OPEN AND PUBLIC MEETINGS

1. Purpose of The Open and Public Meetings Act

To understand the Open and Public Meetings Act it is necessary to understand the public policy behind the Act. The Act specifically states 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 political subdivisions take their actions and conduct their deliberation openly.[1]

Thus, all meetings of official government bodies, with very limited exceptions, are to be open to the public. And it is more than opening the meeting to the public. The policy also calls for deliberations to be conducted openly. If you keep these two policies in mind it is easy to comply with the Open and Public Meetings Act.

2. Important Definitions

a. Meeting. The Act defines a meeting as being a convening of a public body when a quorum is present.[2] Meetings include workshops, executive sessions and it does not matter if the meeting is held in person or by means of electronic communications.

i. *A chance meeting or a social meeting is not a meeting.*

ii. *"Meeting" does not mean the convening of a public body that has both legislative and executive responsibilities if: (a) no public funds are appropriated for expenditure during the time the public body is convened; and (b) the public body is convened solely for the discussion or implementation of administrative or operational matters for which no formal action by the public body is required; or that would not come before the public body for discussion or action.*

b. Convening. The Act defines convening as the calling of a meeting 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 public body has jurisdiction or advisory power.[3]

c. Public Body. The Act defines a public body as any administrative, advisory, executive, or legislative body of the state or its political subdivision that expends, disburses, is supported in whole or in part by tax revenue and is vested with authority to make decisions regarding the public's business.

i. A political party group or caucus or conference committee, rules committee, or sifting committee of the Legislature is not a public body.

3. Open Meetings

a. Utah Code Ann. § 52-4-202(1) provides that a public body shall give at least 24 hours advance notice of each meeting, UNLESS the meeting is to consider a matter of

[1] Utah Code 52-4-101

[2] Utah Code 52-4-103(4)(a)

[3] Utah Code 52-4-103(2)

emergency or urgent nature. Notice of the public body annual meeting must be provided on an annual basis as well.

b. Utah Code Ann. § 52-4-202(1) provides that notice includes providing each member with the meeting agenda, date, time, and place of the meeting.

c. Utah Code Ann. § 52-4-202(6)(a) provides that the agenda should be specific enough to notify the public as to the topics to be considered at the meeting.

d. Utah Code Ann. § 52-4-202(6)(b) provides that except for a matter that is an emergency or of an urgent nature, if the topic discussed is not listed on the agenda, the public body may not consider and take action upon such topic.

e. Utah Code Ann. § 52-4-202(3) provides that notice shall be satisfied by posting written notice at the principal office of the public body and giving a copy to a local newspaper or local media correspondent.

f. Utah Code Ann. § 52-4-202(4) encourages public bodies to post a notice of meeting on the Internet.

4. Closed Meetings

a. Utah Code Ann. § 52-4-205 provides that all meetings are considered open to the public unless it closed for certain, limited reasons:

i. Discussion of the character, professional competence or physical or mental health of an individual;

ii. Strategy sessions to discuss collective bargaining;

iii. Strategy sessions to discuss pending or reasonably imminent litigation;

iv. Strategy sessions to discuss purchase, exchange or lease of real property or water rights if that would disclose the value of the property or prevent getting the best terms;

v. Discussion of the deployment of security personnel, devices or systems;

vi. Investigative proceedings of allegations of criminal misconduct; or

vii. Discussion by a county legislative body regarding commercial information provided by a taxpayer about their property.

b. The Utah Supreme Court has carved out an exception to the open meeting requirements of the Act for meeting of a judicial or quasi-judicial notice.

c. Utah Code Ann. § 52-4-204 provides that closed meetings can only be held upon 2/3 vote of members present at the meeting at which a quorum is present.

d. Utah Code Ann. § 52-4-204(4) provides that the following information must be publicly announced and entered on the minutes before a closed meeting commences:

i. the *reason* for holding the closed meeting;

ii. the *location* where the closed meeting will be held; and

iii. the *vote* by name, of each member of the public body for or against the motion to hold the closed meeting.

e. Utah Code Ann. § 52-4-204(3) provides that an ordinance, resolution, rule, regulation, contract, or appointment may not be approved at a closed meeting.

f. Utah Code Ann. § 52-4-205(3) provides that a public body may not interview a person applying to fill an elected position at a closed meeting.

g. Utah Code Ann. § 52-4-206 provides that a ***recording of the closed meeting must be made***, and written minutes may also be kept, but are not required.

i. Utah Code Ann. § 52-4-206(3) provides that the record must include:

(1) The date, time, and place of the meeting;

(2) The names of members present and absent; and

(3) The names of all present.

ii. Utah Code Ann. § 52-4-206(5) and § 63-2-304(32) provide that minutes and recordings of closed meetings are "protected records" under the Government Records Access and Management Act (GRAMA).

iii. Utah Code Ann. § 52-4-206(6) provides that a recording does not need to be made if the meeting is closed exclusively for discussion of the character, professional competence, or physical or mental health of an individual, or discussion regarding deployment of security personnel, devices, or systems if the presiding officer signs a sworn statement affirming that the sole purpose of the closed meeting was to discuss such matters.

5. Electronic Meetings

a. The Act allows for public meetings to be held by means of a conference using electronic communications provided that the public body has adopted a rule, resolution, or ordinance allowing electronic meetings.

b. Utah Code Ann. § 52-4-207(3) provides that if a public body holds an electronic meeting, it must give public notice of the meeting; post a written notice at the "anchor location" (where the electronic meetings originates or where the participants will be connected); provide members of the public body at least 24 hours notice; provide a description of how members will be connected to the meeting; establish one or more anchor location, with at least one being in the building where the public body would normally meet; and provide space and facilities at the anchor location for the public to attend, monitor, and in the event of a hearing, participate.

6. Enforcement

a. Utah Code Ann. § 52-4-302(2) provides that actions taken in violation of the open meeting requirements, notice requirements, or electronic meeting requirements are voidable by a court if a lawsuit is filed within 90 days of the date of the action.

b. Utah Code Ann. § 52-4-303(1) requires that the attorney general and county attorneys of the state shall enforce the Act.

c. Utah Code Ann. § 52-4-303(3) provides that a person denied any right under the Act may commence a lawsuit to compel compliance with or enjoin violations of this Act or determine the Act's application to discussions or decisions of a public body.

c. Utah Code Ann. § 52-4-303(4) provides that attorneys' fees and court costs may be awarded to a successful plaintiff.

d. Utah Code Ann. § 52-4-304(1) provides that if a lawsuit is filed challenging a closed meeting, a court will review the record of the meeting in camera and decide the legality of the closed meeting. Utah Code Ann. § 52-4-304(2)(a) provides that if a court determines that the public body did not violate the Act, the judge shall dismiss the case without disclosing or revealing any information from the recording or minutes of the closed meeting. Utah Code Ann. § 52-4-304(2)(b) provides that if a court determines that the public body did violate the closed meeting requirements, the judge will publicly disclose all information about the portion of the meeting that was illegally closed.

f. Utah Code Ann. § 52-4-305 provides that a member of a public body who knowingly or intentionally violates or who knowingly and intentionally abets or advises someone to violate the Ac is guilty of a class B misdemeanor.