

Office of Attorney General

OPEN MEETINGS GUIDE

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North Dakota's laws state that all government records and meetings must be open to the public unless otherwise authorized by a specific law. The basic laws are found in North Dakota Century Code, beginning at §44-04-17.1. The public has the right to know how government functions are performed and how public funds are spent.

DEFINITION OF MEETING

Meeting means *any gathering of a quorum of the members of a governing body of a public entity regarding public business*, and includes committees and subcommittees, informal gatherings or work sessions, and discussions where a quorum of members are participating by phone or any other electronic communication (either at the same time or in a series of individual contacts).

- If a governing body delegates any authority to two or more people, the newly formed committee is subject to the open meetings law even if the committee does not have final authority or is just fact-finding. What it is called does not matter, it is still a committee. Committee meetings must be noticed, and minutes taken.
- Portfolios are a committee of the governing body if more than one commissioner holds the portfolio.
- Emails or text messages between members of a committee or subcommittee regarding public business may constitute a meeting and violate open meeting laws.

Training seminars and purely social gatherings attended by a quorum of a public entity are not meetings, however, as soon as the members discuss any public business, it becomes a "meeting."

MEETING SCHEDULES

If the governing body holds regularly scheduled meetings, the schedule of these meetings must be posted annually on the entity's official website **OR** filed with the Secretary of State (for state agencies), the City Auditor (city level entities), or the County Auditor (all other entities).

- The annual meeting schedule also must be furnished to anyone who requests the information.
- Filing the annual meeting schedule does not relieve a public entity of its obligation to post a meeting notice/agenda for each meeting.

MEETING NOTICES

Prior written notice is required for all meetings of a public entity, including committees and subcommittees.

- Generally, there is **no minimum advance notice period** for public meetings.

An entity must provide public notice of the date, time and location of a meeting when the governing body is notified. It is not necessary to have a speakerphone or monitor available in a physical location if a meeting is held solely electronically. Instead, all information necessary to join the meeting must be included in the notice.

As soon as an agenda is prepared and given to the governing body, it must be posted and provided to the public in the same manner as the meeting notice. If an executive session is anticipated, the meeting notice also must include the executive session as an agenda item, along with the subject matter and the legal authority for the executive session.

Regular meeting agendas may be added to or altered at the time of the meeting. For **special** meetings, however, **only** the specific topics included in the notice may be discussed.

PROVIDING PUBLIC NOTICE OF MEETINGS

At the same time the governing body is notified of the meeting, the meeting notice must be:

1. Posted at the main office of the public entity, if the entity has a main office.
2. Posted at the location of the meeting, if held somewhere other than the entity's main office.
3. Filed with the appropriate official [the Secretary of State for state-level entities, the city auditor for city-level entities, and the county auditor(s) for all other entities].
4. Posted on the public entity's website, if the entity has a website.
5. Provided to any individual who has requested notice of the meeting.

Notice of special meetings also must be given to the entity's official newspaper. Generally, there is no requirement that the meeting notice be published.

If asked, a public entity must provide a requester with personal notice of its meetings. Unless the requester specifies a shorter time period, the request to receive notice is good for one year.

PUBLIC PARTICIPATION

A member of the public has the right to attend an open meeting and to record or broadcast the meeting, but **does not have the right to speak**.

EXECUTIVE SESSIONS

Only the portions of a public meeting that are specifically confidential or exempt from the open meetings law may be closed to the public and held in executive session. The remainder of the meeting must be open to the public.

- Generally, a public entity **may not close** a meeting to discuss salary issues or employee job performance.

There are several reasons why a meeting may not be open to the public. For instance:

- The portion of a meeting during which confidential or exempt records are considered may be closed to the public. This is particularly common for school board meetings to discuss student records.
- Board meetings concerning the nonrenewal, dismissal for cause, or suspension of a teacher, principal, superintendent, or directors may be closed except for certain representatives of the board and the teacher, principal, superintendent, and director.
- A governing body may close a meeting to talk with its attorney if the discussion pertains to the attorney's advice regarding a "pending or reasonably predictable" lawsuit involving the public entity.
- An executive session also may be held to discuss the risks, strengths or weaknesses of an action of the public entity or negotiating strategy, if holding the discussion in an open meeting would have an adverse fiscal effect on the bargaining or litigating position of the public entity.
- In addition to discussing closed or confidential economic development records, an executive session is authorized to discuss a public entity's efforts to recruit a new business to the area served by the public entity.
- State agency loss control committee meetings regarding closed records of a specific pending or reasonably predictable claim against the state or a state employee may be held in executive session.

CLOSED MEETINGS PROCEDURES

Although certain statutes may apply to particular meetings or entities, state law specifies the following general procedure for holding an executive session.

1. Convene in an open session preceded by public notice;
2. Announce during the open portion of the meeting the topics to be considered during the executive session and the legal authority for holding an executive session on those topics;
3. Pass a motion to hold an executive session, unless a motion is unnecessary because a confidential meeting is required;

4. Record the executive session electronically;
5. Limit the topics considered during the executive session to the announced, authorized topics; and
6. Take final action on the topics considered in the executive session during the open portion of a meeting.

Under these provisions, a governing body's authority to hold an executive session may be invoked only during a properly noticed open meeting, and not during a separate meeting for which public notice is not provided. To close a portion of the meeting, the governing body may either excuse the public or reconvene in another location.

A vote to go into executive session is not necessary if a confidential meeting is required or if the governing body is closing the meeting to discuss confidential records. However, because a discussion of exempt records does not necessarily have to occur in an executive session, a vote is necessary to determine whether the discussion will occur in an open meeting or in an executive session.

Final action on the topics considered in the executive session must be taken during the open portion of the meeting. Substantive votes must be recorded by roll call.

MINUTES

The minutes of meetings are public records and must be provided to anyone upon request. Draft minutes should be made available to the public even if the minutes have not been approved. Some public entities are required by law to provide minutes to the official newspaper. Minutes must include, at a minimum:

1. The names of the members attending the meeting;
2. The date and time the meeting was called to order and adjourned;
3. A list of topics discussed regarding public business;
4. A description of each motion made at the meeting and whether the motion was seconded;
5. The results of every vote taken at the meeting; and
6. The vote of each member on every recorded roll call vote.

This requirement applies to all governing bodies, including committees and subcommittees.

OPINION REQUESTS

A request for an Opinion alleging that a public entity held a meeting without posting public notice must be received by the Attorney General's office within 90 days of the alleged violation, regardless of when the requester learned about the violation. For all other violations of the open meetings laws, the request for an Opinion must be received within 30 days of the alleged violation. ■