

UTAH OPEN & PUBLIC MEETINGS ACT

UTAH CODE ANN. §§ 52-4-101, *et seq.*

Presented by the Davis County
Attorney's Office, Civil Division

UTAH OPEN & PUBLIC MEETINGS ACT

WHAT DOES THE OPEN MEETINGS ACT DO?

“It requires government to take actions openly.”

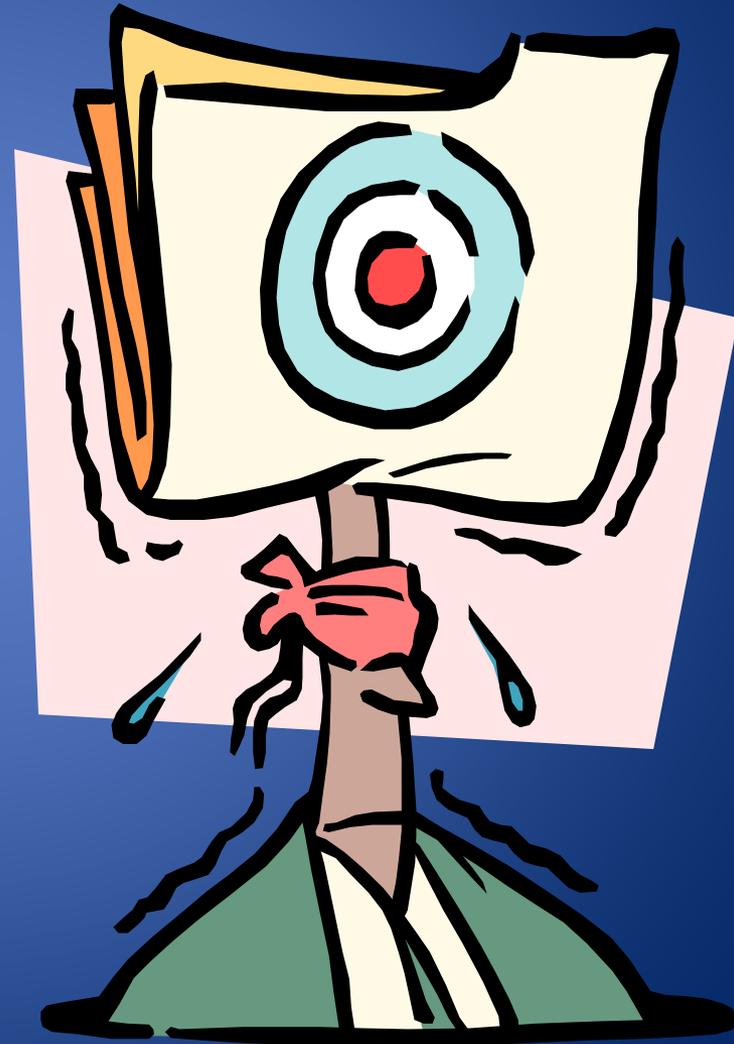
“Ensures deliberations allow for an open public process.”

Who is Subject To the Open and Public Meetings Act?

You Must Follow This Law if:

You are an administrative, advisory, executive or legislative body of the state or its subdivisions; AND

- Were created by the Utah Constitution, statute, rule, ordinance or resolution;
- Consist of two or more persons;
- Spends, distributes or is supported by tax money; AND
- Has authority to make decisions about the public's business.



A Few Examples

- 1) DABC Commission
- 2) State Records Committee
- 3) Board of Pardons
- 4) City or County Councils
- 5) City or County Council Advisory Boards
 - Planning & zoning
 - Board of adjustments
 - Project committees
- 6) Special Districts
- 7) Board of Health

Who Is Not Subject to the Open and Public Meetings Act?

- 1) Political parties, groups and caucuses
- 2) State Legislative conference, rules and sifting committees
- 3) School community council, established under Section 53A-1a-108



Utah Code Ann. § 52-4-103(5)(a)

WHAT IS A MEETING?

“Meeting” means the convening of a public body, with a quorum present, including a workshop or an executive session whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power.

Utah Code Ann. § 52-4-103(5)(b)

The Following Are Not Considered “Meetings” under the Act:

- 1) A chance meeting;
- 2) A social meeting; or
- 3) A meeting of a public body with both legislative and executive responsibilities where:
 - No public funds are appropriated for expenditure;
 - Meeting solely for discussion or to implement administrative/operational matters for which no formal action by the public body is required;

What is a Quorum?

Utah Code Ann. § 52-4-103(10)(a) - “Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law.

Utah Code Ann. 52-4-103(10)(b) - “Quorum” does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power.

RECORDS OF OPEN MEETINGS (Utah Code Ann. § 52-4-203)

Do You Have to Keep Minutes and/or Recordings?

YES TO BOTH!

- Even though there is a recording, the approved written minutes will be the official record.
- Include both written minutes and recording of open meeting as public records.
- Public body shall establish and implement procedures for the public body's approval of the written minutes of each meeting.

What Are The Requirements For Keeping Minutes of Open Meetings?

All minutes must include:

- 1) Date/time;
- 2) Place of meeting;
- 3) Names of all members present or absent;
- 4) The substance of all matters proposed, discussed or decided;
Individual votes made on each matter by the public body;
- 5) The name of each person who:
 - (a) Is not a member of the public body; and
 - (b) After being recognized by the presiding member of the public body, provided testimony or comments to the public body;
- 6) The substance, if brief, of information from individuals giving testimony or making comments; and
- 7) Any additional information requested by a member.

Record of Closed Meetings

If a public body closes a meeting, the public body:

- 1) Shall make a recording of the closed portion of the meeting;
- 2) May keep detailed written minutes that disclose the content of the closed portion of the meeting.
- 3) A recording of a closed meeting shall be complete and unedited from the commencement of the closed meeting through the adjournment of the closed meeting.
- 4) The recording and any minutes of a closed meeting shall include:
 - (a) The date, time, and place of the meeting;
 - (b) The names of the members present and absent; and
 - (c) The names of all others present, except where the disclosure would infringe on the confidentiality necessary to fulfill the original purpose of closing the meeting.
- 5) Minutes or recordings of a closed meeting that are required to be retained permanently shall be maintained in or converted to a format that meets long-term records storage requirements.

Record of Closed Meetings (Continued)

Both minutes and recordings of closed meetings are protected records under GRAMA.

Under GRAMA, however, these protected records may be disclosed as required under a court order.

Neither a recording nor minutes are required when:

- 1) A public body closes a meeting exclusively for any of the following purposes:
 - (a) discussion of the character, professional competence, or physical or mental health of an individual;
 - (b) discussion regarding deployment of security personnel, devices, or systems; or
 - (c) any of the reasons set forth in Utah Code Ann. § 52-4-205(2); AND
- 2) The person presiding signs a sworn statement affirming the sole purpose for closing the meeting was to discuss either (a), (b), or (c) above.

Utah Code Ann. §52-4-203(4)

Minutes and Recordings of Open Meetings

WHEN ARE THE MINUTES OF MEETINGS PUBLIC?

Written minutes and recordings of **open meetings** are **public records** pursuant to Utah Code Ann. § 63G-2-101, *et seq.* (GRAMA) and **shall be released** within a reasonable amount of time.

Written minutes shall be **available to the public before final approval** when the minutes are **only awaiting formal approval**.

Minutes released prior to final approval must be identified as “unapproved”.

A **recording** of an **open meeting** must be made available within **3 business days** after the meeting.

Electronic Message Transmissions

Utah Code Ann. § 52-4-210

The Open Public Meetings Act does not restrict members of a public body from transmitting an electronic message to other members of the public body when the body is not in an open meeting.

WHAT HAPPENS IF SOMEONE VIOLATES OPMA?

Utah Code Ann. §§ 52-4-302 & 305

- 1) A court can void any action in violation of the law.
- 2) Sometimes a violation can be “cured” by discussing and taking a public vote in a subsequent meeting.
- 3) May have to pay court costs and attorneys fees.
- 4) “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises a violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.” (6 mos. Jail and/or \$1,000.00 fine)



Common Violations Of OPMA

- 1) Closing meetings without members of the body voting first in an open meeting to close the meeting.
- 2) Conducting a closed meeting for reasons other than those allowed by OPMA.
- 3) Taking official or final action in a closed meeting.
- 4) Failing to properly provide notice of a public meeting.
- 5) Failing to provide adequate notice of a public meeting.

Action challenging a closed meeting

Utah Code Ann. § 52-4-304 - The court/judge must:

- 1) Review the recording/minutes in camera (in private) and then decide the legality of the closed meeting;
- 2) If judge doesn't find a violation, action dismissed with no disclosure;
- 3) If judge finds a violation, the judge will order disclosure of all or part of the record.

May also be actionable under GRAMA (Utah Code Ann. § 63G-2-202(7))

WHO CAN ENFORCE OPMA?

- 1) The courts;
- 2) The Attorney General;
- 3) A County Attorney; or
- 4) A private citizen who is an aggrieved party.

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HOW LONG DOES A PARTY HAVE TO PURSUE CORRECTIVE ACTION?

- 1) 90 days (generally);
- 2) 30 days, if it involves, bonds, notes, or debt.

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QUESTIONS?