

Alabama Open Meetings Act



Important Notice



Presented By:
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Municipalities

Serving Alabama's Municipalities since 1935

Open Meetings Act



Sections 36-25A-1 - 36-25A-11

Code of Alabama, 1975

Act 2015-340

Open Meetings Act



Presumption:

- Any Discussions
- Quorum
- Council / Council Committee
 - All together at one time
 - Series of meetings –
- City Business

Must be Conducted Pursuant to
the Open Meetings Act OMA

Who is Covered?



Governmental Bodies

- Municipal Boards, Bodies and Commissions
 - Power to Expend or Appropriate Municipal Funds
- Multimember Governing Bodies, Departments, Agencies, Institutions, Instrumentalities, and Corporations
 - Majority of Members *Appointed* or *Elected* by Municipality
- Quasi-Judicial Bodies of the Executive and Legislative Departments of the State
- Standing, Special, or Advisory Committees or Subcommittees of, or Appointed by, the Body.



Who Else is Covered?

- Volunteer Fire Departments certified by the Alabama Forestry Commission
- Community Action Agencies established by:
 - County
 - Municipality
 - Private, Nonprofit Agency Newly Established By Local Ordinance

Who is NOT Covered?



- Voluntary Membership Associations
 - Public Employees
 - Counties
 - Municipalities or their Instrumentalities
- Without Legislative or Executive Functions

Open Meetings Act



What is a Meeting?

Meeting #1



- Prearranged Gathering
- Quorum
 - Governmental Body
 - Committee
 - Subcommittee of a Governmental Body
- Time and Place Set by Law/ Operation of Law

Quorum



- Majority
- Voting Members
- Governmental Body

Four Members Constitute a Quorum when Council consists of Five Councilmembers and a Mayor.

Mayor is Included in Quorum Count when Population is LESS THAN 12,000. AGO 2004-054.

Establishing a Quorum



- Physically Present
- No Telephone Conference
- No Voting or Participating via Electronic Means



Meeting #2

- Prearranged Gathering
- Quorum (Majority)
 - Governmental Body
 - Committee
 - Subcommittee of a Governmental Body
- Authorized to Exercise Powers
- Approve Expenditure of Public Funds



Meeting #3

- Gathering (Prearranged or Not)
- Quorum – (Majority)
 - Governmental Body
- Deliberate specific matters
- At the time of the exchange
- Participating members EXPECT to come before the full governmental body at a later date

Deliberate



- Exchange
- Information / Ideas
- Quorum
- Reach / Influence a Decision
- Vote
- Matters Expected to Come Before Body
- Immediately / Later Time



Meeting #4

- Gathering (Prearranged or Not)
- Quorum
 - Committee
 - Subcommittee of a Governmental Body
- Deliberate Specific Matters
- Relating to their Purpose
- At the time of the exchange
- Participating members EXPECT to come before them at a later date

Open Meetings Act



What is NOT a
Meeting?

It's NOT a Meeting if...



- Quorum
 - Social Gatherings
 - Conventions
 - Conferences
 - Training Programs
 - Press Conference
 - Media Events
 - Association Meetings
 - On-site Inspections
 - Meetings with Applicants for Economic Incentives or Assistance
- NO Deliberation
- EXPECTED to Come Before the Body at a Later Date

It's NOT a Meeting if...



- Quorum
 - In Person
 - Electronic Communication
- With State or Federal Officials
- Reporting or Obtaining Information
- Seeking Support for Important Issues



It's NOT a Meeting Even if...

- Quorum
 - including two members of a three member body
- Discussing Economic, Industrial, or Commercial Prospect or Incentive
- Does NOT include Conclusions:
 - Recommendations
 - Policy
 - Decisions
 - Final Action on Request
 - Offer of Public Financial Resources

Two Member Meetings



- Two members of a governmental body MAY TALK together WITHOUT DELIBERATION.
- A Mayor, who is NOT a voting member of the council, (Cities with population over 12,000) can TALK *or* DELIBERATE with a member of the municipal council.

Emails



Emails DO NOT Constitute a Meeting *unless*,
There is DELIBERATION.

A Unilateral Declaration is NOT a DELIBERATION

Key Facts to Remember



Quorum
+ Meeting
Must Comply with the
Open Meetings Act

Serial Meetings



Slagle v. Ross, 125 So.3d 117 (Ala. 2012)

What is a Serial Meeting?



- Less than a Quorum at Each Meeting
- At Least One Member Attends One or More Other Meetings in the Series
- Total Number of Members Attending Two or More of the Series of Meetings, Collectively, Constitutes a Quorum
- Public Not Given Notice
- Deliberate Specific Matters EXPECTED to Come Before the Body at a Later Date
- Purposefully Avoiding the Open Meetings Act
- One of the Meetings is within 7 Calendar Days of a Vote on ANY of the Matters Deliberated

What is NOT a Serial Meeting:



2 Members of a 3 Member Body

1. No Deliberations
2. Only Exchange Background and Educational Information With Members

What is NOT a Serial Meeting:



A Series of Gatherings to Fill a Position

1. Required to File a Statement of Economic Interests
2. More than 3 People under Consideration

What is NOT a Serial Meeting:



A Gathering or Series of Gatherings Involving only 1 Member of a Governmental Body

Council Members at Committee Meetings



A Quorum of a Governing Body May Attend a
Committee Meeting When:

- Notice of the Committee Meeting
- Governing Body DOES NOT Deliberate Matters
- EXPECTED to Come Before Them at a Later
Date

Council Members at Committee Meetings



But if...

- Quorum
- Prearranged Meeting
- Occurs in Conjunction with the Committee Meeting
- **MUST Give Notice of this Meeting**

***Impromptu Meetings are NOT ALLOWED!**

Open Meetings Act



Notice Requirements



Notice Requirements

- Council Meetings (Regular Meetings)
 - 7 Days Notice
 - Public Bulletin Board at City Hall
- Separate Corporation
 - Public Bulletin Board at City Hall/ Principal Office of the Corporation
- All Other Governmental Bodies
 - Location that is Reasonably Accessible or Convenient to the Public

Notice Requirements



- Time
- Date
- Place
- General Description of Nature and Purpose*

*Organizational Ordinance or Resolution is Sufficient

Preliminary Agendas



Preliminary Agendas MUST BE Posted as soon as Practicable in the Same Location or Manner as the Meeting Notice. AGO 2006-027.

Posting Notices

Changes to Location or Method



1. Must Be Approved by the Governmental Body
2. Announced to the Public
3. Open Meeting

Regularly Scheduled Meetings



- Meetings Established by Organizational Ordinance or Resolution
 - 7 Days Notice
- Meetings Not Set by Ordinance or Resolution
 - No less than 24 Hours Before the Meeting is Scheduled to Begin

Special Called Meetings



Post Notice:

- 24 Hours
- Mayor / 2 Councilmembers

- 1 Hour:
 - Emergency
 - Requiring Immediate Action
 - Physical Injury to Persons
 - Damage to Property
 - Solely to Accept the Resignation of a Public Official or Employee.



Direct Notification

- REGISTERED Members of the Public
- News Media
- Fee
- Time, Date, and Place
- Same Time of General Notice
- Method of Delivery
 - Electronic Mail, Telephone, Facsimile, the United States Postal Service, or Any Other Reasonable Method

Conducting Meetings



- Parliamentary Procedure
- Voice Votes
- No Secret Ballots
- No Voting in Executive Sessions
- Video and Audio Recordings Allowed*

<http://www.robertsrules.org/rror--00.htm>

Form and Content of Minutes



- Date, Hour and Place of Meeting
- Regular, Adjourned or Special Meeting
- Proper Notice - Council
 - Special Meeting – Proper Notice to Public
- Names of the PRESENT Councilmembers
- Names of ABSENT Councilmembers
- Time of Late Arrivals and Early Departures
- Any Action Taken
- Work Sessions
- Executive Sessions*



Form and Content of Minutes



VERBATIM

Procedure to Enter into Executive Session



1. Quorum Convenes a Meeting
2. Majority of the Members Present Adopt, by Recorded Vote, the Motion Calling for the Executive Session
 - State Reason for Executive Session
3. Record Each Member's Vote in the Minutes
4. PRIOR to Calling the Executive Session to Order, the Presiding Officer MUST State if They Will Reconvene After the Executive Session and the Approximate Time

Open Meetings Act



Executive Session

Executive Sessions



1. General Reputation and Character, Physical Condition, Professional Competence or Mental Health of Individuals, or Job Performance of Certain Public Employees.
 - Interview Current Public Employees for Promotions
 - No Statement of Economic Interests

Executive Sessions



CANNOT Discuss Job Performance of:

- Elected / Appointed Officials
 - Appointed State/ Local Board Members
 - Appointed State / Local Commission Members
 - Public Employees who file Statement of Economic Interests Forms
-
- CANNOT Discuss Salary, Compensation, and Job Benefits of:
 - Specific Public Officials or Specific Public Employees

Executive Sessions



2. Consider Discipline, Dismissal or Hear Formal Written Complaints or Charges Against:
 - Public Employee
 - Student at Public School or College
 - Individual, Corporation, or Partnership
 - Other Legal Entity

Executive Sessions



3. Discuss Legal Ramifications and Options with Attorney:
 - Pending Litigation
 - Controversies Imminently Likely to be Litigated
 - Meet or Confer with Mediator or Arbitrator

Executive Sessions



4. Security Plans, Procedures, Assessments, Measures,...or Security or Safety of Persons, Structures, Facilities, or Other Infrastructures, where Public Disclosure Could be Detrimental

Executive Sessions



5. Identity of Undercover Law Enforcement Agents or Informers
 - Criminal Investigation of Persons*
(except Public Officials)
 - File Criminal Complaint

Executive Sessions



6. Acceptable Offers for Purchase, Sale, Exchange, Lease or Market Value of Real Property.
 - Material Terms of the Contract MUST be Disclosed
 - Only Persons Representing the Interests of the Governmental Body

Executive Session



7. Preliminary Negotiations

- Involving Trade or Commerce
- In Competition with Private or Public Entities
- Alabama Trade Secrets Act

Executive Session



8. Strategy for Negotiations Between the Governmental Body and a Group of Public Employees

Executive Sessions



9. Deliberate and Discuss Evidence Or Testimony Presented During a Public or Contested Case Hearing

Absolute Privilege and Immunity



- Members of the Council
- Employees
- Participating in an OMA Compliant Meeting
- ANY Statements Made During the Meeting
- Relates to a Pending Action

Civil Actions

Violation of Open Meetings Act



- County – Primary Office
 - Media Organization
 - Alabama Citizen Impacted Greater than the Public At Large (Evidence)
 - Attorney General
 - District Attorney
- No Local Public Official Vs. Public Official
- 60 Days of Date Plaintiff Knew/ Should have Known
- 2 Years of Alleged Violation
- Name and Capacity of Members in Attendance

Open Meetings Act Complaint



- Disregarded Notice Requirements
- Disregarded Provisions of the OMA During a Meeting
- Other Matters Discussed During Executive Session
- Intentional Violations of OMA Provisions

Questions?



Contact the Legal Department

- Ken Smith, Executive Director: kens@alalm.org
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