Alabama Open Meetings Act

Presented By:
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Alabama League of Municipalities

Important Notice

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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
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
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

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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
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

Executive Sessions

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

   – 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

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