



# Governor's Council on Disabilities and Special Education

Open Meetings Act

Stuart W. Goering  
Senior Assistant Attorney General  
State of Alaska Department of Law

# Overview

- Open Meetings Act - AS 44.62.310 - .319
- Government business presumed public business
- Exceptions
- Executive sessions
- Consequences of violations

# Fundamental State Policy

- AS 44.62.312(a):

It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies that serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

# Presumption

- Meetings of a governmental body of a public entity are open to the public
- Closed sessions are permitted only if an exception applies, or another law so provides
- Materials considered by the governmental body in a meeting should be available to the public, even at teleconference locations

# What is a Meeting?

AS 44.62.310(g)(2) - “meeting” means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

# What is a Meeting? Essentials

- More than three members or a majority, whichever is less
- Applies to committees
- Applies if policies or decisions are considered, even if not prearranged
- Applies to prearranged consideration of recommendations or advice, even if the body lacks independent authority to act

# Required Notice

AS 44.62.310(e) - Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and if, the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Subject to posting notice of a meeting on the Alaska Online Public Notice System as required by AS 44.62.175(a), the notice may be given using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

# What is “Reasonable Public Notice”?

- Contains date, time and place of meeting, including teleconferencing information
- Posted on AOPNS, at the agency’s offices, and optionally publicized in print and broadcast media
- Email and physical mailing lists are common
- Objective is to reach as many interested persons as possible

# Timing of Notice

- Agency should be consistent in the timing and manner of public meeting notice
- General rule is at least a week, but in appropriate circumstances a shorter period may be acceptable
  - Response to legislative inquiries
  - Litigation matters
  - Time-sensitive personnel or financial matters

# Exceptions

- AS 44.62.310(d)
  - Adjudication by a judicial or quasi-judicial board (AS 47.30.031(b)(4))
  - Staff meetings
  - Participation in or attendance at a gathering of national, state, or regional organization of which the agency or a constituent is a member (but no action may be taken)

# Executive Sessions

- As a matter of policy, should be used infrequently
- Matter to be discussed must be specifically described in public, without compromising the need for confidentiality
- Board must affirmatively vote to go into executive session
- No action may be taken in executive session, except to provide direction to an attorney in a specific legal matter

# Subjects for Executive Session

- Matters the immediate knowledge of which would have an adverse effect on the finances of the agency
- Matters that tend to prejudice the reputation and character of any person, except that the person may request a public discussion
- Matters that are by law confidential
- Matters involving consideration of government records that by law are not subject to public disclosure

# Non-Statutory Reasons

- The common law privilege of attorney-client communications may justify executive session for general legal advice
- Other common law privileges have been recognized but would be unlikely to apply to Council

# Consequences of Violations

- Actions taken in violation of Open Meetings Act may be voided by a court
- Agency may cure violation by holding a properly noticed meeting and substantially reconsidering the action taken
- Cure may occur either before or after the action is voided by the court

# Conclusion

- As a governmental body, the Council is expected to operate in public whenever possible
- When in doubt, ask for legal advice before acting
- Questions?