



OKLAHOMA

State Courts Network

[Previous Case](#) [Top Of Index](#) [This Point in Index](#) [Citationize](#) [Next Case](#) [Print Only](#)

Question Submitted by: The Honorable David L. Moss, District Attorney, Tulsa County

1982 OK AG 212

Decided: 11/09/1982

Oklahoma Attorney General

Cite as: 1982 OK AG 212, __ __

¶10 The Attorney General has received your request for an official opinion, asking, in effect, the following question:

Which of the following situations, if any, are subject to the requirements of the Open Meeting Act:

- (A) The members of a public body meet among themselves to discuss the appropriation of funds;**
- (B) A public body is interested in gaining insight into a matter of which the members are not knowledgeable. The members of the public body meet with a group of experts in the field in order to discuss the matter;**
- (C) A majority of members of a public body are together in an informal setting. The members begin discussing a matter concerning the business of the public body;**
- (D) A public body meets to vote on a matter?**

¶11 *Oklahoma Ass'n of Municipal Att'ys v. State*, Okl., 577 P.2d 1310 (1978), recognized that one of the policies sought to be advanced by the Legislature in adopting the Open Meeting Act was to facilitate an informed citizenry's right to participate in government and understand why government acts affecting their lives are taken.

¶12 Statutes are to be construed with reason to accomplish the Legislature's purpose, as opposed to construing them in a manner to encourage the evil against which such statutes are directed. *Bell v. United Farm Agency*, Okl., 296 P.2d 149,150 (1956). The Open Meeting Law, because it is enacted for the public's benefit, is to be construed liberally in favor of the public. *Intern. Ass'n of Firefighters v. Thorpe*, Okl., 632 P.2d 408, 411 (1981). Therefore, the provisions of the Open Meeting Act will be given a liberal construction with reference to the questions posed.

¶13 The first question concerns whether the Open Meeting Act is applicable when members of a public body meet among themselves to discuss the appropriation of funds. This question is answered in part by 25 O.S. 304(2) (1981), which defines "meeting" as "the conducting of business of a public body by a majority of its members being personally together." Unless a contrary intent appears, words used in a statute are given their ordinary meanings. *Applications of Oklahoma Turnpike Authority*, Okl., 277 P.2d 176 (1954). "Business," not having been defined in the Open Meeting Act, must be given a construction in consonance with the ordinary meaning of the term and in harmony with the purposes of the Open Meeting Act; and as stated, supra, a liberal interpretation must be indulged. Business should be assumed to include the entire decision-making process including deliberation, decision or formal action. 13 OKL.OP.A.G. 132, 134 Atty Gen. Opin. No. 81-69; 11 OKL.OP.A.G. 543, 545, Atty Gen. Opin. No. 79-331. See, *Times Publishing Company v. Williams*, 222 So.2d 470 (Fla.1969). Clearly, the Legislature must have intended for the discussion stage to be covered by the Open Meeting Act. Therefore, when members of a public body meet among themselves to discuss the appropriation of funds, the requirements of the Open Meeting Act must be met.

¶4 Your second question inquires as to whether a public body may meet with experts in order to gain insight into an area without meeting the requirements of the Open Meeting Act. The Oklahoma Supreme Court in *Oklahoma Ass'n of Mun. Att'ys v. State*, supra, at 1313-14, stated that the process of decision making as well as the end results must be conducted in full view of the governed. In *Times Publishing Co. v. Williams*, supra, the Court, interpreting Florida's Open Meeting Act, stated:

"Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the entire *decision-making process* that the legislature intended to affect by the enactment of the statute before us. This act is a declaration of public policy, the frustration of which constitutes irreparable injury to the public interest. Every step in the decision-making process, including the decision itself, is a necessary preliminary to formal action." 222 So.2d at 473. (Emphasis original)

¶5 An open deliberative process reveals rejected alternatives about which the public might not know if access to study sessions and deliberative meetings were denied. See Tacha, *The Kansas Open Meeting Act: Sunshine in the Sunflower State*, 25 Kan.L.Rev. 169 (1977). The public's right to know would be defeated if a public body could hold a nonpublic "investigatory meeting" to gain insight into a matter and then reform into a public meeting for the actual vote. *Jones v. Tanzler*, 238 So.2d 91, 93 (Fla. 1970) (Adkins, J. concurring specially).

¶6 In *Sanders v. Benton*, Okl., 579 P.2d 815 (1978), the Oklahoma Supreme Court interpreted 25 O.S. 201 et seq. (1971), which was the predecessor of the current Open Meeting Act. In *Sanders*, supra, the Court stated that the Open Meeting law was not intended to open for public scrutiny the meetings of governing bodies and public entities with decision making authority and leave in the dark the meetings of subordinate entities which were established by the parent entities for the purpose of exercising decision making authority for and on behalf of its parent entity. 579 P.2d at 820. In *Intern. Ass'n of Firefighters v. Thorpe*, supra, the Court held that the *Sanders* rule, regarding subordinate entities and their authority, continues to apply to the present Open Meeting Law. 632 P.2d at 411. The cases of *Sanders* and *Thorpe* indicate the Open Meeting Law is applicable to the entire deliberation process. Although the cases of *Sanders* and *Thorpe* dealt with situations where the public body had created separate subordinate entities rather than simply meeting with a group of experts, the cases are analogous to the question presented in that they hold that when a public body's decision making or deliberation process is influenced by outside sources the requirements of the Open Meeting Act must be satisfied. When a public body meets with experts in order to gain insight into a matter, they are involved in the deliberation process. The public is interested in how and why officials decide to act or not to act. See, *Times Publishing Co. v. Williams*, supra, at 473-74. Therefore, when a public body meets with experts in order to gain insight into a matter, the Open Meeting Act requirements must be satisfied.

¶7 Your third question concerns the applicability of the Open Meeting Act to a situation where a majority of members of a public body are together in an informal setting and begin discussing a matter concerning the business of the public body. No open meeting legislation should open to public scrutiny purely private conduct. However, if government officials use their private or social time to discuss agenda items and, even more importantly, to determine how they will vote, the purpose of the open meeting law will have been circumvented. Public access to a mere "rubber stamp" vote is all but useless. See Tacha, supra, at 179.

¶8 Title 25 O.S. 306 (1981), states:

"*No informal gatherings* or any electronic or telephonic communications among a majority of the members of a public body *shall be used to decide any action or to take any vote on any matter.*" (Emphasis added)

¶9 The Oklahoma Supreme Court has given an indication that they are inclined to give a broad interpretation to the phrase "to decide any action" and interpret 306 liberally. See, *Berry v. Board of Governors of Registered Dentists*, Okl., 611 P.2d 628 (1980).

¶10 In *City of Miami Beach v. Berns*, 245 So.2d 38,41 (Fla. 1971), the Court upheld an injunction forbidding the mayor and city council of Miami Beach from meeting without members of the public being allowed to attend. The Court simply said that a meeting occurs when public officials get together, and that a violation of the Sunshine Law takes place if the officials transact or agree to transact public business in a certain manner in the future. The violation occurs regardless of whether the meeting is formal or informal. The Court went further and stated that "if a public official is unable to know whether by convening of two or more officials he is violating the law, he should leave the meeting forthwith."

¶11 The goal of the Oklahoma Legislature in enacting the Open Meeting Act was not simply to prevent or punish deliberate violations, but to restore sadly sagging public confidence in government, a goal which is hurt by every noncomplying meeting regardless of whether or not the noncompliance resulted from evil motives. *Matter of Order Declaring Annexation, Etc.*, Okl.App., 637 P.2d 1270 (1981). Therefore, it is clear that, when members of a public body meet informally and begin discussing matters affecting the public body, regardless of whether or not there is any motive to evade the Open Meeting Act, the discussion falls under the auspices of the Open Meeting Act.

¶12 Your fourth question concerns whether a meeting of a public body to vote on a matter is subject to the requirements of the Open Meeting Act. This question is answered by 25 O.S. 305 (1981), which states that "in all meetings of public bodies, the vote of each member must be publicly cast and recorded."

¶13 In analyzing the situations presented in this request for an Attorney General Opinion, it is apparent that all are subject to the provisions of the Open Meeting Act. All of the situations listed in the question satisfy the definition of "meeting" in that all involve the actions of a majority of members of a public body. Each situation is part of the "deliberation process." The Open Meeting Act should be liberally construed in order to effectuate its purpose. Also, the Act should be interpreted in such a way as to avoid establishing potential evasion loopholes. See, *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla. 1974).

¶14 Therefore, it is the official opinion of the Attorney General that:

- 1. When members of a public body meet among themselves to discuss the appropriation of funds, the requirements of the Open Meeting Act must be satisfied.**
- 2. When a public body meets with a group of experts in order to gain insight into a particular matter, the meeting must be open to the public and satisfy other requirements of the Open Meeting Act.**
- 3. When a majority of members of a public body are together in an informal setting and begin discussing matters concerning the business of the public body, the discussion comes under the auspices of the Open Meeting Act.**
- 4. When a public body meets to vote on a particular matter, the vote is subject to the provisions of the Open Meeting Act.**

JAN ERIC CARTWRIGHT
ATTORNEY GENERAL OF OKLAHOMA
GLOYD L. McCOY
ASSISTANT ATTORNEY GENERAL

Citationizer[®] Summary of Documents Citing This Document

Cite Name	Level	
Oklahoma Attorney General's Opinions		
Cite	Name	Level
<u>2020 OK AG 4,</u>	<u>Question Submitted by: The Honorable Collin Walke, Oklahoma State Representative, District 87</u>	Discussed at Length

Citationizer: Table of Authority

Cite Name	Level	
Title 25. Definitions and General Provisions		
Cite	Name	Level
<u>25 O.S. 201,</u>	<u>Repealed</u>	Cited
<u>25 O.S. 304,</u>	<u>Definitions</u>	Cited
<u>25 O.S. 305,</u>	<u>Recording of Votes</u>	Cited
<u>25 O.S. 306,</u>	<u>Vote By Electronic or Telephonic Communications</u>	Cited