



Open Meetings Act—Basic Principles¹

The purpose of the Texas Open Meetings Act (OMA) is to ensure the public’s access to meetings of governmental bodies so that it has the opportunity to be informed concerning the transactions of public business. *Toyah Indep. Sch. Dist. v. Pecos-Barstow Indep. Sch. Dist.*, 466 S.W.2d 377 (Tex. App.—San Antonio 1971, no writ).

The OMA, Texas Government Code chapter 551, requires meetings of governmental bodies, including community college boards, to be open to the public except for expressly authorized executive sessions, referred to as closed meetings. The OMA also requires that the public be given notice of the time, place, and subject matter of meetings of governmental bodies. Tex. Gov’t Code §§ 551.001(3)(E), .002, .041.

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Applicability of the OMA

1. Must a community college board comply with the OMA?

Yes. The OMA applies to all governmental bodies, including a school district. Because a community college is considered a school district for the purposes of the OMA, a community college board must also comply with the OMA. Tex. Gov’t Code § 551.001(3)(E); Tex. Educ. Code § 130.084; Tex. Att’y Gen. Op. No. JM-340 (1985).

¹ An electronic version of this document is available on [TASB College eLaw](https://tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-oma-basic-principles.pdf) at tasb.org/services/community-college-services/resources/tasb-college-elaw/documents/cc-oma-basic-principles.pdf.

2. What community college board meetings must comply with the OMA?

The OMA applies to every regular, special, or called meeting of a community college board. Tex. Gov't Code § 551.002; Tex. Att'y Gen. Op. No. JM-340 (1985).

3. What is a meeting subject to the OMA?

A *meeting* occurs when a *quorum* of a community college's board members deliberates to discuss or consider public business or public policy over which the board has supervision or control or takes formal action. A meeting also occurs when a quorum deliberates with another person regarding such public business or public policy. Tex. Gov't Code § 551.001(4)(A), (6).

Additionally, a *meeting* occurs when a community college board conducts or is responsible for a gathering called by the board at which a quorum is present and the members receive information or questions from, give information to, or ask questions of any third person about public business or public policy over which the board has supervision or control. For purposes of this definition, a third person includes an employee of the college. Tex. Gov't Code § 551.001(4)(B).

4. Are there any gatherings of a community college board that are not meetings?

A *meeting* does not include a gathering of a quorum of a community college's board members, as long as there is no formal action taken and any discussion of public business is incidental to the event, at:

- A social function unrelated to the board's public business;
- A regional, state, or national convention or workshop;
- A ceremonial event or press conference; or
- A candidate forum, appearance, or debate to inform the electorate.

Tex. Gov't Code § 551.001(4)(B).

A *meeting* also does not include a quorum of a community college board at a legislative committee or agency meeting if the board members' deliberations consist of only publicly testifying, commenting, and responding to questions asked by the legislative committee or agency members. Tex. Gov't Code § 551.0035(b).

5. Do communications on a community college's online message board violate the OMA?

No. Texas Government Code section 551.006 provides an exception to the OMA for a communication or exchange of information between members of a governmental body, including a community college board, about public business if the communication:

- 1) Is in writing;
- 2) Is posted to an online message board or similar internet application that is publicly viewable and searchable; and
- 3) Is displayed in real time on the online message board or similar internet application for at least 30 days after it is first posted.

Tex. Gov't Code § 551.006(a).

A community college that uses an online message board or similar internet application to post communications between its board members as provided by section 551.006 must also ensure that the message board or internet application:

- Is the only message board or similar internet application used by the community college for posting the communications between its board members;
- Is owned or controlled by the college;
- Is prominently displayed on the college's primary web page;
- Is no more than one click away from the college's primary web page;
- Is used only by members of the college's board or staff with specific authorization from a board member; and
- Includes with any posted communication the name and title of the staff member who posts the communication.

Tex. Gov't Code § 551.006(b)-(c).

If a community college removes from the message board or internet application any communication that has been posted for at least 30 days, it must also maintain the posting for at least six years and make it available as public information in accordance with the Texas Public Information Act (PIA). Tex. Gov't Code § 551.006(d).

6. Does the OMA apply to community college board committees?

Maybe. Whether meetings of committees involving less than a quorum of a governmental body must be posted under the OMA depends on the function of the committee. *See, e.g.,* Tex. Att’y Gen. Op. Nos. JC-60 (1999) (stating a committee to select an architect is a governmental body), JC-53 (1999) (stating a pricing committee to sell bonds is a governmental body), LO-97-58 (1997) (stating a complaint review committee created by Texas Funeral Services Commission is a governmental body).

A committee with authority to make final decisions or to supervise or control some aspect of public business is likely to be subject to the OMA, while a committee that is purely advisory is normally not subject to the OMA. However, if an advisory committee is found to act, in reality, as more than an advisory body, then the OMA would apply. This can be the case if the advisory committee’s recommendations are approved *pro forma* without discussion. If there is any doubt about a committee’s authority, the safest course is always to comply with the OMA. Tex. Att’y Gen. Op. Nos. GA-999 (2013) (stating an advisory body may be subject to the OMA if a governing body routinely rubberstamps its recommendations), JH-467 (1974), JH-438 (1974); *see also Willmann v. City of San Antonio*, 123 S.W.3d 469 (Tex. App.—San Antonio 2003, pet. denied) (reversing summary judgment because a city council subcommittee may have violated the OMA).

Definition of a Quorum and Related Issues

1. What is a quorum?

A *quorum* means a majority of a governmental body, except in rare circumstances. This rule applies regardless of any vacancies in the governmental body. Therefore, four members of a seven-member community college board of trustees constitute a quorum, even if there are vacancies on the board. Tex. Gov’t Code § 551.001(6); Tex. Att’y Gen. Op. No. JM-1127 (1989).

2. Does the physical presence of a quorum constitute a meeting?

No. The presence of a quorum of a governmental body in the same room is not necessarily a meeting. Deliberation of public business or a gathering to receive information or questions from, give information to, or ask questions of a third person must occur. Tex. Gov’t Code § 551.001(4).

3. What is a walking quorum?

A *walking quorum* occurs when community college board members engage in separate communications that, when occurring in isolation, involve less than a quorum of the board but together form a series of communications between a quorum of the board on an issue within its jurisdiction. A community college board member commits an offense by engaging in at least one communication in the series with the knowledge that the series of communications involved or would involve a quorum and would constitute a deliberation once a quorum of board members engaged in the series. The offense is a misdemeanor punishable by a fine between \$100 and \$500, jail time between one and six months, or both. Tex. Gov't Code § 551.143.

Telephone conversations: A walking quorum can also occur without a quorum of members physically gathered in one location, such as when board members telephone each other individually to ascertain how each would vote on certain issues prior to board meetings. *Hitt v. Mabry*, 687 S.W.2d 791 (Tex. App.—San Antonio 1985, no writ); *see also* Tex. Att'y Gen. Op. No. LO-95-55 (1995) (expressing concern that telephone conversations can violate OMA).

Emails and written communications: A series of email or other written communications that discuss public business and involve a quorum of the board may also violate the OMA as a walking quorum, even if any single communication within the series does not involve a quorum. Consequently, community college board members should carefully avoid email and written exchanges among a quorum regarding public business. Tex. Gov't Code § 551.143; e.g., Tex. Att'y Gen. Op. Nos. GA-896 (2011) (expressing concern over email communications), JC-307 (2000) (concluding that written communications between board members outside of a public meeting can constitute illegal deliberation), DM-95 (1992) (expressing concern over board members signing a joint statement outside of a convened open meeting).

Definition of Deliberation and Related Issues

1. What is deliberation?

Deliberation means a verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body. Tex. Gov't Code § 551.001(2).

2. Can one-way communications to or from a community college board member be deliberation?

One-way communication spoken by one member of a community college board and heard by the rest of a quorum has been held to be deliberation. *Bexar Medina Atascosa Water Dist. v. Bexar Medina Atascosa Landowners' Ass'n*, 2 S.W.3d 459 (Tex. App.—San Antonio 1999, pet. denied).

Therefore, if a quorum of a board is together and one member of the quorum talks about college business, a meeting has occurred, even if none of the other trustees respond. See, e.g., Tex. Att'y Gen. Op. Nos. JC-248 (2000) (stating that OMA applies to quorum of state agency members attending a hearing and one or more members testifies on agency business), JC-203 (2000) (stating that OMA applies to quorum of committee members attending a speech and a member has verbal exchange with another person on committee business).

Open Meeting Procedures and Requirements

1. Where may a community college board hold a meeting?

A meeting of a community college board must be held in a location accessible to the public. Tex. Gov't Code § 551.002; see, e.g., Tex. Att'y Gen. Op. No. JC-53 (1999) (stating that a meeting of a governmental body must be held in a location accessible to the public and precludes a meeting in another state).

2. What notice is required before a community college board meeting?

A community college board must post written notice before all meetings. The public is entitled to advance written notice of all meetings of the board, whether open or closed, regardless of whether final action will be taken. The notice requirements of the OMA are strictly enforced. Notice must include the date, hour, place, and subject matter of the meeting. Tex. Gov't Code § 551.041.

The agenda for a community college board meeting may serve as the notice if it contains all legally required information, including all items to be addressed at the meeting. TASB Community College Services recommends that a board combine the notice and agenda for a meeting into a single document. For a sample combined notice and agenda, please see the [Regular Meeting Notice/Agenda Sample](#) on TASB College eLaw.

3. What is a meeting agenda?

The OMA does not define the term *agenda*, but it has been defined by the Texas Attorney General to mean a memoranda of things to be done, as items of business or discussion to be brought up at a meeting, or a list, outline, or plan of things to be considered or done at a meeting. Tex. Att’y Gen. Op. No. JM-840 (1988).

An agenda for a board meeting of certain community colleges, based on city or student population, must also be posted on the college’s website. For that reason, it may be easier for community colleges to comply with the posting requirement for meeting agendas, if applicable, and the separate notice requirements under the OMA by preparing a single agenda for each meeting that satisfies all legal requirements. Tex. Gov’t Code §§ 551.056, .1282.

4. May a community college board discuss items not listed on a meeting notice?

No. A community college board cannot hold a meeting to discuss items not listed on the posted notice for the meeting. If a member of the public or a member of the board inquires about a topic not on the notice, the only lawful response is to: (1) respond with specific factual information or a recitation of existing policy, or (2) deliberate or decide to place the subject on the agenda for a subsequent meeting. Tex. Gov’t Code § 551.042.

5. Does the public have a right to participate in open meetings of a community college board?

Yes. Open meetings must allow public comment. A community college board must allow each member of the public who desires to address the board regarding an item on an agenda for an open meeting to address the board regarding the item at the meeting before or during the board’s consideration of the item. Tex. Gov’t Code § 551.007(b).

A board may adopt reasonable rules for public comment, including rules that limit the total amount of time that a member of the public may address the board on a given item, but may not prohibit public criticism of the board, including criticism of any act, omission, policy, procedure, program, or service. This prohibition does not apply to public criticism that is otherwise prohibited by law. Tex. Gov’t Code § 551.007.

For additional information regarding public comment periods at an open meeting, please see [Open Meetings Act—Public Comment](#) on TASB College eLaw.

Closed Meeting Procedures and Requirements

1. May a community college board hold a closed meeting?

Yes. A community college board may meet in closed session if there is an express exception in the law allowing the board to hold a closed session.

2. For what reasons may a community college board hold a closed meeting?

For a complete list of closed meeting exceptions, see Texas Government Code sections 551.071-.090 and [Open Meetings Act—Closed Meetings Topics & Procedures](#) on TASB College eLaw.

3. What procedures must a community college board follow to hold a closed meeting?

To hold a closed meeting, a community college board must first convene in an open meeting for which public notice is posted as required by the OMA. When the board is ready to hold a closed meeting, the board's presiding officer must publicly announce that it will hold a closed meeting and identify the section of law in the OMA that authorizes the closed meeting. Tex. Gov't Code § 551.101.

4. What may a community college board do during a closed meeting?

If the closed meeting is properly noticed and authorized by the OMA, the community college board may deliberate a matter only if it is included on the meeting notice and the OMA authorizes the board to deliberate the matter. A board may not take any final action, decision, or vote on a matter in a closed meeting. Tex. Gov't Code § 551.102.

5. What records are required for a community college board to hold a closed meeting?

The OMA requires a community college board to keep either a certified agenda or make a recording of closed meeting proceedings. A certified agenda must be certified by the presiding officer that the agenda is a true and correct record of the proceedings and must include a statement of the subject matter of each deliberation made at the meeting, a record of any further action taken, and an announcement of the date and time at the beginning and end of the meeting made by the presiding officer. A recording of a closed meeting must also include the announcements of the date and time at the beginning and end of the meeting made by the presiding officer. Tex. Gov't Code § 551.103.

A board member commits a Class C misdemeanor offense by participating in a closed meeting knowing that a certified agenda is not being kept or that a recording is not being made. Tex. Gov't Code § 551.145(a), (b).

For additional information regarding required records of a closed meeting, please see [Open Meetings Act—Closed Meeting Records FAQ](#) on TASB College eLaw.

6. How long must a community college keep the records of a closed meeting?

A certified agenda or recording of a closed meeting must be preserved for at least two years after the date of the meeting. If litigation or other action involving a closed meeting is brought within two years after the date of the meeting, the certified agenda or recording must be preserved while it is pending. Tex. Gov't Code § 551.104(a).

7. May a community college publicly disclose the records of a closed meeting?

A certified agenda or recording of a closed meeting is confidential. Knowingly disclosing a certified agenda or recording of a lawfully closed meeting to a member of the public is a Class B misdemeanor offense and may incur liability for damages, attorney fees, court costs, and exemplary damages. A certified agenda or recording of a closed meeting may be made available for public inspection or copying only by court order. Tex. Gov't Code §§ 551.146(a), (b), .104(c).

8. Who may attend a community college board's closed meeting?

Members of a community college board may attend a closed meeting. When holding a closed meeting under Texas Government Code section 551.071 to conduct a private consultation with the board's attorney, the attorney must also be present. A board may also include any officers or employees whose participation the board determines is necessary for a matter discussed at the meeting. Tex. Att'y Gen. Op. No. JC-375 (2001).

Additionally, a person may not attend a closed meeting if the person's presence is contrary to the governmental interest protected by the law that authorizes the closed meeting. *See, e.g.,* Tex. Att'y Gen. Op. No. JM-238 (1984) (stating a governmental body may not admit to closed discussion of litigation an adversary or person whose presence would prevent privileged communication); *Finlan v. City of Dallas*, 888 F. Supp. 779 (N.D. Tex. 1995) (stating a city committee may not hold closed meeting to deliberate about real property while allowing a third party to attend and obtain confidential information that may be used to negotiate against the city).

Penalties for Violations of the Open Meetings Act

1. How does a violation of the OMA affect a community college board's actions at a meeting?

A court may invalidate a community college board's action taken in violation of the OMA. Tex. Gov't Code § 551.141.

Invalidation of one action item does not affect the validity of other actions taken at the same meeting. *Point Isabel Indep. Sch. Dist. v. Hinojosa*, 797 S.W.2d 176 (Tex. App.—Corpus Christi 1990, writ denied).

If a board discovers that it has acted in violation of the OMA, the action may be corrected and ratified at a subsequent meeting. See *Lower Colo. River Auth. v. City of San Marcos*, 523 S.W.2d 641 (Tex. 1975).

But actions in violation of the OMA, even when subsequently ratified, may subject a member of that board to criminal penalties. Additionally, subsequent ratification does not render an issue moot as a court could still declare that the board violated the OMA and compel it to publicly disclose all transcripts, minutes, recordings and other evidence of closed meetings; require it to comply with the OMA in the future; and order it to pay attorney fees. *City of Farmers Branch v. Ramos*, 235 S.W.3d 462 (Tex. App.—Dallas 2007, no pet.).

2. Are there penalties for community college board members or employees or other individuals violating the OMA?

Yes. The OMA provides for various criminal and civil penalties for violations of the OMA, including fines and imprisonment, by community college board members and employees as well as third parties.

3. What are the criminal penalties for a violation of the OMA by a community college board member?

Criminal penalties may apply to certain violations.

Unauthorized closed meeting: A community college board member commits a criminal offense if the member knowingly calls or aids in calling, closes or aids in closing, or participates in a closed meeting that is not authorized by the OMA. The offense is a misdemeanor punishable by a fine of \$100 to \$500, imprisonment in the county jail for one to six months, or both. Tex. Gov't Code § 551.144(a)-(b).

A member will be subject to criminal penalties for violating this statute even if the member was not aware that the meeting was not authorized by the OMA. *Tovar v. State*, 978 S.W.2d 584 (Tex. Crim. App. 1998) (en banc).

It is a defense to prosecution, however, that the member acted in reasonable reliance on a court order or a written opinion of a court, the attorney general, or the attorney for the governmental body. Tex. Gov't Code § 551.144(c).

Prohibited series of communications: A board member commits an offense by knowingly engaging in a series of communications concerning college business in which fewer than a quorum of board members engage in each individual meeting, but a quorum of members engages in the entire series of communications as a whole. A board member commits an offense by engaging in at least one communication in such a series while knowing that the series of communications involved or would involve a quorum and would constitute a deliberation once a quorum of members engaged in the series. An offense is punishable by a fine of \$100 to \$500, imprisonment in the county jail for one to six months, or both. Tex. Gov't Code § 551.143.

Failure to record a closed meeting: A board member who participates in a closed session knowing that a certified agenda or recording of the closed meeting is not being kept commits a Class C misdemeanor. The penalty is a fine up to \$500. Tex. Gov't Code § 551.145; Tex. Penal Code § 12.23.

Disclosing a certified agenda or recording of a closed meeting: An individual who without lawful authority knowingly discloses to a member of the public a certified agenda or recording of a lawfully closed meeting commits a Class B misdemeanor. The penalty is a fine up to \$2,000, jail confinement up to 180 days, or both. Tex. Gov't Code § 551.146, Tex. Penal Code § 12.22.

4. **May a community college board member be subject to civil liability for violating the OMA?**

Yes, for certain violations.

Disclosing a certified agenda or recording of a closed meeting: An individual may be held liable in a civil court for knowingly disclosing to a member of the public a certified agenda or recording of a lawfully closed meeting. The plaintiff may collect actual damages, including damages for personal injury, lost wages, defamation, or mental or other emotional distress; court costs and legal fees; and punitive damages. Tex. Gov't Code § 551.146(a).

5. **May a community college board member be subject to civil liability for disclosing closed meeting deliberations?**

Yes. Although it is not a criminal violation for a person present in a closed meeting to disclose to the public the substance of closed meeting deliberations, other civil penalties may apply. Tex. Att’y. Gen. Op. No. JM-1071 (1989).

For example, a community college board member who repeats false information discussed in a closed meeting could be held liable for defamation. In addition, a board member who reveals closed session deliberations may violate the college’s local code of ethics and the member’s fiduciary duty to the college.

6. **What are the penalties for a violation of the OMA by a community college employee or third party?**

A community college employee or third party may be criminally or civilly liable for certain violations of the OMA.

Disclosing a certified agenda or recording of a closed meeting: An individual, corporation, or partnership that without lawful authority knowingly discloses to a member of the public a certified agenda or recording of a lawfully closed meeting commits a Class B misdemeanor. The penalty is a fine up to \$2,000, jail confinement up to 180 days, or both. Tex. Gov’t Code § 551.146, Tex. Penal Code § 12.22.

An individual, corporation, or partnership may also be held liable in a civil court for knowingly disclosing to a member of the public a certified agenda or recording of a lawfully closed meeting. A plaintiff may collect actual damages, including damages for personal injury, lost wages, defamation, or mental or other emotional distress; court costs and legal fees; and punitive damages. Tex. Gov’t Code § 551.146(a).

Assisting a board member to violate the OMA: A nonmember of a governmental body, such as a community college employee or a member of the public, can commit a criminal violation of the OMA, but only if the nonmember acts with the intent to aid or assist a member who knowingly acts to violate the OMA. Tex. Att’y Gen. Op. No. JC-307 (2000) (stating a person who is not a board member would violate the OMA by acting with intent to aid or assist a member to knowingly violate the OMA).

TASB Policies on Community College Board Meetings

1. What TASB Policies apply to community college board meetings?

See TASB Policies BD(LEGAL) and (LOCAL), BDA(LEGAL), and BDB(LEGAL) and (LOCAL).

2. Where can I get more information on community college board meetings?

If you have questions about these or other legal issues, community college representatives may contact TASB Community College Services at 800.580.1488 or colleges@tasb.org.

For more information on community college law topics,
visit TASB Community College eLaw online at colleges.tasb.org/elaw.

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