

# **Understanding Michigan's Open Meetings Act**

March 12, 2019

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**League of Women Voters  
of the Copper Country**



## Agenda

- What law governs open meetings in Michigan?
- Definitions: public body, meeting, quorum, deliberation
- What are the rights of the public:
  - Notice
  - Open meeting unless an exception for a closed meeting
  - Attend and speak
  - Decisions
  - Minutes
- Enforcement of the OMA
- What are some current issues that come up?
- Resources for more information



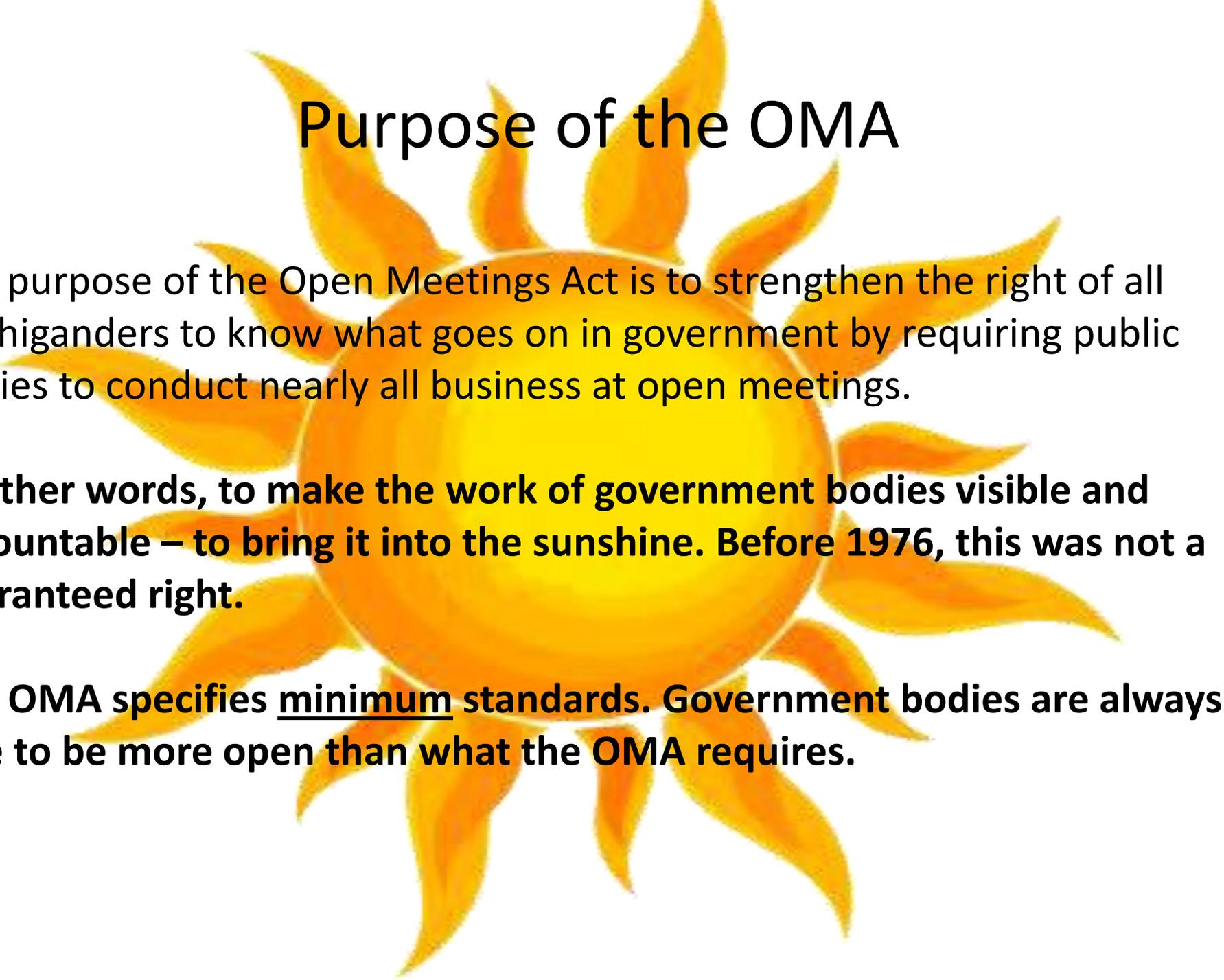


# Michigan's Open Meetings Act (OMA) "Sunshine Law"

Where it's found:

1976 PA 267, MCL 15.261 – 15.275

[http://www.legislature.mi.gov/\(S\(hngc1mj4nomrnvu4q5erut45\)\)/mileg.aspx?page=getObject&objectName=mcl-Act-267-of-1976](http://www.legislature.mi.gov/(S(hngc1mj4nomrnvu4q5erut45))/mileg.aspx?page=getObject&objectName=mcl-Act-267-of-1976)



# Purpose of the OMA

The purpose of the Open Meetings Act is to strengthen the right of all Michiganders to know what goes on in government by requiring public bodies to conduct nearly all business at open meetings.

**In other words, to make the work of government bodies visible and accountable – to bring it into the sunshine. Before 1976, this was not a guaranteed right.**

**The OMA specifies minimum standards. Government bodies are always free to be more open than what the OMA requires.**

# My disclaimer

- The OMA is more complex than it seems, and we won't cover every aspect of it in this presentation.
- I am not an expert.
- Interpretation of the OMA and new issues about how it works continue to arise. Answers often depend on the facts of individual cases so it's hard to generalize.

# The OMA applies to any Michigan “meeting” of a “public body”

“**Public body**” means any

- State or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council
- That is empowered by state constitution, statute, charter, ordinance, resolution, or rule
- To exercise governmental or proprietary authority or perform a governmental or proprietary function.

A “**meeting**” means

- The convening of a **public body**
- At which a **quorum** is present,
- For the purpose of **deliberating toward or rendering a decision** on a public policy



# Issue

## What is a “public body?”

- What about sub-committees formed for advisory purposes?
  - Reviewing applicants for jobs
  - Gather information and provide advice on issues
  - Usually *ad hoc* and temporary
- Under some circumstances, a sub-committee may constitute a “public body” and would be subject to the OMA - it must comply with all requirements of the OMA.
- See: *Schwab v. Standish-Sterling Community School District Bd of Educ, et al.*, (Unpublished, Michigan Court of Appeals, November 25, 2008). This “hiring committee” constituted a public body subject to the OMA. Decision hinged on who gave the sub-committee the authority to conduct its work – technical and depends on the facts of each case.

# Issue

## What is a “meeting,” a “quorum” or a “constructive quorum?”

- A public meeting occurs when a **quorum of a public body meets to deliberate or decide on a public policy.**
- Not all gatherings where a quorum of a public body is present will constitute a public meeting – for example, members present at a community event or a seminar.
- What about social media, such as Facebook or email?
  - Example: 4 members of a 7 member public body engage in email exchanges regarding matters of public policy; only 3 of the members actively engage while the 4th member only received the emails but did not respond. These emails constituted a “public meeting” subject to the OMA – the inclusion of the 4<sup>th</sup> person who did not object nevertheless helped constitute a quorum. *Markel v. Mackley* (Unpublished MI Court of Appeals, Case No. 327617, 2016).
  - Example: A “constructive quorum” can be formed when Board members intentionally form sub-quorum groups to deliberate and make decisions on public policy (in person, email, text, telephone) with the intention of avoiding a quorum.
  - Example: A “constructive quorum” can be formed when emails get forwarded to other board members, creating an email string that is a **round robin** type discussion.

## Issue

# What is “deliberation?”

- Example – board members text or email one another during a public meeting about the issue under discussion in order to avoid making public statements during the meeting. This is a deliberation subject to the OMA and would be in violation of the OMA. All discussions must be open and be capable of being heard by the public in attendance. *AG’s Open Meetings Handbook.*
- Participation by board members by electronic communications – telephone, Skype – is not prohibited by the OMA, so it is permissible provided that the public in attendance at the meeting can hear the person who is participating electronically. Remote participation may require approval by the public body using it.

# What are the rights of the public?

- All meetings of a public body shall be **open to the public** and shall be **held in a place available to the general public**.
- **Notice** of the meeting per OMA.
- All persons have a **right to attend** any meeting, except as provided in the OMA.
- This includes the **right to tape-record, videotape,** or broadcast live on TV or radio.
- All **decisions of a public body shall be made at a public meeting**.
- All **deliberations of a public body constituting a quorum shall be made at an open meeting** unless otherwise provided in the OMA
- **No one has to register or provide his/her name** to attend a meeting.
- **Anyone is permitted to address a meeting** of a public body, subject to rules of the public body.
- **No one can be excluded from a meeting** except for breach of the peace.
- Access to **Minutes** of the meeting.



With enumerated exceptions, all public meetings must be held in open session. Even where closed sessions are allowed, the particular **action or decision** must be taken in open session.



### **Allowable closed sessions (effective March 27, 2019):**

1. If requested by the named person, to consider matters related to the employment of personnel, a public officer or employee.
2. If requested by either negotiating party, sessions connected with negotiation of a collective bargaining agreement.
3. If requested by student or parents, to consider actions against a student by school district, ISD, or institution of higher ed.
4. To consider purchase or lease of real property up to the time an option to purchase or lease is obtained.
5. To consult with an attorney regarding trial or settlement strategy in connection with specific pending litigation but ONLY if open meeting would have a detrimental financial effect on the public body's litigation or settlement position.
6. If requested by candidate, to review and consider contents of an application for employment or appointment, but interviews for public office must be in an open meeting.
7. To consider material exempt from discussion or disclosure by state or federal law.
8. There are additional exceptions included in new law.

## Notice of Meetings

The Open Meetings Act has specific notice requirements for different kinds of meetings:

- Regular meetings
- Rescheduled regular meetings
- Special meetings
- Emergency meetings



## **Regular Meetings of a public body**

### **Notice must:**

- Be posted within 10 days after the first meeting in each calendar or fiscal year
- Include
  - Dates of meetings
  - Times of meetings
  - Places of meetings

Note that the OMA does not require any particular number of meetings. Nor does it require that a meeting agenda be posted. The OMA also has provisions that allow parties to request mailed notices (can charge a fee to cover printing and postage). If requested, the public body must provide copies of public notices to any newspaper, radio, or TV station located in the state, free of charge.

## **A Change in the schedule of Regular Meetings**

### **A permanent change**

#### **Notice must:**

- Be posted within 3 days after the meeting at which the change is made
- Include
  - (new) Dates of meetings
  - (new) Times of meetings
  - (new) Places of meetings

## A Rescheduled Regular Meeting (1-time only) or a Special Meeting of a public body

### Notice must:

- Be posted at least 18 hours before the meeting at public body's principal office and, if the public body has a webpage, the **public notice** must be included on either the homepage or on a separate webpage dedicated to public notices for non-regularly scheduled public meetings
- Include
  - Date of meeting
  - Time of meeting
  - Place of meeting

# An **Emergency Meeting** of a public body

## Notice must:

- Be posted at least 18 hours before the meeting
- Include
  - Date of meeting
  - Time of meeting
  - Place of meeting
- **Exception to notice requirement:** If 2/3<sup>rd</sup> of members decide that delay would be detrimental, the public body may hold a meeting without notice. If it does so, it must
  - Make paper copies of public notice available at the emergency meeting (which includes specific explanation as to it could not comply with 18-hour notice requirement)
  - Post the notice of the emergency meeting on the public body's website, if there is one
  - Within 48 hours after the emergency meeting, send official correspondence to the board of county commissioners informing board of the above





# Houghton County Board of Commissioners

The Houghton County Board of Commissioners is the policy making body of the County. The Board consists of five members who are elected by the residents of Houghton County from their respective districts. Each term lasts two years.

The Houghton County Board of Commissioners meet monthly on the Tuesday following the second Monday of each month at 5:00 p.m..

Meetings are held on the 5th floor of the Houghton County Courthouse, 401 East Houghton Avenue, Houghton, MI 49931.

[CLICK HERE FOR MEETING SCHEDULE & MINUTES](#)



**Al Koskela**  
*Chairman*

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**District 2:** Franklin, Quincy, Osceola, Schoolcraft and Torch Lake Townships



**Tom Tikkanen**  
*Vice Chairman, Commissioner*

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**District 1:** Calumet Township, Hancock Township



**Roy Britz**  
*Commissioner*

[rabritz@charter.net](mailto:rabritz@charter.net)  
906.281.1031

**District 5:** Chassell Township, Duncan Township, Elm River Township, Laird Township, Portage Township, Stanton Township



All Department Contacts

Free Land Records Search

Pay Delinquent Property Taxes

Property Tax Information

Foreclosed Tax Sales



Statement of Votes Cast 08.07.18

# Board of Commissioners Meetings & Minutes

[All Department Contacts](#)

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[Foreclosed Tax Sales](#)

**HOUGHTON COUNTY**  
*News*

[Statement of Votes Cast 08.07.18](#)

The Regular Meetings of the Board of Commissioners for the County of Houghton will be held in the Conference Room on the fifth floor of the Houghton County Courthouse on the 2nd Tuesday following the 1st Monday of each month. All meetings will commence at 5:00 P.M.

In the event of change of dates for meetings, or any special Meeting, the change or other meeting date will be posted and if necessary, advertised.

Jennifer Lorenz  
 Houghton County Clerk

## Meeting Dates & Minutes

MEETING	DATE		
Regular Meeting	December 10, 2019 (Tue)		
Regular Meeting	November 12, 2019 (Tue)		
Regular Meeting	October 15, 2019 (Tue)		
Regular Meeting	September 10, 2019 (Tue)		
Regular Meeting	August 13, 2019 (Tue)		
Regular Meeting	July 9, 2019 (Tue)		
Regular Meeting	June 11, 2019 (Tue)		
Regular Meeting	May 14, 2019 (Tue)		
Regular Meeting	April 9, 2019 (Tue)		
Regular Meeting	March 12, 2019 (Tue)		
Special Meeting	March 11, 2019 (Mon)	<a href="#">Board Packet</a>	
		2 PM	
Regular Meeting	February 12, 2019 (Tue)	<a href="#">Board Packet</a>	<a href="#">Agenda</a>
Special Meeting	January 30, 2019 (Wed)	<a href="#">Agenda</a>	<a href="#">Minutes</a>
		Meeting will take place at noon.	

# The public has a **right to attend all public meetings and to address the meeting**

- this includes the right to tape-record, videotape, or live broadcast on TV or radio – might this include streaming or other live communications? This right is subject to rules regulating non-disruption.



# New Questions and Issues Raised by Social Media

## Public Forum and Right to Address

Facebook pages of public officials: In a January 2019 U.S. Court of Appeals (No. 17-2002, 4<sup>th</sup> Cir. 2019), reviewed a *de novo* question. In *Davison v. Randall, et al.*, a County Supervisor (Randall) maintained a Facebook page in her official capacity in order to communicate with constituents. She blocked one of her constituents (Davison) when he posted comments critical of Randall and the Board of Supervisors. Davison challenged this action as unconstitutional. The Court of Appeals held that:

- A social media page such as Facebook, when maintained by a public official in that person's public capacity, is a "public forum" and it's irrelevant that Facebook itself is a private entity
- Government may not limit public speech through "viewpoint discrimination" which is strictly prohibited
- Though not binding outside the 4<sup>th</sup> Circuit, should all public officials with web pages pay attention to this case?



## Minutes of Meetings

- Must keep minutes of each meeting – open or closed – with information required by OMA
- Minutes are public records open to public inspection
- Proposed minutes must be available to public within 8 business days after the meeting. Approved minutes must be available to public within 5 business days after approved.
- January 2019: DMG reported a dispute between the Calumet Village Clerk and a village trustee about whether all written notes, recordings and other documents created in compiling minutes had to be submitted. The Clerk maintained that she was only required to include information specified in OMA.

# Enforcement and Consequences of Violations of OMA

## Who can enforce?

- Attorney General
- Prosecuting attorney of the county where public body serves
- Any person (including the media)



## How is the law enforced?

- A civil action in the circuit court in any county in which the public body serves
- Suit must be brought within 60 days after public body's approved minutes involving the challenged decision are publicly available (30 days for some actions such as approval of contracts or acceptance of bids)

## What are the consequences of a violation?

- Court may invalidate the decision if public body did not make decision at a public meeting or did not give notice and noncompliance impaired rights of the public
- Court may issue an injunction to compel compliance or prohibit noncompliance
- Public official who intentionally violates OMA may be subject to personal liability up to \$500 and court costs and actual attorney fees of person bringing suit
- Public official who intentionally violates OMA is guilty of misdemeanor with fine up to \$1000 (1<sup>st</sup> offense) and up to \$2000 (2<sup>nd</sup> offense in same term) or up to 1 year in prison or both

## Lessons and Takeaways

1. Remember the purpose of the OMA – to strengthen the right of the public to know what goes on in government
2. Assume that the OMA applies and that a meeting should be open.
3. Don't discuss public business outside of meetings with other members of the public body
4. Make sure closed meetings are authorized.
5. Watch out for social media.
6. Know your rights.

## **Related Laws – not covered today**

- Michigan's Freedom of Information Act (FOIA)
- Federal Open Meetings Act
- Federal Freedom of Information Act (FOIA)

## Resources

1. *Open Meetings Handbook*. Attorney General Dana Nessel.  
[https://www.michigan.gov/documents/ag/OMA\\_handbook\\_287134\\_7.pdf](https://www.michigan.gov/documents/ag/OMA_handbook_287134_7.pdf)
2. *Michigan Open Meetings Act: Frequently Asked Questions*. Michigan State University Extension.  
[https://www.canr.msu.edu/news/michigan\\_open\\_meetings\\_act\\_frequently\\_asked\\_questions](https://www.canr.msu.edu/news/michigan_open_meetings_act_frequently_asked_questions)
3. Michigan Open Meetings Act. 1976 PA 267, MCL 15.261 – 15.275  
<http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-267-of-1976.pdf>
4. Open Meetings Laws in Michigan. Digital Media Law Project.  
<http://www.dmlp.org/legal-guide/michigan/open-meetings-laws-michigan>
5. Google it (Michigan Open Meetings Act) and you will get lots more information.



## Questions and Discussion