

The Public Meetings Act

Disclaimer

- ▶ The Attorney General's Office represents the Wyoming Department of Agriculture and the Wyoming Board of Agriculture. Through that role, the Attorney General's Office may be called upon to provide legal advice to conservation districts on issues of general interest, as requested by the Director of the Department of Agriculture.
- ▶ As a result, at the request of the Director of the Department of Agriculture, this presentation is intended to provide general information geared towards conservation districts.

Special Districts Public Records and Meetings Act

- ▶ Wyoming Statutes §§ 16-12-101 through 105
- ▶ Applies to Conservation Districts
- ▶ Meetings must be held in a location accessible to the general public or made accessible to the general public.

Public Meetings Act - General Rule

- ▶ All meetings of the governing body of an agency are “public meetings, open to the public at all times, except as otherwise provided.”
 - ▶ No action of a governing body of an agency “shall be taken except during a public meeting following notice of the meeting in accordance with this act.”
 - ▶ Action taken at a meeting not in conformity with this act “is null and void and not merely voidable.”

Who is Subject to the Public Meetings Act?

- ▶ A few requirements:
 - ▶ Agencies that are an “authority, bureau, board, commission, committee, or subagency” of Wyoming, a county, a municipality, or other political subdivision.
 - ▶ Must be created by the Wyoming constitution, a statute, or ordinance.
 - ▶ Must be a meeting of that agency.
- ▶ The Insurance Commissioner meets with one of his policy analysts to discuss proposing a rule change. Public meeting?
 - ▶ No. Need a governing body, not individual. *See Cheyenne Newspapers, Inc. v. Bldg. Code Bd. of Appeals of Cheyenne*, 2010 WY 2, ¶ 15, 222 P.3d 158, 163 (Wyo. 2010) (“Generally speaking, a ‘governing body’ is the ‘group . . . having ultimate control.’”).
- ▶ A subcommittee of the Board of Cosmetology meets to perform a preliminary edit to its rules. Public meeting?
 - ▶ No. *Cheyenne Newspapers, Inc. v. City of Cheyenne*, 2016 WY 125, 386 P.3d 329 (Wyo. 2016) (holding committee not subject to PMA because not created by constitution, statute, or ordinance).

Public Meetings Act

- ▶ What is a Meeting? “an assembly of at least a quorum of the governing body of an agency which has been called by proper authority of the agency for the expressed purpose of discussion, deliberation, presentation of information or taking action regarding public business.”

Example

- ▶ The entire Board of Mixed Martial Arts gets together to barbecue and watch Ronda Rousey's next "comeback." Public meeting?
- ▶ The takeaway: Broadly speaking, you'll need to look for a quorum of your agency's governing body meeting to transact or discuss public business.

Regular Meetings

- ▶ In the absence of a statutory requirement, “the governing body of an agency *shall provide by ordinance, resolution, bylaws or rule for holding regular meetings* unless the agency's normal business does not require regular meetings in which case the agency shall provide notice of its next meeting to any person who requests notice.”
 - ▶ A member of the public may submit a request to the agency, requesting notice of the agency’s future meetings.
 - ▶ This public request for notice must be in writing, and must be renewed on an annual basis.

Special Meetings

- ▶ Special meetings may be called by the presiding officer of a governing body by giving “verbal, electronic or written notice of the meeting to each member of the governing body and to each newspaper of general circulation, radio or television station requesting the notice.”
 - ▶ The notice must specify the time and place of the special meeting and describe the business to be transacted.
 - ▶ The notice must be issued at least 8 hours prior to commencement of the meeting.
 - ▶ “No other business shall be considered at a special meeting.”
 - ▶ Translation: If an agenda item is not listed in the notice, or not described in sufficient-enough detail, it may NOT be covered at the meeting.
- ▶ “Proof of delivery of verbal notice to the newspaper of general circulation, radio or television station may be made by affidavit of the clerk or other employee or officer of the agency charged or responsible for distribution of the notice of the meeting.”

Examples on Notice Requirements

- ▶ A board forgets to provide notice of its meeting, holds the meeting, and passes a motion adopting final rules. What happens?
 - ▶ The motion is void. The PMA provides that “[a]ction taken at a meeting not in conformity with [the PMA] is null and void and not merely voidable.” Wyo. Stat. Ann. § 16-4-403(a).
- ▶ A board decides that it generally dislikes public scrutiny and conspires to hold a private meeting. At that meeting, it passes a motion adopting final rules. What happens?
 - ▶ Like above, the motion is void. Additionally, the PMA imposes a \$750.00 civil penalty against any member of an agency who knowingly or intentionally violates the PMA.
 - ▶ This penalty applies if the member attended a meeting without knowing it was in violation of the PMA, discovered the agency was violating the meeting, and nonetheless decided to remain at the meeting.

Meeting Recess

- ▶ The governing body of an agency “may recess any regular, special, or recessed regular or special meeting to a place and at a time specified in an order of recess.”
- ▶ A copy of the order of recess must be **conspicuously** posted on or near the door of the place where the meeting or recessed meeting was held.

Emergency Meeting

- ▶ The governing body of an agency may “hold an emergency meeting on matters of serious immediate concern to take temporary action without notice.” However, reasonable effort must be made to offer public notice of such meetings.
- ▶ “All action taken at an emergency meeting is of a temporary nature and in order to become permanent shall be reconsidered and acted upon at an open public meeting” within 48 hours, excluding weekends and holidays, **unless the “event constituting the emergency continues to exist” after 48 hours.**
 - ▶ When this occurs, “the governing body may reconsider and act upon the temporary action at the next regularly scheduled meeting of the agency, but in no event later than 30 days from the date of the emergency action.”

Attending a Public Meeting

- ▶ You are not required to give any information as a condition of attending a public meeting.
- ▶ However, if you wish to speak at a public meeting, you can be required to give your name and affiliation.

Minutes



- ▶ Minutes of a meeting:
 - ▶ Must be recorded.
 - ▶ If no action is taken by the governing body, then minutes do not need to be published.

Electronic Communications

- ▶ “No meeting shall be conducted by electronic means or any other form of communication that does not permit the public to hear, read or otherwise discern meeting discussion contemporaneously.”
- ▶ “Communications outside a meeting, including, but not limited to, sequential communications among members of an agency, shall not be used to circumvent the purpose of this act.”
 - ▶ No email chains or “reply all’s”
 - ▶ No group instant messages
 - ▶ No group texts
 - ▶ Google Docs
 - ▶ Facebook groups

Reasons for Executive Session

- ▶ An executive session is an agency meeting that is not open to the public. Executive sessions are permissible but ****only**** under certain, limited circumstances.
- ▶ The general categories of situations allowing an executive session are:
 - ▶ Security threats/threats to property
 - ▶ Threats that could harm the public if they attended
 - ▶ Employment/personnel/human resources matters
 - ▶ When legal advice is obtained/discussing litigation or other legal matters
 - ▶ Preparing, grading, or administering license exams
 - ▶ When considering real estate purchases
 - ▶ When discussing “anonymous” gifts, donations, or bequests
 - ▶ When discussing any information specifically categorized as “confidential” under the law

Executive Session

To enter Executive Session: need a motion stating a valid reason to enter into Executive Session. Should be noted in the minutes.

Executive Session Minutes:

1. Must be kept.
2. Are confidential
3. Must contain sufficient detail of the confidential information discussed.

Executive Session Examples

- ▶ A building code board of appeals holds a contested case regarding if it should grant permits to demolish several historic homes. It then, after a proper motion, enters executive session to deliberate. Fine?
 - ▶ No. *Cheyenne Newspapers, Inc. v. Bldg. Code Bd. of Appeals of Cheyenne*, 2010 WY 2, 222 P.3d 158 (Wyo. 2010).
- ▶ A licensing board holds a contested case to consider revocation of a professional license. It then enters executive session, after a proper motion, to deliberate on its decision. Fine?
 - ▶ Yes. Wyo. Stat. Ann. § 16-4-405(a)(ii).

Violations

- ▶ Knowingly and intentionally violating this Act is a civil penalty not to exceed \$750
- ▶ You are in violation if you attend or remain at a meeting in violation of the Open Meetings Act unless you record your objection in the meeting minutes. If minutes are not being taken (aka you're out at dinner) then you must make your objection public and have it recorded at the next regular meeting.
- ▶ So leave.

Conclusion

- ▶ The Public Meetings Act is intended to curb corruption in government and provide transparency.
- ▶ When in doubt, err in favor of applying the PMA.
- ▶ More notice is never a bad thing.
- ▶ Be careful of the traps that technology presents to your agencies.