

Welcome to

School Vermont **U**
B  **ard** **ONLINE**

Open Meeting Law

May 7, 2020

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Introductions

Technical difficulties: 802-223-3580
/ 800-244-8722



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Special Guest



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Webinar Logistics

Technical difficulties: 802-223-3580
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Questions

- Questions and comments are always welcome
- Question box
- All questions are completely anonymous

Evaluation

- End of the webinar

Email follow-up

- Summary information
- PowerPoint slides
- Other resources

Archived

- VSBA YouTube Channel
- VSBA website

Agenda

- **Overview of Open Meeting Law**
- **Executive Session**
- **Electronic Meetings**
- **Temporary Changes During State of Emergency**
- **Email and Social Media**
- **Public Comment**
- **Collective Bargaining**

Vermont Open Meeting Law

Open Meeting Law Declaration of Public Policy:

. . . public commissions, boards, councils and other public agencies in this state exist to aid in the conduct of the people's business and are accountable to them . . .

1 V.S.A. § 311

Vermont Open Meeting Law

- The Open Meeting Law provides that all meetings of a public body are open to the public at all times, except as provided in section 313 (addressing executive sessions).
- The intent of the law is to create transparency in government by requiring advance public notice and an opportunity for public participation in governmental decisions.

Who must comply?

Public Bodies of the state and its municipalities:

- State and municipal boards, councils and commissions
- Committees and subcommittees of these bodies

When does the OML apply?

Any time a “quorum” holds a “meeting.”

- QUORUM: a **majority** of the entire public body
- MEETING: a gathering of a quorum of a public body ***for the purpose of discussing business or taking action.***

Changes in 2018

- Act 166 of 2018 amended the Open Meeting Law by
 - adding a definition
 - clarifying what activities do not constitute a meeting under the Open Meeting Law.

Business of the Public Body

The definition that was added:

“Business of the public body” means the public body’s governmental functions, including any matter over which the public body has supervision, control, jurisdiction, or advisory power.

What is not a meeting?

Act 166 added the bold language below:

A “meeting” is not any communication, including in person or through e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda or distributing materials to discuss at a meeting, provided that ***no other business of the public body is discussed or conducted.***

What is not a meeting?

Act 166 clarified that “meeting” shall not mean occasions when a quorum of the public body attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers, ***provided that the public body does not discuss specific business of the public body that, at the time of the exchange, the participating members expect to be business of the public body at a later time.***

What is not a meeting?

Act 166 also clarified that “meeting” shall not mean a gathering of a quorum of a public body at a duly warned meeting of another public body, ***provided that the attending public body does not take action on its business.***

What is a meeting?

- A “meeting” can occur in any physical location.
 - includes work sessions and retreats
- A “meeting” can occur over a span of time
 - could include email strings and social media discussions
- Group emails may be used to schedule a meeting, create an agenda, or to distribute materials to discuss at a meeting but should never be used for discussion purposes

Public Notice of Meetings

- Regular meetings
 - Resolution setting regular time and place of meetings
 - Post and make agenda available 48 hours before each meeting
- Special meetings
 - Give 24 hours' notice (time, place and purpose) to:
 - newspaper or radio station serving the area;
 - any person who specifically asked in writing;
 - and all members of the public body.
 - Post and make agenda available 24 hours in advance
- Emergency meetings
 - Only used “when necessary to respond to unforeseen occurrence or condition requiring immediate attention.”
 - Give “some public notice . . . as soon as possible” before the meeting.

Agendas

- Time to Post
 - At least 48 hours before each regular meeting.
 - At least 24 hours before each special meeting.
- Where to Post:
 - On a website that public body maintains or designates (if one exists),
 - in the municipal clerk's office*,
 - and in two designated public places.

*each union school district elects a clerk - must be posted in that office

Agendas

- Providing Agenda
 - Must make available to any person upon specific request, prior to the meeting.
- Content of Agenda
 - Specific topics to be discussed and potential actions.
 - Any addition or deletion must be the first act of business at the meeting.
 - Any other adjustment may be made at the meeting.

Minutes

- Cover all topics and motions that arise
- Minimum content:
 - members present;
 - active participants;
 - motions, proposals,
 - resolutions and their dispositions;
 - vote results, noting individual votes if there is a roll call.
- Must be available for inspection and copying upon request no later than five calendar days after the meeting
- Posted to website no later than five calendar days from the date of the meeting, if public body maintains or designates a website
- In the event of a staffing shortage during state of emergency caused by COVID-19, a school board may extend the time limit for posting of minutes to not more than ten days from the date of the meeting
- Must remain posted to website for at least one year after the meeting (exception: draft minutes replaced with update)

Executive Session

When is it appropriate?

- Only if the business to be considered fits into one of the 14 statutory categories.
- Only if the public body votes to enter in open session and indicates its reason for doing so.
- The motion must state the nature of the business of the executive session, be supported by a majority of the board and be recorded in the minutes.
- When preparing agenda, consult with legal counsel if there is a question about whether executive session is permissible or about which provision of the executive session law applies.

Executive Session

Topics requiring a specific finding that ***“premature general public knowledge would clearly place the . . . public body or person involved at a substantial disadvantage.”***

- contracts;
- labor relations agreements with employees;
- arbitration or mediation;
- grievances, other than tax grievances;
- pending or probable civil litigation or prosecution, if the public body is or may be a party;
- confidential attorney-client communications, if made to provide legal services to the body.

Premature Public Knowledge

Example: board intends to discuss a contract with a bus company.

Does the board automatically vote to enter executive session?

No – first the board must determine that discussing the contract in open meeting would result in premature general public knowledge that would clearly place the board or the bus company at a substantial disadvantage.

Two Motions Recommended

- If the topic requires a specific finding that ***“premature general public knowledge would clearly place the . . . public body or person involved at a substantial disadvantage.”***
- First motion: “I move to find that premature general public knowledge regarding the board’s contract with Best Bus Company would clearly place the board at a substantial disadvantage because the board risks disclosing its negotiation strategy if it discusses the proposed contract terms in public.”
- Second motion: “I move to enter executive session for the purpose of discussing the board’s contract with Best Bus Company under the provisions of Title 1, Section 313(a)(1)(A) of Vermont Statutes (contracts).”

Another Example – Leave Request

- First motion: “I move to find that premature general public knowledge regarding an employee’s leave request would place the employee and the board at a substantial disadvantage because it would reveal personal medical information of the employee.”
- Second motion: “I move to enter executive session for the purpose of discussing an employee’s leave request under the provisions of Title 1, Section 313(a)(1)(B) of Vermont Statutes (labor relations agreements with employees).”

Other Permissible Reasons

Other permissible reasons for executive session are set forth in 1 V.S.A. Section 313(a)(2)-(10) and :

- Negotiating or securing of real estate purchase or lease options
- Appointment, employment, evaluation, discipline, or dismissal of public officer or employee
- Student academic records, suspension, or discipline
- Exempt public records under the Public Record Act
- Clear and imminent peril to public safety
- Security or emergency response measures, if disclosure could jeopardize public safety.

One Motion Recommended

- To enter executive session for reasons set forth in 1 V.S.A. Section 313(a)(2)-(10), the motion should identify the topic of discussion and the specific statutory provision.
- Recommendation: the topic should be more specific than “legal issues” or “personnel matters.”
- “I move to enter executive session for the purpose of discussing the evaluation of the Superintendent under the provisions of Title 1, Section 313(a)(3) of Vermont Statutes (evaluation of a public officer or employee).”

Example Motion

- This topic DOES NOT REQUIRE a specific finding that *“premature general public knowledge would clearly place the . . . public body or person involved at a substantial disadvantage.”*
- “I move to enter executive session for the purpose of discussing the suspension of a student under the provisions of Title 1, Section 313(a)(7) of Vermont Statutes (the academic records or suspension or discipline of students).”

Executive Session

- While in executive session, a board may only discuss the subject matter referenced in the motion to enter executive session.
- The public body decides who attends: legal counsel, staff, anyone who is subject of discussion or whose information is needed.
- Minutes are not required to be taken and we do not recommend that they be taken.

Executive Session

- A board cannot take any action in executive session except actions related to securing real estate options.
- Ultimate action on all other items must be taken by motion and vote in open session. That motion should provide enough information (subject to confidentiality considerations) to allow members of the public to understand the nature and substance of the action taken.
- Unless other law requires it, a public body may opt to conduct its business in public, even if an executive session is permissible.

Meeting by Electronic Means

- A member participating remotely must:
 - identify him/herself when meeting convenes
 - be able to hear and be heard throughout the meeting
- If a quorum or more is participating remotely:
 - agenda must designate a physical location where the public can attend and participate
 - one member must be physically present
 - Physical location requirement is not in effect during the state of emergency related to COVID-19.
- Any vote not unanimous must be taken by roll call.

Electronic Meetings: State of Emergency

- Designated physical location not required
- Board must use technology that permits the attendance of the public through electronic or other means
- Whenever feasible, board must allow the public to access the meeting by telephone
- Boards must post information about how the public may access meeting electronically and include this information in the published agenda

Recording Meetings: State of Emergency

- School boards are required to record meetings unless unusual circumstances make it impossible for them to do so

E-mail and Social Media

- Boards can use electronic communications to schedule a meeting, organize an agenda, or distribute materials to discuss at a meeting.
- The following are probably not permissible (ask your attorney):
 - Group emails involving a quorum of a public body that discuss the body's business.
 - Collective editing of a document by a quorum.
 - Participation in a Facebook group or Front Porch Forum by a quorum if the body's business is discussed.

Public Comment Period

*Board meetings are public meetings, but they are **not** a meeting of the public*

- *16 V.S.A. §554(b)*: a reasonable opportunity to appear and express views on any matter considered by the board shall be given to any person in the school district
- *1 V.S.A. 312(h)*: public comment shall be subject to reasonable rules established by the chair

Penalty and Enforcement

- Aggrieved party must allege a specific violation of the Open Meeting Law and make a request for specific actions to cure the violation.
- Public body has 10 calendar days to respond
 - If acknowledge a violation, have 14 calendar days to cure it and take measures to prevent reoccurrence.
 - Failure to correct a violation could result in attorney's fees and other litigation costs

Open Meeting Law and Collective Bargaining

- The VT Supreme Court issued *Caledonia Central* decision on February 23, 2018, holding that the ***Open Meeting Law does not apply to collective bargaining negotiations between an SU negotiating committee and a teachers' union because such negotiations are not "meetings" under the Open Meeting Law.***
- In its decision, the court stated that the Open Meeting Law was ambiguous and it relied on the interplay between the Open Meeting Law, the Vermont Labor Relations for Teachers and Administrators Act and the Public Records Act to resolve that ambiguity.

What Does Court's Decision Mean?

- Since Open Meeting Law does not apply, negotiations are not required to be held in public.
- This raises questions about whether an SU negotiations council is required to warn its negotiations sessions.
- During such sessions there may be periods of time when the SU committee is meeting by itself to discuss priorities, strategies, etc.
- Such a gathering may meet the definition of a “special meeting” under the Open Meeting Law, requiring posting of a notice at least 24 hours prior to the meeting.

Guidance

- Due to the complexity of the issues raised by the VT Supreme Court decision, VSBA advises districts to work with their legal counsel when planning negotiations sessions to ensure compliance with the law.
- Negotiations can be held in public ***if both parties agree to it.***

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**Thank you for participating in
today's webinar and for your
commitment to Vermont's children.**

**Please complete the online
evaluation!**

www.vtvsba.org



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