three years of the cases that came before us there were 49 cases and out of those 49 cases there were only 21 violations. Is that pertaining only to 2009, the 49 cases and not all three years?

George Taylor indicated that is correct.

A motion to approve the minutes and seconded. Vote taken - all ayes, no nays - motion was approved.

3. Legislative Agenda.

Keith Munro asked George Taylor to give his report on item 3.1.a.

George Taylor reported that at the last meeting he was requested to bring back to this meeting a staff report, basically a factual summary of the 21 violations that this office found during the 2009 calendar year. The report is for the purpose of reviewing the nature of the violation to serve as a basis for discussion by the Task Force of whether additional enforcement provisions are warranted to strengthen the enforcement of the OML. This report was uploaded to the website. He asked if everyone had seen the report? George Taylor stated that after he reviewed these violations and made the summaries, he felt like there were few if any that did not warrant an application or could have warranted an application for a fee or fine. The vast majority of these violations are what we call technical violations. There were violations of the agenda, the public comment portion of the agenda, and several regarding the "clear and complete" rule. George Taylor began with a description of each of the violations covered by the report.

#1 – Round Hill GID. This was a technical violation. The body just simply failed to send a notice of the meeting even though the recipient had asked to be on the mailing list. When I spoke with the general manager, he said he knew and was very sorry, it was an inadvertent oversight because of a new reporting secretary. Nevertheless, the general manager agreed to ensure compliance with the OML for mailing agendas and correspondence to the public.

#2 – Mesquite City Council. This violation was a little more involved but basically it was a public comment violation. The council determined that they would restrict public comment, but the restriction conflicted with the OML requirement that the public gets to comment on any matter within the public body's jurisdiction and control. The Mesquite City Council's effort was in conflict with that OML provision. The Council quickly agreed to cure a clear cut violation of the OML and one that appeared on the face of the agenda. We received notice of compliance from the Council that the action item had been re-agendized and that the Council's public comment period had been amended.

#3 – Nevada Board of Parole Commissioners. This is not a public body, but nevertheless, their statute does extend certain rights to the public, one of which is that the Board must give reasonable notice of the meeting and the opportunity to be present at the hearing. The Board cured an agenda violation at the meeting because when the matter of notice was brought up, they quickly said they would re-agendize the matter for another meeting. There was no dispute.

#4 – Sandy Valley Citizens Advisory Council. The public body recording secretary claimed she had posted the agenda when in fact the investigation revealed that she had not. When the public body met, the county representative queried the recording secretary whether the agenda had been posted. She claimed she had posted it, yet a member of the public said, no, it had not been posted. We wrote an opinion at the time stressing the importance of posting its agenda. The recording secretary resigned immediately after this incident.

#5 – Virgin Valley Water District. This was a violation of the clear and complete rule. The agenda items did not inform the public of an unwritten purchase agreement which the general manager entered into without Board knowledge. This had to do with water purchases. The matter was settled. Once we investigated it, the VVWD eventually voted on and instituted parameters for the general manager to use when entering into purchase agreements.

George Taylor asked if anyone had any questions.

Terry Care asked about Sandy Valley. Who violated the OML, the public body or an employee of the public body?

George Taylor said he felt the Advisory Council was in violation, that the colloquy at the meeting suggested that the recording secretary was asked, the

public body did investigate and went forward in good faith on her recollection that, yes she had posted the meeting, but when we investigated sometime later we found out that she had not.

George Taylor moved on to Page 3, the two Fernley City Council files. One of them has to do with a violation of a supporting materials violation in the OML, and the other had to do with a violation of public comment.

The supporting materials violation had to do with an evaluation of their new city manager. The city manager hand delivered an employment counteroffer that was never distributed to the clerk and the public never had the benefit of the document during the public meeting.

The second one was a violation concerning public comment. We were informed it was a clerical error. The matter was cured at the meeting when the public body publicly adopted a public comment agenda item. The problem there was that it had been inadvertently left off.

Page 4 – Henderson City Council. The allegation here is that there was a secret ballot. The selection process for a new city councilman had been settled upon and adopted by the City Council, but it was taken right out of Robert's Rules of Order. The selection process did not allow for public comment, and in fact when we reviewed the minutes of the meeting and the video tape of this meeting, there was no public comment from beginning to end. They started with 14 nominees, narrowed it down to 6, and then there was a vote with the so-called secret ballot. We required, with Henderson City Council's full cooperation, that they re-agendize the matter, recertify the ballots and release the material, and then they went through this portion of the process again some days later. Another issue in this case and one that has arisen from time to time is the issue of deliberation. The complaint suggested that because there was no deliberation during this entire process that the selection process was a violation of the letter or spirit of the OML. Yet, there is nothing in the OML that requires a public body to deliberate. As we said in the opinion, "failure to verbally deliberate the qualities of the candidates before balloting was not a violation of the OML, because the OML only requires that it take place in public, that is, if you do deliberate."

Any questions or any discussion regarding this case.

Senator Care - Were there any minutes of any public discussion about Robert's Rules of Order being what they would rely on here?

George Taylor indicated he was informed during his investigation by the City Council of that fact. To answer your question, no, I do not recall in the minutes or in the video that Robert's Rules of Order had been the basis for the selection process.

Senator Care - Was there anything in the investigation that would suggest that city council members themselves discussed that or discussed it with the city council or their attorneys before the meeting?

George Taylor stated what we did learn was that the Mayor had discussed this issue with each council person before this process even took place, but I don't know how long before it had taken place.

Page 5 – Nevada Board of Wildlife Commissioners. This was about the “clear and complete” rule. The agenda item stated that it was for the purpose of discussing correspondence since the last meeting, but when the chair called for that agenda item, the chair engaged in another line of questioning. The chair apparently wanted to discuss with the director of NDOW some alleged misbehavior, he wanted to discuss his professional competence. It was clear to us that the chair exceeded the scope of the item with his comments on several unrelated matters. Here is what happened. During this discussion by the chair with the director of NDOW, another commissioner raised a point of order informing the chair that he was straying from the agenda and explained why. The chair refused to acknowledge the point of order and said, “well, I am making these comments and I am going to finish them.”

Moving on to page 6, the agenda in this case violated the “clear and complete” rule. This is the Clark County Advisory Board to Manage Wildlife. It was clear legal counsel for this body acknowledged that there were discrepancies between the posted agenda and the items on which the board took action. It is true that the Board did not have the final draft of the Commission's agenda from the Division of Wildlife which was a prerequisite for making their recommendations. Nevertheless, they violated the OML because CCABMW's agenda did not list the topics it would be discussing or taking action on.

Keith Munro commented that he felt everyone has a flavor of what the types of alleged violations are. Are the violations set forth in this document provided to all the members on this Task Force, pretty general of the type of violations there are? Is there anything out of the ordinary?

George Taylor stated the 21 violations are consistent with the 3-1/2 years he has been handling OML matters and are a good representation.

Keith Munro – So it would be fair to say that this is what we are trying to improve upon.

George Taylor indicated, yes.

Keith Munro moved on to Item 3.a.2.

George Taylor indicated this is a discussion item. There is no report on this; we have discussed the issue before. In the OML manual there is a section regarding cure or corrective action. My recollection of the discussion of this matter in prior meetings is that cure should be coupled with other enforcement provisions, whether it is a fine or fee schedule, whether it is a public acknowledgment of a violation. George Taylor stated he would like to make one more mention of a case that the Task Force needs to know about.

George Taylor stated this case was the Douglas County Board of School Trustees. Moving back to the report on the factual summary of 2009 violations. This case is on page 4. The reason I wanted to come back to this is that even though this public body took corrective action by re-agendizing this matter, the president of the Board of School Trustees announced that the special session was only to cure the dispute about whether the private meeting among three members the week before, had been a violation of the OML. The president pointedly stated she was not admitting to an OML violation. It occurred to me that I needed to bring this to your attention because as we have moved on in the agenda to 3.a.2, we are talking about cure and coupling it with other issues.

Keith Munro asked how they handled the housekeeping aspect of that meeting. If it had been approved and if they weren't admitting to a violation, then the action stood, and so by merely re-agendizing, did they go through and rescind their prior action and then take it again?

George Taylor stated no. What happened at the private meeting between the president and two trustees was they were preparing an evaluation procedure to distribute to the other members of the Board of School Trustees for the evaluation of the Superintendent. The private meeting was just a proceeding to agree upon the evaluation procedure. What we did was make them do that completely over in the open. That to my way of thinking is corrective action and even though the president didn't like it and refused to admit it was an OML violation, nevertheless in my view after looking at the minutes for the second meeting, it appeared to me they cured.

Keith Munro asked so does that lead to the next item on the agenda, the cure? With the statutes passed by the Legislature and if we are going to have the public bodies cure violations, should we have the Legislature weigh in and give guidance on how they want these violations cured?

Judy Caron - Case No. 09-031 on page 5—since that was designated as a non action item that came during comment, I have the same question—what is the cure for that and is that something we are looking at when we are talking about fines where he did not acknowledge. What is the cure?

George Taylor stated that is for discussion by the Task Force, but my view is that whether it is an action or discussion item, a cure is appropriate.

Keith Munro – The question I will throw out to the panel is how to cure an alleged violation. Is that something we should get the Legislature to weigh in on?

Art Mallory stated it is possible that inherent in the AG's power to enforce the OML might be the power to promulgate rules and regulations to encompass this cure. I think everyone would benefit from having a written schedule of actions that would be required by the AG in case they deemed it was a violation and these actions would be termed "cures." I am very uncomfortable looking at 09-031; that was a clear violation of the OML where the discussion in public was inappropriate and it didn't say here that whoever made the comment apologized, or corrected it, or struck it from the record, or anything. There was just nothing. So I would suggest that possibly rather than burden the Legislature with all these things, it might be within the AG's ambit to establish a schedule for these things to be approved by the Task Force and maybe let the Legislature see, but I think it ought to start here.

Keith Munro stated there are a couple of issues there. I am not sure we have the ability to promulgate regulations with respect to the OML, so we would have to get the Legislature's approval for that; and secondly, to the extent that we promulgated any regulations, we would have to go back to the Legislative Commission for approval.

Art Mallory stated I still think this would be the best source of the cure schedule and then take it to the Legislature and make their job a lot easier.

Keith Munro – So conceptually, it would be fair to say that people think we should have a cure, what that cure method should be is open for discussion but we should probably have some sort of cure.

Art Mallory – People like to see a schedule where they know what the result of misconduct will be.

Keith Munro – I am still having trouble a little bit with the difference between, if we pass regulations, we have got to go to a subset of the Legislature, the Legislative Commission. Wouldn't it be better to go to the full Legislature and get them to weigh in?

Art Mallory stated he feels it would be better to deal with the Legislature.

Randy Munn stated it is his understanding that essentially it is almost like a settlement agreement because you have prosecutorial authority and you have noticed the violation to them, you have said if you do XYZ then I won't prosecute you and obviously you are running against your 60 - 120 day statute of limitations in that process, but ultimately, when they agree to do a cure they are satisfying your conditions for a settlement to avoid litigation. In that process it is an offer

you make in a letter form and they either do it, or do they agree in writing that they will do XYZ?

George Taylor stated that much of the corrective action we require from public bodies occurs on the telephone. I speak with counsel on the phone and as soon as I understand that there has been a violation, we negotiate a lot of times on the telephone and the result, of course, is re-agendizing the matter. The proof of the corrective action is the re-agendized meeting or reconsideration of the item.

Randy Munn - so I don't understand why you would want to codify your prosecutory discretion.

Keith Munro stated so everybody knows what the penalties are.

Randy Munn – you could enter into a settlement with the public body. They know what the rules are if you nail it down and say if you do XYZ you will cure this violation and we will let you off the hook. If you try to codify that, then you going to have either a codifying process which is a settlement process that you are codifying, or you are going to need to have a list that goes forever about circumstances that you will cure and what you won't cure.

Keith Munro – There are two aspects to this. There is one, the acknowledgement that they are agreeing to a violation, but there is no current requirement that they do that now, and even now the ability to cure is a little bit iffy under the statute.

Randy Munn – It falls back to prosecutorial discretion, whether to prosecute or not.

Paul Lipparelli stated he doesn't think there is a one size fits all situations. The different kinds of violations probably cry out for different kinds of cures. If we have a technical violation that involves one item on an agenda, that certainly should not invalidate other items on the agenda that were properly noticed and conducted and we have some people who we work with in our public who tend to believe that certain small violations could invalidate the entirety of the agenda. I would like to see, if not codification, maybe some description of the parameters of the cures. For example, if the public didn't get to participate fully in an item on an agenda because it wasn't clear and complete, they have lost the opportunity to be there during that item and the cure there ought to be to put it back on and do it over again. But if the violation concerns going too far in response to a public comment, I fail to see how doing something again with that item is going to be of a benefit to the public and that is the overarching purpose of the law is to make sure the public is there and can participate and witness, so I agree with Randy's notion that it is going to be difficult to comprehensively cover all the possibilities but it may not be bad if we had a range. If this is the kind of

violation, then this is the kind of a cure. That might help us to be able to advise our clients.

Keith Munro – **Let's move on to agenda item 3.a.1(3)**, discussion of proposed removal from office provision (public body members) based on the number of violations within a defined timeframe.

George Taylor stated the Task Force discussed many of these items together as a package of legislative issues. The removal from office provision was discussed at the last meeting. We actually looked at one of the handouts and found that a few states allow removal from office, but that generally there had to be violations within a defined timeframe, so this issue was placed on the agenda again for discussion purposes with regard to this idea of coupling several enforcement provisions together or decoupling these enforcement provisions.

Randy Munn stated that his only concern about having a provision for removal from office is that it is going to force us to litigate every nit and cranny of every violation we come across in the cure process because we can't allow our client, the council, to be exposed to removal from office without having to fight tooth and nail to the end and that is not going to be a very positive process and it will be expensive.

Keith Munro stated that at the last meeting Barry Smith from the Press Association gave a synopsis of all the states. Is anybody aware of any state where someone has been removed from office for violation of the OML?

Judy Caron commented that one of the provisions in the statute says that a member of a board may be removed for due cause. I could not find a true definition for a particular board of what is due cause. I don't know if that needs to be addressed here, or if it could be expanded, or if that is a broad open-end statement on a particular board or commission. Does the OML fall within it if it is a repeated violation?

Keith Munro asked Ms. Caron if she would like to do research on that issue, bring it back to another meeting, and make a presentation. Ms. Caron indicated she would.

Paul Lipparelli suggested that the existing panoply of removal provisions that are all throughout the laws depending on the office you hold, be maintained and that the AG or some other tribunal be empowered to refer to the body that already has power to remove a case involving misconduct under the OML for consideration of removal if it met a certain threshold like maybe a multiple violation or something along those lines. I'm concerned that it will be difficult given all the different kinds of committees, boards, and commissions that we have and the various ways in which they are impaneled, to have a removal power vested in one or a few officials. In some other contexts a violation or

misconduct triggers a referral, not unlike the way the Bar Association deals with misconduct of attorneys. You get referred to the Bar and then the Bar takes it from there.

Keith Munro asked Mr. Lipparelli if that would work hand in hand with the cure provision of the public acknowledgment of the violation and then the body would have the opportunity to make a decision about whether it was serious enough for removal. Is that what you are saying?

Mr. Lipparelli – I can see those things working together but I also can see problems if you have a five or seven person public body where maybe the misconduct is a minority of the board and the majority of the board would be in an awkward position with regard to some of its colleagues on the public body as to making a decision about whether they ultimately face removal, so it is never going to be easy when you get to the removal question. I think Randy's comment is going to escalate every single OML case into litigation if the ultimate end is removal.

Trevor Hayes stated that just looking at the chart, [OML Enforcement provisions compiled by the Mass. Newspaper Publ. Assoc.; see it on AG's webpage] that other states have, one basis is intent to deprive the public of information, the other is after two previous violations when damages were assessed, and the third one I found was upon condition of a misdemeanor, so it is not every case that is going to meet these standards. The lowest one is intent, the other ones are conviction of a misdemeanor or two prior offenses. Not every case will turn into litigation for an OML violation.

Paul Lipparelli agreed and stated he did not mean to say every violation automatically goes to removal but what I did say is if removal is the last step in the process which begins with a violation finding. If I characterized Randy's comment correctly, it is going to turn up the heat on defense of those violations from the very beginning of the case, They are going to be fighting harder if they are facing removal, so I think the gentlemen in Las Vegas has a good point. They have set a threshold in these other states, multiple violations are when there has been a finding of intent met and that might be the way to go.

Randy Munn stated there is an existing statute for malfeasance in office or misdemeanors for removal by, I don't know if it is the DA or the AG or both, but I'm not sure if that reaches to a misdemeanor violation under the OML.

Terry Care - That was going to be my question because I don't know if anybody bothered to look but I would be curious to know as to those jurisdictions that have a mechanism for a removal from office whether or not anybody has been removed from office. Often statutes get passed because somebody says we need to do something about this, but in fact, it just never happens, the statute just never kicks in because nobody goes that far. I could be wrong about that but I

would be curious to know whether in these states anybody has actually ever been removed. It would seem to me the simple thing is if you have got one, not an entire body, but one, member of a public body who is the instigator here and it is quite clear a conscious effort to subvert the OML, that just might rise to a level of malfeasance of office and there would already be an existing statute that would kick in to govern that.

Scott Doyle stated that Nevada's law is compatible with that of several other states. We do have an existing provision for removal of office for conviction of a violation of Chapter 241, our OML statute, so we are like many other states. The removal proceedings that I believe we were discussing a moment ago are codified in Chapter 382 of the NRS, it is the general removal provisions and I think there are two or three alternative statutory remedies there. In addition to the removal for a violation of Chapter 241, there are also provisions there in a number of places specifying that you can remove somebody for malfeasance. The issue then would be whether you could include non criminal, civil, or a succession of non criminal civil violations of the OML within the ambient of that legal concept of malfeasance. The question is can you do it without statutory amendment at the current time, because I think that removal from office is not a legally favored remedy, that if you wanted to pursue removal from office for a succession of civil violations of the OML you would have to provide for that expressly in a place like Chapter 382 of the NRS.

Keith Munro – The statutes you referenced in 382, are there Supreme Court cases that limit those?

Scott Doyle – Yes, they are subject to a strict construction. I think that the standard of proof if it is not “beyond a reasonable doubt”, it is close to it, “clear and convincing” and so I think with those two concepts in mind you would have a difficult time trying to convince a court by way of interpretation to remove from office for a succession of civil violations of the OML absent a statutory change to the existing law of the NRS. That would be my opinion.

Keith Munro - I haven't researched the statutes in awhile but my recollection is that there are some cases that limit it and that it also only applies to local officials, not state officials.

Scott Doyle – For state officials, usually removal is provided in the State Constitution and so you are foreclosed from having a statutory remedy that is in addition to that.

Randy Munn – there is a section specific to state officers that falls under the Constitution and the rest fall under Chapter 383.

Keith Munro asked Mr. Lipparelli to give his presentation.

Paul Lipparelli indicated that he went back to his finance people and found little enthusiasm for his idea because the finance people say this happens so infrequently that it doesn't warrant going so far as changing the law. Additionally Mr. Mallory's comment last week about needing to make exceptions so that inadvertence wouldn't be used as an excuse for putting financial items on an agenda under an emergency exception, they sort of shrank from that notion. So that unless anyone on the committee wishes me to do this on behalf of the committee, I am prepared to withdraw my suggestion.

Keith Munro – Any comments? **Let's move on to item 3.a.3.** Preliminary discussion of the advantages or disadvantages of a potential "appeal" process from OML opinions.

George Taylor stated that this agenda item appears because in a prior meeting someone asked whether there is an appeal process from a finding of a violation from this office. We don't want to confuse this discussion with what Scott Doyle mentioned in his letter and which we have discussed in the past and that is the summary proceedings from a decision by this office to go further after finding a violation, but assuming we have legislative approval to do this, but institute a summary proceeding for a civil infraction. Having said that, there are two issues here, an appeal process and I'm not sure that makes any sense if in fact we also want to talk about summary proceedings and a fee schedule.

Keith Munro – any thoughts on how an appeal process would work.

George Taylor – as the agenda item states, this is a preliminary discussion on the advantages and disadvantages and I think if we are also interested in summary proceedings, then I'm not sure we want to talk about anything else, or if we are not interested in summary proceedings or a fee schedule, then we can talk about an appeal process.

Keith Munro – The reason you have an appeal is if you disagree with the opinion and if you disagree with the opinion you can potentially end up in litigation in district court and they can have an appeal anyway.

Judy Caron – I previously brought up this appeal issue. Not being an attorney, but a citizen asking for an opinion on attending a meeting, interpretation of the law, reading the form when you fill something out a private citizen taking that initial step. When the opinion came back there was a lot of things to learn and what possibly is intentional in one person's eyes and from the author giving the opinion raised the question: What appeal process does the public have when we are enforcing what laws were in statute that we are going to give a warning and it had to do with what was deliberate? That is where that came from and I will be honest, I still think as a public and a representative for myself and for the general public, when we are at commission meetings, there is a distinguishing factor there to me, if it is an elected position on a board or commission versus an

appointed. Most of the boards I attend are appointed positions and these commissions are spending public money so when it comes back that something is deliberate in our eyes as a public and there is not an appeals process, not being an attorney, where do I turn. Does that mean I have to go out and hire a private attorney to pursue this case one step further, or is the government that we pay our taxes to, the AG's office, have an appeals process for the public to use to maybe get a hearing with three or four persons sitting on that appeal to see if there is justification to re-address that? Does just one person look at it when you a member from the AG's office sitting as counsel and Open Meeting Laws are violated, where is the separation of powers? Where can the public turn to ask for clarification or an appeal? Do we have another step without having to hire a private attorney? If a misdemeanor had been found in finding, I think the AG's office would have taken the next step.

Keith Munro asked Mr. Doyle to address the next item, agenda Item 3.b.

Scott Doyle – I think this was my idea and I believe that one of the items that was uploaded to the website was the Maryland statute which everyone should have received a copy of. This item came before the Task Force primarily and I'm not going to pick on a particular official but I'm just going to use this official's activity as an example. Within the last half year the Governor appointed a Blue Ribbon Panel to deal with education issues and the question was, was that body going to be subject to the OML? Under current interpretation the initial determination was, no, the group was not subject to the OML and that is primarily because of long standing interpretation by the AG's office that the law currently does not apply to a single member official like a governor. I proposed that if you wanted to change the law in this regard you could use the Maryland statute as a template and the particular concept that is in the Maryland law that would be useful is the fact that when a single person official, like a governor or a county or city manager, appoints a group then that group is going to be subject to the OML if the group membership includes people that are not on the payroll of that particular entity. For example, in the case of the Governor, he appoints people to his group that are not on State payroll, then that group under the Maryland concept would be subject to the OML. If he appoints just staff people to the group, then the group is not subject to the OML because it operates under the historical interpretation of the AG's office that it is a staff committee and staff committees are not subject to the OML. The same thing would hold true for county and cities that have a manager form of government under the Maryland law if you used that for the template. So that is a recommendation of how to address, it expands the scope of the law I think to some degree but it also clarifies it.

Keith Munro asked George if he has had any contact with the Maryland AG's office on how that works for them and asked him to contact their office.

Keith Munro asked Mr. Doyle when he was the District Attorney for Douglas County and he got all of his staff together for a staff meeting, how would that work.

Scott Doyle stated the Maryland law doesn't address it because all of the staff are on the county payroll and so the group gathering would not be subject to the OML.

Keith Munro – what if you had your staff or subset of your staff get together and meet with a defense attorney on a case – Open Meeting Law there?

Scott Doyle replied that the Maryland statute ties the applicability of this provision to the chief executive of the county that reports directly to the county commission so that would be the county manager. Under your scenario I would think that meeting would take place under the auspices of the district attorney and that person would not be subject to this law because by definition that person doesn't serve as the county CEO.

Keith Munro – In Nevada they talk about the Governor's cabinet and there is no real governor's cabinet, it is a make believe kind of thing, whoever the Governor chooses to be in there. Let's say the Governor had a cabinet meeting.

Scott Doyle – under the traditional concept of the Governor's cabinet meeting as I understand it, it is comprised of department heads and perhaps maybe even some other elected officials within State government. All of those people are on State payroll, so under the Maryland concept that group would not be subject to the OML, if I understand Maryland's law correctly.

Keith Munro – So what's the tipping point for the OML applying to something that a governor would appoint?

Scott Doyle – The tipping point would be bringing in a member of the public who is not on the State payroll. Another possibility would be bringing a local government official into the group who is on the payroll of another governmental entity. One of the things that you might want to address in the line drawing is whether appointments are tied to payrolls. For example, in State government you have the University system that is separate, it is part of State government but it is treated as a separate entity, both constitutionally and statutorily. I don't think that State payroll or State employees generally handle the payroll for the University. That would be an issue that you would definitely want to consider very carefully because under the Maryland concept, I think argument could be made both ways that if you include the University representative on the Governor's group that he is creating, it may or may not trigger the application of the OML, you would want to address it statutorily in writing.

Keith Munro – If you went that way, you would want to think about some of those distinctions between different subsets of State government and local government. What about the Adjutant General who is always an important position for any governor, for Homeland Security and emergency management purposes, that might get paid by the federal government?

Scott Doyle – Again under the Maryland concept because the pay comes from the federal government rather than the state, I think that would be a situation where you would have to define whether you want the OML to apply to that particular situation, and then the other thing I think you would also have to take a look at is existing OML exclusions that pertain to certain Homeland Security groups that are currently constituted to meet under State law.

Maggie McLetchie – My one comment about this is that rather than a literal “who is paid by whom” and “who works for whom”, it seems there might be a better way to do it; it might be more of a functional approach about how the governmental body is actually operating. My issue with this is I disagree with the interpretation that the AG’s office has had and it hasn’t been really looked at by the courts and it hasn’t been endorsed by the Legislature that committees like the recent Blue Ribbon Task Force for example, are not subject to the OML and I appreciate the discussion about how to change that but I don’t want to assume that those groups are not subject to the OML, so I disagree with that. Second, I think that saying application of the OML should be based on “who works for who” and that kind of thing might be too broad and it might be better to have a functional approach about what kind of work the committee is actually doing.

Keith Munro asked Ms. McLetchie if she thinks we need to put that functional approach in the statute.

Maggie McLetchie stated she does and thinks there should be some clarification. She stated she has actually been playing with some language that she would send around for the next meeting for consideration.

Keith Munro stated it would get placed in the board packets. Any other thoughts on this item?

Randy Munn – The Law of Unintended Consequences: At some point every elected public official says to his staff, meet with this lobbyist or this constituency group to discuss “X” because they are interested in “X.” If that creates a public body, we have a nightmare on our hands.

George Taylor stated that the Maryland statute does say that a public body does not include a single member entity. It is part of their definition and it defines public body basically by how it is created. In the first part of the statute, public body is defined by its creator: The Maryland Constitution, a state statute, a county charter, an ordinance, a rule or executive order, etc. Scott’s point is the

Maryland Statute also defined public body if it has two non state employees as members of the entity. My issue is this, I wonder if this gets to the issue the Task Force discussed last time regarding having state agency bodies create entire entities of the public to assist them in doing what might be considered a governmental function, and specifically we were talking about a board of school trustees and a superintendent who created a committee that was entirely parents and people like that to advise him on something. I wasn't sure if it was a governmental function, but anyway that was the context we were talking about and why we should drill down a little deeper regarding the definition of public body.

Keith Munro – Next agenda item 3.c. – discussion of proposed requirement that a public body be required to acknowledge in an open meeting, recent finding of OML violation and any corrective action taken in response to direction from this office.

George Taylor stated the context for this item is the discussion the Task Force had about coupling at least two enforcement provisions together and perhaps more. If you go back to 3.a.1 (which is divided into 1, 2, 3) the cure, monetary fines, penalties and discussion of proposed removal from office. My understanding given the way this Task Force has discussed this issue before is whether you select one, or you couple one or more together for a legislative package, so this issue appears again in 3.a.c, discussion of this requirement regarding public acknowledgement. That's why I wanted to mention the case with the Board of School Trustees in Douglas County regarding the fact that when they re-agendized that matter and had a special session, the president specifically pointedly stated that she disagreed with the violation. This is a discussion item.

Barry Smith – I just wanted to ask the steps that you would go through in a process like that because you said most of the discussion of what is the cure takes place on the phone and then the proof of it is when the board actually takes care of it, but in a case like that, what would be the next step if there is nothing that says as part of the cure you must do ABC and XYZ, and they do ABC but not XYZ. Would you walk me through how you would approach that and what would happen.

George Taylor – What is foremost on my mind is getting the public's business done quickly. Many of these things like this issue, this evaluation of this superintendent of the board of school trustees, was important to the community to get done efficiently and quickly. It has been my view that by writing letters to each other as an enforcement strategy may slow the enforcement process down when the number one issue is to have the public's business done efficiently and effectively and that is what you will find in section 11.01; that is what we recommend in our manual. The basis for cure is: although cure may not

obliterate the violation, corrective action should be taken so that the business of government is accomplished in the open.

Randy Munn - asked what the process would be if there were a list of demands to cure and the public body failed to complete them.

George Taylor – stated in answer the second part of [Barry Smith's] question, typically what happens when corrective action is required is it is just simply reagendaizing the item and there is a requirement that the public body can't rubber stamp the discussion; it must be a legitimate reconsideration of the agenda item and/or have another meeting.

Barry Smith – What I am getting at is if we are talking about what further sanctions there might be, at what point would you say or this office would say yes this was a violation or there was an alleged violation, they cured it to our satisfaction, the case is closed and without acknowledgment or something that says yes there was a violation, I am kind of left wondering how we would then get into the next step. Does the case remain open?

George Taylor – Until the corrective action is actually taken, we do not close the case. We can leave it open indefinitely, at least to the point of our 60 day and 120 day limitation periods and even beyond that.

Barry Smith – Would you consider that yes there was a violation but they cured it?

Keith Munro – It would be our opinion.

Randy Munn – The AG's office entered into a settlement agreement with the Douglas County DA that once we hit 120 days there would be no opinions issued finding a violation.

George Taylor – Barry you and I are like two ships passing in the night here, I am not real sure that I can answer the question.

Paul Lipparelli – George, don't you almost always follow up one of those phone conversations with counsel with a letter that summarizes the understanding. I know your practice is that when you get a formal complaint from the public you always respond to us in writing so that the complaining party understands the outcome from the AG's perspective. That letter is certainly a public record available to anybody to copy and inspect and I don't see how adding a requirement to the law that the public body acknowledge having received such a communication from the AG adds any burden to the public bodies, it is simply a matter of placing it on the next agenda and acknowledging for everyone's benefit that this is the finding of the AG with regard to this complaint and having the

public body acknowledge it. I think Mr. Smith's point may be that no one may hear about the violation or the finding after that phone conversation takes place.

Keith Munro – Isn't that the benefit of the public acknowledgment?

Paul Lipparelli – I totally agree, I think it is appropriate.

Keith Munro – If it is cured it may not have a detrimental affect but it sure adds to the openness of the OML process.

Judy Caron – A case in question and I think we have discussed this at this Task Force was the question that arose of when the AG's office makes contact with the board or the commission, sometimes it is an individual like a chairman and that is not shared with the other board members, the other board members may never know an OML complaint had been filed, a finding of fact was addressed or a violation. I think it also gives integrity to the public and the board members that if they do raise a point of order where it is not an action item that is going to come back to be re-agendized, it gives integrity to the board and to the public, so I think it should be acknowledged at the next meeting.

Art Mallory – It looks like the chairman in the Douglas County case was entering a no contest plea. They didn't say I'm not saying I didn't do it, I am just not admitting to it. Yet they were totally complying with the wishes of the AG in order to satisfy the requirements of the OML. I don't think we ought to restrict people into saying you have to admit you did wrong if you are willing to cure it. Otherwise, there will be frivolous litigation just on the matter of getting that admission as opposed to getting a cure and getting on with the people's business.

Keith Munro – I think the point is the acknowledgment would be an acknowledgment that the AG has issued an opinion and the body at that point could say, in light of that we are going to move forward and rescind our prior action and take new action.

Art Mallory – If that is all we are talking about I will stand corrected, that sounds reasonable.

Randy Munn – It comes down to what is required to be on that agenda.

Keith Munro – I would assume a copy of the opinion would be available to the public at that meeting.

Scott Doyle – I know this is a very unscientific sample of one but when Douglas County disagreed with the opinion of the AG's office, the way we handled it was we noticed the fact that the AG's opinion had been issued, it was part of the agenda item and if my memory serves me correctly, there was either a multipart

agenda item or multiple separate agenda items that acknowledged this was the opinion received in this particular fact context. There was advice given by legal counsel explaining why the county's legal counsel disagreed with the AG's determination and then an authorization to file a declaratory action was a separately noticed action item either as a subpart of one big item or as a separate item. Even in a situation where there is disagreement, the Chair's point made a moment ago that you have to put the AG's determination into the public record if you are going to comply with the clear and complete requirement in the agenda seems to be implicit in the way the law is currently structured. Looking at the Douglas County School Board situation summarized on page 4, I think Mr. Mallory's observation from a moment ago is a good one. This is almost like a consent decree situation on the part of the public body. They are saying we are going to cure what the AG thinks is a violation, but we are not going to necessarily agree with the assessment that it is a violation and I would go even farther than that to say that frankly the opinion of the Chair is just that, a simple personal opinion spoken by that particular elected official and may or may not reflect the opinion of the majority of the public, so maybe the acknowledgment process works best the way it is structured currently which by way of negotiated offers being reduced to writing and then the settlement that is the product of that being noticed and acted upon by the public body. I don't know if we necessarily want to try and draft a formal acknowledgment requirement under the statute. You could make it part of the terms of the offer.

Trevor Hayes stated he doesn't think it is necessary to read the whole [AG opinion into the record] but I would love to see the AG's opinion on the violation be included in the backup materials of the city council or school board or whatever and then the chair should say, "we were found in violation it [the opinion] is included in the backup materials."

Barry Smith – Do you think that the AG's office has the authority as part of the settlement to put that in the language without changing the statute?

Scott Doyle – My answer to your question would be yes and I believe that is something the AG can adopt as an interpretive practice under their ability to enforce the law if they find that the parties are not complying with that requirement, then maybe in 2013 that would be fodder for a statutory amendment but right now I'd like to continue to perpetuate the acknowledgment practice without a statutory amendment.

Keith Munro – Mr. Doyle how long did you work for the AG's office?

Scott Doyle – About two weeks shy of eight years.

Keith Munro – During your eight years did you ever see that done? That would be a pretty big change in practice for this office.

Scott Doyle – I did a little enforcement work from about 1983 until about 1990 and the enforcement mechanism back then was significantly different than it is now. When the complaint was received, an investigation was done. The investigation covered many of the same topics, if not identically the same sources of investigation, but at the close of the investigation the AG's office wrote a letter. If it was a letter, it was a decline to prosecute and then it would state the reasons and that letter was sent to the public officials involved as well as the complainant. If there was a basis to file a civil suit, then that suit was filed. The change that I think has taken place and it dates back to the 1990's, is that a third remedy rather than a decline to prosecute letter of the filing of some sort of a legal action, the third alternative that was added is the opinions that we are now talking about and so to my way of thinking is if the board is going to renotice an item to cure, part of the complete record for cure is going to be some written justification as to why they are going back and renoticing and revisiting the item again and that will have to be included in the back up materials as was suggested by one of our task members down in Las Vegas, a copy of the AG's opinion. If it is not express, it is at least tacit recognition of why they are going back and revisiting the issue.

Judy Caron – I understand exactly what you are saying. What do you do in the case where it is not an agendaized action that you don't need to take further action on for acknowledgment?

Randy Munn – I would take Mr. Doyle's analysis and say because it is part of the settlement even if it wasn't an action item, George could impose upon them the duty to agendaize that as an information item.

Art Mallory – Was that done in the Board of Wildlife Commissioner's case? Was there some type of public announcement or acknowledgment that they had found the chairman had violated the OML and then so the public would know that was taken care of?

George Taylor – I think that is one of the issues we are discussing now because that did not happen. We have made an administrative change in our procedures. We now send copies of our opinions to every member of the board and primarily because of this case.

Scott Doyle asked under the new procedure if the clerk of that board of the wildlife commission did not put an item on the agenda reporting the receipt of the AG's determination letter, could another wildlife commissioner make a report of that correspondence under another more generic agenda item, such as, sometimes there is a correspondence item on some board's agendas. Would that be a violation of the law if a wildlife commissioner other than the chairman, said I got a copy of the AG's determination letter with respect to the chairman's action on X date under the generic agenda item labeled correspondence that

appears month in and month out on their agendas if they have one. Has that commissioner now committed a second violation under current interpretation?

George Taylor – The second commissioner being the initiator, the one who created the violation in the first place?

Scott Doyle – No, as I understand the wildlife commission case it was the chairman that was deviating from the item. What I am saying is if it is another commissioner other than the chairman that is saying we got a determination letter about the chair's flap at last month's meeting this past week and the AG's office determined that the chair was out of line. Could that second non violator commissioner report that under a generic correspondence item without creating a second violation of the OML?

George Taylor – I don't know on what basis I would want to charge that second commissioner with a violation. I think by bringing it up he is informing the public and doing his duty. I think we would want to encourage that kind of behavior, so I am not sure.

Scott Doyle – This points out to me the difficulty of trying to draft and get passage and approval of a statutory acknowledgment format because again everybody's hindsight says perfect. In this particular instance I think that if the wildlife commission had been required as part of settlement to report this determination by the AG's as an item of correspondence on the next available agenda, and it was not done. What I am saying is there are other ways to address the issue and cure even that type of an acknowledgment problem if there are wildlife commissions that have a little intestinal fortitude. If one already challenged the chair on a point of order, I'm sure that it wouldn't be too difficult to make mention of the receipt of a determination letter at a subsequent meeting under a generic correspondence item. There are any number of ways to secure some sort of level of acknowledgment without resorting to a statutory amendment. I think your idea of giving your determination letter to all of the members of the public body is an excellent one. It wouldn't hurt to copy their legal counsel if that is not being done as well.

George Taylor replied counsel is being copied and I believe the clerk is as well.

Scott Doyle – It just seems to me if there is that type of dissemination then somebody will probably acknowledge it, particularly in the case of the wildlife commission situation where it really is a violation that is perpetuated by one member on a collective deliberative item, as opposed to a simple majority or a complete membership. I think the other membership would want to divorce themselves from it. We are dealing with public opinion here in the enforcement of this law as well.

Randy Munn – Do you normally include in your terms of settlement a cure arrangement, an extension of your statute of limitations if they don't reply when they are supposed to?

George Taylor – No that is not normally something I would do. Our next item is a discussion of extension of time.

Randy Munn – I think with that being statutory, you would have the complication of who has the authority to waive the statute of limitations.

Keith Munro – Let's move on to the next agenda item 3.3.d., regarding extending limitation periods.

George Taylor stated that at the April 29th meeting there was a suggestion to extend the limitations period for public bodies that do not meet our discovery request in a timely fashion and so there is a handout that is entitled "suggested language amending 241.037." This is a starting point or departure point for consideration of an amendment of the limitations period in this situation. There are many complaints received after the 60 days period and so one of my limitations period is already exhausted and many that do come in before 60 days are late as well. Even if it is 15 or 20 days late that makes it difficult to conduct an investigation. The suggested language amending it is at the bottom. I would add this language at the end of subsection 3 of 241, para. 3:

"Both limitation periods shall be extended whenever a public body fails to respond to the Attorney General's investigative request and the public body has been notified of such investigation and of the request for discovery. Failure to respond within the time allowed in the notice of investigation to a reasonable request for copies of the public body's meeting notice, agenda, minutes, audio/video recording, and statements or affidavit from members of the public body shall extend the applicable limitations period in this subsection one (1) day for each day the public body's response has not submitted within the specified time limit of the notice of investigation."

Keith Munro – Any thoughts on that possible language?

Randy Munn – I would recommend you add the cure from a circumstance as well to that. That if they don't accomplish the cure in some sort of settlement, that way we keep statute of limitations open and keep the pressure on them to accomplish it and they can't get away with it by letting your statute run.

Maggie McLetchie – I was also thinking that the time period should be extended to allow the public to wait to see what the AG does. Right now you might file a

complaint with the AG and I don't think that tolls your statute of limitations and I think it should.

Randy Munn – Are you saying that if they file a complaint it tolls the statute of limitations? Is that what you said?

Maggie McLetchie – Right. So if there is a member of the public, say I went to a meeting and I think they violated the OML and I file a complaint with the AG rather than having to file something with the court within the 120 days, it seems that my time should be tolled while I am letting the AG's office go through the investigation process.

Randy Munn – Are you talking about a toll for a private cause of action?

Maggie McLetchie – Correct.

Scott Doyle – I would like to make a couple of observations. First of all, with respect to the proposed language, the failure to respond within the time allowed in the notice of investigation. What that means to me is that the AG has the right to set the time limit on a notice by notice basis and that the time limit for response may not be uniform throughout the universe of investigations. Now, I understand why that flexible concept would be very useful for the AG's office because when you receive a complaint from a member of the public that is very close to one or both of these statute of limitations periods, the natural inclination would be to specify a shorter response time on the part of the public entity so that you can secure the information that you would need to determine whether or not a civil action should be filed. However, this goes back to something as a matter of policy that Art Mallory said earlier on another subject and that is that I think there needs to be certainty in government and so the one observation I would make is that the time limitation within which response must be made probably should be statutorily specified as a fixed number of business days rather than allowing this discretionary specification. The reason I say that is because we've drawn a model in another part of the law when you are required to produce public records you have a statutorily prescribed timeframe in which to do that. You have a court rule prescribed timeframe in which to respond to civil complaints in district court. It seems to me that the statutory concept should be rather than allowing a discretionary response time to be created on a case by case basis that the law just simply be written to specify you have X number of days. Now in the situation where a citizen has filed a complaint toward the end of the statute of limitations period, if you take the time that has already been consumed by the citizen in preparing and filing their complaint and you add it to the statutory allowable time for a statute of limitations extension, let's say 10 working days, if you add the number of days the person has taken to file a complaint with you and you assume the public body takes their full 10 days to respond and that takes you say beyond the 120 day limitations period, the AG's office can immediately write back to the complainant and disclose this to the complainant so they have

no false sense of expectation that somehow the AG's office can save them from their own delay in tendering their complaint. I think that by putting certainty in there the approach statutorily would be better on this extension concept than leaving it open.

Keith Munro asked what is the mechanism for ensuring that the documents received back from the public body in question are accurate and complete.

Scott Doyle stated that right now there is no mechanism. You are relying on the institutional integrity of the clerk of the board because until you decide to file an action where you may request again through formal pretrial the same documents.

Keith Munro – So if somebody makes a mistake in their submission to the AG's office and that affects our ability to enforce the OML, is that just tough luck on the AG's office?

Scott Doyle – Under my final number of day's concept, it probably would be. Under your flexible concept in the proposal it may not be because you could say full response has not been made so therefore you are in the extension day for day provision.

Keith Munro - I heard you say two or three times about intent to bring certainty to the process and into government, but I looked at your letter regarding possible subpoena power so the AG's office could get the documents in a timely fashion and someone could be swearing under penalty of perjury that they are accurate, you were against that. So I'm not sure what your positions are.

Scott Doyle – No, I was against an administrative subpoena. I felt that given the data we had at the time I wrote my April 26th letter that the vast majority of public bodies acting through their clerks or legal counsel were producing the records that the AG's office needed in a timely fashion. There were a relatively small number of public bodies that were producing records in a grossly extended period of time, so I thought rather than asking for administrative subpoena power which is something that the Legislature has been reticent to grant in the past, that a better way to approach the problem would be to take these recalcitrant agencies and have their limitations period extended on a day for day basis when they don't respond with public records in a timely fashion. To my way of thinking the things that are listed here are the public body's notice, agenda, minutes, audio/video recording – those would all be public records and you could specify that those must be produced within the timeframe under Chapter 239 of NRS which is the public records production.

Keith Munro – But if there is a malingering for court work, that affects the fair enforcement of the OML.

Scott Doyle – If you feel that is the situation, then you send an investigator out and you do interviews within the limitations period. If the entity declines the interviews on the advice of legal counsel, then I think you have established the basis where you are not going to be sanctioned under NRCP Rule 11 if you file the civil action and force the issue.

Keith Munro – In putting together our budget now or assisting the AG, we are about ready to cut the heck out of every State department and so the ability for us to have investigators go out there and do these things is going to be severely limited. I think you are raising some good points.

Scott Doyle – We have a procedure by which most clerks are capable of producing a certified copy of a public record. If you require the paperwork to be a certified copy of a public record, then you are certainly putting the onus on the clerk of the board to maintain good production practices.

Keith Munro – Isn't that what clerk's do?

Scott Doyle – Yes, but what you are suggesting is that there are clerks out there that are willing to avoid doing the duty that they are required to do by law and that is impeding your ability to evaluate whether a violation has occurred and whether a civil action has been filed. All I'm saying is there are existing remedies to address some of that. The only thing I don't think you would necessarily get under public record analysis necessarily would be statements or affidavits from the members of the public body because those would not fit Chapter 239 requirements but everything else if you wanted to put a finite numbers of days on it for production you could take the same production time from the public records law and apply it here and that would address my concern of having a definite number of days for production.

Paul Lipparelli – Any statute of limitations exists because there is an interest on the part of some people in moving forward and not having indefinite availability to courts. In the case of a private person who thinks he or she has been wronged by the action of a public body, their right under para. 2 of 241.037 exists for them to go ahead and take the case to court themselves. What I worry about and here is my question and it stems from never having worked like many of you have on the AG's side of the OML. The difference between 241.036 that says any action taken in violation of the OML is void and the provisions of 241.037 that says essentially it is voidable if the AG goes to court and has it declared void — that is the part of this statute of limitations problem that is most concerning to me. We have a number of people that move on with their lives after one of our public bodies takes action – contractors, labor agreements, any number of actions on the part of a public body, developers who get project approval who can't be left wondering for an indefinite period of time whether they can count on the final decision of the board, so what I want to know is where does the problem come from and is there a way we can focus on what the problem is so that we can get

the remedy for maybe a weak spot in the law versus creating a situation where there is much more overall uncertainty about when the matter is finally closed.

Keith Munro – Great comments.

Randy Munn – I am trying to recollect when you do a 241 action, is it an expedited process or do you have to go through a 16.1 conference.

George Taylor – Right now it is a procedure that would go through a 16.1 conference. It is not a summary proceeding.

Art Mallory – If our goal is to be sure that the public bodies comply with the request in a timely manner whatever time we decide on, I might suggest being a mean prosecutor, that we allow the AG to say okay if they don't comply with this request we will deem it admission to a violation of the OML. I realize that is a pretty sharp prick, but that would be an interesting tool to get people to pay attention and comply if they knew they were automatically being in violation simply by not complying with the request. That might be helpful to George to have which is quite common, when you file a civil suit and the respondent doesn't answer, then the claims in the complaint are deemed admitted.

Scott Doyle – Art's comment is a good idea. Here is the concern, it goes back to the discussion that we were having a moment ago and that is this division of function between the members of the public bodies themselves who are going to be on the receiving end of your admission and a clerk that for example in the case of county government is an independently elected official. It raises all sorts of issues, maybe the clerk disagreed with what the board did and wanted to make sure that the board got their comeuppance for it so the materials are produced a day or so late. It is no ultimate umbrella to the clerk but it certainly is going to have a disastrous effect for the board. I understand the concern if you take Mr. Mallory's suggestion. I understand the concern about these matters hanging on for a long time or an indefinite period of time. That is why 60 days and 120 days were selected back in 1983 and 85. All I am saying is that the AG's office has legitimately run into, and I forget which entities, but within the last three years two entities that deliberately postponed or maybe more their response for a period in excess of 60 days and all I'm saying is that the law should be tailored to address those few occasions when the entity impedes the AG's ability to investigate and evaluate effectively and the remedy that I suggested was have those particular non responsive entities statute of limitations extended on a day for day basis beyond a certain time based on their non response. It is putting the onus where it belongs, but I understand all the other problems that have been discussed today with the concept and if we want to set it aside that is another approach to it.

Keith Munro – Everyone wants accuracy, but we don't have a lot of rules in place to ensure accuracy.

Barry Smith – I don't think it should be set aside. I think it is very important that this be part of whatever we propose in some form and time certain is the way to go.

Keith Munro – We are still information gathering and we are probably going to have one or two more meetings and at the final meeting the AG will probably try to nail some things, take some votes, but she will be the ultimate decider on what she puts in her bill if she has a bill. I think we have had some really great discussion here today.

Randy Munn - If it was a time certain George, how much more time do you think you would need. You had 60 days in the first instance for a void action.

Keith Munro - I guess it depends on how much information there is, the complexity of the case, there is a lot of issues there.

Randy Munn – Sure you're deciding whether to file a complaint during this time.

Keith Munro moved on to Agenda Item 4.a. — Review of proposed periodic OML training requirement for members of public body. The thought here is should there be some requirement for public bodies to have some sort of training or acknowledge that they have had training on the OML so they are making some effort or a good effort to have some knowledge of what the rules are governing their proceedings.

George Taylor – I would say right off the bat that 4.a. and b., I realize they are on the administrative agenda and I realize I drafted this agenda but if we are talking about a proposed training requirement, under this agenda item, it would be something that we as a body, this is our administrative internal agenda, things that we can change or take action administratively and we don't need to put it in our legislative agenda, but perhaps these first two items should be flip flopped and reconsidered, but nevertheless having said that, part of my job is OML training. Last week I gave two presentations in Reno and I have another one coming up. I give presentations to Bar associations and lawyers and groups like that. I feel it is effective and I think it is important. It encourages attorneys to give me a call, I field a lot of calls on a day to day basis attempting to assist attorneys who do represent public bodies. I don't respond to or talk with members of public bodies unless they just call me cold and I have no alternative but I always refer them to their attorney. I don't give them legal advice. My view is a periodic training requirement for members of the public body is a good thing and I was wondering if there are some counties who have ordinances passed that require periodic training, not just in OML but in other areas, ethics, fiscal training, and things like that.

Keith Munro asked George Taylor if he feels it would be efficient to have the public bodies' local attorney or district attorney provide that sort of training if there was a requirement.

George Taylor – absolutely.

Randy Munn – From that perspective you could train the trainer so to speak so that you are not giving the boards misinformation on the interpretation of the AG's current prosecutor because times change and views of the law change, it would be nice to have that kind of resource where we could take the average advisory board that gets created and is going to exist for six to eight months to take them aside and say this is the law, this is the way the AG views the law and we will be here to advise you but this is the ground rules.

Gene Brockman - I think this ought to be mandatory during the first six months of either appointment or election of the office regardless of what it is because without it you can very easily violate the law. I like the idea of passing the responsibility down to the city attorney or the lowest level.

Judy Caron – In reading the statutes it says that most boards have an oath of office that is taken. I think that should possibly be included in your oath of office that you will abide by Nevada's Open Meeting Laws. That gives credit to the person taking the oath that they will address the education portion of it and it relies on them.

Randy Munn – The vast majority of public bodies do not have an oath of office.

Judy Caron – How about on their application when you put in to be appointed to a board or commission, could you put something in there to sign so they have to acknowledge that when they are prosecuting their cases or look at this that it is not something they say they weren't aware of. How would you make the public aware that this is their responsibility?

Keith Munro – Most State offices have a requirement, it is statutory.

Scott Doyle – To me the training is one of the most important improvements in enforcement of the OML that the AG's office has ever made. I think your statistics on inquiries and complaints are relatively low in contrast to the number of bodies and the number of meetings that they conduct and the number of items that are present on the agenda in each one of those meetings over time. So I like the ideas that have been discussed up to this point. I think there are things that can be done administratively to make sure local attorneys are equipped to train their advisory bodies whether they take an oath of office or have an application process where you can formally hand them materials or if it is just an ad hoc advisory body and the training for those public bodies should be the responsibility of the district attorneys, city attorneys, and general counsel of the

various general improvement districts and special districts throughout the state. I do think that administratively the way to train the trainers is to make OML training a mandatory component of the annual government civil attorney's conference that is held and you have an administrative connection with Brett Kandt being part of the AG's office, that would be a way to make sure the training is there. With respect to the State Bar, I know they are receptive to training and so if you have government attorneys that can't make the conference, there is other ways to get training if your budget is limited and you are not going to have the money to send investigators out, you are certainly not going to have the money necessarily to have George go out and do a lot of training but I think if you can focus it into some of these existing administrative mechanisms through the State Bar and through the prosecutor advisory council that you can cover the local trainers and get good delegation and responsible training without finger pointing about what was or was not said during training.

Keith Munro – Do we feel comfortable with DA's and city attorneys certifying that training had been completed after they have gone to one of those conferences, I think we are talking the same thing.

Paul Lipparelli – We do training in Washoe County because it is in our interest to. It keeps our office from getting a lot of calls. The more our public bodies know about the law themselves the less involvement we have to have with the way they do business, and we frankly cannot staff every public body we have in Washoe County so some of our public bodies meet without an attorney present and they do the best they can. I'm a little bit hesitant about seeing a training mandate because as Mr. Chairman you were indicating earlier helping the AG prepare her budget, I have been helping the DA prepare his and mandates are one of those things that make it very difficult to manage all your resources, so I think it ought to be encouraged, it ought to be supported as it is. With this AG and at least the past two that I have had experience with. Mandating this requirement—I'd like to think about that.

Keith Munro – I would like to skip ahead on the agenda to items f and g.

Agenda Item f is an update on administrative change of notification to all members of the public body of the disposition of an OML complaint lodged against it. We have made an internal change in our process here in the AG's office and I will let George speak to that in a minute.

Agenda Item g is a disclaimer, we are moving toward no longer having any type of limitation put on any of our opinions and that they are all put upon the website.

George Taylor – It is correct that we have made an administrative change regarding notification and I alluded to this earlier when a disposition is made we send it to all members of the public body, counsel, to the clerk or recording secretary of the public body, but it is our view now that the more letters we send

the more people we contact the better spread of the release of the opinion, so this administrative change has already been enacted. Under item g, disclaimer/notice, even before I became the OML deputy, sometimes I ran across notices on some opinions stating that the letter hasn't been reviewed, but it is subject to publication. I have used it on some of my opinions, which I didn't want to publish. While we were making an internal decision about what it means to publish as opposed to an informal opinion as opposed to some other disposition, we made an internal determination that we are going to do away with that and all dispositions will be of equal dignity. The Task Force has asked in the past that we make these available on line and we are going to do that. There won't be any more disclaimers or notices on dispositions.

Keith Munro – let's move on to discussion of future agenda items. Does anyone have any thoughts on what they might like discussed at the next meeting?

Gene Brockman – The Nevada League met Thursday and Friday last week and I got an opportunity to let them know I was going to be meeting with the Task Force, this is my first meeting so I'm kind of new at this. They gave me four assignments to pass on you. 1) The provisions of the OML that require performance evaluation of the city executive be in open meeting has cause those evaluations to be completely ineffective. There is no real critique of performance, there is no discussion, there is simply no performance improvement as a result of these very shallow regulations. Public evaluations have really deteriorated to the point where they are simply contract extensions for the executive in most cities and counties. We urge this body to consider that the provision that requires that and perhaps makes some suggestions for future change; 2) they also urged that all state agencies and particularly the Legislature follow the same rules that they have imposed on the rest of us; 3) we need to find a way to try to eliminate the frivolous OML complaints and those that are made for punitive reasons rather than an actual violation; and 4) they urged that the OML needs to apply to collective bargaining sessions as it does to all other matters.

Keith Munro – Any other thoughts or comments. Any comments from the public.

3:02 Meeting adjourned.