

Mr. Chair, committee members, I am Assemblywoman Shelly Shelton and am requesting that the Public Utilities Commission be fully investigated for numerous violations of Nevada Revised Statutes and the Open Meeting Law (OML). Rather than take up a lot of your time, I will give a few brief examples of the most egregious violations and relevant statutes reaffirming such.

On October 26th, I experienced first hand the aggressive misrepresentation regarding the governance of the PUC regarding the OML and the Administrative Procedures Act..

Commissioner Noble claimed that his contested case was not covered under the OML, their General Counsel Tanner claimed that they were exempt from the OML, because they are "quasi-judicial" and caused my constituent to be charged with trespassing at a public meeting, for video taping the meeting.

On November 5, 2015, in the Reno News and Review, Ms Tanner is quoted as saying: *"The commission is a quasi-judicial body and therefore the Nevada's open meeting law does not apply."*

§ 4.04 Quasi-judicial proceedings no longer exempt from OML (AG's manuals 2012 & 2016)

Assembly Bill 59, 2011 made all meetings of a public body that are quasi-judicial in nature subject to the OML. Only the Nevada Board of Parole Commissioners is exempt, but only when acting to grant, deny, continue, or revoke parole for a prisoner or to establish or modify the terms of the parole of a prisoner.

Accordingly, NRS 241.020 requires that, except as otherwise provided by statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies; NRS 241.040 makes wrongful exclusion of any person from a meeting a misdemeanor.

§ 3.10 Quasi-judicial proceedings (AG's manuals 2012 & 2016)

The 2011 Legislature subjected all public body meetings of a quasi-judicial nature to the OML. Only meetings of the Parole Board of Commissioners are exempt, but only when acting to grant, deny, continue, or revoke parole of a prisoner, or when modifying the terms of the parole of a prisoner.

"Quasi-judicial proceedings are those proceedings having a judicial character that are performed by administrative agencies."

Agenda Item V (D)—Supporting Information (Part 1)—PUCN Page 10 under "Public Involvement", *"Proceedings of the PUCN are quasi-judicial and very similar to a court of law in compliance with the Administrative Procedures Act."*

§ 13.02 Relationship of Open Meeting Law to Administrative Procedures Act, NRS Chapter 233B (Also listed in 2016 under Section 12.02)

The 2009 Legislature made changes to the method of adopting regulations by agencies that are subject to Nevada's Administrative Procedures Act. (APA). SB 267 amended NRS 233B.061 to apply the OML to agency workshops and hearings.

All workshops and public hearings must be conducted in accordance with the OML. NRS 233B.061 now applies the OML to all executive branch agencies subject to the APA, whether the agencies adopt regulations by board, commission or other public body, or by an individual.

The APA also governs the hearings of "contested cases" before administrative agencies and, again, if the agency is a "public body," the Open Meeting Law will also apply to the hearings.

Illegally charging a member of the public with criminal trespassing without justification or legal standing.

This issue has me highly desirous of wanting a full legal investigation into the actions of Ms Tanner and Commissioner Noble and having them charged with OML violations and litigation initiated by the Attorney General's Office.

The PUC on October 26, 2015, issued the following to the Review Journal: *A statement issued by a PUC spokeswoman said the commission "looks to Nevada court rules and statutes" to guide how it addresses quasi-judicial proceedings."*

The PUC is not under any of the auspices of Nevada Courts, they are fully under the OML and APA as determined by statutes, as referenced and cited above.

The PUC, a "quasi-judicial" entity, are intentionally acting in a manner as if they are allowed to act as a 'Judicial' entity, which none of their Commissioners fit the criteria. As every Judicial officer is a licensed attorney, admitted to the Nevada Bar, and the PUC is precluded from having more than two of the Commissioners being from the same area of expertise. Also, the two Commissioners who are bar admitted, are in an inactive status.

The Nevada Supreme Court Rules, Part IV, Rules on Electronic Coverage of Court Proceedings: Rule 229. Definitions and scope.

1. Definitions.

"Judge" means the particular judge, justice or judicial officer who is presiding over the public proceeding, or his or her designee (e.g., Public Information Officer, Clerk or Court Administrator.)

None of the Commissioners fits the following statutes:

NRS 293.064 "Judicial office" defined. "Judicial office" means the office filled by any judicial officer. NRS 293.0643 "Judicial officer" means any justice of the Supreme Court, any judge of the Court of Appeals, any judge of a district court or any justice of the peace.

I read the full email exchange between Ms Tanner and Ms De Fazio. The biggest contradiction is that Ms Tanner told her she could film the agenda meetings, but not hearings that Commissioner Noble was presiding over. Why is the camera "acceptable" at a meeting of their choosing and a "disruption" when they don't want it recorded?

§ 8.09 Audio and/or video recordings of public meetings by members of the public

Under NRS 241.035(3), members of the public may be allowed to record on audio tape or any other means of sound or video reproduction if it is a public meeting and the recording in no way interferes with the conduct of the meeting.

Accordingly, NRS 241.020 requires that, except as otherwise provided by statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these bodies;

Each member of a public body who attends a meeting of that body where action is taken in violation of any provision of the Open Meeting Law, with knowledge of the fact that the meeting is in violation thereof, is guilty of a misdemeanor. NRS 241.040(1). Further, wrongful exclusion of any person or persons from a meeting is a misdemeanor. NRS 241.040(2).

Since the PUC stated as referenced above, that they are subject to the Administrative Procedures Act and the PUC is claiming that the meeting in question involved a "contested case".

The APA also governs the hearings of "contested cases" before administrative agencies and, again, if the agency is a "public body," the Open Meeting Law will also apply to the hearings.

As you have seen, this is just the tip of the iceberg when it comes to the PUC and any quasi-judicial agency that has this many violations warrants investigation and further actions if required.

Thank you for your time and request enactment of an audit and investigation into the PUC.