

Oklahoma Open Meeting Act



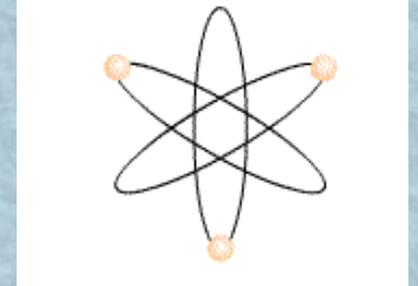
Office of Attorney General

Tom Bates

First Assistant Attorney General

Issues are Explosive

- ◆ Often involves angry citizens
- ◆ Usually the media are highly involved
- ◆ The “perfect storm” for an explosion of controversy







GOALS

What We Hope to Do For You Today

- ✓ Build a foundation of knowledge and general understanding Oklahoma Open Meeting Act
- ✓ Review the entire Oklahoma Open Meeting Act
- ✓ Answer questions



GOALS

What We Don't Want to Do

- ✓ We cannot be your legal adviser!
- ✓ We won't be giving you a list of loopholes
- ✓ We won't be giving you a cheat sheet for how to get around the Act

It's The Law!



Found in Oklahoma Statutes: Title 25, Sections 301-314

Title of the Act

(25 O.S. § 301)

“Oklahoma Open Meeting Act”

Don't Break the Law!

There are consequences:

- ◆ Civil Implications:

- ◆ **“Any action taken in willful violation of this act shall be invalid.” (25 O.S. § 313)**

- ◆ Criminal Penalties:

- ◆ **“Misdemeanor”**

- ◆ **Fine up to \$500 and/or up to 1 yr in county jail (25 O.S. § 314)**

Historical Background

(25 O.S. 301)

- ◆ **Became law on Oct. 1, 1977**
- ◆ **Subject of at least 68 AG opinions ... and rising**
- ◆ **20 Oklahoma Supreme Court Cases**
- ◆ **13 Oklahoma Court of Civil Appeals cases**
- ◆ **2 Court of Criminal Appeals cases**

Public Policy

Cornerstone of the Act

(25 O.S. § 302)

Starting place is good understanding of the Act:

- ◆ Purpose – No guessing or hiding the ball by the Legislature
- ◆ Public Policy – Clearly set forth:

It is the public policy of the State of Oklahoma to *encourage and facilitate* an informed citizenry's understanding of the governmental processes and governmental problems.

Judicial Standard of Review

Andrews vs. Ind. School District No. 29 737 P.2d 929 (OK 1987)

“Agendas must be worded in plain language, directly stating the purpose of the meeting, and the language used should be simple, direct and comprehensible to a person of ordinary education and intelligence.”

Int’l Association of Firefighters vs. Thorpe 632 P.2d 408 (OK 1981)

“The Open Meeting Law, because it is enacted for the public’s benefit, is to be construed liberally in favor of the public.”

In Matter of Appeal of Order Declaring Annexation 637 P.2d 1270 (OK 1981)

“Strict adherence to the letter of the law is required. Substantial compliance is insufficient.”

Implementation of Public Policy By:

(25 O.S. § 303)

- ◆ ALL meetings “shall” be held in public
- ◆ At convenient times and places
- ◆ Open to the public
- ◆ Shall provide advance public notice of time, place & subject matter



“Public Body” Defined

(25 O.S. § 304.1)

- * Governing bodies of all municipalities**
- * Boards of county commissioners**
- * Boards of public education**
- * Other boards, agencies, public trusts...**
 - Supported in whole or in part by public funds**
 - Entrusted with expending public funds**
 - Administering public property**
- * Committees & sub-committees of those public bodies**
- * Exceptions: Judiciary, Legislature, staffs of public bodies & other special statutory exceptions**

“Meeting” Defined

(25 O.S. § 304.2)

Generally:

- ◆ **When “conducting business” of public body**
- ◆ **By majority of members**
- ◆ **Being personally together**



“Meeting” Defined

◆ “Meeting” does not include informal gatherings of a majority when no business of the public body is being discussed.

- **Loophole?**
- **Trapdoor?**

“Meeting” Defined

Caveat: If the members of the public body are in actuality holding a meeting (conducting business, by a majority of its members) they **MUST** comply w/ the requirements of the Act!!!

Four Types of Meetings

(25 O.S. § 304)

1) Regularly scheduled meetings – § 304.3

2) Special meetings – § 304.4

3) Emergency meetings – § 304.5

4) Continued or Reconvened Meetings – § 304.6

Votes

(25 O.S. § 305)

Vote of each member must be:

- ◆ **Publicly cast**

- ◆ Raises Questions – Should all votes be “roll call votes?”

- ◆ **Recorded**

- ◆ Failure to do so results in action being invalid!

Oldham v Drummond Bd of Ed, 542 P.2d 1309 (OK 1975)

**Votes
Are
Powerful**

Electronic and Telephonic Communications

(25 O.S. § 306)

- ◆ **Prohibits deciding or taking action (voting) on any matter by phone or e-mail**
- ◆ **Also prohibits deciding or taking action on any matter at an “informal” gathering**
- ◆ **Language in the Act hasn’t kept pace w/ technological advances**

Warning

(25 O.S. § 306)

- ◆ **Net result is stricter application for public bodies comprised of 3 members vs those w/ 5 or more**
- ◆ **Best advice to members of public body is “not” to discuss any matter that could be construed as “business” at an informal gathering, or on the phone, or by e-mail, or via the Internet**
- ◆ **Cannot circumvent the Act in any way
(AG Opinion 00-07)**

Electronic Communications

Cont ...

- ◆ Meeting packets forwarded prior to meeting
 - ◆ Be Careful!
 - ◆ Do not respond “Reply to All”
 - ◆ Remember - E-mails are subject to Open Records Act
- ◆ This field is “ripe for harvest” for violations of the Act

Executive Sessions

(25 O.S. § 307)

- ◆ **General rule: No executive sessions unless specifically authorized in this section (307A) or other statute**

- ◆ **Limited Permissible Purposes:**
 - ◆ Personnel matters
 - ◆ Purchase or appraisal of real property
 - ◆ Confidential communications w/ atty concerning pending investigation, claim or action
 - ◆ Other specific instances

Executive Sessions

(25 O.S. 307)

Misc:

- **Strict procedures for agendas (sections 307 B, 307 E & 311B)**
- **Must take vote & have majority to convene executive session**
- **Votes cannot be taken in executive session**
- **Must take & keep minutes**
(Berry v Bd of Gov of Registered Dentists 611 P.2d 628 (OK 1980))

Teleconference

(25 O.S. 307.1 & 304.7)

◆ **Permissible, but certain conditions must be met:**

- ◆ **Must have quorum of public body at agenda site**
 - ◆ **Notice & agenda must have video site**
 - ◆ **Off-site location must be in district**
 - ◆ **Public must have access**
 - ◆ **No executive sessions**
- ◆ **Must be both visual & auditory**



Notice & Agenda



(25 O.S. § 311)

Regularly scheduled meetings (311A.9)

- ◆ **Annually file advance public notice of all meetings by Dec. 15**
 - ◆ **Date, time & place (Section 311A.1)**

- ◆ **24 hours prior to meeting post notice & agenda**
 - ◆ **Excludes Saturday, Sunday and Okla. holidays**

- ◆ **New Business Permissible**
 - ◆ **But matter must not have been known or reasonably foreseen prior to time of posting agenda (Section 311A.9)**

Notice & Agenda Cont...

(25 O.S. § 311A)

Special Meetings (311A.11)

- ◆ **48 hours prior to meeting:**
 - ◆ Give notice to appropriate office of date, time & place
 - ◆ Mail said notice to those who have filed written request

- ◆ **24 hours prior to meeting:**
 - ◆ Post publicly in prominent view
 - ◆ Notice (time, date, place)
 - ◆ Agenda
 - ◆ Excludes Sat, Sun and Okla. holidays

- ◆ **New business is NOT permissible**

Notice & Agenda Cont...

Continued or Reconvened Meetings (311A.10 & 304.6)

- Announce at original meeting

Emergency Meetings (311A.12 & 304.5)

- Must meet 304.5 requirements (injury to persons, property and/or immediate financial loss likely)
- No public written notice required
- As much advance public notice as reasonable & possible under circumstances, including telephonic or electronic means

Notice & Agenda Cont...

Executive Session Requirements (311B)

– Contains sufficient information for the public to identify the items of business and purpose

* *“Agendas must be worded in plain language, directly stating the purpose ... the language used should be simple, direct and comprehensible to a person of ordinary education and intelligence.”*

– Specifically states the subparagraph of Section 307B, authorizing an executive session

Minutes

(25 O.S. § 312)

- ◆ **Requires written minutes including:**
 - ◆ **Official summary of the proceeding**
 - ◆ **Identifies all members present and absent**
 - ◆ **Identifies all matters considered**
 - ◆ **Identifies all actions taken**
 - ◆ **Reflects manner and time notice was given**
 - ◆ **Minutes are open to the public**

Minutes Cont...

■ Minutes for Emergency Meetings

- Must state nature of emergency
- Must include reasons for declaring emergency meeting

■ Recording Meetings (Section 312 C)

- Any person may record the meeting
- Provided it does not interfere with meeting

Miscellaneous

Public Comments?

- ◆ **A public body is not required to provide opportunity for citizens to speak**
- ◆ **If public body chooses to allow public comments, it is advisable to set policy**
 - ◆ **Could limit comments to agenda items only**
 - ◆ **If provide for open comment, members must be careful not to engage in discussion ...**

What is a Willful Violation?

- ◆ **Depends upon analysis as criminal vs civil violation**
 - ◆ **Criminal violation:** burden of proof is “beyond a reasonable doubt”
 - ◆ **Civil violation:** burden of proof is “preponderance”

- ◆ **Civil violation is much easier for the complaining party to prove!**
 - ◆ **Remember** - the Open Meeting Act is “construed liberally in favor of the public”
 - ◆ Int’l Assn of Firefighters vs Thorpe 632 P.2d 408 (OK 1981)
 - ◆ **Remember** - “Strict adherence to the letter of the law is required. Substantial compliance is insufficient.”
 - ◆ In Matter of Appeal of Order Denying Annexation 632 P.2d 1270 (OK 1981)

Willful Continued

- ◆ **Rogers v Excise Bd of Greer County, 701P.2d 754 (OK 1984)**
 - ◆ **“For purposes of Open Meeting Act, willfulness does not require showing of bad faith, malice, or wantonness, but rather encompasses conscious, purposeful violations of law or blatant or deliberate disregard of law by those who know, or should know ... Agendas that are deceptively vague & likely to mislead constitute a willful violation.”**

Willful Continued

- ◆ **Haworth Bd of Ed vs Havens 637 P.2d 902 (OK 1981)**
 - ◆ “A willful violation of the Act includes any act or omission that has the effect of actually deceiving or misleading the public ...”
- ◆ **Also consider: Hillary v State 630 P.2d 791 (OK 1981)**
 - ◆ “In a prosecution for violation of the Open Meeting Act, the state need only prove that the failure to comply was willful. Beyond that, criminal intent need not be proven.”

**Thank you for your
attention**