

OPEN MEETING ACT

OVERVIEW

It is important for Montana Conservation Districts (CDs) to understand and follow the Open Meeting Law. Montana Code Annotated sets forth requirements that districts need to follow when convening a quorum of the board of supervisors.

What's Considered a Meeting?

A "meeting" is the convening of a quorum of a CD supervisors as described in 2-3-203, MCA, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the district has supervision, control, jurisdiction, or advisory power.

However, the law is wide-ranging enough to include any informal gathering where there may be a majority of supervisors present, which constitutes a quorum. As such, it is considered a meeting and must be **open, noticed, transcribed, and available for public inspection.**

Note about email: Districts should be mindful NOT to conduct business over email. Doing so could meet the definition of "meeting" and be in violation of open meeting requirements. Informational emails sent by an administrator to the full board are permissible. However, supervisors should not respond or otherwise engage in matters of the district over email.

OPEN MEETINGS

According to Montana statute 2-3-201, MCA, all meetings are to be open to the public. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business.

So, any time supervisors get together (including those attending virtually) to conduct business and there is a quorum, these meetings must be open to the public.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.



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NOTICING MEETING

All meetings must be noticed. The notice should clearly state the date, the time, the specific agenda items including action items to be discussed, and the location of the meeting.

Best practices recommend consistency in noticing meetings. If your district posts a meeting notice, it should be done at least seven days prior to regular meetings and at least 24 hours for special meetings. It should be posted in the same place for every meeting. However, according to MCA 2-3-103, a CD should post their agenda on its website or social media page or its newspaper's website. If free of charge, the CD shall provide the notice and agenda to its local newspaper to post on the newspaper's website. Once posted, the agenda should not be amended to ensure that all items have adequate public notice.

The failure to give notice can result in the actions of the board being voided, 2-3-213, MCA. Moreover, a board can be required to pay attorney fees and costs to a prevailing party if a Court determines the Open Meetings Act has been violated. These costs would be borne by the individual district, not the DNRC. MCA 2-3-221.

CLOSED MEETINGS/EXECUTIVE SESSIONS

There are few situations where a meeting may be closed according to statute 2-3-203, MCA. The presiding officer may close the board meeting to discuss:

- Personnel matters, such as discussion of salaries, evaluations of employees, disciplinary actions, and/or discussions of pending legal problems.
- Matters of individual privacy, when the presiding officer determines that the need to protect a person's privacy clearly outweighs the benefits of public disclosure. The individual whose privacy is at issue may waive that right; if they do so, the meeting must be open. 2-3-203(3), MCA.
- A strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency

PUBLIC RECORDING

Ever have a reporter or private individual take pictures or video of your board meeting?

Although this may be a little nerve racking, those doing so may not be excluded from any open meeting and may not be prohibited from taking photographs, televising, or recording such meetings. However, the presiding officer may emphasize during the meeting that such activities do not interfere with the conduct of the meeting.



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Meeting Minutes

According to 2-3-212, MCA, appropriate minutes of all meetings be kept and available for inspection by the public.

At a minimum, minutes should include:

- The date, time, and place of meeting.
- List of attendees
- Agenda items that will be proposed, discussed, or decided at the meeting.
- A record of votes.

Don't forget:

- Meeting minutes are considered public record.
- Meeting minutes are to be submitted to DNRC, per MCA 76-15-315.
- Meeting minutes must be sent to the county clerk and recorder for each county within the jurisdiction of the district, per 76-15-324.

Other Requirements

- Committees and/or subcommittees appointed by a public body or an association for the purpose of conducting business that is within the jurisdiction of the district are subject to the requirements of the Open Meeting Law.
- Only the presiding officer may close a meeting. A motion to go into closed session is privileged, is not debatable or amendable, and is adopted by majority vote (per Sturgis parliamentary procedures).
- Also, per Sturgis, the minutes of a closed session are available only to those authorized to attend the session, unless the district or committee votes to make them available to the public. Such meeting minutes should be kept in the same manner as any meeting, though the minutes should be sealed from inspection.

Resources:

CD 10-minute Open Meeting Training

[Montana Code Annotated, Title 2, Chapter 3, Part 2. Open Meetings](#)

Disclaimer: This information is provided for general information purposes only and does not constitute legal advice. The information provided should not be used as a substitute for a legal opinion from your county attorney or otherwise retained and qualified legal counsel. If you need advice regarding a specific legal situation, contact your legal counsel.

