

**CARSON CITY AIRPORT AUTHORITY
MEETING NOTES**

WEDNESDAY, AUGUST 29, 2007 – 6:00 P.M.

Public Meeting at:

**CARSON CITY AIRPORT
TERMINAL BUILDING
2600 COLLEGE PARKWAY
CARSON CITY, NEVADA**

~ PLEASE NOTE SPECIAL MEETING LOCATION AND DATE ~

A. CALL TO ORDER, ROLL CALL, AND DETERMINATION OF QUORUM. The regular meeting of the Carson City Airport Authority was called to order at 6:01 p.m. Roll call was taken, and quorum was determined:

Present: Don Peterson, Collie Hutter, and Steve Lewis

Absent: Neil Weaver, Walt Sullivan, Gary Handelin and Richard Staub

Staff: Jim Clague, Steve Tackes and Yvon Weaver

NOTE: Since a quorum was not present, a formal meeting could not be convened. The meeting that ensued was considered an informal meeting. Mr. Taylor did make a presentation regarding Nevada's open meeting laws, but no action was taken at this meeting. Following is a synopsis of the information presented by Mr. Taylor, and a portion of some of the question-and-answer session that followed.

B. PLEDGE OF ALLEGIANCE

C. PUBLIC COMMENT. *Members of the public who wish to address the Airport Authority may speak on non-agendized matters related to the Airport. Comments are limited to three (3) minutes per person or topic. If your item requires extended discussion, please request the Chairman to calendar the matter for a future Airport Authority meeting.* There were no public comments at this time.

D. PUBLIC HEARINGS

(1) PRESENTATION BY GEORGE TAYLOR, DEPUTY ATTORNEY GENERAL, ON THE NEVADA OPEN MEETING LAW; QUESTIONS; DISCUSSION (*S. Tackes*). Mr.

George Taylor, Deputy Attorney General for the State of Nevada, addressed the Board. He first stated that the District Attorney's office has issued the opinion that a board cannot have a meeting until a quorum is in attendance. A quorum was expected for this meeting; however, a quorum was not present for the duration of this meeting and therefore a formal meeting could not be convened. The meeting that continued was considered an informal meeting. Mr. Taylor explained that since a quorum was not present, *technically* "minutes" could not be taken and the meeting should be dismissed. However, since no action was intended to be taken at this meeting, Mr. Taylor allowed the meeting to continue in an informal format, and indicated that informational notes from the meeting could be distributed with the caveat that these were only a synopsis of notes from the meeting, and are not considered meeting minutes. Based on this information, following is a synopsis of the information presented by Mr. Taylor, and a portion of some of the question-and-answer session that followed.

Mr. Tackes had submitted a list of questions to Mr. Taylor in advance of this meeting. One of the questions concerned meetings at which a quorum may be present but is not expected to present. Mr. Taylor indicated that several questions and answers regarding meetings had recently been published, including this question, related to the question above: May a public body hold a public meeting without a quorum after providing statutory notice and publication of its agenda? The simple answer was, yes, so long as no action is taken; however, the attorney general's office now advises that such meetings not be held at all. Mr. Taylor indicated that in some areas board members have to travel great distances to attend meetings and other mitigating circumstances are involved, but Mr. Taylor explained that neither hardship nor any other reason does not excuse compliance with the statutory requirements of the open meeting law.

The definition of a meeting begins with a quorum, and Nevada is a quorum state. A quorum must be met in order to hold a meeting.

The question was asked about the number of members of the Airport Authority Board, which consists of 7 members. One member will be rotating off in October, it is possible his replacement will not be in place when he leaves the Board, and the number will therefore be down to 6. Mr. Lewis asked what number would equal a quorum.

Mr. Tackes explained that a quorum is still a simple majority of the numbers, and in this case in order to take action a quorum would equal 4. Three is not the majority of 6; 4 is the majority of 6. Then, of the quorum present, the majority of the quorum present and voting aye would pass a voted-on item. Therefore, if only 4 members were present, establishing a quorum, then at least 3 of those members would have to vote in the affirmative for an item to pass. Mr. Taylor stated that if the public body were an *elected* body, then the law would establish the quorums.

Mr. Taylor explained that the open meeting law doesn't prohibit members of a public body in numbers less than a quorum from meeting and discussing public business and gathering information, with two caveats: they cannot discuss business in an effort to deliberate toward a decision or what might appear to be deliberation toward a decision; and they cannot ask another member how they're going to vote or poll them on their vote. Also, once the meeting has ended, you cannot go home and call another member, tell them what happened at the meeting, and ask them "privately" how they plan to vote. You can express your interest in and support of an item, and you can say how you plan to

vote, but you cannot ask another member their opinion, how they plan to vote, or tell them how to vote.

Mr. Tackes asked Mr. Taylor about a hypothetical situation, such as the dilemma of what to do with the entrance to the Airport, and whether it would be okay for Mrs. Hutter to contact Mr. Lewis to kick around some ideas, make some suggestions, and then ask Mr. Lewis what he thought about the ideas or suggestions that could be brought forward for a decision at another meeting. Mr. Taylor thought this scenario would be okay, but indicated that it was a gray area of the open meeting law, and should be avoided.

Mr. Lewis asked Mr. Taylor about the various subcommittees that have been established by the Board, and the subcommittees hold meetings where 2 or 3 Board members were present. Mr. Taylor indicated that this is discussed extensively in the open meeting law manual in Sections 3.03 and 3.04. An agenda must be posted, the meeting must start on time, minutes must be taken and the meetings must be publicly held.

Mr. Taylor explained that a public board, such as the Airport Authority Board, that appoints a subcommittee, that subcommittee is subject to the open meeting law. If the Governor or a single person appoints an advisory or subcommittee, the open meeting law does not apply. If the open meeting law does not apply explicitly to the person or body appointing the subcommittee, then the open meeting law also does not apply to the subcommittee. In the case of the Airport Authority Board, the open meeting law applies to the Board, and so therefore it also applies to any subcommittees that the Board appoints. The court has also been very explicit in saying that the open meeting law only applies to a quorum, absent the two caveats of deliberation and private serial collecting discussions.

Deliberation connotes making a choice. Kicking ideas around five or six ideas for discussion and presentation at the next Board meeting is fine, but kicking ideas around and *choosing* one of those ideas for presentation at the next Board meeting is absolutely not okay, and is considered a violation of the open meeting law.

Mrs. Hutter stated that many times there is a lot of mathematical calculations involved in the idea kicking process, and it takes a lot of time to work things through. Mr. Taylor explained that his office would have no problem with ideas being discussed so long as *all* of the ideas were brought to the Board and the public with the explanation, for instance, that “five” (or “X”) ideas were discussed, but no choices, decisions or recommendations were made.

Mr. Peterson asked Mr. Taylor about expressing an opinion regarding those ideas. Mr. Taylor indicated that there is a difference in lobbying and polling. In lobbying, you can say that you think “this” is a good idea, but you cannot ask another Board member how they’re going to vote. You can only express your own opinion, without asking another for theirs. In polling, you directly ask how another Board member will be voting. The Supreme Court has explicitly said that it’s okay to lobby, but it is not okay to poll. You cannot ask another member how they are going to vote, and you cannot ask another member to vote in a certain way.

Mr. Peterson asked if it would be okay to go around the room and say, well, here’s how I’m going to vote, without asking the other person how they’re going to vote – just

expressing how you are going to vote. Mr. Taylor said that this would be considered okay. Mr. Taylor said that as long as a Board member felt like s/he could provide a written and signed statement, saying that they did not poll, the attorney general would accept that. Each Board member is on the honor system.

Mr. Taylor stated that subcommittees have to go through the same process of noticing meetings, posting agendas, etc., as do the regular meetings.

Mr. Lewis asked if he could appoint a single person to do something without having to go through the noticing process. Mr. Taylor stated that the open meeting law does not apply to a single person, but to at least two or more. It needs two or more to apply.

The question was about staff meetings, with the Airport Authority's staff being comprised of Mrs. Weaver, Airport Manager; Mr. Clague, Airport Engineer; and Mr. Tackes, Airport Counsel, and whether their meetings had to be posted, etc. Mr. Taylor explained that staff is typically delegated to a function or the completion of a task. If they are completing a task, then there is no problem for members of staff to meet. If they are making a decision then they are subject to the open meeting law.

Mrs. Weaver pointed out that her getting the paving done at the Airport is a task, and in some instances is done per the direction of the Board. Mr. Clague pointed out that his negotiating the price to do the paving was also a task, but the Board approves any bids he might receive. Mr. Taylor explained that if staff (not Board members) is completing a task as delegated by the Board, then there is no problem for them to meet. Mr. Taylor stated that the open meeting law does not apply to Mrs. Weaver as a single person making decisions regarding the Airport via her position as the Airport Manager.

The question was asked if written minutes have to be voted on by the Authority and/or signed by an officer of the Board. Mr. Taylor explained that according to the open meeting law, minutes have to be available for inspection within 30 days, and can be made available to the public even if they have not yet been approved. If they are not yet approved, there should be some indication on them so that it is clear that the Board has not yet approved the minutes. Mr. Taylor stated that marking the minutes as "DRAFT" is an acceptable indicator.

Mr. Taylor indicated that minutes should be reasonably available to the public. Minutes do not have to be posted, and they do not have to be mailed "willy nilly" to everyone. The only requirement is that there is at least one central place where they are available for review; this would typically be at the Airport Manager's office or on the Airport website. Mr. Taylor stated that posting the minutes to the Airport Authority website is not a requirement.

The question was asked about supporting materials, and when they needed to be made available; and if the requirement is that supporting materials needed to be made available prior to the meeting, then what should be done about people showing up to the meeting who bring their heretofore unseen supporting material with them.

Mr. Taylor cited 241.020(6). Supporting materials are any materials that the Board might need to review or consult regarding public business and/or discussion of an item. Any supporting materials that the Board is using must also be made available to the

public. Paragraph (6) explains when those materials must be made available. If supporting materials are provided to members of the public body before the meeting (day before, two weeks before or whenever), they must also be made available to the public at that same time. If supporting materials are available at the beginning of the meeting, then that is the time when materials should also be ready for public review.

The statute says, “made available” – and that could mean that the public could look at the supporting materials but not take them, since the meeting facilities do not have a copy service available at the time of the meeting. Copies can be created for distribution to the public as long as doing so is not an onerous event. Mr. Taylor stated that reasonable access must be provided to the item; however, the Board is not necessarily obligated to provide individual copies. If there is a great expense to copying materials, and a member of the public wants it, they can be asked to pay for their individual copy, as the alternative is they can be happy looking at the Board’s copy.

The exception is that the agenda, proposed ordinances and regulations, and notices must be made available at no cost, but back-up materials are not included in that ruling. Mr. Taylor stated that the exception is any material that is deemed confidential, proprietary, or something that is declared confidential by law. NRS 332.025 defines proprietary information, and Mr. Tackes will pull the statute, review it, and send his review to the Board. Something cannot simply be declared confidential just because you don’t want it distributed.

Finances and financial information could be considered proprietary, and provided to Mrs. Weaver or Mr. Tackes, who could then review the information and inform the Board that, yes, the financial information is in order, so that information that could be harmful to the person making the submittal does not have to be divulged to the public.

The question was asked about subcommittee meetings, and protocol for them. Mr. Taylor indicated that everything that was done for a regular meeting had to also be done for a subcommittee meeting, from posting the agenda to taking minutes and having those minutes reviewed and approved by the Board. Mr. Taylor further explained that if there were three Board members on a subcommittee and all three of them were in attendance at the subcommittee meeting, then a quorum would consist of two members in attendance. If Mr. Clague, Mrs. Weaver or Mr. Tackes were to hold a meeting, and invited three or less of the Board members (it must be less than a quorum), then no agenda needed to be posted, nor minutes taken nor recording made – but the caveats discussed above apply; that is, there can be no polling, no deliberating to a decision, and no serial gathering of information. Mr. Taylor stated that if the group is meeting to be making decisions, then they’d better not meet; they should give it some thought and do the right thing (meaning, call a formal meeting). On the other hand, if the group is just meeting to gather information, the law does not apply.

Mr. Jerry Vaccaro asked about the subcommittee meetings held to review Title 19. Mr. Taylor stated that the open meeting law applies to this subcommittee; that the meetings must be noticed and an agenda published, and that minutes must be taken and the meetings recorded.

Mr. Vaccaro asked if the proposed changes had to be made available to the public. Mr. Taylor stated that at the time the proposed changes were submitted to the Board of

Supervisors, then at that point they had to also be made available to the public; not necessarily beforehand, but accomplished according to the statute in the NRS regarding supporting materials.

Mr. Lewis explained that the subcommittee members felt that the proposed changes were not a public document until the subcommittee is ready to submit the proposed changes to the Board. Mr. Lewis explained that the process has been ongoing for a long time.

Mr. Taylor explained that the subcommittee needs to be allowed to do their work in coming up with the product. Once the subcommittee has completed their task and believes that they are at the point where the document is ready for review and approval by the Board, the item will be placed on an agenda. It is at that point that the document is considered “supporting material” and should be made available to the public.

NOTE: Since a quorum was not present for the duration of the meeting, a formal meeting could not be convened. The meeting that ensued was considered an informal meeting. Mr. Taylor stated that minutes of this discussion could not be published, since this was an informal meeting; however, notes could be taken as long as notation was made that they were not formal meeting minutes. Mr. Taylor made a presentation regarding Nevada’s open meeting laws, but no action was taken.

E. REPORT FROM AUTHORITY MEMBERS (*Non-Action Item*).

This item was abandoned since a formal meeting was not convened.

F. ACTION ON ADJOURNMENT.

The meeting was adjourned at 7:10 p.m.

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NOTE: A tape recording of these proceedings is on file, and available for review and inspection at the Airport Manager’s office during normal business hours.

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The notes of the 29 August 2007 Special Meeting of the Carson City Airport Authority are submitted to the Airport Authority on this 19th day of September, 2007.

BY: _____

TITLE: Steve Lewis, Chairman