

Open Meetings Act

Library of Michigan
Advanced Directors Workshop
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DISCLAIMER

This outline is intended as general information only and may not be relied upon as legal advice. Libraries should always consult with their legal counsel regarding legal matters including, but not limited to, the Library Privacy Act, Open Meetings Act, Freedom of Information Act and Patron Behavior Policies.

Open Meetings Act

Purpose:

- To require meetings of public bodies to be open to the public (limited exceptions for closed sessions)
- To require public notice and the keeping of minutes of meetings

Open Meetings Act - Mandates

- Section 3 - Meeting Mandates
- Sec. 3(1) - Meetings must be “open” and held in places available to the general public
 - May be videotaped, tape-recorded, broadcast live on radio or TV - No prior approval by public body is needed
 - But ... public body may establish reasonable rules and regulations to minimize possibility of disruption of a meeting

Open Meetings Act – Mandates, cont’d.

Meeting Mandates -continued

- Sec. 3(2) - Decisions must be made at meeting open to public
- Sec. 3(3) - All deliberations of a public body constituting a quorum (majority) shall be made at an open meeting, with limited EXCEPTIONS for closed sessions in Sec. 8.
- Issue: Is a committee of a library board a “public body” that must comply with the OMA? Conservative approach: Comply with OMA for all committee meetings.
- Sec. 3(4) - No need to register or give name as precondition to attend

Open Meetings Act – Mandates, cont'd.

Meeting Mandates – cont'd.

- Sec. 3(5) - Members of public must be allowed to address meetings under rules established and recorded by public bodies.
- Sec. 3(6) - No exclusion of public from public meeting, EXCEPT for a breach of the peace actually committed at the meeting.
- Sec. 3(10) - OMA does not apply to social or chance gatherings or conferences not designed to avoid the OMA.

Open Meetings Act – Notice

Meeting Notice Requirements

- Sec. 4(a) - Must contain name of public body, phone number and address
- Sec. 4(b) - Notice must be posted at principal office, and may be placed at other locations deemed appropriate by public body
- Sec. 4(c) - If the public body, such as township, village or city library board, is part of a political subdivision, notice must be posted at city, township or village office

Open Meetings Act – Notice, cont'd.

- Sec. 5(2) - Post notice of all regular meetings w/in 10 days of first meeting of year; indicate dates, times, and places of meetings
- Sec. 5(3) - If change in schedule, post notice of change w/in 3 days after meeting at which change is made
- Sec. 5(4) - Rescheduled regular meetings or special meetings, at least 18 hours in advance of meeting

Open Meetings Act – Notice, cont’d.

Recent Change to the OMA

- PA 528 (effective December 28, 2012)

Notice Requirements for Special Meetings

- If a public body directly or indirectly maintains a website that includes monthly (or more frequent) updates of public meeting agendas or minutes, the public body must post the notice of a special meeting in a prominent and conspicuous place on its website (in addition to posting the notice at its principal office) at least 18 hours before the meeting.
- The public notice on the website must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled meetings and accessible via a prominent and conspicuous link on the website’s homepage that clearly describes its purpose for public notification of those non-regularly scheduled public meetings.
- If a public body’s website does not include meeting agendas or minutes, PA 528 does not require posting on the website.
- PA 528 did not alter the basic requirement for posting the notice of special meetings at the public body’s principal office at least 18 hours before the meeting, which continues to apply to all public bodies. However, PA 528 did amend Section 5 to clarify that a special meeting notice must be posted in a “prominent and conspicuous place” at the public body’s principal office.

Open Meetings Act – Notice, cont’d.

Recent Change to the OMA

Any *durational requirement* for posting a public notice under the OMA (such as the 18-hour requirement for a special meeting) is “the time that the notice is required to be accessible to the public.”

Thus, to comply with the 18-hour notice requirement for special meetings, the notice must be “accessible to the public” for the 18 hour period. This applies to both the posting of the notice at the principal office and posting on the website.

Open Meetings Act – Notice, cont'd.

- Sec. 6(1) - Upon written request from individual or firm, etc., and upon payment of yearly fee of reasonable costs of printing and postage, copy of meeting notices must be sent to requesting party by first class mail.
- Sec. 6(2) - Upon written request from radio station, TV station, or newspaper, copy of meeting notices must be provided at same time as posting, free of charge.

Open Meetings Act – Closed Session

- Sec. 7(1) - Closed sessions are only called upon 2/3 roll-call vote of total membership of public body. (NOTE: Closed sessions for dismissal, suspension, or hearing charges against an employee, or periodic evaluation of personnel, and collective bargaining agreement negotiations do not require 2/3 vote but do require roll call vote.)
- Sec. 7(1), (2) - Purpose of closed session must be stated in the public minutes - Separate set of minutes taken for the closed session.
- Sec. 7(2) - Minutes of closed session must be kept for at least a year and a day after approval of minutes of open meeting at which closed session was conducted.
- Sec. 7(2) - Closed session minutes are not available to the public and are not subject to disclosure under the Freedom of Information Act.

Open Meetings Act – Closed Session, cont'd.

- Sec. 8 lists the only permissible purposes for holding closed sessions.
- Most frequently used closed sessions under section 8:
 - To consider personnel dismissal/suspension, hear complaints/charges, or periodic personnel evaluation, if requested by the employee
 - For collective bargaining, if requested by either party
 - To consider purchase or leasing of real estate
 - To consult with attorney regarding trial strategy or case settlement if open session would have a detrimental financial effect
 - To consider materials exempt from disclosure by statute (such as confidential written communication from a library's attorney which is exempt under FOIA due to attorney-client privilege)

Open Meetings Act - Minutes

- Sec. 9(1) - Meeting minutes are minimal - must include date, time, place, members present, members absent, any decisions made (and the purposes of any closed sessions)
 - Corrections must be made at next meeting, and both corrections and original entry must be shown.
- Sec. 9(2) - Minutes are to be made available to the public at the official address; copies are available at reasonable estimated cost of printing and copying.
- Sec. 9(3) - Draft minutes must be available for public inspection within eight business days; when approved, final minutes must be available within five business days

Open Meetings Act - Penalties

- Intentional violations by public officials are misdemeanors, with up to \$1,000 fines; or if second offense, criminal, up to \$2,000 fines or imprisonment up to one year, or both.
- A public official who intentionally violates the Act is personally liable in a civil action for damages up to \$500 plus plaintiff's costs and attorneys fees.
- Attorney General, prosecuting attorney, or any person may commence a civil action to challenge the validity of a decision in violation of the Act.
- An action to invalidate a decision for violation of the Act must be brought within 60 days after approved minutes are made available to the public (30 days for contracts, bids, bonds, or borrowing proposal to voters).
- If the court concludes that the governmental entity violated the Act and the court grants relief, the governmental entity must pay plaintiff actual attorneys fees.

Open Meetings Act – “Emerging Issues”

- Teleconferencing: Are members of public body permitted to participate and vote by teleconferencing (telephone or video conferencing)?
 - Difference of opinion among attorneys; conservative approach is to require physical presence
 - HB 4363 would prohibit voting unless each member of a public body is physically present (i.e., no teleconferencing). HB 4363 passed the House on May 16, 2013.

Open Meetings Act – “Emerging Issues” – cont’d

- E-Mail: E-mail communications among board members can violate the Open Meetings Act if a quorum deliberates toward or makes a decision through e-mail or similar communication.
 - A public body may deliberate toward a decision only at a properly noticed and held meeting open to the public.
 - Educate and caution board members about the pitfalls of interactive e-mail communications among board members.

Open Meetings Act – “Emerging Issues” – cont’d

- Board members should also avoid e-mail to engage in “round robin” (sequential communications by one board member with other board members for the purpose of deliberating on or deciding a matter by quorum of members).
- One-way communications with board members or two-way communications between two board members are OK, but very easy to “cross the line” into interactive e-mail communication with a quorum of board members. Be careful!



QUESTIONS?