

The Open Meeting Act in a Nutshell

Presented by:

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Veteran Suicide Prevention Task Force Meeting
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Purpose of the Open Meeting Act



***Transparency in Government
Government under the Microscope***

OVERVIEW

- When does the OMA apply?
- To whom or what does it apply?
- What must be done to comply?
- Why should I comply?



PUBLIC PURPOSE OF OMA

- Encouraging citizens to know more about public bodies, governmental processes, and governmental problems (advance notice, agenda, and minutes).
- Creating space for citizens to come and watch government in action as the public body tackles the issues of the day (open meetings to the public at convenient times and places).

25 O.S. 2021, § 302, Yellow Book 1.



WHEN THE OMA APPLIES?

When a ***majority*** of a ***public body's*** members come together to ***conduct public business.***

25 O.S. 2021, § 304(2), Yellow Book 3



EXEMPT PUBLIC ENTITIES

The Judiciary

State Legislature and legislators

Administrative staff of public bodies

Other entities, incl. Racing Stewards, Council on Judicial Complaints

Multi-disciplinary teams provided for under Title 10A of the Oklahoma Statutes for sole purpose of considering recommendations of team and deciding placement of a child

Board of Directors of federally-qualified health center

Committees that are purely fact finding, informational, recommendatory, or advisory with no decision-making authority. *Andrews v. Indep. Sch. Dist. No. 29 of Cleveland Cnty.*, 1987 OK 40, 737 P.2d 929.*

Private organizations that contract to provide goods or services to the public on behalf of a governmental agency and receive payment as reimbursement. 2002 OK AG 37.

BETWEEN THE CRACKS

- There are some public bodies that are anomalous:
 - Appear to fall under public body analysis; or
 - A part of another branch, thus falling under exemption, but specific statute requires compliance with Open Meeting Act.
- **MUST FOLLOW THE ACT**
- If public body members do not comply, they open themselves up to liability.
- **REMEMBER:** If an entity has specific authority requiring it to follow the OMA, it must follow it.



ENTITY RECEIVING PUBLIC FUNDS

2020 OK AG 2

- Relevant to our presentation today, the Senator asked whether the OSSAA was subject to the OMA or ORA?
- OAG concluded that OSSAA was not subject to the OMA because of two reasons—
 - No evidence that OSSAA was supported by public funds. Defined support as “to pay the costs of; maintain,”
 - Based on this definition, our office has distinguished between—
 - Entity receiving public funds pursuant to legislative enactment or other government authorization for a public purpose, or
 - Entity simply paid in exchange for providing identifiable goods and services
- OSSAA didn’t fit well on either side of this spectrum. Thus, the Office concluded that it more consistently in the latter.



MEETING DEFINED

*Conduct of business of a public body by a majority of its members being personally together or, as authorized by Section 307.1 of this title, together pursuant to a videoconference. **Meeting shall not include informal gatherings of a majority of the members of a public body when no business of the public body is discussed.***



INFORMAL GATHERINGS

- Conferences
- Receptions
- Church Services
- Community Events
- Funerals

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION
Research Park, Oklahoma City

A G E N D A SPECIAL MEETING

Thursday, November 7, 2019 – 9:30 a.m.
655 Research Parkway,
Presbyterian Health Foundation Conference Center,
Oklahoma City
Chairman Joseph L. Parker, Jr., Presiding

1. **Reception for State Regents, State System Regents, Presidents and other guests prior to the State Regents Meeting.**



MAJORITY vs. QUORUM

- OMA default for quorum is a majority.
- Specific act or rule may determine that less than a majority of the public body is authorized to transact business on behalf of the public body. In any event, rely on the specific statute or rule over § 304(2) when determining if a meeting must comply with the OMA. [Unpublished Opinion 93-587](#).
- **EXAMPLE:** X members shall be authorized to transact business for the **[Public body]**.
- Ex-officio members can (and should) be included in your count if not expressly excluded. See [2009 OK AG 26](#).
- Your quorum **DOES NOT** decrease in light of a vacancy. See [1982 OK AG 165](#).



VETERANS SUICIDE PREVENTION TASK FORCE

- Created by H.B. 1036 (2023 Okla. Sess. Laws ch. 106)
- Nine Members
- Section 1, subsection F of the Act sets the quorum at five.
- Five votes also needed to approve any final action.
- “[S]hall be subject to the Oklahoma Open Meeting Act.”



TEXTS, EMAILS, AND SOCIAL MEDIA

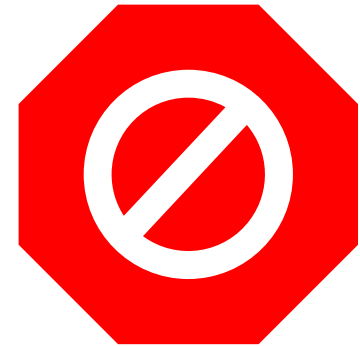
Dorothy sends an email to her fellow board members about an upcoming agenda item.

Sophia has an opinion and smashes reply all.

Confused, Rose also replies all to ask a question.

Having past experience, Blanche decides to chime in and replies all.

A meeting has occurred, and the OMA is violated.



POST-MEETING LUNCH OR COFFEE



BEST PRACTICE: A majority of a public body's members should not attend lunch together.

Public body composed of Joey, Rachel, Phoebe, Chandler, Monica, and Ross has a properly noticed meeting in accordance with the Open Meeting Act.

The meeting adjourns at lunchtime. Rachel brought her signature trifle for everyone. Famished and scared of the trifle, Joey, Ross, Chandler, and Monica want to get burgers or grab something at the coffee shop.



'CONDUCTING PUBLIC BUSINESS'

- Construed the ordinary meaning of “conducting public business” in harmony with the Act’s purpose.
- Includes the **entire** decision-making process, including presentation of information, deliberation, decision, or formal action.

In re Appeal of Order Declaring Annexation Dated June 28, 1978, 1981 OK CIV APP 57, 637 P.2d 1270; **1982 OK AG 212**.



CIRCUMVENTING THE ACT

- Public body cannot use informal gatherings or electronic or telephonic communications among a majority of the members to decide any action or vote on any matter.
- Convenient **≠** Legal.



25 O.S. 2021, § 306, Yellow Book 5.



MEETINGS OF LESS THAN A QUORUM

2020 OK AG 4

- Rep. Walke asked whether a minority of a public body members can meet outside of a public meeting consistent with the OMA.
- The short answer is that it depends.
- If the public body is doing so to willfully and purposefully circumvent the Act, a court might say that such a meeting, even among a minority, is a violation.
- **DO NOT—**
 - *Conduct polling, or*
 - *Hold discussions with the desired aim of reaching a consensus prior to a meeting.*
- Allowed to hold informational briefings where information is provided and received.
- **REMEMBER:** The purpose of the OMA is to facilitate public knowledge and awareness of governmental problems and processes.



MEETINGS



TYPES OF MEETINGS



REGULARLY
SCHEDULED
MEETINGS



SPECIAL
MEETINGS



EMERGENCY
MEETINGS



CONTINUED OR
RECONVENED
MEETINGS



CORE REQUIREMENTS



Provide Advance Notice



Post Agenda



ADVANCE NOTICE TO WHOM?

- State public bodies and governing boards of higher education: **Secretary of State.**
- County public bodies, boards of education, and public bodies under the auspices of a governing board of higher education: **County Clerk** of the county in which the body is principally located.
- Municipal public bodies: **Municipal Clerk.**

25 O.S. 2021, § 311(A), Yellow Book 16-17.



TIMES AND PLACES OF MEETINGS

- **SPECIFIED** times and places,
- **CONVENIENT** to the public,
- **OPEN** to the public, and
- Must provide advance notice (agenda).

25 O.S. 2021, §§ 303 & 306, Yellow Book 1 & 5.



Rogers v. Excise Bd. of Greer Cnty.

[1984 OK 95, 701 P.2d 754](#)

- Excise Bd. scheduled meeting to be held on a legal holiday.
- The meeting location was held in a ***locked*** courthouse.
- The court held that this was a willful violation of the OMA. The Excise Board demonstrated a blatant or deliberate disregard by those who know or should know, if not a willful and purposeful violation of the OMA.



REGULARLY SCHEDULED MEETINGS



- Advance Notice
 - All meetings for the upcoming calendar year must be sent to the appropriate record-keeping clerk by December 15 of the current year.
 - Time, date, and place.
- Posting the Agenda
 - 24 hours prior to the time of the meeting in *prominent public view* at location of meeting or the principal office of public body, or
 - May also upload to public body's website.*
 - Excludes Saturdays, Sundays, and public (legal) holidays.
- New business allowed to the extent that it meets the following:
If it is known about or could have reasonably been foreseen prior to the time of posting the notice and agenda for the meeting, then it is not new business. See 25 O.S. 2021, § 311(A)(10).



REGULARLY SCHEDULED MEETINGS (cont'd)

- Changing the date, time, or place?
 - Notice must be given to the appropriate recordkeeping clerk no less than ten (10) days prior to the implementation of any such change.
- What does this mean?
 - A public body cannot change the time, date, or place of a regularly scheduled meeting if the meeting is set less than ten (10) days away.

A public body **may move up** a regularly scheduled meeting, but the meeting cannot be scheduled less than ten (10) days from the date that notice of the change is published.

BEST PRACTICE: Set a special meeting if the issue(s) is/are urgent and cancel the regularly scheduled meeting.



SPECIAL MEETINGS



- Advance Notice
 - 48 hours prior to time of meeting.
 - Time, date, and place.
 - Must also send notice to those who have requested to receive notice of meeting.
- Posting the Agenda
 - 24 hours prior to the time of the meeting in *prominent public view* at location of meeting or the principal office of public body, or
 - Public Body **may elect** the agendas for special meetings to its website.
 - Excludes Saturdays, Sundays, and public (legal) holidays.
- New business **NOT** permitted.

25 O.S. 2021, § 311(A)(12), Yellow Book 3 & 20.



CONTINUED OR RECONVENED MEETINGS



- Give notice of such action that the original meeting, including—
 - Date,
 - Time, and
 - Place of continued meeting.
- Only matters appearing on the agenda for the meeting continued may be discussed on continuance or reconvening meeting.
- **BEST practice**: Post notice on website and with recordkeeping clerk. Also, post updated agenda with remaining items of business.

25 O.S. 2021, §§ 304(6) & 311(A)(11), Yellow Book 4 & 19.



MINUTES & RECORDING

- Must be written and taken by a designated person.
- Minutes are an **official summary** of the proceedings—
 - Must show who is present and absent, matters considered, and actions taken ([2012 OK AG 24](#));
 - Shall be open for inspection, and
 - Shall reflect the manner and time of notice required under the OMA.
- Minutes must be taken in executive session. [Berry v. Bd. of Governors of Registered Dentists, 1980 OK 45, 611 P.2d 628.](#)
- State law does not require minutes to be approved.
- Recording the proceedings—

Members of the public can record the meeting; however, they are not entitled to interfere with the conduct of the public meeting.



PUBLIC COMMENTS

- Public bodies are **not required** to allow an opportunity for the public to comment on matters or issues being considered by the public body, but it may allow for such comments.
- Public bodies ***may limit*** public comment to items set forth on the agenda, or it may allow for open comment.
- If a public body decides to include public comment in its meetings, the public body should consider adopting a policy, such as setting a time limit for each person providing public comments, setting a cut-off for when persons must sign up to participate in the public comments, and potentially limiting the comments to agenda items.



PUBLIC COMMENTS (cont'd)

- An agenda item titled “Visitors Comments” or “Public Comments” is sufficient to meet the requirements under the OMA.
- **CAUTION**: Items for discussion on the agenda should not be discussed by the public body at this time. This is the public body’s opportunity to listen.



TAKING ACTION

- Votes of each member of a public body: must be publicly cast and recorded.
- May only take action on agenda items that indicate or provide for action to be taken.
- If the vote is either not publicly cast or not recorded, the action taken is invalid. [**Oldham v. Drummond Bd. of Educ.**, 1975 OK 147, 542 P.2d 1309.](#)

25 O.S. 2021, § 305, Yellow Book 4.



VIDEOCONFERENCE & TELECONFERENCE

1. Not less than a quorum must be present at site of meeting.
2. All public body members must be audible and visible to one another.
3. Executive sessions are **NOT** allowed.
4. Notice and agenda must include the **locations** of the meeting; the videoconference sites (*i.e.*, location, address, and telephone number); and identity of members and from where they will appear.
5. Members of public bodies may only participate from the district or subdivision from which they are elected, appointed, or sworn to represent.
6. Materials shared must be immediately available “in the same form and manner” as shared with the public body.
7. Public must be allowed to participate and speak as allowed by rule or policy set by the public body at the videoconference site as permitted at the site of the meeting.
8. Each site and room must be open and accessible to the public.



EXECUTIVE SESSIONS



TWO IMPORTANT QUESTIONS

1. Can I do it?

Does it meet one of the bases, or is there some other legal authority?

2. How do I do it legally?

a. Have I posted it on the agenda?

b. Have I cited to the specific basis for executive session?

c. Have I provided context as to what the public body will be discussing?

d. Has a majority of the public body present voted to enter executive session?



BEFORE, DURING, AND AFTER

- A majority of the public body members present must vote in the affirmative to enter into executive session. 25 O.S. 2021, § 307(E)(2).
- Executive sessions are not authorized when a public body meets via videoconference. 25 O.S. 2021, § 307.1.
- Public vote to enter executive session.
- Cannot vote or poll in executive session.
- Public vote to exit out of executive session.

BEST PRACTICE: After exiting executive session, announce the following, “No votes were taken in executive session, and no items not listed on the agenda for discussion in executive session were discussed.”



EIGHT MOST COMMON BASES

Allowed ***only under certain circumstances and only those circumstances allowed under statute***, such as —

- Discussing employment, hiring, appointment, promotion, demotion, disciplining, resignation, or termination [§ 307(B)(1)];
- Discuss negotiations concerning employees and representatives of employee groups [§ 307(B)(2)];
- Discuss purchase or appraisal of real property [§ 307(B)(3)];
- Confidential communications between public body and attorney, the disclosure of which would impair the public body's ability to proceed in the public interest [§ 307(B)(4)];



EIGHT MOST COMMON BASES (cont'd)

- To hear evidence and discuss expulsion or suspension of a student when requested by the student involved or student's parent, attorney or legal guardian [§ 307(B)(5)];
- Discuss matters involving a specific handicapped child [§ 307(B)(6)];
- Discussing matter in which information is subject to confidentiality requirements under state or federal law [§ 307(B)(7)]; or
- Deliberations in an individual proceeding pursuant to the Administrative Procedures Act [§ 307(B)(8)].



AGENDAS



WORDING THE AGENDA

- “Shall identify all items of business to be transacted by a public body at a meeting.”
- Must include any proposed executive session
- If executive session is proposed, public body must:
 - Contain sufficient information for public to know what the public body is going to discuss.
 - Identify items of business and purposes of executive session, and
 - State which provision under § 307 applies.



WORDING THE AGENDA (cont'd)

- Must be worded in plain language, directly stating the purpose of the meeting.
- Language used should be—
 - Simple,
 - Direct, and
 - Comprehensible to a person of ordinary education and intelligence.

Andrews v. Indep. Sch. Dist. No. 29 of Cleveland Cnty., 1987 OK 40, 737 P.2d 929; *Haworth Bd. of Educ. Of Indep. Sch. Dist. No. 1-6, McCurtain Cnty. v. Havens*, 1981 OK CIV APP 56, 637 P.2d 902.



WORKING THROUGH THE AGENDA

- Nothing in the Act requires you to follow the agenda item by item.
- Nothing in the Act requires you to take up all items on the agenda.
- But the Act does prohibit you from taking action not noticed on the agenda.

Example: The [public body] may take up items in any order it deems necessary and convenient.



AGENDA EXAMPLE #1

Wilson v. City of Tecumseh, [2008 OK CIV APP 84, 194 P.3d 140](#)

- Public body provides sufficient notice to the recordkeeping clerk.
- Then, public body publishes the following agenda item for a proposed executive session:
- Proposed Executive Session pursuant to 25 O.S. §307(B)(1) to discuss the employment, hiring, and resignation of [Employee].
- Public body enters into executive session, discusses the above matter, votes to exit executive session, and then votes to award a bonus (equivalent of 6 months in salary) to the Employee.
- Is there a problem here?



AGENDA EXAMPLE #2

Haworth Bd. of Educ. of Indep. Sch. Dist. No. 1-6, McCurtain Cnty. v. Havens,
[1981 OK CIV APP 56, 637 P.2d 902](#)

- Public body provides sufficient notice to the recordkeeping clerk.
- Then, public body publishes an agenda with the following language:
- Proposed Executive Session pursuant to 25 O.S. §307(B)(1) to discuss appointment of board member. Discussion of hiring administrator. Hiring principal. A second notice and agenda listed the items to be considered as:
 - Appoint new board member.
 - Interview a new administrator.
 - Hire principals.
- Public body enters into executive session, discusses the matters listed above, exits executive session, and then votes to hire and set a salary for a superintendent.
- Is there a problem here?



F.O.P., Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman

[2021 OK 20, 489 P.3d 20](#)

- Norman City Council meets to take action on their operating budget on June 16, 2020.
- Agenda states that the Council can (1) adopt or (2) reject the budget.
- Agenda refers to FYE 2021 Budget Amendments 6-12-2020. Amendments are attached with the notice and agenda at the time of posting.
- City Council took up and adopted three **NEW, never-before-seen** amendments, reallocating funds away from Norman PD.
- Fraternal Order of Police sued, alleging a violation.



F.O.P., Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman (cont'd)

- The trial court found against the City of Norman, concluding that the City had violated the OMA and granted summary judgment.
- City of Norman appealed to the Supreme Court.
- The Oklahoma Supreme Court retained the appeal.
- OSC affirmed the trial court, finding that the City of Norman violated the OMA.
- Agenda was written to only allow adoption or rejection of the budget, not amendment.
- Court further held the agenda to be deceptively vague and likely to mislead, thus making it a willful violation of the OMA.



BEST PRACTICES AFTER *F.O.P. v. NORMAN*

- Do not limit the agenda to just adoption or rejection; it is best to include “possible action.” On the agenda, you might consider listing what “possible action” means.
- Indicate or cite your supporting documents or attachments on the actual agenda.
- If sufficient time allows, list all amendments one by one under the item of business. If done this way, you may want to include language allowing members of the public body to make amendments during the meeting. State law or municipal charter or ordinance may require otherwise.
- **Remember:** the expression one thing excludes others.



POSSIBLE ACTION

“Possible action” includes, but is not limited to, approval, authorization, adoption, rejection, denial, amendment, taking no action, or tabling the item for disposition at a later date or time.



Hirschfeld v. Oklahoma Turnpike Auth.

[2023 OK 59](#)

- In December 2021, Turnpike Authority Executive Director announced that OTA was seeking to develop the “most robust long-range plan in its history.”
- In January 2022, the Authority held votes on the approval or disapproval of a resolution authorizing a line of credit to provide interim financing of “***certain turnpike projects***” and to “authoriz[e] the Director to submit an application to the Council on Bond Oversight for provisional and final approval of the interim financing of certain turnpike projects.” **No turnpikes or projects were identified.** At this same meeting, the Authority also voted on a program management contract for engineering.



Hirschfeld v. Oklahoma Turnpike Auth. (cont'd)

- In February 2022, the Authority voted to approve or disapprove professional design contracts “for [the] **ACCESS Bond Program.**” The Authority also voted on a right-of-way management contract for “various turnpikes.” Finally at the February meeting, the Authority voted on utility management contract(s) for ACCESS Bond Program and Capital Program on “**various turnpikes.**” **No turnpikes or projects were identified.**
- Finally, during the director’s report at the February 2022 meeting, Gov. Stitt announces the ACCESS Program. OTA launches the ACCESS Program website with **proposed** routes. **This is the first time that the public is informed what ACCESS Oklahoma is.** Information about the projects was also the lead story in major media publications and with Oklahoma broadcast news.



Hirschfeld v. Oklahoma Turnpike Auth. (cont'd)

Trial court stage

- Landowners & residents affected by the South Extension filed suit in Cleveland County.
- District Judge Timothy Olsen ruled that OTA violated the OMA willfully and granted summary judgment to the landowners and residents.



Hirschfeld v. Oklahoma Turnpike Auth. (cont'd)

Appellate court stage

- On appeal, judgment was reversed and remanded with instructions to grant summary judgment in favor of OTA.
- Sufficient notice was given in the agenda items for the action proposed. Issuance of the bonds and proposed route were not up for possible action until June 2022.
- Because no action was taken with regard to ACCESS Oklahoma, the OMA did not require more notice about the announcement.
- Court went a step further and found that because it had exclusive jurisdiction to review and validate the bonds, it also had sole authority to review the OMA claims.



Best practices following *Hirschfeld*

- **NEVER** use phrases like “certain turnpike projects.” They’re vague and possibly deceptively so.
- **ALWAYS** address any “major” public announcements on an agenda separately and use language that is sufficiently informative rather than under “Director’s Report.”
- **ALWAYS** label non-finalized plans or proposed projects as a “DRAFT” or “PROPOSED.”



WHY SHOULD I COMPLY?



VIOLATIONS OF THE ACT

CIVIL IMPLICATIONS

- Actions taken in willful violation are ***invalid***.
- Minutes of executive session will be made public when OMA is violated.
- ***Any person*** can bring civil action. Successful party is entitled to reasonable attorney fees.

CRIMINAL PENALTIES

- Any willful violation, if convicted, is a **misdemeanor**, and is punishable by:
 - Fine up to \$500,
 - One (1) year in the county jail, or
 - Both.

ACCOUNTABILITY

- Following its decision in April 2021, the Oklahoma Supreme Court granted FOP's motion for appeal-related attorney fees. In a July 2021 journal entry order, the City of Norman and FOP agreed to just less than \$40,000.00 in attorney fees subject to a post-judgment interest rate of 5.25%.
- In late September 2023, a former public official agreed to a plea deal in which served 45 days in the county jail.



WILLFULNESS

“Willfulness does not require a showing of bad faith, malice, or wantonness, but rather, encompasses *conscious, purposeful violations of law¹ or blatant or deliberate disregard of the law²* by those who know, or should know . . . Notice of meetings of public bodies which are **deceptively vague¹** or *likely to **mislead²*** constitute a willful violation.”

[Rogers v. Excise Bd. of Greer Cnty., 1984 OK 95, 701 P.2d 754.](#)



Statutory Construction of the OMA

- Liberally construed to “further [Act’s] goals and in favor of public.” [Matter of Order Declaring Annexation Dated June 28, 1978, Issued by Frazier, 1981 OK CIV APP 57, 637 P.2d 1270.](#)
- Strict compliance; cannot get away with “substantial compliance.” See [State v. Patton, 1992 OK CR 57, 837 P.2d 483.](#)



CORRECTING AN INVALID ACTION

- ❑ Post advance notice,
- ❑ Post agenda timely with accurately worded agenda item, and
- ❑ Take item up, re-vote, and record the decision.



SECRETARY OF STATE'S OFFICE

- **Open Meeting Calendar:**

<https://www.sos.ok.gov/meetings/legacy/calendarOP.asp>

[X](#)

- **Email meeting notices to:** meetingnotices@sos.ok.gov

- **Forms:**

- [Notice of Regularly Scheduled Meetings](#)
- [Notice of Special Meeting or Change to Regularly Scheduled Meeting](#)





Questions?