# Open Meetings Law

## R.S. 42:11 – R.S. 42:28*

***Formerly R.S.42:4.1-42:13**
**Renumbered by the Louisiana Law Institute**
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**(Redesignation Chart)**

## Overview

**The following document summarizes the general principles and guidelines concerning Louisiana's Open Meetings Law. This document is presented in a "frequently asked questions" (FAQ) format. While the document is fairly detailed, remember that every situation is unique and that each situation deserves careful individual review.**

**To facilitate your use of this document, numerous links will direct your attention to related areas within the document and to other documents posted on the Louisiana Legislative Auditor's website and on external websites. For example, under the index section, you may go directly to any area of the FAQ by clicking the question you wish to view. Within the FAQ, several links will direct you to other areas of the FAQ and to relevant external documents. If you click on the individual question number, you will link to the index in order to select another question to view.**

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**Q.1. What is the Louisiana Open Meetings Law, and where is it found?**
**R.S. 42:12 – 42:28**

**A.1.** The Open Meetings Law, found in R.S. 42:12 – 42:28, regulates meetings of public bodies.

The Open Meetings Law is meant to ensure that decisions by the government are made in an open forum. The Open Meetings Law operates in conjunction with Louisiana's Public Records Law to insure compliance with Article XII, Section 3 of the Louisiana Constitution's mandate that "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law." The Open Meetings Law is designed to ensure state integrity and to increase the public's trust and awareness of its governing officials.

The Legislature through R.S. 42:11 has designated the official short title as the "Open Meetings Law." R.S. 42:11 states:

*This Chapter shall be known and may be cited as the "Open Meetings Law".*

**Q.2. To whom does the Open Meetings Law apply? R.S. 42:14 R.S. 42:17**

**A.2.** Louisiana's Open Meetings Law applies to the meetings of any "public body" unless an express provision in R.S. 42:16, R.S. 42:17, or R.S. 42:18 allows the meeting to be closed.

Open Meetings Law does not apply to judicial proceedings.

**Q.3. What is a public body? R.S. 42:13**

**A.3.** A "public body" is a village, town, and city governing authority; parish governing authority; boards, such as school, port, or levee boards; any other state, parish, municipal, or special district boards, commissions, or authorities, as well as any of their political subdivisions if the body possesses policy making, advisory, or administrative functions. Any committee or subcommittee of any of these bodies is also a public body.

Specifically, any municipal government, state agency, or political subdivision that has a policy making, administrative, or advisory function is subject to the Open Meetings Law. The law also applies to any official committee of the public body that has been delegated any of these functions by the public body, or any unofficial committee or gathering of the body that consists of a quorum of the body.

AG Op. 10-0155 cites the LA Supreme Court's four factor test for determining an entity's status as public or private: (1) whether the entity was created by the legislature, (2) whether its powers were specifically defined by the legislature, (3) whether the property of the entity belongs to the public, and (4) whether the entity's functions are exclusively of a public character and performed solely for the public benefit [*State v. Smith*, 357 So.2d 505 (La.1978)]. For a court to determine that an entity is public, all four factors must be present.

**Q.4** **When is a private non-profit entity a public body for the purposes of the Open Meetings Law?**

**A.4** When determining if an entity is a public body, one must also consider whether a private non-profit entity is a public body for the purposes of the Open Meetings Law. This question is more difficult to answer following the Louisiana Supreme Court's ruling in Louisiana High School Athletic Association ("LHSAA") (*We conclude the LHSAA is not a "quasi public agency or body" under the statute because it is not subject to the Open Meetings Law. We overrule our prior decision in Spain v. Louisiana High School Athletic Association, 398 So.2d 1386 (La.1981), in which the Court erred in concluding the former, unincorporated LHSAA was a "public body" for the limited purpose of La. R.S. 42:5, the Open Meetings Law, because it constituted a committee or subcommittee of BESE or parish school boards. We find the LHSAA is not a "public agency or body" for purposes of the Open Meetings Law and therefore, cannot be a "quasi public agency or body," as defined in La.R.S. 24:513(A)(1)(b)(v).* **Louisiana High Sch. Athletics Ass'n, Inc. v. State, 2012-1471 (La. 1/29/13), 107 So. 3d 583, 609)**

After the *LHSAA* opinion was issued, the AG issued a well written opinion discussing the factors for determining whether a non-profit entity is a public body for purposes of the Open Meetings Law. According to Opinion No. 13-0043:

**"Jurisprudence has made it clear that the mere fact that an entity is a private non-profit does not mean that it can never be a public body for purposes of the Open Meetings Law, nor does the fact that an entity receives public money mean that it is a public body for purposes of the Open Meetings Law".**

The AG opinion then cites a First Circuit case that lists four factors for determining whether a non-profit entity is subject to the Open Meetings Law:

**"(1) whether the entity performs a government function or performs a function which, by law, is entrusted to other public bodies; (2) whether the entity is funded by public money; (3) whether the entity exercises policy-making, advisory, and administrative functions; and (4) whether there is a connexity between the functions of the entity and the functions of a particular "public body" identified in La. R.S. 42:13(A)(2)."** ***Wayne v. Capital***

***Area Legal Servs. Corp.*, 2011-1988 (La. App. 1 Cir. 9/26/12), 108 So. 3d 103, 105 *writ denied,* 2012-2343 (La. 4/5/13), 110 So. 3d 1072**

The AG also opines that the LHSAA case (*Louisiana High Sch. Athletics Ass'n, Inc. v. State*, 2012-1471 (La. 1/29/13), 107 So. 3d 583) eliminated the connexity factor, with the result that three factors determine whether a non-profit is subject to Open Meetings Law:

**"Since LHSAA determined the "connexity" factor is not one which should be considered in whether or not an entity is a "public body" under La. R.S. 42:13, we are left with three remaining factors to consider: (1) whether the entity performs a government function or performs a function which, by law, is entrusted to other public bodies; (2) whether the entity is funded by public money; and (3) whether the entity exercises policy-making, advisory, and administrative functions."**

This list appears to match the factors in the First Circuit case, *Seghers v. Cmty. Advancement, Inc.,* 357 So. 2d 626, 627-28 (La. Ct. App. 1978), which apparently was not overturned by *LHSAA*.

A private non-profit entity that complies with these factors would, therefore, be likely be held to be a public body for purposes of the Open Meetings Law, and would likely be subject to the Open Meetings Law if a court were to determine its status at a later date. The only way to know for certain if a non-profit is a public body for the purposes of the Open Meetings Law is to seek a declaratory judgment from a court of law to determine the status of the entity. Alternatively, an AG opinion may be sought and relied upon.

A later opinion, AG Op. No. 14-0169, thoroughly discusses the issues surrounding whether an entity is a public entity, and whether a private non-profit entity qualifies as a public body for purposes of the Open Meetings Law or Public Records Law.

In this later opinion, the AG cites the Louisiana Supreme Court's holding that in order for an entity to be considered public, the following four factors must be considered: (1) whether the entity was created by the legislature; (2) whether its powers were specifically defined by the legislature; (3) whether the property of the entity belongs to the public; and (4) whether the entity's functions are exclusively of a public character and performed solely for public benefit (*State v. Smith*, 357 So.2d 505, 507-08 (La.1978)).

Further, all four factors must be present in order for a court to determine that an entity is public (*Property Insurance Association of Louisiana v. Theriot*, 09-1152 (La. 3/16/10), 31 So.3d 1012, 1015).

Despite the fact that a particular private non-profit is not a public entity, it could still be considered a "public body" for purposes of the Open Meetings Law, taking into account the following factors: (1) whether the entity performs a government function or performs a function which, by law, is entrusted to other public bodies; (2) whether the entity is funded by public money; and (3) whether the entity exercises policy-making, advisory, and administrative functions (*Louisiana High School Athletics Ass'n v. State*, 2012-1471 (La. 1/29/13), 107 So.3d 583). **AG Op. No. 14-0169**

**Q.5. How should the Open Meetings Law be interpreted?** **R.S. 42:12**

**A.5.** According to R.S. 42:12(A), the Open Meetings Law should be construed liberally. This means that if there is a question as to interpretation of a provision the entity should provide as much access/openness as possible. The Open Meetings Law operates with a general premise that all meetings of public bodies should be open to the public. The burden, therefore, is on the individual seeking to engage in closed meetings to prove that an exception applies allowing the closing of the meeting.

**Q.6. What is a meeting?** **R.S. 42: 13**

**A.6.** A meeting is a convening of a quorum of a public body to deliberate or act on a matter that the public body has supervision, control, jurisdiction, or advisory power over. A meeting is also a convening of a quorum of a public body by the public body or a public official to receive information regarding a matter that the public body has supervision, control, jurisdiction, or advisory power over.

The Open Meetings Law does not apply to chance meetings or social gatherings of members of a public body at which there is no vote or other action taken, including formal or informal polling of the members. There has, however, been a movement to presume that a meeting is taking place when a quorum of a body gathers and discussions of business take place.

If a gathering consists of a quorum of the body or a meeting of a committee of the body to conduct any business of the body, the gathering should be presumed to be a meeting and, thus, subject to the requirements of the Open Meetings Law.

**Q.7. What is a Quorum?** **R.S. 42:13(A)(3)**

**A.7.** A quorum is defined as a simple majority (50% +1) of the total membership of a public body. This default definition applies only in the absence of a statutorily defined quorum for the public body, which may be a greater or lesser percentage of the body. No official action may be undertaken by the body in the absence of a quorum of the body. A prohibited action, for example, could include debate on an item in the absence of a quorum, coupled with a vote without debate on the item

in an open meeting. This example would circumvent restrictions on closed meetings and preclude public observation of the debate. Members of the body, however, may engage in informal discussion of any matter in the absence of a quorum.

The Attorney General (AG) has stated in Opinion No. 00-144 that a public body cannot in its by-laws define a quorum as less than a majority of the total members. This definition would abrogate the clearly stated definition in R.S. 42:13(A)(3). Absent a statutorily defined quorum for the body, the body's quorum must be a simple majority.

**Q.8. What is a Walking Quorum?**

**A.8.** For purposes of the Open Meetings Law, a "**walking quorum**" is a meeting of a public body in which some members leave the meeting and different members enter the meeting, precluding the physical presence of an actual quorum, but resulting in an actual quorum over the course of the discussion. AG Op. Nos. 90-349, 04-0128.

Gatherings at which there is not a quorum present are not meetings under the Open Meetings Law, as presence of a quorum for the gathering is required for the gathering to constitute a meeting. According to *Brown v. East Baton Rouge Parish School Board* and AG Op. No. 99-0050, walking quorums, in which members of the body come and go, or in which absent members are contacted during the meeting so as to prevent a physical quorum of the body, are not allowed and violate prohibitions against circumventing the intent of Louisiana's Open Meetings Law.

Polling of a quorum of a public body is not permissible under the Open Meetings Law as the public should not be deprived of the opportunity to observe the deliberations of a public body in deciding upon a course of actions.

**"A member who polls a majority of the members of a public body on a matter which may later be considered by the public body as a whole may violate the Open Meetings Law if the poll is used to circumvent the purpose and intent of the Open Meetings Law. Knowing how a majority of the public body will vote on a matter prior to the actual vote at a properly noticed public meeting can mean that a measure passes with little debate or that a measure is never brought up for debate."** AG Op. No. 14-0065

**Q.9. What are the requirements of an Open Meeting?** **R.S. 42:14 – 42:23**

**A.9.** Meetings of public bodies are required to:

- have notice of the meeting at least 24 hours before the meeting via placement of a copy of the notice at the place of the meeting or at the body's official office;
- allow for some means of public comment; R.S. 42:14(D) requires each public body (except school boards) conducting a meeting that is subject to the notice requirement of R.S. 42:19(A), to allow a public comment period prior to action on an agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules and restrictions regarding this comment period.
- allow for recording of the meeting by the audience;
- record minutes of the proceedings; and
- have "open" meetings - public bodies may not close their meetings to the public absent narrowly defined exceptions.

A copy of the Open Meetings Law must also be posted at the location of the meeting.

**Q.10. Is the public allowed to participate in Open Meetings?** **R.S. 42:14 - 42:18**

**A.10.** Yes.

- The legal purpose of open meetings is to allow individuals to observe and participate in the deliberations of public bodies. Meetings of public bodies must be open to the public unless closed pursuant to a statutory exception. R.S. 42:16 – 42:18 allow closed executive sessions. Public bodies must provide an opportunity for public comment prior to action on the agenda item upon which a vote is to be taken. The governing body may adopt reasonable rules and restrictions regarding the comment period.
- R.S. 42:14, requires each public body, except school boards, conducting a meeting that is subject to the notice requirement of R.S. 42:19(A), to allow a public comment period prior to action on an agenda item upon which a vote is to be taken.
- School boards are subject to R.S. 42:15

- A similar obligation is imposed for school boards, except that public comment must occur prior to taking any vote and must occur before each topic and not at the beginning of the meeting. R.S. 42:15..

**Q.11. Are public bodies required to give notice before they meet?** **R.S. 42:19**

**A.11.** Yes. All public bodies, except the legislature and its committees, shall give written public notice of any meeting.

If the meeting is a regular meeting established by law, resolution, or ordinance, the written public notice must be given at the beginning of each calendar year and

Written public notice must be given no later than twenty-four (24) hours, exclusive of Saturdays, Sundays, and legal holidays, before any regular, special, or re-scheduled meeting.

A copy of the notice must be placed at the place of the meeting or at the official office of the body, or published in the official journal of the public body no less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, before the scheduled time of the meeting.

If the public body has a website, it shall post notice of its meetings via the internet on the website for no less than twenty-four hours, exclusive of Saturdays, Sundays, and legal holidays, immediately preceding the meeting.

**Q.12. What must be included in the meeting notice?** **R.S. 42:19**

**A.12.** All notices must include the date, time, and place of the meeting(s). Additionally, the required written public notice for any individual meeting requires that an agenda be attached. If an executive session is to be held regarding strategy sessions or negotiations for collective bargaining or litigation, the following must also be attached to the notice:

- Statement identifying the court, case number, and parties relative to any pending litigation to be considered at the meeting; and
- Statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made that is to be considered at the meeting.

**An exception exists for the requirements of notice in extraordinary emergencies, but public bodies are still required to give notice of the meeting as they deem appropriate and as the circumstances permit.**

The agenda must be reasonably clear to provide the public sufficient notice of what subjects will be discussed, according to the Attorney General as stated in AG Op. No. 07-0181.

R.S. 42:17(D) provides an exception to notice requirements of R.S. 42:19 for meetings of private citizens' advisory groups or private citizens' advisory committees established by a public body, so long as the members do not receive compensation and serve only in an advisory capacity.Textbook advisory committees of DOE or BESE are not privy to this exception.

**Q.13. What are the procedures to add to or delete items from an agenda?**
**R.S. 42:19**

**A.13.** Items may be added to the agenda only by a unanimous vote of the body present at an open meeting. Any motion for a vote to add an item to the agenda shall include with reasonable specificity the subject matter of the additional agenda item and the purpose for adding the item to the agenda. Public comment on the motion must be allowed prior to any vote to add an item to the agenda.

R.S. 42:19, which sets forth the requirements for notice of meetings, states at (A)(1)(b)(ii) that the notice shall include the agenda. Furthermore, any matter proposed that is not on the agenda shall be identified with reasonable specificity in the motion to take up the matter not on the agenda, including the purpose for the addition to the agenda. The matter must also be entered into the minutes of the meeting. Prior to any vote by the public body on the motion to take up a matter not on the agenda, there must be an opportunity for public comment on the motion in accordance with R.S. 42:14 or 15. The public body shall not use its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of R.S. 42:12 through 23.

R.S. 42:19(A)(1)(b)(ii)(aa) states that the agenda shall not be changed less than 24 hours, exclusive of Saturdays, Sundays, and legal holidays, prior to the scheduled time of the meeting. Each item listed on the agenda shall be listed separately and described with reasonable specificity. Before the public body may **take any action on an item, the presiding officer or designee shall read aloud** the description of the item.

**Act 416 of 2013 Regular Session,** effective (08/01/2013) added R.S. 42:19(A)(1)(b)(ii)(dd), which provides that governing authorities of parishes with populations of two hundred thousand or more or municipalities with a population of one hundred thousand or more that have more than fifty items on their consent agenda, may take up each item without reading the description of each item aloud. The governing authority shall, however, allow a public comment period prior to any action on any item listed on a consent agenda. Act

416 also enacted R.S. 42:13(4), which defines "consent agenda" as "a grouping of procedural or routine agenda items that can be approved with general discussion."

**Q.14. What is an extraordinary emergency?** **R.S. 42:17 R.S. 42:18**

**A.14.** Extraordinary emergencies, for the purpose of the Open Meetings Law, are limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude. According to the AG, the classic definition of extraordinary emergency includes work stoppages and strikes. AG Op. No. 85-789.

A meeting at the first available work day after Christmas to avoid a possible court challenge for non-payment of tenure award was a case of extraordinary emergency. *Eastwold v. Garsaud*, 427 So.2d 48 (La. App. 4th Cir. 1983).

**Q.15. How is written public notice given?** **R.S. 42:19**

**A.15.** The Open Meetings Law contains an illustrative list of methods or acceptable means for providing written public notice. The following methods are acceptable for giving written public notice:

- Posting copies of notice at the principal office [See Q.16] of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held; or

- Publication of the notice in the official journal [See Q.16] of the public body no less than twenty-four hours, exclusive of Saturdays, Sundays, or legal holidays, before the scheduled time of the meeting; or

- Posting on the website: If the public body has a website, additionally by providing notice via the Internet on the website of the public body for no less than twenty-four hours, exclusive of Saturdays, Sundays, or legal holidays, immediately preceding the scheduled time of the meeting. The failure to timely post notice via the Internet pursuant to this Subparagraph or the inability of the public to access the public body's website due to any type of technological failure shall not be a violation of the provisions of this Chapter.

Public notice of day to day sessions of the legislature is governed by the Louisiana Constitution, rules of procedure of the Senate and House of Representatives, and the Joint Rules.

The law requires the public entity to mail a copy of the notice to any member of the news media who requests notice of public meetings. The member of the news media shall be given notice of all meetings in the same manner as is given to members of the public body.

**Q.16. How are a public body's principal office and official journal determined?**
**R.S. 43:140**

**A.16.** The public body generally determines its principal office. The official journal of the public body is determined by the body -- subject to the requirements found in R.S. 43:140, *et seq.* R.S. 43:141 and R.S. 43:142 provide that police juries, city and parish councils, municipal corporations, and school boards in all the parishes except Orleans, at their first meeting in June of each year, shall select a newspaper with the following qualifications as official journal for their respective parishes, towns, or cities for a term of one year:

**(1) Published in an office physically located in the parish in which the body is located for a period of five years preceding the selection;**

**(2) Not missed during that period as many as three consecutive issues unless caused by fire, flood, strike, or natural disaster;**

**(3) Maintained a general paid circulation in the parish in which the body is located for five consecutive years prior to the selection; and**

**(4) Entered in a U.S. Post Office in that parish under a periodical permit in that parish for a period of five consecutive years prior to the selection.**

Where there is no newspaper published in an office physically located within the parish that meets the requirements of R.S. 43:140(3), a newspaper in an adjoining parish may be designated as the official journal. **R.S. 43:146**

The newspaper selected shall be known as the official journal of the parish, town, city or school board, and it shall publish all minutes, ordinances, resolutions, budgets and other official proceedings of the police jury, town or city councils, or the school board. **R.S. 43:143** Municipal corporations shall select an official journal published in an office physically located within their municipal boundaries if a newspaper as defined in R.S. 43:140(3) is published therein. If no qualified newspaper is published within the municipal boundaries, a newspaper published in the parish of the municipal corporation that meets the requirements of a newspaper as defined in R.S. 43:140(3) shall be selected. **R.S. 43:145** In case of vacancy the governing body shall select an official journal for the unexpired term. **R.S. 43:149**

**Q.17. When may public bodies have "closed" executive sessions?** **R.S. 42:16**

**A.17.** Public bodies may have "closed" executive sessions only as provided by statute. R.S. 42:16, 42:17, and 42:18 provide the instances for which a public body may enter into executive session limit the matters that may be discussed within an executive session.

In order for a public body to enter into an executive session, a vote of 2/3 of members present at an open meeting, for which proper notice was given pursuant to R.S. 42:19, is necessary -- along with an accompanying statement of the reason for entering into the executive session. The vote of each member on the motion to enter into executive session along with the reason for entering the executive session must be recorded and entered into the minutes.

R.S. 42:19(A)(1)(b)(iii) requires that a notice of intent to move into Executive Session under the provisions of R.S. 42:17(A)(2) be attached to the written public notice of the meeting. The notice shall contain a statement identifying any court, case number, or parties relative to any pending ligation to be considered at the meeting, and a statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation for which formal written demand has been made.

Public bodies are authorized to enter into executive sessions to discuss the character, professional competence, or physical or mental health of a person. However, the public body must provide written notice to the individual at least twenty-four hours, exclusive of weekends and legal holidays, prior to the meeting. Further, the public body may not enter into executive session for the purposes of this discussion, if the individual requests that the matter be discussed in an open meeting. Finally, this exception does not apply to any discussion related to the appointment (or reappointment) of an individual to a public body or the award of a public contract.

**Q.18. What are valid reasons for entering into executive session?**
**R.S. 42:17 – 42:18**

**A.18.** Valid reasons for entering into executive session include:

- Discussion of character, professional competence, or physical or mental health of a person*;

*This reason does not apply to appointments of a person to a public body or to discussions of the award of a public contract -- except as provided in R.S. 39:1594(C)(2)(c). R.S. 42:17(A)(1). Written notice must be given to the individual at least twenty-four hours, exclusive of weekends and legal

holidays, prior to the meeting, and an executive session may not be held if the individual requests this discussion occur in an open meeting.

- Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body;

- Discussion regarding the report, development, or course of action for security personnel, plans, or devices;

- Investigative proceedings regarding allegations of misconduct;

- Cases of extraordinary emergency, limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude;

- Any meeting of the State Mineral Board at which records or matters entitled to confidential status by existing laws are required to be considered or discussed by the board with its staff or with any employee or other individual, firm, or corporation;

- Discussions between a city or parish school board and individual students or the parents or tutors of those students, or both;

- Presentations and discussions at meetings of civil service boards of test questions, answers, and papers produced and exhibited by the office of the state examiner, municipal fire and police civil service, pursuant to R.S. 33:2492 or 33:2552;

- Portion of any meeting of the Second Injury Board during which records or matters regarding the settlement of a worker's compensation claim are required to be considered or discussed by the board with its staff in order to grant prior written approval as required by R.S. 23:1378(A)(8)*; and

  ***See Act 254 of the 2015 Regular Session**

- Hospital Service Districts (HSDs) are authorized to enter into executive session in order to discuss matters declared to be part of the marketing strategies and strategic plans of the HSD under the Enhanced Ability to Compete Act, see R.S. 46:1073.

- Any other matters that are or that will be provided for by the Legislature.

R.S. 42:18 allows for additional reasons for executive session by the houses of the legislature and its committees.

**Q.19. What are prerequisites for a closed session to discuss an individual's character and fitness?** **R.S. 42: 17(A)(1)**

**A.19.** Absent extraordinary circumstances, the individual that is the subject of discussion must be given at least 24 hours written notice, exclusive of Saturdays, Sundays, or legal holidays, prior to the scheduled time contained in the notice of the meeting at which such executive session is to take place. The individual can require that the discussion occur in an open meeting. This discussion cannot be of the appointment of the individual to a public body or the awarding of a public contract, except as otherwise provided for in R.S. 39:1593(C)(2)(c)*.

Act 864 of 2014 Regular Session reorganized the Procurement Code and appears to have carried forward the provisions of R.S. 39:1593(C)(2)(c) in R.S. 39:1595(B)(6).

**Q.20. What is considered litigation for the purpose of closing a meeting?** **R.S. 42:19**

**A.20.** A body is not allowed to close a meeting to discuss the possibility of litigation. It may discuss in closed session current litigation that is on-going and already filed only if discussion in open meeting would be detrimental to the body's position in the litigation. A body must also ensure that the proper information concerning the case number, statement of the matter, identity of the court and parties, is included on the agenda and public notice prior to the meeting in which the closed session will occur.

**Q.21. What are the requirements for the State Mineral Board to close its meetings?**

**A.21.** The State Mineral Board may have closed sessions under any of the other statutorily provided exceptions, and may also close its meetings at which records or matters entitled to confidential status by existing laws are required to be considered or discussed by the board with its staff or with any employee or other individual, firm, or corporation to whom the records or matters are confidential. The records must be disclosed to and accepted by the board subject to a privilege for the exclusive use in evaluating lease bids or development covering state-owned lands and water bottoms. An exception for the records must be provided for in Chapter I of Title 44 of the Louisiana Revised Statutes or other statutes to which the board is subject.

**Q.22. What are the requirements for a school board to close its meeting to discuss a student?**

**A.22.** Students must be within the jurisdiction of the respective school board. The discussion must be regarding problems of students or their parents or tutors, and must be open if the parent, tutor, or student requests that the discussion be held in open meeting.

**Q.23. Are public bodies required to keep minutes?** **R.S. 42:20**

**A.23.** Yes, public bodies are required to keep written minutes of all of their open meetings.

These minutes must include the following:

- The date, time, and place of the meeting;
- The members of the public body recorded as either present or absent;
- The substance of all matters decided, and, at the request of any member, a record, by individual member, of any votes taken; and
- Any other information that the public body requests be included or reflected in the minutes.

The AG stated in Op. No. 94-376 that minutes need not be verbatim transcripts of the meeting and that summaries satisfy the requirement.

All minutes are public documents and subject to public records requests unless specifically exempted.

According to Title 43 of the Louisiana Revised Statutes the various political subdivisions of the state are required to publish the minutes of their proceedings in the official journal of the body.

R.S. 42:17(D) provides an exception to the minutes requirements of R.S. 42:20 for meetings of private citizens' advisory groups or private citizens' advisory committees established by a public body, so long as the members do not receive compensation and serve only in an advisory capacity Textbook advisory committees of DOE or BESE are not privy to this exception.

Act 628 of the 2014 Regular Session, **effective (08/01/2014), enacted R.S. 42:20(B)(2),** which states:

If the public body has a website, the public body shall post on its website a copy of the minutes made available pursuant to Paragraph (1) of this Subsection and shall maintain the copy of those minutes on the website for at least three months after the posting. If the public body is required to publish its minutes in an official journal, the public body shall post its minutes on its website as required by this Paragraph within ten days after publication in the official journal. If the public body is not required to publish its minutes in an official journal, the public body shall post its minutes on its website as required by this Paragraph within a reasonable time after the meeting. The inability of the public to access the public body's website due to any type of technological failure shall not be a violation of the provisions of this Chapter.

**Q.24. Are public bodies required to vote in any particular manner? R.S. 42:14**

**A.24.** Yes, members must vote *viva voce*. This requirement has been determined by the AG to require the physical presence of the member and prohibits submission of votes in writing by absent members, AG Op. No. 07-0040, or through vote via telephone, AG Op. No. 02-0106. Further, members are not allowed proxies unless specifically afforded this right by specific statute (AG Op. Nos. 92-352 and 10-0055) and may not undertake voting by secret ballot.

The *viva voce* requirement can be satisfied through use of electronic machines that display how individuals vote. AG Op. No. 80-2.

AG Op. No. 11-0070 provides: "This office has previously opined that the 'viva voce' language in R.S. 42:14 requires a vote with a 'live voice,' and that the person voting must be physically present. See AG Op. Nos. 07-0040 and 99-385. Thus, the members of a public body cannot validly authorize an action via a written vote, even if done unanimously."

**Q.25. Must public bodies allow the recording of their meetings? R.S. 42:23**

**A.25.** Yes, the proceedings of all or any part of a public meeting may be video or tape recorded, filmed, or broadcast live. The public body shall, however, establish standards for the use of lighting, recording, or broadcasting equipment to insure proper decorum in a public meeting. The AG has stated in Op. No. 95-277 that public bodies are required to allow recording even if they provide recording themselves, but may regulate where the media may be located to facilitate order and safety.

Act 363 of 2013 Regular Session, effective (06/17/2013) amended R.S. 42:23(A) to provide that any non-elected board or commission that has the authority to levy a tax shall video or audio record, film, or broadcast live all proceedings in its public meetings.

Act 338 of 2014 Regular Session, effective (08/01/2014) enacted R.S. 33:9099.2, which exempts meetings of the governing authority of any crime prevention and security district, improvement district, or other district created by or pursuant to Chapter 29 of Title 33 of the Revised Statutes, from the provisions of R.S. 42:19.1 (additional notice requirements for taxing authorities) and 42:23(A), which requires non-elected boards or commissions with authority to levy taxes to video or audio record, film, or broadcast live all proceedings of their public meetings.

**Q.26. What happens if a public body violates the Open Meetings Law?**

**R.S. 42:24**

**A.26.** Any action taken in violation of the Open Meetings Law shall be voidable by a court of competent jurisdiction. However, any suit to void any action must be commenced within sixty days of the action and sufficiently pled to state a cause of action under the Open Meetings Law. See *Greemon v City of Bossier City*, 65 So.3d 1263 (La. 2011).

Actions taken at a meeting that were in violation of Open Meeting Law due to lack of notice at least 24 hours before meeting, were cured by subsequent ratification of the action taken at subsequent valid meeting. *Marien v. Rapides Parish Police Jury*, 717 So.2d 1187 (La. App. 3rd Cir. 1998).

**Q.27. Who must enforce the Open Meetings Law?** **R.S. 42:25**

**A.27.** The AG is required to enforce the Open Meetings Law throughout the state, and district attorneys are charged with enforcement within the judicial districts within which they serve. Any individual who has been denied any right under the Open Meetings Law or that believes that his or her rights have been violated may institute enforcement proceedings.

**Q.28. What relief may be granted for violations?** **R.S. 42:26**

**A.28.** A plaintiff in an enforcement proceeding may be granted any or all of the following relief:

- A writ of mandamus – Court order to compel a public official or body to perform mandatory or purely ministerial duties correctly;

- Injunctive relief – Temporarily compel the public body to act or stop acting, pending a final resolution on the issue;

- Declaratory judgment – a binding adjudication that establishes the rights and other legal relations of the parties without providing for or ordering enforcement;
- Judgment rendering the action void as provided in R.S. 42:24; and
- Judgment awarding civil penalties as provided in R.S. 42:28.

**Q.29. Where may one initiate enforcement proceedings?** **R.S. 42:27**

**A.29.** Enforcement proceedings shall be instituted in the district court for the parish in which the meeting took place or will take place.

**Q.30. What is the maximum amount that can be assessed as a civil penalty for Open Meetings Law violations?** **R.S. 42:28**

**A. 30.** A maximum of $100 per violation can be assessed against an individual who knowingly and willfully participates in a meeting conducted in violation of the Open Meetings Law. The member shall be personally liable for the payment of the penalty.

**Q.31. May a public body meet on a legal holiday?**

**A.31.** Nothing prohibits a public body from meeting on any day of the week (including legal holidays), but the public body must continue to adhere to all requirements of the Open Meetings Law. **AG Op. No. 74-0016**

While a public body may not be prohibited from conducting business on legal holidays, doing so should be avoided as a matter of principle. Meetings on legal holidays may be construed as attempts to circumvent requirements of the Open Meetings Law, unless there is a valid reason for conducting the meeting on the legal holiday, such as an emergency situation that requires immediate action.

Act 628 of 2014 Regular Session, effective August 1, 2014, amended the notice provisions of the Open Meetings Law in R.S. 42:19 to exclude Saturdays, Sundays, and legal holidays from the calculation of the twenty-four hour periods for posting and amending of meeting notices.

**Q.32. What are the new notice provisions regarding public hearings to levy taxes?**
**R.S. 42:19.1**
**R.S. 47:1705(B)(2)**

**A.32.** Act 267 of 2013 Regular Session, effective August 1, 2013, enacted R.S. 42:19.1, which provided new notice requirements in addition to those in R.S. 42:19, which are prerequisites for the levy, increase, renewal, or continuation of a tax, or for the calling of an election for such purposes by political subdivisions. These additional notice requirements were amended by Act 694 of 2014 Regular Session, effective August 1, 2014.

R.S. 42:19.1(A)(1), as amended by Act 694, requires that public notice of the date, time, and place of any meeting at which a political subdivision intends to levy a new ad valorem property tax or sales and use tax, or increase, or renew any existing ad valorem property tax or sales and use tax, or authorize the calling of an election for submitting such a question to the voters of the political subdivision shall be published in the official journal of the political subdivision and announced to public during the course of a public meeting of the political subdivision no more than Sixty (60) days nor less than thirty (30) days before such public meeting. If the scheduled meeting is cancelled or postponed, a new public notice of the subsequent meeting is required under R.S. 42:19.1(A)(2)(a) to be published in the official journal of the political subdivision no less than ten (10) days before the subsequent meeting.

Act 694 of 2014 Regular Session, added an additional notice requirement under R.S. 42:19.1(A)(1), which requires that written notice of the meeting must be hand delivered or transmitted by email to each voting member of any governing authority of a political subdivision who is required to approve such measures previously adopted by another governing authority (i.e. police jury approval of tax related decisions of certain parish boards and commissions) and to each state senator and representative in whose district all or a portion of the political subdivision is located, no more than sixty (60) days nor less than thirty (30) days before the scheduled meeting at which action will be taken on the ad valorem property tax or sales and use tax.

Further, once a meeting is held in accordance with the provisions of R.S. 42:19.1(A)(1), no additional notice is required under R.S. 42:19.1 for subsequent meetings of the political subdivision at which the only action reduces the rate or term of the tax in the measure and thereby reduces the total amount of tax that would be collected under the measure, or substantially reduces the cost to the political subdivision of any bond or debt obligation to be incurred by the political subdivision (i.e. refinancing of bonds at lower rate).

If the consideration of the action is postponed or considered without action or vote, any subsequent meeting to consider action of the tax would be subject to the

ten day notice provisions of R.S. 42:19.1(A)(2)(a) unless the date, time, and place of a subsequent meeting for consideration is announced to the public during the course of the meeting at which action is postponed or considered without action or vote.

Act 338 of 2014 Regular Session, **effective (08/01/2014) enacted R.S. 33:9099.2,** which exempts meetings of the governing authority of any crime prevention and security district, improvement district, or other district created by or pursuant to Chapter 29 of Title 33 of the Revised Statutes, from the provisions of R.S. 42:19.1 (additional notice requirements for taxing authorities) and 42:23(A), which requires non-elected boards or commissions with authority to levy taxes to video or audio record, film, or broadcast live all proceedings of their public meetings.

The provisions of R.S. 42:19.1 do not apply to "Roll Forward" actions under the provisions of R.S. 47:1705(B)(2)(c)&(d).

R.S. 47:1705(B)(2) provides for additional notice requirements as required by Article VII, §24(C) of the Louisiana Constitution for public hearings that must be held for the purpose of increasing ad valorem tax millages under the "Roll Forward" process. This provision states that in the event that a taxing authority has submitted a notice to the official journal in conformity with the date required for the submission of advertisements for publication by July fifteenth, and the official journal fails to publish the notice by July fifteenth, the publication of the notice shall be deemed to be in accordance with the publication requirements provided in this Subparagraph if, and only if, the notice is published by July twenty-fifth.

**Q.33. What are the provisions regarding a public employer entering a collective bargaining agreement? R.S. 44:67.1**

**A.33.** R.S. 44:67.1 states that no public employer shall accept or ratify a collective bargaining agreement until it has been made available to the public via the Internet website of the public employer for at least 5 business days. The public employer shall issue a written public notice in the manner provided in R.S. 42:19(A)(2) informing the public of how the agreement may be accessed and the date, time, and place of the meeting at which the agreement will be considered by the public employer for acceptance or ratification.

**Q.34. Is a non-profit corporation certified by BESE as a local charter authorizer subject to the Open Meetings Law? R.S. 17:3981.2**

**A.34.** R.S. 17:3981.2 states that non-profit corporations certified by BESE as local charter authorizers shall be subject to the Open Meeting Law, Public Records Law and the Code of Governmental Ethics. See R.S. 17:3981.2(C)

**Q.35. What is the notice requirement regarding a public hearing on municipal zoning regulations?** **R.S. 33:4724**

**A.35.** R.S. 33:4724 requires publication at least 3 times in the official journal or a paper of general circulation regarding a public hearing on zoning regulations. The provision also requires that there be at least 10 days between the first publication and the hearing.

Additional requirements apply to notice to land owners affected by the zoning regulation.

## AG Opinions

**AG Op. No. 16-0093 –** AG discusses the issues surrounding whether a nominating committees and other similar bodies are a "public body" within the meaning of the Open Meetings Law.

**AG Op. No. 16-0075 –** An ordinance not on the agenda and not an emergency must be placed on the agenda unanimously by the governing authority prior to it being voted on. La. R.S. 42:19(A)(1)(b)(iii)(cc))

**AG Op. No. 15-0122 –** A Lawrason Act municipality may adopt a procedure for governing its meetings that allows individual council members to place items on the agenda, provided such a request complies with the timelines set forth in the ordinance and the notice provisions of the Open Meetings Law. Further, as the Open Meetings Law requires unanimous approval of the members present to add an item to the agenda, in no case may a municipality, by ordinance, lessen this requirement to a majority vote. Finally, the Open Meetings Laws does not require unanimous approval of all members present to withdraw an item from the agenda.

**AG Op. No. 15-0080 -** The AG discussed the issues whether a Volunteer Fire Department is a public entity and whether it must comply with state laws including, but not limited to, the Open Meetings Law, Public Records Law, Public Bid Law, Local Government Budget Act, etc.

**AG Op. No. 14-0172 -** The AG discusses the issues whether it is proper to label an agenda item: "*Discuss any other business properly brought before this committee*"

**AG Op. No. 14-0169** – The AG discusses the issues surrounding whether a particular private non-profit entity might be classified as a public entity, and whether a particular private non-profit qualifies as a public body for purposes of the Open Meetings Law or Public Records Law.

**AG Op. No. 14-0065** – The AG discusses the restrictions against the polling of a majority of members of a public body in regards to the Open Meetings Law.

**AG Op. No. 13-0221** – The AG discusses who is responsible for preparing the agenda for a town meeting and the requirements for public comment periods.

**AG Op. No. 13-0043** - Jurisprudence has made it clear that the mere fact that an entity is a private non-profit entity does not mean that it can never be a public body for purposes of the Open Meetings Law, nor does the fact that an entity receives public money mean that it is a public body for purposes of the Open Meetings Law

**AG Op. No. 12-0177** – The AG discusses application of Open Meetings Law to electronic communications between members of a public body.

**AG Op. No. 12-0206** – Housing Authority Board cannot exclude an individual placed on a No-Trespass List from attending its public meetings held on property subject to the No-Trespass List, without first obtaining an injunction, sanction or other judicial legal relief. Finally, there is nothing within the Open Meetings Law that provides authority for a public body to require any attendees of an open meeting to provide advanced notice of intent to attend the meeting.

**AG Op. No. 12-0078** – The AG discusses the requirements for a public body to convene an Executive Session under the provisions of R.S. 42:17(A)(2).

**AG Op. No. 10-0271** – The AG discusses the procedure for amending the posted agenda and the remedies available for a violation of the Open Meetings Law.

**AG Op. No. 09-0037** - It is proper for "financial matters" to be placed on the Sabine Parish School Board's consent agenda, if such matters are routine or non-controversial. If a member of the public body determines that any item on the consent agenda requires discussion, then the item must be treated as a typical agenda item, allowing for debate and a separate vote.