Public Policy
Cornerstone of the Act

(25 O.S. § 302)

Starting place is good understanding of the Act:

♦ Public Policy – Clearly set forth:

It is the public policy of the State of Oklahoma to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems.
Implementation of Public Policy By:

25 O.S. § 303

♦ All meetings of public body “shall” be held in public
♦ At convenient times and places
♦ Open to the public
♦ Shall provide advance public notice of time, place & subject matter

“Public Body” Defined

25 O.S. § 304(1)

* Governing bodies of all municipalities
* Boards of county commissioners
* Boards of public education
* Other boards, agencies, public trusts...
  - Supported in whole or in part by public funds
  - Entrusted with expending public funds
  - Administering public property
* Exceptions: Judiciary, Legislature, staffs of public bodies & other special statutory exceptions

“Meeting” Defined

25 O.S. § 304(2)

Generally:
♦ When “conducting business” of public body
♦ By majority of members
♦ Being personally together or pursuant to a teleconference authorized by Sec. 307.1
Four Types of Meetings
25 O.S. § 304

1) Regularly scheduled meetings – § 304(3)
2) Special meetings – § 304(4)
3) Emergency meetings – § 304(5)
4) Continued or Reconvened Meetings – § 304(6)

Votes
25 O.S. § 305

Vote of each member must be:
♦ Publicly cast
♦ Recorded
♦ Failure to do so results in action being invalid!

(Oldham v. Drummond Bd of Ed, 542 P.2d 1309 (OK 1975))

Electronic and Telephonic Communications
25 O.S. § 306

♦ Prohibits deciding or taking action (voting) on any matter by phone or e-mail
♦ Also prohibits deciding or taking action on any matter at an “informal” gathering
Executive Sessions

25 O.S. § 307

♦ General rule: No executive sessions unless specifically authorized in this section 307 or other statute

♦ Limited Permissible Purposes:
  ♦ Personnel matters – 25 O.S. § 307(B)(1)
  ♦ Purchase or appraisal of real property – 25 O.S. § 307(B)(3). See also 25 O.S. § 307(D).
  ♦ Confidential communications w/ atty concerning pending investigation, claim or action – 25 O.S. § 307(B)(4)
  ♦ Where disclosure of information violates state or federal law – 25 O.S. § 307(B)(7)
  ♦ Deliberations in individual proceedings - 25 O.S. § 307(B)(8)
  ♦ Other specific instances

Executive Sessions

(25 O.S. 307)

Misc:

- Strict procedures for agendas - Sections 307(E) & 311(B)
- Must take vote & have majority to convene executive session
- Votes cannot be taken in executive session
- Must take & keep minutes
  (Berry v Bd of Gov of Registered Dentists 611 P.2d 628 (OK 1980)

Teleconference

25 O.S. 307.1 & 304(7)

♦ Permissible, but certain conditions must be met:
  ♦ Must have quorum of public body at agenda site
  ♦ Notice & agenda must list video site and site where each member will be
  ♦ Off-site location must be in district
  ♦ Public must have access
  ♦ No executive sessions
  ♦ Must be both visual & auditory
Notice & Agenda

Regularly scheduled meetings - 311(A)(9)
♦ Annually file advance public notice of all meetings by Dec. 15
  • Date, time & place - Section 311(A)(1)
♦ 24 hours prior to meeting post notice & agenda
  – 311(A)(9)
  • Excludes Saturday, Sunday and Okla. holidays
♦ New Business Permissible – 311(A)(9)
  • But matter must not have been known or reasonably foreseen prior to time of posting agenda - Section 311(A)(9)

Notice & Agenda Cont...

Special Meetings - 311(A)(11)
♦ 48 hours prior to meeting:
  • Give notice to appropriate office of date, time & place
  • Mail said notice to those who have filed written request
♦ 24 hours prior to meeting:
  • Post publicly in prominent view at principal office or, if no office, meeting location
  • Notice (time, date, place)
  • Agenda
  • Excludes Sat, Sun and Okla. holidays
♦ New business is NOT permissible

Notice & Agenda Cont...

Continued or Reconvened Meetings – 311(A)(10) & 304(6)
- Announce at original meeting

Emergency Meetings – 311(A)(12) & 304(5)
- Must meet 304(5) requirements (injury to persons, property and/or immediate financial loss likely)
- No public written notice required
- As much advance public notice as reasonable & possible under circumstances, including telephonic or electronic means
Agendas

$Shall identify all items of business to be transacted. 311(B)(1).

$Agenda items must be worded in plain language directly stating the purpose of the meeting and the language used should be simple, direct, and comprehensive to a person of ordinary education and intelligence.

Executive Session Agenda Item
(Example)

Possible discussion and vote to enter Executive Session pursuant to 25 O.S. § 307(B)(1) to discuss annual review of President.

Agenda Item Best Practices

THIS
1. President’s Report
   A. Status of audit
   B. Introduction of new Vice President of Student Affairs.
   C. Report on enacted legislation from the 2014 legislative session relating to higher ed.
2. Committee assignments made by Board Chair.

NOT THIS
1. President’s Report
2. Miscellaneous
3. Old Business

Minutes

Requires written minutes including:

- Official summary of the proceeding
- Identifies all members present and absent
- Identifies all matters considered
- Identifies all actions taken
- Reflects manner and time notice was given
- Minutes are open to the public
Minutes Cont...

- Minutes for Emergency Meetings
  - Must state nature of emergency
  - Must include reasons for declaring emergency meeting

- Recording Meetings - Section 312 (C)
  - Any person may record the meeting
  - Provided it does not interfere with meeting

Miscellaneous

Public Comments?

♦ A public body is not required to provide opportunity for citizens to speak

♦ If public body chooses to allow public comments, it is advisable to set policy
  ♦ Could limit comments to agenda items only
  ♦ If provide for open comment, members must be careful not to engage in discussion ...

Don’t Break the Law!

There are consequences:

♦ Civil Implications:
  ♦ “Any action taken in willful violation of this act shall be invalid.” (25 O.S. § 313)
  ♦ Prevailing plaintiff is entitled to recover reasonable attorney fees from public body. (25 O.S. § 314)

♦ Criminal Penalties:
  ♦ “Misdemeanor”
  ♦ Fine up to $500 and/or up to 1 yr in county jail (25 O.S. § 314)
Willful Violation

- Rogers v Excise Bd of Greer County, 701 P.2d 754 (OK 1984)
- “Willfulness does not require a showing of bad faith, malice, or wantonness, but rather, encompasses conscious, purposeful violations of the law or blatant or deliberate disregard of the law by those who know, or should know the requirements of the Act.”
- “Notice of meetings of public bodies which are deceptively vague and likely to mislead constitute a willful violation.”

Thank you!