



# **THE OPEN MEETINGS ACT**

## **A SUMMARY**

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## 1. What is the purpose of the Open Meetings Act?

**Answer:** The overriding principle of the Act is that government should conduct its business in an open manner.

The Act expressly provides that “all **meetings** of the **governing body of an agency** are public meetings, open to the public at all times, except as otherwise provided.” Wyo. Stat. Ann. § 16-4-403 (emphasis added). Public access to government agencies is critical to a representative form of government. Governmental agencies are essentially engaged in the **public’s** business. The first duty of government is to serve the public. Holding public meetings insures that all affected people are permitted an opportunity to be heard on issues that are important to their lives. Governmental agencies, including but not limited to boards, commissions, and sub-agencies within departments or agencies are required to comply with the Open Meetings Act as set forth in this summary.

For answers to specific questions concerning open meetings or actions which may be subject to the Open Meetings Act, contact the Wyoming Attorney General’s Office.

## 2. Who is subject to the Open Meetings Act?

**Answer:** Meetings of State boards and commissions are subject to the Act’s requirements. Meetings of directors of departments and State stand-alone agencies are not covered under the Act.

### A. State Boards and Commissions:

[T]he act applies to multi-member state boards and commissions such as the Wyoming Liquor Commission, the Public Service Commission, Wyoming Highway Commission, Wyoming Game and Fish Commission, Employment Security Commission, Oil and Gas Conservation Commission, and the like.

See Attorney General Opinion No. 17, dated August 3, 1973.

### B. Directors and Stand-Alone Agencies:

[W]here the law governing a particular agency vests the full responsibility and authority for the agency’s decisions in a single individual (e.g., Tax Commissioner, Director of Department of Administration and [Information], Insurance Commissioner, State Examiner, State Engineer), the Act does not apply, since such an individual is not a ‘governing body,’ within the definition of the Act.

See Attorney General Opinion No. 17, dated August 3, 1973.

### **3. Does the Act apply to “sub-agencies?”**

**Answer:** Yes.

Some agencies headed by a single officer or agency head have “sub-agencies,” which consist of a multi-member governing board. Sub-agencies, such as the Board of Control, which is part of the State Engineer’s Office, must comply with the Act.

However, *ad hoc* advisory committees are not covered. An example of an *ad hoc* advisory committee is the gathering together of several multi-member boards and/or several agency heads for a particular purpose not considered an agency action, such as advising the Governor as to a particular problem or objective.

### **4. When does the Act apply?**

**Answer:** Generally, the Act applies if at least a quorum of the members of a governing body meets, even informally, in order to consider matters which are within the agency’s official business.

Under the Act, all meetings of the governing body of an agency are public meetings, open to the public at all times, except as otherwise provided, and no action may be taken except during a public meeting. Wyo. Stat. Ann. § 16-4-403. As defined by statute, “meeting” means “an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the expressed purpose of discussion, deliberation, presentation of information or taking action regarding public business.” Wyo. Stat. Ann. § 16-4-402(a)(iii). **So, the Act applies to informal discussion about public business amongst a quorum of the members of a governing body.**

The day-to-day administrative activities of an agency, its officers, and its employees are not subject to the Act’s notice requirements. Wyo. Stat. Ann. § 16-4-404(e). Thus, an agency may perform its daily administrative tasks without notice or a public meeting.

### **5. Does the Act cover deliberations after a contested hearing?**

**Answer:** Yes.

Because deliberations are included in the definition of “meeting” and all “meetings” of a governing body of an agency are considered public meetings, open to the public at all times (*see*

Wyo. Stat. Ann. § 16-4-403), deliberations by a governing board after a contested hearing, but before an agency decision is rendered, are generally subject to the Act. However, the deliberations of a governing board following **personnel hearings** and **professional licensing hearings**, and other matters appropriate for executive sessions, are expressly exempted from this requirement under Wyo. Stat. Ann. § 16-4-405. *See* Question No. 9 below.

## **6. What are the notice requirements under the Act?**

**Answer:** No action of a government body of an agency is to be taken except during a public meeting **following notice of the meeting**. The Act contemplates fair and reasonable advance notice of meetings. The notice requirements vary and are set out below:

### **A. Regular Meetings**

In absence of a statute setting out a schedule or requirement for regular meetings, a governing body is required to, by ordinance, resolution, bylaws, or rule, hold regular meetings, unless the agency's normal business does not require regular meetings. Under the Act, the governing body shall provide notice of its meeting to any person who requests notice. The request for notice shall be in writing and renewed annually. The governing body must also comply with any notice requirements in other statutes, outside the Act, that require them to provide notice to certain persons.

Under the Act, the notice requirement may be fulfilled by mailing a copy of the meeting schedule or resolution setting the next meeting to whomever has made a request for notice. No particular form of notice is required as long as it specifies clearly the name of the agency holding the meeting, the specific date, time and place of the meeting, and the general or specific purpose. Again, if a particular statute or ordinance, outside the Act, mandates special notice requirements for the particular governing body or situation at hand, then those requirements must be followed.

When notice under the Act is to be given, the agency should give sufficient advance notice of the meeting to the local news media to enable media representatives to attend the meeting. The Act does not specifically require that notice be made statewide. Nevertheless, whenever possible, agencies should adopt a regular meeting schedule, providing for an adequate number of scheduled meetings so that special meetings can be limited to the smallest number possible, and so notice of meeting schedules may be given to media representatives who normally cover the affairs of each agency or have requested notice of such meetings.

*See* Attorney General Opinion No. 17, dated August 3, 1973.

### **B. Special Meetings**

The presiding officer of a governing body may call special meetings if he gives verbal, electronic, or written timely notice of the meeting to each member of the governing body and to each newspaper of general circulation, radio, and television station requesting notice. The notice shall specify the time and place of the special meeting and the business to be transacted and shall be issued at least eight hours prior to the commencement of the meeting. **No other business may be considered at the special meeting.** Wyo. Stat. Ann. § 16-4-404(b).

### **C. Recess of Meetings**

A regular or special meeting may be recessed (delayed or moved to another location) by the governing body to a place and at a time specified in the “order of recess.” A copy of the order of recess is to be conspicuously displayed on or near the door of the place where the meeting or recessed meeting was held. Wyo. Stat. Ann. § 16-4-404(c).

### **D. Emergency Meetings**

Governing bodies may hold emergency meetings on matters of serious immediate concern to take temporary action without notice. However, governing bodies shall make a reasonable effort to provide public notice. All actions taken at an emergency meeting are temporary. In order for the actions taken at an emergency meeting to become permanent, they must be reconsidered and action taken at an open public meeting within forty-eight hours, excluding weekends and holidays, unless the event constituting the emergency continues to exist after forty-eight hours. In such case, the governing body may reconsider and act upon the temporary action at the next regularly scheduled meeting of the agency, but in no event later than thirty days from the date of the emergency action. Wyo. Stat. Ann. § 16-4-404(d).

## **7. Does the Act apply to meetings conducted by telephone or videoconference?**

**Answer:** Yes.

The Act defines an “assembly” to include communicating in person, by means of telephone or electronic communication, or in any other manner such that all participating members are able to communicate with each other contemporaneously. Wyo. Stat. Ann. § 16-4-402(a)(iv). Thus, when a quorum of the members of a governing board of an agency gather together by telephone communication or videoconference to participate in agency business, such gatherings are covered by the Act. Additionally, no meeting shall be conducted by electronic means or any other form of communication that does not permit the public to hear, read or otherwise discern meeting discussion contemporaneously. Communications outside a meeting, including, but not limited to, sequential communications among members of an agency, cannot be used to circumvent the purpose of the Act. Wyo. Stat. Ann. § 16-4-403(d).

## **8. Does the Act require that minutes be taken?**

**Answer:** Minutes must be taken at all meetings, regardless of whether official action has been taken.

Minutes are not required for the day-to-day administrative activities of an agency and its officers and employees. Wyo. Stat. Ann. § 16-4-403(c).

## **9. When can a governing body go into executive session?**

**Answer:** A governing body may go into executive session when any of the events listed in Wyo. Stat. Ann. § 16-4-405(a) occur and a member makes a motion to go into executive session, it is seconded, and the motion carries by a majority of members in attendance when the motion is made. A motion to hold an executive session which specifies any of the reasons set forth in Wyo. Stat. Ann. § 16-4-405(a)(i) through (xi) is sufficient notice of the issue to be considered in an executive session.

Wyo. Stat. Ann. § 16-4-405(a) provides that governing bodies may hold executive sessions in the following situations:

(i) With the attorney general, county attorney, district attorney, city attorney, sheriff, chief of police or their respective deputies, or other officers of the law, on matters posing a threat to the security of public or private property, or a threat to the public's right of access;

(ii) To consider the appointment, employment, right to practice or dismissal of a public officer, professional person or employee, or to hear complaints or charges brought against an employee, professional person or officer, unless the employee, professional person or officer requests a public hearing. The governing body may exclude from any public or private hearing during the examination of a witness, any or all other witnesses in the matter being investigated. Following the hearing or executive session, the governing body may deliberate on its decision in executive sessions;

(iii) On matters concerning litigation to which the governing body is a party or proposed litigation to which the governing body may be a party;

- (iv) On matters of national security;
- (v) When the agency is a licensing agency while preparing, administering or grading examinations;
- (vi) When considering and acting upon the determination of the term, parole or release of an individual from a correctional or penal institution;
- (vii) To consider the selection of a site or the purchase of real estate when the publicity regarding the consideration would cause a likelihood of an increase in price;
- (viii) To consider acceptance of gifts, donations and bequests which the donor has requested in writing be kept confidential;
- (ix) To consider or receive any information classified as confidential by law;
- (x) To consider accepting or tendering offers concerning wages, salaries, benefits and terms of employment during all negotiations;
- (xi) To consider suspensions, expulsions or other disciplinary action in connection with any student as provided by law.

Wyo. Stat. Ann. § 16-4-405(a).

## **10. Do governing bodies need to take minutes at executive sessions?**

**Answer:** Yes.

Minutes shall be maintained of any executive session. Minutes and proceedings of executive sessions shall be confidential and produced only in response to a court order, except for portions of minutes reflecting a member's objection to the executive session.

Wyo. Stat. Ann. § 16-4-405(b).

## **11. Are there penalties for not complying with the Act?**

**Answer:** Yes.

Any member or members of an agency who knowingly or intentionally violate the provisions of the Act shall be liable for a civil penalty not to exceed seven hundred fifty dollars. Any member of the governing body of an agency who attends or remains at a meeting knowing the meeting is in violation of the Act shall be liable under the Act unless minutes were taken during the meeting and the parts thereof recording the member's objections are made public or at the next regular public meeting the member objects to the meeting where the violation occurred and asks that the objection be recorded in the minutes. Wyo. Stat. Ann. § 16-4-408.

In addition to the misdemeanor penalties listed above, any action taken at a meeting where the Open Meetings Act was not followed is null and void.