



Texas Open Meetings Act

August 2, 2016

Open Meetings Act

- Adopted in 1967 to help make governmental decision-making accessible to the public.
- It requires meetings of governmental bodies to be open to the public, except for expressly authorized executive sessions, and be preceded by public notice of the time, place and subject matter of the meeting.

What is a Meeting?

- Meeting:
 - A deliberation between a quorum of a governmental body (“gb”), or between a quorum of a gb and another person, during which public business or public policy over which the gb has supervision or control is discussed or considered, or during which the gb takes formal action; or
 - A gathering conducted by the gb, at which a quorum is present, that has been called by the gb, and at which the members received information from, give information to, ask questions of, or receive questions from any third person, including an employee of the gb, about the public business or public policy over which the gb has supervision or control.
 - Not a purely social gathering, that does not in any way involve discussion or consideration of public business or policy.



What is a meeting? (cont.)

- What does “deliberation” mean?
 - A verbal exchange during a meeting between a quorum of a gb, or between a quorum of a gb and another person, concerning an issue within the jurisdiction of the gb or any public business.
 - “Deliberation” and “discussion” are synonymous for purposes of the act.
 - A “verbal exchange” clearly includes an exchange of spoken words, but it may also include an exchange of written or other nonspoken words (i.e., letters, memos or electronic exchange)

This WAS a meeting!

- Quorum of Water Board invited to meeting of certain landowners, to receive feedback from landowners about whether the Board was “on the right track.”
- Two Board members made “minor comments” and the Chair answered one question. None of the Board members spoke to each other; they sat in the audience and listened to landowner comments.
- The Court determined this was a meeting because a quorum was present and issues over which the Board had control were being discussed.
 - *Bexar Medina Atascosa Water Dist v. Bexar Medina Atascosa Landowners’ Ass’n*, 2 S.W.3d 459 (Tex. App.-San Antonio 1999, pet. denied).

So was this!

- A councilmember in Alpine, TX, sent an e-mail to four other councilmembers, asking if they thought an item should be placed on a future agenda. The next day, one councilmember replied that it should be discussed.
- Those 2 councilmembers were indicted by a grand jury for violating the OMA, even though there was no discussion of the merits of the issue. The charges were eventually dismissed.

Walking Quorum

- Meetings of less than a quorum in an attempt to evade the Act.
- In *Esperanza Peace and Justice Center v. City of San Antonio*, the night before a council meeting, the mayor met with several council members, and spoke with others by telephone. A decision about the budget was made that night, and ratified at the public meeting the next day.
- A meeting of less than a quorum is NOT subject to the Act when there is no intent to avoid the Act's requirements.

Walking Quorum, con't.

- In the *San Antonio* case, the mayor met with the council members to reach a conclusion; city manager kept track of the numbers to avoid a quorum; the consensus was memorialized in a memo containing the council members signatures; the consensus was “manifested” when adopted at the open meeting.
- According to the Court, this was a violation of the Open Meetings Act.
 - 316 F.Supp. 2d 433 (W.D. Tex. 2001).

Notice Requirements

- A gb must give the public advance notice of the subjects it will consider in an open meeting or a closed executive session.
- The notice must be sufficient to apprise the general public of the subjects to be considered during the meeting.
 - “personnel” not sufficient to discuss appointment of a new school superintendent;
 - “litigation” not sufficient to describe a major desegregation lawsuit that had occupied the district’s time for a number of years.

Open Sessions

- Meeting must be convened in open session, before going into closed session.
- Meeting must be held in a location accessible to the public.

Open Sessions, con't.

- The OMA permits a member of the public or member of the gb to raise a subject that has not been included in the notice for the meeting, but any discussion of the subject must be limited to a proposal to place the subject on the agenda for a future meeting:
 - A statement of specific factual information, or recitation of existing policy may be given in response to the inquiry;
 - Any deliberation of, or decision about, the subject of the inquiry shall be limited to a proposal to place the subject on the agenda for a subsequent meeting.

Executive Sessions

- All deliberations between a quorum of the council must take place in a public session, unless certain narrowly drawn exceptions apply.
- Before going into closed session, a quorum must first convene in an open meeting for which notice has been given, and during which the presiding officer publicly
 - Announces that a closed meeting will be held; and
 - Identifies the section(s) under which the closed meeting is held.

Consultation with Attorney

sec. 551.071

- A gb may NOT conduct a private consultation with its attorney except:
 - To seek advice about pending or contemplated litigation or a settlement offer; or
 - When required by the Texas Disciplinary Rules of Professional Conduct.
- General discussion of policy, unrelated to legal matters, is not permitted merely because an attorney is present.
- Attorney-client privilege may be waived by communicating privileged information in the presence of persons not within the privilege.
- The gb may admit its agents or representatives where their interests are aligned with the gb's and their presence necessary for full communication between the gb and its attorney.

Deliberations about Real Property

sec. 551.072

- A gb may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property **IF** deliberation in an open meeting would have a detrimental effect on the position of the gb in negotiations with a third person.
- Does not allow a gb to “cut a deal in private, devoid of public input or debate.”

Personnel Matters

Sec. 551.074

- May conduct a closed session:
 - To deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; or
 - To hear a complaint or charge against an officer or employee.
- Does not apply if the officer/employee requests the meeting remain open.

Personnel Matters, con't.

- Does not allow closed deliberations about a class of employees, only individuals.
- Does not allow closed deliberations about the selection of an independent contractor or consultant.

Security Devices, sec. 551.076

- A gb is not required to conduct an open meeting to deliberate the deployment, or specific occasions for implementation, of security personnel or devices.

Economic Development Negotiations, sec. 551.087

- A gb may convene a closed session:
 - To discuss or deliberate regarding commercial or financial information that the gb has received from a business prospect that the gb seeks to have locate, stay or expand in or near the territory of the gb, and with which the gb is conducting economic development negotiations; or
 - To deliberate the offer of financial or other incentive to a business prospect described above

Who May Attend Executive Session?

- Only the members of the gb have a right to attend.
- A gb has discretion to include any of its officers and employees whose participation is necessary to the matter under consideration.
- A gb may not admit a person whose presence is contrary to the gb's interest.
 - A person wishing to sell real estate to the city may not attend a session closed under the real estate exception, a provision designed to protect the city's bargaining position with third parties.
 - Opposing party in litigation may not be present in session closed under litigation exception.

Civil Penalties

- Action taken in violation of the Act is voidable.
- Any interested person can seek a writ of mandamus or an injunction to ensure a gb follows the Act.
 - A court may award reasonable attorney fees and litigation costs.

Criminal Penalties

- A member of a gb commits a Class C misdemeanor if he participates in a closed meeting knowing that a certified agenda or tape recording is not being made.
- It is a Class B misdemeanor to knowingly disclose the certified agenda or tape recording of a lawful closed meeting.
 - It is a defense that the defendant had good reason to believe disclosure was lawful; or
 - The disclosure was a mistake of fact.
 - Not a violation to make public statements about the subject matter of a closed session.

Criminal Penalties, con't.

- When a closed meeting is not permitted, it is a violation to knowingly:
 - Call or aid in calling or organizing a closed meeting;
 - Close or aid in closing the meeting to the public; or
 - Participate in a closed meeting
- It is a defense that a member acted in reasonable reliance on a court order, a court or AG opinion, or the city attorney's opinion.
- Penalty:
 - Fine \$100-\$500; and/or
 - 1 – 6 months in jail

Criminal Penalties, con't.

- It is a violation for a member to knowingly conspire to circumvent the Act by meeting in numbers less than a quorum for the purpose of secret deliberations.
- Penalty:
 - \$100-\$500; and/or
 - 1 – 6 months in jail.

Training Requirements

- Since 1996, elected officials are required to complete a minimum of one hour of training on the Texas Open Meetings Act
- Must be completed within 90 days of election
- Free training on line: www.oag.state.tx.us, select "open government" tab at top of page, then "open government training" from the drop down menu.
- Obtain your course completion certificate online, and return to City Secretary Dianna Barker for filing.