

# Doing the Business Of the Public In Public

Utah Open & Public Meetings  
2015 Training

# Utah Code §52-4

## “Open & Public Meetings Act”

- §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 people's business.**
  - (2) It is the intent of the legislature that the state, its agencies, and its political subdivisions:
    - (a) take their actions properly; and
    - (b) conduct their deliberations openly.

# What does the OPMA law do?

- It requires government officials to deliberate and take actions openly.
- It defines who has to follow the law.
- It defines who isn't affected by the law.
- It defines what is and isn't a meeting.
- It outlines under what circumstances a meeting may be closed to the public.
- It sets standards for conducting closed meetings.
- It sets forth notification requirements for public meetings.
- It discusses what minutes are required for public and closed meetings.
- It sets forth remedies for enforcement and violation of the law.

# Who is required to follow the OPMA?

- Any state administrative, advisory, executive or legislative body which:
  - Was created by the Utah Constitution, statute, rule, ordinance or resolution;
  - Consists of two or more persons;
  - Spends, distributes or is supported by tax money;
  - Has authority to make decisions about the public's business
- This includes political subdivisions such as a city council, public service commission, planning & zoning commission or advisory committee.

# What is a meeting?

- A meeting is defined as:
  - A quorum or simple majority of a public body meeting in person or through electronic equipment to discuss or act on a matter under its authority.
- A chance or social gathering of a public body is not considered a meeting.

# Can a meeting be held without people being in the same room?

- YES:
  - Government officials can meet by telephone, computer or other electronic devices. A public notice still must be provided to describe how the members will be connected and how the public may attend or participate.

# When can a meeting be closed to the public?

- A meeting may only be closed to the public for the following purposes:
  - Discussing an individual's character, professional competence, or physical or mental health.
    - A meeting **may not** be closed if that discussion pertains to an individual under consideration to fill a mid-term vacancy or temporary absence.
  - Strategy sessions to discuss collective bargaining.
  - Strategy sessions to discuss pending or reasonably imminent litigation.
  - Strategy session to discuss the purchase, exchange, lease or sale of real property, including water shares.
    - Prior to the sale being approved, a public notice of the terms of the sale must be given.
  - Discussions regarding security personnel, devices or systems.
  - Investigative proceedings regarding allegations of criminal misconduct

# How is a meeting closed?

- 2/3 of the public body must vote to close the meeting.
- The public body must hold an open meeting with public notice before closing a meeting.
- The individual votes to close and the reason for closing must be recorded in the minutes.
- Closing a meeting is **always** discretionary, not mandatory. The law does not require any meeting to be closed.



# What is forbidden during a closed meeting?

- During a closed meeting, a public body **may not**:
  - Approve any ordinance, resolution, rule, regulation, contract or appointment.
  - Take final action
    - Final votes must be in open and on the record
  - Interview a person applying to fill an elected position or discuss the character, competency, etc. of those under for consideration for that appointment.

# How must the public be notified about a meeting?

- OPMA requires that notice must be given at least 24 hours in advance of the meeting.
  - The notice should specify the agenda, time, date and place.
- Notice should be provided in the following ways:
  - Posting at the place where the meeting will be held.
  - Given to at least one local general circulation newspaper or local media correspondent.
  - Posted online with the Utah Public Notice website ([pmn.utah.gov](http://pmn.utah.gov))
    - The informational packet is also required to be posted on this site.
- Public bodies which hold regular meetings throughout the year are required to adopt and post their annual schedule once per year.

# Does the law allow any exceptions to giving notice?

- Yes
  - An emergency meeting can be held if the majority of the body votes to consider matters of an “emergency or urgent manner.”
  - The law still requires that the “best notice practicable” be given.
  - Minutes from an emergency meeting must be taken and should include a statement of the circumstances making the meeting necessary.

# Are minutes required in open and closed meetings?

- Yes. Minutes of both open and closed meetings must include the date, time and place of the meeting and the names of all members present or absent.
- Open meeting minutes must include a summary of:
  - All matters proposed, discussed or decided
  - Names and substance of information from individuals, not a member of the body, giving testimony
  - Individual votes on each matter; and
  - Additional information requested by a member

# Are minutes required in open and closed meetings?

- Minutes of closed meeting must include:
  - The date, time and place of the meeting.
  - Names of members both present and absent.
  - Names of others present unless it infringes on the purpose of closing the meeting.
  - If a public body closes a meeting, they may choose to keep detailed written minutes of the closed portion of the meeting.
    - If a meeting is closed for the purposes of discussing the character or competency of an individual, the presiding member may sign a sworn affidavit stating that is the only reason for closing the meeting, no recording or written minutes are required.

# Are minutes public records?

- Yes, if the meeting is open.
- No, if the meeting is closed.
  - The Government Records and Management Act classifies closed meeting minutes as protected and not subject to public disclosure.
  - If a person challenges the legality of a closed session, a judge may, upon review of the meeting minutes/recording, disclose the portion of the meeting that was illegally closed. If no illegality is found by the judge's review, then no disclosure is made and the challenge is dismissed.
- Minutes from open meetings must be made available within a reasonable amount of time.

# How is the open meetings law broken?

- Closing a meeting without members voting first in an open meeting.
- Closing a meeting for reasons not allowed by law.
- Taking official action during a closed meeting.
- Failing to give public notice of a meeting.
- If the law is broken:
  - A court can void any action taken in violation of the law.
  - A violation can sometimes be “cured” by a subsequent meeting where the action is discussed and a vote taken in public.
  - The law doesn't allow for punitive damages, but it does allow for reasonable attorney fees and court costs.

# Who enforces the law? Who determines if it has been broken?

- The OPMA can be enforced by:
  - The Attorney General for the State of Utah
  - The county attorney
  - A private citizen who has been denied their rights under the law.
    - Suit must be filed within 90 days, or within 30 days if it involves bonds, notes or debt.
- A district court judge determines if the law was broken.
  - He/she privately reviews the recording or written minutes.
  - If no violation is found, the case is dismissed and meeting information is not disclosed.
  - If a violation is found, all information pertinent to the portion of the meeting that was illegally closed will be made public.