

# UTAH OPEN & PUBLIC MEETINGS ACT

## UTAH CODE TITLE 52, CHAPTER 4

Department of Administrative Services Internal  
Service Fund Rate Review Committee Meeting

September 11, 2019



# Why do we do this?

“The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.”

Utah Code § 52-4-104

# Declaration of Public Policy Utah Code §52-4-102

- (1) The Legislature finds and declares that the state, its agencies and political subdivisions exist to aid in the conduct of the peoples business.
- (2) It is the intent of the Legislature that the state, its agencies and its political subdivisions :
  - *(a) take their actions openly; and*
  - *(b) conduct their deliberations openly.*



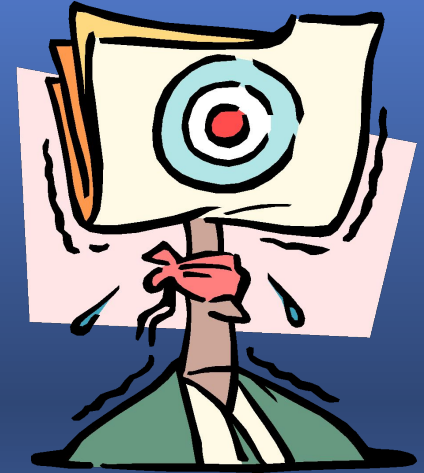
# UTAH OPEN & PUBLIC MEETINGS ACT

- WHAT DOES THE OPEN MEETINGS ACT DO?
  - “It requires government to take actions openly.”
  - “Ensures deliberations allow for an open public process.”

In other words, we want the people to know what is going on with state government.

# Who Is Subject To This Law?

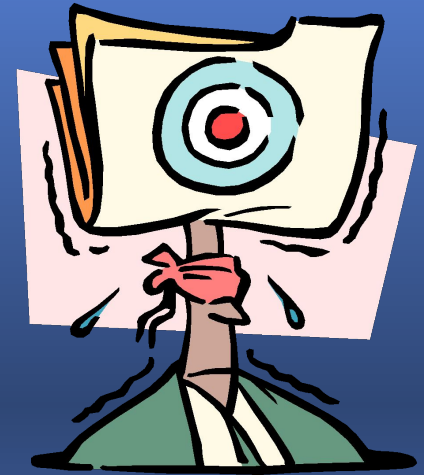
- “Public Body” defined by Utah Code § 52-4-103(9)
- A Public Body means any “administrative, advisory, executive, or legislative body of the state or its political subdivisions” that:
  1. Is created by the Utah Constitution, statute, rule, ordinance, or resolution;
  2. Consists of two or more persons;
  3. Expends, disburses, or is supported in whole or in part by tax revenue; and
  4. Is vested with authority to make decisions regarding the public’s business.



# Who Is Subject To This Law?

**2017 Legislative Session** included a reference to 53A-1, Part 16 “Public School Membership in Associations” where an association:

- Consists of two or more persons
- Expends, disburses, or is supported in whole or in part by dues paid by a public school and
- Is vested with authority to make decisions regarding the participation of a public school or student in interscholastic activities.



# Examples

- City or County Councils
- City or County Council Advisory Boards
  - Planning & zoning
  - Board of adjustments
  - Project committees
- Special Districts DABC Commission
- State Records Committee
- Board of Pardons

## *Cardiff Canyon Owners Assoc. v. Mountain Accord*

- July 10, 2017 decision from Judge Laura Scott, 3<sup>rd</sup> District Court, Salt Lake County
- The Mountain Accord initially was a joint or cooperative undertaking because all of the parties were public agencies.
- Consequently, Mountain Accord is a “public body” subject to the requirements of OPMA.
- Each of the public entities acting alone “would be unquestionably subject to the OPMA.” The Court concluded that a private entity’s participation in a joint or cooperative undertaking does not take Mountain Accord “beyond the reach of the OPMA.”



*...in other words*

When in doubt, hold a public meeting.



# Who Is Not Subject to the Open Meetings Act Law?

- Political parties, groups and caucuses
- State Legislative conference, rules and sifting committees
- School community council, established under 53A-19-108
- The Economic Development Legislative Liaison Committee (2017 Change)



# Utah Code § 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 § 52-4-103(5)(b)

- WHAT DOES “MEETING” NOT MEAN?
  - A chance meeting
  - A social meeting
  - 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
    - Meeting solely for discussion or to implement administrative/operational matters that would not come before the body for discussion or action

# What is a Quorum?

- § -103(10)(a) “**Quorum**” means a simple majority of the membership of a public body, unless otherwise defined by applicable law
- § -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

# Attendance at Meetings

## Utah Code § 52-4-207

- DO I HAVE TO ATTEND MEETINGS, OR CAN IT BE HELD WITHOUT PEOPLE IN THE SAME ROOM?
  - Can meet by phone or other electronic means which allows all participants to hear or observe communications
    - Must be adopted into existing rules/ordinance
    - Notice requirements still apply
    - Public must have a means to attend or participate



# Utah Code § 52-4-202 Notice Requirements

- ARE THERE ANY NOTICE REQUIREMENTS?
- Yes, notice requires all of the following:
  - Must be posted as a written notice at the place where the meeting will be held
  - By posting notice to the “Utah Public Notice Website” Utah Code § 63F-1-701
  - Must be given to at least one local general circulation newspaper or local media correspondent
  - At least 24 hours prior to meeting post:
    - Agenda including all action items stated with **reasonable specificity**
    - Date
    - Time
    - Place



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

## Department of Administrative Services

TANI PACK DOWNING  
Executive Director

KENNETH A. HANSEN  
Deputy Executive Director

MARILEE P. RICHINS  
Deputy Executive Director

### Agenda

#### DAS FY2021 Internal Service Fund Rate Review Committee Meeting

**DATE:** Wednesday, September 11, 2019  
**TIME:** 9:00 a.m.  
**PLACE:** State Capitol Building, Room 445

#### I. Committee Business:

- a. Welcome – Todd Kiser, Insurance Commissioner and Rate Committee Chair
- b. Approval of minutes of September 12, 2018
- c. Open and Public Meetings Act Training – Paul Tonks, Attorney General's Office
- d. Overview of DAS and Rate Committee Responsibilities – Ken Hansen, Deputy Executive Director, Department of Administrative Services

#### II. Presentation by DAS Internal Service Funds

- a. **Finance** – John Reidhead, Division Director
  - Purchasing Card program
    1. Presentation
    2. Discussion
      - a. Committee
      - b. Public
    3. Action Items – Vote on FY 2021 Rates
- b. **Purchasing and General Services** - Christopher Hughes, Division Director
  - Cooperative Contracts program
  - State and Federal Surplus Property programs
  - Print Services program
  - State Mail and Distribution Services program
    1. Presentation
    2. Discussion
      - a. Committee
      - b. Public
    3. Action Items – Vote on FY 2021 Rates



## Utah Code § 52-4-202(2)(a) Notice Requirements

- In addition to the requirements under Subsection §52-4-202(1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once a year of its annual meeting schedule.

# Utah Code §52-4-201, -204 & -205

## Closed Meetings

- CAN A MEETING BE CLOSED TO THE PUBLIC? IF SO WHEN?
  - An open meeting can be closed for the following purposes:
  - A meeting is open to the public unless closed under § 52-4-204, -205 or -206
  - Discussing an individual's character, professional competence, or physical or mental health
  - Strategy sessions to discuss collective bargaining
  - Strategy sessions to discuss pending or reasonably imminent litigation



## Closed Meetings (Cont.)

- An open meeting can be closed for the following purposes continued:
  - Discussions regarding security personnel, devices or systems
  - Investigative proceedings regarding allegations of criminal misconduct
  - Strategy sessions to discuss the purchase, exchange, lease or sale of water rights or water shares if public discussion would disclose the appraisal/estimated value of the property under consideration; or would prevent the transaction from being completed under the best possible terms

## Closed Meetings (Cont.)

- An independent Legislative Ethics Commission or Legislative Ethics Committee review of ethics complaints
- A county legislative body discussing commercial information.
- Strategy sessions to discuss the purchase, exchange, lease or sale of real property
  - Public notice of the terms and public approval of sale required
  - Water rights shares under certain conditions

# Are There Any Meetings That Must Be Closed?

- **NO.** NOTE: A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under Utah Code § 52-4-205.
- The decision to close a meeting to the public is always discretionary, not mandatory. The law does not require any meeting to be closed.
- **EXEPTIONS** The following must be closed:
  - A meeting of the Health and Human Services Committee to review a fatality review report
  - A meeting of the Child Welfare Legislative Oversight Panel to review a fatality review report

# Utah Code §52-4-204 Closing Meetings

- IS THERE A PROCESS TO CLOSE MEETINGS?
- YES, 52-4-204
  - A Quorum must be present.
  - Two-thirds of the members present must vote to close the meeting.
  - The body must first hold an open public meeting with proper notice before entering into the closed meeting.
  - The body must publicly disclose: **Note: there are separate requirements in subsections (B), (C) & (D)**
    - The vote by name of each member for or against entering into the closed meeting
    - The reasons for holding the closed meeting
    - Location of the closed meeting

# What Is Forbidden During A Closed Meeting?

- You may not:
  - Approve any ordinance, resolution, rule, regulation, contract or appointment
  - Interview a person to fill an elected position
  - Take final action
  - **Final votes must be open and on the record (except as allowed specifically by statute)**



# WHAT ABOUT EMERGENCIES?

## Utah Code § 52-4-202

- The law allows for meetings for “emergency or urgent” matters if:
  - The best notice practicable is given
  - The minutes include a statement of the unforeseen circumstances that made the meeting necessary





# RECORDS OF OPEN MEETINGS

## (Utah Code § 52-4-203)

- DO WE 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 each meeting

# What Are The Requirements For Keeping Minutes of Open Meetings?

- All minutes must include
  - Date/time
  - Place of meeting
  - Names of all members present or absent
- In addition minutes of open meetings must include
  - All matters proposed, discussed or decided
  - All names and substance of information from individuals giving testimony
  - Individual votes on each matter
  - Any additional information requested by a member

# What are the Requirements For Keeping Minutes of Closed Meetings?

- Minutes of closed meetings must include
  - The names of all members present
  - The names of others present at the closed meeting, unless it infringes on the purpose of the closed meeting
  - The closed meeting **must** be recorded and shall be complete and unedited
    - Note: There may be exceptions to this requirement see § 52-4-206(6)(a) and (b)
  - Detailed written minutes **may** be kept
  - Minutes and/or recordings of closed meetings are not public records.

#### **52-4-304. Action challenging closed meeting.**

(1) Notwithstanding the procedure established under Subsection [63G-2-202\(7\)](#), in any action brought under the authority of this chapter to challenge the legality of a closed meeting held by a public body, the court shall:

- (a) review the recording or written minutes of the closed meeting in camera; and
- (b) decide the legality of the closed meeting.

(2) (a) If the judge determines that the public body did not violate Section [52-4-204](#), [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting.

(b) If the judge determines that the public body violated Section [52-4-204](#), [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall publicly disclose or reveal from the recording or minutes of the closed meeting all information about the portion of the meeting that was illegally closed.

(3) Nothing in this section may be construed to affect the ability of a public body to reclassify a record, as defined in Section [63G-2-103](#), as provided in Section [63G-2-307](#).

# Utah Code §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 § 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.
- The minutes released prior to final approval must be identified as “unapproved”.
- The recording of a open meeting must be made available within 3 business days.
- A public body may satisfy the requirements that minutes include the substance of matters proposed, discussed or decided or the substance of testimony or comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments provided (2017 change).

# Electronic Message Transmissions

- Utah Code § 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?

- -302 & -305
- A court can void any action in violation of the law
  - Sometimes a violation can be “cured” by discussing and taking a public vote in a subsequent meeting
  - May have to pay court costs and attorneys fees
  - “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

- Discussing matters in a closed meeting that should be discussed during the open session
- Taking official or final action in a closed meeting
- Closing meetings without members of the body voting first in an open meeting to close the meeting
- Conducting a closed meeting for reasons other than those allowed by OPMA
- Failing to properly provide notice of a public meeting
- Failing to provide adequate notice of a public meeting

# WHO CAN ENFORCE OPMA?

- The courts
- The Attorney General
- A County Attorney
- A private citizen who is an aggrieved party

# UTAH OPEN & PUBLIC MEETINGS ACT

- HOW LONG DOES A PARTY HAVE TO PURSUE CORRECTIVE ACTION?
  - 90 Days
  - 30 Days if it involves, bonds, notes, or debt

# UTAH OPEN & PUBLIC MEETINGS ACT

- QUESTIONS?

