

Oklahoma Open Meeting Act

Do's & Don'ts for Public Bodies

Joey Senat, Ph.D.
Associate Professor
OSU School of Media
Joey.senat@okstate.edu

4/9/23 Joey Senat, Ph.D., OSU School of Media 1

1

Not intended as legal advice.

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

4/9/23 Joey Senat, Ph.D., OSU School of Media 2

2

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)

4/9/23 Joey Senat, Ph.D., OSU School of Media 3

3

Statute

Court Decisions

AG Opinions

What the Law Means

4/9/23 Joey Senat, Ph.D., OSU School of Media 4

4

Statutory Construction

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

12/2/20

Joey Senat, Ph.D., OSU School of Media

5

5

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

6

6

Oklahoma Open Meeting Act

25 O.S. §§ 301-314

4/9/23

Joey Senat, Ph.D., OSU School of Media

7

7

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

8

8

What is the purpose of Open Meeting Act?

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

(2008 OK CIV APP 84, ¶ 10)

4/9/23

Joey Senat, Ph.D., OSU School of Media

9

9

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

10

10

How to Apply the OMA

- “**Liberally** in favor of the public.”
- WHY?
 - Because the Open Meeting Act was “**enacted** for the **public’s benefit.**” (1981 OK 95, ¶ 7)

4/9/23

Joey Senat, Ph.D., OSU School of Media

11

11

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

12

12

How to Apply the OMA

Must be given a construction that will ***effectuate 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)

12/2/20

Joey Senat, Ph.D., OSU School of Media

13

13

How to Apply the OMA

- “Should be interpreted in such a way as to ***avoid establishing potential evasion loopholes.***” (1982 OK AG 212, ¶ 13)

4/9/23

Joey Senat, Ph.D., OSU School of Media

14

14

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

15

15

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

16

16

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

17

17

Meeting Defined

- **"All meetings of public bodies shall be open to the public."** (2006 OK AG 17, ¶ 1)
- Conduct of business of the **majority** of a public body **being personally together or together videoconference or teleconference.** (§ 304(2)(8); § 306; § 307(A)(1)(c))
- **Not by email or text message.**

4/9/23

Joey Senat, Ph.D., OSU School of Media

18

18

Meeting Defined

- **"Should be assumed to include the entire decision-making process** including deliberation, decision or formal action."
(1982 OK AG 212, ¶ 3)
- Member may **NOT obtain a consensus** upon an item of business through a series of **private one-on-one meetings.**
(1981 OK AG 69, ¶ 17)

4/9/23

Joey Senat, Ph.D., OSU School of Media

19

19

Meeting Defined

- **But ...**

4/9/23

Joey Senat, Ph.D., OSU School of Media

20

20

Meeting Defined

- **Unless intended to circumvent the OMA**, a ...
 - **Minority** of members of a public body **may** gather to **receive information** and to **discuss business** of the public body. (2020 OK AG 4, ¶¶ 4-5)

4/9/23

Joey Senat, Ph.D., OSU School of Media

21

21

Meeting Defined

- **Unless intended to circumvent the OMA**, **single member may** host a series of sequential discussions with other members -- either one-on-one or in **small groups of less than a majority** -- to **present identical information** relevant to the public body's business. (Id. ¶¶ 6-8)

4/9/23

Joey Senat, Ph.D., OSU School of Media

22

22

Meeting Defined

- “If members **engage in vote-counting** or other **attempts to reach consensus** in this context, it will **likely be deemed a violation.**” (Id. ¶ 8)

4/9/23

Joey Senat, Ph.D., OSU School of Media

23

23

When may two of three county commissioners have discussions together?

4/9/23

Joey Senat, Ph.D., OSU School of Media

24

24

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

25

25

OMA DOES apply...

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

4/9/23

Joey Senat, Ph.D., OSU School of Media

26

26

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, ¶ ¶ 10-11)

4/9/23

Joey Senat, Ph.D., OSU School of Media

27

27

OMA DOES apply...

- When a *majority* meets with *experts* to *gain insight* into a matter under its purview.

(1982 OK AG 212; 2020 OK AG 4, ¶ 11)

4/9/23

Joey Senat, Ph.D., OSU School of Media

28

28

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))

4/9/23 Joey Senat, Ph.D., OSU School of Media 29

29

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

4/9/23 Joey Senat, Ph.D., OSU School of Media 30

30

When & Where Must Meetings be Held?

- Meetings must be held at “specified times and places which are convenient to the public.” (§ 303)

4/9/23 Joey Senat, Ph.D., OSU School of Media 31

31

Notices (When?)

KIND OF MEETING	ADVANCE NOTICE
Regular	by Dec. 15 <ul style="list-style-type: none"> • No less than 10 days advance notice if change in date, time or place.

4/9/23 Joey Senat, Ph.D., OSU School of Media 32

32

Notices (When?)

KIND OF MEETING	ADVANCE NOTICE
Special	<p>at least 48 hours</p> <ul style="list-style-type: none"> Includes weekends & state holidays. Must be mailed or delivered to anyone who has filed written request but may charge \$18 annually for such notification.

4/9/23 Joey Senat, Ph.D., OSU School of Media 33

33

Notices (When)

KIND OF MEETING	ADVANCE NOTICE	
Emergency	<p>As much time as reasonable, possible under circumstances, in person or by telephonic or electronic means.</p>	
Continued or Reconvened	<p>Date, time and place must be announced at the original meeting</p>	<p>Only matters on the agenda of the original meeting may be discussed</p>

4/9/23 Joey Senat, Ph.D., OSU School of Media 34

34

Notices (Where)

KIND OF PUBLIC BODY	ADVANCE NOTICE	
COUNTY	<p>County Clerk</p>	
Multicounty, Regional, Area-wide or District	<p>County clerk where the body is principally located. If no office, give notice "to the county clerk of the county or counties served."</p>	

4/9/23 Joey Senat, Ph.D., OSU School of Media 35

35

Where/When to Post *Agendas* for Regular / Special Meetings?

- Post it in "***prominent public view*** at the ***principal office*** or at the ***location of the meeting if no office exists***" at least **24 full hours** – excluding weekends and state holidays – in advance of the meeting.
- **OR**

4/9/23 Joey Senat, Ph.D., OSU School of Media 36

36

Where/When to Post *Agendas* for Regular / Special Meetings?

- Post on **website** and provide **free via email** no less than 24 hours — excluding weekends and state holidays — prior to the meeting.
- **AND**
- Make **available** in **principal office** or at **location** of meeting **during normal business** hours at least 24 hours – excluding weekends and state holidays – in advance. (§ 311(A)(9)(b)(12))

4/9/23

Joey Senat, Ph.D., OSU School of Media

37

37

What is an Agenda?

- List, outline, or plan of things to be considered or done;
- Memorandum of things to be done, as items of business **or discussion** to be brought up at a meeting.

(1981 OK CR 78, ¶ 7)

4/9/23

Joey Senat, Ph.D., OSU School of Media

38

38

WHO sets the Agenda?

- Handbook for County Clerks of Oklahoma:
 - “The County Clerk must ensure that agendas are prepared and posted, according to the statutes, prior to the sessions.” (7-2)

4/9/23

Joey Senat, Ph.D., OSU School of Media

39

39

WHO sets the Agenda?

- BUT the statute cited to support that proposition don't mention the power to prepare the agenda.

4/9/23

Joey Senat, Ph.D., OSU School of Media

40

40

WHO sets the Agenda?

“The county clerk shall attend the sessions of the board of county commissioners, either in person or by deputy, shall keep the seals, records and papers of said board of commissioners and shall sign the records of the proceedings of the board of county commissioners and attest the same with the seal of the county.” (19 O.S. § 243)

4/9/23

Joey Senat, Ph.D., OSU School of Media

41

41

Agenda Must Include?

- Date, time, place of the meeting as given in the advance notice. (§ 311(B)(9)(11))

4/9/23

Joey Senat, Ph.D., OSU School of Media

42

42

Agenda Must Identify?

- **All items of business** to be transacted by a public body at a meeting. (§ 311(B)(1))
- **Include items to be discussed with no action taken?**
 - **YES.** (1982 OK AG 114, ¶ 10)

4/9/23

Joey Senat, Ph.D., OSU School of Media

43

43

Agenda Must Identify?

- ACCESS Oklahoma plan *not* on OTA agenda but was discussed by Gov. Stitt and others under “Director’s Report.”
- OTA argued no violation because no action taken.

4/9/23

Joey Senat, Ph.D., OSU School of Media

44

44

Agenda Must Identify?

“OTA's arguments are *without merit*. The OMA is ***not limited*** to Agenda items or business where ***official action*** is taken.”

“Oklahoma case law supports the position that the ***OMA requires notice of all items to be discussed and presented, even if not on for approval or a vote.***” -- Judge Olsen

4/9/23

Joey Senat, Ph.D., OSU School of Media

45

45

How Must Agenda Be Worded?

- ***Plain language*** directly stating the purpose of the meeting to give the public ***actual notice***.

- ***Simple, direct language comprehensible*** to a person of ***ordinary education, intelligence***.

(1981 OK CIV APP 56, ¶ 9)

4/9/23

Joey Senat, Ph.D., OSU School of Media

46

46

How Must Agenda Be Worded?

- Purpose is defeated if required notice is ***deceptively worded*** or ***materially obscures*** stated purpose of meeting.

(1981 OK CIV APP 56, ¶ 9)

4/9/23

Joey Senat, Ph.D., OSU School of Media

47

47

Toad Lick County Budget Board

- **Consideration of Adoption of FYE 2022 Toad Lick County Budget**

4/9/23

Joey Senat, Ph.D., OSU School of Media

48

48

Toad Lick County Budget Board

- Prior to the meeting, three members had decided they wanted to amend the proposed budget for the sheriff by moving \$630,000 to community outreach programs.
- At the meeting, their motion to do so was approved 5-3 after lengthy discussion and arguments.

4/9/23 Joey Senat, Ph.D., OSU School of Media 49

49

Toad Lick County Budget Board

- **Consideration of Adoption of FYE 2022 Toad Lick County Budget**
- **Does this language comply with the Open Meeting Act?**

4/9/23 Joey Senat, Ph.D., OSU School of Media 50

50

Toad Lick County Budget Board

“Language used in the agenda was *deceptively vague* and *likely to mislead* regarding the meeting and was therefore a *willful violation* of the Act.”

(2021 OK 20, ¶ 20)

4/9/23 Joey Senat, Ph.D., OSU School of Media 51

51

Toad Lick County Budget Board

Agenda language “failed to distinguish ‘consideration’ of the ... budget from further ‘amendment’ to the ... budget.”

(Id. ¶ 10)

4/9/23 Joey Senat, Ph.D., OSU School of Media 52

52

Toad Lick County Budget Board

A “person of ordinary education and intelligence” would have understood that the Council might or might not *approve* the proposed budget but “would **not** have understood that Council could possibly *introduce and adopt new amendments* to the proposed city budget at the special meeting.” (*Id.* ¶ 36)

4/9/23 Joey Senat, Ph.D., OSU School of Media 53

53

Toad Lick County Budget Board

- As written, the agenda item “specifically *limited* Council’s potential actions to *adopting or rejecting* the city budget, thereby concealing the actions taken by Council.”
(*Id.* ¶ 18)

4/9/23 Joey Senat, Ph.D., OSU School of Media 54

54

Toad Lick County Budget Board

- Solutions?

4/9/23 Joey Senat, Ph.D., OSU School of Media 55

55

Toad Lick County Budget Board

- If had wanted to amend budget after discussion under that agenda item, “the Open Meeting Act required that Council *call a separate meeting and give proper notice* to the public of its intentions.”
(*Id.* ¶ 18)

4/9/23 Joey Senat, Ph.D., OSU School of Media 56

56

Toad Lick County Budget Board

- Or, use different agenda language:
- “Consideration of Adoption, Rejection, **Amendment**, and/or **Postponement** of the FYE 2022 City of Norman Proposed Operating and Capital Budgets.”

4/9/23 Joey Senat, Ph.D., OSU School of Media 57

57

Poll: Toad Lick County Commission Regular Meeting Agenda Items

- **New Business:**
 - **Proposed Policy – Dogs in the Courthouse**
- **Miscellaneous items**
- **Old Business**
- **Other Business**
- **Open Discussion**
- **Executive Session If Needed**
- **Public Comments**

4/9/23 Joey Senat, Ph.D., OSU School of Media 58

58

Definition of New Business?

- Must be on agenda for public body to discuss “any matter ***not known about*** or which could ***not have been reasonably foreseen*** prior to the time of posting.”
(§ 311(A)(9))
- Cannot** be discussed at a ***special*** or ***continued*** meeting. (§ 311(A)(12))

4/9/23 Joey Senat, Ph.D., OSU School of Media 59

59

Definition of New Business?

- Executive sessions may be conducted under “new business” if subject legitimately arose after agenda posted and is permitted topic. (1982 OK AG 114, ¶ 15)

4/9/23 Joey Senat, Ph.D., OSU School of Media 60

60

Correct Agenda Item?

- New Business
- Nothing should be listed under New Business.

4/9/23

Joey Senat, Ph.D., OSU School of Media

61

61

Vote on New Business?

- **May vote** on item raised under *new business* if it meets statutory definition.
- County commissioners were entitled to enact resolution regulating solid waste landfills if passage met the definition of “new business.”
(1981 OK AG 92, ¶¶ 5 & 11)

4/9/23

Joey Senat, Ph.D., OSU School of Media

62

62

Correct Agenda Items?

- Miscellaneous items
- Old Business
- Other Business
- Open Discussion

4/9/23

Joey Senat, Ph.D., OSU School of Media

63

63

Correct Agenda Items?

- Must *list items* to be *discussed*.
- Public bodies are **NOT** permitted to consider items of “*old business*” *not specifically listed* on the agenda.

(2009 OK CIV APP 51)

4/9/23

Joey Senat, Ph.D., OSU School of Media

64

64

Put Bulleted Items Under Reports

- Do **NOT** use “cryptic” agenda language to hide what you will do in a meeting.
- Do **NOT** try to hide items of business by putting it under “report.”

Gay Tudor, General Counsel to AG, 2009
 Abby Dillsaver, General Counsel to AG, 2019

4/9/23

Joey Senat, Ph.D., OSU School of Media

65

65

Put Bulleted Items Under Reports

- Attorney General’s Office prefers for such reports to have bulleted points for items under the report.

Gay Tudor, General Counsel to AG, 2009
 Abby Dillsaver, General Counsel to AG, 2019

4/9/23

Joey Senat, Ph.D., OSU School of Media

66

66

Put Bulleted Items Under Reports

- OTA “Director’s Report” (Feb. 22, 2022) “which contained no explanation or any indication of what the Director would be reporting.”
 - Gov. Stitt and others outlined the ACCESS Oklahoma plan for turnpikes.

4/9/23

Joey Senat, Ph.D., OSU School of Media

67

67

Put Bulleted Items Under Reports

- Judge declared a willful violation.

“Absolutely nothing was on the formal Agenda notifying the public that this would be addressed or ‘officially’ unveiled at the meeting.”

4/9/23

Joey Senat, Ph.D., OSU School of Media

68

68

Put Bulleted Items Under Reports

“The Agenda should have informed the public that this was one of the purposes of the meeting and that Governor Stitt was going to make a presentation on the topic at the meeting.”

4/9/23

Joey Senat, Ph.D., OSU School of Media

69

69

Conduct of Meetings

4/9/23

Joey Senat, Ph.D., OSU School of Media

70

70

Open Meeting Act Violation?

All three commissioners and ADA for the BOC gather at the front table to quietly discuss an agenda item up for discussion and vote. No one else can hear the conversation. After about 5 minutes, they returned to their chairs.

4/9/23

Joey Senat, Ph.D., OSU School of Media

71

71

How do we interpret the Open Meeting Act?

4/9/23

Joey Senat, Ph.D., OSU School of Media

72

72

Open Meeting Act Violation?

- 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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

73

73

Public Bodies must

- Act within “both the **spirit** and **purpose** of the Open Meeting Act.” (1980 OK AG 144, ¶ 7)

4/9/23

Joey Senat, Ph.D., OSU School of Media

74

74

What is the statute's purpose?

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

(25 O.S. § 302)

4/9/23

Joey Senat, Ph.D., OSU School of Media

75

75

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)

4/9/23

Joey Senat, Ph.D., OSU School of Media

76

76

How to Apply the OMA

- **“*Liberally* in favor of the public.”**
- Because the Open Meeting Act was **“*enacted* for the **public’s benefit.**”**

(1981 OK 95, ¶ 7)

4/9/23 Joey Senat, Ph.D., OSU School of Media 77

77

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)

4/9/23 Joey Senat, Ph.D., OSU School of Media 78

78

How to Apply the OMA

Must be given a construction that will ***effectuate 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)

12/2/20 Joey Senat, Ph.D., OSU School of Media 79

79

How to Apply the OMA

- “Should be interpreted in such a way as to ***avoid establishing potential evasion loopholes.***” (1982 OK AG 212, ¶ 13)

4/9/23 Joey Senat, Ph.D., OSU School of Media 80

80

Meeting

- “Should be assumed to include the ***entire decision-making process*** including **deliberation**, decision or formal action.”

(1982 OK AG 212, ¶ 3)

4/9/23

Joey Senat, Ph.D., OSU School of Media

81

81

Tulsa City Council

- Two Tulsa City Council members who texted each other and a third member during a meeting were sued under the Open Meeting Act last week.
- [Culver v. City of Tulsa, No. CV-2023-638 \(Tulsa Cnty. March 29, 2023\)](#)

4/9/23

Joey Senat, Ph.D., OSU School of Media

82

82

Tulsa City Council

- Lawsuit argues: For a meeting to be open to the public, “the ***public must be able to see and hear all the discourse of all members*** of the public body.”
- Conversely, “a meeting is ***not open*** if the ***public cannot hear the members*** of the public body ***while they discuss agenda items*** during the public meeting.”

4/9/23

Joey Senat, Ph.D., OSU School of Media

83

83

Solution to Conduct Private Discussion?

- Called for an **executive session** provided the agenda included “**new business**” as an item and the **topic qualified as new business** and **for an executive session**.
- BOC would have been obligated to explain the purpose and item of business to be discussed in that executive session.

4/9/23

Joey Senat, Ph.D., OSU School of Media

84

84

Executive Sessions

- “Executive sessions are not permitted under the law because the matters to be taken up are in the private domain of public officials. Such matters **are the business of the public**. Executive sessions exist only for the purpose of compromising equally important policy commitments which come into conflict.”

(1982 OK AG 114, ¶ 12)

4/9/23

Joey Senat, Ph.D., OSU School of Media

85

85

Executive Sessions

- May *not* go into executive session *unless* certain “**procedures are strictly complied with.**” (§ 307(E))

4/9/23

Joey Senat, Ph.D., OSU School of Media

86

86

Proposed executive session must be noted on agenda and ...

- Contain sufficient information for the public to ascertain that an executive session will be proposed;
- Identify the items of business **and** purposes of the executive session; and
- State the specific statutory authorization for the executive session. (§ 311(B)(2)(a-c))

4/9/23

Joey Senat, Ph.D., OSU School of Media

87

87

Among the 10 Topics for Executive Sessions

- Employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee. (§ 307(B)(1))
 - Must include name or unique title of person subject of the discussion. (1997 OK AG 61)
 - If hiring, must identify the position. (1997 OK AG 61)

4/9/23

Joey Senat, Ph.D., OSU School of Media

88

88

Among the 10 Topics for Executive Sessions

- Board of county commissioners may hold executive session to discuss the appointment of individual to fill a vacancy in an elective county office pursuant to Okla. Stat. tit. 51, § 10(b). (1992 OK AG 23)

4/9/23

Joey Senat, Ph.D., OSU School of Media

89

89

Among the 10 Topics for Executive Sessions

- **NOT** meet in executive session to discuss “a job opening for a public officer or employee when *no particular individual is to be discussed.*” (2006 OK AG 17, ¶ 10)
- **NOT** discuss hiring of *independent contractors*, including those providing professional services. (2005 OK AG 29, ¶ 13)

4/9/23

Joey Senat, Ph.D., OSU School of Media

90

90

Among the 10 Topics for Executive Sessions

- “Employment” includes “continued employment and conditions of employment such as place of employment, salary, duties to be performed and evaluations.” (1996 OK AG 40)

4/9/23

Joey Senat, Ph.D., OSU School of Media

91

91

Among the 10 Topics for Executive Sessions

- **BUT** listing an executive session to discuss “the *employment, hiring, resignation*” of a city manager was “**not sufficient** ... to inform a person of ordinary education and intelligence” that the city council was **considering paying that employee a \$30,000 bonus.** (2008 OK CIV APP 84, ¶ 11)

4/9/23

Joey Senat, Ph.D., OSU School of Media

92

92

Among the 10 Topics for Executive Sessions

- Purchase or appraisal of real property. (§ 307(B)(3))
 - **Only** when **public body is purchaser** of the real property, not seller. (2007 OK AG 32, ¶ 6)
 - **Attendance limited** to members of the public body, the attorney for the public body and the immediate staff of the public body. (§ 307(D))

4/9/23

Joey Senat, Ph.D., OSU School of Media

93

93

Among the 10 Topics for Executive Sessions

- Confidential communications between public body and attorney concerning pending investigation, claim, or action **if** public body, with advice of attorney, determines disclosure will seriously impair the ability of public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest. (§ 307(B)(4))

4/9/23

Joey Senat, Ph.D., OSU School of Media

94

94

Among the 10 Topics for Executive Sessions

- Pending claim can refer to litigation or administrative action that **either exists** or is **merely potential** or **anticipated**. (2005 OK AG 29, ¶ 13)

4/9/23

Joey Senat, Ph.D., OSU School of Media

95

95

Among the 10 Topics for Executive Sessions

- May **not close** meeting merely to get **general legal advice** from attorney that does not meet the standard of **serious impairment** and **injury** to public interest. (2005 OK AG 29, ¶ 13)
- **Must identify** specific investigation, claim or action to be discussed.

4/9/23

Joey Senat, Ph.D., OSU School of Media

96

96

Executive Sessions

- Majority of a quorum of the members present vote in the public meeting to enter the executive session.
 - Vote is recorded.
- May **NOT** vote during executive session.
 - Any vote or action taken on item considered in executive session must be publicly cast and recorded.

4/9/23

Joey Senat, Ph.D., OSU School of Media

97

97

Executive Sessions

- Written minutes must be kept.
- Minutes are confidential and “should be kept sealed and in a separate file from the minutes of the open session of the open meeting.” (1996 OK AG 100, ¶ 6 n. 2)

4/9/23

Joey Senat, Ph.D., OSU School of Media

98

98

Executive Sessions

- Willful violation of OMA would cause minutes and other records of session, including tape recordings, “to be immediately made public.” (§ 307(F)(1-2))

4/9/23

Joey Senat, Ph.D., OSU School of Media

99

99

Conduct of Meetings

- Each member’s vote “must be publicly cast and recorded.” (§ 305)
 - Roll Call vote recommended by AG.
 - **CanNOT** vote by mail. (1980 OK AG 144)

4/9/23

Joey Senat, Ph.D., OSU School of Media

100

100

Conduct of Meetings

- Must keep written minutes of its meetings, including executive session discussions. (§ 312(A))
 - “An official summary of the proceedings showing clearly *those members present and absent, all matters considered by the public body, and all actions taken by such public body.*” (§ 312(A))

4/9/23

Joey Senat, Ph.D., OSU School of Media

101

101

Conduct of Meetings

- Person employed as the “*minute clerk*” is ***not statutorily required*** to take the minutes of a board’s executive session.
- ***Any person legally present*** during an executive session may take the minutes.
 - 1996 OK AG 100

4/9/23

Joey Senat, Ph.D., OSU School of Media

102

102

How Must Meeting Minutes Be Written?

- Record when members of a public body are absent during portions of a meeting. (2012 OK AG 24, ¶ 22)
- Written *summary* of the proceedings, not a word for word transcription. (1996 OK AG 100, ¶ 6)
- “Should be written in *plain language* that may be easily understood by a person with ordinary education and intelligence.” (2012 OK AG 24, ¶ 23)

4/9/23

Joey Senat, Ph.D., OSU School of Media

103

103

How Must Meeting Minutes Be Written?

- Minutes for an *emergency meeting* ***must include*** “the *nature of the emergency* and the proceedings occurring at such meeting, including *reasons for declaring such emergency meeting.*” (§ 312(B))
- Minutes for each public meeting must be open for public inspection. (§ 312(A))

4/9/23

Joey Senat, Ph.D., OSU School of Media

104

104

Public Comments

- Does the public have a right under the Open Meeting Act or the First Amendment to speak at open meetings of public bodies?

- NO

(1998 OK AG 45; 2002 OK AG 44, ¶ 3; Shero v. City of Grove, No. 05-CV-0137-CVE-PJC, 2006 U.S. Dist. LEXIS 80462, at *13 (N.D. Okla. Nov. 2, 2006))

4/9/23

Joey Senat, Ph.D., OSU School of Media

105

105

Public Comments

- If allow public comment, may establish *reasonable time, place and manner restrictions*.
- Restrictions on speakers must be *content-neutral*. Individuals cannot be prevented from speaking based on content of their speech.

▶ 1998 OK AG 45, ¶ 10. See also 2002 OK AG 44, ¶ 7

4/9/23

Joey Senat, Ph.D., OSU School of Media

106

106

Public Comments

- Public is entitled to comment during *public hearings* conducted under *other state statutes*.

4/9/23

Joey Senat, Ph.D., OSU School of Media

107

107

Public Comments

- *County budget board: Public hearing on proposed budget no less than 15 days prior to beginning of budget year.*
- Notice of date, time & place of hearing, along with proposed budget summaries, shall be published on county's website & in general circulation newspaper in county no less than 5 days before date of hearing.

(County Budget Act, O.S. 19, § 1412)

4/9/23

Joey Senat, Ph.D., OSU School of Media

108

108

Public Comments

- At the *public hearing* on the budgets, *any person* may present to the county budget board *comments, recommendations* or *information* on any part of the proposed budget.

(County Budget Act, O.S. 19, § 1412)

4/9/23 Joey Senat, Ph.D., OSU School of Media 109

109

Public Comments

- At the *county excise board's* first annual meeting, it must set the time and place for *public hearings* at which any taxpayer may be heard for or against any part of the statements of estimated needs for current expense purposes for the current fiscal year as certified by each of the municipalities.

(68 O.S. 3012)

4/9/23 Joey Senat, Ph.D., OSU School of Media 110

110

Conduct of Meetings

- Must vote to adjourn meeting.
- Return from executive session to adjourn in public.

4/9/23 Joey Senat, Ph.D., OSU School of Media 111

111

Consequences for Non-Compliance

4/9/23 Joey Senat, Ph.D., OSU School of Media 112

112

Who can sue over violation of Open Meeting Act?

- **Anyone.**
- **DON'T** have to prove *individually injured* by the alleged violation. (§ 314(B)(1))

4/9/23

Joey Senat, Ph.D., OSU School of Media

113

113

Lawsuits

- Successful plaintiff “shall be entitled to reasonable attorney fees. (§ 314(B)(2))
- Also recover court costs at judge’s discretion. (tit. 12, § 930)

4/9/23

Joey Senat, Ph.D., OSU School of Media

114

114

MISDEMEANOR

- Maximum
 - \$500 fine & 1 year in county jail (§ 314(A))
- Entitled to jury trial.

4/9/23

Joey Senat, Ph.D., OSU School of Media

115

115

MISDEMEANOR

- As a penal statute, OMA must be *strictly construed*.
- State need only prove a willful failure to comply. *Criminal intent need not be proved* because *conduct is illegal by virtue of OMA*. (1981 OK CR 78, ¶ 5)
- Prosecutors *don't have to prove injury*. (1981 OK CR 78, ¶ 8)

4/9/23

Joey Senat, Ph.D., OSU School of Media

116

116

MISDEMEANOR

- Nowata city commissioners
 - suspended 1-year sentences
- Boynton town trustees
 - suspended 1-year sentences & \$500 fines
 - deferred 1-year sentence & \$250 fine

4/9/23

Joey Senat, Ph.D., OSU School of Media

117

117

MISDEMEANOR

- 4 Billings School Board members arrested, charged Nov. 21, 2022, with violating Open Meeting Act.
 - Met multiple times outside of public meetings, including to hire a new superintendent.
 - Three board members decided in a series of phone calls to allow a student to bring a date to prom who doesn't attend the school. The district policy is for a student to get approval from the school board.

4/9/23

Joey Senat, Ph.D., OSU School of Media

118

118

Action Declared Invalid

- Any action taken in “willful violation” of the Open Meeting Act is “invalid.” (§ 313)
- **Acting upon *advice of an attorney* did *not excuse* a public body’s violation of the Open Meeting Act.** (2009 OK CIV APP 51, ¶ 17)

4/9/23

Joey Senat, Ph.D., OSU School of Media

119

119

What does “willful” mean?

“If willful is narrowly interpreted, if actions taken in violation of the Act could *not* be set aside unless done in bad faith, maliciously, obstinately, with a premeditated evil design and intent to do wrong, then the public would be ***left helpless to enforce*** the Act most of the time and ***public bodies could go merrily along, in good faith, ignoring the Act.***”

(1981 OK CIV APP 57, ¶ 26)

4/9/23

Joey Senat, Ph.D., OSU School of Media

120

120

What does “willful” mean?

- “Willfulness does *not* require a showing of *bad faith, malice, or wantonness*, but rather, *encompasses conscious, purposeful* violations of the law **or blatant or deliberate disregard of the law by those who know, or should know** the requirements of the Act.”

(1984 OK 95, ¶ 14)

4/9/23

Joey Senat, Ph.D., OSU School of Media

121

121

What does “willful” mean?

- BUT ... A willful violation is *not* shown “by merely pointing to (1) *an official’s knowledge* of a statutory duty and (2) *a result which is an actual failure* to perform this duty.”

(2022 OK 50, ¶ 38)

4/9/23

Joey Senat, Ph.D., OSU School of Media

122

122

What does “willful” mean?

Important to answer:

- **Why** an official’s notice did not comply,
- **Manner** of noncompliance,
- **Frequency** of noncompliance,
- **Extent** of noncompliance, and
- **Effect** of noncompliance.

(*Id.* ¶¶ 38, 52)

4/9/23

Joey Senat, Ph.D., OSU School of Media

123

123

What does “willful” mean?

State agency director’s *inadvertent failure* to include the Secretary of State’s Office among some 30 entities and individuals receiving an emailed notice of a special meeting did *not* constitute a **willful** violation.

(2022 OK 50)

4/9/23

Joey Senat, Ph.D., OSU School of Media

124

124

What does “willful” mean?

Failure was an *honest mistake* that occurred on *one occasion* while using a group email that *included the plaintiff’s attorney* and *during unusual circumstances* involving a perceived need for timely regulations concerning public safety.

4/9/23

Joey Senat, Ph.D., OSU School of Media

125

125

What does “willful” mean?

Failure did *not frustrate* the OMA’s purpose.

- No one suggested that anyone was waiting for the Secretary of State's notice as a means to participate in the meeting
- No one complained at the time.

4/9/23

Joey Senat, Ph.D., OSU School of Media

126

126

Not Just Mere Words

“The Oklahoma Legislature, elected voice of the people of this state, mandated open meetings.... We in the judiciary are bound to honor that mandate. **[W]ithout vigorous enforcement in the courts, laudable legislation is reduced to ‘mere words.’ Well, not this laudable legislation, not in this Court, not in this case. The Legislature has said, ‘Let the sun shine on government.’ So say we today.”**

4/9/23

Joey Senat, Ph.D., OSU School of Media

127

127