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# CLOSED SESSIONS DURING LIBRARY BOARD MEETINGS

## MONTANA STATE LIBRARY SUMMER 2025

*These materials are designed to provide information regarding areas of the law and best practices concerning the identified topics. These materials are not intended to be a rendering of legal advice. The reader of these materials should request legal advice from an attorney on specific legal inquiries.*

# INTENDED OUTCOMES

This session provides library leaders foundational guidance about the convening a library board in closed session consistent with Montana law. Emerging and ongoing issues are presented so participants complete the session with renewed confidence in ensuring governmental transparency.

# CONSTITUTIONAL FOUNDATIONS

The Montana Constitution provides each citizen with a right to know and a right of privacy. These two rights will intersect at some board meetings.

- **Article II, Section 9. Right to know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.
- **Article II, Section 10 Right of privacy.** The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

# STATUTORY REQUIREMENTS

## **2-3-201. Legislative intent -- liberal construction.**

The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

# STATUTORY REQUIREMENTS

## **2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.**

(1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

...

(6) Any committee or subcommittee appointed by a public body, or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

# COMPLIANCE GUIDANCE

- **What do the open meeting laws mean?**

The open meeting laws require local government boards to conduct business in a transparent manner that ensures citizens can observe operations, deliberations and decisions.

When members of the board will be present, whether physically or by means of electronic equipment, to hear, discuss, or act upon a matter over which the board has supervision, control, jurisdiction, or advisory power the public has a right to observe those discussions.

- **How does the definition of a quorum apply?**

The presence of a quorum, a majority of the board's or committee's membership, means that action may be taken during the meeting. But discussions that occur when a quorum is not present can deprive the public of its right to know so the presence of a quorum is not the sole determining factor.

# PUBLIC NOTICE

## ■ When is notice is required?

When members of the board, a board committee, a committee upon which a board member sits or is appointed and any other committee that conducts business under the jurisdiction of the board meets to hear, discuss or take action on business or operations the board must notify the public that the group is meeting to honor the public's right to observe and participate in the meeting. This includes regular board meetings, special board meetings, committee meetings.

## ■ What notice is required?

The notice posted to the public should include where and when the meeting is taking place and what will be discussed and possibly acted upon. The contents of an agenda must contain enough information to enable a reasonable reader to understand the subject matter to be discussed at the meeting.

## ■ Where is notice posted?

Local government boards shall publish an agenda for meetings to the public as specified in Section 2-3-103, MCA:

*A. If a newspaper of general circulation in the county where the library is located publishes electronic notices and links to meeting agendas free of charge to the library on the newspaper's website, the library shall provide the notice and agenda to the newspaper to post on the newspaper's website.*

*B. If the library does not have an option to post notices and links to meeting agendas free of charge, the library shall provide adequate notice of a meeting by doing at least one of the following:*

- 1. posting a link to the meeting agenda on the library's primary website; or*
- 2. posting the agenda on the social media site of the library.*

In addition to the above-noted electronic postings, boards may post a physical copy of the meeting agenda at identified locations in the community.

# STATUTORY REQUIREMENTS

## **2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.**

...

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains, and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).



# PERMITTED CLOSED SESSIONS

- **When can a board convene in closed session?**

All board and committee meetings must be held in open session, with the exception of two circumstances: (1) where individual rights of privacy clearly exceed the public's right to know, and (2) to discuss litigation strategy. If a closed session is going to be held it must appear on the agenda that a closed session is possible, so the public is sufficiently notified.

- **How does a board handle individual privacy rights?**

When an item may result in a closed session it should be noted on the agenda. When that agenda item is the next order of business, the board chair conducts an independent analysis as to whether there is a recognized right of privacy. If the board chair determines there is both a recognized right of privacy that the public would deem reasonable and that right of privacy clearly exceeds the public's right know, the matter can be held in closed session. All decisions of the board must be held in open session. However, the board can discuss the wording of a possible motion in closed session.

- **What is litigation strategy?**

The law specifically allows a board to convene in a closed session to discuss litigation strategy with the board's attorney. The attorney must be present in some fashion, i.e., in person or by other means. This closed session is not available when the litigation is against another public agency.

# CLOSED SESSION MINUTES

- **Section 2-3-212, MCA**, includes the following requirement: “Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes...are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.”
- Individuals are free to explain votes or comments which may have made in an open session. Discussions of items in closed session remain private to preserve the underlying purpose of the closed session as reflected in the closed session minutes law.

# CLOSED SESSION DECISION MAKING

- **How does the Board make a decision on a matter requiring a closed session?**

All decisions of the Board must be held in open session. However, the board can discuss the wording of a possible motion in closed session. The Board must return to open session to complete the decision-making process in a manner that does not violate the privacy rights of the individual or waive the attorney-client privilege while honoring the public's right to know that a decision was made.

- **Does that mean the public has a right to comment prior to the final decision?**

The public may comment on the motion pending before the Board during an open session in a manner which does not violate privacy rights by expressing support or opposition to the proposed action. Certain comments may be heard during the closed session if handled in accordance with law.

# OPEN MEETING GOVERNANCE FUNDAMENTALS

- Effective and sound meetings policies, procedures, and practices can help ensure the library operates in a transparent and accountable manner to generate and retain public trust.
- Community engagement is not just a local issue. Each library's actions can have impacts across Montana; transparency, honesty, and accountability are successful traits that will establish confidence that can translate to support from all parts of the community
- Informed citizens become involved citizens and involved citizens are more likely to be supportive of the library's mission and decisions; community support for the library may result in government policy makers being more receptive to supporting libraries at the statewide level
- Develop open and honest relationship with members of the media to foster existing relationship with community leaders, policy makers, and stakeholder representatives
- Benefits of Compliance:
  - Prepare for emergencies with stakeholder-focused crisis management plan
  - Highlight routine successes of the library
  - Explain budget priorities in a fashion that highlight on patron needs
  - Demonstrate stability through consistently enforced policies

# MEETINGS POLICY PROVISIONS - EXAMPLES

## ■ **Board Meetings**

Operations and decisions of the Board shall occur at a duly called and legally conducted meeting as defined and established in Montana law.

## ■ **Notice of Meetings**

Unless otherwise required by law and policy, the Library shall publish an agenda for each type of meeting included in this policy in a manner required by Montana law and Library bylaws.

## ■ **Regular Meetings**

Unless otherwise specified, all meetings will take place in the \_\_\_\_\_.  
Regular meetings shall take place at \_\_\_\_\_ on the \_\_\_\_\_  
\_\_\_\_\_ of each month, or at other times and places determined by the Board.

## ■ **Committee Meetings**

Each Board committee established under by the Board shall meet as needed in accordance with the directive issued to the committee or trustees and noticed to the public consistent with the requirements of this policy. Minutes of each meeting shall be completed as required by Montana law, Library bylaws, or applicable policy.

# MEETINGS POLICY PROVISIONS - EXAMPLES

## ■ Closed Sessions

The Board may meet in closed sessions to consider matters of individual privacy as specified in Montana law. The possibility of a closed session shall be noted on the respective agenda item appearing on the public notice published in accordance with this policy. The individual whose rights of privacy will be considered during the possible closed session shall be notified in writing of the meeting. Before closing a meeting, the presiding officer must determine that the demands of individual privacy exceed the merits of public disclosure and so state publicly before going into closed session.

The Board also may go into closed session to discuss a strategy to be followed with respect to litigation, when an open meeting would have a detrimental effect on the litigating position of the Library. This exception does not apply if the litigation involves only public bodies or associations as parties. Before closing a meeting for litigation purposes, the Library may consult legal counsel on the appropriateness of this action.

No formal action shall take place during any closed session. Closed session meeting minutes shall be completed in accordance with Montana law.

# MONTANA LIBRARY ASSISTANCE HELPLINE





THANK YOU

Contact Information:

[helpline@mtlib.org](mailto:helpline@mtlib.org)