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Open Meetings Act Basic Training

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Today's Agenda

- ▶ Applicability of the Act
- ▶ Notice Requirements
- ▶ How to Conduct Open Meetings
- ▶ When and How to Conduct Closed Meetings
- ▶ Penalties and Remedies Under the Act
- ▶ Questions and Answers



Open Meetings Act History and Purpose

- ▶ “Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by this chapter.”

Tex. Gov’t Code Ann. § 551.002

- ▶ Although this provision has remained virtually the same since the Open Meetings Act was enacted in 1967, the Act has grown from 1 ½ pages to almost 100 annotated pages and is interpreted regularly by Texas courts.



Open Meetings Act History and Purpose

- ▶ The Texas Supreme Court has stated that the purpose of the Act is “to safeguard the public’s interest in knowing the workings of its governmental bodies.”
 - *Cox Enter., Inc. v. Bd. of Trs. of Austin Indep. Sch. Dist.*, 706 S.W.2d 956, 960 (Tex. 1986)

- ▶ The court has also explained that the public’s interest is “not only to know what a governmental body decides but to observe how and why every decision is reached.”
 - *Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 300 (Tex. 1990)



When Does the Act Apply?

- ▶ The Act generally applies when
 - there is a governmental body, and
 - that body is meeting.

- ▶ The general rule is found in Government Code section 551.002:
 - “Every regular, special, or called meeting of a governmental body shall be open to the public, except as provided by the Act.”



Governmental Bodies Subject to the Act

- ▶ Governmental bodies subject to the Act include:
 - state agencies, boards, commissions, departments and committees
 - county commissioners courts, city councils, school boards, special district boards and deliberative bodies with rule-making or quasi-judicial authority
 - local workforce development boards
 - certain nonprofit corporations and property owners' associations

- ▶ Governmental bodies outside the Act can be made subject to the Act by rule or local ordinance



Two Definitions of “Meeting”

- ▶ Subsection 551.001(4) provides two definitions of meeting:
- ▶ (A) The first definition requires
 - a gathering of a quorum of the governmental body; and
 - deliberation about the governmental body’s public business or formal action taken by the governmental body.
- ▶ (B) The second definition requires
 - A gathering that is called by the governmental body with a quorum present; and
 - An opportunity for members to ask questions, speak or listen to matters relating to public business.



A Quorum of the Governing Body

- ▶ Generally, a quorum is required to be physically present in the meeting room.
 - A quorum is a majority of the governing body, unless a law provides a different formula.

- ▶ The Act also applies at times when there is not a quorum if
 - there is a meeting of a committee or subcommittee with authority to supervise public business; or
 - members of a governmental body conspire to circumvent the Act.



A Conspiracy to Circumvent the Act is an Offense

- ▶ An offense is committed when “a member or group of members of a governmental body . . . knowingly conspire to circumvent [the Act] by meeting in numbers less than a quorum for the purpose of secret deliberations in violation of [the Act].”

Tex. Gov't Code Ann. § 551.143



Quorums that are Not Meetings Subject to the Act

- ▶ Social functions
- ▶ Conventions or workshops
- ▶ Ceremonial events
- ▶ Press conferences
- ▶ Legislative agency meetings
- ▶ Legislative committee meetings



Notice Requirements

- ▶ Governmental bodies are required to post notice of the following meeting information:
 - Date
 - Hour
 - Place, and
 - Subjects to be considered



Time of Posting Notice

- ▶ Under most circumstances, notice must be posted 72 hours before the meeting.
- ▶ In emergencies, notice must be posted two hours before the meeting.



Place of Posting Notice

- ▶ Sections 551.048-551.056 provide detailed posting requirements for state entities, counties, cities, school districts and other districts and political subdivisions, which vary depending on the governmental body.
- ▶ For example, a state governmental body is required to provide notice to the Secretary of State, while a county governmental body is required to post notice of each meeting on a bulletin board where there is convenient public access in the county courthouse.



Content of Notice

- ▶ Apprise the general public of the topic to be discussed
- ▶ Avoid boilerplate language
- ▶ Adhere to custom



Notice Exception

Items of Community Interest

- ▶ “[A] quorum of the governing body of a municipality or county may receive from staff of the political subdivision and a member of the governing body may make a report about items of community interest during a meeting of the governing body without having given notice of the subject of the report as required by this subchapter if no action is taken and, except as provided by Section 551.042, possible action is not discussed”

Tex. Gov’t Code Ann. § 551.0415



Emergency Meeting Exception

- ▶ What constitutes an emergency or urgent public necessity?
 - Immediate action is required because of:
 - An imminent threat to public health and safety; or
 - A reasonably unforeseeable situation



Notice for Emergency Meetings

- ▶ Timing and Content for Emergency Notice
 - When calling an emergency meeting:
 - Post the notice two hours before the meeting
 - Notify the media, and
 - Clearly identify the emergency or urgent public necessity in the notice



Recess in Meeting

- ▶ Reposting of notice is not required when recessing if:
 - The meeting resumes the following regular business day; and
 - The recess is made in good faith and not to circumvent the Act.



Miscellaneous

- ▶ The Act allows postponement of a meeting in case of a catastrophe.
- ▶ No statutory requirements exist for cancelling a meeting.
- ▶ Actions taken without proper notice are voidable.



Convening and Conducting an Open Meeting

- ▶ Meetings must be conducted within the State of Texas.
- ▶ Meetings must be accessible to the public, including individuals with disabilities.
 - The public must be able to record the meeting by video, audio or other means.
- ▶ A quorum must be present.
 - If members leave, resulting in the loss of a quorum, the meeting should be adjourned until a quorum is again present.



Open Meetings Public Comments or Speech

- ▶ If allowing the public to speak, the governmental body may impose reasonable limits but cannot unfairly discriminate among speakers based on their views for or against a specific matter.



Open Meetings – Final Actions

- ▶ Any vote or final action on an issue must be conducted in an open meeting.
- ▶ To the extent that closed meetings are permitted, they are only for purposes of deliberation.



Closed Meetings

- ▶ When may a governmental body meet in a closed meeting or executive session?
 - When expressly authorized to do so by the Open Meetings Act (Tex. Gov't Code Ann. §§ 551.071-.089)
 - When expressly authorized to do so by a statute outside the Act

- ▶ The authority to meet in executive session may not be implied from a statute.



Closed Meeting – Attorney Consultation Exception

- ▶ When may a governmental body meet in a closed meeting to seek advice from its attorney?
 - When discussing pending or contemplated litigation or a settlement offer
 - When discussing a matter that requires the attorney to meet in a closed meeting in order to comply with the Texas Disciplinary Rules of Professional Conduct



Required Procedures for Closed Meetings

- ▶ Post notice.
- ▶ Do not begin until a quorum is present.
- ▶ First convene in an open meeting.
- ▶ Identify in the open meeting the legal provision authorizing the governmental body to meet in closed session.
- ▶ Keep a certified agenda or make a tape recording as required by law.



Who may Attend Closed Meetings?

- ▶ Only members of the governmental body have a right to attend.
- ▶ An employee may attend if the employee's presence is
 - Necessary to the closed meeting, and
 - Would not defeat its legal basis
- ▶ No one whose presence would undermine the legal basis for the closed meeting may attend.



What may a Governmental Body do in Closed Session?

- ▶ Deliberation is allowed
 - In a closed session, members of a governmental body may deliberate about matters that relate to the legal basis for the closed meeting.

- ▶ No Formal/Final Actions or Votes
 - No formal actions or votes may occur in a closed meeting.



Closed Meeting Requirement Certified Agenda or Tape Recoding

- ▶ The Act requires a governmental body to make and keep a certified agenda or tape recording of most closed meetings.
- ▶ Certified agendas are required to indicate
 - The presiding officer's announcements of the date and time at both the beginning and end of the meeting
 - A statement of the subject matter of each deliberation
 - A record of any further action taken
 - The presiding officer's certification that the agenda is a true and correct record of the closed meeting
- ▶ Tape recordings are required to include
 - The presiding officer's announcements of the date and time at both the beginning and end of the meeting



Certified Agenda or Tape Confidentiality & Preservation

- ▶ Confidentiality
 - A certified agenda or tape recording of a closed meeting is confidential and is not available to the public except by court order.
 - A person who knowingly and without lawful authority makes a certified agenda or tape recording public commits a Class B misdemeanor.

- ▶ Preservation
 - A certified agenda or tape recording shall be preserved for at least two years.



Things to Remember about Closed Meetings

- ▶ Express authorization is required, authority may not be implied by statute.
- ▶ Notice is required by the governmental body, even if it anticipates the entire meeting to be closed.
- ▶ Closed meetings are limited to deliberations; no final actions may be taken.
- ▶ A certified agenda or tape recording is required for most closed meetings.



Closed Meeting Acts Resulting in Criminal Penalties

- ▶ Criminal penalties exist for knowingly violating the Act:
 - Failing to keep a certified agenda or tape recording
 - Unlawfully disclosing a certified agenda or tape recording
 - Holding or participating in an illegally closed meeting
 - Circumventing the Act by meeting with numbers less than a quorum



Remedies

- ▶ The Act permits a court to void any action taken in violation of the Act.
- ▶ Individuals may sue to prevent threatened actions in violation of the Act.



Open Meetings Act Handbook

- ▶ The Office of the Attorney General publishes a biennial handbook on the Open Meetings Act that includes the text of the Act and relevant cases and Attorney General Opinions interpreting the Act
- ▶ The handbook is available online at:
www.texasattorneygeneral.gov



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