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COMPLYING WITH PUBLIC OPEN MEETING ACTS

Craig W. Kelsey, Ph.D.
California State University,
Bakersfield, CA

In an effort to be sensitive to the public, inclusive of the many views that exist in a democratic society and to comply with various laws and ordinances, public meetings are and should be open to the general citizenry. In order to ensure that this process is fair, consistent and followed, many local and state level regulations have been developed and authorized. These rules have generally been referred to as “sunshine” laws or open meeting acts. The purpose is to affirm the public’s right to hear the deliberations of elected and appointed government officials.

Each state has either established laws or state Attorney General opinions guiding the open meeting process. For example, in California the Bagley-Keene Open Meeting Act and the Ralph M. Brown Act establish rules and regulations for state agencies and local governments respectively. The Federal Advisory Committee Act speaks to procedures for federal agencies to follow. Few cities have created specific processes for open meeting compliance and rely on already established state laws.

What is an Open Meeting?

A public agency open meeting is any gathering of the majority members of a “covered” board when that board meets to hear, discuss or deliberate on matters within that board’s jurisdiction. Though this definition seems simple and clear, many circumstances impact this concept and a multitude of variations may alter what constitutes a public meeting. Certain types of meetings are exceptions to open meeting acts. These are few and still must adhere to certain requirements. Examples include: personnel, pending litigation, labor negotiation, property negotiation and meetings dealing with threats to public safety.

What agencies are covered?

Generally there are five types of agencies that are the intent of open meeting act laws, rules and regulations. The underlying purpose is for the public to have opportunity to participate in the affairs of their public enterprise. The five specific covered agencies are:

- State commissions: almost uniformly, open meeting laws apply
- School boards: some exceptions might include student records privacy
- Not for profits: if public funds, in kind contributions or public supervision
- Hospital boards: some exceptions might include patient medical privacy
- Local committees: almost uniformly, open meeting laws apply

What rules must be followed?

Each set of open meeting laws may have slightly different requirements but generally there are nine guidelines that must be in place. These rules are usually straight forward and are standard expectations. These rules are:

- Notices for the meetings must be posted and sent with an agenda for regularly scheduled meetings.
- Media must be notified of special meetings or emergency meetings providing sufficient time for their attendance.
- The agenda sets the record for discussion items and decision items.
- Meetings must occur in publicly accessible areas generally within the jurisdiction boundaries of the agency.
- Citizens, visitors or media members are not to be required to sign a sheet to attend a public meeting.
- Public meetings are open for recording and broadcasting.
- The public are to be allowed opportunities to not only listen to the public meeting discussions but to have provided opportunity to comment on items of concern.
- Voting of board members must be public, secret ballots are not permissible.
- Documents, if distributed before or during the meeting are considered public and must be made available to requesting citizens unless these documents fall under any public record act.

What are common violations?

Unfortunately on occasion meetings will be held that were required to conform to the open meeting acts but for some reason or another, the process was not followed. If the intent of the board was to violate the open meeting act then citizens have certain recourses. They are:

- Request from those board members present what discussions occurred, votes made and actions taken.
- Contact the county District Attorney and file a complaint indicating specific details of violations of the open meeting process.
- In extreme cases, citizens may bring suit against the agency and their board.

More than likely the board made an innocent error and would be willing and open for correction. The most typical violations to the open meeting process are:

- Luncheon and social gatherings of a board where the intent is not to discuss public business but in the course of the event individuals or groups do share thoughts that should have been presented in a public forum.
- The use of what is called a “daisy chain” which is a series of phone calls, electronic messages or conversations that occur outside of the public meeting by board members, discussing matters “off the record.”
- The use of what is called a “spoke and wheel” which is when a third person receives and conveys messages.

Conclusions

Public open meeting laws are intended to make the discussion, decision making and actions of elected and appointed officials an open process for the public. Some state open meeting laws are a few hundred **words** long and others are more than one thousand **pages** in length. As differing circumstances occur new and additional interpretations of best practices emerge. Some general conclusions may be helpful:

- Court challenges, suits and attorney general opinions are frequent and continuous updating of open meeting laws are necessary.
- The use of the internet for the posting of public documents is increasing as is the use of electronic notification and communication.
- Some social observers have concluded that members of boards and commissions are not able to have the level of meaningful dialogue that leads to consensus building because of the public nature of the discussions.
- The Freedom of Information Act is an important rule and has some influences on the process of open meetings. However, the information act concerns itself with access to past records as opposed to involvement in current meetings.

If further information concerning Open Meetings Acts is of interest, please contact PlaySafe, LLC at www.play-safe.com.