

Utah Open and Public Meetings Act

PRESENTED BY KRISTINA KINDL



Declaration of Public Policy

■ The state, its agencies, and political subdivisions exist to aid in the conduct of the people's business.

■ Therefore, the state, its agencies, and its political subdivisions

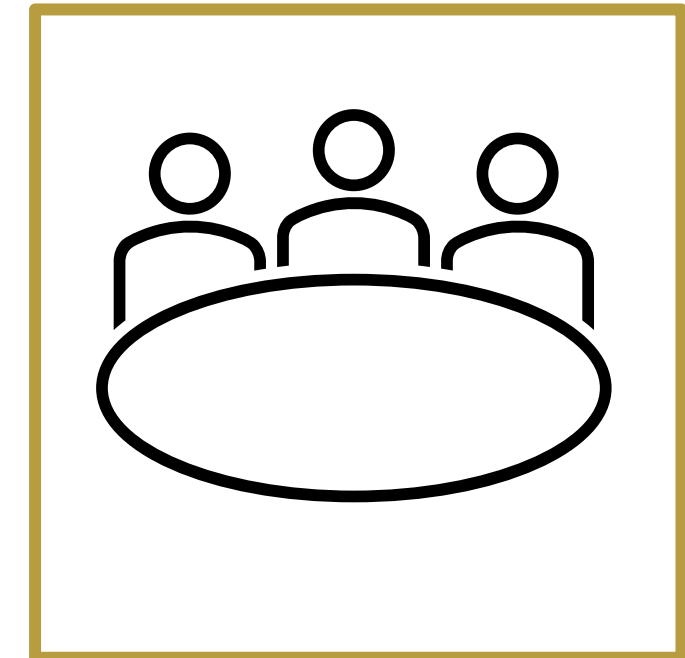
- *Should take their actions openly; and*
- *Conduct their deliberations openly.*

A lack of transparency
results in distrust and a
deep sense of
insecurity

Dalai Lama XIV

What is a Meeting?

- What a meeting is:
 - Convening, with a quorum present (majority), for the purpose of discussing, receiving comments from the public about, or acting upon a matter within the public body's scope of authority (jurisdiction) or advisory power.
 - This includes workshops and executive sessions
 - If four of the board members are communicating, they are at risk of being in a meeting.
- What a meeting is not:
 - *A chance social gathering*
 - *Convening only for the discussion or implementation of administrative or operational matters:*
 - *for which no formal action is required; or*
 - *that would not come before the public body for discussion or action.*



Basic Rule – Make Public Aware

Give at Least 24 Hours
Advance Notice of
Each Meeting

Agenda, Date, Time,
Location

Post Public Notice

District Office & Website
Public Notice Website
Provide to Newspaper or
Media

Notice of Annual
Meeting
Schedule

Agenda Requirements

- Must provide reasonable specificity to notify the public of the topics to be considered.
- Each topic must be listed as a separate agenda item – potential closed session items should be identified.
- “Non-agenda” topics may be discussed in an open meeting at the discretion of the Board President if raised by the public and no final action is taken.

Electronic Communications

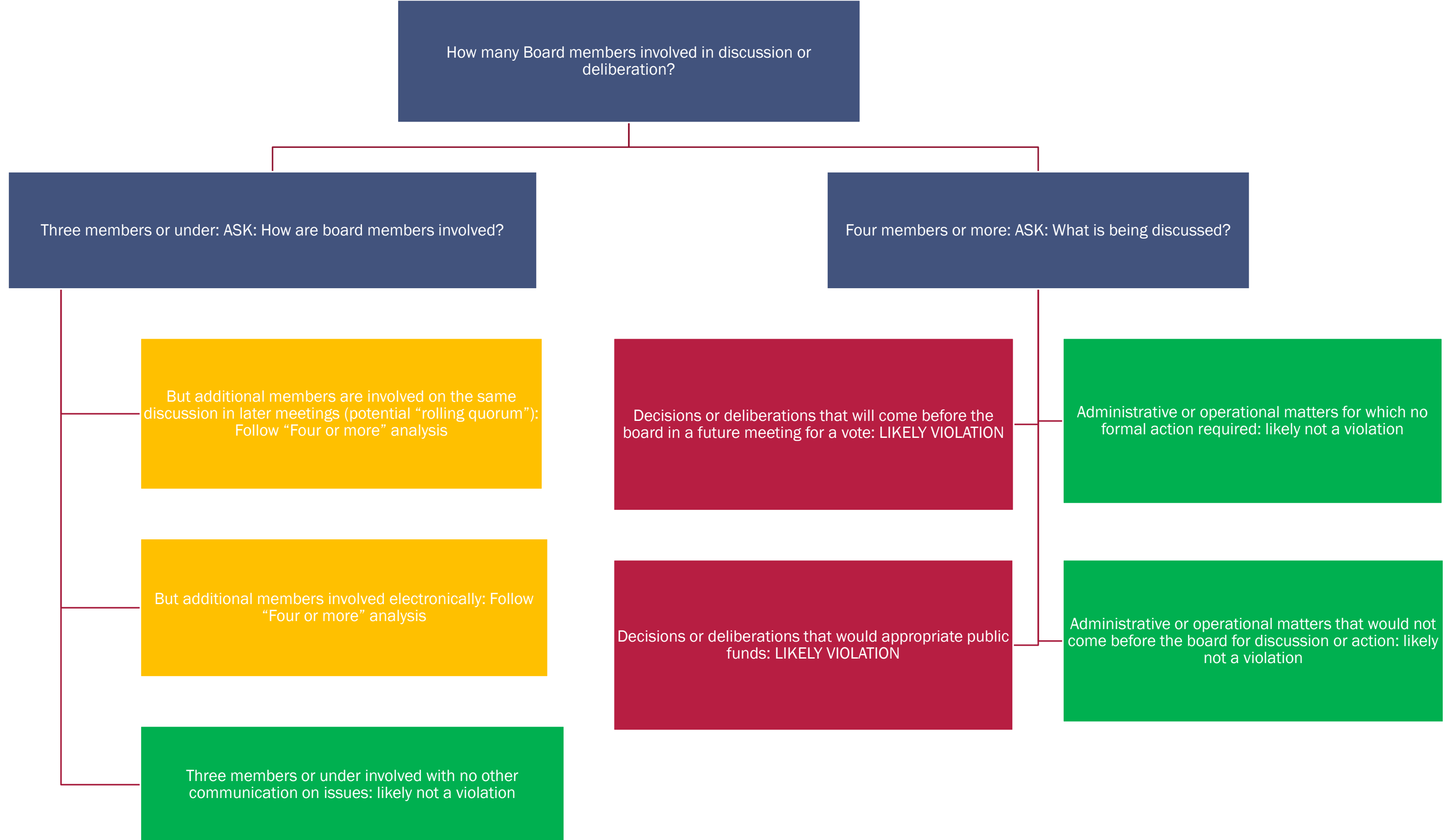
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When Do They Amount To A Meeting?



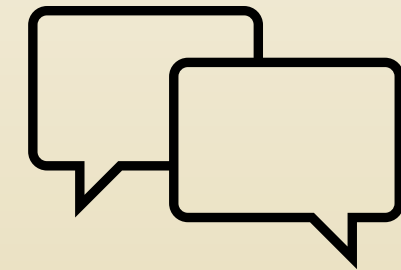
But If A Quorum Isn't Involved, We Are Compliant, Right?

“Courts are not so naive as to be blind to the fact that those inclined to violate the Open Meetings Law could do so using the quorum requirement as a shield. This could be done by conducting, in effect, the equivalent of a "public meeting" in a series of "closed meetings" with numbers of less than a quorum in each such meeting but totaling a quorum or more when taken together. In such closed meetings with less than a quorum, deliberations could be conducted, and votes taken with a public meeting then being held to ratify publicly that which had already been done in private. This would violate the spirit of our Sunshine Law and would render an unreasonable result that was not intended by our legislature.”

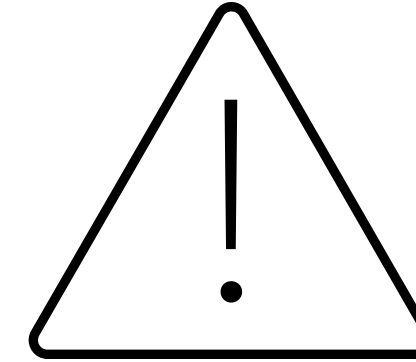


Ask Yourself When Communicating With Other Board Members...

- Are we communicating about official business?
- Will we be taking a vote on this matter?
- How many board members are involved in the communication?
- Is it a quorum, or is this a series of communications through electronic means that totals a quorum?
- Is there any evidence of trying to circumvent the spirit of the law?
- Are these emails or text messages public records subject to disclosure pursuant to GRAMA?



Be Cautious



- It is most likely a meeting and violates the law if:
 - A majority of board members participates in a conference call.
 - Serial meetings/rolling quorum – each consisting of less than a quorum.
 - A majority of board members use e-mail, text messaging, instant messages to express approval or disapproval of a matter that is likely to come before the board.
- Avoid the use of “reply all”, “copy” or “forward” to other board members.
- Not trying to discourage sharing information.

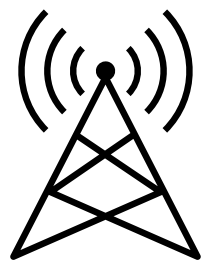
Emergency Meeting

- Can be held without complying with 24-hour notice requirements
 - *Must be of emergency or urgent nature*
 - *Must give as much notice as practicable*
 - *Majority of the board approves the meeting*
 - *Must attempt to notify all the members of the board*

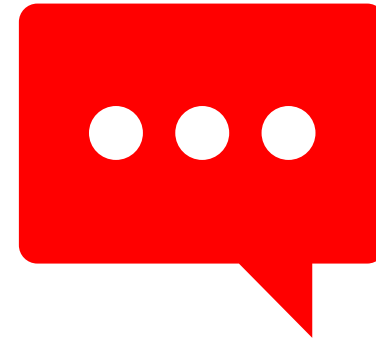


Electronic Meetings - Requirements

- Normally a physical “anchor location” must be established so that members of the public can attend the open portions of the meeting.
- However, an anchor location does not need to be established if the Board President determines that conducting the meeting presents “a substantial risk to the health and safety of those present or who would otherwise be present at the anchor location.”
 - The Board President’s determination and a summary of the facts upon which the determination is based must be included in the public notice. The public must be informed of how they can attend the meeting electronically.
 - This determination expires after 30 days.



Limited Public Forum






Just as a reminder, the public is welcome to attend the open portions of the meeting, but they do not have the right to speak or disrupt the proceedings.



The Act “does not prohibit the removal of any person from a meeting if the person willfully disrupts the meeting to the extent that orderly conduct is seriously compromised.”

Record of Public Meetings



- Must be recorded (audio is sufficient) – Available within three days
 - Must have a written record (Minutes)
 - *Date, time, place*
 - *Members present*
 - *Substance of all matters proposed, discussed or decided upon, which may include a summary of board member comments*
 - *Record – by individual board member – of each vote taken*
 - *Name of each individual (who is not a board member) who provided testimony or comments to the board, and a summary of such testimony/comments*
 - *Any other information that is a record of the proceedings of the meeting that any member requests be entered in the minutes or recording*
- 

Substance of Minutes

- Board may satisfy the requirement that minutes include the substance of matters proposed, discussed, or decided or the substance of public comments by maintaining a publicly available online version of the minutes that provides a link to the meeting recording at the place in the recording where the matter is proposed, discussed, or decided or the testimony or comments are provided.

Utah Code §52-2-203(2)(b)

Retention of Minutes

Written Minutes

- Approved minutes are permanent records.
- Must be kept in a format that meets long-term storage requirements

Utah Code §52-4-203

Availability to Public

- Pending minutes must be available within reasonable time after the meeting (30 days).
- Pending minutes are public records
 - Must be clearly identified as “unapproved” or “awaiting formal approval”

Texting During Meetings

Texting about matters over which the Board has jurisdiction during a meeting by and among board members does not conform to the Act's requirements that participation by board members be recorded.



“Discussing” During a Meeting

Hard NO on:

- Group or individual texts to other board members.
- Email deliberations during board meeting.
- **SAY IT SO THAT EVERYONE CAN HEAR IT!**



Email and other electronic communication

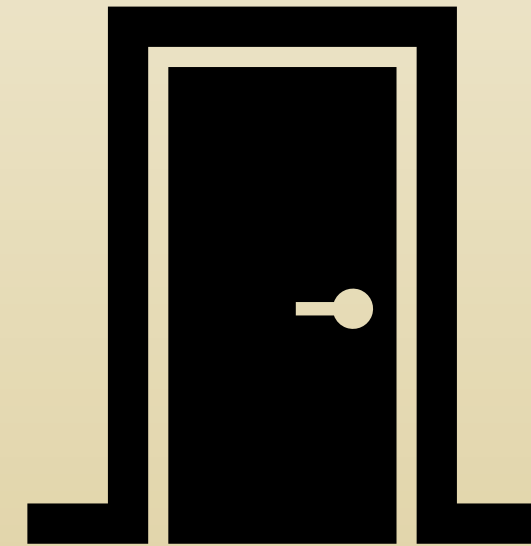
Nothing in the OPMA restricts a board member from transmitting an electronic message to other members of the board at a time when the board is not convened in an open meeting.

Utah Code §52-4-210

Closed Meetings

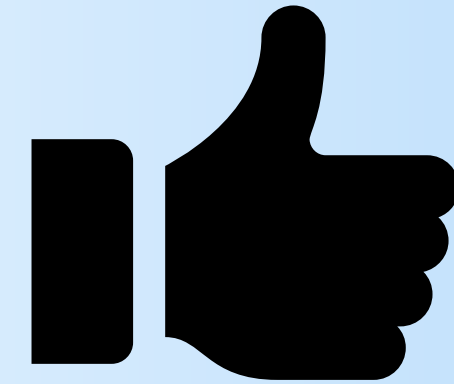
- Calling a closed meeting
 - *A quorum must be present*
 - *The meeting must be open (with proper notice)*
 - *2/3 vote approving closing the meeting*
 - *Must be a proper purpose under Utah Code §52-4-205*
- The reason(s) for closing the meeting must be announced and entered into the minutes
- The location of the closed meeting must be disclosed and entered into the minutes

Utah Code §52-4-204



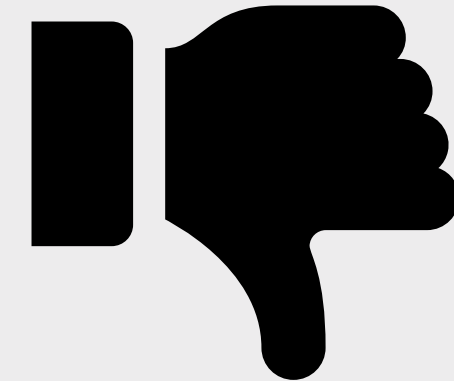
Closed Meetings - Proper

- Common Proper Topics for Closed Meeting
 - *Discuss an individual's character, competence, physical or mental health*
 - Not necessarily an employee
 - *Pending or reasonably imminent litigation (including administrative actions)*
 - *Collective bargaining*
 - *Property transaction (acquisition, sale, lease, exchange)*
 - *Deployment of security personnel, devices, or systems*
 - *Investigative proceedings regarding allegations of criminal misconduct*



Closed Meetings - Improper

- Improper Purposes of Closed Meeting Interview a person for an elected position
 - Discuss filling a midterm vacancy or temporary absence
 - Discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence
- The Board may not vote or take action in a closed meeting, including the Board's election of Board officers
 - Except – NEW – the only motion that can be made during a closed session is a motion to end the closed session. In order to pass, a majority of board members present must approve.



Closed Meetings Records

- Except when the meeting is closed *exclusively* to discuss an individual's character, professional competence, physical or mental health, or the deployment of security personnel devices or systems, the Act requires the Board make a record of the closed portion of the meeting
- May keep detailed written minutes that disclose the content of the closed portion of the meeting
- Must be complete and unedited from commencement to adjournment
- The recording must include: the date, time, and place; the names of members present and absent; and the names of all others present
- Both recording and written minutes of closed meetings are protected records under GRAMA, will only be released pursuant to a court order

VIOLATIONS



- Any individual denied any right under this chapter has the right to bring an action in Third District court.
 - If a violation is found to have occurred, any resulting action/vote would be voided.
 - Can “cure” violation by discussing the voidable action and taking a public vote in a subsequent meeting.
- If any board member knowingly or intentionally violates (or abets or advises a violation) of any of the closed meeting provisions of this chapter, is guilty of a class B misdemeanor (i.e., fine not to exceed \$2,500 and jail term not to exceed six months).

It's so lovely to
present to all of you

QUESTIONS?