

A GUIDE TO OPEN MEETINGS
Revised August 2006
Deborah Markowitz, Vermont Secretary of State

Living in Vermont, we expect openness in government. Any day the legislature is in session we can sit down in either chamber, or in the various committee rooms, and see laws being made. Any day we can walk into the county courthouse and attend any hearing or trial, or watch the arguments being given before the Vermont Supreme Court. We can attend Act 250 hearings and meetings of the local zoning board, and any other public body, and we can expect to see notices of those meetings in the newspaper or on public bulletin boards. We can review and copy public documents in state and local offices.

One important foundation of openness in Vermont is the Right to Know laws, including those related to open meetings and public records. Together they are the most important public laws we have because they allow us direct access to the decisions that affect us. A full understanding of these laws makes everyone a better citizen. This is an introduction to the open meeting law.

You can read the open meeting law for yourself. The open meeting law is found in every town clerk's office, in Title 1 of the Vermont Statutes Annotated. Title 1 is in the first volume of a set of green law books that include all of the statutory laws of the state. Look for sections 310 through 314, and make sure you check the pocket part to see if there is newer law to review for each section. You can also find this law on the internet through the Vermont Automated Library System (VALS) at

<http://www.leg.state.vt.us/statutes/statutes.htm>

MEETINGS OF A PUBLIC BODY MUST BE OPEN TO THE PUBLIC

- Public must be given notice of the meeting.
- Public must be allowed to attend the meeting and be heard.
- Minutes of the meeting must be taken.

WHO DOES THE OPEN MEETING LAW APPLY TO?

This open meeting law applies to all boards, councils and commissions of the state and its political sub-divisions (i.e. municipalities), including subcommittees of these bodies. This means the open meeting law governs meetings of selectboards, planning commissions, boards of civil authority, recreation commissions, municipal public library trustees, auditors, listers, etc.

WHEN DOES THE OPEN MEETING LAW APPLY?

Whenever a quorum (a majority) of a public body meets to discuss the business of the board or to take action, the open meeting law will apply. This means that if a majority of

a board find themselves together at a social function they must take care not to discuss the business of the board!

HOW DOES A BOARD NOTICE ITS MEETINGS?

- A board schedules **regular meetings** by adopting a resolution setting the time and place of the meeting. This information must be made available to the public.
- A board holding a **special meeting** must, at least 24 hours before the meeting, publicly announce the time, place and purpose of the meeting by notifying the board members and the local news media and any other media that has specifically requested notification, and by posting notice of the meeting in or near the clerk's office and in two other public places in the municipality.
- An **emergency meeting** may be held in the event of a true emergency without public announcement as long as some public notice is given as soon as possible before the meeting.

WHAT IS THE PUBLIC'S RIGHT TO BE HEARD?

At an open meeting the public must be given a reasonable opportunity to comment on matters considered by the board, subject to reasonable rules set by the chair of the board.

WHAT DO MINUTES OF THE BOARD NEED TO INCLUDE?

Minutes must at least include the names of all members of the public body present at the meeting, and other active participants, and all motions, proposals, and resolutions made, and their dispositions, and the results of any votes taken. Minutes are public records, which must be available for public inspection within five days after the meeting.

WHEN CAN A BOARD MEET IN PRIVATE?

- A board may meet in private to deliberate in connection with a quasi-judicial hearing. This is not an open meeting and does not have to be warned.
- A board may only go into executive session upon a majority vote of the board (2/3 vote of a state board), on a motion made in open meeting, that indicates the reason for going into executive session. The only permissible reasons for going into executive session are set out in *I V.S.A. § 313*, and are explained on page 5, herein.
- A board may invite into executive session its attorney, administrative staff and persons who are subjects of the discussion or whose information is needed.
- No decision may be made in executive session. Decisions may be made in deliberative session so long as there is a written decision that is public record.

WHAT RIGHTS DO THE MEDIA HAVE?

- Upon request, the agendas of regular or special meetings must be made available to the news media prior to a meeting.
- News agencies that wish to be notified of special meetings must provide a written request to the public body.
- Members of the news media and the public have the right to attend meetings and to tape or videotape meetings so long as it is not done in a manner that disrupts the meeting.

- The media and the public have the right to know the reason a board is going into executive session.

1. DEFINING OPEN MEETINGS

A state or local board or commission in Vermont meets when a quorum (majority) of its members comes together to discuss public business. Two members of a five-person board may meet without the need for public notice. *1 V.S.A. § 310(2)*.

The entire board can meet by itself without notice or public attendance when it deliberates on its written decision, following a quasi-judicial hearing on an application or permit. The board may also exclude the public from a proper executive session. But these are the exceptions. Most meetings are public.

Committees and subcommittees of public boards must follow the law, just as the full board itself.

That means there must be public notice, an opportunity for members of the public to speak to the board, and written minutes, which the law requires to be ready for review within five days of the meeting. Meetings held without respecting the details of the law are illegal, and the courts regard what is done in those meetings as voidable. More importantly, illegal meetings are an offense to democracy. In Vermont the people rule, sometimes directly, sometimes through elected or appointed representatives, but always with the benefit of public scrutiny.

The open meeting law is based on Article 6 of the Vermont Constitution. Article 6 guarantees that “all power being originally inherent in and consequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them.”

One way of demonstrating accountability is conducting public business in public for everyone to see.

2. PUBLIC NOTICE

Vermont’s open meeting law defines the basics of public notice. Other laws provide more specific directions, but every board must follow the requirements of the law as a minimum. There are three kinds of public meetings under the law:

- **Regular Meeting.** The most common type of meeting is the regular meeting. When a board meets on the first Tuesday of the month, every month, the law does not require formal public notice. The board needs to adopt a resolution specifying its regular meeting schedule in this instance, and provide an agenda on request, to qualify for this privilege. *1 V.S.A. § 312(c)(1).*

Agendas of regularly scheduled meetings must be made available, upon specific request, prior to meeting, so that interested members of the public can be reasonably informed of what will be discussed at the meeting. *1 V.S.A. § 312(d).* Boards should not take action on matters that did not appear on the agenda since such action would violate the purpose of the open meeting law. However, courts have not yet considered whether this is a breach of the law.

- **Special Meeting.** A special meeting is called for some other time than the regular meeting date. In such meetings, the board usually has a more limited agenda. Public notice for special meetings requires a minimum of three public postings of the notice (one at the Town Clerk’s office), as well as notice to each member of the board at least 24 hours before the meeting is to begin. The agenda must be made available, and notice must also be given to the local news media and any other media that has specifically requested notice. *1 V.S.A. §§ 312(c)(2), 310(4).*

Adjourned Meetings. When a meeting is “adjourned,” or continued to a new time and/or place, the meeting will not be considered a new meeting (and not require additional notice) so long as the time and place of the new meeting is announced before the first meeting is closed. *1 V.S.A. § 312(c)(4).*

- **Emergency Meetings** are those called to respond to what the law calls “an unforeseen occurrence or condition requiring immediate attention by the public body.” *1 V.S.A. § 312(c)(3).* These are the rarest of meetings. Frankly, when the town hall is on fire, nobody expects the selectboard to respect the formalities of the open meeting law before calling for help. The law exempts a board from formal posted public notice for emergency meetings, but requires that some notice

be given. Emergency meetings should never be used as a substitute for a poorly warned special meeting. *1 V.S.A. § 312(c)(3)*.

Inadvertent Meetings. A meeting occurs whenever a majority of the members of a public body are together talking about the business of the board. *1 V.S.A. § 310*. This means that, for example, when a majority of a board find themselves at a social gathering together, it is important not to discuss the business of the public body.

3. THE RIGHT TO SPEAK

Every public meeting must make time for the board to take public comment. *1 V.S.A. § 312(h)*. The subjects may be related to the agenda or not. Many boards allow public comment at the start of the meeting. Others place it as the final agenda item. Some boards allow public comment whenever anyone present has something to add to the discussion. Whenever it occurs, public comment is an important time in the life of a board. It is the one opportunity that members of the public have to speak openly about their concerns.

Public comment period is not a free-for-all. The chair of the board is allowed by law to establish reasonable rules to ensure civility and avoid delay, and reasonable limitations on the amount of time for each speaker are not unusual or improper.

The law of school boards takes public comment one step further than for other boards. *16 V.S.A. § 554*. Whenever a member of the public requests a written response to its public comments, the board is required by law to provide a written response.

4. EXECUTIVE SESSIONS

An executive session is a closed meeting within a public meeting. *1 V.S.A. § 313*. **A motion and vote** are essential prerequisites to entering executive session. A majority of the members of a local board (a two-thirds majority of a state board) must agree to enter for the reasons stated. This motion and vote must then be included in the minutes of the meeting, making a permanent record of the session and its reasons.

Boards may not enter executive session without first meeting in public session and then voting to close the meeting, and then only for very specific reasons.

The legislature has identified a number of reasons to enter executive session. One category, which includes consideration of contracts, civil actions, mediation, arbitration, and labor relations agreements, requires a special review before executive session is justified. The law requires the board to conclude that “premature general public knowledge would clearly place the state, municipality, other public body, or person involved at a substantial disadvantage” before voting on executive session in these cases.

Other reasons to go into executive session are:

- The negotiating or securing of real estate purchase options;
- The appointment or employment or evaluation of a public officer or employee;
- A disciplinary or dismissal action against a public officer or employee; but nothing in this subsection shall be construed to impair the right of such officer or employee to a public hearing if formal charges are brought;
- A clear and imminent peril to the public safety;
- Discussion or consideration of records or documents that are not public documents under the access to public records act. However when the board discusses or considers the excepted record or document it may not also discuss the general subject to which the record or document pertains;
- The academic records or suspension or discipline of students.

Abusing the law of executive session is offensive to the purpose of open meetings. Boards should close their meetings rarely, and then only for legitimate purposes. If the subject is already well known to the community, even if the board is able to find a category to cite, there is no justification for entering executive session.

No action may be taken in executive session. Entering a real estate purchase option is the sole exception. In all other instances, appropriate topics may be discussed in executive session but ultimate action must be taken by motion and vote in open session. *1 V.S.A. § 313(a).*

Going Into Executive Session

A board may not go into executive session simply because it wishes to proceed privately. Rather, it may only exclude the public if it can point to a specific exemption in the law.

Some boards make the mistake of “warning” meetings as executive or closed sessions. This is an error because the law requires the board to move, in open session, to go into an executive session.

A motion to go into executive session must indicate the nature of the business of the executive session, and this motion must be passed by an affirmative vote of a majority of the members present (2/3 vote for state boards).

In an executive session only the subject matter referenced in the motion to go into this session may be discussed.

Attendance in executive session is limited to members of the public body, and, in the discretion of the public body, its staff, clerical assistants and legal counsel, and persons who are subjects of the discussion or whose information is needed.

Minutes do not have to be taken in an executive session. However, if minutes are taken, these minutes are not public.

Remember...

no binding action may be taken in executive session (except those related to securing real estate options). Rather, all final votes must be taken in open session and recorded in the minutes of the meeting. 1 V.S.A. § 313(a).

5. WHAT THE LAW IS NOT

The open meeting law applies to boards and commissions, not to individual officials. There is no right to sit in the town manager’s office and watch her conduct town business. There is no right to be present at site visits for tax assessments or abatements, or to oversee the routine day-to-day administration of the town. *1 V.S.A. § 312(g).*

Sometimes a board acts in a **quasi-judicial** capacity. It conducts a hearing on a variance or a conditional use permit, or when it hears tax appeals. In these instances, although the hearing is open, only interested parties (as defined by the relevant statute) may be heard, and deliberations that follow may be closed to the public. *1 V.S.A. § 312(e)(f).* The open meeting law acknowledges this as an exception to the general rule about board action. When acting on these cases, boards may issue their decisions in writing, without the formality of a meeting where the decision is announced.

Some boards go beyond the requirements of the law and do everything in public (except quasi-judicial decisions – where due process may require private deliberations.) The risks entailed in letting everybody know its business are not small, but these boards will discuss everything except lawsuits in open session, and go out of their way to inform the public in attendance at the meeting of the subject as it is discussed. There is no penalty for extra openness and a high return on the investment if the public understands you have nothing to hide.

The law on open meetings is not itself going to guarantee that every decision made by a board is the right decision. It is not a mechanism for enlarging the board to include vocal members of the public with a strong point of view. In the end, after discussing an issue, a board is going to make a decision with motion and vote or pass over the question, and that decision is the board's to make.

6. MINUTES

Every meeting needs minutes. The open meeting law requires minutes to include the result of all votes, all motions (including those that fail), and the names of all persons participating in the meeting. Minutes must be available for review and copying within five days of the meeting, even if the board has not yet approved them. *1 V.S.A. § 312 (b)*. Minutes are the permanent record of the board's actions. They should be of interest to anyone planning to appear before a board with a proposal, to understand the board's process and precedents. Copies are available through the clerk of the board. Those interested may review minutes of former meetings on request, and obtain copies at the actual photocopying cost.

7. ENFORCEMENT

Members of the public have rights to enforce violations of the law in superior court. The law provides that these courts must schedule hearings of such violations as soon as the docket allows it, allowing swift resolutions of disputes. Courts may fine the town or order the board to follow the law. The Attorney General is also authorized to prosecute violations. *1 V.S.A. § 314*.

Prosecutions are rare in Vermont. When they happen, the media is quick to cover the story. People take open meetings seriously here.

The open meeting law should be enforced with the same spirit in which it is written. It is a guide to proper behavior by public officials. Sometimes boards make mistakes. In cases where the offense is unintentional, the best remedy is often to ensure that the board understands how the law works so that it does it right the next time.

8. FINAL THOUGHT

Good government is open government. Open meetings beget open minds. Openness generates trust and fidelity to law. It gives people direct access to decision-making and

provides a civil forum for public criticism and appreciation of the hard work of governance.

There is bound to be tension between efficiency and openness. Doing things in public is not the way most of us are used to conducting our business. New board members are always surprised at how it feels to do things as unguardedly as the open meeting law requires. Even members of the public are sometimes amazed at how much of government is open and available to them.

Don't sit home and complain your government doesn't represent you.

Go see it in action.

It's an education.