



Open Meetings Act—Attendance at Closed Meetings¹

Q: *Who can attend a college district board's closed meetings?*

A: Generally, a college district board may choose who it will allow in the closed session. Those whose attendance is contrary to the legal basis for the executive session must be excluded; however, a board may include district officers and employees of the governmental body, including the college president, whose participation is necessary to the matter under consideration. Members of the public are not allowed in closed meetings unless a provision of the Texas Open Meetings Act (OMA) or another law allows them to participate. Tex. Att'y Gen. Op. Nos. GA-511 (2007), JC-375 (2001), JM-238 (1984), JM-6 (1983).

Q: *Is it possible for a trustee to be excluded from a closed meeting?*

A: In rare circumstances, a board may exclude a particular trustee from a closed meeting if the trustee has taken a legal position adverse to the college district on the subject of the closed meeting and disclosure of the deliberation will compromise the district's position as to that matter. Tex. Att'y Gen. Op. No. JM-238 (1984).

Additionally, an interested official must file an affidavit and abstain from further participation in the matter when that public official has a substantial interest in a business entity or real property about which the board may deliberate or take action. Tex. Loc. Gov't Code § 171.004. Further participation may be interpreted to allow the public official to silently remain in the room during deliberations on the matter of substantial interest. However, the attorney general has suggested that a public official choose to refrain from attending closed meetings that address the matter in order to avoid the appearance of impropriety. Tex. Loc. Gov't Code § 171.004; Tex. Att'y Gen. Op. No. GA-334 (2005).

Q: *Can the college district's attorney participate in closed session?*

A: Yes. As mentioned above, the board may include officers and employees whose participation is necessary to the matter under discussion, and whose presence is not contrary to the legal basis for the closed meeting. Tex. Att'y Gen. Op. No. JM-238 (1984).

The attorney consultation exception to the OMA allows the board to consult with the its attorney in closed session in order to seek advice about pending or contemplated litigation or a settlement offer, or when the attorney will have an ethical duty of

¹ An electronic version of this document is available on TASB College eLaw at tasb.org/Services/Community-College-Services/Resources/TASB-College-eLaw/documents/oma_attendance_at_closed_meetings_faq.pdf.

confidentiality. The attorney consultation exception is limited to a discussion of legal matters and does not give the board a right to discuss other nonlegal matters in closed session merely because the attorney is present. Tex Gov't Code § 551.071; *Olympic Waste Services v. City of Grand Saline*, 204 S.W. 3d 496 (Tex. App.—Tyler 2006, no pet.); Op. Tex. Att'y Gen. No. JC-233 (2000).

Q: *What TASB policies apply to closed meeting attendance?*

A: For more information regarding closed meeting attendance, see TASB Policies BD(LLEGAL) and BDA(LLEGAL).

Q: *Where can I get more information regarding the OMA?*

A: College district trustees and administrators may contact TASB Community College Services at 800.580.1488 or visit colleges.tasb.org.

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

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the college's own attorney in order to apply these legal principles to specific fact situations.