

OPEN AND PUBLIC MEETINGS ACT

UTAH CODE TITLE 52, CHAPTER 4



WHAT IS THE PURPOSE OF THE OPEN AND PUBLIC MEETINGS ACT

- “It is the intent of the Legislature that the state, its agencies, and political subdivisions (a) **take their actions openly**; and (b) **conduct their deliberations openly**.” U.C.A. 52-4-102.
- “The legislature expressly declared its purpose in enacting the Utah Open and Public Meetings Act in section [52-4-102] . . . As a result, **we interpret the Utah Open and Public Meetings Act broadly** to further the declared statutory purpose of openness.” *Kearns-Tribune Corp. v. Salt Lake County Comm'n*, 2001 UT 55, 28 P.3d 686, 690.

WHAT IF WE MESS UP, WHAT IS THE HARM?

- “A person denied any right under this chapter may commence suit in a court of competent jurisdiction to: (a) compel compliance with or **enjoin violations** of this chapter; or (b) **determine the chapter’s applicability to discussions or decisions** of a public body. The court may award reasonable attorney fees and court costs to a successful plaintiff.” UCA 52-4-303.

BUT THAT'S NOT ALL ...

- If there is a claim a meeting was closed for an **improper purpose**, the judge shall review the recording of the closed meeting in camera and decide the legality of the closed meeting. If the judge determines the meeting was closed for an improper purpose, **the recording of the portion of the closed meeting that was improper shall be made public.** UCA 52-4-304.

IT GETS WORSE ...

- “[A] member of the public body who knowingly or intentionally violates or **knowingly or intentionally abets or advises a violation** of any of the closed meetings provisions of this chapter is guilty of a **class B misdemeanor**.” UCA 52-4-305.

MEETINGS: WHEN IS A MEETING A MEETING?

- “**Meeting**” means convening of the Board, with a quorum present for the purpose of discussing or acting upon any matter over which the Board has jurisdiction or advisory power and taking public comment. Chance or social gatherings by members of the Board do not constitute a “meeting.” UCA 52-4-103.

FANCY MEETING YOU HERE: CHANCE OR SOCIAL GATHERINGS

- The Act does not define a “chance or social gathering” well, so plain language should guide your understanding. To make it more confusing, UCA 52-4-103(6)(b) refers to a “chance gathering or social gathering,” and 52-4-208 refers to a “chance meeting or social meeting.” However, the admonition in 52-4-208(2) seems to apply to both terms: do not circumvent the Act by discussing board matters over dinner.

MEETINGS: WHEN IS A MEETING NOT A MEETING?

- It is not a “**Meeting**” if the Board convenes solely to discuss **administrative or operational matters** for which **no formal action**, current or future, is required and if **no public funds** are appropriated for expenditure during the time the Board is convened. UCA 52-4-103.

WHEN ARE MEETINGS OPEN TO THE PUBLIC?

UCA 52-4-201

- “A meeting is open to the public unless closed....” With some exceptions, almost all meetings of any Board of Education are open to the public. This includes work or study sessions, where the Board reviews matters in detail (often with staff), but does not take public comments. A site visit or tour by the Board is also a public meeting, and members of the public may attend.

NO HIDDEN AGENDAS: PUBLIC NOTICE

UCA 52-4-202

- Public notice is required of all meetings.
- **Annual Meeting Schedule** must be (1) posted at District office, (2) published in at least one local newspaper, and (3) posted on the Utah Public Notice Website.
- **Individual Meetings** notice must be posted at least 24 hrs. in advance (unless emergency meeting). An agenda, date, time and location must be (1) posted at District office and (2) published in a local newspaper, and (3) posted on Utah Public Notice Website.

NO HIDDEN AGENDAS: BOARD AGENDA

- Agenda must provide reasonable specificity to notify the public as to the topics to be considered.
- Each topic must be listed as a separate agenda item—potential closed session items should be identified.
- Except in emergency circumstances, a Board may not take action unless the topic is listed as an agenda item in a public notice.
- “Non-agenda” topics may be discussed in an open meeting at discretion of Chair if raised by public and no final action is taken.

I COULDN'T HELP BUT NOTICE YOUR NOTICE: LOCAL GOVERNMENT OFFICIALS

- It is not part of the Open and Public Meetings Act, but 53A-3-409 provides that interested mayors and county executives whose city or county lies partly or wholly within the District boundaries shall be provided with notice of board meetings by mail or email and allowed to attend and participate in board discussions at board meeting. They may attend closed meetings if invited to participate unless they have a conflict of interest with respect to real estate being discussed.

BUT IT'S AN EMERGENCY: EMERGENCY MEETINGS

- A Board may convene, without providing the required notice, to discuss matters of an emergency or urgent nature. The Board must still attempt to give the “best notice practicable,” and attempt to contact all members of the Board. A majority of the Board’s members must approve conducting business at an emergency meeting.

MINUTES TO WIN IT: WRITTEN

UCA 52-4-203

- A summary of the meeting, including the date, time, and place of the meeting, which members of the Board were present, the substance of any matter discussed and acted upon, a record of individual votes, the names of persons providing testimony or comments to the Board, and the substance of comments submitted by a member of the public.
- Approved minutes are prepared and approved at the next regular meeting of the Board. The minutes should also include any documents or other information presented at the meeting.

MINUTES TO WIN IT: RECORDED

- Recordings must be a complete, unedited recording of the entire open portion of a meeting and must be properly labeled with the date, time, and location of the meeting. Recordings must be available within 3 days after meeting.

MINUTES TO WIN IT: RETENTION AND DISCLOSURE

- Written minutes (approved minutes) are permanent records and must be kept in a format that meets long-term storage requirements.
- The recording and minutes are public records under GRAMA.
- Pending minutes must be available within a reasonable time after the meeting (30 days). Pending minutes are public records and must be clearly identified as “unapproved” or “awaiting formal approval.”

WHEN MAY MEETINGS BE CLOSED TO THE PUBLIC?

UCA 52-4-204, 205

- A meeting may be closed to discuss:
 - an individual's character or competence,
 - strategy regarding collective bargaining,
 - strategy regarding pending or reasonably imminent litigation,
 - strategy about buying or selling (other disposition) real property,
 - deployment of security personnel or systems,
 - investigative proceedings involving criminal conduct, and
 - a few other areas.

CASE CLOSED: HOW ARE MEETINGS CLOSED?

- Two-thirds of the Board's members may vote to close a meeting. The general reason justifying the closed meeting must be stated at the time of the vote. A motion and vote to close a meeting must be conducted in an open meeting. A closed meeting may be held during the course of an otherwise open public meeting, and the public meeting may continue after the closed meeting is concluded.

CASE CLOSED: WHAT CANNOT BE DONE IN CLOSED MEETINGS?

- Sensitive matters may be discussed, but **no resolution, rule, regulation, contract, or appointment** may be approved in a closed meeting. Those **actions** must be taken in a open meeting even if **discussions** were held privately.
- The Board cannot interview or discuss the competence or physical or mental health of a person applying to fill an elected position or filling a midterm vacancy or temporary absence.

CASE CLOSED: CAN WE MAKE DECISIONS IN CLOSED SESSIONS?

- “As long as the ‘**information obtaining**’ procedures are conducted in the open and **any final or formal action** is announced or issued in the open, the ‘**decision making**’ or **deliberation** of a public body during a judicial process may be held in private and is exempt from the requirements of the Act.” *Dairy Product Services, Inc., v. City of Wellsville*, 2001 UT 81.

CASE CLOSED: WHAT IS PENDING LITIGATION?

- The Utah Supreme Court has stated that court proceedings constitute litigation, but so do proceedings before a “quasi-judicial body” that are legislatively mandated to apply the law to the facts, where its proceedings are conducted according to rules of procedure and subject to judicial review. *Kearns-Tribune Corp. v. Salt Lake County Comm'n*, 2001 UT 55, 28 P.3d 686

CASE CLOSED: WHO CAN COME INTO A CLOSED SESSION?

- Anyone the Board allows may attend a closed meeting. The Act requires the recording of the closed portion of the meeting to contain 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.

CASE CLOSED: WHAT RECORD IS REQUIRED FOR CLOSED MEETINGS?

- A complete, unedited recording must be made and kept unless the purpose is to discuss the character, professional competence, or the physical or mental health of an individual. In such cases, a recording is not required but the minutes must contain an affidavit of the chair affirming that the sole purpose of the meeting was to discuss those issues.
- The recording must identify the date, time, place, names of members present/absent and the names of all other individuals present.
- Generally, minutes *may* be kept but are not required.

CASE CLOSED: WHAT IF SOMEONE DISCLOSES CONTENT OF A CLOSED SESSION?

- Recordings of closed meetings are protected records under GRAMA, except that the records may be disclosed pursuant to a court order. UCA 52-4-304.
- “A public employee or other person who has lawful access to any private, controlled, or protected record under this chapter, and who intentionally discloses, provides a copy of, or improperly uses [such] record knowing that the disclosure or use is prohibited under this chapter, is...guilty of a class B misdemeanor.” UCA 63G-2-801.

CALL ME: BOARD MEMBERS PARTICIPATING TELEPHONICALLY

- Board members may participate in an open meeting by telephone. Participating telephonically is not the same as conducting an electronic meeting.



IT'S ELECTRIC: ELECTRONIC MEETINGS

- Policy required to conduct electronic meetings. We have one.
- In addition to regular notice, the Board must provide:
 - Specific notice to all members of the Board at least 24 hrs. in advance
 - A description of how members will be connected
 - One or more anchor locations, one being the regular meeting site
 - Space and facilities at the anchor location for the public to attend and monitor the meeting and to participate as appropriate

POINT OF FACT: CAN MEMBERS OF THE PUBLIC OFFER COMMENTS AT MEETINGS?

- Yes, but in general, school board meetings do not require public comment.
 - “Nothing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to communications of members of the public on public issues.” *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271 (1984)
- However, certain meetings require public comment, including proposed school closure, boundary change, district budget, tax increase, and bond ballot measures.

I SAY!: CAN YOU LIMIT WHAT A MEMBER OF THE PUBLIC SAYS DURING PUBLIC COMMENTS?

- It depends. If you allow public comment, then you can't restrict comments that may be critical of board members or district personnel.
 - “The [members] may well have an interest in discussing among themselves sensitive personnel or litigation matters, and the exceptions allow them to do that in certain situations. It is difficult to see, however, how that interest translates into a significant interest in restricting the public's ability to present its views on personnel or litigation matters at a public meeting. The performance of public employees and the handling of employment-related litigation can be important matters of public concern.” *Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999)

EXCUSE ME?: WHAT LIMITS ARE APPROPRIATE?

- Utah Open and Public Meetings Act does not prohibit the removal of any person from a meeting if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised. U.C.A. 52-4-301
- A person is guilty of disrupting a meeting or procession if, intending to prevent or disrupt a lawful meeting . . . he obstructs or interferes with the meeting . . . by physical action , verbal utterance, or any other means.
Disrupting a meeting or procession is a class B misdemeanor. UCA 76-9-103