



COLORADO

Transportation
Investment Office

ANNUAL BEST PRACTICES TRAINING

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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:

- “[P]ursue 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”

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

Acquire, Hold
Title to, &
Dispose of Real
Property

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

Enter into agreement with private or public entities to facilitate P3s

* Complete list at § 43-4-806(6)

Conflicts of Interest

- Board Member May Not (Section 24-18-108.5, C.R.S.):
 - Receive compensation (other than a per diem allowance)
 - Perform an official act with which the Member 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:
 - Make a **written disclosure** to the Secretary of State adequately describing financial interest; **and**
 - Immediately before the vote, **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

2006 passage of Amendment 41 to Colo. Const. - “Ethics in Government”

- 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;
 - Electronic records ([including emails](#)); and
 - Data

Give It To Me 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.**”

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



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

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



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;**
 - **The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest**
 - **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

- Two Colorado Court of Appeals cases address “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”

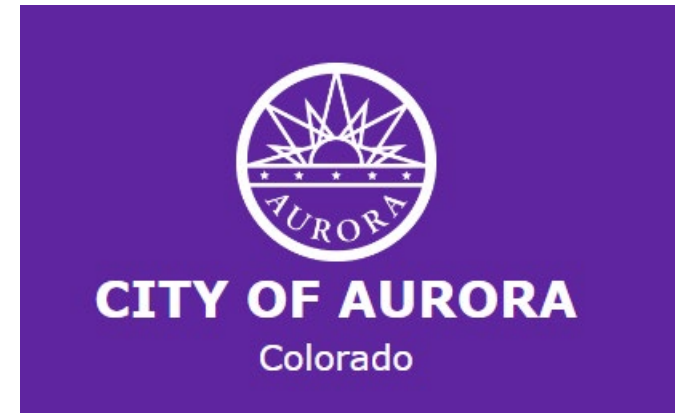
O'Connell v. Woodland Park School District

- Agenda said, “Board Housekeeping” but Board discussed chartering of new school & related MOU
- Draft of the MOU was circulated with agenda.
- The Board voted & approved the MOU.
- Board **cured by reapproving MOU at subsequent meeting with adequate notice of that topic** where there was full discussion, public comment, and new vote
 - Did not merely “rubber stamp” at next meeting



Sentinel Colo. v. Rodriguez

- Aurora City Council Executive Session – failed to properly announce executive session & then taking a position/formal action during the executive session
 - Agenda listed executive session but said vague things like, “negotiations”, “personnel matters”, and “legal advice”
 - Took “roll call” vote during executive session
- City Council then waived 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**



Key Takeaways for “Curing” OML Violation

- Must fairly notice what executive session will be with enough specificity (without revealing the advice or strategy)
- Do NOT vote or take formal action in executive session
- OML violation could invalidate a Board action
 - But Board can rectify with an OML-compliant meeting & revote
 - But no “rubber stamping” (i.e., need full public discussion before vote)
- OML violation, however, may risk waiving attorney-client privilege protection

Questions?