

OPEN AND PUBLIC MEETINGS

1. **The Open and Public Meetings Act.** The Open Meetings Act (UTAH CODE ANN. §§52-4-101 *et seq.*) is based on the following policy:

The Legislature finds and declares that the state, its agencies and political subdivisions, exist to aid in the conduct of the people's business. It is the intent of the Legislature that the state, its agencies, and its political subdivisions: take their actions openly, and conduct their deliberations openly.

With very limited exceptions, all meetings of official bodies of the state, counties, cities and towns, interlocal entities like the CWC and other public bodies are to be open to the public; deliberations of such bodies be conducted openly; and the public is to be given advance notice of the time and place of the meeting, and of the items that will be under discussion.

(a) **Noticing: Agendas.** To assure the opportunity for public participation, the Open Meetings Act specifies the minimum notice for a public meeting.

(i) **Annual Notice.**

(ii) **Meeting-Specific Notice.** At least twenty-four hours prior to the meeting, including agenda and the date, time and place of the meeting.

(iii) **Posting and Publication.**

(iv) **Agenda.** Reasonable specificity. No final action on un-noticed issues raised at meeting.

(v) **Emergencies.** Notice requirements can be disregarded, so long as the best notice practical is given.

(b) **Open Meetings.** Every meeting of a public body is open to the public unless it is properly closed. A “meeting” is the “convening” of a “public body” when a “quorum” is present. “Convening” is any meeting called by a person for the purpose of either discussing or acting on a subject matter. A “public body” means, with limited exceptions, any administrative, advisory, executive or legislative body (a) that is created by statute, rule, ordinance or resolution, (b) which consists of two or more persons, (c) expends, disburses or is supported in whole or in part by tax revenue, and (d) is vested with authority to make decisions regarding the public’s business. A “quorum” means a simple majority of the members of a public body.

(i) **Non-Meetings.** Chance meetings, social meetings, staff meetings and department head meetings.

(ii) **Public Body.** The Open Meetings Act applies to more than just a governmental entity’s governing body (such as the CWC’s board of commissioners).

(iii) **Disruption.** The Act does not prohibit removal of any person from the meeting if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.

(c) Closed Meetings. All meetings are to be open to the public with the certain limited exceptions, of which the following are applicable to the CWC:

- (i) Discussion of the character, professional competence, or physical or mental health of an individual.
- (ii) Strategy sessions to discuss pending or reasonably imminent litigation.
- (iii) Strategy sessions to discuss the purchase, exchange, or lease of real property.
- (iv) Strategy session to discuss the sale of real property.
- (v) Discussion regarding deployment of security personnel, devices or systems.
- (vi) Investigative proceedings regarding allegations of criminal misconduct.

The public body first must be called together in an open meeting. At least two-thirds of the members of the public body present must vote to close the meeting. No closed meeting is allowed for any other reason, nor may any other items be discussed in the meeting. The reasons for holding the closed meeting and the vote either for or against the proposition to hold the closed meeting are to be publicly announced and entered into the minutes of the public portion of the meeting.

(d) Minutes and Recordings.

(i) Minutes and Recordings of Open Meetings. Written minutes and a digital or tape recording must be kept of all open meetings. The recording must be a complete and unedited record of all open portions of the meeting, and shall be available within a reasonable time after the meeting.

(ii) Minutes and Recordings of Closed Meetings. With limited exceptions, the Open Meetings Act requires that the closed meeting be recorded. Detailed written minutes are permissible but not mandatory. Closed meetings to discuss the character, professional competence, or physical or mental health of an individual or discussions regarding deployment of security personnel, devices or systems need not be recorded nor minutes taken.

(e) Enforcement and Penalties. The attorney general and the county attorneys of the state are charged with enforcing the Open Meetings Act. Private individuals, however, can enforce these acts by bringing suit to enjoin or force compliance with provisions of the Act.

Certain final actions in violation of the Act are voidable by a court, if the lawsuit is commenced within 90 days after the date of the action. If a private individual prevails, the court may award reasonable attorneys fees and court costs to the successful plaintiff.

Further, a member of a public body who knowingly or intentionally violates, or who knowingly and intentionally abets or advises a violation of any of the closed meeting provisions of the Act, is guilty of a class B misdemeanor.

4. **Conduct of Meetings**. Watch out for the following in public meetings, any of which may result in a decision that is arbitrary or capricious:

(a) *Public Clamor*. Decisions of public bodies have been rejected by courts when it was apparent from the record that the body was influenced more by vocal participants at the meeting than by their responsibility to represent the public.

(b) *The Straw Vote*. Such a vote may not represent an honest test of community public opinion.

(c) *Petitions*. Petitions also are frequently presented as evidence of the correctness of the petitioners' position, but may not be an honest representation of the community.