OVERVIEW OF OPEN MEETINGS

Open and Public Meetings Act (1977)
(§ 52-4-101, *et seq.* -- Statutes to 2010)

I. Declaration of public policy.

State and local government exists to conduct the people's business and they should take their actions and conduct their deliberations openly. § 52-4-102.

II. Application – statutory definitions.

A. "Meeting" – convening a public body in person or electronically, with a quorum, to discuss, hear from the public, or act upon some matter "over which the public body has jurisdiction or advisory power." § 52-4-103(4).

B. "Convening" – means to call together a meeting of a public body by its chairperson to discuss or act upon something within that public body's jurisdiction or advisory power. § 52-4-103(2).

C. "Public body" – any administrative, advisory, executive, or legislative body which:

1. Is created by constitution, statute, rule, resolution, or ordinance;

2. Consists of two or more persons;

3. Either spends or is supported in whole or part by taxes; and

4. Is vested with the authority to make decisions regarding the public's business. § 52-4-103(7).

D. The Act specifically does not apply to certain kinds of meetings or public bodies.

1. A public body that exercises both executive and legislative power (a county commission) is not bound by the Act when it discusses administrative matters, spends no money, takes no formal action, or considers matters which are not usually formal commission meeting agenda items. § 52-4-103(4)(b)(iii).

2. A body who has a quorum of two persons (a county commission) is not bound by the Act when considering or discussing administrative matters where no formal or informal action is to be taken. § 52-4-103(9)(b).

E. A partial list of county entities covered by the Act includes: county commission, county council, B of E, board of health, library board, mental health authority

board, board of adjustment, planning commission, boundary commission, merit system commission, CVB board, local district governing bodies, and various advisory boards.

III. Procedural requirements.

A. Notice requirements.

1. Annual notice (date, time and place) and 24-hour notice (date, time, place and agenda). § 52-4-202(1) & (2).

2. Notice posted in writing at the office or meeting place and on the State Archives website. § 52-4-202(3).

3. Emergency meetings may be held for "unforeseen, emergency, and urgent" matters – these should be given the "best notice practicable." § 52-4-202(5).

4. Description of items on the agenda must be "reasonably specific." § 52-4-202(6).

5. A matter brought up by the public may be discussed, even if it is not on the agenda, but no action may be taken. § 52-4-202(6)(b) & (c).

B. Minutes in open meetings.

1. Minutes need to be both written and by audio recording. § 52-4-203(1).

   a. Written minutes include date, time, place, members present, agenda, substance of discussion, summary of comments, votes taken, names of members of the public and their comments, and any other item as requested. § 52-4-203(2).

   b. Audio recording: Must be a complete and unedited recording of all the open portion of a meeting, and must be adequately labeled and must be made available within three days. § 52-4-203(3) & (4).

2. All minutes of open meetings are considered public records under GRAMA and must be made available within a reasonable time. § 52-4-203(4) & (7).

3. Meeting minutes must be made available to the public before they have been officially approved at a later meeting. Such minutes should be clearly stamped as "unapproved." § 52-4-203(4).

4. If the group is going on a site visit an audio recording is not required, but adequate written minutes are. § 52-4-203(7).

C. Minutes in closed meetings.

1. Audio recorded minutes are mandatory and written minutes are optional. § 52-4-206(1).

2. Written minutes must disclose the date, time, place, members present, and names of others present. § 52-4-206(3).

3. The minutes of closed meetings are considered protected documents under GRAMA. § 52-4-206(5).

4. Neither an audio recording nor written minutes are required if a meeting is closed to discuss the character and competence of an individual or the deployment of security devices – the chairperson of the public body must, however, sign an affidavit regarding the subject matter of a meeting. § 52-4-206(6).

D. Electronic meetings.

1. Electronic meetings (by phone, computer, e-mail, text messaging, and so forth) are permitted only if the county has adopted a rule or ordinance establishing regulations regarding electronic meetings. § 52-4-207(2).

2. An electronic meeting must include public notice of the fact that the meeting will be conducted electronically, written notice must be published at the physical location where the meeting originates (this must be at the public body's normal meeting place), and sufficient space and electronic facilities must be available for the public to listen in. § 52-4-207(3).

E. Training.

1. The chairperson of the public body is required to schedule annual training regarding Open Meetings Act requirements. § 52-4-104

2. The attorney general is responsible to send an annual notice to all public bodies regarding legislative changes. § 52-4-303(2).

IV. Open Meetings -- Exceptions.

A. Procedure – how to close a meeting.

1. The closed meeting must begin as an opening meeting with 24-hours notice, it must be called and convened like a normal meeting, and a quorum must be present. This process must be followed even if the only agenda items are closed subjects. § 52-4-204(1).

2. Closure is not automatic – there must be a motion to close with a two-thirds vote in favor. § 52-4-204(1)(a)(iii) & (5).

3. All matters discussed must be within the specific exceptions permitted by statute. § 52-4-204(2).

4. There can be no approval of a contract, ordinance, or appointment during the closed session (formal action must be postponed until the meeting is reopened to the public). § 52-4-204(3).

5. Minutes are required during the closed session as described above. § 52-4-206.

B. The reasons for closing a meeting. § 52-4-205.

1. To discuss the character, competence or health of an individual (but may not interview a person for appointment to an elective office).

2. A strategy session to discuss collective bargaining.

3. A strategy session to discuss pending or reasonably imminent litigation.

4. A strategy session to discuss acquiring real estate.

5. A strategy session to discuss selling real estate.

6. Discussions regarding the deployment of security personnel or devices.

7. Discussions regarding investigation of criminal misconduct.

8. Discussion of a taxpayer's commercial information which is used to establish property tax valuation.

C. Other open meeting exceptions.

1. Statutory exceptions:

a. Chance or social meetings. § 52-4-103(4)(b)(i) & (ii).

b. Combined legislative/executive body's administrative discussions. § 52-4-103(9)(b).

c. A meeting of two elected persons by themselves. § 52-4-103(9)(b).

d. Staff meeting of other elected officials – not a public body which is vested with authority.

2. Case law exceptions:

a. Deliberations regarding decisions in a quasi-judicial setting. Common Cause v. Utah Public Service Commission, 598 P.2d 1312 (1979).

b. Conducting administrative business, requiring no deliberation or formal action. Harper v. Summit County, 26 P.3d 193 (2001)

c. Public body's failure to notify public that closed session had ended and open session had resumed. Ward v. Richfield City, 798 P.2d 757 (1990).

d. Acting on a matter over which the public body had no jurisdiction. Hutchinson v. Cartwright, 692 P.2d 772 (1984).

V. Sanctions and enforcement.

A. The Act is enforced judicially in an action brought by either the attorney general, a county attorney, or an affected citizen. It is brought to compel compliance, enjoin violation, or for declaratory judgment – attorneys' fees are awarded. § 52-4-303.

B. Regarding closed meetings, the judge reviews the minutes of the closed meeting in camera and decides to either release those minutes publicly or retain confidentiality. § 52-4-304.

C. A violation of the Act, (including procedural violations regarding notice or minutes) may make any final actions voidable. § 52-4-302(1)(a).

1. There is no enforcement for website notice violations until after April 1, 2009 or for failure to notice an emergency meeting because of website technology failures. § 52-4-302(1)(b).

2. A public entity can cure an open meetings violation by conducting a later meeting, on the same subject, which complies with the Act's requirement. Ward v. Richfield City, 798 P.2d 757 (1990).

D. A member of a public body is guilty of a class B misdemeanor for knowing or intentional violation of the act. § 52-4-305.

E. Statute of limitations – 30 days for actions involving bonds, notes or other indebtedness and 90 days for all other matters. § 52-4-302(2) & (3).