

The Open Meeting Law and Public Records Act

The Vermont Standards Board
for Professional Educators

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Vermont's Open Meeting Law

- Public Body Defined
 - “any board council, or commission of the State or one or more of its political subdivisions... Any committee of any of the foregoing boards...” 1 V.S.A. § 310.
- Characteristics of Public Bodies
 - Warned, open meetings
 - Access to public records
 - Rules of order
 - Conflict of interest avoidance

Open Meeting Requirements

- In general:
 - Provide advance notice of meetings, including agendas.
 - Discuss the body's business in public, unless an exception applies.
 - Allow members of the public to attend and participate.
 - If a quorum or more of the members attend via electronic means, provide a staffed physical location for members of the public who wish to attend in-person.
 - Take meeting minutes and make them available to the public.

Notice

- The time and place of a public body's regular meetings should be designated by bylaw, resolution or other determining authority of the public body.
- The time, place and purpose of each special meeting must be publicly announced at least 24 hours before the meeting.
- Emergency meetings require notice “as soon as possible before any such meeting” but may be held only when necessary to respond to an unforeseen occurrence or condition requiring immediate attention by the public body.

Discussion in Public

- Members of public bodies must avoid participation in unwarned, nonpublic meetings.
- “Meeting” is defined as
 - A gathering of a quorum of a public body
 - For the purpose of discussing the business of the public body or for the purpose of taking action.
- Members should be mindful and avoid "meeting" in the context of telephone or electronic communication, as well as during recesses of publicly warned meetings.

Use of Executive Session

- No executive session may be held except in limited circumstances.
- Some permissible topics of discussion require a “specific finding that premature public knowledge would place the public body at a substantial disadvantage.”

Requires “Disadvantage” Finding:

- Contracts
- Labor relations agreements
- Arbitration/mediation
- Grievances
- Pending or probable litigation
- Legal advice

Without “Disadvantage” Finding:

- Real estate options
- Appointment, employment or evaluation of a public officer or employee
- Discipline or dismissal or public officer or employee
- Public safety
- Records exempt from public records act, including student academic records

Use of Executive Session

- Procedures:
 - A motion to enter executive session must receive a 2/3 majority.
 - The motion must indicate the nature of the business of the executive session.
 - No other matters may be considered during the executive session.
 - No formal or binding action may be taken*.
 - Minutes need not be taken, but any minutes are exempt from the public records act.
- Because topics of executive session are sensitive or privileged, confidentiality considerations are an important norm for public bodies to observe.

*Exception for certain real estate transactions. 1 V.S.A. § 313.

Public Participation

- At each meeting, the public must be allowed a “reasonable opportunity” to express opinions on matters considered at the meeting, as long as order is maintained.
- Public comment is subject to reasonable rules established by the chair.
- The rules established by the chair must be viewpoint neutral.

Meeting Minutes

- Minutes must be kept and must be posted to the body's website no later than five calendar days from the meeting.
- Minutes must include:
 - All topics and motions that arise at the meeting,
 - All members of the public body present,
 - All active participants in the meeting,
 - All motions made, including disposition of the motion,
 - The results of any votes, including a roll call if taken.

Questions on OML?

- Next stop, public records.

Public Records Act

- Public records are materials “produced or acquired” in the course of the agency business.
 - Use email responsibly and professionally.
 - The law makes no distinction between personal and official email accounts.
- Responding to requests for records
 - Notify the licensing office, and they will work with AOE’s public records officer.

Questions About Records?

- Next stop, Roberts Rules, the conflicts of interest.

Roberts Rules of Order

- Non-chair members should be familiar with the basics:
 - Motions require a second before consideration/debate can commence.
 - One motion may be considered at a time.
 - Motions may be withdrawn or amended with consent of the body.
 - Speakers should address comments during debate to the chair.

Conflict of Interest Avoidance

The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain: and that the public have confidence in the integrity of its government. (Vermont League of Cities and Towns).

It is important to avoid actual and perceived conflicts.

- (1) a situation in which a person has a duty to more than one person or organization, but cannot do justice to the actual or potentially adverse interests of both parties;
 - (2) when a public official's personal interests are contrary to his/her loyalty to the public business and/or interest.
- When a conflict or perceived conflict arises, a VSBPE member should briefly describe the nature of the conflict and recuse him or herself from the pertinent discussion and vote.