

Open Meetings

Because of the statutory definition of "meeting," not all sessions of governing bodies, their committees, or advisory bodies are subject to the open meetings provisions of the Act. The following elements must be present in order for a board, etc., session to meet the statutory definition of a meeting: (1) a quorum, for purpose of taking action, must be in attendance; (2) deliberations must take place; and (3) the deliberations must determine or result in the joint conduct or disposition to the business of the particular body, but only to the extent that such deliberations relate to public broadcasting.

The statute does not preclude telephonic meetings, meetings conducted via the Internet, or meetings conducted by video conferencing. If an organization's by-laws allow for meetings by telephone, Internet, or video conferencing, the body may meet in such a manner. However, these alternative meeting formats must still meet the other statutory requirements such as providing reasonable notice and allowing the public to attend, which in the case of an alternative meeting format would mean the ability to listen, observe, or participate.

KIXE will determine on a case-by-case basis whether the elements that make a gathering into a "meeting" subject to the open meeting provisions are present. For example, certain gatherings of governing and advisory bodies are not "meetings" because they do not involve deliberations to determine joint conduct. Examples of gatherings that are not "meetings" include: background or status briefings; sessions to stuff envelopes or complete other menial tasks; events that are purely social in nature; or assemblies to assign responsibilities for particular projects to individual board members for fact finding and subsequent report to the body as a whole.

2. Reasonable Notice to the Public

The law provides that all meetings that are required to be open to the public must also be preceded by "reasonable notice to the public."

"Reasonable notice" normally means notice that is both reasonably expected to inform and appropriate to the purpose of the notice. Notice should be directed toward those individuals who could be reasonably expected to have an interest in attending the meeting. Notice should also be given in a manner that could be expected to reach such individuals.

The Conference Report acknowledges that there may be occasions when an open meeting preceded by reasonable notice would be impracticable. The Report states, "from time to time emergency situations or the convenience of teleconferencing may make it impractical to hold an open meeting preceded by reasonable notice. In such situations, requiring advance notice to the public for committee meetings would be

unreasonable. Although the conferees understand that meetings conducted by telephone cannot be open to the public, the conferees expect that the entities involved will attempt to minimize those instances."

3. All Persons Shall Be Permitted by the Stations to Attend

One troublesome part of the open meeting requirement is that physical space, as well as fire department occupancy regulation, may prohibit "all persons" from attending a meeting. Although it would not be reasonable to expect KIXE to rent a convention hall to accommodate persons who may wish to attend meetings, it would nevertheless seem appropriate that the various bodies conduct their respective meetings in facilities that would accommodate a reasonable audience. The rule of reasonableness should guide in this area and KIXE takes into account factors such as past attendance, the meeting's agenda, and current events. The law would not require a station to undergo unreasonable expenses and efforts to accommodate the public. By the same token, the law would not tolerate failure to provide reasonable accommodation of the public. Therefore, it would be inconsistent with the open meetings requirement to reduce the size of current meeting facilities or otherwise deter the public from attending open meetings.

Likewise, security procedures may impact the public's ability to attend meetings without providing identification. Since the statute prohibits KIXE from requiring members of the public, as a condition to attendance, to register their name or to provide any other information, KIXE will not hold meetings at locations where access is privately restricted. However, it would be unreasonable to require the KIXE to hold meetings in unsafe locations or otherwise fail to protect stations employees, volunteers and those attending meetings, or ignore security procedures in emergency circumstances during governmentally mandated heightened security alerts. The rule of reasonableness should apply to security procedures. KIXE ensures reasonable efforts allow unrestricted access to open meetings, while maintaining a reasonably safe environment and bearing in mind that Federal, state, and local security regulations may unavoidably impact such access.

If a meeting, which is open to the public, is conducted telephonically or via video conferencing or the Internet, the organization, in addition to complying with the other provisions of this section, must provide the public with access to the proceedings through a location at which the public may observe or listen or by disseminating call-in information that permits the public to observe or listen from another location in a manner consistent with the reasonable notice provisions herein. To the extent practicable, if KIXE provides a location for the public to observe or listen to a meeting, this location must be reasonably accessible to members of the public who could be expected to have an interest in attending the meeting. If the organization allows the public to listen to or observe the meeting from another location, the station may not charge for the phone call, notwithstanding normal telephone toll charges.

4. Explanation of Closed Meetings

If a session is closed to the public pursuant to the statutory exceptions (discussed in part C below), a written statement containing an explanation of the reasons for closing the meeting must be made publicly available within a reasonable period of time thereafter. The explanation for a closed meeting, however, does not have to be made available in the same manner as the notice of an open meeting. The explanation for the closing of a meeting preferably should use the words of the statute.

B. Prohibitions

Although PBS, NPR, or stations cannot require that a person register by name or provide any other information as a condition of attending a meeting, they may request identification for other purposes, such as ensuring reasonable security. For example, an organization providing priority seating arrangements for those who formally request such seating space ahead of time may request those individuals to identify themselves. This procedure would be acceptable, because it is a requirement only for priority seating, not attendance. Similarly, the organization could place a sign-up sheet at the entrance to the meeting so that members of the public may voluntarily do something such as submit a comment for consideration, sign-up for volunteer work or engage in similar activities. This is acceptable as long as providing information is voluntary for the public and not a requirement to attend.

C. Exceptions

The law also provides exceptions to the open meeting requirement. Closed sessions can be conducted to consider matters relating to individual employees, proprietary information, litigation, and other matters requiring the confidential advice of counsel, commercial or financial information obtained from a person on a privileged or confidential basis, or the purchase of property or services whenever the premature exposure of such purchase would compromise the business interests of any such organization.

D. Result of Noncompliance

The law provides that CPB may not distribute any of its funds to PBS, NPR, or the licensee or permittee of any public broadcast station that does not hold open meetings in compliance with this provision.