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## **Question Submitted by: Commissioner Dana L. Murphy, Oklahoma Corporation Commission**

**2012 OK AG 24**

**Decided: 12/21/2012**

**Oklahoma Attorney General Opinions**

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Cite as: 2012 OK AG 24, \_\_ \_\_

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¶0 This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

- 1. When a majority of commissioners of the Oklahoma Corporation Commission attends public utility hearings on a legislative matter conducted by an administrative law judge, are the following types of notice sufficient for compliance with 25 O.S.2011, §§ 303 and 311 of the Oklahoma Open Meeting Act?**
  - a. Notice of the date, time and location of the hearing, and information about the proposed rate changes to be considered included in a utility bill a public utility company mails to affected customers.**
  - b. Notice of the date and location of the hearing published once each week for two (2) consecutive weeks at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in each county in which the affected utility customers are located.**
  - c. A statement added to a utility bill insert or newspaper publication that commissioners may attend the public utility hearing.**
  - d. Notice of the date, time and location of the hearing and the matter to be considered on a document labeled "Court Calendar" posted on a bulletin board in the lobby of the Jim Thorpe Office Building. The bulletin board is accessible to the public from 7 a.m. to 5:30 p.m. each weekday.**
  - e. Notice of the date, time and location of the hearing and the matter to be considered on a document labeled "Court Calendar" posted on a bulletin board in an area of the Jim Thorpe Office Building that is accessible to the public twenty-four hours a day, seven days per week.**
- 2. May the Oklahoma Corporation Commission post notice of and attend two separate meetings held in separate locations at the same time on the same day?**
- 3. Do the following methods of recording minutes of the meetings of the Oklahoma Corporation Commission comply with 25 O.S.2011, § 312 of the Oklahoma Open Meeting Act?**
  - a. Minutes which indicate a commissioner was present at roll call, but do not indicate the commissioner was absent during other portions of the meeting. If not, how should the minutes indicate the comings and goings or early departure of commissioners?**
  - b. A court reporter's untranscribed verbatim notes of a meeting.**
  - c. A court reporter's transcribed verbatim notes of a meeting.**
- 4. If a court reporter's transcript of a meeting satisfies the minutes requirement of the Oklahoma Open Meeting Act,**

**may the Oklahoma Corporation Commission require a member of the public to pay court reporter fees to obtain the transcript?**

**5. Assuming no emergencies or exigent circumstances exist, at what point in time after a meeting must the Oklahoma Corporation Commission provide minutes to be in compliance with the Open Meeting Act?**

**6. May a member of the Oklahoma Corporation Commission vote to approve the minutes of a meeting he or she did not attend?**

**7. If the members of the Oklahoma Corporation Commission cannot agree on what the minutes of a particular meeting should contain, what must the Corporation Commission do to comply with the minutes requirement of the Oklahoma Open Meeting Act?**

**8. Must the loss of a quorum during a meeting be clearly reflected in the minutes, and if so, how?**

**9. When a majority of commissioners attends an Oklahoma Senate or House of Representatives meeting that involves business related to the Oklahoma Corporation Commission, must the commissioners follow the requirements of the Open Meeting Act?**

**10. When a majority of commissioners attends a meeting with another governmental agency--state, local or federal--to discuss mutual business, must the commissioners follow the requirements of the Open Meeting Act?**

**11. When a majority of commissioners attends a meeting of a private entity concerning a topic of interest to the Oklahoma Corporation Commission's business, must the commissioners follow the requirements of the Open Meeting Act?**

## I.

### Introduction

¶1 The Oklahoma Corporation Commission is a constitutionally created body comprised of three commissioners elected by the general public to serve six-year terms. Okla. Const. art. IX, § 15(A). The Corporation Commission's duties include the regulation of public utility companies, oil and gas conservation, production and storage, and motor carrier, rail and pipeline transportation. See Okla. Const. art. IX, §§ 3 - 5, 18; 17 O.S.2011 & Supp.2012, §§ 1 - 802.4. The Corporation Commission exercises executive, judicial, and legislative authority in the performance of its duties. *Sw. Bell Tel. Co., v. Okla. Corp. Comm'n*, 873 P.2d 1001, 1004 (Okla. 1984); Okla. Const. art. IX, § 19. The Corporation Commission is a public body subject to the Oklahoma Open Meeting Act ("Act"), but is exempt from the Act when acting in its judicial capacity.<sup>1</sup> See 25 O.S. 2011, § 304(1); *Monson v. State ex rel. Okla. Corp. Comm'n*, 673 P.2d 839, 843 (Okla. 1983).

## II.

**When Two Corporation Commissioners Are Present at the Same Time at a Public Utility Hearing on a legislative matter Conducted by an Administrative Law Judge, the Hearing is Subject to the Open Meeting Act.**

¶2 The public utility hearings at issue in your question are conducted by an administrative law judge but concern legislative matters, thus the hearings do not fall within the judiciary exemption in the Open Meeting Act. See *Cox Okla. Telecom, LLC v. State ex rel. Okla. Corp. Comm'n*, 164 P.3d 150, 157 (Okla. 2007) (Corporation Commission hearing on a public utility company's application for competitive reclassification was a legislative matter); *Sw. Bell Tel. Co.*, 873 P.2d at 1004

(Corporation Commission rate-making hearing for a public utility company was a legislative matter). This Opinion considers the application of the Open Meeting Act to public utility hearings that do not fall within the Corporation Commission's judiciary exemption. It does not reach the issue of whether a particular public utility hearing is legislative or judicial.

¶3 A hearing is held before an administrative law judge, and the Corporation Commission holds a separate meeting to act on the administrative law judge's report and recommendations that result from the hearing. On occasion, a majority of commissioners (two commissioners) may attend all or a part of a hearing on a legislative matter at the same time, and may ask questions or make comments during the course of the proceeding.<sup>2</sup> Your questions presume that the commissioners' participation in the hearings in this manner coupled with the legislative nature of the proceedings transform the hearings into a "meeting" subject to the Open Meeting Act. We agree.

¶4 The Act defines a meeting as follows:

"Meeting" means the conduct of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a videoconference. Meeting shall not include informal gatherings of a majority of the members of the public body when no business of the public body is discussed[.]

25 O.S.2011, § 304(2).

¶5 The definition contains three elements: (1) a majority of a public body, (2) personally together or together via videoconference, and (3) conducting the business of the public body. When two members of the three-member Corporation Commission attend a public utility hearing at the same time, they comprise a majority of the members of a public body personally together. A public utility hearing is the business of the Corporation Commission. The dispositive issue is whether the Corporation Commission is engaged in the "conduct of business" when an administrative law judge presides over the proceeding and the commissioners do not take any votes, make any decisions, or issue any rulings or orders at the proceeding.

¶6 The Attorney General concluded in previous Opinions that the "conduct of business" encompasses more than just voting or decision-making. In A.G. Opin. 77-285 the Attorney General examined the discussion of administrative matters by a majority of tax commissioners. *Id.* at 305. The Attorney General concluded that "[w]hen a majority of the members of the [Tax] Commission are performing functions necessary to carry out the responsibilities of the [Tax] Commission, whether they be executive, administrative or quasi-judicial, they are 'conducting business' of the Commission." *Id.* at 310. In an Opinion issued to the Oklahoma Bank Commissioner, the Attorney General concluded: "[t]hrough 'business' is not defined by the act, it should be assumed to include 'the entire decision making process including discussion, deliberation, decision or formal action.'" A.G. Opin. 79-331, at 545. A public body's discussion of appropriation of funds and discussion with a group of experts to gain insight on a matter before the public body are subject to the Open Meeting Act. A.G. Opin. 82-212, at 353. "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." *Okla. Ass'n of Mun. Attorneys v. State*, 577 P.2d 1310, 1313-14 (Okla. 1978) (emphasis added).

¶7 The federal open meeting law contains a statutory definition of "meeting" that is instructive in some respects. The federal law defines "meeting" as "the deliberations of at least the number of individual agency members required to take action on behalf of the agency **where such deliberations determine or result in the joint conduct or disposition of official**

**agency business.**" 5 U.S.C. § 552b(a)(2) (2012) (Westlaw) (emphasis added). The United States Supreme Court construed the statute to mean "discussions that 'effectively predetermine official actions.'" *FCC v. ITT World Commc'ns, Inc.*, 466 U.S. 463, 471 (1984) "Such discussions must be 'sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency.'" *Id.* (quoting R. Berg and S. Klitzman, *An Interpretive Guide to the Government in the Sunshine Act* 9 (1978)).

¶8 In applying its somewhat narrow construction of "meeting," the Supreme Court held that a quorum of the members of the Telecommunications Subcommittee of the Federal Communications Commission ("FCC") was not subject to the federal Sunshine Act when they attended consultative meetings conducted by their foreign counterparts.<sup>3</sup> The Court reasoned that there was no joint conduct or disposition of official agency business when the matters discussed were not within the public body's formally delegated authority to take action. *Id.* at 471-72. They relied on the fact that the discussions at issue were simply general discussions of policy for telecommunication providers that provided the subcommittee with general background information and an opportunity to exchange views on matters on which the FCC had already made decisions. *Id.* at 471-472. Although the matters discussed were related to the subcommittee's limited authority to issue common carrier certifications, they were not discrete proposals or specific issues on which the subcommittee could take action. *Id.* at 4731.

¶9 The Oklahoma Attorney General Opinions discussed above seemingly construe "conduct of business" more broadly than the United States Supreme Court has construed the relevant federal law term "meeting." The Opinions do not limit the types of discussions that fall under the Act to those that "effectively predetermine official actions," and speak in broader terms about discussion, deliberation, and voting as all being the "conduct of business." This broader construction is consistent with the Oklahoma Supreme Court's holding that the Open Meeting Act, "because it is enacted for the public's benefit, is to be construed liberally in favor of the public." *Int'l Ass'n of Firefighters, Local 2479 v. Thorpe*, 632 P.2d 408, 411 (Okla. 1981). As a result, the state law term "conduct of business" might well include discussions in which the members of the public body are considering information that will aid them in their decision-making, even though those discussions do not necessarily "effectively predetermine their official actions" or cause the members to form a reasonably firm position on the matter at that moment. Like the federal court, however, we do not believe that even a liberal construction of the term "conduct of business" could include broad general matters that may be *related* to the business of the public body, but are not matters on which the public body could take action.

¶10 A public body is thus engaged in the "conduct of business" when a majority of the members are considering discrete proposals or specific matters that are within the agency's jurisdiction. As a result, when two commissioners are present at the same time at a legislative public utility hearing, they are engaged in the "conduct of business" of the Corporation Commission. They constitute a majority of the members of the public body personally together, participating in discussions of discrete proposals or specific matters regarding the regulation of a public utility, a matter within their jurisdiction. Citizens observing the commissioners at the public utility hearings could gain insight into how the commissioners arrived at the decisions that affect their daily lives and an understanding of governmental processes.

¶11 The fact that the two commissioners are not present at the same time for the **entire** proceeding does not remove their actions from the purview of the Open Meeting Act. The definition of a "meeting" does not contain a provision which requires a majority of the members of a public body to be together for a minimum amount of time to constitute a meeting. Neither does the fact that two commissioners may have chosen to informally "drop in" on the same public utility hearing at the same time. There is no provision in the definition of "meeting," which requires the members of the public body to formally gather. See

A.G. Opin. 82-212, at 355. In fact, an informal gathering of a majority of the members of a public body "to decide any action or to take any vote on any matter" is a violation of the Open Meeting Act. 25 O.S.2011, § 306. A liberal construction of the Open Meeting Act definition of "meeting" in favor of the public encompasses a public utility hearing on a legislative matter conducted by an administrative law judge when two commissioners are present at the same time considering discrete proposals or specific matters. Whether the Corporation Commission or another public body is engaged in the "conduct of business" in other types of gatherings requires a consideration of the particular facts and circumstances.

### III.

#### Notice Requirements

¶12 As the public utility hearings attended by a majority of commissioners fall within the definition of "meeting," the Corporation Commission must comply with the requirements of the Open Meeting Act. You ask whether various types of notice<sup>4</sup> of these public utility hearings are sufficient under the Act's notice requirements.<sup>5</sup> The Act includes the following notice requirements relevant to your question:

1. By December 15 of each year, file advance notice of the dates, times, and locations of regular meetings for the next year with the appropriate state, county, or municipal official. For the Oklahoma Corporation Commission, the Secretary of State is the appropriate official. 25 O.S.2011, § 311(A)(1), (2).
2. At least forty-eight hours prior to a special meeting, file advance notice of the dates, times, and locations of the meetings with the appropriate state, county or municipal official and mail or deliver notice to persons who have filed a written request for notice of meetings. *Id.* § 311(A)(11).
3. At least twenty-four hours prior to any meeting, post the meeting notice and agenda<sup>6</sup> "in prominent public view at the principal office of the public body." *Id.* § 311(A)(9), (11). The Attorney General has interpreted this statute to mean that the notice and agenda must be conspicuously posted in a place that is easily accessible and convenient to the public at all times during the twenty-four hours prior to the meeting. A.G. Opin. 97-98, at 194. The twenty-four hour period shall not include Saturdays, Sundays, and legal holidays. 25 O.S.2011, § 311(A)(9).

#### **A. The notices described in your first question do not meet the notice requirements of the Oklahoma Open Meeting Act.**

¶13 The type of notice you ask about in subpart (a) is an insert in regular customer billings the public utility company mails to the affected utility customers. The insert contains the date, time and location of the hearing, and information about the proposed rate changes. This notice is not sufficient for a regular meeting because the Corporation Commission does not file it with the Secretary of State pursuant to subsections 311(A)(1) and (2); and it is not conspicuously posted in a place accessible and convenient to the public pursuant to subsection 311(A)(9) and (11). This notice is also not sufficient for a special meeting, as it is not filed with the Secretary of State at least forty-eight hours prior to the meeting; is not mailed or delivered to persons who filed written request for notice of special meetings; and is not conspicuously posted in a place accessible and convenient to the public pursuant to subsection 311(A)(9) and (11).

¶14 In subsection (b) of your first question, you ask about publication in a newspaper in the counties where the affected public utility customers reside. This notice is deficient for the same reasons as the utility bill insert notice. The addition of a statement to the mail and publication notices that commissioners may be attending the hearing does not cure the filing and

posting deficiencies. Thus, the notice described in subsection © of your first question is also insufficient.

¶15 The notice in subsection (d), a "Court Calendar" posted on a bulletin board located in an area of the Jim Thorpe Office Building that is accessible to the public only during weekday business hours, is deficient for the same reasons as the utility bill insert and newspaper publication. This notice may also be deficient if it does not indicate that the "Court Calendar" is the business of the Commission and if it is not posted twenty-four hours prior to the hearing.

¶16 The notice in subsection (e), a "Court Calendar" posted on a bulletin board located in an area of the Jim Thorpe Office Building that is accessible to the public twenty-four hours per day, seven days a week, complies with the portion of Section 311(A)(9) which requires conspicuous posting in a public place accessible to the public. Nevertheless, it is deficient in all other respects as the other types of notices.

¶17 The Oklahoma Court of Civil Appeals held that "the notice and agenda provisions are at the very heart of the Sunshine Law." *In re Order Declaring Annexation Dated June 28, 1978*, 637 P.2d 1270, 1273 (Okla. Civ. App. 1981). The court rejected the defendant school board's argument that a "'substantial compliance' exception should be made to an open meeting act." *Id.* at 1274 (citation omitted). While the notices you describe may comply in part with the requirements of the Open Meeting Act, partial compliance is not sufficient.

**B. The Corporation Commission may not post notice of and attend two separate meetings held in separate locations at the same time on the same day. As a majority of the members of the Corporation Commission cannot be in two places at the same time, it is not possible for two "meetings" to occur at the same time.**

¶18 You also ask whether the Corporation Commission may post notice of and attend two separate meetings in separate locations at the same time on the same day. For example, the Corporation Commission would post notice and agendas of a commission meeting and a public utility hearing on a legislative matter conducted by an administrative law judge occurring at the same time on the same day but in different locations. Conceivably, the purpose of such a notice would be to allow the individual commissioners to move back and forth between the two meetings as they desired. When two commissioners happened to be in the same meeting at the same time, there would be no violation of the notice provisions of the Open Meeting Act because notice of the meetings was posted.

¶19 Under the Act, a "meeting" occurs when a majority of the members of a public body are personally together conducting the business of the public body. 25 O.S.2011, § 304(2). As a majority of the members of a public body cannot be in two places at the same time, it is not possible for two "meetings" to occur at the same time. Thus, posting notice of two meetings to be held at the same time on the same day in different locations is misleading to the public. Rather than "encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems," it would more likely confuse and frustrate citizens who wanted to observe the commissioners actions in both the commission meeting and the public utility hearing. 25 O.S.2011, § 302. The public would essentially have to follow the individual commissioners back and forth from place to place. "Statutes are interpreted to attain that purpose and end[,] championing the broad public policy purposes underlying them." *Keating v. Edmondson*, 37 P.3d 882, 886 (Okla. 2001) (footnote omitted). An interpretation of the Open Meeting Act to allow posting of two sets of notices for meetings held at the same time on the same day but in different locations so individual commissioners can move back and forth between the two meetings as they desire does not attain or champion the spirit and purpose of the law.

#### IV.

#### Minutes

¶20 Questions three through eight concern various methods of recording minutes of the meetings of a public body, the sufficiency of the content of the minutes, and approval of the minutes by the public body. Section 312 provides that minutes are "an official summary of the proceedings" and "shall be kept by a person so designated by such public body." 25 O.S.2011, § 312(A). In addition, the minutes must meet all of the following requirements relevant to your questions about minutes of a meeting of a public body.

1. The minutes must be in written form. *Id.*
2. The minutes must clearly show "those members present and absent, all matters considered by the public body, and all actions taken by such public body. " *Id.*
3. The minutes must be open to public inspection. *Id.*
4. The minutes must indicate the time and manner of notice of the meeting. *Id.*

**A. Minutes of a meeting must indicate that a commissioner was absent for portions of the meeting.**

¶21 Your first inquiry regarding minutes concerns minutes which report a commissioner was present at roll call, but do not indicate that the commissioner was absent during other portions of the meeting. Section 312(A) requires that minutes "show clearly" the presence **and absence** of members. The relevant dictionary definition of "absence" is "1 : state of being absent or missing from a place . . . 2 : **failure to be present** (as in an accustomed place) or where one is needed, wanted, or normally expected." Webster's Third New International Dictionary 6 (3d. ed. 1993) (emphasis added).

¶22 The teleconference exception to the Open Meeting Act also aids in construing the meaning of presence and absence. "In the interpretation of statutes, courts do not limit their consideration to a single word or phrase in isolation to attempt to determine their meaning, but construe together the various provisions of relevant legislative enactments to ascertain and give effect to the legislature's intention and will." *McNeill v. City of Tulsa*, 953 P.2d 329, 332 (Okla. 1998). The statute allows a member of a public body to participate in a meeting from a different physical location provided that "each member of the public body is visible and audible to each other and the public." 25 O.S.2011, § 307.1. When a member is both visible and audible to the other members of the public body and to the public the member is "present" at a meeting. A member is "absent" when the member is no longer visible and audible to the other members and the public. The absence must be reflected in the minutes. Minutes that report only a commissioner's presence during roll call but do not indicate a commissioner was absent for portions of the meeting, do not "show clearly those members present and absent" in compliance with Section 312(A) of the Open Meeting Act.

**B. The presence and absence of a commissioner during a meeting must be recorded in the minutes in a manner that is easily understood by a person with ordinary education and intelligence, and is not deceptively vague or misleading.**

¶23 You next ask how a commissioner's temporary absence from a meeting should be recorded. The Open Meeting Act does not prescribe how a member's absence or presence must be recorded. There are no reported Oklahoma court decisions or Attorney General Opinions on the issue. However, the standards courts have applied regarding the sufficiency of agendas provide guidance. Minutes of meetings, like agendas, should be written in plain language that may be easily understood by a person with ordinary education and intelligence. See *Andrews v. Indep. Sch. Dis. No. 29*, 737 P.2d 929, 931 (Okla. 1987) (agenda items of "proposed eligibility requirements for extracurricular activities," and "increase in academic requirements"

could be easily understood). *Id.* at 930. The Corporation Commission should avoid recording minutes in a manner that is deceptively vague or misleading. See *Wilson v. Tecumseh*, 194 P.3d 140, 144 (Okla. Civ. App. 2008) (agenda item of discussion of employment, hiring, and resignation was deceptively vague and misleading regarding the public body's action to award a bonus to an employee). *Id.* at 143. Minutes which do not indicate that a commissioner was absent for a portion of the meeting may be construed as deceptively vague or misleading to the public. A common method to indicate that a member who was present during roll call but later left the meeting is a simple notation such as, "Commissioner A left the meeting" and "Commissioner A returned to the meeting" inserted in the section of the minutes which describes the matter under consideration at the time the commissioner left or returned to the meeting.

**C. Neither a court reporter's untranscribed verbatim notes nor transcript meet the Oklahoma Open Meeting Act requirements for minutes of a public meeting.**

¶24 A court reporter's untranscribed verbatim notes or transcript of a public meeting are the subject of your next inquiry regarding minutes. You ask whether either document complies with the Act, and if so, whether the Commission may charge persons seeking the record the court reporter fee to obtain them. As neither document meets the requirements in the Act, we do not reach the question of the court reporter fee.

¶25 A court reporter's untranscribed verbatim notes are a notation of the words spoken by persons at the hearing written in a shorthand language that is unintelligible to the general public. While the notes may be in written form, the writing is such that it does not clearly show the members attending, the matters considered and the actions taken by the public body in a way that the public could understand. Use of a court reporter's untranscribed verbatim notes as the "official summary of the proceedings" of an open meeting would defeat the Act's public policy goal of facilitating the public's understanding of governmental processes. See 25 O.S.2011, § 302.

¶26 Although a member of the public could read a court reporter's transcript of a public meeting, the transcript's format precludes the document from meeting the "shows clearly" requirement and is not a "summary." "As provided in Section 312 of the Open Meeting Act, minutes are simply a written **summary** of the proceedings, not a word for word transcription." A.G. Opin. 96-100, at 227. The dictionary definition of "summary" is "constituting or containing a summing up of points : covering the main points concisely : summarizing very briefly," and "a short restatement of the main points . . . for easier remembering, for better understanding, or for showing the relation of the points." Webster's Third New International Dictionary 2289 (3d. ed. 1993).

¶27 A transcript does not briefly and concisely restate the main points of a public meeting. A member of the public who wanted to know the matters considered and the actions taken by the Commission may be forced to read through pages of verbatim statements made by numerous individuals to ferret out what actually happened at the meeting. The Act does not expressly prohibit the use of a verbatim transcript of the meeting as the "official summary of the proceedings." However, the format of a court reporter's transcript does not aid the public in easily understanding the matters considered and the actions taken by the public body. Further, a transcript may not indicate the time and manner of notice of a meeting unless a person present at the meeting made such a statement for the record. Therefore, a transcript does not meet the Act's requirements for minutes of a public meeting.

**D. The point in time after a meeting in which the Corporation Commission must provide minutes to be in compliance with the Open Meeting Act is a question of fact which may not be answered in an Attorney General Opinion. In the absence of an Open Meeting Act statutory deadline, or other governing rules or statutes, public bodies should prepare and approve minutes within a reasonable amount of time after the adjournment of the meeting.**



¶28 Question five regarding minutes asks at what point in time after a meeting the Corporation Commission's failure to provide minutes constitutes non-compliance with the Act. The Act does not contain specific statutory deadlines by which minutes must be recorded and available to the public. However, an examination of other law provides some guidance. The Legislature requires the school board and municipal clerks to furnish tentative minutes of regular and special meetings to legal newspapers requesting them within five days after the meetings. 25 O.S.2011, § 115. The Commissioners of the Land Office must approve minutes at the next succeeding meeting. 64 O.S.2011, § 1034. The minutes of a bank's board of directors must be forwarded to the State Banking Commissioner within forty days after the board meeting. 6 O.S.2011, § 714(A).

¶29 Other states have specific statutory deadlines for minutes in their open meeting acts. In Kentucky, minutes must be available for public inspection "no later than immediately following the next meeting of the body." Ky. Rev. Stat. Ann. § 61.835 (West 2012). Mississippi requires its public bodies to record minutes "within a reasonable time not to exceed thirty (30) days after recess or adjournment." Miss. Code Ann. § 25-41-11(1) (West 2012). The minutes of meetings of public bodies in Illinois must be approved by the later of thirty days after the meeting or at the second subsequent regular meeting, and must be available to the public within ten days after approval. 5 Ill. Comp. Stat. Ann. 120/2.06(b) (West 2012).

¶30 A Delaware court, in the absence of a statutory deadline, declined to articulate a bright-line test to determine when a public body's failure to timely approve minutes constituted a violation of the state's open meeting act. *Reeder v. Del. Dep't of Ins.*, No. C.A. 1553-N, 2006 WL 510067, at \*10 (Del. Ch. Feb. 24, 2006) (unpublished). The court found that a delay of as much as eight months in approving minutes was not a violation. *Id.* The court recognized that several factors affect a public body's ability to prepare and approve minutes within a certain time period, including the adequacy of staffing and the frequency of meetings. *Id.*

¶31 The Oklahoma Legislature established specific time requirements for the production of minutes of meetings of certain public bodies. However, the Legislature declined to create a time requirement in the Act which applies to the minutes of the meetings of all public bodies. "[L]egislative silence, when it has authority to speak, may be considered as giving rise to an implication of legislative intent." *City of Duncan v. Bingham*, 394 P.2d 456, 460 (Okla. 1964). Had the Legislature intended that there be a definite time requirement for the preparation of minutes of all public bodies it could have created one within the Open Meeting Act.

¶32 In the absence of an Open Meeting Act statutory deadline or other governing rules or statutes, public bodies should prepare and approve minutes within a reasonable amount of time after the adjournment of the meeting. A common practice is to approve the minutes at the next meeting of the public body. However, that may not be reasonable for a public body such as the Corporation Commission, which holds public meetings every workday. What constitutes "reasonable" is a fact intensive inquiry requiring consideration of various factors, including, but not limited to, the frequency of meetings, and whether the public body has adequate staff to timely prepare minutes. As the question requires a consideration of facts, the Attorney General may not answer at what point the Corporation Commission's failure to prepare and approve minutes of its meetings becomes a violation of the Open Meeting Act. 74 O.S.2011, § 18b(A)(5).

**E. In the absence of statutes or procedural rules which provide otherwise, a member of a public body may vote to approve the minutes of a meeting he or she did not attend, provided that the member becomes familiar with the events that occurred. One way a member may become familiar with the events that occurred at the meeting is to review records of the proceeding such as audio recordings, transcripts, and documents considered at the meeting.**

¶33 The Open Meeting Act does not require a public body to approve the minutes of its meetings. We are not aware of any other statute or rule applicable to the Corporation Commission which contains such a requirement. Nevertheless, public bodies routinely approve minutes in accordance with other statutes, generally accepted rules of parliamentary procedure such as *Robert's Rules of Order*, or bylaws or other rules of meeting procedure established by the individual public body.<sup>7</sup> Approval of minutes generally signifies that the events were accurately recorded by the secretary, the minutes contain the minimum information required by the Act, and the public body adopts the document as an official record of the proceedings. See Del. Op. Atty. Gen. 06-ID26, 2006 WL 4130484, at 4 ("Approval of the minutes is a ministerial act to correct any omissions or inaccuracies and make sure the minutes contain the minimum information required by FOIA."); *Robert's Rules of Order Newly Revised* [hereinafter RONR] (10th ed.) § 41, p. 344, ll. 6-9 (minutes are not an official record of the proceedings of the public body until they have been approved).

¶34 Implicit in the premise that a vote to approve signifies the member's acknowledgment that the minutes are an accurate record of the proceedings is the presumption that the member must have been present when the events occurred to be qualified to cast such a vote. See Ohio Op. Atty. Gen. 2007-019, 2007 WL 2262869, at 8 (when the purpose of voting to approve minutes is to confirm that minutes were recorded, a member may vote to approve minutes of a meeting he or she did not attend; when the purpose of voting to approve minutes is to certify that the minutes are a true and accurate record of the events that occurred, a member absent from that meeting may not vote). However, courts have held that a member's absence from a proceeding does not automatically disqualify the member from voting on the matter. See *Carr v. City of El Dorado*, 230 S.W.2d 485, 486 (Ark. 1950) (city council member absent from hearing is qualified to vote on issuance of taxicab permit when he reviewed minutes of meeting, discussed matter with another council member, and talked to various citizens); *Jago Ford v. Planning & Zoning Comm'n*, 642 A.2d 14, 16 (Conn. App. Ct. 1994) (commission member absent from hearing is qualified to vote on zoning matter when he read the minutes and the pertinent documents from the meeting he missed). Also, there is no requirement in *Robert's Rules of Order* that a member have first-hand knowledge of the matter being voted upon to be qualified to vote. See Just the FAQ's (Frequently Asked Questions), # 30, <http://www.parlipro.org/faqs.htm>.

¶35 Therefore, a member of a public body is not automatically disqualified from voting to approve the minutes of a meeting he or she did not attend. However, as the member's vote to approve signifies a belief that the minutes accurately describe the events that occurred, and the member does not have firsthand knowledge, the member should have some other basis for voting. One way a member may become familiar with the events that occurred at the meeting is to review records of the proceeding such as audio recordings, transcripts, and documents considered at the meeting. Each individual member must determine whether the member has adequate knowledge to attest that the minutes accurately reflect the members present and absent, the matters considered and the actions taken.

¶36 In the absence of statutes or procedural rules or policies that provide otherwise, a member of a public body may vote to approve the minutes of a meeting he or she did not attend, provided that the member becomes familiar with the events that occurred.

**F. The Commissioners do not have to agree on the contents of minutes of a meeting or vote to approve the minutes to be in compliance with the Open Meeting Act.**

¶37 As previously discussed, there is no Open Meeting Act requirement to **approve** minutes. Failure to **approve** minutes does not make the actions of a public body invalid. *Davidson v. Village of Hanging Rock*, 647 N.E.2d 527, 533 (Ohio Ct. App. 1994) ("Minutes serve as records of actions, not as actions themselves."); see *Crosslin v. Warner-Quinlan Asphalt Co.*, 177 P.

376, 378 (Okla. 1918) (the clerk's failure to record the city council's action to approve an ordinance in the city journal did not invalidate the ordinance). *Id.* at 377. The law merely requires a public body to designate a person to keep minutes that indicate those members present and absent, all matters considered, all actions taken, and the manner and time of notice of the meeting. 25 O.S.2011, § 312(A). Since the commissioners do not have to approve minutes the commissioners do not have to reach agreement on what the minutes should contain.

¶38 Although the Corporation Commission is not required by law to follow *Robert's Rules of Order*, the rules provide some guidance on handling disputes about the contents of minutes. See *Oldham v. Drummond Bd. Of Educ.*, 542 P.2d 1309, 1311 (Okla. 1975) (The Open Meeting Act "makes no mention of Robert's Rules of Order and is not controlled thereby"). If there is a dispute over the contents of the minutes, they may be approved by motion rather than unanimous consent. RONR (10<sup>th</sup> ed.) § 41, p. 343, ln.19-24. The minutes prepared by the designated person are presented to the Corporation Commission. A commissioner may make a motion to correct the minutes. The motion is handled in accordance with the Commission's normal procedure. If there is a tie vote when only two commissioners vote, the motion fails. Nevertheless, the Commission remains in compliance with the Open Meeting Act because minutes were prepared.<sup>8</sup>

**G. The loss of a quorum must be clearly reflected in the minutes in a manner that is easily understood by a person with ordinary education and intelligence and is not deceptively vague or misleading.**

¶39 Finally, you ask whether the minutes must clearly reflect the loss of a quorum, and if so, how the loss is indicated. A member's departure from the meeting is an "absence" that must be included in the minutes. 25 O.S.2011, § 312(A). If a commissioner's departure from the meeting (whether temporary or permanent) destroys the quorum, the Corporation Commission loses the authority to take action on the matters before it until the quorum is restored. See Okla. Const. art. IX, § 18a(B) (Corporation Commission quorum requirement). The loss of a quorum and the resulting inability to take action is a "matter considered" that must be included in the minutes. 25 O.S.2011, § 312(A). The loss of a quorum must be indicated in a manner that may be easily understood by a person with ordinary education and intelligence and is not deceptively vague or misleading. See *Andrews*, 737 P.2d at 931; *Wilson*, 194 P.3d at 144 (guidelines for wording of agenda items).

## V.

### **Attendance of a Majority of Commissioners at Meetings of the Legislature, Other Public Bodies and Private Entities**

¶40 At issue in your last three questions is whether the Commission is required to follow the Open Meeting Act when a majority of commissioners attends meetings conducted by the Legislature, other governmental agencies, or private entities in which matters related to the Commission are discussed. The Act applies if the gatherings attended by a majority of commissioners constitute a "meeting" as that term is defined in the law. A majority of commissioners attending a meeting of another public or private entity constitutes a "majority of its members being personally together." 25 O.S.2011, § 304(2). The dispositive issue is whether the commissioners are "conducting the business" of the Commission when they attend meetings of other entities.

¶41 The analysis in Section II of this Opinion is applicable to this question as well. When a majority of commissioners attend a meeting with another governmental entity to discuss mutual business, or attend a meeting of a private entity on a topic of interest to the Commission, the gatherings do not constitute a meeting unless the commissioners are considering discrete

proposals or specific matters within the Commission's jurisdiction. In most instances, whether a majority of commissioners' attendance at any particular meeting of another governmental entity or a private entity is subject to the Open Meeting Act is a question of fact which may not be determined in an official Attorney General Opinion. 74 O.S.2011, § 18b(A)(5).

¶42 Under this analysis, when a majority of commissioners attends an Oklahoma Senate or House of Representatives meeting to provide information about the Commission's business to aid the Legislature in *its* process of decision-making, the commissioners are not considering discrete proposals or specific matters within their jurisdiction, and thus are not "meeting" for purposes of the Open Meeting Act.

¶43 It is, therefore, the official Opinion of the Attorney General that:

**1. When a majority of commissioners of the Oklahoma Corporation Commission are present at the same time at a public utility hearing on a legislative matter conducted by an administrative law judge, the hearing is subject to the Open Meeting Act. The commissioners are engaged in the "conduct of business" because they are considering discrete proposals or specific matters that are within their jurisdiction. See *FCC v. ITT World Commc'ns, Inc.*, 466 U.S. 463, 471 (1984).**

**2. The following types of notice do not meet the notice requirements of the Open Meeting Act for regular or special meetings because they are not filed with the Secretary of State and are not conspicuously posted in a place accessible and convenient to the public as required by 25 O.S.2011, § 311(A)(1), (2), (9), (11).**

**a. Notice of the date, time and location of the hearing, and information about the proposed rate changes to be considered included in a utility bill a public utility company mails to affected customers.**

**b. Notice of the date and location of the hearing published once each week for two (2) consecutive weeks at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in each county in which the affected utility customers are located.**

**c. A statement added to a utility bill insert or newspaper publication that commissioners may attend the public utility hearing.**

**d. Notice of the date, time and location of the hearing and the matter to be considered on a document labeled "Court Calendar" posted on a bulletin board in the lobby of the Jim Thorpe Office Building. The bulletin board is accessible to the public from 7 a.m. to 5:30 p.m. each weekday.**

**e. Notice of the date, time and location of the hearing and the matter to be considered on a document labeled "Court Calendar" posted on a bulletin board in an area of the Jim Thorpe Office Building that is accessible to the public twenty-four hours a day, seven days per week. This notice complies with 25 O.S.2011, § 311(A)(9), but does not comply with subsections 311(A)(1), (2), or (11).**

**3. The Oklahoma Corporation Commission may not post notice of and attend two separate meetings held in separate locations at the same time on the same day. As a majority of the members of the Corporation Commission cannot be in two places at the same time, it is not possible for two "meetings" to occur at the same time.**

**4. The following methods of recording minutes of the meetings of the Oklahoma Corporation Commission do not comply with 25 O.S.2011, § 312(A) of the Oklahoma Open Meeting Act.**

**a. Minutes which only indicate a commissioner's presence at roll call, but do not indicate the commissioner's absence during other portions of the meeting. Minutes which do not indicate the commissioner's absence do not "show clearly those members present and absent." *Id.* A commissioner is "absent" from a meeting when the commissioner is not both visible and audible to the other members and the public. *Id.* § 307.1. The presence and absence of a commissioner during a meeting must be recorded in the minutes in a manner that is easily understood by a person with ordinary education and intelligence, and is not deceptively vague or misleading. See *Andrews v. Indep. Sch. Dis. No. 29*, 737 P.2d 929, 931 (Okla. 1987); *Wilson v. Tecumseh*, 194 P.3d 140, 144 (Okla. Civ. App. 2008).**

**b. A court reporter's untranscribed verbatim notes of a public meeting do not "show clearly" the members attending, the matters considered, and the actions taken by the public body. See 25 O.S.2011, § 312(A).**

**c. The format of a court reporter's transcript of a public meeting is such that the document is not a "summary", and does not "show clearly" the members attending, the matters considered, and the actions taken by the public body. Further, a transcript may not indicate the time and manner of notice of a meeting unless a person present at the meeting made such a statement for the record. See *Id.***

**5. Because a court reporter's transcript of a public meeting does not satisfy the minutes requirement of the Oklahoma Open Meeting Act, the question of whether the Corporation Commission may require a member of the public to pay court reporter fees to obtain the transcript is moot.**

**6. The point in time after a meeting in which the Oklahoma Corporation Commission must provide minutes to be in compliance with the Open Meeting Act is a question of fact which may not be answered in an Attorney General Opinion. 74 O.S.2011, § 18b(A)(5). In the absence of a deadline in the Open Meeting Act and in other governing rules or statutes, a public body should prepare and approve minutes of a meeting within a reasonable amount of time after the adjournment of the meeting. What constitutes "reasonable" is a question of fact requiring consideration of various factors, including, but not limited to, the frequency of meetings, and whether the public body has adequate staff to timely prepare minutes. See *Reeder v. Del. Dep't of Ins.*, No. C.A. 1553-N, 2006 WL 510067, at \*10 (Del. Ch. Feb. 24, 2006)(unpublished).**

**7. In the absence of statutes or procedural rules which provide otherwise, a member of the Oklahoma Corporation Commission may vote to approve the minutes of a meeting the member did not attend, provided that the member becomes familiar with the events that occurred. One way a member may become familiar with the events that occurred at the meeting is to review records of the proceeding such as audio recordings, transcripts, and documents considered at the meeting.**

**8. The commissioners do not have to agree on the contents of minutes of a meeting or vote to approve the minutes to be in compliance with the Oklahoma Open Meeting Act. 25 O.S.2011, § 312(A).**

**9. The loss of a quorum must be clearly reflected in the minutes in a manner that is easily understood by a person with ordinary education and intelligence and is not deceptively vague or misleading. See *Andrews v. Indep. Sch. Dis. No. 29*, 737 P.2d 929, 931 (Okla. 1987); *Wilson v. Tecumseh*, 194 P.3d 140, 144 (Okla. Civ. App. 2008).**

**10. When a majority of commissioners attends a meeting with another governmental agency to discuss mutual business, or attends a meeting of a private entity concerning a topic of interest to the Oklahoma Corporation Commission's business, the commissioners are not subject to the requirements of the Open Meeting Act unless, at the meeting, the commissioners are considering discrete proposals or specific matters that are within their jurisdiction. Whether a majority of commissioners' attendance at any particular meeting of another governmental entity or a private entity is subject to the Open Meeting Act is a question of fact which may not be determined in an official Attorney General Opinion. 74 O.S.2011, § 18b(A)(5).**

**11. When a majority of the members of the Oklahoma Corporation Commission attends an Oklahoma Senate or House of Representatives meeting to provide information about the Commission's business to aid the Legislature in *its* process of decision-making, the commissioners are not required to follow the requirements of the Open Meeting Act, as such a gathering does not meet the definition of "meeting" under the Act. See 25 O.S.2011, § 304(2).**

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#### **FOOTNOTES**

<sup>1</sup> The Oklahoma Constitution provides that the Corporation Commission "shall have the powers and authority of a court of record" with regard to its regulation of corporations. Okla. Const. art. IX, § 19. The Oklahoma Supreme Court held that this constitutional authority places the Commission within the judiciary exemption in Section 304 of the Open Meeting Act. *Monson v. State ex rel. Okla. Corp. Comm'n*, 673 P.2d 839, 843 (Okla. 1983).

<sup>2</sup> Pursuant to Article IX, Section 28 of the Oklahoma Constitution:

The commissioners, or either of them, or such persons as they may employ therefor, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company or other public service corporation, and to examine under oath, any officer, agent, or employee of such corporations in relation to the business and affairs of the same.

*Id.*

<sup>3</sup> Although a quorum of the Telecommunications Subcommittee did not constitute a quorum of the FCC, the subcommittee had independent authority to approve common carrier certifications; therefore the subcommittee was subject to the Sunshine Act. *ITT World Commc'ns, Inc.*, 466 U.S. at 470-471.

<sup>4</sup> The Commission must also comply with regulatory notice requirements specific to public utility hearings. OAC 165:5-7-51. The utility bill insert notice and the newspaper publication notice described in subparts (a) and (b) of the first question are the types of notice required by the Commission's rules. The rule requires the applicant, not the Commission, to provide the notice. *Id.* 165:5-7-51(a). Although not required by the Commission's rules, the utility bill insert notice and the posted notice typically contain the time of the hearing. Memorandum from Andrew Tevington, General Counsel, Oklahoma Corporation Commission, to the Oklahoma Corporation Commissioners 7 (May 25, 2012) (on file with author).

<sup>5</sup> In addition to the Open Meeting Act requirements, Section 3106.2(A) of Title 74 requires a public body to post a schedule and information of its meetings on its website. The posting must include the date, time, location and agenda of each meeting. *Id.*

<sup>6</sup> In addition to the filing and posting of notice of a meeting, a public body must also prepare an agenda listing the items of business to be conducted at the meeting. 25 O.S.2011, § 311(B).

<sup>7</sup> For example, the Commissioners of the Land Office must approve minutes at the next succeeding meeting. 64 O.S.2011, § 1034. Many public bodies have promulgated rules providing that their meetings are governed by *Roberts Rules of Order*. (e.g, Crime Victims Compensation Board, OAC 185:1-1-5(l); State Board of Education, OAC 210:1-1-6(a); Physician Manpower Training Commission, OAC 540:1-3-4(f)).

<sup>8</sup> A public body may choose to make an audio recording of the meeting to aid in the preparation of accurate written minutes, but is not required to do so by the Open Meeting Act.

### **Citationizer<sup>®</sup> Summary of Documents Citing This Document**

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##### **Oklahoma Court of Civil Appeals Cases**

Cite	Name	Level
<u>2008 OK CIV APP 84, 194 P.3d 140,</u>	<u>WILSON v. CITY OF TECUMSEH</u>	Discussed at Length
<u>1981 OK CIV APP 57, 637 P.2d 1270,</u>	<u>Matter of Order Declaring Annexation Dated June 28, 1978, Issued by Frazier</u>	Cited

##### **Oklahoma Supreme Court Cases**

Cite	Name	Level
<u>1987 OK 40, 737 P.2d 929, 58 OBJ 1422,</u>	<u>Andrews v. Independent School Dist. No. 29 of Cleveland County</u>	Discussed at Length
<u>1994 OK 38, 873 P.2d 1001, 65 OBJ 1340,</u>	<u>Southwestern Bell Telephone Co. v. Oklahoma Corp. Comm.</u>	Cited
<u>2001 OK 110, 37 P.3d 882, 72 OBJ 3672,</u>	<u>KEATING v. EDMONDSON</u>	Cited
<u>1918 OK 751, 177 P. 376, 71 Okla. 286,</u>	<u>CROSSLIN v. WARNER-QUINLAN ASPHALT CO.</u>	Cited

<u>1964 OK 165, 394 P.2d 456,</u>	<u>CITY OF DUNCAN v. BINGHAM</u>	Cited
<u>2007 OK 55, 164 P.3d 150,</u>	<u>COX OKLAHOMA TELECOM, LLC v. STATE ex rel. OKLAHOMA CORPORATION COMM'N.</u>	Cited
<u>1975 OK 147, 542 P.2d 1309,</u>	<u>OLDHAM v. DRUMMOND BD. OF EDUC.</u>	Cited
<u>1978 OK 59, 577 P.2d 1310,</u>	<u>OKLAHOMA ASS'N OF MUN. ATTYS. v. STATE</u>	Cited
<u>1981 OK 95, 632 P.2d 408,</u>	<u>International Ass'n of Firefighters, Local 2479 v. Thorpe</u>	Cited
<u>1998 OK 2, 953 P.2d 329, 69 OBJ 208,</u>	<u>McNEILL v. CITY OF TULSA</u>	Cited
<u>1983 OK 115, 673 P.2d 839,</u>	<u>Monson v. State ex rel. Oklahoma Corp. Com'n</u>	Discussed

**Title 6. Banks and Trust Companies**

Cite	Name	Level
<u>6 O.S. 714,</u>	<u>Directors - Meetings and Duties - Commissioner Involvement</u>	Cited

**Title 17. Corporation Commission**

Cite	Name	Level
<u>17 O.S. 1,</u>	<u>Violation of Commission's Rules - Fine - Suspension Pending Appeal</u>	Cited

**Title 25. Definitions and General Provisions**

Cite	Name	Level
<u>25 O.S. 307.1,</u>	<u>Videoconference Exceptions</u>	Cited
<u>25 O.S. 115,</u>	<u>Legal Newspapers Request for Minutes of School Board and Municipal Meetings</u>	Cited
<u>25 O.S. 302,</u>	<u>Public Policy</u>	Discussed
<u>25 O.S. 303,</u>	<u>Times and Places - Advance Notice</u>	Cited
<u>25 O.S. 304,</u>	<u>Definitions</u>	Discussed at Length
<u>25 O.S. 306,</u>	<u>Vote By Electronic or Telephonic Communications</u>	Cited
<u>25 O.S. 311,</u>	<u>Public Bodies - Notice</u>	Discussed at Length
<u>25 O.S. 312,</u>	<u>Written Minutes</u>	Discussed at Length

**Title 64. Public Lands**

Cite	Name	Level
<u>64 O.S. 1034, 64 O.S. 1034,</u>	<u>Record of Proceedings - Approval - Certification of Validity of Proceedings - Number of Concurring Members Required</u>	Discussed

**Title 74. State Government**

Cite	Name	Level
<u>74 O.S. 18b,</u>	<u>Duties of Attorney General - Counsel of Corporation Commission as Representative on Appeal From Commission</u>	Discussed at Length



