

Boardsmanship Review

Let the Sunshine In

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Citizens have a right to expect that the decisions that will affect their lives will be made at a time and place when the public can observe the proceedings. State open meetings laws, sometimes called “sunshine laws,” govern public access to governmental meetings.

Every state has some version of a sunshine law. In addition, most states have laws ensuring public access to government documents and records.

The Supreme Court of Oklahoma gave a clear statement of why open meetings are so important:

“If an informed citizenry is to meaningfully participate in government or at least understand why government acts affecting their daily lives are taken, the process of decision making as well as the end results must be conducted in full view of the governed”¹ [emphasis added].

This primer on open meeting laws is not intended to replace the advice of the board attorney. But it will provide a new board member with a general overview of what is—and is not—permitted.

WHAT IS A MEETING?

Public officials are required to debate and vote on public issues in public. The open meeting laws of the state apply every time a board meets in a regular or special session.

But what about the other times when board business may be discussed? Many public officials are either unclear or too loose about what actually constitutes a meeting.

For example, what if a board gathers for breakfast before a regularly scheduled board meeting and talks about a proposed policy? In

that case, most state laws would suggest that these board members were in a meeting. (In fact, in some states, even two board members meeting together and discussing board business would be considered a meeting.)

The key is to remember the goal of the open meeting law: The public has a right to know how decisions are made and, whenever possible, to participate in making those decisions.

TECHNOLOGY AND OPEN MEETINGS

Many open meeting laws were written before the advent of today’s technology. But that does not mean that technology can be used to evade open meeting laws. An email discussion of an upcoming board issue or a conference call scheduled for the specific purpose of strategizing about an upcoming vote could be considered subject to open meeting laws.

Some states have begun to incorporate technology into their open meeting laws. Board members may be allowed to participate and even vote on board matters via conference call. Missouri law specifically provides for meetings “by Internet chat, Internet message board, or other computer link,” provided the public is notified of how to access the meeting.²

PUBLIC NOTICE

Even the most committed and involved citizen needs some advance notice of an upcoming meeting. State laws do not always spell out how much notice is required, but in general boards try to provide between 24 and 72 hours.

When notice had to be printed in a newspaper, it was more of a challenge for boards to meet this requirement. Today, social media can simplify the process of informing interested members of the public and the press. Unless

state laws specify what the notice should contain, boards should provide at a minimum the date, time, and location of the meeting and the topic to be discussed.

CAN ANYTHING BE DISCUSSED IN PRIVATE?

In most states, boards can go into executive or “closed” session. Typically, the state laws governing meetings spell out what topics qualify for a closed session. These may include the following:

- discussion of the performance of a public official (for example, the evaluation of the state superintendent or commissioner);
- strategy sessions related to pending legislation;
- public safety and security;
- allegations of criminal misconduct against a specific individual.

Generally, the board needs to specify why it is going into a closed session. Following the closed session, the board needs to certify that only business that was lawfully exempt from the state’s open meeting law was conducted. If any votes are required coming out of a closed session, they must be taken in public.

The board attorney can be an invaluable partner when a board goes into a closed session. Some boards invite the attorney to be present

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to ensure that the board discussion remains within the limitations of open meeting law.

OPEN MEETINGS AND THE PRESS

Today, anyone with a smartphone and access to the Internet can “publish” a story about a public meeting. It is critical that board members treat each other and members of the public with respect at all times, and it is especially important when the board is discussing a controversial or challenging subject.

As a general rule, boards should follow these procedures when dealing with members of the press:

- Provide reporters with information on the issues to be discussed. In many cases, this may mean making the board packet available, except for items to be discussed in closed session.
- Establish clear policies about whether recording and broadcasting public meetings is allowed. Most boards allow the practice as long as the meeting is not disrupted.
- Determine the board’s practice for speaking with the press. Some boards prefer that only the board chair give the official position of the board.

BOARD MEMBERS’ RESPONSIBILITY

Consequences for violating open meeting laws can be serious. They can include criminal penalties, removal from office, noncriminal infractions, payment of attorney fees, and invalidation of official acts. The board attorney can and should inform board members about the current definition of what constitutes a meeting in their state.

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NOTES

1. *Oklahoma Association of Municipal Attorneys v. State* (1978).
2. Missouri Revised Statutes § 610.020(1).