ANNUAL TRAINING
FOR
BOARDS & COMMISSIONS
(OPMA & GRAMA)

♦HANDOUT♦

OPEN AND PUBLIC MEETINGS ACT OUTLINE

(Utah Code Ann. §§ 52-4-101, et seq.)

A. Policy Behind Open and Public Meetings Act. The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business. It is the intent of the Legislature that the state, its agencies, and its political subdivisions:

1. Take their actions openly and conduct their deliberations openly. (*See* Utah Code Ann. § 52-4-102)

B. Public Bodies and Specified Bodies. Meetings involving "public bodies" and "specified bodies" are subject to the Open and Public Meetings Act under prescribed circumstances. (Utah Code Ann. § 52-4-103(7) and (12)):

1. "Public body" includes any administrative, advisory, executive, or legislative body of the state that:
    a. is created by the Utah Constitution, statute, rule, ordinance or resolution;
    b. consists of two or more persons;
    c. expends, disburses, or is supported in whole or in part by tax revenue; and;
    d. is vested with the authority to make decisions regarding the public's business.
2. "Specified body" includes any administrative, advisory, executive, or legislative body of the state that:
    a. is not a public body;
    b. consists of three or more members; and
    c. includes at least one state legislator officially appointed to the body by the president of the Senate, speaker of the House, or governor.

C. Meetings Subject to the Open and Public Meeting Act. The Open and Public Meetings Act governs any meeting convened by a public body or specified body that satisfies all the following requirements:

1. The meeting is convened with a quorum present.
2. The meeting is convened by an authorized person.
3. The meeting is convened for the purpose of discussing, receiving comments from the public, or acting on a matter over which the body has jurisdiction or advisory power.
    a. This includes workshops, executive sessions, site visits and traveling tours.
4. Meetings conducted in person or by electronic means, including telephone, email, text messaging, electronic chat, social media, or video conferencing, are all subject to open meeting requirements.
5. Bona fide chance or social gatherings are not subject to open meeting requirements.

D. Requirements of the Open and Public Meeting Act. Public meetings subject to the Act must be open to the public and comply with the following requirements:

1. Public notice of meetings is required:

a. 24 hours advance written notice must be provided to the public of the meeting agenda, date, time, and location for each meeting.
b. Annual public notice must be given posting meeting dates, times and locations where regular meetings are scheduled for public bodies in advance over the course of a year.

2. Public notice requires:

   a. Posting written notice at the principal office of the public or specified body or at the building where the meeting will be held; and
   b. Posting notice on the Utah Public Notice Website, including updating that notice if any of the statutorily required information changes.

3. Public notice includes:

   a. An "agenda" that provides reasonable specificity of the topics that will be considered at the meeting; and any public materials provided to the public body concerning matters that will be discussed at the meeting. Topics not listed or adequately specified in a published agenda may not be considered, except as provided below.
   b. Topics not listed on an agenda that are raised by the public during an open meeting may be discussed, but no final action may be taken.

4. All aspects of the meeting, including discussions, motions, and deliberations must be open to the public, unless the meeting is closed for one of the reasons set forth in statute.

5. Written minutes and an audio or video recording must be kept of all open meetings. The minutes and recording must include:

   a. The date, time, and place of the meeting;
   b. The names of members present and absent;
   c. The substance of all matters proposed, discussed, or decided;
   d. A record, by individual member, of votes taken;
   e. The name of each person who provided testimony and the substance in brief of their testimony; and
   f. Any other information that a member requests to be entered in the minutes or recording.

6. Pending written minutes (awaiting formal approval) are public records and must be available to the public within 30 days of the meeting that is the subject of the minutes.

7. Approved written minutes are also public records and must be posted on the Public Notice Website and otherwise made available to the public within three business days of approval.

8. Public materials distributed at the meeting are public records and must be posted on the Public Notice Website and otherwise made available to the public within three business days of approval.

9. Meetings must be recorded and the unedited recording of the meeting must be:

   a. Posted or linked on the Public Notice Website; and
   b. Otherwise made available to the public within three business days after the meeting.

c. Recordings cannot be modified to correct or remove ill-advised statements. Be mindful that the microphones are sensitive and often pick up whispered conversations between members.

10. A recording is not required to be kept of an open meeting that is a site visit or traveling tour, provided no vote or action is taken by the public body.

11. A public or specified body member may transmit an electronic message to another member when not convened in an open meeting, with the following caveats:

    a. Electronic messages concerning public body business or specified body business are public records under GRAMA, even when transmitted on private devices; and
    b. A "meeting" is defined to include "electronic communications" when a quorum is present.

E. Electronic Meetings. Public body meetings convened or conducted, in whole or part, by means of a conference using electronic communications may be authorized when the following conditions are satisfied:

1. The public body has adopted an administrative rule or resolution authorizing and governing the use of electronic meetings;
2. Notice is published consistent with regular meeting requirements informing the public of the meeting's agenda, date, time, and anchor locations;
3. Space and facilities are provided at the anchor locations for interested persons to attend and monitor the meeting;
4. Information is provided to the remote members on how to connect electronically to the meeting; and
5. One of the anchor locations is the building or location where the public body normally meets.
    a. Other administrative restrictions may be imposed.
    b. Health and safety-Chair declaration.
    c. No proxy voting is allowed unless otherwise provided by statute or bylaws.

F. Disruptions. A person may be removed from a meeting, if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

G. Violations. A public body or specified body may be sued in a court of competent jurisdiction to compel compliance with the Act or to void any decision made or action taken in violation of the Act. If successful, the plaintiff may be awarded attorney fees and costs.

1. A member who knowingly or intentionally violates any closed meeting provision is guilty of a class B misdemeanor.

H. Closed Meetings. Meetings otherwise subject to the Open and Public Meetings Act may be closed to the public under very limited circumstances. Due to the extremely limited circumstances authorizing closure of a public meeting, the complex procedural requirements associated with doing so, and the civil and criminal penalties imposed for violating the Act's closed meeting requirements, members should never close or attempt to close a public meeting without first consulting counsel.

1. **<u>Closed Meeting Requirements</u>**:
    a. A closed meeting may be held for any of the reasons listed in Utah Code Ann. § 52-4-205. Some reasons to close a meeting that might be relevant to your work are:
        i. discussion of the character, professional competence, or physical or mental health of an individual;
        ii. strategy sessions to discuss collective bargaining; or reasonably imminent litigation;
        iii. strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if there is a concern over disclosure of the appraisal or estimated value of the property under consideration; or disclosure would prevent the public body from completing the transaction on the best possible terms (note additional restrictions in section);
        iv. strategy sessions to discuss the sale of real property, including any form of a water right or water shares;
        v. discussion regarding deployment of security personnel, devices, or systems;
        vi. investigative proceedings regarding allegations of criminal misconduct; or
        vii. see statute for additional purposes.
    b. A closed meeting may be held if:
        i. A quorum is present;
        ii. The meeting is an open meeting for which notice has been given under Utah Code Ann. § 52-4-202; and
        iii. Two-thirds of the members of the public body present at the open meeting vote to close the meeting.
    c. The following information shall be publicly announced and entered on the minutes of the open meeting at which the closed meeting was approved:
        i. The reason or reasons for holding the closed meeting;
        ii. The location where the closed meeting will be held; and
        iii. The vote results listed by name, for each member of the public body, either for or against the motion to hold the closed meeting.
    d. During the closed meeting, there cannot be a pre-determination of actions to be taken once the meeting is re-opened, such as preliminary voting on a matter. (*See* Utah Code Ann. § 52-4-208.)

<u>Note</u>: For additional information on closed meetings see Utah Code Ann.§§ 52-4-204 to 206.

GOVERNMENT RECORDS AND ACCESS MANAGEMENT ACT

(Utah Code Ann. §§ 63G-2-101 to 901)

A. Records Subject to Disclosure Under GRAMA:

1. "*Governmental Entity*" means executive department agencies of the state, including every office, agency, board, bureau, committee, department, advisory board, or commission of an executive department agency that is funded or established by the government to carry out the public's business.
2. "*Record*" means a book, letter, document, paper, map, plan, photograph, film, card, tape, recording, electronic data, or other documentary material regardless of physical form or characteristics:
   a. That is prepared, owned, received, or retained by a governmental entity or political subdivision; and
   b. Where all the information in the original is reproducible by photocopy or other mechanical or electronic means.
3. "*Record*" does not mean:
   a. A 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;
   b. 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; or
   c. A daily calendar or other personal note prepared by the originator for the originator's personal use or for the personal use of an individual for whom the originator is working.

B. A Word to the Wise:

1. Do not write or record anything in an email, voice mail, text message, or similar communication medium concerning board/committee business that will make you feel uncomfortable if printed in the newspaper.
   - Presume that all recordable communications will find their way to the media, social media, or your opponents.
2. GRAMA provisions apply to <u>both personal and work communication devices</u>. It is the substance of the communication that triggers GRAMA provisions, not the ownership of the device.