

OPEN MEETINGS ACT

I. Overview.

- A. The Open Meetings Act was expressly enacted for the purpose of requiring certain meetings of public bodies to be open to the public, to require notice and the keeping of minutes of the meetings, to provide enforcement of the Act, to provide invalidation of decisions under certain circumstances and to provide penalties for non-compliance.
- B. All meetings subject to the Open Meetings Act must be open to the public and held in a place available to the general public.
- C. The Americans with Disabilities Act requires public bodies to provide disabled individuals a reasonable opportunity to request necessary, reasonable auxiliary aides and services to participate at public meetings.
- D. A public body may not place conditions on attendance such as requiring visitors to sign in or provide names.
- E. The right to attend a meeting of a public body includes the right to tape record, videotape and broadcast the public proceedings via live radio and television.
- F. All persons in attendance at a public meeting have the right to address the public body.

II. Open Meeting.

- A. Public bodies, including libraries, are subject to the Open Meetings Act.
- B. Committees and Subcommittees that have only advisory authority may not fit the definition of Public Body, since they have no decision-making authority. However, "advisory" committees are very narrowly construed.

III. What is a Meeting?

- A. To be a "meeting," the public body must be "deliberating toward or rendering a decision on a public body." Committees that have only advisory authority may not fit the definition of public body, since they have no decision-making authority. OAG, 1997, No. 6935 (April 2, 1997).

B. A "meeting" within the purview of the Open Meetings Act requires (1) a quorum (2) deliberation or rendering a decision (3) on a matter of public policy. OAG, 1979-1980, No 5437 p 36 (Feb 2, 1979).

C. Implications of new technology such as e-mail or chat rooms.

IV. What is not Considered a "Meeting" under the Open Meetings Act?

A. The Open Meetings Act does not apply to a conference or informational gathering, provided that the meeting does not involve deliberation and is not designed to circumvent the Act. OAG, 1982, No. 6074.

B. A public body may convene to listen to the concerns of a neighborhood group or board of directors without complying with the Open Meetings Act, provided that the body does not deliberate toward or render a decision. OAG, 1978, No. 5364.

V. Notice.

A. Public Meetings Must be Properly Noticed.

1. Within ten (10) days after the public body's first regular meeting of the calendar or fiscal year, it must post a notice at its principal office stating the dates, times and places of its regular meetings.
2. If a public body changes its regular meeting schedule, it must post a new notice stating the changes within three (3) days after the meeting at which the change was made and at least 18 hours before the rescheduled meeting.
3. If the public body chooses to recess a meeting for more than 36 hours, it may only reconvene the meeting after posting a public notice stating the date, time and place where the meeting will be reconvened.
4. Upon written request, the clerk must furnish a copy of the notice to any newspaper or radio or television station located within the state free of charge.
5. Special meetings require that the meeting be posted 18 hours in advance of the meeting.

VI. When Can the Public Body Meet in Closed Session?

- A. A closed session may be called by a majority vote of the members:
 - 1. To consider the dismissal, suspension, discipline, complaints, charges or periodic personnel evaluations of a public officer or employee, if the named person requests a closed hearing; or
 - 2. For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement, if either party requests a closed session.
- B. A closed session may be called by a two-thirds roll call vote of the members:
 - 1. To consider the purchase or lease of real property up until the time an option to purchase or lease is acquired;
 - 2. To consult with the municipal attorney regarding trial or settlement strategy in connection with specific pending litigation, if an open meeting would have a detrimental financial effect on the public body;
 - 3. To consider material exempt from discussion or disclosure by state or federal statute; or
 - 4. To review the specific contents of an application for employment or appointment to a public office, if the candidate requests that the application remain confidential. All interviews by a public body for a public office must be open, however.
- C. The Open Meetings Act not only lists the exemptions for which closed session is authorized, but it also implicitly directs the manner in which the public body may proceed to a closed session.
 - 1. A closed session must be preceded by a vote in an open session.
 - 2. The roll call vote and the purpose of the closed session must be stated and included in the minutes of the open session.
 - 3. At the conclusion of the closed session a roll call vote must be taken to close the closed session and re-open the open session before the meeting may be adjourned.
 - 4. All decisions of the public body must be made in an open meeting. As a result, no decisions may be rendered in a closed session. Any decision resulting from discussions in a closed session may be made in a manner

that does not disclose information regarding discussions or deliberations of a closed session, however.

The only topic of discussion in a closed session is one which is authorized under the Open Meetings Act as a legitimate basis for calling a closed session and for which the closed session was called.

VII. Minutes.

A. Open Session.

1. Minutes of each meeting must be kept showing the time, date and place of the meeting. The minutes must also state the names of all members present and absent, any decisions made, all roll call votes taken at the meeting and the reason for any closed sessions held.
2. Proposed minutes must be made available for public inspection within eight (8) business days after the meeting at which the minutes were taken.
3. Any corrections to the minutes must be made at the next meeting, and the corrected minutes must show the original entry and the correction.
4. Approved minutes must be available for public inspection within five (5) business days after the meeting at which the minutes were approved.

B. Closed Session.

1. During the closed session, a separate set of minutes must be taken by the clerk or designated secretary of the public body. The closed session minutes must be retained by the clerk and are not available to the public.
2. The closed session minutes can only be disclosed if required by a civil action filed under the Open Meetings Act.
3. Closed session minutes must be retained by the public body for at least one year and one day after approval of the minutes of the meeting at which the closed session was held.
4. Discussion of closed session minutes before approval of the minutes may also be made in closed session.

VIII. Remedies.

- A. A decision made by a public body may be invalidated if the public body has not complied with the Open Meetings Act.
- B. In any case where a public body discovers it has failed to comply with the Act or is charged with failing to comply, the public body may re-enact the disputed decision in conformity with the Act. A decision re-enacted in this manner shall be effective from the date of re-enactment and shall not be declared invalid by reason of the deficiency in the procedure used in its initial enactment.
- C. If a public body violates the Open Meetings Act, a person may commence a civil action to compel compliance or to enjoin further non-compliance with the Act.
- D. If a public official is found to have intentionally violated the Act, the official may be held personally liable for court costs and actual attorney fees as well as up to \$500 in damages.
- E. A public official who intentionally violates the Act is guilty of a misdemeanor punishable by a fine of up to \$1000. For a second offense during the same term of office, the maximum fine increases to \$2000 and the public official may be imprisoned for up to one (1) year.