

# Open Meeting Law:

Balancing Government Transparency  
with Government Efficiency



**Massachusetts Gaming Commission  
Training**

***January 27, 2016***



# Public Body

## Definition

A multi-member board, commission, committee or sub-committee ... however created, elected, appointed or otherwise constituted, established to serve a public purpose ... subcommittee shall include any multiple-member body created to advise or make recommendations to a public body.

- Excludes:
  - Legislature and its committees
  - Bodies of Judicial branch
  - Bodies created by a constitutional officer solely to advise the constitutional officer
  - Bodies that do not serve a public purpose
  - Groups not established with the “jurisdiction” to make decisions or recommendations collectively
- Connelly exception: where a public official creates a group to advise that public official on a decision that he or she has sole responsibility for, the group is not subject to the Open Meeting Law



# Deliberation

## Definition

An oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction

- Excludes:
  - Distribution of meeting agenda, scheduling or procedural information
  - Distribution of reports or documents to be discussed
    - Provided no opinion of a member of the public body is expressed
  - Subquorum, if not subcommittee and no serial communication



# Meeting

## Definition

Deliberation by public body with respect to any matter within the body's jurisdiction

- Excludes:

- On-site inspection provided no deliberation
- Attendance by a quorum at an event provided no deliberation
- Attendance by a quorum at meeting of another public body provided no deliberation
- Meeting of a quasi-judicial board for sole purpose of making a decision in an adjudicatory proceeding



# Executive Session

- OML allows public bodies to conduct closed, or executive, meetings in certain circumstances
- Public bodies must follow OML requirements for executive session:
  - Convene open session prior to going into executive session
  - State publicly the purpose(s) for the executive session
  - Conduct roll call vote to enter executive session and obtain a majority of members
  - Announce whether open session will reconvene after
  - Statement by remote participant(s) that no other person is present / able to hear discussion at remote location, unless approved by body
  - Maintain minutes of and documents from executive session
  - Discuss only matters for which executive session is lawfully called
  - Conduct roll call votes of all votes taken during executive session



# Purposes for Executive Session

1. Discuss reputation, character, health, discipline, charges, complaints, but not professional competence of individual
2. Conduct strategy sessions in preparation for negotiations, to conduct collective bargaining sessions or contract negotiations, with nonunion personnel
3. Discuss strategy for collective bargaining or litigation\*
4. Security personnel or devices
5. Criminal misconduct
6. Acquisition of real property\*
7. Comply with law or grant-in-aid requirement
8. Preliminary screening for employment\*
9. Confer with mediator on litigation or decision
10. Trade secrets in the course of activities conducted by a public body as an energy supplier

\*If holding an open meeting would have a detrimental effect and the chair so declares on record beforehand.



# Executive Session Purpose: 1

“To discuss the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual.”

If an executive session is held, such individual shall have the following rights:

- Notified in writing at least 48 hours prior to the proposed executive session
- Request that the session be open
- To be present at such executive session during deliberations which involve that individual
- To have counsel or a representative present and attending for the purpose of advising the individual and not for the purpose of active participation in the executive session
- To speak on his own behalf
- To cause an independent record to be created by audio-recording or transcription, at the individual's expense



# Executive Session Purpose: 2

“To conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.”

- When discussing the contract of nonunion personnel, presumption that professional competence of the individual has already been discussed in open session
- When negotiating a non-union contract in executive session, if the public body reaches an agreement, it must still vote to execute the agreement in open session following executive session
- A public body should identify the specific nonunion personnel with whom it is negotiating before entering executive session, unless public disclosure of that information would compromise the purpose for secrecy
  - While we generally defer to the judgment of public bodies on this issue, a body must be able to demonstrate a reasonable basis for this claim if challenged





# Executive Session Purpose: 3

“To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.”

- Chair must declare that deliberating during an open session would have a detrimental effect
- Litigation must be pending or be imminently threatened
- May approve final terms and execute a collective bargaining agreement in executive session
  - Should disclose in open session following execution
- A public body should identify the specific collective bargaining unit or litigation matter before entering executive session, unless public disclosure of that information would compromise the purpose for secrecy
  - While we generally defer to the judgment of public bodies on this issue, a body must be able to demonstrate a reasonable basis for this claim if challenged



# Resources

## Attorney General's Open Meeting Law Website

<http://www.mass.gov/ago/openmeeting>

- Open Meeting Law: G.L. c. 30A, §§ 18-25
- Regulations: 940 CMR 29.00
- Guide
- Checklists
- FAQs
- Determination Letters



# Contact Information

Office of Attorney General  
Division of Open Government  
One Ashburton Place  
Boston, Massachusetts 02108  
[openmeeting@state.ma.us](mailto:openmeeting@state.ma.us)  
(617) 963-2540