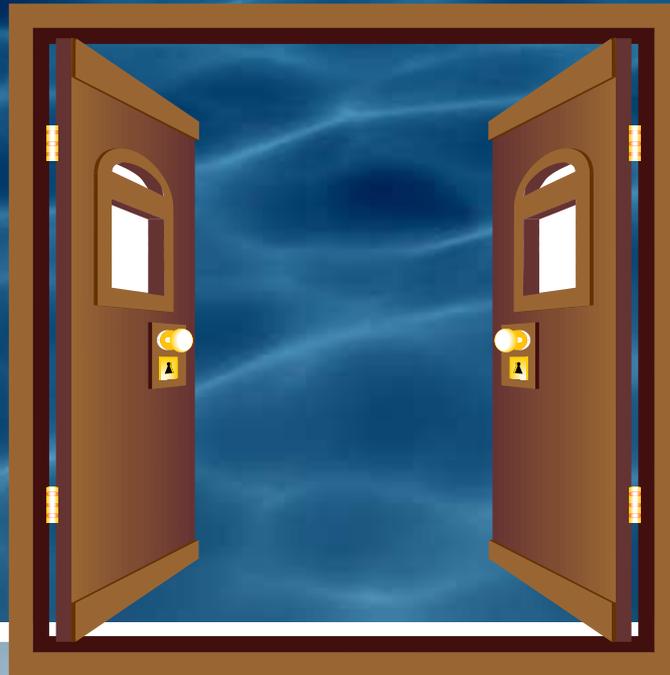


Open and Public Meetings Act Training



Training Outline

1. Training Requirement
2. Public Policy
3. General Rule
4. Definitions
5. Notice Requirements
6. Minutes of Open Meetings
7. Closing a Meeting
8. Record of Closed Meetings
9. Emergency Meetings
10. Disruptive Behavior
11. Litigation and Enforcement



Training Requirement

§52-4-104

The presiding officer of each public body is responsible to ensure that all members of the public body are provided with annual training on the Open and Public Meetings Act.



Public Policy

§52-4-102

- Public bodies exist to aid in the conduct of the people's business.
- Their actions and deliberations should be taken and conducted openly.



General Rule

§52-4-201(1)

Every meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206.



Definitions

§52-4-103(4)

- “Meeting” means the convening of a *public body*, with a *quorum* present, whether in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public concerning, or acting upon a matter over which the public body has jurisdiction or advisory power.
- Includes a workshop or executive session of a public body.
- Does not mean a chance or social meeting.



Definitions

§52-4-103(7)

“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, a statute, rule, ordinance, or resolution;
2. consists of two or more persons;
3. expends, disburses or is supported in whole or part by tax revenue; and
4. is vested with the authority to make decisions regarding the public’s business.

Definitions

§52-4-103(9)

“Quorum” means a simple majority (greater than half) of the membership of a public body, unless otherwise defined by applicable law.



Notice Requirements

§52-4-202(1)-(3)

- Annual public notice of the date, time, and place of regularly scheduled board meetings.
- At least 24 hour public notice of the agenda, date, time and place of each of its meetings.
- The 24 hour public notice is satisfied by:

1. posting a notice:
 - (a) on the front door of the office; and
 - (b) either:
 - (i) online at the Utah Public Notice Website (§ 63F-1-701); or
 - (ii) by providing notice to at least one newspaper of general circulation or to a local media correspondent by means other than the Notice Website.



Agenda Requirements

§52-4-202(6)

- A public notice that is required to include an agenda must be specific enough to notify the public as to the topics to be considered at a meeting.
- Except for emergency meetings, a public body may not raise and consider a topic that is not listed under a properly noticed agenda.
- However, a topic not included on an agenda *that is raised by the public* during an open meeting may be discussed but no final action may be taken at that meeting.

Minutes & Recordings of Open Meetings - §52-4-203

- Except for site visits and field tours in which no vote or action is taken, written minutes and recordings must be kept of all open meetings.
- The minutes and recordings are public records, but minutes are the official record of action taken.
- Anyone in attendance can make their own recording unless it interferes with the conduct of the meeting.



Minutes and Recordings of Open Meetings - §52-4-203(2)

Written minutes and recordings must include:

- a. the date, time and place of the meeting;
- b. the names of members present and absent;
- c. the substance of all matters proposed, discussed, or decided;
- d. a record, by individual member, of votes taken;
- e. the name of each person who is not a member who provided testimony;
- f. the substance of any testimony or comments by the public; and
- g. any other information any member requests to be entered.

Minutes and Recordings of Open Meetings - §52-4-203(4)

Written minutes and recordings of an open and public meeting are public records as follows:

- a. Written minutes that have been prepared in a form awaiting only formal approval by the public body are a public record.
- b. Written minutes shall be made available to the public within a reasonable time after the end of the meeting.
- c. Written minutes made available to the public before they have been adopted by the public body shall be marked “awaiting formal approval” or “unapproved” or some similar notice that they have not been formally approved.

Minutes and Recordings of Open Meetings - §52-4-203(4)

Written minutes and recordings of an open and public meeting are public records as follows (continued):

- d. Public bodies are required to establish and implement procedures for the public body's approval of the written minutes of each meeting.
- e. Written minutes are the official record of action taken at the meeting.
- f. A recording of an open meeting shall be available to the public for listening **within three business days** after the end of the meeting.
- g. Written minutes or recordings of an open meeting have a permanent retention schedule and need to be stored in/converted to a format that will allow long-term preservation.

Closing a Meeting

§52-4-204

Closed meetings are never required, but may be held provided:

- a. a quorum is present;
- b. two-thirds of the members in a properly noticed open meeting vote to close the meeting;
- c. the only matters discussed in the closed meeting are those permitted in Section 52-4-205; and
- d. no ordinance, resolution, rule regulation, contract or appointment is approved in the closed meeting.



NO ADMITTANCE

Closing a Meeting

§52-4-204(4)

The following must be publicly announced and entered on the minutes the open meeting:

- the reason or reasons for holding a closed meeting;
- the location where the closed meeting will be held; and
- the vote by name, of each member of the public body, either for or against the motion to hold a closed meeting.



NO ADMITTANCE

Closing a Meeting

§52-4-205

The purposes for closing a meeting are limited to:

- discussion of the character, professional competence, or physical or mental health of an individual (excepting a person submitted for consideration to fill a midterm vacancy or temporary absence of an elected office);
- strategy sessions discussing:
 - pending or reasonably imminent litigation;
 - collective bargaining;
 - the purchase, exchange, or lease of real property if discussion would disclose property value or prevent the best possible transaction for the public body;...



NO ADMITTANCE

Closing a Meeting

§52-4-205

Allowed closed meeting purposes (cont'd):

- strategy sessions discussing:
 - the sale of real property if;
 - discussion would disclose property value or prevent the best possible transaction for the public body;
 - previous notice that such property will be offered for sale has already been given; and
 - the terms of the sale are publicly disclosed before sale approval;
- deployment of security personnel, devices, or systems; and
- investigative proceedings regarding allegations of criminal misconduct.



NO ADMITTANCE

Record of Closed Meetings

§52-4-206(1) & (2)

- Except where a sworn statement is required, a recording of the closed meeting is required and detailed written minutes may be kept.
- Recordings must be a complete and unedited record from commencement through adjournment of the closed meeting.



Record of Closed Meetings

§52-4-206(3)

The recording and any minutes of a closed meeting must contain:

- the date, time, and place of the meeting;
- the names of members present and absent; and
- 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.

Record of Closed Meetings

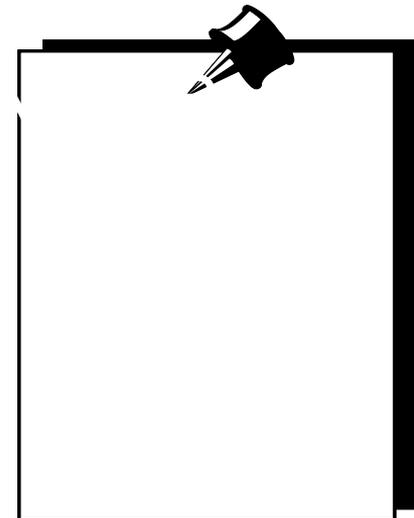
Sworn Statements - §52-4-206(6)

- Instead of a recording, a sworn statement is required from the person presiding at a meeting if a public body closes a meeting exclusively for the purpose of:
 - discussing character, professional competence, or physical or mental health of an individual; or
 - discussing the deployment of security personnel, devices, or systems.

Emergency Meetings

§52-4-202(5)

- When, due to unforeseen circumstances, it is necessary for a public body to hold an emergency meeting to discuss matters of an emergency or urgent nature, the notice requirements may be disregarded and the best notice practicable given (to include time, place, and topics to be considered).
- Before such a meeting is held an attempt must be made to notify all of its members and a majority must vote in favor of holding such a meeting.



Electronic Meetings

§52-4-207(2)

A public body may not hold an electronic meeting unless it has adopted a resolution, rule, or ordinance governing the use of electronic meetings. Commerce R151-1-2 provides:



- Such meetings are permitted but may be limited based on budget, public policy, or logistical considerations.
- A director or designee may establish such meetings on his or her own initiative or acting upon a timely request (at least 3 business days prior) from a board member.
- A quorum of a public body is not required to be present at a single anchor location.
- Any number of separate connections are permitted unless limited based upon available equipment, etc..

Electronic Meetings

§52-4-207(3)

A public body convening or conducting an electronic meeting must:

- give public notice under Section 52-4-202;
- post written notice at the anchor location(s);
- provide at least 24-hour notice to the public body, including how members will be connected, so members may participate in and be counted as present for all purposes;
- establish one or more anchor locations, at least one of which must be in the normal meeting location, and provide space and facilities so that interested persons and the public can attend, monitor, and participate; and
- provide space and facilities at the anchor location so interested persons and the public can attend, monitor and participate.

Definitions

§52-4-103

- “Electronic meeting” means a public meeting convened or conducted by means of a conference using electronic communications.
- “Anchor location” means the physical location from which an electronic meeting originates or the participants are connected.
- “Participate” means the ability to communicate with all of the members of a public body, either verbally or electronically, so that each member of the public body can hear or observe the communication.

Disruptive Behavior at a Meeting

§52-4-301



- A public body may remove any person who willfully disrupts a meeting to the extent that orderly conduct is seriously compromised.
- Such a removal does not constitute closing the meeting.

Voiding a Public Meeting

§52-4-302

- Final action in a meeting held in violation of the requirements for open, emergency, and electronic meetings is voidable in court.
- Lawsuits to void issuance of bonds, notes or other debt evidences must be filed within 30 days after the date of the action. All other suits to void action must be filed within 90 days.



Criminal Penalty for Improperly Maintaining Records - §63A-12-105

Intentionally mutilating, destroying, or otherwise damaging or disposing of the record-copy of a record knowing it is in violation of the laws governing retention of the record is a class B misdemeanor, and the employee involved may be suspended or discharged from employment.



Enforcement of Open and Public Meetings Act - §52-4-303

- The attorney general and county attorneys are responsible for enforcement of the Open and Public Meetings Act.
- The attorney general is required on a least a yearly basis to provide notice to all public bodies of any material changes to the Open and Public Meetings Act.
- A person denied any right under the Act may bring suit to compel compliance with or enjoin violations or determine the applicability of the Act, and may be awarded attorney fees and court costs if successful.

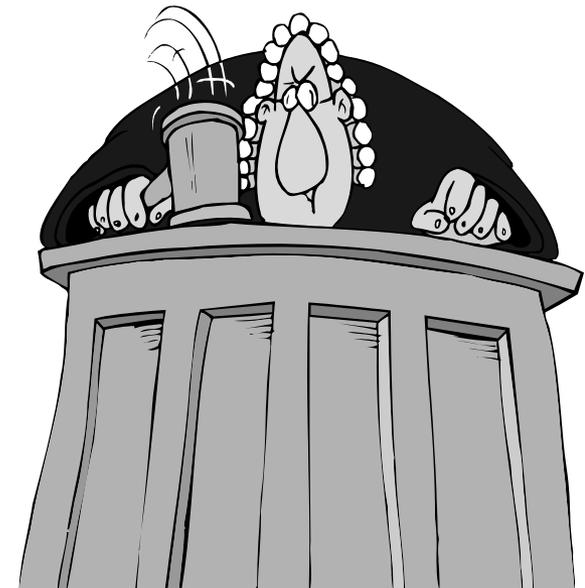
Action Challenging Closed Meeting

§52-4-304

- In a lawsuit brought to challenge the legality of a closed meeting a court is required to review the recording or written minutes of the closed meeting in camera, and decide the legality of the closed meeting.
- If the court determines that the public body did not violate the Act regarding closed meetings, it must dismiss the case without disclosing or revealing the information from the recording or minutes of the closed meeting.
- If the court determines the public body did violate the Act regarding closed meetings, it must publicly disclose or reveal from the recording or minutes all information about the portion of the meeting that was illegally closed.

Criminal Penalty for Closed Meeting Violation - §52-4-305

A knowing or intentional violation or aiding or advising in the violation of the closed meeting provisions of the Open and Public Meetings Act is a class B misdemeanor.



Reasonable Accommodations

- Although not addressed in the Open & Public Meetings Act, the Americans with Disabilities Act 42 U.S.C. 12101 et seq., provides persons with a disability the right to request a reasonable accommodation
- Be sensitive in dealing with reasonable accommodation requests – this may require such things as providing TTY service for a person who is deaf or hard of hearing when conducting an electronic meeting when proper notice of the reasonable accommodation request has been given in order to allow him/her to “participate.”

Questions?