

FOR YOUR INFORMATION

News for School Clients

**PUBLIC NOTICES UNDER THE
OPEN MEETINGS LAW**

June 2004



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Public Notices Under the Open Meetings Law

Recently, the state's Attorney General issued an opinion clarifying the public notice requirements for meetings conducted by governmental bodies. This FYI will review the requirements of the open meetings law and explain the Attorney General's recent interpretation of the law related to preparing public notices with sufficient specificity to fulfill the minimum obligation to comply with the law.

The open meetings law creates a presumption that meetings of governmental bodies must be held in open session. Every meeting of a governmental body must comply with the open meetings law. A governmental body includes not only boards, councils, and commissions, but also certain other entities, such as committees and advisory bodies, created by the parent body and whose duties are assigned by such body.

Governmental bodies must give advance notice of each of their meetings. The chief presiding officer, or the officer's designee, must give notice of each meeting of the body to (1) the public, (2) any members of the news media who have submitted a written request for notice, and (3) the official newspaper or news medium likely to give notice in the area, such as radio stations and weekly newspapers. Every public notice of a meeting must set forth the time, date, place and *subject matter* of the meeting, including *subject matter* intended for consideration at any contemplated closed session. The public notice provides the means of placing a subject

of governmental business under consideration by the governmental body. Governmental business refers to any formal or informal action, including (1) information gathering, (2) discussion, or (3) decision-making. Importantly, the governmental body is engaged in governmental business when its members gather to simply hear information on a matter within the body's realm of authority or on a subject the body has the potential to decide—even if there is no discussion or interaction.

The Attorney General issued an opinion letter on March 5, 2004, about the way to properly notice the subject matter of a meeting. The notice must be specific. The Attorney General suggested that a good rule of thumb is to ask whether a person interested in a specific subject would be aware, upon reading the meeting notice, that the subject might be discussed or information about the subject matter might be gathered at the meeting.

When a member of the governmental body knows in advance that a matter may come before the body, that subject matter must be described in the meeting notice. The issue recently addressed by the Attorney General dealt with the use of general subject matter designations such as "miscellaneous business," "agenda revisions," or "such other matters as are authorized by law" in public notices. These type of general subject matter designations should be avoided as lacking the specificity required by the law for public meeting notices.

The Attorney General specifically discussed the “public comment” period, which allows the governmental body to receive information from members of the public. The open meetings law provides for a citizen public comment period when the public notice has designated such a time on the agenda. This allows citizens to present information to the governmental body on subjects not included in the meeting notice. The governmental body may discuss, but not act on, any matter raised by the public during a comment period. However, it is advisable to defer extensive discussion and action on any such subject item until specific notice of the subject matter can be given.

No such authorization exists regarding comment periods for members of the governmental body or officials of the governmental body. Because members of governmental bodies and governmental officials have regular opportunities to suggest meeting subjects for placement on the agenda, they must identify in the notice the *specific subject matter* they intend to address. Non-specific agenda descriptors such as “informational items” should be avoided. Simply identifying the source of the information item on the agenda, such as “Commissioner comments” or “Board Member comments” will not be sufficient to inform the public about the *subject matter* of the information the Commissioner or Board member intends to provide. If substantial amounts of information are communicated during these type of comment periods, the interested public, who did not have notice of the specific subject matter addressed, is

deprived of a substantial amount of information. At the extreme, enough information could be conveyed during these type of comment periods to eliminate the need for any discussion at a subsequent meeting when the noticed subject is brought up for action. In these situations, the public is deprived of all of the information to which it is entitled.

The Attorney General recommended that governmental bodies eliminate “comment” items or periods from the meeting notice for members of the governmental body and its officials. A subject designated as “forthcoming events,” however, is considered minimally adequate to comply with the law. When governmental persons know in advance that they intend to provide information at the meeting about a forthcoming event of interest to the public, the subject matter of the event should be identified in the notice. The governing body may want to take advantage of the advance notice rule by amending and redistributing a meeting notice up to twenty-four hours in advance of the meeting in order to add subject matter specificity in the notice.

The public meeting notice does not need to be a detailed agenda. However, descriptions of the subject matter of a meeting created for the public notice must be sufficiently informative to reasonably apprise the public of the subject matter at the time the notice is prepared. When subjects are not identified in the public notice, the governmental body should refrain from engaging in any (1) information gathering, (2) discussion, or (3) action that would deprive the public of information about the conduct of governmental business.

If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team
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