



# Annual Training for Boards & Commissions

- ✓ **OPEN & PUBLIC MEETINGS ACT (OPMA)**
- ✓ **PUBLIC OFFICERS' AND EMPLOYEES' ETHICS ACT (Conflicts of Interest)**
- ✓ **GOVERNMENT RECORDS ACCESS & MANAGEMENT ACT (GRAMA)**

**Presented by Stanford Pinegar, Assistant Attorney General**

# Utah Conservation Commission

(Created by Statute – Utah Code Ann. § 4-18-104)

- **Members:**

- ✓ **Twelve Members – UDAF Commissioner, Director of the Extension at USU, Executive Director of DNR, Executive Director of DEQ, President of the County Weed Supervisors Association, and Seven District Supervisors to give CD representation on a multicounty basis.**
- ✓ **Six Members needed for quorum (Utah Code Ann. § 4-18-401 (10)).**
- ✓ **UDAF Commission is Chair of UCC and only votes to break a tie vote.**



# **Utah Conservation Commission**

**(Created by Statute – Utah Code Ann. § 4-18-104)**

## **The UCC May:**

- ✓ **Facilitate the development and implementation of necessary conservation strategies and programs to promote the protection, integrity, and restoration of land for agriculture and other beneficial purposes.**
- ✓ **Approve and make loans through the ARD Fund in accordance with the conservation purposes in the Act.**
- ✓ **Approve and make grants of State and Federal funds for the purposes of conservation identified in the Act.**



# **OPEN & PUBLIC MEETINGS ACT (OPMA)**

**(Utah Code Ann. §§ 52-4-101, et seq.)**

- 1. POLICY BEHIND OPMA FROM  
LEGISLATURE – The State, Its Agencies  
and Its Political subdivisions:**
  - ✓ **Exist to aid in the conduct of the  
people's business; and**
  - ✓ **Take their actions openly and conduct  
their deliberations openly.**

# **PUBLIC BODY MEETINGS SUBJECT TO OPMA:**

**"Public Body" includes any administrative, advisory, executive, or legislative body of the state:**

- ✓ **Created by the Utah Constitution, statute, rule, ordinance or resolution;**
- ✓ **Consists of two or more persons;**
- ✓ **Expend, disburses, or is supported in whole or in part by tax revenue; and**
- ✓ **Vested with the authority to make decisions regarding the public's business.**

# **OPMA GOVERNS ANY PUBLIC BODY MEETING THAT SATISFIES ALL THE FOLLOWING REQUIREMENTS:**

- ✓ **Called by Authorized Person.**
- ✓ **Quorum Present.**
- ✓ **To Discuss, Receive Public Comment, or Take an Official Act.**
- ✓ **Includes Workshops, Executive Sessions, and Site Visits or Tours.**
- ✓ **In Person or Electronic Meetings (including telephone, email, text messaging, electronic chat, social media, or video conferencing).**
- ✓ **Individuals constituting a quorum may not act together outside a meeting in a concerted and deliberate way to predetermine an action to be taken by the Public Body at a meeting on a relevant matter.**

# **REQUIREMENTS OF OPMA**

## **PUBLIC NOTICE:**

- ✓ **Advance written notice to public (at least 24 hours) including agenda, date, time, and location.**
- ✓ **Annual Public Notice for regularly scheduled annual meetings.**
- ✓ **Convened to discuss, receive public comment, or take an official act under the Board's purview.**
- ✓ **Notice must meet "Class A Notice Requirements" (See Utah Code Ann. § 63G-30-102).**

# **REQUIREMENTS OF OPMA**

## **PUBLIC NOTICE REQUIREMENTS:**

- ✓ **Posted at Board's office or where meeting will be held.**
- ✓ **Posted on Utah Public Notice Website.**
- ✓ **Posted on Public Body's Official Website.**
- ✓ **Must Include:**
  - **Agenda with reasonable specificity.**
  - **Public materials to be discussed at meeting.**
  - **Any items upon which the Board plans to take action or vote.**
  - **Topics not listed may only be discussed at the chair's discretion.**

# REQUIREMENTS OF OPMA

## WRITTEN MINUTES & RECORDINGS MUST BE KEPT FOR ALL OPEN MEETINGS INCLUDING:

- ✓ Date, time, place and names of members present and absent.
- ✓ Substance of all matters proposed, discussed, or decided.
- ✓ A record, by member, of votes taken.
- ✓ Name of each person who provided testimony and what was said.
- ✓ Any information a member requests be entered into the minutes.
- ✓ Role Call votes for important votes.

Note: If appearing virtually, turn on camera when voting or commenting.

- ✓ Minutes, Recordings, and Materials must be maintained and posted according to statute.
- ✓ Recordings not required for tours or site visits if no official action or votes will be taken.

# REQUIREMENTS OF OPMA

## ADDITIONAL TOPICS OF NOTE:

- ✓ **No “Do-Overs” – recordings may not be edited or altered.**
- ✓ **Electronic messages sent during a meeting are subject to GRAMA even if on personal devices.**
- ✓ **Electronic meetings allowed, subject to Statute, which includes:**
  - **Board previously voted to allow electronic meetings.**
  - **Meeting Notices include how to access meetings electronically.**
  - **Space is provided for members of the public who wish to attend/monitor meetings in person.**
- ✓ **Persons disrupting meeting may be removed.**
- ✓ **Violations of OPMA: Board may be sued in court to compel compliance or to void decisions.**

# Requirements of OPMA

## **CLOSED MEETINGS – “Proceed with Caution:”**



- ✓ Quorum must be present at a Noticed, Open Meeting.
- ✓ Two-thirds of Members vote to approve closing the meeting.
- ✓ Must publicly announce and enter in minutes:
  - Reason(s) for holding closed meeting citing to the statutory exception;
  - Location of closed meeting; and
  - Vote, by name, of each member listing whether for or against holding closed meeting.
- ✓ Each matter discussed must be permitted by statute (Utah Code Ann. § 52-4-205):
  - Twenty listed exceptions varying from discussing an individual's character/professional competence to strategies with sale or purchase of real property to trade secrets, etc.
- ✓ No action may be taken during closed session (except vote to end closed session).
- ✓ Include possibility of closed session with notice of meeting/agenda.
- ✓ Consult Counsel in advance if possible or when motion is made to close meeting.



# UTAH PUBLIC OFFICERS' AND EMPLOYEES' ETHICS ACT

(Utah Code Ann. §§ 67-16-1, et seq.)

## “CONFLICTS OF INTEREST”

### 1. GUIDELINES FOR BOARD AND COMMISSION MEMBERS TO DETERMINE:

- Actual Conflicts of Interest –  
Requires Abstention from Voting
- Perceived Conflicts of Interest –  
Requires Disclosure

# **ACTUAL CONFLICTS REQUIRING ABSTENTION**

**BOARD MEMBER MUST DECLARE CONFLICTS AND WITHDRAW FROM DECISION MAKING PROCESS WHEN BOARD'S DECISIONS MAY POSITIVELY OR NEGATIVELY IMPACT:**

- ✓ **A business or organization in which:**
  - **Board Member is officer, employee, director, etc.**
  - **Board Member or spouse/minor children have ownership interest 10% or greater.**
- ✓ **Board Member unable to be objective and independent due to an affiliation.**
- ✓ **Board Member has personal investment in business/organization that will create conflict between private interests and public responsibility.**

**Penalty: Knowing and intentional violation of this Act may result in dismissal and/or criminal prosecution.**

# PERCEIVED CONFLICTS REQUIRING DECLARATION

**BOARD MEMBER SHOULD DECLARE ANY AFFILIATION WITH A BUSINESS OR ORGANIZATION WHICH MAY REASONABLY APPEAR TO THE PUBLIC AS A CONFLICT OF INTEREST:**

- ✓ **Declare the nature of the affiliation.**
- ✓ **Affirmatively state that it will not adversely affect objectivity.**
- ✓ **Affirmatively state that it will not adversely affect independent and informed decision making.**
- ✓ **Annually fill out or update Disclosure Statement and update any time it changes.**

# **ETHICS ACT - PROHIBITED ACTIVITIES**

## **UNLAWFUL FOR A BOARD MEMBER TO:**

- ✓ **Improperly use or disclose private, protected or controlled information to further personal economic interests, gain privileges or exemptions for self or others.**
- ✓ **Use position on board to further personal economic interests, gain privileges or exemptions for self or others.**
- ✓ **Accept employment that will impair independent judgment or interfere with ethical responsibilities.**

# **ETHICS ACT - GIFTS AND BRIBES**

**UNLAWFUL FOR A BOARD MEMBER TO KNOWINGLY ACCEPT OR SOLICIT FOR SELF OR OTHERS A GIFT OF SUBSTANTIAL VALUE OR ECONOMIC BENEFIT THAT:**

- ✓ **Influences Member to not faithfully and impartially perform Board duties.**
- ✓ **Member believes is a reward for official action taken by Board.**
- ✓ **Recently or in near future Member involved in Board action that will directly affect donor or gift-giver.**

**Exceptions:**

- **Occasional gifts valued at \$50 or less (non-monetary)**
- **Public awards for public service.**
- **Bona fide loans made in the ordinary course of business.**

**Penalties: Knowing and intentional violation carries criminal penalty based on value of gift. (Class B Misdemeanor to Second Degree Felony)**

# **GIFTS AND BRIBES (CONTINUED)**

## **GOVERNOR HUNTSMAN'S ETHICS EXECUTIVE ORDER – BOARD MEMBERS**

### **PROHIBITED FROM:**

- ✓ **Accepting any gift or compensation that might influence or reward Board Member for performance of Board Business.**
- ✓ **Includes non-monetary gifts of \$50 or less.**

### **Exceptions to Executive Order:**

- **Food, refreshments, meals of limited value.**
- **Publicly available rewards or prizes.**
- **Plaques or mementos recognizing service.**
- **Trinkets or mementos of nominal value.**
- **Gifts from extended family or personal friends.**
- **Small efforts of common courtesy or services of nominal value.**
- **Attendance/participation in events sponsored by other government agencies.**

# **GIFTS AND BRIBES (CONTINUED)**

## **REQUIRING DONATIONS:**

- ✓ **Unlawful to demand or offer a donation (personal property, money or services) as a condition for granting permit, approval or other authorization.**

### **Exceptions:**

- **Required by rule or statute.**
- **Mutually agreed to between applicant and the agency.**
- **Voluntarily given.**
- **Made without conditions.**

# **GIFTS AND BRIBES (CONTINUED)**

## **RECEIVING COMPENSATION:**

- ✓ Board Member may not receive or agree to receive compensation for assisting any person or business entity in a transaction involving a matter over which the Board has authority.

**Exceptions:** Board Member files a sworn written statement with UDAF and the Attorney General's Office describing services rendered and compensation received.

## **DISCLOSURE OF SUBSTANTIAL BUSINESS INTEREST:**

- ✓ Board Member must disclose if officer, employee, or owner of a business over which the Board has authority.

## **PARTICIPATION IN TRANSACTIONS BETWEEN STATE AGENCY AND A BUSINESS:**

- ✓ Board Member may not participate in official capacity or receive compensation for any transaction between a state agency and a business entity in which the member is an officer, employee or owner unless disclosed.

# GIFTS AND BRIBES (CONTINUED)

## **BRIBERY:**

- ✓ **Guilty of crime of bribery under Section 76-8-105 – directly or indirectly solicit or accept any benefit with the understanding or agreement that the purpose is to influence his or her decision, opinion, recommendation, judgment, vote, or exercise of discretion.**

**PENALTIES:** Knowing and intentional violation carries criminal penalty based on value of compensation. (Class B Misdemeanor to Second Degree Felony)

# **GOVERNMENT RECORDS ACCESS & MANAGEMENT ACT “GRAMA”**

**(Utah Code Ann. §§ 63G-2-101, et seq.)**

## **POLICY BEHIND GRAMA**

**Legislature recognizes the Public’s constitutional rights for:**

- 1) Access to information concerning the conduct of the public’s business; and**
- 2) Privacy in relation to personal data gathered by governmental entities.**



# GRAMA

## RECORDS SUBJECT TO DISCLOSURE UNDER GRAMA:

- ✓ **GOVERNMENTAL ENTITIES SUBJECT TO GRAMA:** Includes Boards and Commissions funded or established by the government to carry out the public's business.
- ✓ **RECORD:** A book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:
  1. That is prepared, owned, received, or retained by a governmental entity or political subdivision; and
  2. Where all the information in the original is reproducible by photocopy or other mechanical or electronic means.

# GRAMA

## RECORDS NOT SUBJECT TO DISCLOSURE UNDER GRAMA:

- ✓ Personal Note or Personal Communication – prepared by or received by an employee or officer of a governmental entity in the employee's or officer's private capacity.
- ✓ A Temporary Draft or Similar Material – prepared for the originator's personal use or prepared by the originator for the personal use of an individual for whom the originator is working.
- ✓ A Daily Calendar.
- ✓ Other Personal Notes – prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working.
- ✓ See Utah Code Ann. § 63G-2-103(25)(b) for additional exceptions.

# GRAMA

## A WORD TO THE WISE:

- ✓ GRAMA applies to both personal and work communication devices. It is the substance of the communication that triggers GRAMA, not the ownership of the device.
- ✓ Do not write or record anything in an email, voice mail, text message, or elsewhere concerning Board business that would make you uncomfortable if printed in the newspaper or posted on social media.
- ✓ Presume that all recordable communications will find their way to the media, social media, or your opponents.



**THANK YOU!  
&  
QUESTIONS?**