

# What you need to know about the Open Meetings Act

**T**he Open Meetings Act (OMA) is arguably the statute that most impacts a township board as a whole. Every board member is subject to the OMA every time the board meets—and before and after it meets. All other statutory township boards and commissions are subject to the OMA, as well as most, if not all, committees established by the board.

The OMA is the law that requires notice to be given before a meeting is held and requires minutes to be prepared as a record of actions taken at a meeting. It's the law that requires each meeting to include a public comment period and that mandates when minutes of a meeting must be available to the public.

Perhaps most importantly, the OMA is the source of the requirement that all votes of a public body must be made in public.

As comprehensive as it is, the Open Meetings Act, Public Act 267 of 1976, MCL 15.261, *et seq.*, is surprisingly short and clear. It is available for free on the Michigan Legislature's website: [www.legislature.mi.gov](http://www.legislature.mi.gov). So there's no excuse—every board member should be familiar with the OMA and comfortable with how it works in practice.

This article will discuss the OMA's requirements for meeting notice, meeting conduct, decision-making and minutes. But first, a little background may be useful.

## **Why are township meetings 'open'?**

It's a good question. Undeniably, the requirements for notifying and including the public in meetings of a public body may, at times, make it more difficult for a public body to make decisions or accomplish its business. But in the wrong hands, efficiency can become expediency—and that's what prompted the Michigan Legislature to adopt the OMA in 1976 in the wake of the Watergate scandal. Today, all 50 states, the District of Columbia and the federal government each have some form of "open meetings" or "sunshine" law.

It's important to note that there is no constitutional or First Amendment right to open meetings. The public's right to attend and participate in meetings of a public body is statutory, as defined by Michigan's Legislature. It is not an absolute right; it is limited to the OMA's provisions that allow a person: 1) to attend and record or telecast a meeting, and 2) to speak during a public comment period under rules established by the public body.

The public does not have a statutorily protected right to speak outside of a public comment period or to participate in the public body's decision-making process. That is because a public meeting is the only place a public body like a township board may lawfully make decisions and do its business. The public has many other opportunities to interact or do business with a township, outside of a board meeting. But the board is restricted to acting only in an open meeting. With that in mind, the OMA also allows a public body to adopt rules to minimize disruption of its ability to do business.

Nothing, however, prevents a public body from allowing a greater degree of openness. An individual township board can choose to give more notice and allow for more public involvement in its meetings. The spirit of the OMA emphasizes transparency in government.

There are times when the public interest in effective administration and decision-making outweighs the public interest in open meetings. The OMA includes very limited options for addressing certain types of issues in "closed session." But all decisions of a public body must still be made in public.

## Start with the OMA's definitions

To determine if the OMA applies in a particular situation, you have to know whether 1) a public body 2) is meeting to 3) deliberate toward or make a decision—as each of those elements is defined by the OMA:

**Public body:** MCL 15.262(a) defines a "public body" as "any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority or council, that is empowered by state constitution, statute, charter, ordinance, resolution or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function ... ." Any committee, subcommittee or other body that meets the definition of "public body" will be subject to the OMA.

**Meeting:** MCL 15.262(b) defines a "meeting" as "the convening of a public body at which a quorum is present for the purpose of *deliberating toward* or *rendering a decision* on a public policy ..."

**Decision:** MCL 15.262(d) defines a "decision" as "a determination, action, vote or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."

## What is a township public body?

**Statutory bodies**—All township bodies created or authorized by state law are subject to the OMA, including the township board, annual meeting of the electors, planning commission,

zoning board of appeals, board of review, construction board of appeals, election commission, elected park commission, elected library board, police or fire administrative board (single or joint), building authority, civil service commission, police or fire civil service commission, downtown development authority board, economic development corporation board, emergency services authority, historic commission, housing commission, and officials compensation commission. That list is not exhaustive; to be prudent, assume that any body authorized or required by state law must comply with the OMA.

In most cases, the enabling statute will state that the body is subject to the OMA.

**Advisory committees**—Any committee established by the township board or other public body is potentially subject to the OMA, unless it is "purely advisory," meaning it makes no final decisions. A township board may appoint advisory committees to collect information, make recommendations and participate in township programs. Purely advisory committees that do not include a quorum of the township board or other public body are not subject to the OMA.

Many court cases and attorney general opinions have addressed the intricacies of what constitutes a public body, and it is beyond the scope of this article to give a definitive description. Suffice to say, the fact that a public body calls a committee "advisory" does not automatically release the committee from OMA compliance. A township "advisory committee" may be subject to the OMA if it falls under the OMA's definition of a quorum of a public body deliberating toward or rendering a decision at a meeting in practice.

**Subcommittees of less than a quorum**—Although the OMA defines a meeting as "the convening of a public body at which a quorum is present," if a public body delegates a governmental function or proprietary authority to a subcommittee that is less than a quorum of the body, that subcommittee is still conducting a governmental function, and the process must be conducted at an open meeting. Avoid using subcommittees to circumvent the OMA.

Not all requests for recommendations from a subcommittee are a delegation of a governmental function or proprietary authority, but when in doubt, consult the township's attorney.

**Individuals**—Similarly, if a township board (or other body) delegates the final decisions for a township governmental function or proprietary authority to an individual, that individual is still conducting a governmental function, and the process must be conducted at an open meeting. The only township exception is when the individual's office/position is charged with that governmental function or proprietary authority by statute, not board delegation. By law, an individual official is not a public body.

A prudent approach is for any township body or committee to fully comply with the OMA. The township board may charge a subcommittee or advisory committee with OMA compliance.

In the long run, this approach may be good for public relations and may help the township avoid even the appearance of attempting to circumvent the OMA.



Photo courtesy of Southwest Washtenaw Council of Governments

An individual township board can choose to give more notice and allow for more public involvement in its meetings. The spirit of the OMA emphasizes transparency in government.

## What types of meetings are lawful?

There are only two types of meetings of a public body: Regular and special meetings.

**Regular meetings**—Under the OMA, a regular meeting of a public body is a meeting that is on the schedule of meetings adopted by the body and posted within 10 days after the first meeting of the public body’s year (fiscal or calendar year).

**Special meetings**—A special meeting is simply a meeting that is not in the schedule of regular meetings. Special meetings are just that—special. Frequent use of special meetings, with their short notice periods, can be perceived by the public as an attempt to circumvent their attendance at meetings. Major or potentially sensitive business items are probably best discussed at a regularly scheduled meeting if there is no emergency or other pressing deadline.

## Is it a meeting?

**“Work sessions”**—Some public bodies designate certain meetings as “work sessions,” meaning that the body does not intend to vote on any business at that meeting. But there is no such designation in the OMA or township law, and calling a meeting a “work session” does not remove the meeting from OMA requirements. Remember, the OMA definition of meeting includes “deliberating toward” a decision. A “work session” must be either a regular or special meeting.

And any stated restriction on voting is only self-imposed. If a quorum is present at a work session, nothing will prevent the body from voting, so the OMA should be followed.

**Public hearings**—A public hearing is always an agenda item at a regular or special open meeting; it never “stands alone.” Even if the meeting is held only to conduct the public

hearing, it is still a meeting of the public body conducting the hearing, and the OMA applies.

**“Closed meetings”**—Occasionally, someone will refer to a “closed meeting.” There is no such thing, although a public body may hold a “closed session” during an open meeting, if one of the OMA’s permissible reasons applies. All meetings of a public body must be open meetings. (See page 29 for more on holding a closed session.)

## What notice does the OMA require?

A public meeting notice must include the name of the public body to which the notice applies, its telephone number if one exists, and its address, and must list the dates, times and locations of the regular meetings. The notice must be posted at the public body’s principal office and any other locations it considers appropriate. The Internet, social media, or public access television may be used for posting public notice, in addition to, but not instead of, the notice posted at the principal office. (MCL 15.264)

If a township does not have a hall or “principal office,” the required public notice for a township public body must be posted in the office of the county clerk. (MCL 15.264)

**Regular meeting notice**—The schedule of a public body’s regular meetings must be posted at the township’s principal office within 10 days after the first meeting of the public body in each calendar or fiscal year. (MCL 15.265) A public body is not required to establish a regular schedule; some bodies, such as the zoning board of appeals, meet only as needed. (Attorney General Opinion 5183 of 1977)

If a public body changes its schedule of regular meetings, it must post the new schedule within three days after the meeting at which the change is made (and at least 18 hours prior to any rescheduled meeting). A public body may change its schedule to move one meeting date or to reschedule its remaining meetings for the year to a new day each month. (MCL 15.265)

**Special meeting notice**—The OMA requires that the public be notified of any special meeting of a township public body by notice posted at the township’s principal office at least 18 hours prior to the meeting time. The notice must state the date, time and place of the meeting. The notice must be accessible by the public for the full length of time, so it cannot be posted in a hallway or other area of a building where the notice is not visible to the public even when the building is closed. (MCL 15.265)

If the township “directly or indirectly maintains an official Internet presence [website] that includes monthly or more frequent updates of public meeting agendas or minutes,” then special meeting notices must also be posted on a portion of the website that is fully accessible to the public. “The public notice on the website shall be included on either the homepage or on a separate webpage dedicated to public notices for nonregularly scheduled public meetings and accessible via a prominent and conspicuous link on the

website's homepage that clearly describes its purpose for public notification of those nonregularly scheduled public meetings." (MCL 15.265)

**Subscriptions to public notices**—The OMA requires a public body to send public notice of meetings to: 1) a newspaper published in Michigan, or a radio or television station in Michigan at the same time the notice is posted, at no charge, upon written request; and 2) by first-class mail to anyone other than the media who submits a written request and pays a yearly fee of no more than the reasonable estimated cost for printing and postage of those notices. (MCL 15.266)

## Additional notice requirements

Other statutes mandate additional notice requirements. The following is not an exhaustive list, and township officials should routinely consult the statutes that authorize a particular action by a public body to determine if any additional notice is required.

**Americans with Disabilities Act**—The federal Americans with Disabilities Act (ADA) requires that a public meeting notice must state that if a person with disabilities notifies the clerk within a designated number of days prior to the meeting, accommodations will be furnished to enable meaningful attendance. The township board may establish the number of days it will require for ADA notification. MTA recommends using the following language on all public meeting notices:

*"This notice is posted in compliance with Public Act 267 of 1976, as amended, the Open Meetings Act, MCL 41.72a, and the Americans with Disabilities Act. The \_\_\_\_\_ Township Board will provide necessary reasonable aids and services, such as signers for the hearing-impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting upon \_\_\_\_\_ days' notice to the \_\_\_\_\_ Township Board by writing or calling: (list the name, title, address and telephone number of the contact person)."*

**Public hearings**—Public hearings are an element of an open meeting; they never stand alone. A public hearing is a legally required comment period on a specific action being considered by the public body. Additional notice is usually required to encourage public awareness and input. Notice of the public hearing may be required by law to be published in a newspaper or mailed to specific persons, businesses or organizations. In many cases, the statute that requires the public hearing will state when the notice must be printed or sent.

For example, the Michigan Zoning Enabling Act (MCL 125.3101, *et seq.*) requires all **zoning application/hearing notices** to be published once in a newspaper of general circulation at least 15 days before the date of the meeting. If the application involves 10 or fewer adjacent properties, or the request is for a zoning board of appeals interpretation of the zoning ordinance or an appeal of an administrative decision regarding a specific parcel, the notice must also be sent by mail or personal delivery to the applicant or property owner, and the occupants and assessed owners of property within 300 feet. (MCL 125.3103)

Another example is the requirement to publish the notice of a township board **budget public hearing** in a newspaper of general circulation. Under the Budget Hearings of Local Governments Act, the notice must include the time and place of the hearing, and state the place where a copy of the budget is available for public inspection. The notice must also include the following statement printed in 11-point boldfaced type: **"The property tax millage rate proposed to be levied to support the proposed budget will be a subject of this hearing."** (MCL 141.412) A general law township must publish the notice at least six days prior to the day of the meeting at which the budget public hearing will be held. The Charter Township Act adds the stricter requirement for a charter township to publish the notice at least seven days prior to the date of the meeting. (MCL 42.26)

Township public bodies should consult the statutes for the particular requirements for the type of public hearing to be held or, when in doubt, call MTA Member Information Services at (517) 321-6467 for the correct time frame.

**Planning commissioner notice**—The Michigan Planning Enabling Act requires the planning commission secretary to send written notice of a special meeting of the planning commission to the members not less than 48 hours in advance of the meeting. (MCL 125.3821)

## How may the public participate in a meeting?

**Attending**—Any person may attend the open sessions of a public meeting. A public body cannot put conditions on attendance, such as requiring a person to identify him or herself. A person may be excluded from a specific open meeting only for a breach of the peace actually committed at that meeting. (MCL 15.263 and Attorney General Opinion 5183 of 1977)

**Recording**—MCL 15.263 states, "The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting."

"Reasonable rules and regulations" may include directing that recording equipment be located in a particular part of the meeting room, to minimize risks of tripping over cords and blocking the view of the audience. But nowadays, smartphones and other devices mean that you may not know that people are recording. A person recording the open session of a public meeting does not have to tell anyone that he or she is recording the meeting or get permission to do so.

A public meeting is a public forum, with little or no expectation of privacy (except for closed sessions), so public bodies should just assume that everyone in the room during open session is recording. Those recordings may be posted on the Internet or social media—even "live" as the meeting is happening—or otherwise distributed or broadcast by private individuals.

**Public comment**—The public has a right “to address a meeting of a public body under rules established and recorded by the public body.” (MCL 15.263) The public must have at least one opportunity to speak publicly at an open meeting, and this has come to be known as the “public comment period.”

There are numerous court decisions and attorney general opinions on public comment, but, as people who’ve heard the author speak on the subject know, a simple rule of thumb is to assume that if little green men from Mars appear speaking Martian, and they want to speak during the public comment period, they get the same time to speak as anyone else would!

A public body may adopt rules for the public comment period. According to Attorney General Opinion 5183 of 1977, “the rules regulating the right of public address may include such controls as the length of time any one person may be permitted to address the body, the portion of the agenda set aside for public address, and a requirement that persons wishing to address the public body identify themselves and make it known ahead of time that they wish to address the body in order to facilitate the planning of time allotments to various portions of the agenda.”

Attorney General Opinion 5183 stresses, however, that “these rules must be reasonable, flexible and designed to encourage public expression and not discourage or prohibit it.”

A public body may limit the amount of time it will allow each individual speaker to address the meeting. Note that this is not the length of the public comment period itself; it is the length of time an individual speaker gets to speak. If 100 people want to speak, they each must be given the opportunity to speak. For that reason, consider choosing a limit such as two or three minutes. Few people need more time than that to make their point. Any time limit rules should be imposed consistently.

Consider allowing a group of individuals who wish to present a specific point of view to designate a spokesperson who may have additional time to adequately represent the group’s views. This is only an option, however; a public body cannot require a group to use a spokesperson.

A person’s right to speak during a public comment period implicates the First Amendment right to free speech, particularly on matters of public concern. Restrictions on the public comment period should be limited to content-neutral “time, place and manner” restrictions that serve a significant government interest and allow ample alternative channels of communication. Avoid attempting to regulate what a person is saying (the content of the speech).

For example, Attorney General Opinion 5332 of 1978 states that a public body may adopt a rule that “prohibits a person from using the board’s and the public’s time to make a personal attack upon an individual” if the content of the speaker’s attack “refers to conduct of the person being attacked that is totally unrelated to the manner in which he or she performs his or her duties” (is not a matter of public



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concern). The opinion goes on to state that, if the speaker’s attack “is intended to refer to the manner in which an employee of the board or board member carries out his or her duties, the rule would be invalid ... .” Commenting on how officials perform their duties is political free speech.

## How must decisions of a public body be made?

The OMA states, “All decisions of a public body shall be made at a meeting open to the public.” (MCL 15.263) A public body may never vote or make a final decision in closed session.

Attorney General Opinion 5262 states that the Legislature clearly intended a vote to be open to the public: “The Open Meetings Act prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of a public body have voted.”

This means that any vote must be made by an “all in favor” voice-vote, a roll call vote, a show of hands or other method that allows the public to know how the official is voting. (*Esperance v. Chesterfield Township of Macomb County*, 89 Mich. App. 456, 1979) Township public bodies cannot vote by paper ballot or other secret ballot.

Public bodies should never vote or decide an issue outside of an open meeting. Several court decisions and attorney general opinions have addressed whether a public body can “poll” its members outside of a public meeting. According to MTA Legal Counsel, it is possible for one board member to lawfully “poll” other individual board members by phone or email to ask how they stand on a particular issue—as long as the contacts do not include any discussion of the issue, and do not eliminate full public discussion and deliberation of the issue prior to the body taking action on it. The polling cannot rise to the level of reaching a consensus or an agreement about an issue. But because there is a fine line between

about an issue. But because there is a fine line between “polling” and unlawful “round-the-horn” or “round-robin” voting outside of an open meeting, especially when several board members engage in “polling,” MTA recommends that township public bodies avoid attempting to “poll” their members.

### **What should be included in meeting minutes?**

Minutes are a record of actions taken by a public body. They are not meant to be a word-for-word recital of the meeting or a medium for expressing individual positions.

For many reasons, the official responsible for drafting a public body’s minutes and the public body should work together to adopt a policy or consensus on what will or will not be included in the minutes, such as avoiding personal statements or verbatim deliberations or comments (except as appropriate for public hearings).

One of the most important reasons is that, when a public body makes corrections to its minutes, text that is “removed” never actually goes away. (See “*Approving/amending minutes*” below.)

A public body must keep minutes of each of its meetings showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose(s) for which a closed session is held. The minutes must include the roll call for any roll call votes taken at the meeting. (MCL 15.269)

According to MTA Legal Counsel, “[Meeting] minutes must, at a minimum, indicate the body which is meeting (e.g. township board, zoning board of appeals, planning commission, etc.); the date, time and location of the meeting; motions and resolutions made, supported and results of the motion; and any action taken by the body which is not specifically indicated in motions or resolutions.”

“Although the minutes do not have to include a verbatim recitation of all statements made at the meeting, a record of the topics or issues addressed during a meeting and any motions made (whether carried or not) provides a complete description of the proceedings of the meeting. We also note that if the township board has adopted a policy of following the provisions of *Robert’s Rules of Order*, it requires the recordation of all motions (whether passed or not) in the meeting minutes.

“Finally, we note that an accurate record of all motions offered, and their disposition, can avoid future disagreements or questions concerning those motions.”

Those are the basic requirements. Information over and above the requirements of the OMA and other statutes may be added at the discretion of the clerk/secretary and the public body when it approves the minutes at the next meeting. Note that the township clerk is responsible for the township board meeting minutes. (MCL 41.66)

Public bodies may want to consider adopting a policy of writing motions down before voting on them. This ensures that the members all know what the motion says when they are voting, and it gives the clerk/secretary an accurate record of the motion for the minutes. The extra time taken to clarify the motion can save hours of discussion on confusing votes later.

The meeting moderator (supervisor for township board meetings) should make a habit of reading the motion out loud prior to taking the vote and declaring the outcome. This will assist the members of the body in voting and the clerk/secretary in maintaining an accurate record.

### **Recording a public hearing in the meeting minutes**

According to MTA Legal Counsel, “When a public body conducts a public hearing (always an agenda item within a public meeting), the minutes should include the comments and arguments of those promoting or opposing a particular matter which is the subject of the public hearing and the fact that an opportunity to be heard was given to those present.”

One example of this is a hearing held to confirm a special assessment roll. MCL 41.726 requires a person objecting to the roll to file his or her objection in writing with the township clerk, but it is also important for the township to record in the minutes who appeared to protest so the township can demonstrate at any State Tax Commission proceedings that it provided the person an opportunity to be heard. Another example is noting in the March board of review meeting minutes when a taxpayer has appeared to appeal his or her assessment.

### **When must minutes be available to the public?**

There are actually two sets of minutes for any public meetings, and they should be identified as the draft (or “proposed” or “tentative”) minutes and the approved minutes.

**Draft minutes**—Draft minutes must be available for public inspection within eight business days after the meeting. They can be available sooner, just no later than eight business days. (MCL 15.269)

A public body may want to establish a policy that members of the body receive the draft minutes as soon as they are available. This gives them time to review the minutes so they are prepared to approve them at the next meeting.

**Approving/amending minutes**—A public body may only make any corrections in the minutes at the next meeting after the meeting to which the minutes refer. After that, the minutes cannot be changed. (MCL 15.269) Changes should be limited to correcting typos or clarifying ambiguities; they should not “change history.” If a board thinks better of a motion approved at the last meeting, the minutes are not the way to fix the problem. The minutes will show that motion. The board may be able to reconsider or repeal that motion at a subsequent meeting, but should consult with its attorney for specific guidance on whether and how to do so.

If corrections are made, the corrected minutes must show both the original text of the draft minutes submitted for approval and the final, corrected text. (MCL 15.269)

This can be accomplished by drawing a line through text to be omitted and hand-writing the corrected or new text above the text, or by using a computer’s “*strikethrough*” option for omitted text and ALL CAPS option for corrected or new text.

**Approved minutes**—Approved minutes must be available for public inspection within five business days after the meeting at which the minutes were approved. (MCL 15.269)

**Minutes inspection and retention**—Minutes are public records open to public inspection, and a public body must make the minutes available at the address designated on its public meeting notices. (MCL 15.269)

The approved minutes of a public meeting must be retained permanently. Draft minutes are kept until the minutes are approved. Handwritten notes or recordings of a meeting made for the purpose of creating the minutes must be retained until the day after the meeting at which the minutes are approved, when the notes or recordings may be destroyed (unless they are subject to a Freedom of Information Act request, a discovery request or a court order). (General Record Retention Schedule 25—Township Clerks)

## What happens if a public body violates the OMA?

There are three distinct types of legal relief available for violations of the OMA (*Leemreis v. Sherman Township*, 273 Mich. App. 691, 2007). Each one has different requirements:

**1) Invalidation of decision**—A decision made by a public body may be invalidated if the public body has not complied with the OMA. The attorney general, county prosecuting attorney or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body. (MCL 15.270)

Specifically, a decision may be invalidated if:

- The public body has not complied with MCL 15.263(1), (2) or (3), or has failed to give proper notice, which has interfered with substantial compliance with MCL 15.263(1), (2) or (3), and
- The circuit court finds that that noncompliance or failure has impaired the right of the public under the OMA. (MCL 15.270)

In plain English, if a public body deliberates toward or makes a decision outside of an open meeting, or gives improper notice, or interferes with a person's right to attend or record a meeting at which the public body deliberates toward or makes a decision, a circuit court judge has discretion to invalidate that decision.

An action to invalidate a public body's decision must be commenced within 60 days after the approved minutes are made available to the public or within 30 days after the approved minutes are available to the public if the decision involves approving a contract, receiving or accepting bids, making assessments, issuing bonds or other indebtedness, or submitting a borrowing proposal to the electors. (MCL 15.270)

In the statutory equivalent of a "do-over," the OMA allows a public body to reenact the disputed decision—when an action to invalidate the decision has been initiated in court. A reenacted decision is effective from the date of reenactment. (MCL 15.270)

When in doubt whether a decision was made in compliance with the OMA, or when an action has been initiated to invalidate a decision, a public body should consult its legal counsel to determine if reenactment is appropriate.

**2) Civil action for injunctive relief**—If a public body is or has been violating any aspect of the OMA, the attorney general, county prosecuting attorney or a person may commence a civil action in circuit court to compel the public body to comply or to enjoin further noncompliance. (MCL 15.271)

For example, if a public body is not giving proper meeting notice or making minutes available in time, the court can compel (require with a writ of mandamus) the public body to start sending proper notice or make minutes available. Or, for example, if a public body is meeting outside of a public meeting, the court can enjoin (prevent) the public body from continuing to do so by issuing a preliminary injunction or a temporary restraining order.

In addition, a person who commences such a civil action may be awarded court costs and actual attorney fees for the action, if they succeed in specifically obtaining injunctive relief. (MCL 15.271, and *Speicher v. Columbia Township*, 197 Mich. App. 125, 2014)

## 3) Penalties for intentional violations

**Criminal liability**—A public official who is a member of a public body, who intentionally violates the OMA, is guilty of a misdemeanor punishable by a fine of not more than \$1,000. A second offense will result in a fine of not more than \$2,000, or imprisonment for not more than one year, or both. (MCL 15.272)

**Personal civil liability**—A public official who is a member of a public body, who intentionally violates the OMA, is personally liable in a civil action for actual and exemplary damages of not more than \$500, plus court costs and actual attorney fees for a person or group of persons bringing the action. (MCL 15.273)

**"Court of public opinion"**—Even the appearance of attempts to circumvent the OMA can sour the public's perception of a public body. Even if no action is ever taken in court, ultimately the voters may still have their say.

## Putting the OMA into practice

Townships are the government most accountable and responsive to the public. The ability of the public to observe and participate in meetings of township bodies is the essence of township government and one of the strongest arguments for retaining this truly grassroots form of representation. The Open Meetings Act is a statutory expression of what townships stand for, and township officials can—and do—put it into practice every day.



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*Next month's issue of Township Focus will include additional information about township board meeting requirements.*



## Closed sessions

A closed session may be called during an open meeting, but only if all the criteria of one of the following “permissible purposes” are met. (MCL 15.268) Note that there are no lawful “closed meetings” for a public body subject to the OMA. A closed session is always an agenda item at an open meeting.

A public body may only receive information or deliberate during a closed session; decisions cannot be made in closed session.

### Permissible reasons to meet in closed session

A simple majority vote of a township public body’s members present and voting is required to call a closed session for the following reasons:

- To consider the dismissal, suspension or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member or individual agent, if the named person requests a closed hearing. A person requesting a closed hearing may rescind the request at any time, in which case the matter at issue shall be considered after the rescission only in open sessions.
- For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement if either negotiating party requests a closed hearing.

A two-thirds roll call vote of the members elected or appointed and serving on a township public body is required to call a closed session for the following reasons:

- To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.
- To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.
- To review and consider the contents of an application for employment or appointment to a public office if the candidate requests that the application remain confidential. However, except as otherwise provided in this subdivision, all interviews by a public body for

employment or appointment to a public office shall be held in an open meeting pursuant to the OMA.

- To consider material exempt from discussion or disclosure by state or federal statute.

### Minutes of a closed session

A separate set of minutes must be kept for a closed session. The minutes must record the purpose(s) for the closed session and the vote taken to enter into closed session, including the roll call of a two-thirds roll call vote when required to enter closed session. (MCL 15.267) The purpose given in the minutes for entering closed session should identify the specific OMA permissible purpose and address each element of the permissible purpose.

The minutes would also include the usual information required for minutes, such as the time the closed session is entered, who is present, and the time the closed session ended and the body returned to open session, except that no decisions may be made, and there is no public comment period in closed session.

Note that the minutes of the open meeting at which the closed session is held must also indicate the time a closed session is entered, who is present, the purpose(s) for the closed session, the vote taken to enter into closed session and the time the closed session ended.

The minutes of a closed session are not available to the public, and may only be disclosed under court order. (MCL 15.267)

The public body must still approve the closed session minutes at its next regular meeting. A member of the public body who was not present at the closed session may see the minutes for the purpose of approving them, but a public official who disseminates closed session minutes to the public risks criminal prosecution and civil penalties. (Attorney General Opinion 7061 of 2000)

Once the minutes of a closed session are approved, they are sealed and retained for one year and one day after the meeting at which the minutes were approved, at which point they may be destroyed. (MCL 15.267) If a recording is kept of a closed session, that recording is sealed, retained and destroyed along with the closed session minutes. (*Kitchen v. Ferndale City Council*, 253 Mich. App. 115, 2002)