



STATE OF NEVADA
OFFICE OF THE GOVERNOR BRIAN SANDOVAL
One Hundred One North Carson Street
Carson City, Nevada 89701

LUCAS M. FOLETTA, ESQ.
GENERAL COUNSEL

TELEPHONE
775-684-5774
FAX
775-684-5683

MEMORANDUM

DATE: November 29, 2011

TO: All Executive Branch Advisory Bodies

FROM: Lucas Foletta, General Counsel 

RE: Executive Orders implementing the Sunset Task Force's recommendations and other guidance

Sunset Task Force

On April 7, 2011, the Governor established the Sunset Task Force ("Task Force") by Executive Order. The Task Force was charged with reviewing the necessity of existing nonstatutory Executive Branch boards, commissions, committees, councils, and other advisory bodies (collectively "advisory bodies"). The Task Force was further tasked with making findings and recommendations relating to such advisory bodies. On July 12, 2011, the Task Force issued its final report. In its report, the Task Force recommends that the Governor issue a series of Executive Orders (collectively "EOs") "to continue, create, and eliminate various councils, commissions, task forces, or similar bodies." The Task Force also recommends that the Governor take a number of steps applicable to all advisory bodies where practicable and appropriate.

This week the Governor issued nine EOs implementing the Task Force's recommendations. Of the nine, one eliminates eighteen advisory bodies specifically; one establishes a new advisory body, the Nevada Child Care Advisory Committee; and seven continue preexisting advisory bodies with certain modifications. The EOs are available on the Governor's website.¹ Please review the EOs to determine whether your advisory body is affected. Additional EOs relating to the Task Force's report may be forthcoming.

¹ <http://gov.nv.gov/news/executive/>.

The seven EOs that make modifications to preexisting advisory bodies take the form of amendments. As such, the terms of the original EOs have not been restated. Instead, the amendments reflect only the changes intended to be made to the original EOs. To the extent the terms of the original EOs do not conflict with the amendments, they remain operative. Therefore, in interpreting the amendments, it is important to read all EOs relating to your advisory body together, so as to determine what provisions of the original orders have been changed, what provisions remain in effect and what provisions of the amendments introduce new elements.

Additional Guidance

The Task Force's review revealed several areas of concern to existing advisory bodies in connection with which additional guidance is warranted. The remainder of this memorandum relates to those areas.

Open Meeting Law

The Open Meeting Law ("OML") is codified in Chapter 241 of the Nevada Revised Statutes. It requires generally that the deliberation of public bodies be conducted openly so as to ensure public participation and transparency. Towards that end, Chapter 241 contains requirements relating to the noticing of agendas, keeping of minutes and adhering to agendas. Your advisory body may be subject to the OML. As such, it is important that you consult the requirements of Chapter 241 and seek the appropriate advice if you are unclear as to your obligations under the law. The Office of the Attorney General publishes *The Nevada Open Meeting Law Manual*.² It may serve as a valuable reference in your efforts to research your advisory body's legal obligations.

Governor's Office Contact

It is important that, insofar as your advisory body serves in an advisory capacity to the Governor, you communicate effectively with the Governor's Office. In part, your obligation will be satisfied by complying with reporting requirements, to the extent they are imposed by the EO establishing your advisory body. That said, should the need for less formal communication arise, each advisory body should have a contact person within the Governor's Office. Your advisory body staff should contact the Governor's Office Boards and Commissions liaison to determine who will be the advisory body's point of contact.

Bylaws

Some advisory bodies are authorized to establish bylaws. Bylaws may be a valuable tool in refining the workings of the advisory body. That said, it is important to note that bylaws cannot conflict with the grant of authority in the EOs establishing a particular advisory body. For example, if the EO grants discretion to the chair to make appointments, the advisory body cannot establish bylaws setting minimum qualifications to membership that constrain the chair's appointment authority.

² The Manual is available at <http://ag.state.nv.us/opengovt/oml/omlmanual.pdf>.

Internet-Broadcast and Establishing a Website

The Internet may be useful in engaging the public in your advisory body's work. Whether it is appropriate in a particular case will depend on the function of the advisory body and the resources available to it. Individual advisory bodies should consider the establishment of a website and the appropriateness of Internet broadcasting on a case by case basis.

Subcommittees

Some advisory bodies are authorized to form subcommittees to aid them in their work. That said, subcommittees are generally authorized to consider particular issues and make recommendations. They are not authorized to make final decisions within the scope of the grant of authority given to the advisory body. Therefore, the general grant of authority to establish a subcommittee does not authorize the advisory body to delegate authority to make final decisions on behalf the advisory body.