



Effective: December 17, 2014

West's Colorado Revised Statutes Annotated Currentness

Title 24. Government--State

Administration

▣ Article 6. Colorado Sunshine Law (Refs & Annos)

▣ Part 4. Open Meetings Law (Refs & Annos)

→→ § 24-6-402. Meetings--open to public--definitions

(1) For the purposes of this section:

(a)(I) "Local public body" means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), in order to assure school board transparency "local public body" shall include members of a board of education, school administration personnel, or a combination thereof who are involved in a meeting with a representative of employees at which a collective bargaining agreement is discussed.

(b) "Meeting" means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.

(c) "Political subdivision of the state" includes, but is not limited to, any county, city, city and county, town, home rule city, home rule county, home rule city and county, school district, special district, local improvement district, special improvement district, or service district.

(d) "State public body" means any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of any state agency, state authority, governing board of a state institution of higher education including the regents of the university of Colorado, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or the general assembly, and any public or private entity to which the state, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the state public body.

(2)(a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

(d)(I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a "meeting" within the meaning of this section.

(IV) Neither a state nor a local public body may adopt any proposed policy, position, resolution, rule, or regulation or take formal action by secret ballot unless otherwise authorized in accordance with the provisions of this subparagraph (IV). Notwithstanding any other provision of this section, a vote to elect leadership of a state or local public body by that same public body may be taken by secret ballot, and a secret ballot may be used in connection with the election by a state or local public body of members of a search committee, which committee is otherwise subject to the requirements of this section, but the outcome of the vote shall be recorded contemporaneously in the minutes of the body in accordance with the requirements of this section. Nothing in this subparagraph (IV) shall be construed to affect the authority of a board of education to use a secret ballot in accordance with the requirements of section 22-32-108(6), C.R.S. For purposes of this subparagraph (IV), "secret ballot" means a vote cast in such a way that the identity of the person voting or the position taken in such vote is withheld from the public.

(d.5)(I)(A) Discussions that occur in an executive session of a state public body shall be electronically recorded. If a state public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the state public

body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the state public body while the regularly used electronic equipment is inoperable. A state public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the state public body. Except as provided in sub-subparagraph (B) of this subparagraph (I), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (3) of this section that authorizes the state public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a state public body pursuant to paragraph (b) of subsection (3) of this section.

(B) If, in the opinion of the attorney who is representing a governing board of a state institution of higher education, including the regents of the university of Colorado, and is in attendance at an executive session that has been properly announced pursuant to paragraph (a) of subsection (3) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a state public body in accordance with section 24-72-204(5.5) and after an in camera review of the record of the executive session, that the state public body engaged in substantial discussion of any matters not enumerated in subsection (3) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of paragraph (a) of subsection (3) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (3) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204(5.5).

(D) No portion of the record of an executive session of a state public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the state public body or as provided in sub-subparagraph (C) of this subparagraph (I) and section 24-72-204(5.5).

(E) The record of an executive session of a state public body recorded pursuant to sub-subparagraph (A) of this subparagraph (I) shall be retained for at least ninety days after the date of the executive session.

(II)(A) Discussions that occur in an executive session of a local public body shall be electronically recorded. If a local public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the local public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except

that electronic recording shall not be required for two successive meetings of the local public body while the regularly used electronic equipment is inoperable. A local public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the local public body. Except as provided in sub-subparagraph (B) of this subparagraph (II), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (4) of this section that authorizes the local public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a local public body pursuant to paragraph (h) of subsection (4) of this section.

(B) If, in the opinion of the attorney who is representing the local public body and who is in attendance at an executive session that has been properly announced pursuant to subsection (4) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the local public body, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the local public body may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a local public body in accordance with section 24-72-204(5.5) and after an in camera review of the record of the executive session, that the local public body engaged in substantial discussion of any matters not enumerated in subsection (4) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of subsection (4) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (4) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204(5.5).

(D) No portion of the record of an executive session of a local public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the local public body or as provided in sub-subparagraph (C) of this subparagraph (II) and section 24-72-204(5.5).

(E) Except as otherwise required by section 22-32-108(5)(e), C.R.S., the record of an executive session of a local public body recorded pursuant to sub-subparagraph (A) of this subparagraph (II) shall be retained for at least ninety days after the date of the executive session.

(e) This part 4 does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.

(f) The provisions of paragraph (c) of this subsection (2) shall not be construed to apply to the day-to-day oversight of property or supervision of employees by county commissioners. Except as set forth in this paragraph (f), the provisions of this paragraph (f) shall not be interpreted to alter any requirements of paragraph (c) of this subsection (2).

(3)(a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (I) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(I) The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the state public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as a gift in an executive session, only if such executive session is requested by the donor.

(II) Conferences with an attorney representing the state public body concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of a state public body is not sufficient to satisfy the requirements of this subsection (3).

(III) Matters required to be kept confidential by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;

(IV) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(V) Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;

(VI) With respect to the board of regents of the university of Colorado and the board of directors of the university of Colorado hospital authority created pursuant to article 21 of title 23, C.R.S., matters concerning the modification, initiation, or cessation of patient care programs at the university hospital operated by the university of Colorado hospital authority pursuant to part 5 of article 21 of title 23, C.R.S., (including the university of Colorado psychiatric hospital), and receiving reports with regard to any of the above, if premature disclosure of information would give an unfair competitive or bargaining advantage to any person or entity;

(VII) With respect to nonprofit corporations incorporated pursuant to section 23-5-121(2), C.R.S., matters concerning trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(VIII) With respect to the governing board of a state institution of higher education and any committee thereof, consideration of nominations for the awarding of honorary degrees, medals, and other honorary awards by the institution and consideration of proposals for the naming of a building or a portion of a building for a person or persons.

(b)(I) All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session. Governing boards of institutions of higher education including the regents of the university of Colorado may, upon their own affirmative vote, hold executive sessions to consider the matters listed in this paragraph (b). Executive sessions may be held to review administrative actions regarding investigation of charges or complaints and attendant investigative reports against students where public disclosure could adversely affect the person or persons involved, unless the students have specifically consented to or requested the disclosure of such matters. An executive session may be held only at a regular or special meeting of the state public body and only upon the announcement by the public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply to discussions concerning any member of the state public body, any elected official, or the appointment of a person to fill the office of a member of the state public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (3), the state board of parole created in part 2 of article 2 of title 17, C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

(d) Notwithstanding any provision of paragraph (a) or (b) of this subsection (3) to the contrary, upon the affirmative vote of two-thirds of the members of the governing board of an institution of higher education who are authorized to vote, the governing board may hold an executive session in accordance with the provisions of this subsection (3).

(3.5) A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. The state or local public body shall make public the list of all finalists under consideration for the position of chief executive officer no later than fourteen days prior to appointing or employing one of the finalists to fill the position. No offer of appointment or employment shall be made prior to this public notice. Records submitted

by or on behalf of a finalist for such position shall be subject to the provisions of section 24-72-204(3)(a)(XI). As used in this subsection (3.5), "finalist" shall have the same meaning as in section 24-72-204(3)(a)(XI). Nothing in this subsection (3.5) shall be construed to prohibit a search committee from holding an executive session to consider appointment or employment matters not described in this subsection (3.5) and otherwise authorized by this section.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(a) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the local public body has a personal interest in such purchase, acquisition, lease, transfer, or sale;

(b) Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4).

(c) Matters required to be kept confidential by federal or state law or rules and regulations. The local public body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.

(d) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(e)(I) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators.

(II) The provisions of subparagraph (I) of this paragraph (e) shall not apply to a meeting of the members of a board of education of a school district:

(A) During which negotiations relating to collective bargaining, as defined in section 8-3-104(3), C.R.S., are discussed; or

(B) During which negotiations for employment contracts, other than negotiations for an individual employee's con-

tract, are discussed.

(f)(I) Personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. With respect to hearings held pursuant to the "Teacher Employment, Compensation, and Dismissal Act of 1990", article 63 of title 22, C.R.S., the provisions of section 22-63-302(7)(a), C.R.S., shall govern in lieu of the provisions of this subsection (4).

(II) The provisions of subparagraph (I) of this paragraph (f) shall not apply to discussions concerning any member of the local public body, any elected official, or the appointment of a person to fill the office of a member of the local public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(g) Consideration of any documents protected by the mandatory nondisclosure provisions of the "Colorado Open Records Act", part 2 of article 72 of this title; except that all consideration of documents or records that are work product as defined in section 24-72-202(6.5) or that are subject to the governmental or deliberative process privilege shall occur in a public meeting unless an executive session is otherwise allowed pursuant to this subsection (4);

(h) Discussion of individual students where public disclosure would adversely affect the person or persons involved.

(5) Deleted by Laws 1996, H.B.96-1314, § 1, eff. July 1, 1996.

(6) The limitations imposed by subsections (3), (4), and (5) of this section do not apply to matters which are covered by section 14 of article V of the state constitution.

(7) The secretary or clerk of each state public body or local public body shall maintain a list of persons who, within the previous two years, have requested notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings, provided, however, that unintentional failure to provide such advance notice will not nullify actions taken at an otherwise properly published meeting. The provisions of this subsection (7) shall not apply to the day-to-day oversight of property or supervision of employees by county commissioners, as provided in paragraph (f) of subsection (2) of this section.

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(9)(a) Any person denied or threatened with denial of any of the rights that are conferred on the public by this part 4 has suffered an injury in fact and, therefore, has standing to challenge the violation of this part 4.

(b) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees. In the event the court does not find

a violation of this section, it shall award costs and reasonable attorney fees to the prevailing party if the court finds that the action was frivolous, vexatious, or groundless.

(10) Any provision of this section declared to be unconstitutional or otherwise invalid shall not impair the remaining provisions of this section, and, to this end, the provisions of this section are declared to be severable.

CREDIT(S)

Amended by Laws 1977, H.B.1018, § 1; Laws 1977, H.B.1503, § 1; Laws 1985, H.B.1097, § 6; Laws 1987, H.B.1018, § 1; Laws 1989, H.B.1143, § 4; Laws 1991, S.B.91-33, § 2, eff. June 1, 1991; Laws 1991, S.B.91-225, § 6; Laws 1992, H.B.92-1167, § 1, eff. April 23, 1992; Laws 1996, H.B.96-1314, § 1, eff. July 1, 1996; Laws 1996, S.B.96-212, § 3, eff. June 1, 1996; Laws 1997, S.B.97-59, § 1, eff. April 14, 1997; Laws 1999, Ch. 72, § 1, eff. March 31, 1999; Laws 2000, Ch. 117, §§ 4, 5, eff. April 13, 2000; Laws 2001, Ch. 63, § 5, eff. March 27, 2001; Laws 2001, Ch. 286, §§ 1, 2, eff. Aug. 8, 2001; Laws 2002, Ch. 35, § 1, eff. Aug. 7, 2002; Laws 2002, Ch. 86, § 7, eff. April 12, 2002; Laws 2002, Ch. 187, § 3, eff. May 24, 2002; Laws 2006, Ch. 2, § 1, eff. Aug. 7, 2006; Laws 2009, Ch. 94, § 1, eff. Aug. 5, 2009; Laws 2009, Ch. 369, § 74, eff. Aug. 5, 2009; Laws 2010, Ch. 391, § 40, eff. June 9, 2010; Laws 2012, Ch. 64, § 1, eff. March 24, 2012; Laws 2014, Ch. 380, § 1, eff. June 6, 2014; Laws 2014, Ch. 393, § 2, eff. June 6, 2014; Laws 2014, I.P. 124, eff. Dec. 17, 2014.

HISTORICAL AND STATUTORY NOTES

Laws 1977, H.B.1018, § 1, substituted “general assembly” for “legislature”, “may be” for “is” and inserted “state” preceding “constitution” in subsec. (1); substituted “adoption of any proposed policy, position” for “discussion or adoption of any proposed” and inserted “or is expected to be in attendance” in subsec. (2); and added subsec. (2.1).

Laws 1977, H.B.1503, § 1, added subsecs. (2.3), (2.5), (2.7) and (2.9); provided for rulemaking in subsec. (4) and the first sentence of subsec. (5); and added the second sentence to subsec. (5).

The 1985 amendment added subsec. (2.6).

The 1987 amendment inserted provisions in subsecs. (1), (2.3), and (2.5) pertaining to governing boards of state institutions of higher education.

The 1989 amendment deleted “university of Colorado” preceding “university hospital” in par. (2.3)(f).

Section 13 of Laws 1989, H.B.1143, provides:

“Effective date. This act shall take effect upon passage; except that sections 2 through 10 shall take effect upon the commencement of operations and completion of any transfer of asserts to any corporation under part 4 of article 21 of title 23, Colorado Revised Statutes.”

Laws 1991, S.B.91-33 rewrote the section.

Laws 1991, S.B.91-225 provided for the board of directors of the university of Colorado hospital authority in provisions of subpar. (3)(a)(VI).

Laws 1991, S.B.91-225, approved June 1, 1991, amending this section becomes effective pursuant to section 15 of the 1991 law “upon the repeal of part 1, of article 21 of title 23”. The repeal becomes effective “upon the date agreed to by the board of regents and the university of Colorado hospital authority created by part 5 of [article 21] for the transfer of hospital assets to and the assumption of hospital liabilities of such authority.”

The repeal of part 1 of article 21 of this title became effective upon the transfer of assets on October 1, 1991.

Laws 1991, S.B.91-225, § 1, provides:

“Legislative declaration. (1) The general assembly hereby finds and declares:

“(a) That through the passage of House Bill No. 1143 at its first regular session in 1989, the general assembly intended to authorize the board of regents of the university of Colorado to reorganize the university of Colorado university hospital by transferring its assets and operating obligations to a private nonprofit-nonstock corporation. The intent of the general assembly in authorizing the creation of the corporation was to remove university hospital from inappropriate government policies and regulations, to promote the economic viability of said hospital, and to enable said hospital to accomplish its educational research, public service, and patient care missions;

“(b) That the university of Colorado university hospital was reorganized in accordance with the provisions of said House Bill No. 1143 and commenced operations through a private nonprofit-nonstock corporation on October 1, 1989, following the transfer of the hospital assets and operating obligations to such corporation;

“(c) That the corporation, in operating the hospital, hired employees, incurred debt, entered into contracts, leases, license agreements, credit agreements, and similar business transactions, and acquired assets;

“(d) That some employees of the university of Colorado university hospital became employees of the corporation and terminated active membership in the public employees' retirement association;

“(e) That the corporation received moneys from the public employees' retirement association for those employees who terminated active membership in such association and the corporation established its own retirement plan;

“(f) That the supreme court of the state of Colorado declared House Bill No. 1143 unconstitutional in its entirety in Colorado Association of Public Employees v. Board of Regents, case number 89SA476, announced December 24, 1990, (rehearing denied January 28, 1991) because the act violated section 13 of article XII of the Colorado constitution, which requires that certain public entities be subject to the state personnel system;

“(g) That the declaration of unconstitutionality resulted in the existence of a nonprofit-nonstock corporation without the statutory authorization to operate the university of Colorado university hospital as set forth in House Bill No. 1143; and

“(h) That the intent of the general assembly in enacting this act is to again authorize the board of regents to reorganize university of Colorado university hospital through the establishment of a quasi-governmental and corporate entity vested with the powers and duties specified in this act and providing for the transfer of the hospital's assets and operating obligations to said entity and to address issues relating to the employment and pension status of employees of the university of Colorado university hospital and employees of the nonprofit-nonstock corporation created to operate the hospital on October 1, 1989, and the validity of actions taken by the hospital and the corporation from and after October 1, 1989, when the corporation commenced operations to and including the effective date of this act. It is also the intent of the general assembly in including sections in this act which were enacted, amended, or repealed in said House Bill No. 1143 to clarify the status of those statutory sections.”

The 1992 amendment added par. (2)(f).

Laws 1996, H.B.96-1314, § 1, in par. (1)(b), inserted “electronically”; in par. (1)(d), inserted “, governing board of a state institution of higher education including the regents of the university of Colorado”, and deleted “the governing board of any state institution of higher education including the regents of the university of Colorado,” preceding “and any public”; in subpars. (2)(d)(I) and (2)(d)(II), in the second sentences, deleted “general” preceding “topic”; in par. (3)(a), in the introductory portion, inserted “the announcement by the state public body to the public of the topic for discussion in the executive session and the”, and “after such announcement”, and substituted “that” for “which” preceding “is not open”; in subpar. (3)(a)(II), in the first sentence, substituted “representing” for “for”; in subpar. (3)(a)(V), inserted “such”; in par. (3)(b), in the fourth sentence, inserted “announcement by the public body to the public of the topic for discussion in the executive session and the”, and added “after such announcement”; inserted subsec. (3.5); in subsec. (4), in the introductory portion, inserted “announcement by the local public body to the public of the topic for discussion in the executive session and the”, and “, after such announcement”, and substituted “that” for “which” preceding “is not open”; in par. (4)(c), added the second sentence; deleted subsec. (5), which prior thereto read:

“Prior to the time the members of the public body convene in executive session, the chairman of the body shall announce the general topic of the executive session as enumerated in subsections (3) and (4) of this section.”;

in subsec. (7), in the first sentence, inserted “or local public body”, substituted “within the previous two years have requested” for “request”, and added “, provided, however, that unintentional failure to provide such advance notice will not nullify actions taken at an otherwise properly published meeting”; and added the second sentence.

Laws 1996, S.B.96-212, § 3, added subpar. (2)(d)(III).

Laws 1996, S.B.96-212, § 1, provides:

“Legislative declaration--use of e-mail. The general assembly hereby finds and declares that the use of electronic mail

by agencies, officials, and employees of state government creates unique circumstances. Electronic mail shares some features with telephonic communication, which generally is not stored in any form and is generally regarded as private. However, electronic mail differs in that it creates an electronic record that may be used or retrieved in electronic or paper format. The use of electronic mail is becoming more common and more important in facilitating the ability of government officials to gather information and communicate with their staff, other officials and agencies, and the public. However, individual officials are not equipped to act as official custodians of such communications and to determine whether or not the communications might be public records. For these reasons, this act is intended to balance the privacy interests and practical limitations of public officials and employees with the public policy interests in access to government information.”

The 1997 amendment, in subsec. (3.5), deleted the former second sentence, which prior thereto read: “A list of all finalists being considered for a position shall be made public by the search committee no less than fourteen days prior to the first interview conducted for the position.”; and inserted the second and third sentences.

Laws 1999, Ch. 72, § 1, in par. (4)(g), added the exception.

Laws 2000, Ch. 117, § 4, in par. (1)(d), inserted “a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S.,” following “Colorado,”.

Laws 2000, Ch. 117, § 5, added subpar. (3)(a)(VII).

Laws 2001, Ch. 63, § 6, eff. March 27, 2001, rewrote subpar. (3)(a)(III), which had read:

“(III) Matters required to be kept confidential by federal law or rules or state statutes;”

Laws 2001, Ch. 286, § 1 added par. (2)(d.5), relating to executive sessions.

Laws 2001, Ch. 286, § 2, in the introductory paragraph of par. (3)(a), inserted “, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized,” and inserted “, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (I) of paragraph (d.5) of subsection (2) of this section,”; designated the existing text of par. (3)(b) as subpar. (3)(b)(I) and added subpar. (3)(b)(II); in the introductory paragraph of subsec. (4), inserted “, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized,” and inserted “, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section,”; and designated the existing text of par. (4)(f) as subpar. (4)(f)(I) and added subpar. (4)(f)(II).

Laws 2002, Ch. 35, § 1 added subpar. (3)(a)(VIII).

Laws 2002, Ch. 86, § 7, amended subpar. (3)(a)(IV) by inserting “or investigations, including defenses against terrorism, both domestic and foreign, and including”; and amended par. (4)(d) by inserting “, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law”.

Laws 2002, Ch. 187, § 3, in par. (2)(d.5), in sub-subpars. (I)(A) and (II)(A), inserted the second sentences relating to electronically recording minutes on or after August 8, 2001.

Laws 2006, Ch. 2, § 1, rewrote sub-subpars. (2)(d.5)(I)(A), (2)(d.5)(I)(B), (2)(d.5)(II)(A), and (2)(d.5)(II)(B), which prior thereto read:

“(d.5)(I)(A) Discussions that occur in an executive session of a state public body shall be recorded in the same manner and media that the state public body uses to record the minutes of open meetings. If a state public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the state public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the state public body while the regularly used electronic equipment is inoperable. A state public body may satisfy the recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the state public body. Except as provided in sub-subparagraph (B) of this subparagraph (I), the record of an executive session shall reflect the specific citation to the provision in subsection (3) of this section that authorizes the state public body to meet in an executive session, the actual contents of the discussion during the session, and a signed statement from the chair of the executive session attesting that any written minutes substantially reflect the substance of the discussions during the executive session. For purposes of this sub-subparagraph (A), ‘actual contents of the discussion’ shall not be construed to require the minutes of an executive session to contain a verbatim transcript of the discussion during said executive session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a state public body pursuant to paragraph (b) of subsection (3) of this section.

“(B) If, in the opinion of the attorney who is representing the state public body and is in attendance at the executive session, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. Any electronic record of said executive session discussion shall reflect that no further record was kept of the discussion based on the opinion of the attorney representing the state public body, as stated for the record during the executive session, that the discussion constitutes a privileged attorney-client communication. Any written minutes shall contain a signed statement from the attorney representing the state public body attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney and a signed statement from the chair of the executive session attesting that the portion of the executive session that was not recorded was confined to the topic authorized for discussion in an executive session pursuant to subsection (3) of this section.”

“(II)(A) Discussions that occur in an executive session of a local public body shall be recorded in the same manner and media that the local public body uses to record the minutes of open meetings. If a local public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the local public body shall continue to elec-

tronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the local public body while the regularly used electronic equipment is inoperable. A local public body may satisfy the recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the local public body. Except as provided in sub-subparagraph (B) of this subparagraph (II), the record of an executive session shall reflect the specific citation to the provision in subsection (4) of this section that authorizes the local public body to meet in an executive session, the actual contents of the discussion during the session, and a signed statement from the chair of the executive session attesting that any written minutes substantially reflect the substance of the discussions during the executive session. For purposes of this sub-subparagraph (A), 'actual contents of the discussion' shall not be construed to require the minutes of an executive session to contain a verbatim transcript of the discussion during said executive session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a local public body pursuant to paragraph (h) of subsection (4) of this section.

“(B) If, in the opinion of the attorney who is representing the local public body and who is in attendance at the executive session, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. Any electronic record of said executive session discussion shall reflect that no further record was kept of the discussion based on the opinion of the attorney representing the local public body, as stated for the record during the executive session, that the discussion constitutes a privileged attorney-client communication. Any written minutes shall contain a signed statement from the attorney representing the local public body attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney and a signed statement from the chair of the executive session attesting that the portion of the executive session that was not recorded was confined to the topic authorized for discussion in an executive session pursuant to subsection (4) of this section.”

Laws 2006, Ch. 2, § 2(2), provides:

“(2) The provisions of this act shall apply to discussions occurring in an executive session of a state public body or local public body on or after the effective date of this act.”

Laws 2009, Ch. 94, § 1, in sub-subpar. (2)(d.5)(I)(B), thrice substituted “a governing board of a state institution of higher education, including the regents of the university of Colorado,” for “state public body”; in subpar. (3)(a)(II), deleted “Governing boards of state institutions of higher education including the regents of the university of Colorado may also confer with an attorney” preceding “concerning specific claims”, and substituted “state public body” for “governing board of a state institution of higher education including the regents of the university of Colorado”.

Laws 2009, Ch. 94, § 2(2), provides:

“The provisions of this act shall apply to conferences with an attorney representing a state public body in an executive session held at a regular or special meeting of the state public body on or after the effective date of this act.”

Laws 2009, Ch. 369, § 74, in par. (4)(g), inserted “the Colorado Open Records Act,” and deleted “commonly known

as the 'Open Records Act' " following "title;"

Laws 2010, Ch. 391, § 1, provides:

Legislative declaration. (1) The general assembly hereby finds that:

"(a) The on-going economic challenges facing the state continue to force drastic cuts in all areas of the state budget, especially in funding for higher education;

"(b) A vibrant, effective, high-quality state higher education system that is both accessible and affordable is crucial to maintaining economic development within the state and to ensuring that the citizens of the state have the educational opportunities they need to succeed in a highly competitive global economy;

"(c) The Colorado commission on higher education last completed a master plan for the state system of higher education in 2002-03. Since that time, in addition to drastic economic changes in the state and resulting budget cuts, there have been significant changes in state education policy, including:

"(I) Direction from the general assembly in the "Preschool to Postsecondary Education Alignment Act", part 10 of article 7 of title 22, Colorado Revised Statutes, to fully align public education from elementary and secondary education through undergraduate and graduate higher education; and

"(II) Enactment of Senate Bill 04-189, which created the "College Opportunity Fund Act", article 18 of title 23, Colorado Revised Statutes, and fee-for-service contracts, the combination of which shifts higher education funding from a formula-based funding system to funding based on student enrollment and the purchase of higher education services provided by state institutions of higher education;

"(d) In recognition of the significant policy and fiscal changes that have seriously impacted the state higher education system, the Colorado commission on higher education must work with the governing boards and chief executive officers of each of the state institutions of higher education to rewrite the master plan for the state system of higher education;

"(e) In rewriting the master plan, the Colorado commission on higher education should also take into account the final report of the higher education strategic planning steering committee appointed by the governor to address state higher education needs, governance, and funding and improving student access and success. The steering committee anticipates completing the final report by November 4, 2010.

"(f) The master plan must address:

"(I) The state's workforce and economic development needs and how those needs may be met by the system of higher education;

“(II) The challenges facing the state system, including but not limited to improving accessibility and affordability for all students graduating from high school, decreasing the geographic disparity of higher education attainment in the state, and closing the educational achievement gap;

“(III) The current state funding crisis and its impact on the state higher education system with regard to funding for capital construction, the level of systemic funding, and the level of institutional funding; and

“(IV) Alignment of the state higher education system with the system of elementary and secondary education in the state;

“(g) The master plan must also include accountability measures that will demonstrate that students receive high-value and high-quality educational services that are provided with the efficiency necessary to reduce attrition and increase retention and enable students to attain their degrees in a reasonable period of time, and to help ensure students achieve post-graduation success.

“(2) The general assembly finds, therefore, that, due to the immediate and daunting economic challenges facing the state institutions of higher education, it is in the best interests of the state to immediately grant to the institutions greater flexibility in setting tuition rates and with regard to institutional operations. Further, the implementation of a new master plan for the statewide system of higher education will preserve the vitality and quality of the public higher education system in Colorado into the future to ensure that Colorado's citizens, through their access to a world-class higher education system, can develop the knowledge and skills necessary to ensure their personal success and the success of the state as a whole.”

Laws 2010, Ch. 391, § 40, added par. (3)(d).

Laws 2012, Ch. 64, § 1, added subpar. (2)(d)(IV).

Laws 2014, Ch. 380, § 1, inserted par. (9)(a), and redesignated existing text of subsec. (9) as par. (9)(b).

Laws 2014, Ch. 380, § 2, provides:

“Applicability. This act applies to meetings held on or after the effective date of this act.”

Laws 2014, Ch. 393, § 2, in sub-subpar. (2)(d.5)(II)(E), inserted “Except as otherwise required by section 22-32-108(5)(e), C.R.S.”.

Laws 2014, Ch. 393, § 3, provides:

“Applicability. This act applies to meetings of boards of education that take place on or after the effective date of this act.”

Laws 2014, I.P. 124, as Proposition 104, redesignated par. (1)(a) as subpar. (1)(a)(I); added subpar. (1)(a)(II); redesignated par. (4)(e) as subpar. (4)(e)(I); and added subpar. (4)(e)(II).

The amendments to this section proposed by Laws 2014, I.P. 124, as Proposition 104, were approved by the electorate at the general election on Nov. 4, 2014, and became effective upon the proclamation of the vote by the governor, Dec. 17, 2014.

Derivation:

C.R.S.1963, § 3-37-402.

Laws 1973, Ch. 456, § 1.

CROSS REFERENCES

Adams state college, board of trustees, executive sessions, see § 23-51-102.

Bingo-raffle advisory board, special meetings, notice, see § 12-9-201.

Boards of retirement, see § 24-54-107.5.

Child fatality prevention review teams, meetings subject to this section, see § 25-20.5-408.

County commissioners, see § 30-10-302.

Crimes of violence by juvenile offenders, report to school district, board of education hearing, see § 22-33-105.

Critical state needs financing corporation, see § 24-115-106.

Health and hospital authority, meetings, applicability of this section, see § 25-29-110.

Mesa state college, board of trustees, executive sessions, see § 23-53-102.

Special districts, notice to electors, see § 32-1-809.

Utilities,

Cooperative electric associations, see § 40-9.5-108.

Voluntary separation of natural gas service offerings and deregulation of natural gas supply, confidentiality of contracts, see § 40-2-122.

Western state college, board of trustees, executive sessions, see § 23-56-102.

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C.J.S. Municipal Corporations §§ 296, 308 to 313.

C.J.S. Public Administrative Law and Procedure §§ 51 to 68.

C.J.S. Schools and School Districts §§ 92, 95, 124 to 127, 138 to 140, 142 to 144, 152, 154 to 160, 174, 176 to 186, 188, 200 to 209, 237 to 250, 266 to 276, 278 to 281, 292 to 293, 327 to 328, 378, 383, 385, 1007.

C.J.S. States §§ 81, 103 to 107, 224 to 227, 249 to 251, 253.

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52 ALR 4th 301, Sufficiency of Notice of Intention to Discharge or Not to Rehire Teacher, Under Statutes Requiring Such Notice.

38 ALR 3rd 1070, Validity, Construction, and Application of Statutes Making Public Proceedings Open to the Public.

Encyclopedias

126 Am. Jur. Proof of Facts 3d 343, Proof of Violation of State Open Meeting or Sunshine Law.

Treatises and Practice Aids

16A Colorado Practice Series 4 CCR § 801-1, CCR S801-1: Personnel Board Rules and Personnel Director's Administrative Procedures.

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I. Construction and application

While the Court of Appeals construes the provisions of the Colorado Open Meeting Law (COML) liberally, it will not interpret the statute to mean what it does not express. *Henderson v. City of Fort Morgan*, App.2011, 277 P.3d 853, certiorari denied 2012 WL 1190615. Administrative Law and Procedure ¶124

Rule of strict construction applies to the executive session exception to public meetings in the Open Meetings Law. *Gumina v. City of Sterling*, App.2004, 119 P.3d 527, certiorari denied 2005 WL 2064910. Administrative Law And Procedure ¶124

E-mails among Public Utilities Commission (PUC) members regarding proposed legislation for the Clean Air--Clean Jobs Act (CACJA) did not constitute a "formal action" of the PUC for purposes of the Open Meetings Law, as e-mails did not fall within the PUC's ability to make public policy; although the PUC was in a position to opine about the draft legislation and provide input, the Governor and the legislature were free to disregard the opinion of the PUC about the proposed CACJA, and, although e-mails may have been subject to the deliberative process privilege, the act of forming an opinion about drafts of the CACJA was incidental to, and not part of, the PUC's policy-making function. *Intermountain Rural Elec. Ass'n v. Colorado Public Utilities Com'n*, App.2012, 298 P.3d 1027. Public Utilities ☞150

E-mails among Public Utilities Commission (PUC) members regarding proposed legislation for the Clean Air--Clean Jobs Act (CACJA) were not part of the PUC's policy-making function, and thus e-mails did not constitute a discussion of public business subject to the Open Meetings Law; while the proposed legislation clearly had a potential effect on the PUC's future regulatory actions generally, forming an opinion about the legislation had no demonstrable connection to any pending regulatory action of the PUC, nor was there any pending action connected to the e-mails with regard to a rule, regulation, ordinance, or other formal action within the policy-making powers of the PUC. *Intermountain Rural Elec. Ass'n v. Colorado Public Utilities Com'n*, App.2012, 298 P.3d 1027. Public Utilities ☞145.1; Public Utilities ☞150

Supreme Court interprets the Open Meetings Law (OML) broadly to further the legislative intent that citizens be given a greater opportunity to become fully informed on issues of public importance so that meaningful participation in the decision-making process may be achieved. *Board of County Com'rs, Costilla County v. Costilla County Conservancy Dist.*, 2004, 88 P.3d 1188. Administrative Law And Procedure ☞124

The open meetings law is meant to apply only to state agencies and authorities, and not to local governments, in view of omission by drafters of key language from the Florida government and sunshine law, on which the Colorado statute is patterned. *James v. Board of Com'rs of Denver Urban Renewal Authority*, App.1978, 595 P.2d 262, 42 Colo.App. 27, affirmed 611 P.2d 976, 200 Colo. 28. Municipal Corporations ☞92

2. Construction with other law

The Open Meetings Law does not undertake to direct public bodies as to how to do their business. *Van Alstyne v. Housing Authority of City of Pueblo, Colo.*, App.1999, 985 P.2d 97, rehearing denied. Administrative Law And Procedure ☞124

3. Purpose

The Open Meetings Law is to be interpreted broadly to further the legislative intent to give citizens an expanded opportunity to become fully informed on issues of public importance, so that meaningful participation in the decision-making process may be achieved. *Costilla County Conservancy Dist. v. Board of County Com'rs, Costilla County*, App.2002, 64 P.3d 900, certiorari granted , reversed 88 P.3d 1188. Administrative Law And Procedure

🔑 124

Open Meetings Law was not intended to interfere with the ability of public officials to perform their duties in a reasonable manner. *Benson v. McCormick*, 1978, 578 P.2d 651, 195 Colo. 381. Administrative Law And Procedure

🔑 124

4. Meetings

City council's use of anonymous written ballots to fill two council vacancies and appoint a municipal judge during its public meetings, using procedure in which ballots were completed in a public meeting, and after the ballots were collected and tabulated, the results were announced at the public meeting, did not violate Colorado Open Meeting Law (COML), absent evidence that the public was prohibited from observing, participating in, or listening to the discussions regarding the candidates or the deliberation process. *Henderson v. City of Fort Morgan*, App.2011, 277 P.3d 853, certiorari denied 2012 WL 1190615. Municipal Corporations 🔑92

Working session that county board of commissioners held with county staff regarding mining company's application for a special use permit (SUP) for a uranium and vanadium mill and tailings disposal facility did not violate the Open Meetings Law, though the meeting was not recorded and minutes were not prepared, where the working sessions was open to the public. *Sheep Mountain Alliance v. Board of County Com'rs, Montrose County*, App.2011, 271 P.3d 597. Zoning and Planning 🔑1423

Evidence in record failed to demonstrate requisite link between meeting which was attended by two members of board of county commissioners and policy-making function of board, and thus such meeting was not subject to public notice requirements of Open Meetings Law (OML); meeting, which was convened by state agencies for discussion of water pollution caused by private mine owner, was passively attended by county commissioners at time when board was not anticipating any decisions or actions relating to mine, and subsequent county actions, including issuance of building permits for water treatment facility and receipt of donation from mine owner, were not linked in any way to previous meeting. *Board of County Com'rs, Costilla County v. Costilla County Conservancy Dist.*, 2004, 88 P.3d 1188. Counties 🔑52

Even gatherings or meetings that are not formal or official meetings of a public body may be covered by the Open Meetings Law. *Costilla County Conservancy Dist. v. Board of County Com'rs, Costilla County*, App.2002, 64 P.3d 900, certiorari granted, reversed 88 P.3d 1188. Administrative Law And Procedure 🔑124

A public body's meeting is not in compliance with the Open Meetings Law if it is held merely to "rubber stamp" previously decided issues at closed meetings. *Van Alstyne v. Housing Authority of City of Pueblo, Colo.*, App.1999, 985 P.2d 97, rehearing denied. Administrative Law And Procedure 🔑124

Legislative caucus meetings are "meetings" of policy-making bodies within meaning of Open Meetings Law and are therefore subject to Open Meetings Law's requirement that "meetings" be "public meetings open to the public at all times." *Cole v. State*, 1983, 673 P.2d 345. States 🔑32

5. Notice to public

Town board of trustees' notice regarding meeting on the undertaking of a construction project in town park did not provide full and fair notice as required by the Open Meetings Law that the board would make a final decision regarding the project, where the notice explicitly stated that there would be a project committee update, an authorization for a survey of public opinion, and the appointment of an additional committee member, and the notice provided no basis for the public to infer that the board would vote on whether to accept or reject the project. *Darien v. Town of Marble*, App.2006, 159 P.3d 761, certiorari granted 2007 WL 1395322, reversed 181 P.3d 1148. Municipal Corporations ↪92

Under the notice provisions of Open Meetings Law, to ensure the public has an opportunity to participate, the absence of a measure's proponent or of a witness who has important information may require that consideration of a measure be postponed to a later date; and when there are unforeseen developments, it may be reasonable for a governmental body to consider unexpected measures regarding which no notice was given or to consider a measure out of order. *Darien v. Town of Marble*, App.2006, 159 P.3d 761, certiorari granted 2007 WL 1395322, reversed 181 P.3d 1148. Administrative Law And Procedure ↪124

School board failed to strictly comply with statutory notice requirements for nonrenewal of probationary teacher's contract, thereby rendering the action invalid; school board made its decision not to renew teacher's contract, which was a formal board action, in an executive session rather than during an open meeting as required under Open Meetings Law. *Barbour v. Hanover School Dist. No. 28*, App.2006, 148 P.3d 268, certiorari granted 2006 WL 3393590, affirmed in part , reversed in part 171 P.3d 223, modified on denial of rehearing. Education ↪593(2)

A public body is required by the Open Meetings Law (OML) to give public notice of a meeting which is part of public body's policy-making process, and mere discussions of matters of public importance do not necessarily trigger the notice requirements of the OML, even when a quorum of the public body is expected to attend such discussions; in order for a meeting to be subject to the requirements of the OML, there must be a demonstrated link between the meeting and the public body's policy-making powers, for example, enactment of a rule, regulation, or ordinance, or a discussion of a pending measure or action which is subsequently "rubber stamped" by the public body. *Board of County Com'rs, Costilla County v. Costilla County Conservancy Dist.*, 2004, 88 P.3d 1188. Administrative Law And Procedure ↪124

Board of county commissioners violated Open Meetings Law when it failed to give public notice before a quorum of commissioners attended meeting to discuss gold mine operator's plan to construct water treatment facility, even though meeting was arranged by other government entities, each commissioner independently decided whether to attend, and commissioners did not participate in the discussion or presentations; commissioners were invited and expected to attend a meeting convened for the purpose of discussing matters of public interest regarding a subject that had been and foreseeably would again be before them. *Costilla County Conservancy Dist. v. Board of County Com'rs, Costilla County*, App.2002, 64 P.3d 900, certiorari granted , reversed 88 P.3d 1188. Counties ↪52

6. Full notice

In determining whether a notice is a “full” notice within the meaning of the Colorado Open Meetings Law (OML), the Supreme Court applies an objective standard, meaning that a notice should be interpreted in light of the knowledge of an ordinary member of the community to whom it is directed. *Town of Marble v. Darien*, 2008, 181 P.3d 1148. Administrative Law And Procedure ↪124

Municipal housing authority's provision of notice of its meeting regarding sale of real property, by publication of notice of meeting in newspaper of general circulation in the county six days before the meeting, constituted “full and timely notice,” within meaning of Open Meetings Law. *Van Alstyne v. Housing Authority of City of Pueblo, Colo.*, App.1999, 985 P.2d 97, rehearing denied. Municipal Corporations ↪92

Open Meetings Law requirement that “full and timely notice” be given of meetings at which public business will be considered establishes flexible standard aimed at providing fair notice to public. *Benson v. McCormick*, 1978, 578 P.2d 651, 195 Colo. 381. States ↪34

Where list of all bills capable of being considered on a particular day was published by legislative committee, of which state senator was chairman, “full and timely notice,” as required by Open Meetings Law was given, despite failure of notice to include an agenda limited to those bills which might reasonably be reached at a given meeting. *Benson v. McCormick*, 1978, 578 P.2d 651, 195 Colo. 381. States ↪34

Under open meeting law, some overt action must be taken by board to give notice to public that meeting is to be held; at very minimum, full and timely notice to the public requires that notice of meeting be posted within reasonable time prior to meeting in area which is open to public view. *Hyde v. Banking Bd.*, App.1976, 552 P.2d 32, 38 Colo.App. 41. Administrative Law And Procedure ↪124

Notice of Banking Board's meeting to take final action on application for bank charter mailed only to those persons maintained on “Sunshine list” did not constitute sufficient notice under provision of Open Meeting Law requiring “full and timely notice to the public,” and therefore, order of Board entered in such meeting denying charter was invalid and cause would be remanded for reconsideration. *Hyde v. Banking Bd.*, App.1976, 552 P.2d 32, 38 Colo.App. 41. Banks And Banking ↪6

7. Agenda

The term “where possible” in notice provision of the Open Meetings Law, which required notice of specific meeting agenda information where possible, did not relieve town board of trustees of the requirement to provide full and fair notice of specific agenda information for meeting on whether to accept or reject construction project, even though the vote to reject the project came upon a motion by board member to depart from the specific matters stated in the agenda, where board was aware of the extensive public interest in project and the absence of the projects proponents from the meeting, there were no urgent circumstances that required an immediate vote, and postponement of the vote would not have unduly interfered with the ability of the board to perform its duties. *Darien v. Town of Marble*, App.2006, 159 P.3d 761, certiorari granted 2007 WL 1395322, reversed 181 P.3d 1148. Municipal Corporations ↪92

Notice of meeting of town council was a full notice, as required by the Colorado Open Meetings Law (OML), with respect to a project to place a monument in town park, even though agenda contained in notice stated, “[Park] Committee Update,” and complainants argued that “Update” suggested that project might be discussed but not acted upon and that notice failed to include specific agenda information; ordinary member of community would understand that “[Park] Committee Update” would include consideration of and possible formal action on project, given common knowledge that committee was involved with project, and notice included agenda information available at time of posting. *Town of Marble v. Darien*, 2008, 181 P.3d 1148. *Municipal Corporations* ☞92

Requirement of the Colorado Open Meetings Law (OML) that a notice include “specific agenda information where possible” simply requires a public body to include specific agenda information in its posting when it is possible, i.e., when that information is available at the time of posting. *Town of Marble v. Darien*, 2008, 181 P.3d 1148. *Administrative Law And Procedure* ☞124

8. Attorney-client privilege

Sunshine Act does not repeal by implication statute concerning attorney-client evidentiary privilege. *Associated Students of University of Colorado v. Regents of University of Colorado*, 1975, 543 P.2d 59, 189 Colo. 482. *Privileged Communications And Confidentiality* ☞104

9. Universities and colleges

In view of special constitutional and statutory authority by which regents are empowered to supervise University of Colorado, the Open Meeting Law of the Sunshine Act was not applicable to preclude regents from entering into executive sessions pursuant to an amendment to laws of the regents. *Associated Students of University of Colorado v. Regents of University of Colorado*, 1975, 543 P.2d 59, 189 Colo. 482. *Education* ☞1016

Neither the Open Meetings nor the Open Records Act expressly apply to the state institutions of higher education. AG File No. OHR8404399/ANX December 26, 1984.

10. Local agencies, generally

Although county board of retirement, which maintained retirement plan for county officials and employees, performed fiduciary functions and did not establish public policy, it operated as agency of county, and was therefore subject to Open Meetings Law (OML) and Open Records Act (ORA), considering that board availed itself of public entity tax and health benefits, used county purchasing accounts, facilities, and seal, that public entities that participated in plan contributed public money to it, that board was authorized to levy retirement tax on all taxable property within county to pay costs of employer contributions to plan, and that plan budget was factored into county budget. *Zubeck v. El Paso County Retirement Plan*, App.1998, 961 P.2d 597. *Counties* ☞52; *Records* ☞51

Local licensing authority of city was an arm of a political subdivision of the state rather than a state agency and thus

was not subject to provisions of Sunshine Act with regard to license suspension revocation proceeding. *Lasteika Corp. v. Buckingham*, App.1987, 739 P.2d 925. Intoxicating Liquors ☞108.9

Statutory delegation of certain regulatory responsibilities to local licensing authority with respect to intoxicating liquors did not make authority a state agency and did not make Sunshine Act applicable to local authority's suspension revocation proceedings. *Lasteika Corp. v. Buckingham*, App.1987, 739 P.2d 925. Intoxicating Liquors ☞108.9

Denver Urban Renewal Authority, although organized pursuant to State Urban Renewal Law, is not a "state agency or authority," and therefore, is not subject to Open Meetings Law. *James v. Board of Com'rs of Denver Urban Renewal Authority*, 1980, 611 P.2d 976, 200 Colo. 28. Municipal Corporations ☞92

11. School boards

Since a school board administers a school district, and a school district is a subordinate division of the government, exercising authority to effectuate the state's educational purposes, school districts and the boards which run them are considered to be political subdivisions of the state and thus not subject to the Sunshine Act, which requires only that meetings of state agencies, authorities, and the legislature, and not those of political subdivisions, be open. *Bagby v. School Dist. No. 1, Denver*, 1974, 528 P.2d 1299, 186 Colo. 428. Education ☞89; Education ☞93

12. Board of assessment appeals

Under the language of the Open Meetings Law, § 24-6-401 et seq., and under § 39-2-127(1), meetings of the Board of Assessment Appeals held for the purpose of making decisions upon cases should be noticed and opened to the public, just as are the hearings conducted before the board. AG File No. DLS/AGACK/KL July 21, 1980.

13. Quasi-judicial

Fact that State Personnel Board was acting in a quasi-judicial capacity when considering hearing officer's decision ordering public employee's reinstatement did not negate its obligation to comply with open meetings law. *Lanes v. State Auditor's Office*, App.1990, 797 P.2d 764, certiorari denied. Officers And Public Employees ☞72.32

14. Executive session

City council's failure to comply strictly with Open Meetings Law requirements for setting executive sessions rendered such sessions, in which council discussed city employee matters, open meetings, and their recorded minutes were open to the public. *Gumina v. City of Sterling*, App.2004, 119 P.3d 527, certiorari denied 2005 WL 2064910. Municipal Corporations ☞92

Once failure of State Personnel Board to hold open meeting was challenged, dismissed public employee's "after the fact" approval of Board's executive session was insufficient to validate Board's meeting under open meetings law. *Lanes v. State Auditor's Office*, App.1990, 797 P.2d 764, certiorari denied. Officers And Public Employees ☞72.32

15. Minutes

County board of retirement, which maintained retirement plan for county officials and employees, was not entitled to redact portions of its meetings' minutes prior to public disclosure, under Open Meetings Law (OML), in light of board's failure to call for executive session by formal vote, which would have exempted certain confidential information. *Zubeck v. El Paso County Retirement Plan*, App.1998, 961 P.2d 597. Records 🔑66

Trial court did not err in denying teacher's request to inspect unredacted official minutes of Public Employees' Retirement Association (PERA) Board of Trustees meetings, where information sought was confidential and teacher declined opportunity to review minutes subject to confidentiality agreement. *Tepley v. Public Employees Retirement Ass'n*, App.1997, 955 P.2d 573, rehearing denied , certiorari denied. Pretrial Procedure 🔑389

Minutes of any meeting of local public body must be recorded only if adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur. Op.Atty.Gen. No. 93-1, Feb. 22, 1993.

16. Emergency

For purposes of open meetings law, an "emergency" is an unforeseen combination of circumstances or resulting state that calls for immediate action; it necessarily presents situation in which public notice, and likewise, public forum, would be either impractical or impossible. *Lewis v. Town of Nederland*, App.1996, 934 P.2d 848, rehearing denied , certiorari denied. Administrative Law And Procedure 🔑124

Procedures detailed in town ordinance requiring ratification of action taken at emergency meeting at either the next regular meeting of board of trustees or special meeting where public notice of emergency has been given represented reasonable satisfaction of "public" conditions of open meetings law under emergency circumstances. *Lewis v. Town of Nederland*, App.1996, 934 P.2d 848, rehearing denied , certiorari denied. Municipal Corporations 🔑92

17. Political subdivision of state

District attorney is not "political subdivision of state," within meaning of statute defining entities subject to open meeting requirements, and thus, his advisory board is not "local public body" of political subdivision, within meaning of statute; district attorney is not included within statute's definition of political subdivision and, in contrast to entities enumerated in such definition, district attorney is elected by electors of judicial district. *Free Speech Defense Committee v. Thomas*, App.2003, 80 P.3d 935. District And Prosecuting Attorneys 🔑8(4); Municipal Corporations 🔑92

18. Local public body

Even if district attorney was political subdivision of state, within meaning of statute defining entities subject to open meeting requirements, his advisory board was not "local public body" of political subdivision, within meaning of

statute, where no governmental decision making functions were delegated to advisory board. Free Speech Defense Committee v. Thomas, App.2003, 80 P.3d 935. District And Prosecuting Attorneys ¶8(4); Municipal Corporations ¶92

19. State public body

District attorney's advisory board is not "state public body," within meaning of statute defining entities subject to open meeting requirements; statute defines state public body as formally constituted body of state agency or state authority, these terms generally refer to state departments and other state bodies that are governed by boards or other multi-membered bodies, and district attorney who established advisory board does not meet definition of state agency or state authority. Free Speech Defense Committee v. Thomas, App.2003, 80 P.3d 935. District And Prosecuting Attorneys ¶8(4); States ¶67

20. Illegal conduct, effect

Actions taken at any meeting that is held in contravention of the Open Meetings Law cease to exist or to have any effect, and may not be rekindled by simple reference back to them. Van Alstyn v. Housing Authority of City of Pueblo, Colo., App.1999, 985 P.2d 97, rehearing denied. Administrative Law And Procedure ¶124

21. Ratification

Formal vote taken at school board's special meeting could not serve as ratification of previously defective notice provided to probationary teacher for nonrenewal of his contract, nor could such special meeting be considered substantial compliance with statutory notice requirements; neither the Teacher Employment, Compensation, and Dismissal Act (TECDA), nor the Open Meetings Law authorized subsequent ratification of previous defective decisions. Barbour v. Hanover School Dist. No. 28, App.2006, 148 P.3d 268, certiorari granted 2006 WL 3393590, affirmed in part, reversed in part 171 P.3d 223, modified on denial of rehearing. Education ¶593(2)

22. Actions

To be a "formal action" and therefore part of the "policy-making responsibility" of the group, for purposes of the Open Meetings Law, an action must fall within the group's ability to make public policy. Intermountain Rural Elec. Ass'n v. Colorado Public Utilities Com'n, App.2012, 298 P.3d 1027. Administrative Law and Procedure ¶124

Parks and Wildlife Board meeting, at which the Board passed changes to the state's off-highway vehicle (OHV) program and recreation fund, was not a "rubber stamping" of a prior decision made in violation of the Open Meetings Law (OML), but, rather cured the Board's prior noncompliance with the OML, and, thus, reversal of the decision, as urged by OHV coalition, was not warranted; the Board heard additional comment from several people, including a coalition representative, heard public comment from many interested parties, and engaged in renewed deliberations before announcing its ultimate decision. Colorado Off-Highway Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation, App.2012, 292 P.3d 1132. States ¶67

Newspaper and individual, who brought successful claims under both Open Records Act (ORA) and Open Meetings Law (OML), for disclosure of public records from county board of retirement, which maintained retirement plan for county officials and employees, were entitled to all reasonable attorney fees, rather than one-half, even though claims overlapped in proof that board was public agency; same effort would have been devoted to proving board's status as public entity under one claim, independent of existence of other claim. *Zubeck v. El Paso County Retirement Plan*, App.1998, 961 P.2d 597. Counties ↪228; Records ↪68

23. Standing

Provision of Open Meetings Law granting state courts jurisdiction to issue injunctions to enforce the Law's requirements "upon application by any citizen of [the] state" does not grant standing to all citizens to bring actions for violations of the Law; to have standing, citizens are still required to have suffered an injury in fact as a result of the violation. *Pueblo School Dist. No. 60 v. Colorado High School Activities Ass'n*, App.2000, 30 P.3d 752, rehearing denied, certiorari denied. Injunction ↪1505

24. Pleadings

Allegations in unsuccessful bidders' complaint that mayor accepted bid of ultimate purchaser before the regular session of the city council, that city council met in closed meeting before the regular session, and that the bid was accepted at the regular meeting were sufficient to state a claim that city officials violated the Open Meeting Law, given that if the allegations were true, the mayor and city council engaged in formal action that should have occurred at the regular meeting, and acceptance of the offer at regular session was merely a "rubber stamp." *Walsenburg Sand & Gravel Co., Inc. v. City Council of Walsenburg*, App.2007, 160 P.3d 297. Administrative Law And Procedure ↪124; Municipal Corporations ↪92

25. Attorney fees and costs

Off-highway vehicle (OHV) coalition was not entitled to attorney fees or costs for bringing Open Meetings Law (OML) challenge against Parks and Wildlife Board after Board made changes to state's (OHV) program, even though the Board admitted to violating the OML, where the Board cured the noncompliance by holding new meeting on the changes, and the new, curative meeting occurred more than three weeks before the coalition filed suit. *Colorado Off-Highway Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation*, App.2012, 292 P.3d 1132. States ↪215

Neighbors who successfully challenged municipal housing authority's sale of real property pursuant to meetings that violated the Open Meetings Law were entitled to attorney fees and costs, regardless of whether housing authority's approval of the sale in a later meeting held in response to neighbors' complaint and that complied with the Open Meetings Law rendered the Open Meetings Law violations moot. *Van Alstyne v. Housing Authority of City of Pueblo*, Colo., App.1999, 985 P.2d 97, rehearing denied. Municipal Corporations ↪1040

26. Review

When applying the flexible standard established by the Open Meetings Law in regards to fair notice to the public, the Court of Appeals considers the nature of the governmental action, the importance of ensuring that the public has an opportunity to participate, and the extent to which giving notice would unduly interfere with the ability of public officials to perform their duties in a reasonable manner. *Darien v. Town of Marble*, App.2006, 159 P.3d 761, certiorari granted 2007 WL 1395322, reversed 181 P.3d 1148. Administrative Law And Procedure  124

C. R. S. A. § 24-6-402, CO ST § 24-6-402

Current with Chapters 1-5, 12-18, 22, 24, 29, 35-37, 39, 40, 42, 43, 45-49, 52, 55-60, 62, 64, 65 of the First Regular Session of the 70th General Assembly (2015)

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27: Council meetings.

Council shall meet regularly at the City Hall, at least twice each month, at a day and hour to be fixed from time to time by the rules and procedures of each Council; however, Council may, upon appropriate prior published notice hold any regular or special meeting at such other appropriate public place in the City as they may designate. Council shall by ordinance prescribe the rules of procedure governing meetings. All meetings for the transaction of business shall be open to the public. Special meetings of Council may be called in the manner and at the time provided for by the rules of procedure of Council. Five members of Council shall constitute a quorum.

(Amended 11-2-1965)

1-5-2: Meetings of the Council. ^[4]

1-5-2-1: Regular Meetings.

Regular meetings of the City Council shall be held in the City Hall on the first and third Mondays of each month at seven thirty o'clock (7:30) P.M., or at such other time and day as Council may, from time to time, designate; provided, however, that when the day fixed for any regular meeting falls upon a day designated by City Council as a City holiday, such meeting shall be held at the same hour on the next succeeding day not a holiday.

(Code 1985, § 1-5-2-1)

1-5-2-2: Special Meetings.

The Mayor shall call special meetings of the City Council whenever, in his opinion, the public business may require it, or at the express written request of any three (3) members of the Council. Whenever a special meeting shall be called, a summons or a notice in writing signed by the Mayor or City Manager shall be served upon each member of the Council, either in person or by notice left at his place of residence, stating the date and hour of the meeting and the purpose for which such meeting is called, and no business shall be transacted thereat except such as is stated in the notice. Notice of a special Council meeting may be announced by the Mayor at any regular Council meeting and when so announced a written notice shall not be required. Notice of a special Council meeting, whether written or oral, shall be served at least twenty-four (24) hours before the special meeting is to be held upon each Councilman not absent from the City or from the regular Council meeting when announced; provided, always, that if, after diligent effort is made to give notice of any such meeting to all members of Council, notice of the same cannot be given due to an inability to locate any member, a majority of the entire Council may waive notice of special Council meeting in writing or by affirmative ballot, and such waiver shall be specifically noted in the minutes of the meeting. Notice may be waived by the entire membership of Council in any case.

(Code 1985, § 1-5-2-2)

1-5-2-3: Agenda.

On the Thursday preceding each regular Council meeting, or at such other day as the City Manager, from time to time, shall determine, the City Manager shall provide to each member of City Council a written agenda of business to come before

the next regular Council meeting, containing matters which, in his opinion, should be taken up by City Council. Any private individual who desires to appear before City Council may be scheduled to appear by advising the City Manager of such request not later than five o'clock (5:00) P.M. the Wednesday preceding the next regular meeting.

(Code 1985, § 1-5-2-3)

1-5-2-4: Quorum.

Five (5) members of the Council shall constitute a quorum at any regular or special meeting thereof. In the absence of a quorum, the presiding officer shall, at the instance of any three (3) members present, compel the attendance of absent members.

(Code 1985, § 1-5-2-4)

1-5-2-5: Presiding Officer. [5]

A.

The presiding officer of the City Council shall be the Mayor, who shall be elected by the members of the Council at the first meeting following each general Municipal election.

B.

The presiding officer shall preserve strict order and decorum at all regular and special meetings of the Council. The Mayor shall state every question coming before the Council, announce the decision of the Council on all subjects, and decide all questions of order, subject, however, to an appeal of the Council, in which event a majority vote of the Council present and voting shall govern and conclusively determine such questions of order. The Mayor shall vote on all questions, his/her name being called last. The Mayor shall sign all ordinances adopted by the Council during his/her presence.

C.

At the said first meeting following each general election, the Council shall elect a Mayor Pro Tem who shall act as Mayor during the absence of the Mayor. In the event of the absence of the Mayor, the Mayor Pro Tem, as presiding officer, shall sign ordinances as then adopted. In the event of the absence of both the Mayor and the Mayor Pro Tem, the presiding officer selected pursuant to the provisions of Section 1-5-2-7B of this chapter, shall sign ordinances as then adopted.

(Code 1985, § 1-5-2-5)

1-5-2-6: Attendance of Municipal Officers.

The City Manager, City Clerk and City Attorney, or their designated representatives, shall attend all meetings of the Council unless excused by the Council.

(Code 1985, § 1-5-2-6)

1-5-2-7: Order of Business. ^[6]

- A.
General. All meetings, except informal meetings, of the Council shall be open to the public. The City Council shall meet regularly at least twice each month at a date to be fixed from time to time by the rules and procedures. ^[7] The City Council shall determine, by resolution, the rules of order and procedure governing meetings.
- B.
Call to Order. The Mayor, or in his absence the Mayor Pro Tem, shall call the Council to order. In the absence of the Mayor or Mayor Pro Tem, the City Clerk or his assistant shall call the Council to order, whereupon a temporary chairman shall be elected by the members of the Council present. Such temporary chairman shall serve as presiding officer of the Council until the arrival of the Mayor or the Mayor Pro Tem, at which time the temporary chairman shall immediately relinquish the chair upon the conclusion of the business immediately before the Council.
- C.
Roll Call. Before proceeding with the business of the Council, the City Clerk or his deputy shall call the roll of the members, and the names of those present shall be entered in the minutes.
- D.
Reading of Minutes. Unless the reading of the minutes of a Council meeting is requested, such minutes shall be approved without reading if the Clerk has previously furnished each member with a copy thereof.
- E.
Adjournment. A motion to adjourn shall always be in order and decided without debate.

(Code 1985, § 1-5-2-7)

1-5-2-8: Rules of Debate.

- A.
Presiding Officer. The Mayor or such other member of the Council as may be presiding, may move, second and debate from the chair, subject only to such

limitations of debate as are by these rules imposed on all members, and shall not be deprived of any of the rights and privileges of a Councilman by reason of his acting as the presiding officer.

B.

Getting the Floor. Every member desiring to speak shall address the chair, and upon recognition by the presiding officer, shall confine himself to the question under debate, avoiding all personalities and indecorous language.

C.

Interruptions. A member, once recognized, shall not be interrupted when speaking unless it be to call him to order, or as herein otherwise provided. If a member, while speaking, be called to order, he shall cease speaking until the question of order be determined and if in order, he shall be permitted to proceed.

D.

Privilege of Closing Debate. The Councilman moving the adoption of an ordinance or resolution shall have the privilege of closing the debate.

E.

Motion to Reconsider. A motion to reconsider any action taken by the Council may be made at any time, subject only to the following limitations. Passage of an ordinance may be reconsidered at any time prior to the time such ordinance becomes effective. Any action of the Council having as its ultimate purpose the vesting of any contractual or quasi-contractual right may be reconsidered at any time before the actual vesting of such right. A motion to reconsider must be made by one of the prevailing side, but may be seconded by any member, and may be made at any time and have precedence over all other motions or while a member has the floor; it shall be debatable. Nothing herein shall be construed to prevent any member of the Council from making or remaking the same or any other motion at a subsequent meeting of the Council.

F.

Remarks Entered in Minutes. A Councilman may request, through the presiding officer, the privilege of having an abstract of his statement on any subject under consideration by the Council entered in the minutes. If the Council consents thereto, such statement shall be entered in the minutes.

G.

Synopsis of Debate. The Clerk may be directed by the presiding officer, with the consent of the Council, to enter in the minutes a synopsis of the discussion on any question coming regularly before the Council.

H.

Rules of Order. Robert's Rules of Order shall govern the procedure of the meeting in all cases where applicable and where not inconsistent with the

Charter or the rules and procedures herein fixed by the Council or other provisions of this Code.

(Code 1985, § 1-5-2-8)

1-5-2-9: Addressing the Council.

A.

General. Any person desiring to address the Council shall first secure the permission of the presiding officer so to do.

1.

Written Communications. Interested parties or their authorized representatives may address the Council by written communications in regard to matters then under discussion.

2.

Oral Communications. Taxpayers or residents of the City, or their authorized legal representatives, may address the Council by oral communications on any matter concerning the City's business, or any matter over which the Council has control; provided, however, that preference shall be given to those persons who may have notified the City Manager in advance of their desire to speak in order that the same may appear on the agenda of the Council.

3.

Reading of Protests. Interested persons or their authorized representatives may address the Council by reading of protests, petitions or communications relating to zoning, including the Unified Development Code, sewer and street proceedings, hearings on protests, appeals and petitions, or similar matters, in regard to subjects then under consideration.

B.

Addressing After Motion. After a motion is made by a member of Council, no person shall address the Council without first securing the permission of the Council so to do.

C.

Manner of Addressing, Time Limit. Each person addressing the Council shall give his name and address for the record, and shall limit his address to a reasonable time. The length of such remarks may be specifically limited by the presiding officer. All remarks shall be addressed to the Council as a body and not to any member thereof. No person other than the Council and the person having the floor, shall be permitted to enter into any discussion, either directly or through a member of the Council, without the permission of the presiding officer. No question shall be asked a Councilman except through the presiding officer.

D.

Oaths and Affirmations at Public Hearings Before Council. The City Clerk and Deputy City Clerks shall have the power to administer oaths and affirmations to persons giving testimony before City Council at public hearings.

(Code 1985, § 1-5-2-9; Ord. 00-78; Ord. 04-6)

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and therefore excepted from the mandatory disclosure of records of official actions.

Although the CCJRA's right of public access to records of official actions may result in the circumvention of grand jury secrecy in cases where, as here, the indictment contains factual information that transpired in the grand jury proceedings, the plain language of sections 24-72-301(2) and 24-72-303(1) requires disclosure nonetheless. The General Assembly may well have intended this result because a grand jury indictment constitutes official action accusing an individual of a specific violation of the law, for which the individual may be tried and subsequently convicted; therefore, the public has a strong interest in examining the indictment. However, to the extent the General Assembly did not intend that a grand jury indictment be open to public inspection regardless of the extent of the information it contains, it is for the General Assembly, and not for this court, to amend the statute. See *Nye v. Dist. Court*, 168 Colo. 272, 275, 450 P.2d 669, 671 (1969).

Therefore, we hold that the CCJRA requires that Thompson's indictment, in its entirety, be made available for public inspection, subject to the deletion of identifying information of any alleged sexual assault victims. Since the Denver Post does not seek the disclosure of the identities of any alleged victims, including any victims of sexual assault, we need not address the Denver Post's constitutional arguments.

IV. Conclusion

We make the rule to show cause absolute. We remand the case to the trial court with the directions to delete from the indictment identifying information of any alleged sexual assault victims and to make the indictment, subject to such deletion, open for public inspection.



The TOWN OF MARBLE, a Colorado statutory municipal corporation; The Town Council of the Town of Marble; and Hal Sidelinger and Robert Pettijohn, in their official capacities as members of the Town Council, Petitioners,

v.

Larry DARIEN, Dana Darien, Tom Williams, and Dan Brumbaugh, Respondents.

No. 07SC01.

Supreme Court of Colorado,
En Banc.

April 14, 2008.

Background: Citizens who were proponents of a project to place a monument in a town park brought an action against town and town council for an alleged violation of the Colorado Open Meetings Law (OML). The District Court, Gunnison County, J. Steven Patrick, J., found no violation. Citizens appealed. The Court of Appeals, 159 P.3d 761, reversed and remanded. Certiorari was granted.

Holding: The Supreme Court, Eid, J., held that a notice of a meeting of town council was a full notice, as required by the OML, with respect to the project.

Reversed.

Martinez, J., dissented and filed opinion.

1. Administrative Law and Procedure ⇨124

In determining whether a notice is a "full" notice within the meaning of the Colorado Open Meetings Law (OML), the Supreme Court applies an objective standard, meaning that a notice should be interpreted in light of the knowledge of an ordinary member of the community to whom it is directed. West's C.R.S.A. § 24-6-402(2)(c).

2. Municipal Corporations ⇨92

Notice of meeting of town council was a full notice, as required by the Colorado Open Meetings Law (OML), with respect to a project to place a monument in town park, even

though agenda contained in notice stated, “[Park] Committee Update,” and complainants argued that “Update” suggested that project might be discussed but not acted upon and that notice failed to include specific agenda information; ordinary member of community would understand that “[Park] Committee Update” would include consideration of and possible formal action on project, given common knowledge that committee was involved with project, and notice included agenda information available at time of posting. West’s C.R.S.A. § 24-6-402(2)(c).

3. Administrative Law and Procedure ↔124

A notice is sufficient under the Colorado Open Meetings Law (OML) as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice. West’s C.R.S.A. § 24-6-402(2)(c).

4. Administrative Law and Procedure ↔124

Requirement of the Colorado Open Meetings Law (OML) that a notice include “specific agenda information where possible” simply requires a public body to include specific agenda information in its posting when it is possible, i.e., when that information is available at the time of posting. West’s C.R.S.A. § 24-6-402(2)(c).

Caloia Hout & Hamilton, P.C., Sherry A. Caloia, Mary Elizabeth Geiger, Glenwood Springs, Colorado, Attorneys for Petitioners.

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Colorado Municipal League, Geoffrey T. Wilson, Denver, Colorado, Attorney for Amicus Curiae Colorado Municipal League.

Levine Sullivan Koch & Schulz, LLP, Thomas B. Kelley, Steven D. Zansberg, Adam M. Platt, Denver, Colorado, Attorneys for Amici Curiae Colorado Press Association and Colorado Freedom of Information Council.

Carver Schwarz McNab & Bailey, LLC, Christopher Kamper, Denver, Colorado, At-

torney for Amicus Curiae Common Cause of Colorado, Inc.

Justice EID delivered the Opinion of the Court.

This case arises from an alleged violation of a provision of the Colorado Open Meetings Law that requires public bodies to provide full notice of public meetings. On January 8, 2004, the town council of Petitioner Town of Marble held a public meeting at which it voted to reject a proposal for erecting a permanent monument at Mill Site Park, a local park owned by the Town. Respondents, who are proponents of the proposal, brought suit, alleging that the posted notice of the meeting was not “full” notice, as required by the Open Meetings Law, because it did not expressly state that the council would be taking formal action on the proposal. After a bench trial, the trial court found for Petitioners. The court of appeals, however, reversed and remanded with instructions to void the January 8th vote. *See Darien v. Town of Marble*, 159 P.3d 761, 765-66 (Colo. App.2006).

We granted certiorari and now reverse the court of appeals. We hold that the notice of the January 8th meeting was “full” because an ordinary member of the community would understand that the agenda item listed on the notice—“Mill Site Committee Update”—would include consideration of, and possible formal action on, the Mill Site Park proposal. In addition, we hold that because the notice contained the agenda information available at the time of posting, it satisfied the requirement that “specific agenda information” be included in the notice “where possible.” Consequently, we hold that the January 8th notice complied with the Open Meetings Law.

I.

The Town of Marble (“Town”) is a small community located in Gunnison County. The Town is named for the Yule Marble Quarry (“Quarry”), which is an active marble mining operation located four miles south of the Town. In 1981, the Town acquired land where the marble from the Quarry had previously been milled. The Town developed this

land into Mill Site Park, a public park that currently features remnants of the old mill, as well as pictures and historical facts pertaining to marble mining and the mill.

In the spring of 2002, the Town established the Mill Site Committee ("Committee") for the purpose of developing a plan for the future use of Mill Site Park. The Committee included two members of the town council ("Council"), two members of the Marble Historical Society, and two members of the public. The Committee was advisory only, meaning that it had no power to make decisions regarding the use of Mill Site Park.

The Quarry has supplied marble for many buildings and monuments, including the Tomb of the Unknowns monument in Arlington National Cemetery. That monument is in need of repair, and in 2003, Cemetery officials approached the Quarry operator about the possibility of supplying marble for a new monument. The Quarry operator then began discussions with the Town, the Marble Historical Society, and others about the possibility of cutting a new block of marble for the Tomb of the Unknowns.

The Council has five members (including the mayor) and holds monthly meetings at which it conducts all business. At the Council's meeting on October 2, 2003, the Quarry operator presented a proposal for the Tomb of the Unknowns project ("TOU project"). This proposal recommended that two blocks be quarried and that the second block be displayed permanently in Mill Site Park. The proposal was discussed under an agenda item entitled "Review Visitor Center Priority List."

The TOU project proved divisive, as some residents of the Town ardently opposed a permanent monument in Mill Site Park. A meeting was held on November 1, 2003, to discuss the Quarry operator's proposal, and witnesses described the meeting as contentious. The issue was discussed again at the Council's November 6, 2003 meeting under an agenda item entitled "Mill Site Update." The mayor at the time, Wayne Brown, informed everyone that public comment would be limited because the Council was not planning on taking any formal action on the proposal at the particular meeting. Thereaf-

ter, six people spoke on the TOU project—three in favor and three in opposition.

Also at the November 6th Council meeting, Mayor Brown made two motions, both of which passed, requesting permission to purchase road signs and permission to purchase maps. Brown made both motions during discussion of the agenda item entitled "Mayor's Update." Minutes from prior Council meetings establish that the Council had previously taken formal actions under agenda items entitled "Road Update" (August 5, 2003 meeting) and "Ice Rink Update" (October 2, 2003 meeting).

The next meeting of the Committee was scheduled for November 19, 2003. Prior to that meeting, Mayor Brown requested and received, by unanimous vote, the consent of the Council to (1) define the Committee's goals and objectives, (2) remind the Committee that it was advisory only and that the Council would make all decisions regarding the use of Mill Site Park, and (3) re-appoint Committee members on the condition that they promise to be objective. Mayor Brown accomplished these three goals at the November 19th Committee meeting, and he further asked the Committee to seek public input concerning the TOU project and to present its findings to the Council on February 5, 2004. At this point, the co-chairs of the Committee were Petitioner Hal Sidelinger and Respondent Dana Darien. Sidelinger was also a member of the Council.

The next discussion of the TOU project occurred at the Committee's meeting on December 11, 2003. Mayor Brown rescinded the February 5th deadline in an effort to give the Committee more time to develop proposals. Committee members discussed various ideas for development of Mill Site Park, and they decided to conduct a survey of property owners and registered voters. One of the Committee members, Connie Hendrix-Manus, prepared a memorandum of ideas for the park. Also, Plaintiff's Exhibit 28 contains a chart detailing five proposed levels of park development. The memorandum and chart do not focus solely on the TOU project; rather, they discuss a wide range of park-development issues, including preservation of

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existing historical artifacts, restoration of landscaping, addition of a visitor's center or museum, maintenance of the park's ice skating rink, and provision for development costs.

The Council held its regular meeting on January 8, 2004. The notice of this meeting was posted at least twenty-four hours in advance in the usual location. The notice indicated the date, time, and location of the meeting and contained an agenda. In relevant part, the agenda states:

Mill Site Committee Update Hal Sidelinger 7:30-7:45

- Authorization for Mill Site Committee survey expenditure(s)
- Endorse replacement of MSC member

The bottom of the notice also provides, "The next [Council] meeting will be held Thursday, February 5, 2004. The next Mill Site Committee meeting will be held Thursday, January 15 at 7:00 p.m. . . ." The Town clerk prepared the notice using the agenda information that had been determined at the time of posting. Fifteen citizens attended the meeting; fourteen of the fifteen opposed the TOU project.

In preparation for the January 8th Council meeting, Sidelinger reviewed the Town's master plan and discussed Mill Site Park with various concerned citizens and Mayor Brown. Sidelinger concluded that he could not support the TOU project because it proposed a permanent structure in Mill Site Park, which he believed violated the Town's master plan.¹ At the meeting, Sidelinger stated that the focus of the Committee should change, and he made a motion that the Town not allow a permanent structure for the TOU project in Mill Site Park. The motion passed four to one. The trial court found that Sidelinger "had no preconceived intent nor plan to make the motion to withdraw support of the TOU project prior to the discussion which occurred at the meeting." The Committee conducted its January 15th meeting, and continued to meet regularly thereafter.

1. The Town's master plan states, "The community does not want to host more visitors by promoting, exploiting or otherwise marketing the Mill

In February 2004, Respondents brought suit against Petitioners, alleging that the notice of the January 8th meeting was insufficient under the Colorado Open Meetings Law, §§ 24-6-401 to -402, C.R.S. (2007) ("OML"). After a bench trial, the trial court held for Respondents, concluding, in an order dated February 2, 2005, that the notice of the January 8th meeting was sufficient and that the Council was not required to indicate on the agenda that it might take formal action on the TOU project.

The court of appeals reversed, holding "that the notice was not full, adequate, or fair under the circumstances" because it used the term "update," which the court interpreted to exclude the possibility that the Council would take formal action on the TOU project. *Darien*, 159 P.3d at 765. In addition, the court of appeals noted that by announcing the date of the Committee's next meeting, the notice "conveyed that the committee's work would continue and, hence, that there would not be a final decision regarding the project." *Id.* Finally, the court of appeals held that it was "possible" to include "specific agenda information" under section 24-6-402(2)(c) in this case because the Council could have adjourned, set a new meeting, and posted a new notice for that meeting that would include a specific agenda item stating that the Council would take formal action on the TOU project. *Id.* We granted certiorari and now reverse the court of appeals.

II.

A.

The OML requires public meetings to be open to the public at all times. § 24-6-402(2)(a). A public meeting is defined as "[a]ll meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken." *Id.* Furthermore, the OML requires notice of public meetings as follows:

Any meetings at which the adoption of any proposed policy, position, resolution, rule,

Site as an attraction. The historic site should be left in its existing state."

regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. *The posting shall include specific agenda information where possible.*

§ 24-6-402(2)(c) (emphasis added). Here, there is no dispute that the notice to the public was "timely." Instead, the dispute focuses on whether the notice was "full."

[1] The OML states as its underlying policy that "the formation of public policy is public business and may not be conducted in secret." § 24-6-401. For this reason, we have recognized that the OML is "clearly intended to afford the public access to a broad range of meetings at which public business is considered." *Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 652 (1978); accord *Cole v. State*, 673 P.2d 345, 347 (Colo. 1983) (quoting *Benson*). In determining whether the notice at issue is "full," we apply an objective standard, meaning that a notice should be interpreted in light of the knowledge of an ordinary member of the community to whom it is directed. This standard is warranted by the OML's stated purpose, which is to provide fair notice of public meetings to members of the community. See §§ 24-6-401 & -402(2)(c); *Benson*, 195 Colo. at 383, 578 P.2d at 652; see also *Hallmark Builders & Realty v. City of Gunnison*, 650 P.2d 556, 560 (Colo.1982) (applying objective standard to notice of a public hearing on a zoning ordinance).

2. Two topics were listed under the "Mill Site Committee Update" agenda item: "Authorization for Mill Site Committee survey expenditure(s)" and "Endorse replacement of MSC

In *Benson*, we noted that the OML fails to "define[] the content of the required notice." 195 Colo. at 383, 578 P.2d at 653. We went on to hold that the full and timely notice requirement "establishes a flexible standard aimed at providing fair notice to the public," and we explained that satisfaction of this standard "depend[s] upon the particular type of meeting involved." *Id.* (emphasis added). In that case, the chairman of a legislative committee had posted a list of all bills that were capable of being considered at a particular meeting. *Id.* A citizen challenged the adequacy of such notice, arguing that the committee chairman should be required to identify which bills would reasonably be reached at a given meeting. *Id.* We disagreed with this argument, concluding that the "full and timely notice" requirement was satisfied because "[l]egislative committee chairmen, as a practical matter, are rarely able to predict with certainty which matters will be considered at a particular meeting." *Id.* at 384, 578 P.2d at 653. We declined to impose a "precise agenda requirement" because it would "unduly interfere with the legislative process." *Id.* Finally, we concluded that the full notice requirement should not be interpreted to "interfere with the ability of public officials to perform their duties in a reasonable manner." *Id.* In sum, we adopted a "flexible" standard that would take into account the interest in providing access to "a broad range of meetings at which public business is considered," as well as the public body's need to conduct its business "in a reasonable manner."

B.

[2] Applying *Benson's* "flexible" standard, we begin by considering the circumstances surrounding the Council's January 8th meeting. The nature of the business discussed at the meeting was the development of Mill Site Park. In particular, the TOU project was discussed under the agenda item entitled "Mill Site Committee Update."² This title was consistent with those used in notices of previous Council meetings, where

member." As we discuss below, the agenda item "Mill Site Committee Update" was broad enough to include consideration of the TOU Project.

the TOU project had been discussed under agenda items entitled "Review Visitor Center Priority List" and "Mill Site Update." At the Council's November 19, 2003 meeting, the Committee was tasked with seeking public input concerning the TOU project, and the project was one of several Mill Site Park development proposals that the Committee considered at its December 11, 2003 meeting. The Committee's involvement with the TOU project was thus common knowledge, and in fact, Respondent Dana Darien was co-chair of the Committee.

Under these circumstances, an ordinary member of the Town's community would understand that the TOU project was a likely candidate for discussion under the topic "Mill Site Committee Update." And in fact, the project was discussed under that agenda item. Hal Sidelinger, co-chair of the Committee and member of the Council, was identified on the meeting notice as the person who would present the "Mill Site Committee Update." As part of his presentation, Sidelinger stated that the TOU project violated the Town's master plan because that plan did not permit permanent structures at the Mill Site. After discussion, Sidelinger moved that, consistent with the master plan, no permanent structure be erected in Mill Site Park, and the motion passed, effectively killing the TOU project. Because an ordinary member of the community would understand that the TOU project could be considered in relation to the "Mill Site Committee Update," we conclude that the notice of the January 8th meeting properly satisfied the OML's full notice requirement.

[3] We observe that the notice of the January 8th meeting exceeds the notice given in the *Benson* case, which simply mentioned the bills that were capable of being considered at the particular meeting. Here, by contrast, the agenda stated that there would be a "Mill Site Committee Update," which would be reasonably understood to include consideration of the TOU project, and such consideration actually occurred. Thus, the notice sufficiently informed the public of the nature of the business to be considered. Under *Benson*, a notice need not precisely set forth every single item to be

considered at a meeting. 195 Colo. at 384, 578 P.2d at 653. Such a requirement would violate a central teaching of *Benson*—that public bodies be permitted to conduct business "in a reasonable manner," *id.*—because it would prohibit them from addressing any item not specifically listed on the notice even though the item is reasonably related to a listed item. Thus, a notice is sufficient as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice, which occurred in this case.

C.

Respondents argue, however, that the "Mill Site Committee Update" notice was not "full" notice, for two reasons. First, they argue that it was misleading because the term "update" is a term of limitation, in that it excludes the possibility that formal action of any kind could be taken with regard to the Mill Site and the TOU project. Second, they argue that it was not "full" because it failed to meet the statutory requirement that notice "shall contain specific agenda information where possible"; according to Respondents, it was "possible" to list the issue of whether the TOU project was consistent with the Town's master plan because the Council could have adjourned, set a new meeting, and included a more specific agenda item in the notice of that future meeting. We consider each argument in turn.

1.

According to Respondents, the term "update" suggests that the TOU project might be discussed, but not acted upon. The court of appeals agreed, concluding that by using the term "update," "the notice did not say that the Council would make a final decision and provided no basis for the public to infer that the Council would vote on whether to accept or reject the [TOU] project at its January 8 meeting." *Darien*, 159 P.3d at 765. We disagree with Respondents and the court of appeals, and hold that the notice was not misleading.

We note, as a preliminary matter, that the Town never promised to refrain from taking any formal action on the TOU project while

the Committee formulated its proposals. As Mayor Brown made clear at the November 19, 2003 Committee meeting, the Committee was merely advisory, and the Town retained full control over the decisions regarding the use of Mill Site Park. Thus, the Town did not make any misrepresentations concerning the action that could or could not be taken on the TOU project.

Nor did the use of the term "update" suggest that formal action would not be taken on the TOU project. Used in the context of the Town's notice, the term "update" indicated that a particular subject would be considered at the meeting. Here, that is exactly what happened. Sidelinger presented the "Mill Site Committee Update," which included his conclusion that the TOU project was inconsistent with the Town's master plan and his motion that the Council adopt the position that no project at the Mill Site could include a permanent structure. The Council's action on the topic was part of its consideration of the topic. Because the possibility of formal action is inherent in consideration of topics at public meetings, see § 24-6-402(2)(c) (describing public meetings as, *inter alia*, "[a]ny meetings at which . . . formal action occurs"), the notice of the January 8th meeting did not have to state that the Council might take formal action on the TOU project.

In fact, the record shows that the Council regularly took formal action under agenda items with the word "update" in their titles. For example, at its November 6, 2003 meeting—a meeting involving a discussion of the TOU project—the Council took formal action twice under the agenda item entitled "Mayor's Update." Thus, the Council's past practice demonstrates that "update" was used as a word of description and did not convey any sort of limitation on the Council's ability to take formal action. The notification was not misleading, as the term "update" meant that a particular subject would be considered and potentially acted upon.

If we were to accept the Respondents' argument, and conclude that the term "update" could not be used to describe consideration of a particular topic if that consideration might lead to formal action, a public

body such as the Town would be required to adjourn every time that consideration of an already noticed topic turned to action. At that point, the public body would be required to set a future meeting and issue a new notice of that meeting listing the fact that formal action might be taken on a particular topic. But the OML imposes no requirement that specific advance notice be given of formal actions that might be taken. *Cf.* Nev. Rev.Stat. Ann. § 241.020(2) (2007) (requiring notices of public meetings to include, among other things, (1) the time, place, and location of the meeting; (2) an agenda with a clear and complete statement of the topics to be considered; and (3) a description of what formal actions might be taken). The General Assembly could have written the OML to require that specific notice of formal action be given. For example, with regard to state-agency rulemaking, it has required agencies to publish notice of (1) the time, place, and nature of any proposed rulemaking; (2) the authority for proposing the rule; and (3) "either the terms or substance of the proposed rule or a description of the subjects and issues involved." § 24-4-103(3)(a), C.R.S. (2007). Here, by contrast, the OML simply requires that notice be "full." That standard was satisfied in this case because the notice adequately informed the public of the subject matter of the meeting—that is, the "Mill Site Committee Update."

Moreover, requiring the Council to adjourn, set a future meeting, and issue a new notice—like requiring the agenda to precisely list every single item to be considered at a meeting—would run afoul of *Benson's* admonition that a public body be permitted to conduct its business in a reasonable manner. As noted above, the Council's discussion and consideration of a particular topic often led to action on that topic. Requiring the Council to adjourn, set a future meeting, and issue a new notice on a particular topic every time that discussion turns to action on an already noticed topic would unreasonably hamper the business and operation of government.

Respondents also contend that because the notice of the January 8th meeting listed the date (January 15th) of the next Committee meeting, it suggested that the Committee's

work would continue and, by implication, that no formal action would be taken on the TOU project. The court of appeals agreed with Respondents, stating that “the most straightforward meaning of the notice was that the committee would continue its work at a meeting the following week.” *Darien*, 159 P.3d at 765. However, the Committee actually did continue its work, as it met on January 15th and continued to meet regularly thereafter. The record demonstrates that the Committee was considering a whole host of options for the development of Mill Site Park in addition to the TOU Project, including restoration of the Park’s landscaping and preservation of its existing historical artifacts. After the January 8th meeting, the Committee continued considering the options other than the TOU Project. Thus, the notice’s suggestion that the Committee’s work would continue did not preclude the Council’s taking formal action on the TOU project at its January 8th meeting.

2.

Respondents raise a second ground to support their argument that notice was not “full”—namely, that the notice failed to “include specific agenda information where possible,” as required by the OML. *See* § 24-6-402(2)(c).³ Again, the court of appeals agreed with Respondents, finding that it was actually “possible” to adjourn the meeting and issue a notice of a future meeting that included an agenda item stating that the Council would take formal action on the TOU project. *Darien*, 159 P.3d at 765. The court reasoned that it would be “possible” to adjourn, set a future meeting, and issue a new notice because, among other things, there was a “lack of urgency” and an “absence of evidence that postponement of the decision would have unduly interfered with the ability of the [Council] to perform its duties.” *Id.* In other words, according to the court of appeals, the “specific agenda information where possible” provision—like the full notice provision—requires a public body to adjourn, set a future meeting, and issue a new notice that includes specific notification of

formal action when consideration of an already noticed topic turns to action.

For the same reasons that we disagree with the argument in the context above, we disagree with it here. The OML does not impose such a requirement of adjournment and re-notification when the action already falls under a topic listed on the notice, and we decline to impose one. Indeed, under the court of appeals’ reasoning, a public body would be required to adjourn its meeting whenever there was the slightest deviation from the precise topic as stated in the notice, as it would almost always be “possible” to adjourn and meet again in the future. Again, this reading of the OML would place an unreasonable restriction on the conduct of public business by a public body.

[4] The statutory provision requiring the notice to include “specific agenda information where possible,” § 24-6-402(2)(c), simply requires the public body to include specific agenda information in its posting when it is “possible” to do so—that is, when that information is available at the time of posting. The statute provides, “*The posting shall include specific agenda information where possible.*” § 24-6-402(2)(c) (emphasis added). Thus, if at the time of “posting,” it is “possible” to include specific agenda information, the notice “shall” include that information. Here, the requirement was met because the Town posted “specific agenda information” by including the available agenda information—i.e., “Mill Site Committee Update” and corresponding agenda sub-items—on the notice.

Respondents contend that our interpretation of the OML’s “specific agenda information where possible” requirement will allow public bodies to withhold agenda items by waiting until after notice is posted to formulate the true agendas for their public meetings. We agree with Respondents that the OML prohibits bad-faith circumvention of its requirements, but such behavior is simply not at issue in the case at bar. The trial court found that Sidelinger “had no precon-

3. The provision requiring “specific agenda information where possible” was added to the OML

in 1991, after we decided *Benson*.

ceived intent nor plan to make the motion" that he did, and Respondents do not challenge this factual finding on appeal. By listing "Mill Site Committee Update," the notice satisfied the requirement that "specific agenda information" be provided where possible.⁴

III.

We hold that the January 8th notice in this case satisfied the OML's "full" notice requirement because an ordinary member of the community would understand that the "Mill Site Committee Update" agenda item would include consideration of, and possible formal action on, the TOU project. In addition, we hold that because the notice contained the agenda information available at the time of posting, it satisfied the OML's requirement that "specific agenda information" be included "where possible." Because they provided full notice of the January 8, 2004 public meeting, we therefore hold that Petitioners did not violate the OML. Consequently, we reverse the court of appeals and reinstate the trial court's order of February 2, 2005.

Justice MARTINEZ dissents.

Justice MARTINEZ, dissenting.

I disagree with the majority's holding that the public received "full" notice of the January 8th meeting. At this meeting, the Council decided the highly contentious issue of the TOU project, and yet none of the proponents of the project attended. In my view, the notice failed to fairly inform the public that the Council would take formal action on the TOU project at this meeting. Accordingly, I dissent.

Colorado's Open Meetings Law requires that the public receive "full and timely notice" of a public meeting. § 24-6-402(2)(c),

4. Finally, as a general matter, Respondents point to the fact that fourteen of the fifteen citizens who attended the January 8th Council meeting opposed the TOU project. Assuming this circumstance could be relevant, it is worth noting that the OML requires full notice, not full attendance. Moreover, the fact that the meeting drew fourteen people who had an interest in the TOU project actually works against Respondents' ar-

C.R.S. (2007). This notice requirement establishes "a flexible standard aimed at providing fair notice to the public." *Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 653 (1978); see maj. op. at 1152. Thus, as the majority correctly notes, this court must apply an objective standard, assessing the notice from the perspective of "an ordinary member of the community to whom it is directed." See maj. op. at 1152; see also *Benson*, 195 Colo. at 383, 578 P.2d at 653.

Nevertheless, the majority fails to apply this objective standard and instead incorrectly focuses on the Council's subjective intent in using the term "update" in the January 8th meeting notice. The majority notes that the term "update" in the agenda item "Mill Site Committee Update" indicated that the Council intended to "consider" the Committee's work, see maj. op. at 1154, but did not have any preconceived plan to take formal action on the TOU project. See *id.* The majority also observes that the Council previously discussed the TOU project under agenda items such as "Mill Site Update," see *id.* at 1153, and regularly took formal action under agenda items labeled as "update." See *id.* at 1154. Hence, the majority concludes that "the term 'update' [did not] suggest that formal action would not be taken on the TOU project." *Id.* at 1153-1154.

While generally the term "update" may include taking formal action, the content of the January 8th meeting notice excluded the possibility that the Council would take formal action on the TOU project at the meeting. The notice contained an agenda item "Mill Site Committee Update" as well as a specific description of that item—"Authorization for Mill Site Committee survey expenditure(s)" and "Endorse replacement of [Mill Site Committee] member." Moreover, the notice also stated that the next Mill Site Committee meeting would take place a week later, on January 15th.

gment, as it provides some circumstantial corroboration for the conclusion that the meeting's notice fulfilled the OML's stated purpose of affording public access to meetings where public business is conducted. See § 24-6-401; *Benson*, 195 Colo. at 383, 578 P.2d at 652 (stating that the OML "was clearly intended to afford the public access to a broad range of meetings at which public business is considered").

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Cite as 181 P.3d 1157 (Colo. 2008)

As used here, the term "update" modified the word "Committee" rather than the words "Mill Site," thus suggesting the Council would discuss housekeeping matters concerning the work of the Committee rather than the TOU project itself. Additionally, the specific description of the agenda item provided content to the word "update," which further indicated to the specified matters. Finally, while the Committee's work was not limited to the consideration of the TOU project, the TOU project was a divisive and publicized issue that was in the forefront of the Committee's activities. Thus, as used here, "update" was a term of limitation, which, read together with the information on the next Mill Site Committee meeting, strongly implied that a decision on the TOU project was not imminent. Consequently, an ordinary member of the community did not have fair notice that the Council would take formal action on the TOU project. Indeed, none of the proponents of the TOU project attended the January 8th meeting.

This conclusion is entirely consistent with *Benson's* requirement that providing full notice not interfere with "the ability of public officials to perform their duties in a reasonable manner." *Benson*, 195 Colo. at 384, 578 P.2d at 653. According to the majority, requiring that the notice include more than "Mill Site Committee Update" would in effect prevent the Council from conducting business in a reasonable manner and thus would violate *Benson*. See maj. op. at 1153. However, the majority's discussion of *Benson* fails to take into account the amendment of section 24-6-402(2)(c), adopted after *Benson* was decided, requiring that a notice of a public meeting be posted and that "[t]he posting . . . include specific agenda information where possible." See ch. 142, sec. 1, § 24-6-402(2)(c), 1991 Colo. Sess. Laws §15, 816. Following this amendment, the statute encourages, but does not require, advance planning as to what matters are going to be transacted at a public meeting.

Here, the Council indicated that the "update" would concern funding of a survey to be conducted by the Committee and replacement of a Committee member. Consequently, while the notice here exceeded the notice

in *Benson* in specificity, see maj. op. at 1153, in contrast to *Benson*, the Council limited the scope of action that might be taken with respect to the Committee's work. Holding the Council to the limitation it chose to impose on itself does not, in any way, restrict the Council's ability to conduct its business in a "reasonable manner." Rather, it is consistent both with section 24-6-402(2)(c) and *Benson*.

Because the notice of the January 8th meeting did not fairly inform the public that the Council would take formal action on the TOU project, I dissent.



The PEOPLE of the State of Colorado,
Plaintiff-Appellant.

v.

Kevin Franklin ELMARR,
Defendant-Appellee.

No. 07SA379.

Supreme Court of Colorado,
En Banc.

April 21, 2008.

Background: Defendant who was charged with first-degree murder filed motion to suppress his statements made in response to police interrogation. The District Court, Boulder County, James Klein, J., granted motion. State appealed.

Holdings: The Supreme Court, Rice, J., held that:

- (1) defendant was subjected to custodial interrogation without proper *Miranda* warning as to render statements inadmissible at trial, and
- (2) factual finding that defendant was subjected to pat-down search upon arrival at police station was supported by evidence.

Affirmed and remanded.