

# Open Meetings Law

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## What are open meetings?

By law, citizens have the right to attend meetings of public bodies, listen to the debates, and watch the decision-making process in action. These meetings are considered “*open meetings*.”<sup>1</sup>

## What law governs open meetings?

Article seven of the New York State Public Officers Law is entitled, Open Meetings Law. This law lays out all of the requirements and exemptions for meetings held by public bodies. The Open Meetings Law went into effect in 1977. To see the Open Meetings Law in full, go to: <http://www.dos.state.ny.us/coog/openmeetlaw.htm>.



## Who oversees and interprets the Open Meetings Law?

The Open Meetings Law requires New York State to form a Committee on Open Government to write advisory opinions, make interpretations of the law when necessary, and give advice to individuals in regard to the law.<sup>2</sup> The actions of the Committee are governed by the New York Administrative Code, <http://www.dos.state.ny.us/coog/regskoog.htm>.

## Why are open meetings necessary?

In a democratic society, the people must stay informed in order to maintain control over their public officials. To be sure that this is accomplished, the law requires that:

- public business be performed in an open and public manner,
- citizens of this state are made fully aware of and are able to observe the performance of public officials, and
- citizens are able to attend and listen to the deliberations and decisions that go into the making of public policy.

“It is the only climate under which the commonwealth will prosper and enable the governmental process to operate for the benefit of those who created it.”<sup>3</sup>

## Who is covered by the law?

The Open Meetings Law applies to all public bodies.

*"Public body"* means any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department [of the state], or for a public corporation . . . or

a committee or subcommittee or other similar body of such public body.<sup>4</sup>

***Common public bodies covered include:***

- ❖ City Councils
- ❖ Town Boards
- ❖ Village Boards of Trustees
- ❖ School Boards
- ❖ Commissions
- ❖ Legislative bodies
- ❖ Committees and subcommittees within the public bodies listed above<sup>5</sup>



**How do you determine if an entity is a public body?**

In certain instances it may be unclear whether an entity qualifies as a public body under the law. Borderline cases may include quasi-public entities, public-private entities, private not-for profit organizations and corporations, and public-private boards.

In addition to the basic definition of a public body, judicial decisions and advisory opinions have established that "in determining whether the entity is a public body, various criteria or benchmarks are material. They include

- the authority under which the entity is created,
- the power distribution or sharing model under which it exists,
- the nature of its role,
- the power it possesses and under which it purports to act,
- and a realistic appraisal of its functional relationship to affected parties and constituencies"<sup>6</sup>

"It has long been held that the mere giving of advice, even about governmental matters is not itself a governmental function." However, if an entity can take final action on governmental matters it may qualify as a public body.<sup>7</sup> In addition, entities created by federal law are not subject to the Open Meetings Law, while entities created by state or local law often are.<sup>8</sup>

***Examples of less obvious public bodies:***

- Western New York Health Systems – This is a not-for-profit corporation whose Board of Directors consists of six members from already existing public bodies, three members from a private entity, and five members from the community at large. The body is a creature of the state and derives its power from state laws and serves a governmental function in overseeing the merger of ECMC, a public benefit corporation, and privately owned Kaleida. While WNYHS is a private entity on its face, it has been deemed a

public body in relation to the Open Meetings Law because of its main functions and relationship to the State.<sup>9</sup>

- Erie County Assigned Counsel Program - This private not-for-profit member corporation receives its funding primarily from Erie County and New York State. Its sole purpose is to provide legal counsel in accordance with Article 18-B of County Law, and it is governed by a Board of Directors that must have a quorum at its meetings to conduct business. This corporation would not exist but for its relationship with the County and therefore is considered a public body.<sup>10</sup>
- Student Government Bodies at Public Institutions – These associations carry out government functions on behalf of State Universities, and they have final decision making power. In addition, these bodies receive their funding from mandatory student activities fees that are paid to the school. Therefore, they are considered public bodies, and their meetings must comply with the Open Meetings Law.<sup>11</sup>

### **What is a meeting?**

**"Meeting"** is defined as "the official convening of a public body for the purpose of conducting public business."<sup>12</sup>

This only requires that a quorum of a public body gather to discuss public business. These meetings must be open to the public even if the public body does not intend to take any action. Meetings also include meetings held by video conference, and the public must be given the right to listen to or observe those meetings as well. This definition does not apply to chance meetings or social gatherings.<sup>13</sup>

### **What notice of open meetings does the law require?**

Notice of the time and place of a meeting scheduled must be given to the public prior to every meeting.<sup>14</sup>

1. *For meetings scheduled at least one week prior*, notice shall be given at least 72 hours before the meeting to the news media and conspicuously posted in one or more designated public locations.
2. *For meetings scheduled less than a week prior*, notice shall be given in the same manner at a reasonable time prior to the meeting.
3. Notice does not mean legal notice.
4. *For meetings that use videoconferencing*, notice shall inform the public that videoconferencing will be used, the locations for the meeting must be identified, and it must be stated that the public has the right to attend the meeting at any of the locations.<sup>15</sup>

### **What does the Open Meetings Law mean for you?**

The Open Meetings Law applies to all of New York State. As a citizen of Erie County you have the right to attend meetings of the public bodies

located within the State and the County, as well as, your cities, towns, villages, and other municipalities. The following websites contain listings of some open meetings that can be viewed on the Internet and in this area:

*New York State Open Meetings Webcast:*

<http://www.nysegov.com/webcast.cfm>

*Erie County Legislature Meeting Schedule:*

[http://www.erie.gov/legislature/pdf/session\\_schedule.pdf](http://www.erie.gov/legislature/pdf/session_schedule.pdf)

*Buffalo Common Council Committee Meetings:*

[http://www.ci.buffalo.ny.us/Home/Leadership/CommonCouncil/Committee\\_Meetings](http://www.ci.buffalo.ny.us/Home/Leadership/CommonCouncil/Committee_Meetings)

*Buffalo Board of Education Calendar:*

[http://www.buffaloschools.org/calendar\\_events.cfm?location=1000](http://www.buffaloschools.org/calendar_events.cfm?location=1000)

You may find many other public bodies and open meeting listings by searching the Internet or your local newspaper.

### **How may the public participate in open meetings?**

*Speaking/Participating:* The Open Meetings Law does not state whether citizens are permitted to speak or otherwise participate at open meetings. Many public bodies have chosen to allow people to speak at their meetings, and the Committee on Open Government advises those public bodies to “[adopt] reasonable rules that treat members of the public equally.”<sup>16</sup>



*Recording:* The Open Meetings Law also does not address the ability of the public to record open meetings. Judicial decisions indicate that any person present may record an open meeting (using either an audio or video recorder), so long as use of a recording device is not disruptive or obtrusive.<sup>17</sup>



### **How can you get information from an open meeting if you are unable to attend the meeting?**

The Open Meetings Law requires that minutes of both open meetings and executive sessions be compiled and made available to the public. Generally, the minutes must be made available to the public within two weeks from the date of a meeting.

- *Minutes of an open meeting* “consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.”
- *Minutes of an executive session* must consist of a record or summary of the final determination of such action, and the date and vote thereon.<sup>18</sup>

### **When can a meeting be closed to the public?**

An “*executive session*” is a part of an open meeting that is not open to the public. This is not a separate meeting of a public body. To close this part of an open meeting the public body must take specific steps:

1. a motion must be made to enter executive session
2. the general area of the subject or subjects to be considered must be given
3. a majority of the public body must vote in favor of going into an executive session<sup>19</sup>



The law also limits the matters that may be discussed in executive session:

- matters which will imperil the public safety if disclosed;
- any matter which may disclose the identity of a law enforcement agency or informer;
- information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;
- discussions regarding proposed, pending or current litigation;
- collective bargaining negotiations pursuant to Article 14 of the Civil Service Law;
- the medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation;
- the preparation, grading or administration of examinations; and
- the proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof.<sup>20</sup>

### **What meetings are exempt from Open Meetings Law?**

The Open Meetings Law does not apply to:

1. judicial or quasi-judicial proceedings, except proceedings of zoning boards of appeals;
2. deliberations of political committees, conferences and caucuses; or
3. matters made confidential by federal or state law.<sup>21</sup>

### **How can you make sure that the law is enforced?**

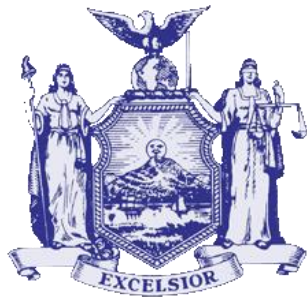
Any aggrieved person can bring a law suit against a public body to enforce the provisions of the Open Meetings Law, and/or an action for declaratory judgment and injunctive relief. The court may then decide if the law has been violated.<sup>22</sup>

- “Since the law says that meetings are open to the general public, you would be aggrieved if you feel that you have been improperly excluded from a meeting or if you believe that an executive session was held that should have been open.”<sup>23</sup>



If a court determines that a vote was taken in material violation of the Open Meetings Law, or that substantial deliberations relating to the vote occurred in private prior to such vote, the court may award costs and reasonable attorney's fees to the winner of the suit.<sup>24</sup>

### Who should you contact for more information?



***NYS Department of State  
Committee on Open Government***  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12231  
(518) 474-2518

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<sup>1</sup> Committee on Open Government, Your Right to Know [http://www.dos.state.ny.us/coog/Right\\_to\\_know.html](http://www.dos.state.ny.us/coog/Right_to_know.html) (last visited April 13, 2009) [hereinafter Your Right to Know].

<sup>2</sup> N.Y. Pub. Off. Law art. 7, <http://www.dos.state.ny.us/coog/openmeetlaw.htm> (2009).

<sup>3</sup> *Id.* at § 100,

<sup>4</sup> *Id.* at § 102(2)

<sup>5</sup> Your Right to Know, *supra* note 1.

<sup>6</sup> Matter of Smith v. CUNY, 92 NY2d 707, 713 (1999).

<sup>7</sup> Goodson-Todman Enterprises, Ltd. v. Town Board of Milan, 542 NYS 2d 373, 374 (1989); Poughkeepsie Newspapers v. Mayor's Intergovernmental Task Force, 145 AD 2d 65, 67 (1989).

<sup>8</sup> Committee on Open Government Advisory Opinion, OML-AO-2932, August 27, 1998, <http://www.dos.state.ny.us/coog/otext/o2932.htm>.

<sup>9</sup> Quigley v. Daines, 2008 NY Slip Op. 1879 (U) (2008), [http://blogs.artvoice.com/avdaily/wp-content/uploads/2008/09/geoff\\_pdf.pdf](http://blogs.artvoice.com/avdaily/wp-content/uploads/2008/09/geoff_pdf.pdf)

<sup>10</sup> Committee on Open Government Advisory Opinion, OML-AO-4016, August 5, 2005, <http://www.dos.state.ny.us/coog/otext/o4016.htm>.

<sup>11</sup> Committee on Open Government Advisory Opinion, OML-AO-2599, April, 19, 1996, <http://www.dos.state.ny.us/coog/otext/o2599.htm>; *see also* Smith and Maitland v. CUNY, Supreme Court, NY County (January 25, 1996).

<sup>12</sup> N.Y. Pub. Off. Law art. 7, § 102.

<sup>13</sup> Your Right to Know, *supra* note 1.

<sup>14</sup> *Id.*

<sup>15</sup> N.Y. Pub. Off. Law art. 7, § 104(1)-(4).

<sup>16</sup> *Id.*

<sup>17</sup> Committee on Open Government Advisory Opinion, OML-AO-3037, June 18, 1999, <http://www.dos.state.ny.us/coog/otext/o3037.htm>.

<sup>18</sup> N.Y. Pub. Off. Law art. 7, § 106.

<sup>19</sup> Your Right to Know, *supra* note 1.

<sup>20</sup> N.Y. Pub. Off. Law art. 7, § 105.

<sup>21</sup> *Id.*

<sup>22</sup> N.Y. Pub. Off. Law art. 7, § 107.

<sup>23</sup> Your Right to Know, *supra* note 1.

<sup>24</sup> *Id.*