

**City of  
Gadsden  
Legal  
Department**



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September 22, 2005

Mr. Meinrad Tabengwa  
Gadsden Organized Area Metropolitan Planning Organization  
90 Broad St.  
Gadsden, AL 35901

Re: Alabama Open Meetings Act, Act No. 2005-40

Dear Mr. Tabengwa:

Act No. 2005-40, which is effective on October 1, 2005, sets specific requirements for meetings by the city council and municipal boards. The new law declares a public policy that the deliberative process of government should be open to the public to the maximum extent possible and that the public should have notice that meetings will occur to enable them to attend and observe. Electronic communications, such as telephone and e-mail, may not be used to circumvent the act. While the act is designated open meetings, it really seeks to put all government actions in the sunshine for the public (constituents of the body, members of the media, persons interested in the activities of the body, and citizens) to know what the government contemplates and does and to provide an opportunity for meaningful participation.

Generally, a meeting occurs whenever a quorum of the body, a quorum of a committee or a quorum of a subcommittee comes together to exchange information about a matter that is expected to be considered by the body at a later time. A meeting may be prearranged. If there is a gathering of a quorum that was not prearranged, it must be in a public meeting if information is exchanged about a matter that is expected to be considered by the body, committee or subcommittee at a later time.

If a meeting is held, notice at least 7 days in advance (a minimum of 24 hours in advance for a special meeting except in case of an emergency requiring immediate action to avoid physical injury to persons or damage to property) must be given to the public, including direct notice to those who have requested to be notified, and posted. Even in an emergency, the notice must be posted at least one hour before the meeting starts. If a preliminary agenda or statement of matters to be considered at the meeting is prepared, this must also be posted as soon as practicable, but this does not prohibit the discussion of other matters not included in the preliminary agenda. If the board has its principal office separate from city hall, in lieu of posting the notice and agenda at a place convenient to the public in city hall, it may do so at a place convenient to the public in the principal office of the board. The city clerk will be posting notices on a bulletin board on the first floor in city hall. If boards provide this information to the clerk, it can be posted on the city hall

bulletin board. This information can be sent to the clerk via e-mail at [cclerk@gadsden.com](mailto:cclerk@gadsden.com) or via fax at 549-4678.

A meeting can be held in executive session, closed to the public. However, there must first be a public meeting, a statement of the purpose of the executive session, and a vote on the record to go into executive session. If a declaration is required before the executive session can begin, the declaration must be made prior to the vote. The presiding officer must state if the body will reconvene and when. An executive session may be held only for one of the reasons specified in Section 7 of the Act, but is not mandatory in any circumstances. Discussion of the job performance of public officials, certain public employees and municipal board members is not permitted in executive session. In case of a proposed executive session discussion about certain legal matters, there must be a written opinion or oral declaration from a licensed attorney that the exception applies to the planned discussion, but all deliberation about what action to take on the matter must occur in public meeting. Prior to a proposed executive session to discuss economic development matters, there must be a declaration that the information to be disclosed is protected by the Alabama Trade Secrets Act and would have a detrimental effect upon the competitive position of a party to the negotiations. Prior to a proposed executive session to discuss negotiations with a group of employees, there must be a certification that the discussion would have a detrimental effect upon the position of the body if disclosed outside the executive session.

A meeting does not occur when a quorum attends a social gathering, convention, conference, training program, press conference, media event, or otherwise gathers, only so long as there is no exchange of information on any specific matter that is expected to be considered by the body, committee or subcommittee at a later time. If such an exchange is likely to occur, then the notice and agenda provisions regarding the discussion must be followed.

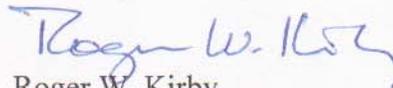
Anyone attending the public meeting may record it by tape recorder or any other means of sound, photographic or video reproduction, provided it does not disrupt the meeting. The body should adopt reasonable rules to govern this activity as well as parliamentary procedures to govern the meeting itself. Someone should be specifically delegated the task of providing and posting notices and agendas, as well as keeping accurate records of any meeting.

This letter is being sent to all members of boards appointed by the mayor or council of the City of Gadsden. Since this law is new, it has not fully been determined whether or not it applies to all boards or only certain boards, how it will apply in practice, and what questions need to be resolved. For example, it covers all corporations and other instrumentalities whose governing bodies are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties or municipalities.

The Act is enforced through civil penalties, not criminal prosecution, for a violation. Each person found to be in violation may be fined up to \$1,000 for each violation or half of the individual's monthly salary, whichever is less. The civil action can be brought by any media organization, Alabama citizen, District Attorney or Attorney General, but cannot be brought by another member of the same body. The complaint must name every member of the body remaining in attendance in violation of the Act. There is an expedited hearing procedure for the court to decide the matter. The court can invalidate the actions taken at a meeting held in violation of the Act. The penalty cannot be reimbursed by the governmental body; it must be paid by the individual. The governmental body may pay for the legal expenses of the case.

You need to read the entire Act, a copy of which is enclosed for every member. The above discussion merely hits some of the high points and concerns. Some additional materials are being furnished to the chair of the board, including *The Alabama Open Meetings Act: A Manual for Alabama Public Officials*, prepared by the Attorney General and the Alabama Press Association (available on the internet at [http://www.ago.state.al.us/documents/open\\_meeting.pdf](http://www.ago.state.al.us/documents/open_meeting.pdf)), and articles in the *Alabama Lawyer* and *Alabama Municipal Journal* on the Act. If your board has its own legal counsel, you should look to them for advice on how to comply with the Act. If you have a question, I would be glad to discuss it with you. When there is a doubt, you need to err on the side of openness, providing timely notice of a meeting and fully disclosing the items to be discussed. Some patience and planning before discussing a matter with other members of your body, committee or subcommittee will be necessary.

Sincerely,



Roger W. Kirby  
City Attorney

Enclosure

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