

Open Meetings / Open Records

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1

County Training Program

A program provided by
The Oklahoma
Cooperative Extension Service
at Oklahoma State University

2

GOAL OF THIS SESSION:

***Help* Keep You Out of the News
(& from being sued & being charged) for
Violating the State Open Government Laws**

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3

3

Not intended as legal advice.

**When in doubt,
consult your district attorney.**

4

Another resource:

Anthony Sykes
Public Access Counselor
Oklahoma Attorney General's Office
opengov@oag.ok.gov

5

- **Who is an *elected official*?**
- **Who believes in *democracy*?**
- **What is a *democracy*?**
- **Who believes in *open government*?**
- **What is *open government*?**
- **Who believes in open government when it *applies to YOU*?**

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6

6

Why Does This Matter?

- You are expected to comply with the ***letter*** and the ***spirit*** of Oklahoma's Open Records and Open Meeting laws.

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7

7

The Statute provides the **letter** of the law:
But Courts and the state Attorney General
interpret what the statute means.

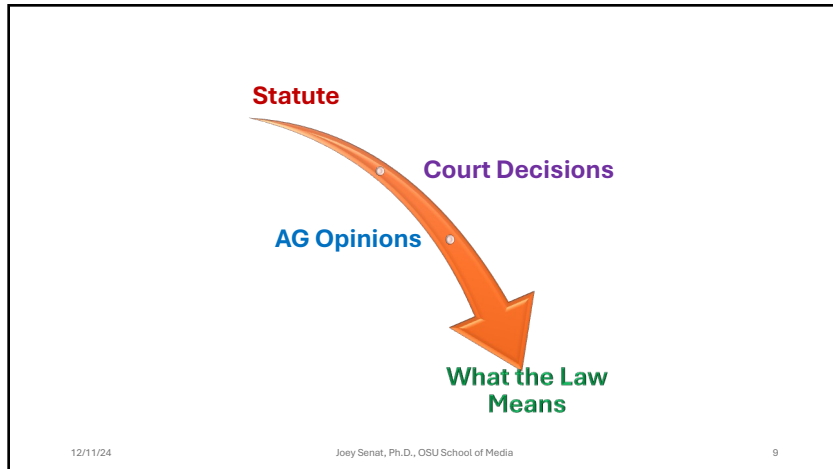
Interpret statute consistent with **legislative intent**. (2016 OK 119, ¶ 15)

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8

8



9

Statutory Construction

- Look to the *statute's language*.
- “We presume that the Legislature intends what it expresses.” (1995 OK 62, ¶ 5)

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10

Statutory Construction

- Don't presume the Legislature intended an ***absurd*** result.
- Give the statute a ***sensible*** construction, bearing in mind the ***evils intended to be avoided*** or the ***remedy afforded***. (1976 OK 14, ¶ 21)

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11

How to Apply the Statute When a Question Arises

- Look to the *applicable wording* of the statute.
- Look to judicial and attorney general opinions on that statutory section.
- **[OSCN.NET](#)**
- Keep in mind the legislative intent.

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12

Example of Answering a Question

May a board of county commissioners meet in another county some 240 miles from its county seat?

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13

13

When & Where Must Meetings be Held?

- **Statute:** Meetings must be held at “**specified times and places which are convenient to the public**” (25 O.S. § 303).
- **Court Case:** Excise board violated OMA by meeting in courthouse locked and closed for **Labor Day holiday** (1984 OK 95).

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14

14

When & Where Must Meetings be Held?

Other state statutes permit county commissions to:

- “Meet at times and in places ***within the county other than the county courthouse*** if it is determined that ***such meetings are beneficial to the general public***. *Such meetings shall be in compliance with the Oklahoma Open Meeting Act*” (19 O.S. § 326(B)).

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15

15

When & Where Must Meetings be Held?

Other state statutes permit county commissions to:

- “Hold their sessions for the transaction of business ***at any other suitable place in the county seat***” if “the county has no courthouse, or the courthouse shall be unfit or inconvenient” (19 O.S. § 348).

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16

16

When & Where Must Meetings be Held?

May a board of county commissioners meet in another county some 240 miles from its county seat?

NO, which the Attorney General’s Office advised the McCurtain County Board of Commissioners.
(May 15, 2024)

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17

17

Oklahoma Open Meeting Act

25 O.S. §§ 301-314

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18

18

What is the purpose of Open Meeting Act?

“Encourage and facilitate an informed citizenry’s *understanding* of the *governmental processes* and *governmental problems*.”

(25 O.S. § 302)

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19

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What is the purpose of Open Meeting Act?

- The Act serves its purpose by ***informing*** citizens “of the ***business*** the ***government will be conducting***.”

(2008 OK CIV APP 84, ¶ 10)

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20

20

Why is it important?

“**Transparency in government** provides citizens with the opportunity to **observe their government** and **understand how its decisions are made**. This idea forms the underpinning of Oklahoma's Open Meeting Act.”

(2020 OK AG 4, ¶1)

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21

21

Why is it important?

Legislature’s goal “was not simply to prevent or punish deliberate violations, but to **restore sadly sagging public confidence in government**, a goal which is hurt by every non-complying meeting regardless of whether or not the noncompliance resulted from evil motives.”

(1982 OK AG 212, ¶11)

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22

22

How to Apply the OMA

“Like other legislation enacted for the benefit of the public, open meeting laws are **liberally construed to further their goals and favor the public.**” (1981 OK CIV APP 57)

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23

23

How to Apply the OMA

To bring about and not subvert the Legislature’s intent to facilitate an informed citizenry’s right to participate in government and understand why government acts affecting their daily lives are taken. (1980 OK AG 215)

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24

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How to Apply the OMA

- **Avoid creating loopholes.** (1982 OK AG 212, ¶ 13)

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25

25

Public Bodies must

- Act within “both the *spirit* and *purpose* of the Open Meeting Act.” (1980 OK AG 144, ¶ 7)
- **Strictly adhere** to the statute. (1981 OK CIV APP 57, ¶ 20)

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26

26

What is Expected?

- Must operate with such openness that the ***citizenry is informed of its activities.*** (2000 OK AG 7, ¶ 30)
- “When in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State.” (1981 OK CIV APP 57)

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27

27

Robert’s Rules of Order

- **Do Robert’s Rules of Order supersede the Open Meeting Act?**
- May apply when the Open Meeting Act is silent but ***cannot trump*** the statute’s requirements or prohibitions. (1975 OK 147, ¶ 7)

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28

28

Robert's Rules of Order

Robert's Rules of Order: Can vote to add item at start of meeting prior to adopting the agenda.

Open Meeting Act: Item *not* listed on agenda can be added ONLY if *New Business* is an agenda item (Regular Meetings only) and the topic was not known about and could not have been reasonably foreseen prior to posting the agenda.

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29

29

When may two of three county commissioners have discussions together?

30

OMA does NOT apply...

- When meeting with governmental agencies or private entities to discuss “*broad general matters* that may be **related** to the business of the public body, but are **not matters on which the public body could take action.**”

(2012 OK AG 24, ¶ 9)

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31

31

OMA DOES apply...

- When “considering **discrete proposals** or **specific matters** that are **within** the **agency’s jurisdiction.**”
(2012 OK AG 24, ¶ 10)

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32

32

OMA DOES apply...

- When a **MAJORITY** convenes ...
 - “Solely to receive an **informational briefing** without taking action.”
 - or**
 - “To discuss **specific actions** that **may ultimately be voted upon.**”

(2020 OK AG 4, ¶ 11 10-11)

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33

33

OMA Does NOT apply...

- Members of public body may gather at parties, dinners or other social events.
- But **majority may not** meet informally “to **decide any action** or to **take any vote** on any matter.”
- **Majority may** gather informally as long as “**no business of the public body is discussed.**”

(§ 304(20))

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34

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May one county commissioner ask another about something *on which that board of county commissioners would never vote, e.g., how to do something?*

35

Open Records Act

51 O.S §§ 24A.1-33

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36

FOIA vs. Open Records Act

Freedom of Information Act

- Federal Agencies
- Federal Courts

Oklahoma Open Records Act

- State & Local Governments
- State Courts

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37

37

Why is public access to government records important?

38

“Openness in government is essential to the *functioning* of a democracy.”

- **Verify accountability** of **government officials**.
- **Checks against arbitrary exercise** of **official power** and **secrecy** in the **political process**.
- **Monitor** the manner in which public officers discharge their public **duties** and ensures that such actions are carried on in an **honest, efficient, faithful, and competent manner**.

• (2011 OK 68; 2014 OK 36)

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39

39

OKLAHOMA OPEN RECORDS ACT

- Oklahomans “are vested with the ***inherent right to know*** and ***be fully informed*** about ***their government***.”

(51 O.S. § 24A.2)

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40

40

OKLAHOMA OPEN RECORDS ACT

- Purpose is “to **ensure** and **facilitate** the public’s right of **access to** and **review of** government records so they may **efficiently** and **intelligently exercise** their **inherent political power.**”
(51O.S. § 24A.2)

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41

41

OKLAHOMA OPEN RECORDS ACT

- To fulfill that purpose, the Act imposes a **duty** on public agencies to provide records to the public.
(2005 OK AG 3, ¶ 4)
- “**All records** of public bodies and public officials shall be **open to any person** for **inspection, copying, or mechanical reproduction during regular business hours.**”
(51 O.S. § 24A.2)

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42

42

OKLAHOMA OPEN RECORDS ACT

- “**Non-disclosure**” or “**non-disparagement**” agreement does **NOT** supersede ORA. (2017 OK CIV APP 4, ¶ 8)
- “May **not** circumvent the Act by placing material otherwise subject to disclosure **solely** in the **custody** of a **non-public body or person.**” (2017 OK CIV APP 4, ¶ 9)

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OKLAHOMA OPEN RECORDS ACT

- Records policies and procedures of agencies “must be in the **letter** and **spirit** of the Open Records Act.”
(1999 OK AG 55, ¶ 22)

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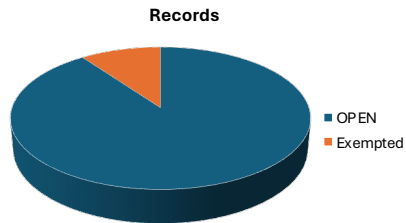
44

44

Presumption of Openness

- All records are **PRESUMED OPEN UNLESS specifically exempted by statute.**

(2003 OK 65, ¶ 12)



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45

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OKLAHOMA OPEN RECORDS ACT

When public agency denies access to record, *who must prove what?*

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46

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OKLAHOMA OPEN RECORDS ACT

- **Agency denying access** to a record bears the **burden of proving** that a **statutory exemption applies** to the record.

(2003 OK 65, ¶ 12)

- When in doubt, "**disclosure** is to be **avored over** a finding of **exemption.**"

(1986 OK 24, ¶ 22)

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47

47