

# Applying the Open Meeting Act to Nonprofits

Being reimbursed for the sale of identifiable goods or services to the government.

Does not submit itemized invoices or claims for goods provided or services rendered to receive public funds, but instead receives a direct allocation of public funds from tax or other revenues.

Exercises actual or de facto decision-making authority on behalf of a governmental body.

Meeting: "Conducting of business of a public body by a majority of its members being personally together or . . . together pursuant to a videoconference." A member may not obtain a consensus upon an item of business through a series of private one-on-one meetings that in total constitute a quorum.

Meeting with governmental agencies or private entities to discuss "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."

Conduct of Business: "Considering discrete proposals or specific matters that are within the agency's jurisdiction."

Open Meeting Act Does NOT Apply

## Advance Notice (When)

- *Regular Meeting*: Notice by Dec. 15 (If change, no less than 10 days advance notice.)
- *Special Meeting*: 48 hours (Must be mailed or delivered to anyone who has filed a written request.)
- *Emergency Meeting*: As much time as reasonable, possible under circumstances, in person or by telephonic or electronic means. (Emergency = "A situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss.")
- *Continued or Reconvened Meeting*: Date, time and place must be announced at the original meeting.

## Advance Notice (Where)

- *Statewide Public Body*: Okla. Secretary of State
- *Multicounty, Regional, Area-wide or District*: County Clerk where the body is principally located. If no office, give notice "to the county clerk of the county or counties served."
- *County*: County Clerk
- *Municipal*: City Clerk

- If the public body has a website, it must place *advance notices* and *agendas* for *regularly scheduled* meetings on it. The same information for *special* and *emergency* meetings also should be posted on the site "[w]hen reasonably possible." The site also should include at least the names of the members of the public entity's governing body.

## Agenda

- *Regular and Special Meetings*: Excluding weekends and state holidays, post the agenda either:
  - In prominent public view at the principal office or at location of meeting if no office exists at least 24 full hours in advance; or
  - On the public body's website and provide the agenda free via email no less than 24 hours in advance, as well as make the agenda "available to the public *in* the principal office of the public body or at the location of the meeting *during normal business hours* at least" 24 hours prior to the meeting.
- *Emergency Meeting*: As much time as reasonable, possible under circumstances, in person or by telephonic or electronic means.
- *Continued or Reconvened Meeting*: Only matters on the agenda of the original meeting may be discussed.
- ✓ Must include "the date, time, place" of the meeting as given in the advance notice.
- ✓ Must identify all items of business to be transacted – including discussed – by the public body at the meeting.
- ✓ Be worded in "plain language, directly stating the purpose of the meeting, in order to give the public actual notice. The language used should be simple, direct and comprehensible to a person of ordinary education and intelligence."

## New Business

- ✓ Must be on the agenda for the public body to discuss "any matter not known about or which could not have been reasonably foreseen prior to the time of posting."
- ✓ Cannot be discussed at a special meeting.
- ✓ Executive sessions may be conducted under "new business" if the subject has legitimately arisen since the agenda was posted and is one of the permitted topics.

### Executive Sessions

- ✓ Must be noted on the agenda:
  - Identify the item of business and purpose of the executive session; and
  - State one of the specific statutory authorizations for executive sessions. Examples:
- “Employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee.”
  - Must include the name or the unique title of the person who is the subject of the discussion.
  - Cannot discuss the hiring of independent contractors, including those providing professional services.
- “Purchase or appraisal of real property.”
  - Only when the public body is the purchaser of the real property, not when it is the seller.
  - Attendance is limited to “members of the public body, the attorney for the public body, and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer, or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session.”
- “Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest.”
  - “‘Pending claim’ can refer to litigation or an administrative action which either presently exists or is merely potential or anticipated.”
  - “May not close a meeting merely to get general legal advice from its attorney that does not meet the standard of serious impairment and injury to the public interest.”
  - Must identify the specific investigation, claim or action to be discussed.
- “Conferring on matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal to entice a business to remain or to locate within their jurisdiction if public disclosure of the matter discussed would interfere with the development of products or services or if public disclosure would violate the confidentiality of the business.”
- ✓ May not vote during executive session. Any vote or action taken on an item considered in executive session must be publicly cast and recorded.
- ✓ Written minutes must be kept of executive session discussions.
  - Those minutes are confidential and “should be kept sealed and in a separate file from the minutes of the open session of the open meeting.”
  - Willful violation of the OMA would cause the minutes and other records of the session, including tape recordings, “to be immediately made public.”

### Conduct of Meetings

- ✓ Robert’s Rules of Order may apply when the Open Meeting Act is silent but cannot trump the statute’s requirements or prohibitions.
- ✓ Each member’s vote “must be publicly cast and recorded.”
  - Must be physically present to vote. Cannot vote by mail or by proxy.
- ✓ Must keep written minutes of its meetings, including executive session discussions.
  - “An official summary of the proceedings showing clearly those members present and absent, all matters considered by the public body, and all actions taken by such public body.”
  - “Written *summary* of the proceedings, not a word for word transcription.”
  - Record when members of a public body are absent during portions of a meeting.
  - “Should be written in plain language that may be easily understood by a person with ordinary education and intelligence.”
  - Minutes for an emergency meeting must include “the nature of the emergency and the proceedings occurring at such meeting, including reasons for declaring such emergency meeting.”
  - Minutes for each public meeting must be open for public inspection.
- ✓ Anyone attending a public meeting may record the meeting by “videotape, audiotape or by any other method” as long as the recording does “not interfere with the conduct of the meeting.”