

Open Meetings Act—Closed Meeting Minutes

Introduction

The Michigan Open Meetings Act (OMA) provides that all meetings of a public body shall be open to the public and be held in a place available to the general public. (MCL 15.261 et seq.) The OMA also provides, however, for those situations in which a public body may meet in closed or executive session. (MCL 15.268) This discussion during a closed session is limited to the minutes taken during a closed session and assumes that the public body met in a properly closed session.

Are minutes required to be taken at a closed session?

Yes. The OMA requires that a separate set of minutes shall be taken at the closed session. (MCL 15.267(2)) According to an opinion of the Michigan attorney general, the minutes must reflect:

- the date, time, and place;
- members present and absent; and
- the purpose of the closed session. (Opinion of the Attorney (OAG) No. 6817)

Who may take the minutes?

The municipal clerk or a secretary designated by the public body.

Are the minutes available to the public?

No. The minutes may only be disclosed if required by court order in a civil action filed in accordance with MCL 15.270, 15.271 or 15.273. OAG No. 6353 provides that disclosure may not be made even if the person requesting the closed session subsequently waives or withdraws the request and consents to disclosure.

Who approves the minutes and when?

The public body. The public body may meet in closed session to approve the minutes of a closed session if the decision to go into closed session to approve the minutes of the past closed session is made in an open session of the public body.

May the minutes of a closed session be destroyed?

The minutes of a closed session may be destroyed one year and one day after approval of the minutes of the regular meeting at which the closed session was approved.

Are the minutes of a closed session subject to the Michigan Freedom of Information Act?

The minutes of a closed session are exempt from disclosure under the Michigan Freedom of Information Act unless required by court order in accordance with the Open Meetings Act.

OPEN MEETINGS ACT: Decisions may be made only at open meetings**OPEN MEETINGS ACT: Contents of minutes of closed sessions**

Sections 7 and 8 of the Open Meetings Act, which authorize closed sessions for deliberations on certain enumerated topics, apply only to deliberations. Decisions of public bodies must be made at a meeting open to the public.

Public bodies must take minutes of a closed session that reflect the date, time, place, members present and absent, and the purpose or purposes of the closed session.

Opinion No. 6817

September 14, 1994

Honorable Greg Kaza
State Representative
The Capitol
Lansing, Michigan

You have asked two questions regarding closed sessions under the Open Meetings Act (OMA), MCL 15.261 *et seq*; MSA 4.1800(11) *et seq*. Your first question is:

Do sections 7 and 8 of the Open Meetings Act refer only to deliberations and not to actual votes and decisions of a public body?

Sections 7 and 8 of the OMA allow a public body to go into closed session for deliberations on certain enumerated topics. However, section 3(2) of the OMA states that “[a]ll decisions of a public body shall be made at a meeting open to the public.” (Emphasis added.) In contrast, section 3(3) of the OMA states that “[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public *except as provided in this section and sections 7 and 8.*” (Emphasis added.) MCL 15.263(2) and (3); MSA 4.1800(13)(2) and (3). The language of these provisions is clear and unequivocal and does not require interpretation. *Soap & Detergent Ass’n v Natural Resources Comm*, 415 Mich 728, 738; 330 NW2d 346 (1982). *Lake Carriers’ Ass’n v Director of the Department of Natural Resources*, 407 Mich 424, 429; 286 NW2d 416 (1979). Section 3(2) of the OMA clearly requires that all decisions of a public body take place in an open session. Section 3(3) of the OMA only allows a public body to go into closed session under sections 7 and 8 for deliberations on certain enumerated topics. This is confirmed by *St. Aubin v Ishpeming City Council*, 197 Mich App 100, 102; 494 NW2d 803 (1992), in which the court stated that “[t]he OMA requires that all decisions of a public body must be made at a meeting open to the public.”

It is my opinion, therefore, in response to your first question, that sections 7 and 8 of the OMA, which authorize closed sessions for deliberations on certain enumerated topics, apply only to deliberations. Decisions of public bodies must be made at a meeting open to the public.

Your second question may be stated as:

Does section 7 of the Open Meetings Act require minutes to be published regarding a closed session and, if so, what information must be placed in those minutes?

Section 7(2) of the OMA, MCL 15.267(2); MSA 4.1800(17)(2), provides:

A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, are not available to the public, and shall

only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

Thus, public bodies are required to take and retain minutes of closed sessions, but they may not make those minutes available to the public unless the disclosure is ordered by a court. OAG, 1985-1986, No 6353, p 255, 257 (April 11, 1986); OAG, 1981-1982, No 6019, p 507, 510 (December 29, 1981).

Section 7 of the OMA does not specify any content requirements for the minutes of closed sessions. However, section 9(1) of the OMA states:

Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting. Corrections in the minutes shall be made not later than the next meeting after the meeting to which the minutes refer. Corrected minutes shall be available no later than the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.

MCL 15.269(1); MSA 4.1800(19)(1).

Section 9(1) applies to each meeting. It is not limited to open meetings. Thus, the section 9(1) requirement that meeting minutes reflect the date, time, place, members present, and members absent is equally applicable to minutes of open meetings and closed sessions. However, the section 9(1) requirement that minutes reflect any decisions made and any roll call votes taken is inapplicable to minutes of closed sessions, since public bodies may not make decisions in closed session. Similarly, section 9(2) and (3) concern the availability of meeting minutes to the public, and clearly apply only to open meeting minutes.

Section 7(1) of the OMA requires that "the purpose or purposes for calling a closed session shall be entered into the minutes of the [open] meeting at which the vote is taken." Section 9(1) contains a similar requirement. It is possible to construe section 9(1) as merely restating section 7(1) in this regard. However, it is a fundamental rule of statutory construction that every word, sentence and section of a statute should be given effect, so that no word or phrase is treated as surplusage or rendered nugatory, if possible. See *Soap & Detergent Ass'n, supra*, 415 Mich at 738, and *Attorney General ex rel Dep't of Natural Resources v Sanilac County Drain Comm'r*, 173 Mich App 526, 531; 434 NW2d 181 (1988). In light of the broader sweep of section 9(1), it is my opinion that the most appropriate construction of this language is that it creates a general requirement that *all* minutes, whether of an open meeting or a closed session, reflect the purpose of the closed session.

It is my opinion, therefore, in answer to your second question, that public bodies must take minutes of a closed session that reflect the date, time, place, members present and absent, and the purpose or purposes of the closed session.

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