

1 THE COMMONWEALTH OF MASSACHUSETTS  
2 MASSACHUSETTS GAMING COMMISSION  
3 PUBLIC MEETING #177  
4 OPEN MEETING LAW TRAINING  
5

6 CHAIRMAN

7 Stephen P. Crosby  
8

9 COMMISSIONERS

10 Gayle Cameron

11 Lloyd Macdonald

12 Bruce W. Stebbins

13 Enrique Zuniga  
14 -----  
15  
16  
17  
18  
19  
20

21 January 27, 2016 1:00 p.m.- 2:37 p.m.

22 MASSACHUSETTS GAMING COMMISSION

23 101 Federal Street, 12th Floor

24 Boston, Massachusetts

1 P R O C E E D I N G S :

2

3 CHAIRMAN CROSBY: We will call to  
4 order the 177th meeting of the Massachusetts  
5 Gaming Commission at about 1:00 on January 27.

6 We have one item on the agenda  
7 today, which is to follow up on the suggested  
8 training session of the Open Meeting Law. And  
9 in collaboration with the Attorney General's  
10 office, we decided that in keeping with the  
11 Open Meeting Law, we should have this training  
12 session in an open meeting, open public  
13 meeting. So, it's being streamed live on the  
14 web. It'll be archived both in text and video.

15 And with that, I think we are ready  
16 to go and welcome our guests from the Attorney  
17 General's office.

18 MS. NABLE: Thank you very much,  
19 Chairman Crosby. I am Amy Nable for those of  
20 you who may not know me. I think most of you  
21 do. I'm the Director of the Attorney General  
22 Healey's Division of Open Government. And  
23 Kevin Manganaro, one of the Assistant Attorneys  
24 General in the division is going to be sharing

1 responsibilities here with me today.

2 As I'm sure you all know, this is  
3 sort of what we're hoping is the last stage of  
4 a process that started back in July when the  
5 Commission sought our guidance on whether or  
6 not certain practices complied with the Open  
7 Meeting Law.

8 We sent a letter fairly detailed  
9 back in December laying out our recommendations  
10 and our findings with that respect. And then  
11 suggested that we should come in and talk and  
12 give some training so that you have an  
13 opportunity to ask us any questions that you  
14 have. And we really encourage you as we go  
15 along today ask as many questions as you want.  
16 That's what we are here for.

17 The only thing that we can't  
18 directly address is whether or not something  
19 that has already occurred violates the Open  
20 Meeting Law aside from the things that were  
21 discussed in that December letter.

22 That's because we wear this dual hat  
23 of training and enforcement. So, if somebody  
24 could potentially still file a complaint, it

1 could come before us. So, we're happy to talk  
2 about current Commission practices, how you can  
3 structure things going forward, hypotheticals  
4 and just general compliance questions. That's  
5 the one caveat that I have.

6 I do want to acknowledge at the  
7 outset that we are very aware of the unique  
8 challenges faced by this body. It is certainly  
9 difficult to be a full-time commission, working  
10 together on the same floor all day, every day  
11 to run an agency within the constraints of the  
12 Open Meeting Law.

13 So, we want to do everything we can  
14 to help you accomplish your jobs within those  
15 constraints. But we are very cognizant that  
16 sometimes even when you are trying very hard  
17 and we acknowledge that there have been a lot  
18 of steps to make your work very transparent  
19 including hundred 177 open meetings with  
20 everything on the Internet and transcribed and  
21 whatnot. Even when you're trying to do that,  
22 sometimes inadvertent violations happen.

23 So, we just want to make sure that  
24 we're doing everything we can to explain to you

1 where those boundaries are, what you can and  
2 can't do. And to try to brainstorm some  
3 solutions to some of those problems.

4           With respect to this being on the  
5 Internet, I would just note that we realize  
6 that this is an open meeting. We think it's  
7 great that you post these to the web so that  
8 other people can look at it. I just want to  
9 note that the guidance we are giving today is  
10 the current interpretation of the Attorney  
11 General.

12           Certainly, over time that could  
13 change. So, anybody using this as a resource  
14 may want to just consult the Attorney General's  
15 website to make sure you're getting the most  
16 current guidance if you're looking at this two  
17 years from now, basically.

18           So, what I'm going to focus on today  
19 primarily is, as I said, the content of that  
20 letter with the big focus on deliberation and  
21 where the boundaries are of deliberation. Then  
22 Kevin is going to talk a bit about executive  
23 session, which I realize is something that this  
24 body hasn't typically used, but we want to make

1 you kind of aware of the ways in which you may  
2 be able to use it to address some sensitive  
3 topics.

4 So, the first thing I'm going to  
5 talk about is public bodies. As I'm sure you  
6 are well where, the Commission is a public body  
7 subject to the Open Meeting Law. It is a  
8 pretty broad definition but it is a multiple  
9 member board, commission, committee or  
10 subcommittee however created, elected,  
11 appointed or otherwise constituted that's  
12 established to serve a public purpose.

13 So, individual public employees who  
14 are not members of the Commission such as your  
15 Executive Director, General Counsel are not  
16 subject to the Open Meeting Law. However, they  
17 obviously have a responsibility, which I'll  
18 discuss more later, to avoid facilitating  
19 violations of the Open Meeting Law by the  
20 Commission. But as individuals who are not  
21 members of a multiple member board, staff of  
22 the Commission is not subject to the Open  
23 Meeting Law.

24 I did want to talk a bit about

1 subcommittees. So, the definition of  
2 subcommittee, it's within definition of public  
3 body, is any multiple member body that is  
4 created to advise or make recommendations to a  
5 parent body.

6 And it doesn't matter if it's called  
7 a subcommittee. It can be called a working  
8 group, an advisory committee, or it may have no  
9 name. It may just be that you delegate to two  
10 Commissioners to go review an issue and report  
11 back to the Commission.

12 Whether or not you say Commissioner  
13 Stebbins, Commissioner Zuniga you are now a  
14 subcommittee, if you delegate that task and  
15 charge them with reporting back to the  
16 Commission, you have created a subcommittee.  
17 And they need to comply with the Open Meeting  
18 Law by posting notice, holding open meetings,  
19 and taking minutes of those subcommittee  
20 meetings. So, that's one thing I wanted to  
21 make sure you were aware of.

22 With respect to the other  
23 exclusions, two exclusions that I wanted to  
24 focus on are the last two on this list.

1                   COMMISSIONER MACDONALD: Excuse me.  
2 Can you take a step back. I'm the new person  
3 on the block here. This subcommittee, can you  
4 be more precise about that? If the Chair were  
5 to ask me and, for example, Commissioner  
6 Cameron to work on a specific subject matter  
7 any time for purposes of eventually reporting  
8 to the Commission that any conversation that I  
9 would have with Commissioner Cameron on that  
10 subject matter would be an open meeting?

11                   MS. NABLE: That is correct. So, if  
12 the task was delegated to an individual  
13 Commissioner, because a subcommittee has to be  
14 multiple member body that obviously would not  
15 be subject to the Open Meeting Law.

16                   You can work on it individually.  
17 You can bring your staff in and then report  
18 back. And there is no requirement that you do  
19 so in accordance with the Open Meeting Law.

20                   But if there are at least two  
21 Commissioners who are delegated that task, then  
22 that is very likely going to be a subcommittee  
23 if you are charged with doing something in  
24 particular and reporting back, making some sort



1 of recommendation or advising the committee.

2 So, for instance, this comes up a  
3 lot with liaisons. A lot of public bodies have  
4 a liaison to different groups. And again where  
5 it's an individual who is liaison charged with  
6 investigating, visiting meetings, reporting  
7 back, it's not subject to the Open Meeting Law.

8 But if there are at least two, then  
9 you need to post notice for a meeting of the  
10 subcommittee. You can't deliberate outside of  
11 that meeting.

12 COMMISSIONER ZUNIGA: What if the  
13 task was delegated to one Commissioner and a  
14 staff member that by itself is also  
15 subcommittee?

16 MS. NABLE: If there are designated  
17 members, correct. You and say Mr. Bedrosian  
18 were delegated the task of working together --  
19 Actually, it may be a little bit different  
20 where it's Ed working in his role as the  
21 Executive Director. You're just tasked with  
22 working with a staff member.

23 You just need to be aware that  
24 that's always a possibility. If they're saying

1 to you go consult with this department and  
2 report back that's probably not going to be a  
3 subcommittee. But if it's very specific,  
4 individuals named with a specific charge that  
5 there's a possibility that it could be.

6 So, I would just stress that you  
7 should be thinking about this. And if there's  
8 any ambiguity, if you are unsure, reach out to  
9 us because these public body questions can get  
10 very thorny and they are all very unique.

11 We have a number of decisions  
12 talking through a variety of situations where  
13 people intentionally and unintentionally  
14 created subcommittees. And I'd be happy to  
15 point you to some of those examples.

16 COMMISSIONER MACDONALD: What's the  
17 authority for this? Is this specifically  
18 addressed in the statute?

19 MS. NABLE: It's the definition of  
20 public body, right, where it's a subcommittee  
21 is any multiple member body that is created to  
22 advise or make recommendations to a parent  
23 body. That however created, elected, appointed  
24 or otherwise constituted language that's

1 earlier in the definition, we read that as  
2 applying to subcommittees as well.

3 COMMISSIONER ZUNIGA: One last  
4 question on this. Chapter 23K has the Chair of  
5 this Commission as the person responsible to  
6 distribute work among the Commission -- That's  
7 a direct quote. -- which could be this  
8 Commission or the whole agency. I suppose it  
9 should apply to both.

10 In that distribution, do you see any  
11 kind of potential for creating a subcommittee  
12 just because the Chair has acted by  
13 distributing work?

14 MS. NABLE: So, I think generally  
15 when people are acting in their normal job  
16 functions and the Chair just happens to be the  
17 person assigning tasks to them in their normal  
18 job functions that's probably not going to  
19 create a subcommittee.

20 It's more of when there is something  
21 that's a little bit outside of that and people  
22 are brought together in some sort of formal way  
23 that we want these five people to research this  
24 particular issue that's of interest to the

1 Commission and report back to us, create a  
2 report that's not perhaps something that's  
3 within their regular job function.

4 It's not like we want the folks in  
5 the finance department to report back to us on  
6 the Commission's finances. That probably  
7 wouldn't be a subcommittee.

8 COMMISSIONER ZUNIGA: Thank you.

9 MS. NABLE: Do you have anything to  
10 add to this?

11 MR. MANGANARO: I would just add  
12 that part of our hesitation in answering the  
13 question is that it becomes very factually  
14 specific.

15 Situations where we've seen it  
16 before are, as Amy said, where people step  
17 outside their regular tasks. For example, (A)  
18 and (B), you're going to be our point people on  
19 a particular topic and then to report back to  
20 the full group. Those are the types of  
21 situations where we've seen it in the past.  
22 But we can imagine other factual situations  
23 where it could come up and we would look at  
24 each one holistically.

1 COMMISSIONER ZUNIGA: Thank you.

2 CHAIRMAN CROSBY: Lloyd asked if it  
3 was one member of the Commission and a staff  
4 person. It sounded like you said that might be  
5 a subcommittee, one Commissioner with a staff  
6 person. What about two staff people?

7 MS. NABLE: Under some  
8 circumstances, right. It doesn't matter if the  
9 subcommittee is comprised of any members of the  
10 Commission or just staff or people from outside  
11 the office. It's any body that's created to  
12 advise or make recommendations to the  
13 Commission.

14 So, it can include one member. It  
15 can include no members. But really what we  
16 look at is does it have a fixed membership.  
17 Are they taking some form of collective action?  
18 And these are the last two exceptions that I'm  
19 going to talk about. Does it serve a public  
20 purpose? Do they take collective action? And  
21 are they going to be advising or making  
22 recommendations back to the committee?

23 So, if I may, it might be helpful if  
24 I address those last two to give you an idea of

1 what's not subject to this rule. So, bodies  
2 that don't serve a public purpose are not going  
3 to be considered public bodies whether they are  
4 subcommittees or standalone bodies.

5 An example of this would be if the  
6 Commission said to five staff members we're  
7 delegating you the task of planning the agency  
8 holiday party. That is not going to be subject  
9 to the Open Meeting Law because it doesn't  
10 serve a public purpose.

11 Then the next one is groups that are  
12 not established with the jurisdiction to make  
13 decisions or recommendations collectively. So,  
14 if you ask five people, staff members or people  
15 from outside the Commission for instance to  
16 meet with the Executive Director and provide  
17 feedback on a particular issue to him that's  
18 not necessarily going to be a public body if  
19 they're not making any sort of recommendation  
20 or taking any sort of votes. They're just  
21 coming in to provide feedback and then he'll do  
22 with it whatever he will.

23 So, those are couple of instances  
24 where it's not going to be subject to the Open

1 Meeting Law. Do we have additional questions  
2 on public body before we move on?

3 CHAIRMAN CROSBY: If we put together  
4 a people representing each of the departments  
5 to organize and implement the move from one  
6 space to another, is that a subcommittee?

7 MS. NABLE: Not if they are not -- I  
8 guess it depends. The answer is it depends.  
9 If they are advising you and making some  
10 recommendation to you for instance on office  
11 space. If the Commission were looking to move  
12 offices which hopefully, God-willing you guys  
13 are not going to have to do that again anytime  
14 soon, but if that were the case and you picked  
15 five people and that's not their normal job  
16 functions, these aren't for instance operations  
17 people, to investigate the issue, report back  
18 to the Commission on preferred office space or  
19 things like that that may be considered a  
20 subcommittee.

21 But if you're asking people for whom  
22 that's within their regular job  
23 responsibilities to do that, it's probably not  
24 going to be a subcommittee if they're not

1 reporting back to you. It's probably not going  
2 to be a subcommittee.

3 As Kevin said, it is very fact  
4 specific. And we're happy to answer any of  
5 these specific questions as they come up. I  
6 guess our primary purpose today is to get you  
7 thinking about these issues and give you some  
8 parameters. But if there are specific  
9 situations that come up, we are happy to answer  
10 those questions.

11 COMMISSIONER ZUNIGA: You mentioned  
12 this already, if it's within the normal job  
13 function of somebody that may not necessarily  
14 be a subcommittee.

15 Somebody who is tasked with doing  
16 this -- I'm specifically thinking of my role as  
17 a treasurer of the Commission, I have functions  
18 of oversight of the finance department, and you  
19 mentioned that earlier. So, that's already  
20 been effectively delegated when I was elected  
21 treasurer of the Commission. So, activities  
22 relative to that with other people would not  
23 constitute a subcommittee in your view or in  
24 your interpretation.



1 MS. NABLE: When you say continuing  
2 to do that with other people, do you mean other  
3 Commissioners or just your work with the  
4 finance department?

5 COMMISSIONER ZUNIGA: Either/or,  
6 both let's say in separate instances.

7 MS. NABLE: So, if two Commissioners  
8 were asked to meet with the finance committee  
9 about a particular issue and report back,  
10 because it really has to be both of those have  
11 to be met. It has to be a multiple member body  
12 and they have to be reporting back, advising or  
13 making a recommendation back to the Commission  
14 as a whole.

15 So, if both of those factors are  
16 met, then it may be a subcommittee. But your  
17 role as the liaison or the person in charge of  
18 overseeing the finance department working with  
19 that department and their staff in their  
20 regular course of duties is likely not going to  
21 fall within this role.

22 COMMISSIONER ZUNIGA: Thank you.

23 COMMISSIONER MACDONALD: Is  
24 delegation in this context a term of art?

1 MS. NABLE: It implies some level of  
2 formality. I'm trying to think of some  
3 examples from our decisions. It is typically  
4 where either a vote was taken -- the clearest  
5 circumstance is when a vote is taken by the  
6 body to formally delegate a task to certain  
7 people. That's going to be the clearest  
8 instance.

9 If the Chair asks two members to do  
10 something that may be sufficient to delegate a  
11 task. But I think that is more of a shorthand  
12 I think than we're using. But there does have  
13 to be some formality to the creation of this  
14 body.

15 COMMISSIONER MACDONALD: What about  
16 the articulation of the substance of the  
17 delegation? Are there particular terms or  
18 concepts that are especially meaningful?

19 MS. NABLE: I think advise or make  
20 recommendations are the key things, report  
21 back, recommend to the Commission, those are  
22 things that we're looking at.

23 I'm kind of going through the  
24 factors that we would look at if somebody were

1 to file a complaint saying that this body was a  
2 subcommittee that didn't meet. We would look  
3 at were there named members? Was there some  
4 formality to the way that it was created? Do  
5 they have a defined task? Did they take  
6 collective action to report back to the  
7 Commission? So, those are, I think, the  
8 factors we would look at.

9 COMMISSIONER MACDONALD: So, even  
10 advisory, strictly advisory delegations in the  
11 sense of let's say a new issue comes up that  
12 arises within at least arguably the  
13 jurisdiction of the Commission but nobody knows  
14 anything about it. And the Chair asks two  
15 people to just look into it and establish a  
16 framework for a discussion as to how the  
17 Commission might thereafter address, come to  
18 terms with that subject. That by itself would  
19 be a delegation to a subcommittee?

20 MS. NABLE: It could potentially  
21 because as I said the definition of  
22 subcommittee is very broad and it includes  
23 advisory committees. Actually, I'm going to  
24 talk about this on the next slide about

1 deliberation. It may be helpful to answer that  
2 question if I move onto that.

3 So, the definition of deliberation  
4 was significantly broadened when the law was  
5 revised back in 2009 as part of the Ethics  
6 Reform bill. Prior to July 1, 2010, the  
7 discussion had to be a verbal communication  
8 that was aimed at making a decision.

9 When they revised the law in 2009,  
10 they broadened it to any communication, oral or  
11 written, so this includes email. This includes  
12 Google docs. This includes message boards,  
13 text message. It doesn't really matter what  
14 the medium is. It's any oral or written  
15 communication through any medium that's between  
16 or among a quorum of a public body on any  
17 public business within its jurisdiction.

18 So, incredibly broad. This is why  
19 in the letter that we sent we noted that a  
20 report on an activity of one of the  
21 Commissioners, as long as it's within your  
22 jurisdiction back a quorum of the Commissioners  
23 is considered a deliberation.

24 That's why also these advisory

1 committees, if they are discussing any matter  
2 of public business within their jurisdiction  
3 that's deliberation. It doesn't have to be  
4 aimed at making a decision. It can be purely  
5 advisory.

6 Now there are statutory exclusions.  
7 And I'll talk about these in depth. And I'm  
8 sure there's going to be a lot of questions  
9 about this. It's not considered deliberation  
10 to distribute a meeting agenda, scheduling or  
11 procedural information, or to distribute a  
12 report or document to be discussed at a  
13 meeting.

14 But both of those exceptions carry a  
15 very strong caveat that it's provided that no  
16 opinion of a member of the public body is  
17 expressed.

18 So, you can send out the meeting  
19 agenda, but you can't say this is why it's  
20 important we take action on this topic or I  
21 recommend that we take action on this topic.

22 That also applies to the agenda  
23 setting meetings that we discussed where we  
24 said it's okay for you to have these meetings

1 to receive reports from the directors on the  
2 various activities of the different  
3 departments. It's okay for you to suggest  
4 items for inclusion on the agenda. But where  
5 you need to be very careful if this is not in a  
6 meeting setting is that you are not conveying  
7 any sort of opinion about those agenda items.

8 So, again not saying we need to take  
9 action on this by this data or else we lose  
10 this funding. Or we need to consider this or  
11 else we're going to be subject to a lawsuit,  
12 something of that nature. There really can't  
13 be any kind of qualifying language. As long as  
14 it's limited to a request to add something to  
15 the agenda, it will fall within this exception.

16 Same thing for scheduling. Is  
17 everybody available on this day at this time  
18 not going to be subject to the Open Meeting Law  
19 if you do that outside of a meeting.

20 Distribution of reports or documents  
21 is a little bit of a tricky area. So, you can  
22 send out a document for everybody to review  
23 prior to the meeting provided you don't express  
24 an opinion. Sometimes, those documents

1 themselves will contain an opinion. And we  
2 have a bunch of decisions in which we've  
3 considered a bunch of circumstances involving  
4 distribution of documents.

5           So, in one particular case, the  
6 public body had discussed an issue and  
7 delegated to an individual member the task of  
8 drafting a letter basically summing up the  
9 positions that they had already decided on.  
10 That member sent that letter once drafted back  
11 to the body for review prior to a meeting so  
12 that they could discuss it at a meeting.

13           We said that was okay because it  
14 wasn't expressing that individual member's  
15 opinion outside of a meeting. It was really  
16 just reducing to writing what the body had  
17 already discussed in the open and it was for  
18 discussion at a meeting. So, we said that's  
19 okay.

20           What you can't do is create a  
21 document solely for the purpose of expressing  
22 your opinion and then send it and say I want to  
23 talk about this at the next meeting. Because  
24 if you are conveying an opinion outside of an

1 open meeting to a quorum, it's going to be  
2 subject to the Open Meeting Law. It's going to  
3 be considered deliberation even if nobody  
4 responds.

5 And we have a number of cases. This  
6 comes up most frequently in the form of an  
7 email where somebody sent an email. None of  
8 the other members responded but we said that it  
9 met the definition, because even though it was  
10 a one-way communication, it was on a matter of  
11 public business within their jurisdiction and  
12 reached a quorum. That's really all that's  
13 required to meet this very broad definition.

14 CHAIRMAN CROSBY: So, the  
15 consequence of that is that you have to give  
16 out a document for discussion at the public  
17 meeting?

18 In other words, you can't send it to  
19 people in advance to read it. You have to give  
20 it to them at the meeting?

21 MS. NABLE: If it's expressing an  
22 opinion that's correct. You should distribute  
23 it at the meeting.

24 COMMISSIONER ZUNIGA: Which we can



1 distribute 48 hours in advance, right? We can  
2 formalize a packet that's going to be in the  
3 meeting with some advance or it can only be at  
4 the meeting?

5 MS. NABLE: I'm not sure I entirely  
6 understand.

7 COMMISSIONER ZUNIGA: Let's assume  
8 something that's delegated to a Commissioner to  
9 come back and make a recommendation to be  
10 included in the packet that's going to be in  
11 the meeting. Can that recommendation come back  
12 as part of the packet?

13 MS. NABLE: Oh, I see what you're  
14 saying. So, if somebody is the liaison and --  
15 It really should be distributed at the meeting  
16 if it's expressing an opinion of that member to  
17 the Commission for the first time.

18 COMMISSIONER ZUNIGA: What's the  
19 earliest it can be distributed?

20 MS. NABLE: As I said, I think it  
21 really should be distributed during the meeting  
22 or at the meeting. And that's because as I  
23 said any communication outside of a meeting  
24 that reaches a quorum that expresses an opinion

1 is going to fall within this definition.

2 So, I think the best thing to do is  
3 to have them present it at the meeting. And we  
4 realize that this is not the most efficient way  
5 to do things.

6 CHAIRMAN CROSBY: What is the public  
7 interest that is being protected by this  
8 interpretation? What are you trying to --

9 MS. NABLE: I think the concern is,  
10 and I can't obviously speak for the Legislature  
11 what they were thinking when they redrafted the  
12 definition in this way, but I think that the  
13 concern is that if an opinion is being  
14 circulated in a memo prior to the meeting, then  
15 everybody will arrive at the meeting having  
16 already made up their minds about that memo.  
17 And the public meeting may not witness the  
18 deliberation.

19 Whereas if they're actually  
20 presenting it and discussing it during the  
21 meeting, then the public actually has a chance  
22 to kind of see that deliberation unfolding and  
23 see how you're arriving at decisions.

24 MR. BEDROSIAN: Amy, if I could

1 interrupt. Is there a difference between  
2 opinion and a report?

3 MS. NABLE: That's a good question.  
4 I think if it's a strictly factual report  
5 that's distributed for discussion at a meeting,  
6 then it's probably okay.

7 MR. BEDROSIAN: Right. I'm thinking  
8 if someone reports and these are the facts. We  
9 will discuss our options at the meeting.

10 MS. NABLE: Right. I think there  
11 are two different principles at play here and  
12 it's easy to confuse the two. The first is  
13 what is deliberation?

14 Deliberation is not limited to  
15 opinions. It's any communication on any matter  
16 within a body's jurisdiction.

17 The second is what falls within the  
18 specific exception for distribution of reports  
19 or documents to be discussed at a meeting.  
20 That's the one that carries the caveat that it  
21 has to be limited to -- that the prohibition is  
22 on opinions expressed by a member.

23 So, I think you are correct that a  
24 strictly factual report that's distributed for

1 discussion at a meeting probably would fall  
2 within this exception to the definition of  
3 deliberation.

4 COMMISSIONER ZUNIGA: What about a  
5 budget, a proposed budget, isn't the numbers in  
6 a budget baseline to a prior year perhaps an  
7 opinion or a recommendation even if it's just  
8 presented with numbers?

9 MS. NABLE: That's an interesting  
10 point. I think we do actually have decisions  
11 on budgets.

12 MR. MANGANARO: I don't recall.

13 MS. NABLE: But I will tell you, for  
14 instance, we have a decision involving a draft  
15 opinion piece. It did express an opinion, but  
16 I think that was the one where they had  
17 discussed it during a meeting and somebody just  
18 kind of reduced it to writing.

19 So, there can be circumstances where  
20 yes, the document may reflect some sort of  
21 opinions, but it wasn't created for the purpose  
22 of expressing an opinion like with the budget.  
23 The budget was created to give you numbers to  
24 discuss during a meeting. It wasn't

1 necessarily created to express an opinion.

2 So, I think a draft budget is  
3 probably okay, and would fall within this  
4 procedural exemption.

5 MR. BEDROSIAN: Can I can ask one  
6 other question on the definition?

7 MS. NABLE: Yes.

8 MR. BEDROSIAN: Within the  
9 jurisdiction -- Within the jurisdiction that  
10 language, have you interpreted that at all?  
11 Because I can imagine a situation where the  
12 Commission is asked to opine or give an opinion  
13 or whatever on something that may not be  
14 strictly within the Gaming statute but some  
15 people may be interested in hearing what they  
16 have to say. If it's not within the Gaming  
17 statute is not within their jurisdiction?

18 MS. NABLE: So, we don't have an  
19 exclusive list of what is and what is not  
20 within bodies' jurisdictions, but we certainly  
21 have a lot of different examples that we can  
22 point to.

23 I would say that even if it's not  
24 specifically in the Gaming statute, it is

1 possibly that it could be within your  
2 jurisdiction if you are being asked to do it by  
3 virtue of your status as Commissioners. If  
4 because of your unique expertise and your  
5 unique positions you're being asked to weigh in  
6 on something, even if it's not your statutory  
7 role, then it could be within their  
8 jurisdiction.

9           COMMISSIONER MACDONALD: You  
10 observed that this interpretation or that the  
11 statute in this respect create certain  
12 inefficiencies. Going back to the circumstance  
13 of preparing a memorandum by one person and  
14 then submission to the Commission for  
15 discussion, you're saying, as I understand it  
16 that that would fall within the Open Meeting  
17 Law.

18           Would a way to deal with the  
19 inefficiency be that such a memorandum could be  
20 submitted in the context of a public meeting at  
21 day one, but then there would be a procedural  
22 decision made that it wouldn't be discussed  
23 until let's say the next week at an open  
24 meeting?

1 MS. NABLE: Yes. I think that would  
2 be one way to deal with it because you're not  
3 communicating outside of a meeting. You're  
4 delivering that report containing your opinion  
5 during a meeting. And people can review it.  
6 Yes, I think that would be one way to deal with  
7 it.

8 Also, with respect I did want to  
9 note with respect to drafting documents, you  
10 can -- And I'm going to talk a little bit  
11 about serial deliberation and where the limits  
12 are. -- but you can utilize your staff in some  
13 ways to deal with some of these inefficiencies.

14 If you all wanted to express, for  
15 instance, to Mr. Bedrosian your positions and  
16 talk through your positions on a particular  
17 issue and have him draft some collective  
18 document that he can then deliver to you during  
19 the meeting. So, he is not reporting it back  
20 to you outside of a meeting, but he's  
21 delivering it back to you during a meeting.  
22 That is one way to collectively draft documents  
23 in a slightly more efficient way.

24 But where you do need to be careful

1 is with the risk of serial deliberation.  
2 Obviously, you can't utilize staff to send  
3 messages between one another outside of a  
4 meeting. But you can definitely utilize your  
5 staff with respect to drafting documents.

6 I wanted to also talk about sub-  
7 quorum communications. I think there seems to  
8 be a pretty good understanding of this, but I  
9 just want to reemphasize that less than a  
10 quorum of the Commission, so in this case two  
11 members, can discuss matters within your  
12 jurisdiction outside of a meeting without  
13 having to post notice or follow the Open  
14 Meeting Law provided they're not a subcommittee  
15 and provided that you don't engage in serial  
16 deliberations.

17 So, for instance, I know that you  
18 are in the habit periodically of having  
19 successive meetings with outside parties on  
20 particular topics. And that's fine, as long as  
21 there is no communication back through staff or  
22 from one member to another about what happened  
23 in each of those successive meetings.

24 So, it's not a violation of the Open



1 Meeting Law to structure briefings in such a  
2 way as so as to not trigger the requirements of  
3 the law provided that you are not using it to  
4 improperly evade the requirements of the law.

5 Does anyone have any questions about  
6 serial deliberations of quorum? I know this a  
7 very fruitful area.

8 CHAIRMAN CROSBY: So, can Ed go from  
9 among us and talk about different issues, some  
10 issue that is on the table? What are the  
11 limitations on him doing that? I guess he  
12 can't come back and package it up into a  
13 decision in effect?

14 MS. NABLE: He can but he can't  
15 communicate that back to the members outside of  
16 a meeting. So, if as a precursor he wants to  
17 talk to each of the members and get their  
18 positions on something, he can, and if he wants  
19 to compile it in writing or just in his head  
20 that's fine. What he can't do is then report  
21 back to the Commissioners outside of a meeting  
22 what the other Commissioners said.

23 MR. BEDROSIAN: And presumably, I  
24 can't serially deliberate. I can't go to

1 Commissioner (A), (B) or (C) and say this is  
2 what each one said.

3 MS. NABLE: Correct. The next thing  
4 I'm going to talk about before I turn this over  
5 to Kevin - So, if you are deliberating,  
6 obviously it needs to take place during a  
7 meeting. Meeting is again is pretty broad, any  
8 deliberation by a public body with respect to  
9 any matter within that body's jurisdiction.

10 And there are a number of steps to  
11 exclusions, some of which again I'm aware that  
12 you are already utilizing, but I figure it  
13 makes sense to kind of recap where the  
14 boundaries of those are.

15 The first one being for an on-site  
16 inspection provided there is no deliberation.  
17 This is not considered a meeting. You don't  
18 have to post notice. It's not an executive  
19 session. It's just not a meeting.

20 For instance, if you all wanted to  
21 go as a group to tour the casino construction  
22 out in Springfield, you could do that without  
23 posting notice there's a meeting provided there  
24 is no deliberation. Some best practices here,

1 I guess we get a lot of questions about site  
2 visits. Can I ask questions? Because  
3 questions can constitute deliberation if they  
4 reach a quorum and they concern a matter of  
5 public business within your jurisdiction.

6 So, there's two things really that  
7 you can do with respect to site visits. First  
8 one is to send a liaison. As I said, at the  
9 outset an individual is not subject to the Open  
10 Meeting Law. So, if you want to send one  
11 individual to go tour the site that person can  
12 ask as many questions as they want, express as  
13 many opinions as they want and can report back  
14 to the Commission during a meeting. And that's  
15 perfectly fine. It doesn't have to comply with  
16 the Open Meeting Law.

17 The other thing that some people do  
18 is if a quorum wants to attend but they really  
19 can't for various reasons make it an open  
20 meeting. Like for instance, if you're touring  
21 a construction site sometimes it can be  
22 difficult to make that accessible to persons  
23 with disabilities. It can hard to tell people  
24 exactly where you're going to be meeting if you

1 are going to be wandering around.

2           So, if you can't make it an open  
3 meeting, what you might want to do is post  
4 notice for an open meeting afterwards in some  
5 location that is accessible. And during the  
6 visit that quorum can take notes, write down  
7 any questions. They can't really communicate  
8 between a quorum, but they can take notes and  
9 go back to the open meeting immediately  
10 afterwards and discuss everything that they saw  
11 there. So, that's one option.

12           Another exception is for attendance  
13 by a quorum at an event such as this here, Open  
14 Meeting Law training today provided there is no  
15 deliberation. So, obviously, you didn't have  
16 to do this today as an open meeting, but we  
17 think it's great that you did because first of  
18 all, it gives you more flexibility again to ask  
19 questions.

20           Certainly, we're always happy to  
21 reach a broader audience and let people know  
22 about the Open Meeting Law. But you can attend  
23 an event and you can ask questions provided  
24 there is no deliberation, and it's not a

1 meeting, same for a meeting of another public  
2 body.

3           And then the last one is this quasi-  
4 judicial exception. And I know that you do  
5 utilize this periodically. This is for the  
6 purpose of making a decision in an adjudicatory  
7 proceeding.

8           The adjudicatory proceeding itself  
9 if it involves a quorum of the body, it does  
10 have to comply with the Open Meeting Law. I  
11 know you tend to us the single hearing officer  
12 model, which is not subject to the Open Meeting  
13 Law. But if a quorum did want to participate  
14 that hearing would have to be subject to the  
15 Open Meeting Law.

16           But when you are meeting to make the  
17 decision, draft the decision, it's not  
18 considered a meeting. It's not within the Open  
19 Meeting Law.

20           Before I turn this over to Kevin,  
21 any questions about meetings?

22           COMMISSIONER ZUNIGA: Just on the  
23 site visits. You touched on the topic of  
24 questions could constitute a deliberation just

1 by the question itself, if I understood you  
2 correctly. For example if I went to a  
3 construction meeting and said where is north  
4 here; where is south might not. Whereas if I  
5 asked why is it taking you so long to make the  
6 progress up to date that clearly does.

7 Is that a fair characterization of  
8 why a question may or may not constitute?

9 MS. NABLE: Yes, I think so. The  
10 key thing to remember is that it has to be  
11 between or among a quorum. So, if you are the  
12 only one there, you can ask whatever you want.  
13 But if there are two other members there, then  
14 I think what you are saying is probably a good  
15 guideline. If it relates to the matters within  
16 the jurisdiction of the body, then even if it's  
17 in question form, it could be deliberation.

18 But if you're simply asking which  
19 way is north; which way is south that is  
20 probably not going to rise to that level.

21 COMMISSIONER ZUNIGA: But to be  
22 extra careful, we could simply go two by two  
23 let's say and that's not a quorum of public  
24 body.

1 MS. NABLE: Right, as long as you  
2 have not been delegated as a subcommittee. If  
3 the Chair said Commissioner Zuniga,  
4 Commissioner Stebbins I'd like you to go visit  
5 this construction site and report back to us on  
6 the progress and any concerns that you have  
7 that may be enough to create a subcommittee.

8 COMMISSIONER ZUNIGA: Fair enough.

9 COMMISSIONER CAMERON: You answered  
10 my question. It was really about site visit  
11 and if two Commissioners attend, you can ask a  
12 question but you can't then go back and talk  
13 about. It's clearly not a subcommittee. So, I  
14 think you already answered my question. Thank  
15 you.

16 MS. NABLE: Okay. Great.

17 COMMISSIONER MACDONALD: What if two  
18 people go to the site and then they come back  
19 and a third member of the Commission said how  
20 did it go today? What did you see and do?

21 MS. NABLE: We're talking about  
22 outside of a meeting?

23 COMMISSIONER MACDONALD: Right.

24 MS. NABLE: Then I would say that

1 maybe they should say that's a really good  
2 question. I'd be glad to talk about that  
3 during our next meeting, because the definition  
4 of deliberation is just so broad that even  
5 reporting on what you saw if that's within the  
6 Commission's jurisdiction --

7           COMMISSIONER MACDONALD: But it's  
8 one person's -- The hypothetical here is it  
9 includes that it's one person reporting back.  
10 It's not one person reporting the consensus of  
11 the two members who were there, but simply  
12 reporting on what that person, what that  
13 Commissioner observed and maybe even expressing  
14 the Commissioner's, the individual  
15 Commissioner's opinion as to let's say the  
16 progress of the contractor. That would be a  
17 problem?

18           MS. NABLE: I think I might have  
19 lost track of the example at some point. I  
20 thought we were talking about two people who  
21 did the same site visit.

22           COMMISSIONER MACDONALD: Two  
23 Commissioners go out to a construction site.  
24 There's early construction going on now in



1 Springfield or at least site clearance in  
2 Springfield and in Everett. And two  
3 Commissioners go out. They ask questions.  
4 They are not assigned to report back. So, this  
5 is not a delegation situation.

6 Questions are asked. An individual  
7 Commissioner has an opinion as to how the  
8 construction is proceeding in relation to the  
9 schedule that had been set. That Commissioner  
10 comes back and another Commissioner said how  
11 did it go? What's the progress?

12 Would that Commissioner's report of  
13 the Commissioner's opinion as to the state at  
14 the progress as against the timeline of the  
15 schedule for the work would that raise any  
16 issues?

17 MS. NABLE: I just want to make sure  
18 I'm entirely following you. So, there were two  
19 people who went on the site visit.

20 COMMISSIONER MACDONALD: Right.

21 MS. NABLE: They ask questions. One  
22 of them comes back and talks to a third person  
23 who wasn't on the site visit?

24 COMMISSIONER MACDONALD: Right.

1 MS. NABLE: As long as that -- What  
2 we are concerned about with respect to serial  
3 deliberation is where (A) talks to (B) and the  
4 (B) conveys to (C) what (B) discussed with (A).  
5 So here, (B) is talking to (C) and is talking  
6 about his or her own impressions and not the  
7 communications that they had with (A) then that  
8 probably falls within the sub-quorum exception  
9 to the definition of deliberation because  
10 there's not communication between or among a  
11 quorum.

12 So, even though (B) has the same  
13 knowledge as (A), as long as they're not  
14 conveying something that they discussed with  
15 (A), it's probably okay.

16 What we're really concerned about is  
17 where that communication non-contemporaneously,  
18 serially reaches a quorum. So, if it's two  
19 separate discussions on not necessarily the  
20 same topic, it's probably okay.

21 I think this would be very fact  
22 specific. So, it would depend on whether or  
23 not what (B) is conveying to (C) is something  
24 that they learned as a result of the questions

1 that (A) asked they were very pointed in some  
2 way. It's not a great idea but it may be  
3 permissible.

4 With that I think I'm going to turn  
5 it over to Kevin. As we said, I know executive  
6 session wasn't something that you had  
7 specifically asked us about, but we wanted to  
8 talk a little bit about it today just to kind  
9 of give you an idea of some tools that you may  
10 have available to help you do your work within  
11 the confines of the Open Meeting Law.

12 MR. MANGANARO: While we know that  
13 executive sessions aren't something that the  
14 Gaming Commission typically uses, I also want  
15 to point out that we're not advocating that you  
16 begin to use them. We simply wanted to make  
17 aware of what tools are in the toolbox for you  
18 guys to consider going forward.

19 So, right here on this slide this a  
20 list of some procedural steps that need to be  
21 taken before a public body can convene in  
22 executive session. So, the first one is that  
23 the meeting must begin in open session before  
24 entering executive session.

1           For example, today's meeting started  
2 at 1:00. It would be inappropriate for there  
3 to be an executive session running from 12:30  
4 to 1:00 followed by an open session.

5           That public body has to convene  
6 first in open session and declare the purpose  
7 for the executive session so that all members  
8 of the public can understand why the public  
9 body is entering the executive session.

10           So, that does require that the Chair  
11 make a statement about the purpose for the  
12 executive session describing in as much detail  
13 as possible what the body plans to discuss  
14 without divulging any information that would  
15 sacrifice the purpose for secrecy.

16           The Commission would then conduct a  
17 roll call vote before entering executive  
18 session, getting majority. And the Chair would  
19 announce whether the meeting will reconvene in  
20 open session after the executive session. For  
21 example, if there are members of the public  
22 they would know whether to wait around for  
23 further public discussion or whether everything  
24 that was being done out in the open had

1 concluded for the day.

2           If there are any members of the  
3 Commission who are participating remotely, they  
4 would be required to make a statement saying  
5 that no one else was present at the remote  
6 location who could hear the discussions,  
7 because again we want to preserve the purpose  
8 for secrecy.

9           Of course, there's never been any  
10 problem with you guys maintaining meeting  
11 minutes, but I would just point out that in an  
12 executive session, you would have to keep  
13 meeting minutes with the same level of  
14 sufficiency and accuracy as you do in open  
15 session minutes.

16           Then it is important that the  
17 discussion track very carefully to only the  
18 purpose for which the executive session is  
19 called. And we're just going to run through  
20 some executive session purposes in a minute.

21           But one that we're going to be  
22 discussing is for example if there is a  
23 litigation matter to be discussed. The  
24 discussion would have to track really carefully

1 to that litigation matter. It would be the  
2 Chair's role to kind of keep the discussion on  
3 track. In human nature, conversations can tend  
4 to wander, but it would be important that it be  
5 focused on the purpose for which the executive  
6 session was convened. And during the executive  
7 session, all votes would need to be done by  
8 roll call.

9           These are the 10 executive session  
10 purposes. I would just point out that this is  
11 a closed list. There are only 10 executive  
12 session purposes that were written into the  
13 law. But we're not going to be going through  
14 all 10 of them today. We picked out three of  
15 them that we thought were particularly useful  
16 for the Gaming Commission's purposes.

17           Starting with the executive session  
18 purpose one, which is to discuss the  
19 reputation, character, physical condition or  
20 mental health rather than the professional  
21 competence of an individual or to discuss the  
22 discipline or dismissal of or complaints or  
23 charges brought against a public officer,  
24 employee, staff member or individual.

1           So, what this first of all supposes  
2           is that any discussion of an individual's  
3           professional competence is discussed in open  
4           session. There is no executive session purpose  
5           say for performing an annual employee review,  
6           something like that. This is for charges  
7           against an individual or a discussion about an  
8           individual that falls outside the professional  
9           competence.

10           One of the examples being an  
11           individual's mental health. So, if the  
12           Commission would be discussing a particular  
13           individual in this scenario, the individual who  
14           would be discussed has certain procedural  
15           rights under the Open Meeting Law. And those  
16           are listed on this slide.

17           That individual is entitled to be  
18           notified in writing at least 48 hours prior to  
19           the proposed executive session. The individual  
20           can request that the discussion take place in  
21           open session. That request can't be denied.  
22           The discussion would then have to take place in  
23           open session.

24           The individual has the right to be

1 present at any executive session concerning  
2 that individual. And they can have counsel or  
3 a representative present, not necessarily for  
4 the purpose of participating in the executive  
5 session, but rather to advise the individual  
6 and protect his or her rights.

7           The individual would have the right  
8 to speak on their behalf and they could cause a  
9 record to be created of the meeting typically  
10 by recording or some other means.

11           So, we were trying to think of  
12 scenarios where this could come up. And we  
13 noted that some discussions that had taken  
14 place in the past concerned employee morale and  
15 the management of staff members. Obviously, it  
16 would be a rather extreme situation where that  
17 would rise to a purpose one executive session.  
18 But we just wanted to kind of put it out there  
19 for the group to consider that in a heightened  
20 situation this might be the kind of forum that  
21 would be appropriate.

22           MR. BEDROSIAN: It strikes me,  
23 Commissioners, in the most direct example that  
24 would probably be your supervision of me.



1 Given that I supervise, I think, by statute the  
2 rest of the staff and you all supervise me,  
3 executive session as I read it would not cover  
4 an annual review but would potentially cover a  
5 complaint or a concern you had about actions on  
6 my behalf.

7 MR. MANGANARO: Yes, I think that is  
8 fair to say.

9 COMMISSIONER ZUNIGA: What about a  
10 character aspect that may be resulting in  
11 performance of let's say the Executive  
12 Director?

13 MR. MANGANARO: I can imagine  
14 several gray areas where there could be a  
15 mental-health issue that could be impacting on  
16 a person's professional competence, for  
17 example.

18 But the law does require that if it  
19 can be bifurcated to the extent that  
20 professional competence is being discussed that  
21 would be in open session. And to the extent  
22 that the underlying cause of the professional  
23 competence issues can be carved out of that  
24 those would be in executive session to the

1 extent that is practical.

2 Are there any other questions on  
3 this one?

4 COMMISSIONER ZUNIGA: Actually on  
5 the morale, do you ever wonder whether this  
6 constraint might result in a commission like  
7 ours being perceived as aloof?

8 MR. MANGANARO: As aloof?

9 COMMISSIONER ZUNIGA: Not connected  
10 with let's say the people that ultimately  
11 always fall under the commission?

12 MR. MANGANARO: How do you mean?

13 COMMISSIONER ZUNIGA: Never asking  
14 about that for example?

15 MR. MANGANARO: Certainly, as Amy  
16 said earlier, we recognize that the law puts  
17 the Gaming Commission in a unique situation,  
18 let's say than many other public bodies that we  
19 work with in our office.

20 So, we do certainly recognize that  
21 you guys have your hands tied in a way that  
22 many other bodies don't.

23 MS. NABLE: And I would add there's  
24 nothing that says that you can't ask your

1 employees how they're feeling. And there's  
2 nothing that says that you can't talk to each  
3 other and say did you hear that so-and-so  
4 recently experienced a loss, isn't that sad.  
5 Maybe we should send her a card. Maybe we  
6 should send her flowers. Those sorts of the  
7 communications are not going be considered  
8 public business within your jurisdiction.

9 I think where it rises to the level  
10 of deliberation is when you're talking about  
11 should we suggest restructuring her work  
12 responsibilities to give her some relief. Is  
13 this affecting her mental health such that we  
14 should discuss changing her job  
15 responsibilities, something of that nature.

16 And those are the discussions I  
17 think that Kevin is talking about that you can  
18 have an executive session if they are related  
19 to mental health.

20 COMMISSIONER ZUNIGA: That's very  
21 helpful.

22 CHAIRMAN CROSBY: Where is the  
23 definition of public business that says that  
24 how the secretarial pool is organized or how

1 staff morale is in the IEB or whatever, where  
2 is the definition of public business that  
3 incorporates those kinds of things?

4 MS. NABLE: So, the law doesn't  
5 define public business within a body's  
6 jurisdiction. Therefore, it's kind of up to us  
7 to interpret what that means. We've again been  
8 sort of interpreting it on a fact specific  
9 basis.

10 So, we have issued decisions where  
11 we said that for instance the organization and  
12 leadership of a body, discussions about that  
13 are matters of public business within their  
14 jurisdiction. With respect to the Gaming  
15 Commission, since your job is to oversee in  
16 some ways -- in most ways the management of the  
17 agency that anything that is related to that is  
18 potentially public business within your  
19 jurisdiction.

20 But you are correct that there is no  
21 statutory definition of that term. Certainly,  
22 there is no definitive definition for the  
23 Commission beyond what we said in the letter  
24 that we sent you.

1           CHAIRMAN CROSBY: As you know, one  
2 of the ones where I aired proactively was  
3 thinking that talking about these sort of  
4 inchoate staff morale issues was not going to  
5 be something that would be considered public  
6 business. It just never occurred to me that's  
7 not what people I think -- I wouldn't have  
8 thought that that was what the law was looking  
9 to protect. And you interpreted it otherwise.

10           So, there is a place for your  
11 interpretations to lessen the constraints and  
12 to define what's material. What is the public  
13 interest in being protected? Is it in the  
14 public interest to have staff morale issues in  
15 some unit of this Commission be discussed in  
16 public? What is the public interest in that?

17           Could you look to come up with  
18 something in the nature of materiality or  
19 substantiveness or something that lessens that  
20 constraint?

21           MS. NABLE: I think to some extent  
22 we are constrained by the definition created by  
23 the Legislature of deliberation that is very  
24 broad.

1           You are correct that we have some  
2 discretion with regard to our interpretation of  
3 what constitutes public business within a  
4 particular body's jurisdiction. But I think at  
5 least with this Commission is it seems clear  
6 anything that is related to running the agency,  
7 the management of the agency would to us seem  
8 to be public business within the jurisdiction  
9 of the body.

10           Again, we don't think that you  
11 should be completely detached from your  
12 employees and not show sympathy for what  
13 they're going through. But to the extent that  
14 you are talking about management of the agency  
15 with respect to those concerns, you just need  
16 to be aware that they may fall within the Open  
17 Meeting Law.

18           MR. MANGANARO: Were there any other  
19 questions at this time? So, I'll move onto  
20 executive session purpose two which is to  
21 conduct strategy sessions in preparations for  
22 negotiations with nonunion personnel or to  
23 conduct collective bargaining sessions or  
24 contract negotiations with nonunion personnel.

1           So, when we were looking at this  
2 one, we weren't so much concerned with the  
3 collective bargaining sessions. But to the  
4 extent that there are ever contract  
5 negotiations with nonunion personnel this would  
6 be an appropriate executive session purpose to  
7 utilize for that.

8           Once again, an individual's  
9 professional competence would be discussed in  
10 executive session but the executive session  
11 could be used for how the performance review  
12 once completed in open session can be utilized  
13 for purposes of contract negotiation. That is  
14 appropriate for a purpose two executive  
15 session.

16           COMMISSIONER ZUNIGA: So, this could  
17 include a consultant contract for example?

18           MR. MANGANARO: Yes, nonunion  
19 personnel.

20           COMMISSIONER ZUNIGA: Not just  
21 individuals but also agencies?

22           MR. MANGANARO: I should back up on  
23 that. We've said in the past that personnel  
24 would apply to employees not vendors.

1           We've had public bodies come to us  
2 in the past looking for an executive session  
3 purpose with vendor services contracts. And  
4 we've said that those have to be done in open  
5 session.

6           We've looked at personnel as  
7 employees as opposed to outside folks. So, I  
8 guess it would be a question of whether the  
9 individual in question could be construed as an  
10 employee of the Commission.

11           When the meeting notice is created  
12 to the extent that it won't compromise the  
13 purpose for the executive session, the name of  
14 the nonunion personnel with whom you'll be  
15 negotiating should be indicated on the meeting  
16 notice.

17           However, for example, if it would  
18 compromise the negotiating position of the  
19 Gaming Commission then it can be omitted, but  
20 we leave that up to typically to public bodies  
21 to determine when the disclosure of certain  
22 information will compromise their negotiating  
23 position. They just need to have a reasonable  
24 basis for believing that when asked if anyone



1 challenges it later on.

2 COMMISSIONER ZUNIGA: Does it also  
3 have to do with the first example as in that  
4 other party have the right --

5 MR. MANGANARO: The name of the  
6 individual?

7 COMMISSIONER ZUNIGA: The name of  
8 the individual, does he or she have the right  
9 to now make it open?

10 MR. MANGANARO: When we're going  
11 back to purpose one executive session, the  
12 individual to be discussed can request that the  
13 discussion take place in open session.

14 COMMISSIONER ZUNIGA: I suppose I'm  
15 merging the two examples here. Could a  
16 negotiation with somebody result in that person  
17 that negotiation being the purpose for entering  
18 into an executive session and therefore we need  
19 to list the name of that person, right?

20 MR. MANGANARO: To indicate the name  
21 of the person to be discussed in a purpose one  
22 executive session?

23 COMMISSIONER ZUNIGA: In a purpose  
24 two, can that person then turn around and say

1 that's purpose one. I want that to be an open  
2 meeting?

3 MR. MANGANARO: I see what you're  
4 saying.

5 MS. NABLE: Theoretically it  
6 shouldn't. If you're policing that discussion,  
7 it shouldn't turn into a purpose one  
8 discussion. It really should be limited to the  
9 contract negotiation.

10 MR. MANGANARO: Were there other  
11 questions at this time? The final purpose that  
12 we wanted to go over today is the executive  
13 session purpose session three, to discuss  
14 tragedy with respect to collective bargaining  
15 or litigation if an open meeting may have a  
16 detrimental effect on the bargaining or  
17 litigating position of the public body and the  
18 chair so declares.

19 So, this is one of the executive  
20 session purposes that does require the chair to  
21 make an affirmative statement upon going into  
22 executive session. And that is we can't hold  
23 this discussion in open session because it will  
24 compromise either our negotiating position or

1 our litigating position.

2           Now we were thinking of this in  
3 terms of litigation. So, if there is a  
4 litigation matter to be discussed in executive  
5 session, Chairman Crosby would indicate that  
6 holding this discussion in open session would  
7 harm the litigating position of the body. When  
8 convening in executive session number three  
9 purpose three executive session -- That's the  
10 right way to say it. -- we look for the  
11 litigation matter to either be pending or  
12 demonstrably likely.

13           So, for example situations where we  
14 said in the past that it is not appropriate to  
15 convene in purpose three executive session is  
16 when the other party simply has a lawyer where  
17 no affirmative steps towards litigation have  
18 been taken yet. There's no case filed and no  
19 case threatened.

20           Or where someone has the right to  
21 appeal a certain decision, we look for an  
22 appeal or a lawsuit to be filed, to be  
23 threatened or to be otherwise demonstrably  
24 likely before the commission could convene a

1 purpose three executive session.

2 As we discussed before, to the  
3 extent that it won't compromise the public  
4 body's litigating position by disclosing the  
5 information, the name of the litigation matter  
6 should be disclosed prior to convening in the  
7 executive session.

8 Any questions about that?

9 MR. BEDROSIAN So Kevin, remind us  
10 even if we enter executive session, we still  
11 take minutes?

12 MR. MANGANARO: Absolutely right.

13 MR. BEDROSIAN: And the minutes are  
14 confidential for a set period of time; is that  
15 correct?

16 MR. MANGANARO: That's correct. So,  
17 let's use the litigation matter as a good  
18 example. Those minutes can be withheld for as  
19 long as it would compromise your litigating  
20 position to disclose that information.

21 So, typically that is the pendency  
22 of the lawsuit. Once the lawsuit is resolved,  
23 in most cases the public body's litigating  
24 position won't be compromised by the disclosure

1 of the minutes. The public body would then  
2 vote to release them to the public once the  
3 executive session -- the purpose is concluded.

4 We didn't want to go into minutes  
5 that much because that wasn't really part of  
6 the letter that we issued in December. But it  
7 is the responsibility of the public body to  
8 review executive session minutes every so often  
9 to make sure that they are still appropriate to  
10 be withheld. And when the purpose expires,  
11 disclose it to the public.

12 MS. NABLE: I would just add that  
13 even after the executive session purpose has  
14 expired you may still choose to withhold  
15 portions under either the public records  
16 exemption or the attorney-client privilege, if  
17 that is applicable.

18 So, with regard to executive  
19 sessions minutes that's an option. Open  
20 session minutes have to be provided as is, no  
21 redactions.

22 COMMISSIONER ZUNIGA: Does it matter  
23 in your opinion that we transcribe all of our  
24 open meetings and we have meeting minutes as

1 well that summarize all of the transcript, but  
2 the transcript is always available. If we were  
3 to go into an executive session then we would  
4 simply do the minutes.

5           Would that be some kind of  
6 inconsistency in your view? The requirement is  
7 just to have minutes.

8           MR. MANGANARO: There is no  
9 requirement that discussions be transcribed.  
10 In fact, what the law requires is the minutes,  
11 is the fair and accurate summary of the  
12 discussions that took place. So, it certainly  
13 wouldn't be an Open Meeting Law violation from  
14 our perspective to not have a transcript of the  
15 executive session.

16           COMMISSIONER ZUNIGA: Thank you.

17           COMMISSIONER MACDONALD: What about  
18 the intersection with the attorney-client  
19 privilege? I'm the only person sitting up here  
20 who hasn't been sued.

21           CHAIRMAN CROSBY: Don't worry.

22           COMMISSIONER MACDONALD: But I know  
23 my days are numbered. On a serious note, the  
24 subject matter of the Commission's work is

1 highly controversial, enormous stakes are  
2 involved. That's been demonstrated in spades  
3 over the last couple of years. I think it's  
4 only reasonable for a commission to try to  
5 learn from the past with the assistance of its  
6 attorneys.

7           Would it be a violation of the Open  
8 Meeting Law to have a session with our counsel  
9 over some issue that isn't actually the subject  
10 matter of present litigation but more in terms  
11 of learning lessons of the past for future  
12 purposes? Five of us are meeting with our  
13 counsel.

14           MR. MANGANARO: I presume you mean  
15 outside of a meeting.

16           COMMISSIONER MACDONALD: Yes.

17           MR. MANGANARO: So, there is no  
18 general executive session purpose to meet with  
19 counsel or to obtain legal advice. It would  
20 have to fit into one of the 10 executive  
21 session purposes.

22           For example, if it's a purpose three  
23 executive session, the litigation would have to  
24 be pending, threatened or otherwise

1 demonstrably likely in order to hold that  
2 conversation away from public view.

3 COMMISSIONER MACDONALD: But to put  
4 it another way, to make it simple, would the  
5 Open Meeting Law forbid a meeting with counsel  
6 if more than two Commissioners were present?

7 MS. NABLE: There are a couple of  
8 things you can do to receive legal advice that  
9 wouldn't violate the Open Meeting Law. First  
10 of all, a training or a presentation. If one  
11 of your attorneys were to present to you on a  
12 particular issue and give you legal advice in  
13 that forum that would fall within the exception  
14 to the definition of meeting that I discussed  
15 provided that there is no deliberation.

16 The second is, as you said, to have  
17 less than a quorum.

18 COMMISSIONER MACDONALD: Provided  
19 there is no deliberation, in other words, there  
20 couldn't be any question-and-answer and  
21 interactive conversation?

22 MS. NABLE: Exactly. It would limit  
23 your ability to participate but if you were  
24 just receiving legal guidance from counsel,



1 then you could do it within that exception to  
2 the definition of meeting.

3 Then the second is what you touched  
4 upon which is have less than a quorum present.  
5 So, counsel can meet with you individually or  
6 counsel can meet with two of you at a time  
7 outside of a meeting provided that there is no  
8 serial deliberation that's occurring there.

9 Then counsel also could put  
10 something in writing and send you a written  
11 legal guidance, which would be likely protected  
12 under attorney-client privilege. But there is  
13 no general executive session purpose for  
14 receiving legal advice from counsel in  
15 executive session.

16 And this actually was challenged  
17 recently. We had a decision involving the  
18 Winchester Board of Selectmen. And they  
19 appealed the decision, and the Superior Court  
20 upheld our decision saying that it was improper  
21 for them to meet with counsel to receive advice  
22 on general legal compliance.

23 COMMISSIONER MACDONALD: I can't  
24 imagine a member of the Superior Court coming

1 up with that conclusion.

2 MS. NABLE: I believe it was Judge  
3 Henry that wrote the decision.

4 COMMISSIONER MACDONALD: That's a  
5 joke. I just came from the Superior Court.

6 MS. NABLE: I see.

7 CHAIRMAN CROSBY: Let me give you an  
8 example of something we deal with and see if  
9 there is a way to deal with it.

10 Lots of times something happens that  
11 requires a response that has to be if not  
12 immediate certainly within less than 48 hours.  
13 The classic example happens all the time is  
14 lawsuits get dropped on our doorstep at 4:30 in  
15 the evening. And we first learn about it with  
16 a call from the press. And we need to figure  
17 out what we're going to do.

18 In any normal organization with this  
19 kind of a structure, you would want to talk  
20 with the five commissioners who are involved,  
21 and talk about how do we deal -- what are we  
22 going to say? What do you say to the press?  
23 What do we do? And there are any number of  
24 other such things that happen in short, in

1 intense timeframes that is simply impossible to  
2 schedule a public meeting.

3 Is there any mechanism by which a  
4 body like ours can talk together about how to  
5 deal with emergency issues that involve all of  
6 our professional lives?

7 MS. NABLE: Do you mind if I answer?

8 MR. MANGANARO: Please.

9 MS. NABLE: I guess you have two  
10 options for dealing with these sort of  
11 emergency situations. We didn't really talk  
12 about the notice requirements, but there is  
13 this 48-hour notice posting requirement except  
14 in the case of an emergency, which is a sudden  
15 or generally unexpected event or set of  
16 circumstances that demand immediate action.

17 So, you can call a meeting on very  
18 short notice if those factors are met. And you  
19 just have to give notice as soon as reasonably  
20 possible upon learning about it. So, if you  
21 really do want to have a quorum of the  
22 Commissioners involved with making a decision  
23 that is probably the only way you can do it is  
24 by calling an emergency meeting.

1           Now if as you're saying that in some  
2 circumstances it's just not possible to get  
3 everybody together or given the time  
4 constraints to hold an open meeting, then  
5 really the only option that you have is to have  
6 individual Commissioners or individual staff  
7 authorized to take action in different areas  
8 outside of a meeting.

9           So, basically as a commission you  
10 can't do it outside of a meeting, but if you  
11 have predecided that the Chairman has authority  
12 to make these decisions with respect to press  
13 requests or Commissioner Macdonald has  
14 authority to make these decisions with respect  
15 to lawsuits, if you have those preordained  
16 levels of authority then you can take action  
17 quickly.

18           CHAIRMAN CROSBY: Right. That is  
19 what we do in effect. But as we sort of  
20 discussed in our interview with you, it's just  
21 a really crappy situation when you've got  
22 urgent important things that we are all  
23 involved in. And there's me and our  
24 Communications Director or me and the ED and

1 the Communications Director or maybe me and one  
2 other Commissioner sitting behind closed doors  
3 figuring out what to do. It's just a really  
4 hard.

5 MS. NABLE: I am sympathetic to  
6 those constraints but I think in terms of  
7 helping you to figure out how you can  
8 accomplish those tasks without violating the  
9 law, those are probably your only two options  
10 is either to have a system in place like you do  
11 where people have predetermined levels of  
12 responsibility or to hold emergency meetings.

13 COMMISSIONER MACDONALD: I'm just  
14 looking through the statute here. Is the  
15 emergency meeting addressed in the statute?

16 MS. NABLE: There is a definition of  
17 emergency in § 18 of the Chapter 20A. And in  
18 the notice section, § 20 it discusses emergency  
19 meetings.

20 COMMISSIONER MACDONALD: I see.

21 MR. BEDROSIAN: Amy, can you remind  
22 me, have you had to interpret emergency at all  
23 yet?

24 MS. NABLE: We have. So, our

1 general guidance with respect to emergency,  
2 again, it has to be generally unexpected and  
3 demand immediate action.

4           We've had several cases where there  
5 was a deadline that somebody knew about and  
6 then they forgot. And then somebody realized  
7 we need to take action on this right away. And  
8 while it may demand immediate action, in those  
9 circumstances we said because it wasn't  
10 unexpected, it didn't constitute an emergency.

11           And then in other instances  
12 something came up, it wasn't expected within 48  
13 hours, but they could've waited another week or  
14 two to take action on it. They had time to  
15 properly post notice. So, that's a  
16 circumstance where we said that that wasn't an  
17 appropriate emergency either.

18           But it's really -- The example we  
19 give during a lot of our trainings may not be  
20 directly relevant here is like the water main  
21 break situation. Nobody knew it was coming.  
22 It needs to be addressed immediately for public  
23 health and safety. That would certainly be  
24 appropriate for an emergency meeting.

1 MR. BEDROSIAN: Thank you.

2 COMMISSIONER STEBBINS: Going back  
3 to executive session purpose number three,  
4 Kevin, when you discuss strategy, does strategy  
5 also include using executive session for  
6 informational purposes? Discussing a lawsuit  
7 without actually discussing strategy to take  
8 place within that lawsuit?

9 MR. MANGANARO: It would involve a  
10 discussion that if disclosed would give a  
11 strategic advantage to the person that you're  
12 talking about. You would lose something by  
13 giving it up in public. It's to protect the  
14 litigating position of the public body. I  
15 don't know how helpful that is.

16 COMMISSIONER STEBBINS: So, strategy  
17 can be somewhat of a broad definition as long  
18 as it has that --

19 MS. NABLE: I think if you are just  
20 asking what's the current status of this  
21 litigation and counsel could report to you our  
22 motion to dismiss is due by X date. That might  
23 not be something be related to strategy.

24 But if you want to know more -- If

1 you're going to be discussing more about that  
2 like, well what do we have to file by that  
3 date? What are the different positions we can  
4 take? What arguments has the other side made  
5 and do you think they're credible? That's the  
6 sort of thing that touches on strategy.

7           So, it is kind of fact specific, but  
8 sometimes just getting general information may  
9 be, to the extent that it's the background for  
10 a strategy, is that you need to learn about  
11 this to help you formulate your positions and  
12 weigh in on it, and you want your attorney to  
13 be able to be very candid with you about the  
14 merits of the case and things like that then it  
15 may fall within purpose three.

16           CHAIRMAN CROSBY: You may have  
17 spoken of this and maybe I missed it at the  
18 beginning, but I thought there was a training  
19 or education exception somewhere. Did I make  
20 that up out of whole cloth?

21           MS. NABLE: No. So, the training  
22 exception is to the definition of meeting.  
23 That's one of those circumstances where it's  
24 not an executive session. It's just not



1 considered a meeting where you are attending a  
2 training, conference or event provided there is  
3 no deliberation.

4 CHAIRMAN CROSBY: But if it's  
5 training about Open Meeting Law or training  
6 about HR policies or something and deliberation  
7 is construed as any oral or written  
8 communication about our public business, and  
9 our public business is being construed to be  
10 practically anything how can we do that? It  
11 doesn't make sense. How can you have a  
12 meeting, a training event about something  
13 having to do with us otherwise we wouldn't be  
14 having the training event and not have a  
15 deliberation?

16 MS. NABLE: When it's a non-member  
17 who is presenting that training as long as you  
18 are not communicating between or among one  
19 another about matters of public business within  
20 your jurisdiction that's what falls within the  
21 exception to the definition of meeting.

22 CHAIRMAN CROSBY: So, it's oral or  
23 written communication between or among one  
24 another?

1 MS. NABLE: Exactly.

2 MR. MANGANARO: A quorum of the  
3 members of the public body.

4 MS. NABLE: Right. So, the training  
5 exception is where you as the members are  
6 attending some sort of training where for  
7 instance your counsel is giving you a training  
8 or we are giving you an Open Meeting Law  
9 training.

10 So, the restriction is just on  
11 deliberation by the body when attending that  
12 sort of training. You are allowed to attend  
13 that event without posting notice provided you  
14 are just receiving information in this form and  
15 asking questions that don't communicate on  
16 public business within your jurisdiction.

17 COMMISSIONER ZUNIGA: Let me ask  
18 that question perhaps another way. You  
19 mentioned we could have had this not being  
20 streamed let's say, not being an open meeting,  
21 this training or this event. But it's in the  
22 public interest so I'm glad we are all having  
23 it.

24 But if you put that aside for a

1 minute, by the virtue of the questions that  
2 we've asked so far just from us to you have we  
3 had in your estimation oral communication?

4 MS. NABLE: On matters within your  
5 jurisdiction, I think so, because it's the  
6 difference between saying can you tell me a  
7 little bit more about what's permissible in a  
8 purpose two executive session that would not  
9 communicate on public business within your  
10 jurisdiction. But asking can we discuss the  
11 executive director's job performance that might  
12 be because that's related to your work.

13 So, doing it in an open meeting  
14 frees you from having to parse through every  
15 single one of your questions to think about is  
16 this sufficiently related to our work that I  
17 may be deliberating by asking this when a  
18 quorum of the Commission is present. But  
19 certainly you can ask those sorts of very  
20 general questions during a training. Can you  
21 tell me a little bit more about purpose two and  
22 what is and isn't appropriate? That probably  
23 wouldn't be deliberation.

24 COMMISSIONER ZUNIGA: Thank you.

1                   COMMISSIONER MACDONALD: So,  
2 deliberation doesn't require more than one  
3 person communicating with the other?

4                   MS. NABLE: It can be a one-way  
5 communication to the other members. The other  
6 members don't have to respond. But if you are  
7 saying it and there are two other members who  
8 are there, who are hearing, who are  
9 participating in the discussion in some way,  
10 even if they're not responding to your point  
11 then you are correct. Then that can be  
12 deliberation. So, it can be directed to me --

13                   COMMISSIONER MACDONALD: So, this is  
14 a deliberation.

15                   MS. NABLE: Yes.

16                   COMMISSIONER MACDONALD: To  
17 Commissioner Zuniga's question, this is a  
18 deliberation. So, it's fortunate that we did  
19 have it in the context of an open meeting.

20                   MS. NABLE: I would just note that  
21 deliberation is not a bad word. It's something  
22 that it's kind of your job to do. So, it's  
23 good to do it in this sort of setting where you  
24 have that opportunity to deliberate and to

1 interact with one another.

2 It's just that the law requires that  
3 if you are going to have that interaction then  
4 the public gets to see how it gets done.

5 COMMISSIONER MACDONALD: Just to  
6 nail that down. Even if in this setting that  
7 none of us actually responded to another  
8 Commissioner's question or to anything that you  
9 or Kevin may have said, even if there was no  
10 exchange amongst the Commissioners, the very  
11 circumstance of our meeting together with the  
12 likes of you two and getting advice from you  
13 two as to the contours of the Open Meeting Law  
14 that's a deliberation?

15 MS. NABLE: I think that it's clear  
16 that we collectively have been having a  
17 discussion today. While you may not have been  
18 directly addressing one another, we are all  
19 sort of participating in the same discussion  
20 such that there has been communication between  
21 or among a quorum.

22 I guess what I would just emphasize  
23 is that you want to avoid the situation where  
24 you need to parse these things out. We've had

1 plenty of decisions where we've had to think  
2 long and hard about was this a communication  
3 directed to a quorum?

4           A circumstance that comes to mind is  
5 where somebody -- there was a member of a  
6 commission who got an email from someone who  
7 wasn't a member, responded to it, accidentally  
8 hit reply all. All of the commissioners had  
9 been copied on that initial email from the  
10 nonmember.

11           We said in that case that the  
12 communication was not directed to the other  
13 members. It was directed to this nonmember.  
14 And that it really was an inadvertent situation  
15 where they weren't intending to communicate  
16 between or among a quorum.

17           What I would just emphasize is that  
18 you just don't want to be in a situation where  
19 we need to make that call about whether it was  
20 intended or unintended. The safest thing is  
21 just to always be thinking about this and avoid  
22 that situation.

23           CHAIRMAN CROSBY: I frequently get  
24 letters from people, letters or emails about

1 stuff. Oftentimes, I will reply to them. And  
2 one of the things I say is I've forwarded your  
3 communication to all of the Commissioners and  
4 we will be sure to read it. And I give the  
5 communication to all of the Commissioners.  
6 That sounds like that might be a violation.

7 MS. NABLE: Again, I can't comment  
8 on something that has already occurred but the  
9 hypothetical --

10 CHAIRMAN CROSBY: Let me give you a  
11 hypothetical. Somebody writes in and says I  
12 think that the casino idea in Brockton is a  
13 terrible idea, never mind something less than  
14 that and gives a bunch of stuff.

15 And I write back to the person and  
16 say thank you very much for your submission. I  
17 will distribute it to the other Commissioners  
18 and it will be a part of our deliberations on  
19 the issue. Then I CC the Commissioners on my  
20 letter and on their letter. Would that be a  
21 violation?

22 MS. NABLE: So, I think the safer  
23 thing to do there would be to respond to the  
24 person. And then to just print out a copy of

1 the email from that person. Not your response,  
2 but just the email from that person and make  
3 sure it gets distributed to everybody.

4 Because then what you are  
5 distributing is something created by a  
6 nonmember. It doesn't include any  
7 communication by you to anyone else. If you  
8 were to copy them on that correspondence, it  
9 probably would be considered an administrative  
10 communication that wasn't really deliberation.

11 But again, I think it may be very  
12 fact specific depending on exactly what you say  
13 in that email and exactly what the other  
14 person's email said.

15 So, if you just want them to be  
16 aware of it again, I think the safest thing to  
17 do is to either forward that person's email to  
18 your administrative staff and ask them to email  
19 it out to the other members. Or print out a  
20 copy and put it in their mailboxes so that you  
21 are distributing the public communication  
22 without sharing any sort of communication by  
23 you.

24 CHAIRMAN CROSBY: What is the



1 administrative communication? That sounds like  
2 an exemption here or limited. It didn't sound  
3 to me like you had defined oral or written  
4 communication very much and just left it really  
5 wide open. But now I'm hearing maybe there are  
6 some limitations on it.

7 MS. NABLE: This kind of goes back  
8 to when you asked I forget who asked, perhaps  
9 Commissioner Macdonald about whether there was  
10 a definition of public business within a body's  
11 jurisdiction. I mentioned that there wasn't a  
12 definition in the law about it, but that we've  
13 certainly given a lot of guidance through fact  
14 specific determinations.

15 So, we've had several determinations  
16 where we determined that a communication was  
17 purely administrative, really didn't constitute  
18 public business. It was acknowledgement of  
19 correspondence. Or yes, I'll be there.  
20 Something of that nature but didn't rise to  
21 that level of public business within the  
22 jurisdiction. It's not in the law but it is in  
23 our decisions.

24 Another exception that we've

1 discussed is communication for political,  
2 purely political purposes. So, for instance,  
3 how to characterize city council members past  
4 acts for political purposes that sort of thing.

5 They're running for re-election and  
6 a couple of them talk about how they want to  
7 characterize some vote that they took six  
8 months ago in their election campaign. So,  
9 that may be an exception to the definition of  
10 deliberation because it isn't really public  
11 business. It's private. It's related to their  
12 political campaigns. So, there are bunch of  
13 these little areas that we've carved out but  
14 there's no exhaustive list, I guess.

15 COMMISSIONER ZUNIGA: Do you ever  
16 wonder or is it at least conceivable that the  
17 broadness of these definitions and the  
18 constraints placed on public bodies like us and  
19 it results in delegation to staff let's say of  
20 a number of things. That then such delegation  
21 in the long run ends up defeating the spirit of  
22 the open meeting to some degree.

23 Whereas the compliance of the letter  
24 of the law ends up in some delegation,

1 delegation which erodes some of the spirit of  
2 the open meeting. Is it at least conceivable  
3 that that could happen?

4 MR. MANGANARO: Is it conceivable, I  
5 would say probably yes. It's something I've  
6 certainly heard from members of public bodies  
7 in the past.

8 I would say from our perspective,  
9 what we're trying to do is balance the public  
10 body's right to access the information of how  
11 public decisions get made versus the efficiency  
12 of the public bodies that have to make those  
13 decisions.

14 So, when Amy is talking about these  
15 little carveouts, sometimes it is a judgment  
16 call based on our need to balance these  
17 competing interests.

18 MS. NABLE: And to the broader  
19 underlying concern, I guess I would just say  
20 that our job is really to interpret the law as  
21 written. And to the extent that you have real  
22 concerns about the way that it's written, I  
23 would suggest that it might not be a bad idea  
24 to reach out to your elected officials, if you

1 haven't already, and just sort of explain to  
2 them the ways that this is impacting your work.

3 We do try to, as much as we can,  
4 interpret the law to enable efficiency where it  
5 wouldn't be adverse to the interest of  
6 transparency. But sometimes we are constrained  
7 by what's written in the law. So, it may make  
8 sense to reach out to them about that.

9 MR. MANGANARO: So, unless there are  
10 other questions, we did just kind of want to  
11 highlight some of the resources that our office  
12 makes available for public bodies because we do  
13 truthfully recognize that everybody is trying  
14 to get it right.

15 And in keeping with that we want to  
16 make as much information available to people as  
17 possible. So, our website is definitely, I  
18 think, what we consider our best resource. We  
19 have the law, the regulations, the AG's Open  
20 Meeting Law guide, checklists that different  
21 public bodies use for different purposes.

22 We talked a little bit about  
23 executive session. There's an executive  
24 session procedural checklist that public bodies

1 use to make sure that they've crossed all the  
2 T's and dotted all the I's before entering into  
3 executive session.

4 We have copies of our past  
5 determination letters on there. One new thing  
6 we have on our website is an interactive lookup  
7 of pending complaints with our office so that  
8 people can see the status of complaints that  
9 have been filed with the division and kind of  
10 check on the progress of those.

11 MS. NABLE: Training videos.

12 MR. MANGANARO: That's right.

13 MS. NABLE: We have some training  
14 videos if you haven't watched them.

15 CHAIRMAN CROSBY: And you just got a  
16 new one.

17 MR. MANGANARO: Exactly, we did it  
18 live.

19 MS. NABLE: That's right. If any of  
20 your staff do not have the time to attend a  
21 training or participate in our webinar, which  
22 Kevin may be about to plug that but we have a  
23 webinar coming up on --

24 MR. MANGANARO: February 24th, I

1 believe.

2 MS. NABLE: -- February 24, yes.  
3 So, people can still register for that if they  
4 are interested. We have six separate segments  
5 of training videos. And you can watch them  
6 individually if you just want a refresher on a  
7 particular topic. And that was just updated in  
8 March.

9 MR. MANGANARO: Of course, we have  
10 our hotline and our email. If there's one  
11 takeaway we want to stress is that we are  
12 available and here to help however we can to  
13 try to talk through any situations that come  
14 up. I think everybody here knows how to reach  
15 us, but there's all of our contact information.

16 MR. BEDROSIAN: Amy, Kevin, thank  
17 you. One last question, how many other full-  
18 time public bodies do you all interact with?

19 MS. NABLE: We had done some  
20 research at some point to try and figure out  
21 how many others there were. I think maybe MCAD  
22 may be one of the only other ones. And they're  
23 not necessarily in the same office. I think  
24 they are all in different offices.

1           So as we said, you guys are unique  
2           in your structure in a lot of ways. So, I hope  
3           you don't feel that I've been evasive in my  
4           answers to any of the questions today where I  
5           wasn't able to give you a firm yes or no. But  
6           I think part of it is because the way that you  
7           do business is different in a lot of ways than  
8           what we see regularly.

9           So, when specific things come up if  
10          you don't know how to proceed, I suggest  
11          calling us because if we think through it  
12          together, we are more likely to arrive at the  
13          right place.

14          CHAIRMAN CROSBY: Anybody else?  
15          Anything else? Thank you very much. Do we  
16          have a motion to adjourn?

17          COMMISSIONER CAMERON: So moved.

18          CHAIRMAN CROSBY: Second?

19          COMMISSIONER ZUNIGA: Second.

20          CHAIRMAN CROSBY: All in favor, aye.

21          COMMISSIONER MACDONALD: Aye.

22          COMMISSIONER CAMERON: Aye.

23          COMMISSIONER ZUNIGA: Aye.

24          COMMISSIONER STEBBINS: Aye.

1                   CHAIRMAN CROSBY:  Opposed?  The ayes  
2  have it unanimously.

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4                   (Meeting adjourned at 2:37 p.m.)  
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ATTACHMENTS:

1. Massachusetts Gaming Commission January 27, 2016 Notice of Meeting and Agenda

GUEST SPEAKERS:

Amy Nable, Assistant Attorney General,  
Director - Division of Open Government  
Kevin Manganaro, Assistant Attorney General

MASSACHUSETTS GAMING COMMISSION STAFF:

Ed Bedrosian, Executive Director

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C E R T I F I C A T E

I, Laurie J. Jordan, an Approved Court Reporter, do hereby certify that the foregoing is a true and accurate transcript from the record of the proceedings.

I, Laurie J. Jordan, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Laurie J. Jordan, further certify I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken and further that I am not financially nor otherwise interested in the outcome of this action.

Proceedings recorded by Verbatim means, and transcript produced from computer.

WITNESS MY HAND this 1st day of February, 2016.

LAURIE J. JORDAN	My Commission expires:
Notary Public	May 11, 2018