

UTAH OPEN & PUBLIC MEETINGS ACT

UTAH CODE ANN. §§52-4-101

et seq.

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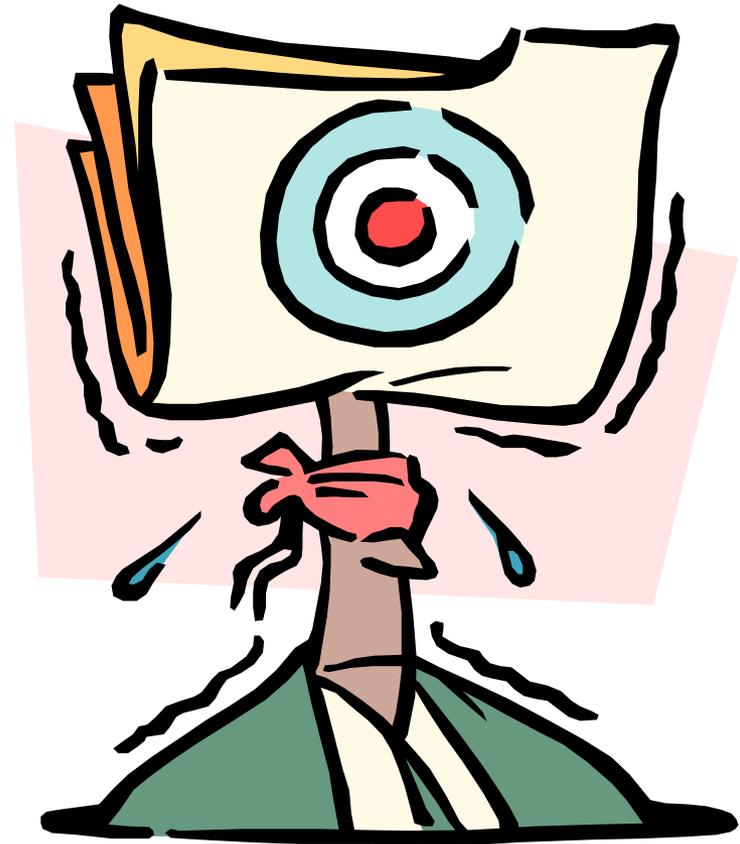
WHAT DOES THE OPEN MEETINGS ACT DO?

- “It requires government to take actions openly.”
- “Ensures deliberations allow for an open public process.”

Who Is Subject To This Law?

DO I HAVE TO FOLLOW THE LAW? YES, if you are:

- An administrative, advisory, executive or legislative body of the state or its subdivisions and;
 - Were created by the Utah Constitution, statute, rule, ordinance or resolution
 - Consist of two or more persons
 - Spends, distributes or is supported by tax money
 - Has authority to make decisions about the public's business.



Examples

- DABC Commission
- State Records Committee
- Board of Pardons
- City of County Housing Authorities (created by ordinance)
- City or County Councils
- City or County Council Advisory Boards
 - Planning & zoning
 - Board of adjustments
 - Project committees
- Special Districts

Who Is Not Subject to Open Meetings law

- Political parties, groups and caucuses
- State Legislative conference, rules and sifting committees
- School community council, established under 53A-19-108



Meetings

UCA §52-4-103(5)(a)

Meeting means the convening of a public body, with a **quorum** present, **including a workshop or an executive session** whether the meeting is held in person or by means of electronic communications, for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body has jurisdiction or advisory power, about, or acting upon a matter over which the public body has jurisdiction or advisory power.

UCA §52-4-103(5)(b) continued

What is not a “MEETING”

- A chance meeting
- A social meeting
- Meeting of a public body with **both** legislative and executive responsibilities where:
 - No public funds are appropriated for expenditure
 - Meeting solely for discussion or to implement administrative/operational matters for which no formal action by the public body is required
 - Meeting solely for discussion or to implement administrative/operational matters that would not come before the body for discussion or action

What is a Quorum

UCA§52-4-103

- § 52-4-103(10)(a) “Quorum” means a simple majority of the membership of a public body, unless otherwise defined by applicable law
- § 52-4-103(10)(b) “Quorum” does not include a meeting of two elected officials by themselves when no action, either formal or informal, is taken on a subject over which these elected officials have advisory power

Attendance at Meetings

UCA§ 52-4-207

DO I HAVE TO ATTEND MEETINGS, OR CAN IT BE HELD WITHOUT PEOPLE IN THE SAME ROOM?

- Can meet by phone or other electronic means which allows all participants to hear or observe communications
 - Must be adopted into existing rules/ordinance
 - Notice requirements still apply
 - Public must have a means to attend or participate



Notice Requirements

UCA §52-4-202

Proper notice requires all of the following:

- Must be posted as a written notice at the place where the meeting will be held
- Must be given to at least one local general circulation newspaper or local media correspondent
- Must post notice to the “Utah Public Notice Website” 63F-1-701
- At least 24 hours prior to meeting post:
 - Agenda including all action items stated with **reasonable specificity**
 - Date
 - Time
 - Place
- Note Certain municipal public bodies may be exempt from posting on the Notice Website based on their budget.

§52-4-202 continued

In addition to the requirements under Subsection §52-4-202(1), a public body which holds regular meetings that are scheduled in advance over the course of a year shall give public notice at least once a year of its annual meeting schedule...

Closed Meetings

UCA §§ 52-4-201, -204 & -205

- CAN A MEETING BE CLOSED TO THE PUBLIC? IF SO WHEN?
 - An open meeting can be closed for the following purposes:
 - A meeting is open to the public unless closed under § 52-4-204, -205 or -206
 - Discussing an individual's character, professional competence, or physical or mental health
 - Strategy sessions to discuss collective bargaining
 - Strategy sessions to discuss pending or reasonably imminent litigation



Closed Meetings continued

- An open meeting can be closed for the following purposes continued:
 - Discussions regarding security personnel, devices or systems
 - Investigative proceedings regarding allegations of criminal misconduct
 - Strategy sessions to discuss the purchase, exchange, lease or sale of water rights or water shares if public discussion would disclose the appraisal/estimated value of the property under consideration; or would prevent the transaction from being completed under the best possible terms
 - Strategy sessions to discuss the purchase, exchange, lease or sale of real property
 - Public notice of the terms and public approval of sale required
 - Water rights shares under certain conditions

A closed meeting is not allowed unless each matter discussed in the closed meeting is permitted under § 52-4-205

Are There Any Meetings That Must Be Closed?

The decision to close a meeting to the public is generally discretionary, not mandatory. However, the law does require the following meetings to be closed.

- A meeting of the Health and Human Services Committee to review a fatality review report
- A meeting of the Child Welfare Legislative Oversight Panel to review certain cases
- A meeting of a conservation district for the purpose of advising the USDA on a farm improvement project if the information is protected under Federal Law.

Closing Meetings

UCA§52-4-204

There is a process required to properly close meetings:

- A Quorum must be present.
- Two-thirds of the members present must vote to close the meeting.
- The body must first hold an open public meeting with proper notice before entering into the closed meeting.
- The body must publicly disclose: **Note: there are separate requirements in subsections (B), (C) & (D)**
 - The vote by name of each member for or against entering into the closed meeting
 - The reasons for holding the closed meeting
 - Location of the closed meeting

In 2013 provisions regarding ethics committee meetings were added

Closed Meetings UCA§205

You may not:

- Approve any ordinance, resolution, rule, regulation, contract or appointment
- Interview a person to fill an elected position
- Take final action: Final votes must be open and on the record



Records of Closed Meetings

UCA § 52-4-206

Record of a closed meeting must include

- The names of all members present
- The names of others present at the closed meeting, unless it infringes on the purpose of the closed meeting
- The closed meeting **must** be recorded and the recording shall be complete and unedited
 - Note: There may be exceptions to this requirement see § 52-4-206(6)(a) and (b)
- Detailed written minutes **may** be kept

Minutes and/or recordings of closed meetings are not public records.

Records of Open Meetings

UCA§ 52-4-203

Written Minutes and Recordings required:

- Even though there is a recording, the approved written minutes will be the official record.
- include both written minutes and recording of open meeting as public records.
- Public body shall establish and implement procedures for the public body's approval of the written minutes each meeting

UCA§52-4-203 continued

- All minutes must include
 - Date/time
 - Place of meeting
 - Names of all members present or absent
- In addition minutes of open meetings must include
 - All matters proposed, discussed or decided
 - All names and substance of information from individuals giving testimony
 - Individual votes on each matter
 - Any additional information requested by a member

UCA§52-4-203 continued

- Written minutes shall be available to the public before final approval when the minutes are only awaiting formal approval.
- The minutes released prior to final approval must be identified as “unapproved”.
- Minutes which were pending approval must be released to the public 30 days after they are approved
- The recording of a open meeting must be made available within 3 business days, an audio tape or link to the audio must be posted on the entity’s website.

Electronic Message Transmissions

UCA §52-4-210

The Open Public Meetings Act does not restrict members of a public body from transmitting an electronic message to other members of the public body when the body is not in an open meeting.

Emergency Meetings

UCA§ 52-4-202

The law allows for meetings for “emergency or urgent” matters if:

- The best notice practicable is given
- The minutes include a statement of the unforeseen circumstances that made the meeting necessary



Violations of OPMA

UCA §§ 52-4-302. 52-5-305

A court can void any action in violation of the law

- Sometimes a violation can be “cured” by discussing and taking a public vote in a subsequent meeting
- May have to pay court costs and attorneys fees
- “In addition to any other penalty under this chapter, a member of a public body who intentionally violates or intentionally abets or advises a violation of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.” (6 mos. Jail and/or \$1,000.00 fine)



Common Violations Of OPMA

- Closing meetings without members of the body voting first in an open meeting to close the meeting
- Conducting a closed meeting for reasons other than those allowed by OPMA
- Taking official or final action in a closed meeting
- Failing to properly provide notice of a public meeting
- Failing to provide adequate notice of a public meeting

Enforcement of OPMA

UCA§52-4-303

- The courts
- The Attorney General
- A County Attorney
- A private citizen who is an aggrieved party

Limitations

UCA§52-4-302

HOW LONG DOES A PARTY HAVE TO PURSUE CORRECTIVE ACTION?

- 90 Days
- 30 Days if it involves, bonds, notes, or debt

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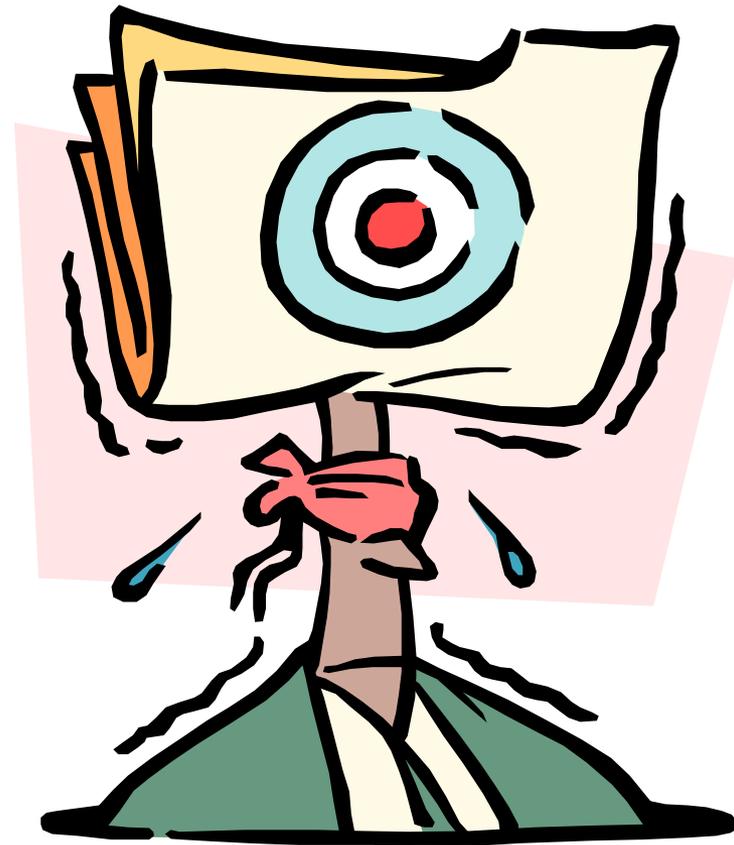
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