

VOLUME NO. 41

OPINION NO. 38

COUNTY COMMISSIONERS - Regularly scheduled meetings between board of county commissioners and staff;

COUNTY OFFICERS AND EMPLOYEES - Regularly scheduled meetings between board of county commissioners and staff;

OPEN MEETINGS - Regularly scheduled meetings between board of county commissioners and staff;

RIGHT TO KNOW - Regularly scheduled meetings between board of county commissioners and staff;

MONTANA CODE ANNOTATED - Sections 2-3-202, 7-5-2122;

MONTANA CONSTITUTION - Article II, section 9.

HELD: A regularly scheduled meeting between the board of county commissioners and its staff is a meeting within the terms of the open meetings law.

10 December 1985

Harold F. Hanser  
Yellowstone County Attorney  
Yellowstone County Courthouse  
Billings MT 59101

Dear Mr. Hanser:

You have requested my opinion on the following question:

When the board of county commissioners has regularly scheduled meetings with its staff, are such meetings "open meetings" under the laws and the Constitution of Montana?

You advise me that the Yellowstone County Board of Commissioners meets with its staff at a particular time one day a week. During these meetings various matters are discussed ranging from the most trivial matter of internal management to matters upon which the board will eventually take final action. The current practice is to exclude the public from these meetings.

The starting point for any consideration of open meetings in this state is article II, section 9 of the Montana Constitution, denominated the "right to know":

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The plain meaning of this section is that the public has a very broad right to observe the proceedings which occur in government agencies.

The Legislature has given further guidance to this constitutional provision by enactment of a statute called the "Open Meetings" law. Tit. 2, ch. 3, MCA. The term "meeting" as defined in the open meetings law is as follows:

As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency ... to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

§ 2-3-202, MCA.

It is clear from this definition that meetings are not limited to official, final action on a proposal. The reach of this statute is quite broad when it refers to matters about which the agency can "hear, discuss, or act" and upon which it "has supervision, control, jurisdiction, or advisory power." A limitation of this definition is that it applies to a meeting where a quorum of the "constituent membership of a public agency" is present. Applied to this case where there is a board of county commissioners, it would require the presence of at least two commissioners.

I conclude that a regularly scheduled meeting between the board of county commissioners and its staff is a meeting within the terms of the open meetings law. This conclusion is not based on judicial interpretation of the statute, because there is none in Montana, but upon the plain meaning and fair intendment of the statute itself. In order to protect the public's right to know, the open meeting provisions must be liberally construed.

The Montana Supreme Court has held that there must be notice of a public meeting in order to give effect to the open meetings law. Board of Trustees v. Board of County Commissioners, 186 Mont. 148, 606 P.2d 1069 (1980). Justice Daly, for the Court, said:

It is difficult to envision an open meeting held without public notice that still accomplishes the legislative purpose of the Montana "open meeting" statutes. Without public notice, an open meeting is open in theory only, not in practice.

186 Mont. at 155-56.

This notice requirement need not be an onerous one, particularly when dealing with regularly scheduled meetings. Section 7-5-2122, MCA, requires the board of county commissioners to establish a regular meeting date by resolution. Publication of this resolution then serves as continuing notice. Special notice would only be required for a meeting not held at the regular date. See Board of Trustees v. Board of County Commissioners, supra. While there have been no court interpretations it is reasonable to conclude that the sufficiency of the notice in an emergency situation would be judged in light of the emergency.

Like any other public meeting, there may be instances in which the meeting between the county commissioners and their staff could be closed. The test, however, is a narrow one and is contained in the Constitution which refers to situations where "the demand of individual privacy clearly exceeds the merits of public disclosure." Mont. Const. art. II, § 9.

THEREFORE, IT IS MY OPINION:

A regularly scheduled meeting between the board of county commissioners and its staff is a meeting within the terms of the open meetings law.

Very truly yours,

MIKE GREELY  
Attorney General