



# THE OPEN MEETINGS ACT A PRIMER

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# Introduction

- This presentation sets forth general guidelines for the Open Meetings Act (OMA). These guidelines are not applicable in every situation where an alleged violation has occurred.
- Therefore, public bodies are *strongly encouraged* to discuss the application of a particular guideline with their unit of local government's legal counsel.

# **What is a Public Body Under OMA?**

# What is a Public Body?

## Factors considered:

- Who appoints the members?
- What are the entity's assigned duties?
- Is it accountable to any larger public body?
- Does the entity have a budget?



# What is a Public Body?



State Boards and Commissions



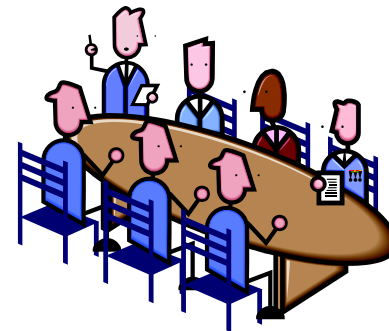
Municipalities



Counties



School Districts



All Subcommittees of the foregoing bodies

# **What Groups Are Not Subject to OMA?**

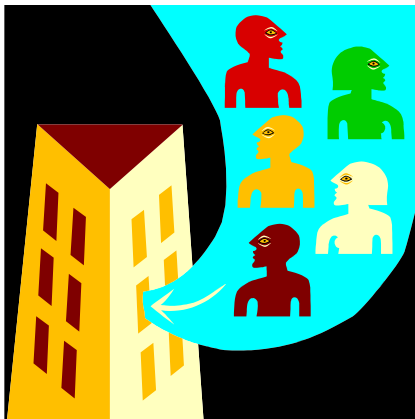
# What Is Not Covered?



Condominium Associations



Individual Officers



Private Companies and Their  
Boards



Not-For-Profit Organizations

# The Meeting





# The Meeting

- OMA defines a meeting as “[a]ny ***gathering*** of a ***majority of a quorum*** for the purpose of ***discussing public business.***” 5 ILCS 120/1.02.



# The Meeting

## Majority of a quorum

Board Number	Quorum	Majority of Quorum
13	7	4
<b>11</b>	<b>6</b>	<b>4</b>
9	5	3*
<b>7</b>	<b>4</b>	<b>3</b>
5	3	3
<b>3</b>	<b>2</b>	<b>2</b>

\* A quorum cannot include half a person

# The Meeting

If a public body has adopted rules allowing for electronic attendance, then a member may attend a meeting electronically if the absence is because of:

- A family emergency;
- An employment related matter; or
- Sickness.

5 ILCS 120/7(a).

# The Meeting

- Before allowing a member to attend electronically, a public body must adopt a rule or regulation permitting electronic attendance. 5 ILCS 120/7(c).
- A quorum must be *physically present* at the meeting in order for the member to attend electronically. 5 ILCS 120/7(a).



# The Meeting

- The limitations of this Section shall not apply to (i) closed meetings of (A) public bodies with statewide jurisdiction, (B) Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles, or (C) municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles or (ii) open or closed meetings of ***State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action.*** 5 ILCS 120/7(d).

# The Meeting

- State advisory boards or bodies, public bodies with statewide jurisdiction, Illinois library systems with jurisdiction over a specific geographic area of more than 4,500 square miles, and municipal transit districts with jurisdiction over a specific geographic area of more than 4,500 square miles, however, may permit members to attend meetings by ***other means only in accordance with and to the extent allowed by specific procedural rules adopted by the body.*** 5 ILCS 120/7(d).

# The Meeting

A quorum of members of a public body must be physically present at the location of an open meeting. 5 ILCS 120/2.01.



# The Meeting

- A quorum of members of a public body must be physically present at the location of an open meeting. If, however, an open meeting of a public body (i) with ***statewide jurisdiction***, (ii) that is an Illinois library system with jurisdiction over a specific geographic area of more than 4,500 square miles, or (iii) that is a municipal transit district with jurisdiction over a specific geographic area of more than 4,500 square miles is held simultaneously at one of its offices and one or more other locations in a public building, which may include other of its offices, through an interactive video conference and the public body provides public notice and public access as required under this Act for all locations, then members physically present in those locations all count towards determining a quorum. 5 ILCS 120/2.01.



# The Meeting

- **"Public building", as used in this Section, means any building or portion thereof owned or leased by any public body. The requirement that a quorum be physically present at the location of an open meeting shall not apply, however, to State advisory boards or bodies that do not have authority to make binding recommendations or determinations or to take any other substantive action. 5 ILCS 120/2.01.**

## The Meeting – Question

While serving as a member of your five-member local park district board, you have become friends with several other board members who share your interests. You and two other board members routinely meet for Zumba sessions at a local gym. On the morning of an anticipated controversial meeting, the three of you get together during a Zumba class and discuss how you think you may vote on a certain matter.

Have you violated OMA?

# Choose your Answer:

- 1) No, because a quorum of the board was not present at the Zumba session.
- 2) No, because the music is likely loud and no one can discuss matters seriously when they're dancing.
- 3) Yes, because there was a gathering of a majority of a quorum of the board at which business of the board was discussed, and the public had no notice or opportunity to attend.

# The meeting - question

- Two weeks prior to a big meeting on a major road project, a city council member informs the Council that she can't attend the meeting in-person because it's spring break and she will be going to Disney World with her kids. However, she informs the Council that the fancy resort that she is staying at has Skype and that she can attend the meeting electronically.
- Under OMA is this permissible?

- 1) No, because a vacation is not one of the reasons for which a public body may allow attendance by other means under OMA.
- 2) Yes, because the Council should not get into the habit of forcing its members to stay home during Spring Break.
- 3) Yes, but only if the Council approved vacation as one of the reasons a person can attend a meeting electronically.

# The Meeting - Public Comment

Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.  
5 ILCS 120/2.06(g).

Citizens have a right to address public officials at open meetings.

# The Meeting

Public bodies should establish rules governing public comment, including:

The amount of time a citizen may speak.

Other matters relating to decorum and procedure.

# The Meeting

## **Accommodation**

The rule of reasonableness vs. absolute accessibility.

*Gerwin v. Livingston County Board*, 345 Ill.App.3d 352, 361 (4<sup>th</sup> Dist. 2003).



# The Meeting

The accommodation must not be merely convenient to the members of the public who show up, but to the public as a whole. 5 ILCS 120/2.01.

- The Meeting – Question

The City Council is planning to purchase a state of the art squad car. However, before purchasing the car, the entire Council wants to see it in person. The only town that has a similar squad car is located 500 miles away. The Council posted the agenda and informed the public that it will be traveling to this town to view the squad car. The agenda states that the Council will be leaving at 6 a.m. on a Saturday and returning to the City around 8 p.m. The agenda also informs people that buses will be available to transport anyone interested in attending.

- Does this meeting violate OMA?

Choose your Answer:

No, because traveling the 500 miles was the only way the Council could view the squad car before making a purchase.

No, because the Council gave proper notice and provided access to any interested citizen.

Yes, requiring a citizen to embark on a 12-hour trip on a Saturday in order to attend a meeting cannot be characterized as "convenient" under OMA.

# The Meeting – Question

- A school district board needs to call a special meeting within a certain time frame to discuss the termination of a teacher. The School Board normally meets at the middle school building, but on the date the meeting is to be held, December 29, the District will be on winter break and the room where the meeting is held is being repaired. One board member offers to have the meeting at her house. Timely notice of the date, time, and location of the meeting, including the Board member's home address, are posted on the District's website, at the District office, and at the middle school. The Board meets at the Superintendent's home and votes to dismiss the teacher.
- Did the Board violate OMA?

Choose your Answer:

No, because a meeting at the Board member's home would allow both the citizens and the Board to kick back, relax and be themselves.

No, because the Council gave proper notice.

Yes, because a meeting at the Board member's residence is not convenient and open to the public

# The Meeting

Social gatherings are permitted provided public business *is not* discussed.



Proceed with caution!

# The Meeting

A social gathering may turn into a meeting if a majority of the quorum discusses public business at the gathering.



Proceed with caution!

# The Meeting

- Beware of the appearance of impropriety.
- Strive to go beyond the minimum requirements of OMA.
- If it doesn't seem right, don't do it!!!





# Notice



# Notice

- Regular meetings = 48 hours notice.
- Special meetings = 48 hours.
- Emergency meetings = as soon as possible.  
(must be a bona fide emergency)

5 ILCS 120/2.02 (a).

# Notice

- Public notice of the meeting must be posted at the principal office of the body holding the meeting.
  - Notice must also be placed on the public body's website if the public body has full-time staff that maintains the website.
- 5 ILCS 120/2.02(b).

# Notice - Question

You are a member of the City Council. The police chief is abruptly fired and the Council needs to appoint an interim police chief as soon as possible, which also needs council approval. The next regular board meeting is not for two weeks. The Mayor calls for a special meeting to be held on Thursday night at 7:00 p.m.. On Tuesday morning the Council's secretary emails the members to notify them of the meeting and posts notice and an agenda for the meeting at City Hall and on the City's website.

Has the secretary complied with OMA?

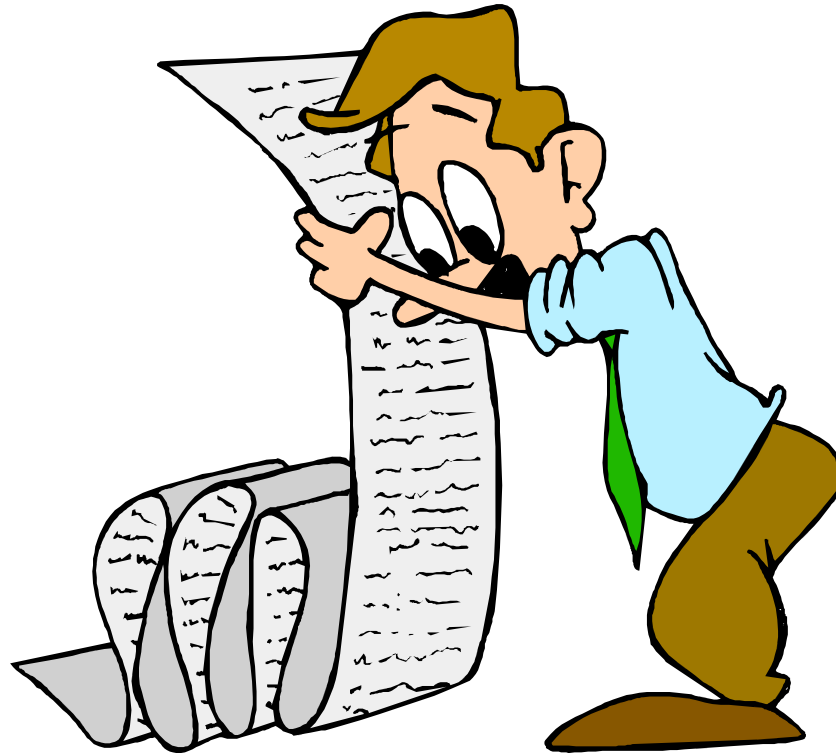
Choose your Answer:

Yes, because notice and an agenda were posted at least 48 hours before the meeting at the City's principal office and on the City's website.

No, because the secretary failed to have the notice published in the local paper.

No, because considering this was a special meeting, the secretary should have given notice earlier.

# The Agenda



# The Agenda

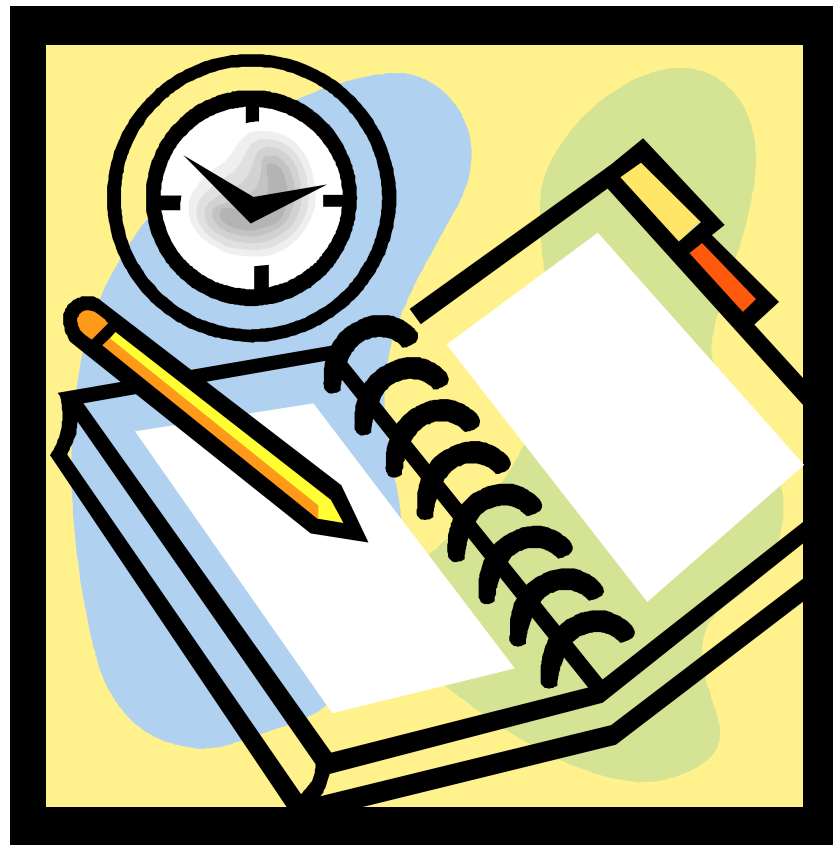
- Notice as to the issues.
- Must be specific as to any final action.
- A public body may discuss matters not on the agenda. See *In re Foxfield Subdivision*, 396 Ill.App.3d 989, 995 (2<sup>nd</sup> Dist. 2009).

# The Agenda – new!

- Public Act 97-827, effective January 1, 2013, adds subsection 2.02(c) to OMA:
- (c) Any agenda required under this Section shall set forth the ***general subject matter of any resolution or ordinance that will be the subject of final action at the meeting.*** The public body conducting a public meeting shall ensure that at least one copy of any requested notice and agenda for the meeting is continuously available for public review during the entire 48-hour period preceding the meeting. Posting of the notice and agenda on a website that is maintained by the public body satisfies the requirement for continuous posting under this subsection (c). If a notice or agenda is not continuously available for the full 48-hour period due to actions outside of the control of the public body, then the lack of availability does not invalidate any meeting or action taken at a meeting.



# Meeting Minutes



# Meeting Minutes

Public bodies must keep minutes of both open and closed sessions. 5 ILCS 120/2.06(a).



# Meeting Minutes

Session minutes must include:

- Date, time and place;
- Summary of discussion of all matters proposed, deliberated or decided;
- Names of all members present and absent; and
- A record of any votes taken.

# Closed Session



# Closed Session

Section 2(c) of OMA authorizes 29 exceptions for a public body to close an open session. 5 ILCS 120/2(c).



# Closed Session

- The exceptions relate to, among other things, employment, litigation, land acquisition, collective bargaining and student disciplinary cases.
- These exceptions are to be *strictly construed*. 5 ILCS 120/1

# Closed Session

- Start in open session
- Vote to close
- Cite to the specific statutory exception
- Exclude the public and enter the closed meeting

# Closed Session

- Employment
  - Must focus on the performance, compensation or dismissal of a *specific employee* or employees. 5 ILCS 120/2(c)(1).
- Litigation
  - Must be either filed or “probable or imminent.” 5 ILCS 120/2(c)(11).



# Closed Session

- Verbatim recording (must tape it)
- Must generate session minutes
- **NO FINAL ACTION!!!**



# Closed Session

When returning to open session, a public body must:

- Vote to adjourn closed session and return to open session.
- Call back to order and vote on any matters discussed.

# Closed Session

- Minutes are available for public inspection *only if* the public body chooses or is ordered by the court.
- Minutes must be reviewed at least twice a year to determine whether the need for confidentiality still exists.

# Closed session - question

During the public comment portion of an open School Board meeting, one resident, angry about a school closing, tells the Board that he is fed up with the School Board, accuses them of engaging in criminal activity and threatens to take the matter “to the authorities!” After hearing that, the Board moves to enter into closed session, citing litigation as the exception.

Can the Board properly close the meeting for this purpose?

Choose your answer:

- Yes, because the Board needed time to figure out how to appropriately respond to the resident's threat.
- No, because the mere threat of a legal action in the course of a public discussion does not rise to the level of "probable or imminent" litigation.
- Yes, because the Board members need to be prepared in case they are paid a visit from the FBI.

# OMA Training

# OMA Training

**P.A. 97-0504 Effective January 1, 2012**

Each elected or appointed member of a public body subject OMA must complete the electronic training curriculum developed and administered by the Public Access Counselor and file a copy of the certificate of completion with the public body.

**5 ILCS 140/1.05.**

**<http://www.illinoisattorneygeneral.gov/>**



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Other Issues

- ▶ Legal Assistance Referrals
- ▶ Estate Tax Forms
- ▶ Domestic Violence and Sexual Assault Services Directory
- ▶ Internet Safety Quiz For parents "How Aware R U?" (pdf)
- ▶ Illinois Internet Crimes Against Children



Other Issues

- ▶ Publications and Brochures
- ▶ Filing a Consumer Complaint
- ▶ How To Freeze Your Credit Files (pdf)
- ▶ How to Obtain A Free Credit Report
- ▶ School Violence Tipline (pdf)





# OMA Training

- Any person who becomes an elected or appointed member of a public body subject to the Act **after** January 1, 2012, must completed the electronic training no later than the 90th day after the member:
- Takes the oath of office, if so required to assume his or her duties as a member of the public body; or
- Otherwise assumes the responsibilities as a member of the public body, if not required to take an oath of office.

# IMRF Posting

Employers participating in the Illinois Municipal Retirement fund must: (1) post on their websites the "total compensation package" for each employee making over \$75,000 per year within 6 business days of approving their budget; and (2) post on their websites at least 6 days *before* approval an employee's "total compensation package " that is equal to or in excess of \$150,000.

5 ILCS 120/7.3.

# **Enforcement of OMA**

# Enforcement of OMA

## Criminal Penalties

- Class C misdemeanor. 5 ILCS 120/4.
- If the State's Attorney is to enforce OMA, the State's Attorney must bring action within 60 days of the State's Attorney's discovery of the alleged violation. 5 ILCS 120/3(a).

# Enforcement of OMA

## Civil Penalties

- Injunction, mandamus, ordering closed minutes released, or voiding final action.
- Attorney fees and costs for the party that prevails.

# **The Attorney General's Role**

# The Public Access Counselor

- Section 3.5(a) of OMA (5 ILCS 120/3.5(a)) provides that “a person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General[.]”

# The Attorney General's Role

- A citizen must submit a Request for Review to the Public Access Counselor (PAC) within 60 days of the date of the alleged violation.
- Upon receipt of the Request for Review, the PAC will decide if further inquiry is warranted.



# The Attorney General's Role

- Upon the PAC's review of the alleged violation and any subsequent correspondence from the public body, the PAC may decide no violation occurred and that no further inquiry is warranted.

## The Attorney General's Role

If the PAC finds that a violation has occurred, it may, depending on the violation, direct the public body to:

- Release closed session meeting minutes.
- Invalidate any final action and revote on a matter.
- Instruct the public body on how to avoid future violations.

## Three Simple Things to Keep in Mind:

1. The requirements of OMA constitute the bare minimum.
2. Always err on the side of caution.
3. If you have to ask if the action is a violation, don't do it!!!

# Additional Resources

Please contact the Public Access Counselor's  
hotline for additional information.

**1-877-299-3642**