



COLORADO

Transportation
Investment Office

ANNUAL BEST PRACTICES TRAINING

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Carla Martin

Assistant Attorney General

Agenda

- C.R.S. Section 24-3.7-102 requires annual training in several areas including:
 - Statutory Powers and Duties;
 - Identifying and managing conflicts of interest;
 - Understanding the requirements of the Colorado Open Records Act and open meetings laws.

HPTE STATUTORY PURPOSES

Purposes of HPTE under C.R.S. § 43-4-806 include:

- “[A]ggressively pursue innovative means of more efficiently financing important surface transportation infrastructure projects that will improve the safety, capacity, and accessibility of the surface transportation system”
- “[P]rovide diverse, multimodal transportation options that reduce traffic congestion and degradation of existing surface transportation infrastructure”
- “[O]ffer more transportation choices for system users”

*Purple indicates additions from SB-184

HPTE STATUTORY POWERS

Impose User
Fees

IGA with RTD
& FRPRD

Issue/Reissue
Revenue
Bonds

Contract for
Funding for
Loans/Grants

Seek Out &
Enter Into
P3s

HPTE STATUTORY DUTIES

C.R.S. § 43-4-806 duties include:

- Annual accounting of user fees collected
 - On and after January 1, 2025, [HPTE] shall impose a congestion impact fee on all short-term vehicle rentals
 - No later than March 1, 2030 and every fifth March 1 thereafter, [HPTE] shall complete an analysis of the rate at which it imposes the congestion impact fee
- No later than March 1, 2025, [HPTE] shall complete an initial assessment of opportunities available through 2040 to leverage federal money made available to the state and assess such opportunities on an ongoing basis
- Evaluate any toll highway in the state that is owned and offered for sale or lease

Board Responsibilities Include

Supervise enterprise director

Adopt bylaws for the regulations

Set and adopt annual budget

Issue revenue bonds

Acquire, hold title to, and dispose of real property

Acquire by purchase, gift, grant, or condemnation buildings, money, or grounds

Enter into agreement with private or public entities to facilitate P3s

* Complete list at § 43-4-806(6)

Conflicts of Interest

- Rules of Conduct (Section 24-18-108.5, C.R.S.) - A Board Member shall receive no compensation other than a per diem allowance . . . shall not perform an official act which may have a direct economic benefit on a business or other undertaking in which such member has a direct or substantial financial interest.
- Voluntary Disclosure (Section 24-18-110, C.R.S.) - Two step process:
 - You can make a written disclosure to the Secretary of State that adequately describes the financial interest; and
 - Immediately before the vote, you state for the record the fact and summarize the nature of the interest.

Art. II Enterprise Board

(E) Board members “shall make financial disclosures and avoid conflicts of interest, as provided by policies adopted by the Enterprise and as provided by law.”



Amendment 41

Codified as Article XXIX, titled “Ethics in Government

Section 5

- Created independent Ethics Commission
 - Hears complaints
 - Issues findings
 - Assesses penalties
 - Issues advisory opinions on ethics issues
- <https://iec.colorado.gov/>



CORA - In a Nutshell

“ All public records **shall** be open for inspection by any person at reasonable times, except as provided in part 2 or as otherwise provided by law.

- ♦ Section 24-72-203, C.R.S.

”



Is It a “Public Record”?

Definition of “public record” is very broad and includes

- Internal and external communications
 - Amongst staff members
 - Between staff and Board
 - Between Board members
 - Between one agency and another agency
- No limitation on means of a communication - includes hard copy “paper” documents and electronic records, documents, **and data**

Give me the documents NOW!



The requestor must have access to the records within a “reasonable time.”

Sec. 24-72-203(3)(b), C.R.S.



“a ‘reasonable time’ shall be presumed to be **three working days or less.**”



The period may be extended by seven working days upon finding of “extenuating circumstances.”

Sec. 24-72-203(3)(b), C.R.S.- for example, a large amount of documents have been requested.



In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.”

Section 24-72-203(3)(c), C.R.S.

Colorado Open Meetings Law



- “It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.” Section 24-6-401, C.R.S.
- To give citizens an expanded opportunity to become fully informed on issues of public importance
- To allow citizens to participate in the legislative decision-making process that affects their personal interests

What is a Meeting?



Any kind of **gathering**, convened to discuss **public business**, in person, by telephone, electronically, or by other means of communication.

Section 24-6-402(1)(b)



What is NOT a meeting?

- Chance meetings
- Social gatherings at which discussion of public business does NOT take place
- Other events in which public business is not the central purpose

Section 24-6-402(e), C.R.S.



Meetings Must Be Noticed

- Notice must be “full and timely.” Section 24-6-402(2)(c)
- “Full notice” is required --- did the notice provide fair notice to members of that community?
- OML imposes no requirement that specific advance notice be given of formal actions. Notice is sufficient as long as the items actually considered at the meeting are reasonably related to the subject matter in the notice.
- Posting must occur **at a minimum, 24 hours before the meeting**

Executive Sessions

- Executive Session = Meeting of the Board without the public present.
 - Can only be used for discussions of specific and noticed topics;
 - Cannot be used to take any formal action.
 - **MUST BE RECORDED & RECORDING KEPT FOR 90 DAYS**
- Only for limited purposes:
 - **Conferences with an attorney** to receive legal advice on specific legal questions;
 - **Matters required to be kept confidential** (federal law or rules, state statutes);
 - **Specialized details of security arrangements** or investigations;
 - **Determining positions relative to matters subject to negotiations**, developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;
 - **Appointment or employment** of a public official or the dismissal /discipline.

Potential Consequences for Failures to Comply

- Invalidation of action taken
- “Willful” misconduct can subject Board members to removal
- Negative Publicity & Potential Litigation
- Release of Otherwise Confidential Information. *See, e.g., Gumina v. City of Sterling*, 119 P.2d 527, 532 (Colo. App. 2004) (holding that if a local public body fails strictly to comply with the requirements set forth to convene an executive session, it may not avail itself of the protections afforded by the executive session).

Case Law Update

- Following two slides detail two recent Colorado Court of Appeals cases about “curing” OML violations
 - *O’Connell* - provides an example of when a public body can “cure” an OML violation
 - *Sentinel Colorado* - provides an example of when an OML violation cannot be “cured”

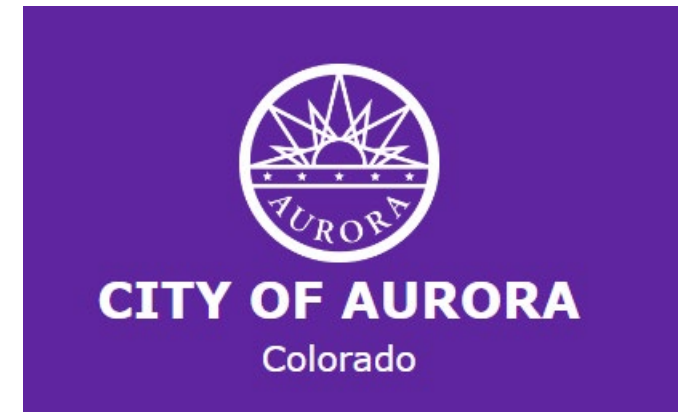
O'Connell v. Woodland Park School District

- Board met to discuss chartering of new school & related MOU, but agenda item only said, “Board Housekeeping”
- Agenda never mentioned Board was considering an MOU or the new charter school, but a draft of the MOU was circulated with agenda. The Board voted & approved the MOU.
- The next day, Board recognized community frustration over lack of transparency over “Board Housekeeping” agenda item.
- Board **cured by reapproving MOU at subsequent meeting with adequate notice of that topic** where there was full discussion of the approval & public comment & re-voted
 - Did not merely “rubber stamp” at next meeting



Sentinel Colo. v. Rodriguez

- Local newspaper sued & obtained recording of Aurora City Council Executive Session because the City Council violated OML by not properly announcing the executive session & then taking a position/formal action during the session
 - Agenda for executive session only said vague things like, “negotiations”, “personnel matters”, and “legal advice”
 - Took “roll call” vote during executive session
- City Council also waived its attorney-client privilege by trying to cure the OML violations at the next City Council meeting
 - Next meeting agenda attached attorney’s letter to Council describing previous executive session → waiver
- Cannot cure - curing only applies where someone seeks to invalidate an *action* taken by the executive session
 - By not following OML requirements, executive session not protected



Questions?