



AMERICAN FORK

Open Meetings Training

August 2, 2022

Why are we here?

- ▶ “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 [the Open and Public Meetings Act].” Utah Code 52-4-104.
- ▶ Auditor checks whether or not we have provided the training.

Why open meetings matter

- ▶ To ensure that the people's business is conducted openly and with adequate transparency to build public trust
- ▶ To ensure that official actions are given sufficient scrutiny and taken openly rather than through “back room” deals
- ▶ So deliberation is done in open view of the public so constituents can understand how and why the decisions were made

Who must comply?

- ▶ Any “administrative, advisory, executive, or legislative body of the state or its political subdivisions that...is vested with the authority to make decisions regarding the public’s business.”
- ▶ Examples:
 - ▶ City/County Councils
 - ▶ City Council Advisory Boards
 - ▶ Planning and Zoning Commissions
 - ▶ Boards of Adjustment
 - ▶ Boards of Special Service Districts

Recent cases finding potential failure to comply with OPMA

- ▶ Southern Utah Wilderness Alliance v. San Juan County Commission, 2021 UT 6
- ▶ Southern Utah Wilderness Alliance v. Kane County Commission, 2021 UT 7

Both of these cases involved the question of whether or not SUWA had standing to object to the failure of county commissioners to comply with OPMA prior to and during meetings with federal land administrators within Utah counties. The Utah Supreme Court concluded that SUWA had standing to challenge the counties' compliance with OPMA and maintain litigation to review whether (1) compliance with OPMA was required; and (2) if so, whether adequate notice and openness to the public was provided.

Open Meetings

- ▶ All “meetings” must be open to the public unless specifically allowed to be closed under the Act

What is a “meeting”?

- ▶ The convening of a public body, with a quorum present,
- ▶ whether the meeting is held in person or by means of electronic communications (or even informally on federal public lands, apparently),
- ▶ 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 (such as in recent Utah Supreme Court cases in which county commissioners met with federal land use managers, discussed in a previous slide)
- ▶ Examples
 - ▶ Regular meetings
 - ▶ Special meetings
 - ▶ Workshops
 - ▶ Executive Sessions
 - ▶ Site Visits
 - ▶ Traveling Tours

Definition of “convening”

“Convening” means the calling together of a public body by a person authorized to do so for the express purpose of discussing or acting upon a subject over which the body has jurisdiction.

What is not a “meeting”?

- ▶ A chance meeting
- ▶ A social meeting
- ▶ A convening solely for discussion or implementation of administrative or operational matters if:
 - ▶ No formal action is taken OR
 - ▶ The matters would not come before the body for discussion or action

Electronic Meetings Requirements

- ▶ A public meeting convened or conducted by means of a conference using electronic communications
- ▶ A public body may not hold an electronic meeting unless it has adopted specific procedures for conducting it.
 - ▶ These may include consideration of budget, logistics, presence of a quorum at an anchor location, vote to establish an electronic meeting, notice requirements, etc.
 - ▶ Requirement of anchor location may be suspended under emergency orders

Closed Meetings Requirements

- ▶ For what purpose?
 - ▶ A closed meeting may only be held:
 - ▶ To discuss the character, professional competence, or physical or mental health of an individual
 - ▶ Strategy sessions for:
 - ▶ collective bargaining
 - ▶ pending or reasonably imminent litigation
 - ▶ purchase, exchange, or lease of real property or water rights/shares
 - ▶ sale of real property or water rights/shares
 - ▶ To discuss the deployment of security personnel, devices, or systems
 - ▶ To investigate proceedings regarding allegations of criminal conduct
- ▶ May not do the following in a closed meeting:
 - ▶ Approve any ordinance, resolution, rule, regulation, contract or appointment
 - ▶ Interview a person to fill an elected position
 - ▶ Take final action (final votes must generally be open and on the record)

Public Meeting Requirements

- ▶ Public body must give notice
 - ▶ Public body must give not less than 24 hours notice of each meeting
 - ▶ Must also give notice of annual meetings scheduled in advance over the course of a year
- ▶ Exceptions:
 - ▶ Regular notice requirements may be disregarded if:
 - ▶ Because of unforeseen circumstances it is necessary to hold an emergency meeting to consider matters of an emergency or urgent nature
 - ▶ Still required to give the best notice practicable
 - ▶ May not hold an emergency meeting unless:
 - ▶ An attempt has been made to notify all the members of the public body;
and
 - ▶ A majority of the members approve the meeting

Common Violations

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

Penalties

- ▶ Any member of a public body who intentionally violates the closed meeting provisions is guilty of a class B misdemeanor
- ▶ A court can void any action taken in violation of the open meetings laws
- ▶ The public body may have to pay court costs and attorney fees if successfully challenged in court on a violation

Executive Sessions

- ▶ The information discussed in executive sessions is confidential and may not be discussed outside of the meeting, including with:
 - ▶ Members of the public
 - ▶ Spouses, family members or significant others

2021 Amendments to OPMA

S.B. 72 "Open and Public Meeting Amendments"

Previously, a public body could not vote in a closed session, so they would have to return to the public meeting, then vote to close the closed session and open the public meeting again. A new amendment allows the body to vote in the closed session to adjourn the closed portion of the meeting and return to the open meeting.

S.B. 125 "Open and Public Meetings Act Amendments"

This bill revoked and recodified the ability for public bodies to meet electronically without an anchor location, without having to already have an ordinance in place, as long as certain findings were made. Those required findings are codified at U.C. 52-4-207(4).

Other amendments:

H.B. 293 "Open Meeting Minutes Amendments" - deals with the posting of minutes by public bodies that are not state public bodies or specified local bodies who already have to have their minutes on the state website. (The body must have a link to the body's website or minutes stated in the notice posted on the state website so the public can easily access and review minutes of non-state public bodies.)

H.B. 297 "Colorado River Amendments" - deals with meetings relating to the Colorado River Compact to adjust allocation of water according to varying availability of water in the drainage, in correlation with the new Colorado River Authority. The use, lease or sale of water shares or water rights may be a reason to close a meeting.

Reminders

- ▶ Always want to be transparent, but be mindful that you are on the public record
- ▶ Do not discuss pending or potential litigation on the public record
- ▶ Anything said on the public record may be used in litigation

Questions and Discussion

The background features a complex, abstract geometric design. It consists of several overlapping, semi-transparent triangles in various shades of blue (from light to dark) and red. The triangles are arranged in a way that creates a sense of depth and movement, with some shapes appearing to recede into the background while others come forward. The overall effect is a modern, minimalist aesthetic.