

"Avoiding Open Meeting Violations"

11AM-12 Noon in Texas Room

12/3/2011

Democracies die behind closed doors.

-Judge Damon J. Keith



Open Meetings Act

- ▣ In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.

Is it a Meeting?

YES, if a quorum is...

Formulating policy	OR Discussing public business	OR Taking action
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Public Notice

- * Meetings shall be held only after "reasonable notice" to the public
- + Your annual OMA resolution defines what is reasonable for your board

- * **AG Guidance:**
 - 10 days • Regular meeting
 - 3 days • Special meeting
 - 24 hours • Emergency meeting

Common Notice Violations

- ▣ Holding a discussion via phone or e-mail.
 - "rolling quorum"
- ▣ Posting notice behind closed doors.
- ▣ Posting notice after the deadline.

The Agenda

- ▣ A final agenda must be available to the public at least 24 hours in advance
- ▣ Agenda must list "specific items of business to be discussed or transacted"
 - Avoid substantive discussion of unlisted items
- ▣ Want to take action? The item must be listed on the 24-hour public agenda.
- ▣ Executive-session items: cite the legal authority & state the subject to be discussed

Common Agenda Violations

- ▣ Non-specific agendas!
- ▣ Adding last-minute "emergency" items.

Executive Session

- ✖ Discussion is limited to 10 exemptions in the Open Meetings Act
- ✖ Procedure to Close
 1. Take a roll-call vote to close the meeting
 2. State which exemption applies AND the subject of discussion
 3. Afterward, state for the minutes that only the specified subjects were discussed

Topics for Executive Session

- ▣ Limited personnel matters

YES	NO
<ul style="list-style-type: none"> • Hiring, promotion, demotion of <u>an individual employee</u> • Dismissal, assignment, resignation of <u>an individual employee</u> • Consideration of complaints/charges against <u>an individual employee</u> 	<ul style="list-style-type: none"> • Overall pay raises/cuts • Changes to employee benefits generally • Department restructuring • Removal/selection of a Board Member

Topics for Executive Session

- ▣ Deliberations in connection with a trial-type legal hearing
- ▣ Discussion of personally identifiable student information
- ▣ Meetings for preliminary collective-bargaining strategy and bargaining sessions with union representatives
- ▣ Sole-source purchases over \$2,500, and discussion of competitive sealed proposals

Topics for Executive Session

- ▣ attorney-client privilege pertaining to threatened or pending litigation

YES	NO
<ul style="list-style-type: none"> • Receiving or soliciting advice from your attorney when there is a pending lawsuit or an actual, credible threat of one. 	<ul style="list-style-type: none"> • Discussing a controversy that <u>may</u> result in litigation • Receiving advice from your attorney on non-litigation matters • Discussing litigation among yourselves (no attorney present)

Topics for Executive Session

- ▣ Discussion of purchase, acquisition or disposal of real property or water rights

YES	NO
<ul style="list-style-type: none"> • Buying land for a playground • Leasing water rights 	<ul style="list-style-type: none"> • Buying playground equipment • Leasing copiers

Common Exec-Session Violations

- ❑ Taking action in closed session.
- ❑ Expanding the exemptions to discuss sensitive or controversial topics behind closed doors.
- ❑ Failing to cite both the legal authority AND the subject to be discussed.
- ❑ Saying "no action was taken" instead of "only XYZ was discussed."

Minutes

- ❑ Prepare draft minutes within 10 working days.
- ❑ All minutes (including draft) are open to public inspection.

Common Minutes Violations

- ❑ Failing to record who's present/absent.
- ❑ Failing to record how members voted.
- ❑ Forgetting to approve minutes at next meeting.

Potential Consequences

- ❑ **Actions taken at non-complying meetings are invalid**
- ❑ The Attorney General, District Attorney or a private individual may file suit.
- ❑ Violating the Act is a criminal misdemeanor, punishable by up to \$500 for each offense.
- ❑ One more ...

Potential Consequences

- ❑ **Actions taken at non-complying meetings are invalid**
- ❑ The Attorney General, District Attorney or a private individual may file suit.
- ❑ Violating the Act is a criminal misdemeanor, punishable by up to \$500 for each offense.
- ❑ Democracy dies.

Quiz Time

How well do you know OMA?

FAQs

- ▣ How can our board prepare its agenda without creating a rolling quorum?

FAQs

- ▣ What if a quorum of our board attends a convention/ribbon-cutting/basketball game/charity event?

FAQs

- ▣ I'm away on travel. Can I call in for one item, or do I have to participate in the entire meeting?

FAQs

- ▣ [Insert your question here.]



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