

# OPEN AND PUBLIC MEETINGS

By David L. Church

In order to understand the Open and Public Meetings Act it is only necessary to understand what the public policy behind the Act is. The Act specifically states that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business. It is the intent of the Legislature that the state, its agencies and political subdivisions take their actions and conduct their deliberation openly.<sup>1</sup>

It is clear from this statement of policy that all meetings of official bodies of cities and towns, with very limited exceptions, are to be open to the public. It is not just having the meeting open to the public that is the policy of the State of Utah. It is also that deliberations be conducted openly. If you keep these two policies in mind it is easy to comply with the Open and Public Meetings Act.

For purposes of the Act it is first necessary to understand what a meeting is. The Act defines a meeting as being a convening of a public body when a quorum is present. Meetings include workshops, executive sessions and it does not matter if the meeting is held in person or by means of electronic communications. Convening is also defined to mean any meeting called by a person authorized to do so for the purpose of either discussing or acting upon a matter on a subject matter over which the body has jurisdiction or advisory power.<sup>2</sup> These very broad definitions are intended to include almost all gatherings of the city council or other committees of a municipality.

The exceptions to what a meeting is are very narrow. They include a chance meeting, a social meeting; a convening of a public body that has both legislative and executive responsibilities where no public funds are appropriated and where the meeting is convened just to implement administrative matters.<sup>3</sup>

The Open and Public Meetings Act applies to more than just the governing body of a city. It also applies to Planning Commissions and the Boards of Adjustment and other advisory committees of the city or town. As long as this group consists of two or more persons, has the power to expend, disburse, or is supported in whole or part by tax revenue and has authority to do the public's business it is governed by the Act. The intent of this is to include all committees, commissions, or other groups that may be carrying out anything that looks like the public's business if they are supported by public funds.

It is important to remember, however, that a quorum of the body is necessary for it to be a meeting subject to the Act. For example, any two council members of a third, fourth, and fifth class city could get together to discuss any matter without it being a meeting but

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<sup>1</sup> Utah code 52-4-101.

<sup>2</sup> Utah code 52-4-103(2)

<sup>3</sup> This could apply to smaller cities and the towns where individual council members have administrative departments but should only be used in very few circumstances.

three council members could not get together to discuss a public matter without it constituting a meeting. It is now clear in the law that in cities operating under the six-member council form of government that two council members and the mayor do not constitute a quorum. If a mayor is meeting with only two of his council members for purposes of avoiding the public scrutiny it will appear to the press and public that at the very least he or she is violating the spirit of the open meetings act and this should be avoided.

All meetings are to be open to the public with limited exceptions. In addition any special meeting such as a workshop or executive session that is held the same day as a regular meeting of the city or town must be held at the same location where the regularly scheduled meeting is being held. The purpose of this is to keep a city council from holding work meeting at a place like a mayor's home or a café prior to the regularly scheduled council meeting.

The exceptions to having a meeting open to the public are meetings for:

- (a) discussion of the character, professional competence, or physical or mental health of an individual;
- (b) strategy sessions to discuss collective bargaining;
- (c) strategy sessions to discuss pending or reasonably imminent litigation;
- (d) strategy sessions to discuss the purchase, exchange, or lease of real property if public discussion of the transaction would:
  - (i) disclose the appraisal or estimated value of the property under consideration; or
  - (ii) prevent the public body from completing the transaction on the best possible terms;
- (e) strategy sessions to discuss the sale of real property if:
  - (i) public discussion of the transaction would:
    - (A) disclose the appraisal or estimated value of the property under consideration; or
    - (B) prevent the public body from completing the transaction on the best possible terms;
  - (ii) the public body previously gave public notice that the property would be offered for sale; and
  - (iii) the terms of the sale are publicly disclosed before the public body approves the sale;
- (f) discussion regarding deployment of security personnel, devices, or systems;
- (g) investigative proceedings regarding allegations of criminal misconduct; and
- (h) discussion by a county legislative body of commercial information as defined in Utah code Section **59-1-404**.

Before a meeting may be closed for one of these valid reasons, the public body must be called together in an open meeting. At least two-thirds of the members of the public body present must vote to close the meeting before it can be closed. No closed meeting is allowed except for the reasons mentioned above. The reasons for holding the closed

meeting and the vote either for or against the proposition to hold the meeting are to be entered into the minutes of the public portion of the meeting.

The law requires that written minutes and a recording are to be taken and kept of all public meetings. Both the minutes and tapes are public records and must be made available to the public within a reasonable time following the meeting. The recording must be available within 3 days following the meeting. Each City and Town is required to establish a policy about how minutes are to be approved. Once a City Recorder, Town Clerk, or Clerk of a meeting get the minutes written and they are given to the members of the public body for their review, they must also be given to the public. They can be labeled as draft minutes subject to change or something like that.

The minutes of open meetings must include certain minimal detail. Including the date, time, and place of the meeting; the names of members present and absent; the substance of all matters proposed, discussed, or decided; a record, by individual member, of votes taken; the name of each person who provided testimony and the substance in brief of their testimony; and any other information that any member requests be entered in the minutes or recording that is a record of what went on in the meeting.

Written minutes may be kept and a digital or tape recording must also be kept of closed meetings. The open portion of the meeting minutes when the closed meetings is voted for must include the date, time, and place of the meeting, the names of the members present and absent and the names of other persons present except where disclosure would infringe on the confidence necessary to fulfill the purpose of closing the meeting. These minutes are public records and are available to the public as set forth above.

The Act also gives the public the right to record any open meeting. This recording could include either audio recording or video recording of the meeting. You do not, however, have to let this recording interfere with the conduct of the meeting.

The closed portion of the meeting must be tape recorded. These tape recordings and minutes (if any) are protected records under the Government Records Access and Management Act and, therefore, should not become public except under the provisions of that Act. The exception to this is meetings in which the competence or physical or mental health of an individual is discussed or the deployment of security devices is discussed. The public body holding the meeting can then choose to have the Chair or presiding officer sign a sworn affidavit affirming that the sole purpose for closing the meeting was to discuss only those issues. The purpose for this exception is that when discussing an individual, frank and open discussions are important and the presence of a tape recording device or minutes may impede this open and frank exchange of ideas. If individuals are meeting to discuss deployment of security personnel or devices, it may very well compromise the security of these devices to have a tape recording or detailed minutes available.

The purpose of requiring the tape recording of the other types of closed meetings is also twofold. Protected records under the Government Records Access and Management Act

will eventually become public records when the reason for the protection is removed. Also, any person who feels like there has been a violation of the law regarding the closed meeting has a right to take this tape recording or the detailed minutes and have a Judge review what went on. If the Judge determines that the public body discussed matters in the closed session that were inappropriate, he will then make these matters public.

The Attorney General and the county attorneys of the State are charged with enforcing the Open and Public Meetings Act. Private individuals, however, can enforce these acts by bringing suit. They may bring suit to enjoin or force compliance with provisions of the Act. If the private individuals prevail, the court may award reasonable attorneys fees and court costs to the successful plaintiffs. If any person intentionally violates any provision of the Act regarding closed meetings that person can be found guilty of a class B misdemeanor.

The Utah Open and Public Meetings Act also provide the minimum notice for a public meeting. A public body shall give not less than 24 hours public notice of each meeting including the meeting agenda, date, time, and place. In addition to these requirements a public body which holds regular meetings that are scheduled in advance over the course of a year must give public notice at least once each year of its annual meeting schedule by giving notice of the date, time, and place of the scheduled meetings. This notice is satisfied by posting written notice at the principal office of the public body, or if no principal office exists, at the building where the meeting is to be held; on the Utah Public Notice Website created under Section 63F-1-701 of the Utah Code; providing notice to at least one newspaper of general circulation within the geographic jurisdiction of the public body; or a local media correspondent. A public body is encouraged to develop and use electronic means to provide notice of its meetings. The public body must also provide public notice to all other media agencies that make a periodic written request to receive them; and post public notice of its meetings on the Internet.

The notice requirements may be disregarded if because of unforeseen circumstances it is necessary for a public body to hold an emergency meeting to consider matters of an emergency or urgent nature; and the best notice practicable is given. An emergency meeting of a public body may not be held unless an attempt has been made to notify all of its members; and a majority of its members approves holding the meeting.

A public notice that is required to include an agenda must provide reasonable specificity to notify the public as to the topics to be considered at the meeting. Each topic must be listed under an agenda item on the meeting agenda. A public body may not consider a topic in an open meeting that is not listed under an agenda item included with the advanced public notice. However a topic not listed on the open meeting agenda that is raised during an open meeting may be discussed but no final action may be taken by the public body during that meeting.

The best way to avoid problems with the Open and Public Meetings Act is to err on the side of public openness. When in doubt, the meeting should be open. City councils and other committees or commissions of cities should not attempt to violate even the spirit of

the Act. It is important that the meeting not only is conducted in public, but the deliberations be conducted openly. It is not appropriate for members of public bodies such as city councils and planning commissions to conduct their deliberations privately and then in the public meeting just perfunctorily hold the vote.

A copy of the Act is attached.