

Tuesday, March 17, 2015

8:30am – 10:30am

Public Records & Open Meetings

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UTAH OPEN & PUBLIC MEETINGS

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Declaration of Public Policy [§52-4-102]

- (1) The Legislature finds and declares that the state, its agencies and political subdivisions exist to aid in the conduct of the peoples business.
- (2) It is the intent of the Legislature that the state, its agencies and its political subdivisions : (a) take their actions openly; and (b) conduct their deliberations openly.

Education [§52-4-104]

- The Act requires yearly training for members of public bodies – the presiding officer is responsible for training

Public Meetings Overview

- What is a meeting?
- What do you do before a meeting?
- What do you do during a meeting?
- What do you do after a meeting?
- Consequences for violations

What is a Meeting? [§52-4-103(6)(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 has jurisdiction or advisory power.

What is a Public Body? [§52-4-103(9)]

- “Public body” means any administrative, advisory, executive, or legislative body of the state or its political subdivisions that:
 - is created by the Utah Constitution, statute, rule ordinance, or resolution;
 - consists of two or more persons;
 - expends, disburses, or is supported in whole or in part by tax revenue; and
 - is vested with the authority to make decisions about the public’s business.
- “Public body” does **not** include a
 - political party, political group, or political caucus;
 - conference committee, rules committee, or sifting committee of the Legislature; or
 - School community council

Examples of Public Bodies

- DABC Commission
- Board of Pardons
- City Council & County Councils and Commissions
- City and County Council Advisory Boards
 - Planning Commission
 - Board of Adjustment
 - Project committees
 - Advisory committees

What is a Quorum? [§52-4-103(11)]

- "Quorum" means a simple **majority** of the **membership** of a public body, unless otherwise defined by applicable law.
- "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.

What is Convening? [§52-4-103(3)]

- "Convening" means the calling together of a public body by a **person authorized to do so** for the express purpose of discussing or acting upon a subject over which that public body has jurisdiction or advisory power.

What is not a “Meeting”? [§52-4-103(6)(b)]

- A chance or a social meeting (but this may not be used to “circumvent” the law [§52-4-208(2)])
- A meeting of the Tax Commission to discuss a confidential tax matter
- Meeting of a public body with both legislative and executive responsibilities if:
 - No public funds are appropriated; and
 - Meeting solely for discussion or to implement administrative/operational matters that would not come before the public body for discussion or action

What do you do before a meeting? [§52-4-202]

- Give Annual Notice
 - A public body which holds regular meetings must provide annual meeting schedule once a year specifying the date, time, and place
- Give 24 Hours’ Notice
 - It must written notice of the agenda, date, time, and place.
 - The agenda must “provide **reasonable specificity** to notify the public as to the topics to be considered at the meeting. Each topic shall be listed under an agenda item on the meeting agenda.”
- How Written Notice is Given
 - By posting at the principal office of the public body or if no principal office exists, at the building where the meeting is to be held; and
 - At the Utah Public Notice Website under §63F-1-701 (local districts and special service districts are encouraged but not required to do this if their annual budget is less than \$1 million); and
 - To a least one newspaper of general circulation within the geographic jurisdiction of the public body or a local media correspondent. This is satisfied if the notice is published on the Utah Public Notice Website.

Emergency Meetings [§52-4-202]

- Because of “unforeseen circumstances” to consider matters of an “emergency or urgent nature”
- Give the “best notice practicable” of the time and place and topics
- An “attempt” must be made to give notice to all members of the public body and a “majority of the members of the public body approve the meeting”.

Open Meetings [§52-4-201]

- All meetings are open to the public unless the law specifically allows them to be closed
- Includes workshops or executive sessions when a quorum is present
- Same day workshops or executive sessions must be held at the same location as the regular public meeting unless
 - If the regularly scheduled meeting has been moved to a new location
 - Site visits or traveling tours (with appropriate notice)
 - Workshop or executive session is an electronic meeting
 - Not practicable due to emergency or extraordinary circumstances

Actions that can be Taken in an Open Meeting [§52-4-202(6)]

- A topic raised by the public not on the agenda may be discussed "at the discretion of the presiding member"
- Except for an emergency meeting, no final action may be taken on a topic unless it was on the agenda.

Closed Meetings [§52-4-204]

- Can a meeting be closed to the public? If so when?
 - Meetings can only be closed when there is a specific authorization under the Act which allows the meeting to be closed.
 - Open meetings are the default.

Are There Any Meetings That Must Be Closed?
[52-4-204(2)]

- Only three types of meetings must be closed
 - Health and Human Services Interim Committee review of fatality report
 - Child Welfare Legislative Oversight Panel – fatality report or individual case discussion
 - Conservation District meeting to advise the Natural Resource Conservation Service of the US Department of Agriculture
- All other meetings are considered OPEN. In those meetings, the decision to close a meeting to the public is always discretionary, not mandatory. The law does not require any meeting to be closed, except the three listed above.

Purpose for a Closed Meeting [§52-4-205]

- You can only close meetings for the following purposes:
 - Discuss the character, professional competence, or physical or mental health of an individual (except you cannot discuss a person who is being considered to fill a midterm vacancy or temporary absence or fill those positions).
 - Collective bargaining strategy sessions.
 - Pending or reasonably imminent litigation strategy sessions.

Closed meeting purposes continued

- Strategy sessions to discuss either the purchase, exchange or lease of real property, or the sale of real property (including water rights or shares), if public discussion:
 - would disclose the appraisal or estimated value of property; or
 - prevent the public body from getting the best possible terms.
 - But for the sale of real property the public body must have previously given public notice that the property would be offered for sale and the terms of the sale must be publicly disclosed before the sale is approved.
- Discussion regarding deployment of security personnel, devices, or systems
- Investigative proceedings regarding alleged criminal misconduct
- Relating to state legislative and executive ethics issues
- A county legislative body discussion of commercial information under 59-1-404
- Relating to the Utah Higher Education Assistance Authority discussing fiduciary or commercial information
- Five types of meetings related to procurement under the Utah Procurement Code

How to Close a Meetings [§52-4-204]

- A Quorum must be present at a properly notice open meeting
- Two-thirds of the body must vote to close the meeting (except only a majority vote is required for meetings that must be closed and certain ethics review meetings).
- The body must publicly disclosed and entered into the minutes:
 - The reason(s) for the closed meeting
 - The location where the closed meeting will be held; and
 - The vote by name of each member for or against entering into the closed meeting

What Is Forbidden During A Closed Meeting?

- You may not:
 - Approve any ordinance, resolution, rule, regulation, contract or appointment [§52-4-204(3)]
 - Interview a person to fill an elected position (including discussion of character or competence)

Electronic Meetings [§52-4-207]

- The public body must first have adopted a resolution, rule or ordinance governing the use of electronic meetings. The law gives examples but **does not mandate** things that may be included like
 - Prohibiting or limiting electronic meetings based on budget, public policy, or logistical considerations;
 - Requiring a quorum at the anchor location and vote to include others
 - Require a request for an electronic meeting be made 3 days prior
 - Restrict the number of separate connections based on available equipment
 - Establish other procedures, limitations, or conditions.
- Provide normal public notice and post notice at "anchor" location.
- 24 hour notice of electronic meeting to member of the public body, including a description of how member connect to meeting
- Establish "anchor" location(s) on of which must be at normal building location and provide space for public at "anchor" location, including way for public to participate in meeting of appropriate
- There are special rules for charter school electronic meetings [§52-4-209]

Conduct During Meeting

- Members of the public body cannot transmit electronic messages (email, instant messaging, electronic chat, text messaging, or any other method [§52-4-103(5)]) to other members when the public body is convened in an open meeting but they can they can at all other times. [§52-4-210]
- A person who “willfully disrupts the meeting to the extent that orderly conduct is seriously compromised” can be removed from the meeting. [§52-4-301]
- The public may record a meeting as long as it does not interfere with the meeting

Recording and Minutes During Open Meetings [§52-4-203]

- Written minutes of an open meeting must be kept.
- A recording of an open meeting must be kept, except no recording is required for:
 - A site visit or a traveling tour if no vote or action is taken
 - Or for a local or special district with an operating budget of less than \$50,000.

What Needs to be in the Minutes and Recording? [§52-4-203]

- The written minutes must include:
 - The date, time, and place of the meeting;
 - The names of members present and absent;
 - The substance of the matters proposed, discussed, or decided which may include a summary of comments made by members of the public body;
 - A record, by individual member, of each vote taken;
 - The name and the substance, in brief, of each person from the public after being recognized by the presiding member who provide testimony or comments
 - Any other information that is a record of the proceedings that any member requests be entered in the minutes or recording.
- The recording must be:
 - Complete and unedited from the commencement of the meeting through adjournment
 - Properly labeled or identified with the date, time and place of meeting

Recording and Minutes During Closed Meetings [§52-4-206]

- All closed meetings **must** be recorded and “detailed written minutes” **may** be kept, except:
 - If discussing:
 - the character, professional competence, or physical or mental health of an individual;
 - the deployment of security personnel, devices, or systems; or
 - its one of the mandated closed meetings; then
 - The presiding member shall sign a sworn statement affirming the sole purpose was for one of the above reasons.
- The recording shall be complete and unedited from the commencement of the closed meeting to its adjournment
- The recording and any written minutes must include:
 - Date, time and place of the meeting
 - Names of members present and absent
 - Names of all others present (unless disclosure would infringe on confidential reason for closing the meeting)
- The recording and minutes are protected records

After the Meeting [§52-4-203]

- Pending minutes, approved minutes, and recordings are public records under GRAMA
- Pending minutes shall contain a clear indication that they are not yet approved and are subject to change
- Pending minutes must be available to the public within a “reasonable time” after the meeting
- Approved minutes must be available to the public within 3 days of the public body’s approval (the body must establish procedures for approval of written minutes)
- Recordings of open meetings must be available to the public within 3 days of the end of the meeting

What Happens If Someone Violates The Act?

- “In addition to any other penalty under this chapter, a member of a public body who **knowingly or intentionally violates** or **knowingly or intentionally abets or advises a violation** of the closed meeting provisions of this chapter is guilty of a class B misdemeanor.” [§52-4-305]
- The act is to be enforced by the attorney general and county attorneys. A person denied any right may also commence suit to compel compliance or enjoin violation or determine the chapters applicability. The court may award attorney fees and court costs. [§52-4-303]
- A court may void any final action in violation of the law but the suit must be commenced within 90 days and for a bond issue within 30 days. §52-4-302]
- Sometimes a violation can be “cured” by discussing and taking a public vote in a subsequent meeting

Common Violations

- Failing to properly provide notice of a public meeting
- 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 the Act
- Taking official or final action in a closed meeting

UTAH OPEN & PUBLIC MEETINGS ACT

• QUESTIONS?
