CHAPTER 1: OPEN MEETINGS

SUNSHINE LAWS GENERALLY — AN OVERVIEW

All 50 states, as well as the federal government, have enacted a variation of the initial "Sunshine Laws" passed by Florida and California in the 1960s. Colorado's Open Meetings Law (OML) was an initiated statute approved by the voters in 1972.[1] The Colorado law exercises authority over public official disclosure,[2] lobbyists,[3] and meetings.[4] This publication is limited to discussion of that portion of the Open Meetings Law governing meetings, and particularly as those provisions affecting municipalities.

THE COLORADO OPEN MEETINGS LAW

As originally enacted, the Open Meetings Law applied only to state government bodies, and contained no exceptions or executive session provisions. Until 1991, meetings of municipal bodies were governed by a different statute, the Public Meetings Law.[5] The Public Meetings Law served many of the same purposes as the Open Meetings Law, but was far more general in nature. The lack of specificity and guidance provided by the Public Meetings Law prompted the General Assembly to repeal it and bring local governments under the purview of the Open Meetings Law.[6] Due to the similar goals of the Public Meetings Law and the Open Meetings Law, much of the case law developed under the now-repealed Public Meetings Law should carry forward and assist in applying the Open Meetings Law. Cases decided under both laws are thus cited throughout this publication.

This publication will answer the most common questions concerning the requirements of the Open Meetings Law:

- Who is covered?
- What is a "meeting"?
- When are "executive sessions" permitted?
- What advance notice of a meeting is required?
- What exemptions are there?
- What happens when the law is violated?

The Colorado Supreme Court has described the Open Meetings Law as "reflect[ing] the considered judgment of the Colorado electorate that democratic government best serves the commonwealth if its decisional processes are open to public scrutiny."[7] On the few occasions that appellate courts in Colorado have reviewed government actions for compliance with the OML, courts have balanced this ideal with the practical obstacles that often face officials when conducting the business of the people.

Because Colorado courts have not been called upon to examine many aspects of the Open Meetings Law, guidance in many areas is somewhat limited. This publication is intended to serve as a guide to some of the more fundamental aspects of the law, and should not be used as a substitute for reasoned legal advice. The reader is urged to consult with the municipal attorney concerning any specific questions.

LOCALLY ADOPTED OPEN MEETINGS PROCEDURES

The Colorado Court of Appeals in 1996 issued a ruling that may pave the way for municipalities to legislate in areas not addressed in the state statutory scheme. In upholding a statutory town's local ordinance establishing a procedure for emergency meetings, the court relied heavily on the presumption that local ordinances and state statutes should be reconciled, if possible, and effect given to both.[8] Only when the statute and the ordinance contain express or implied conditions that are irreconcilable or are "inconsistent and irreconcilable with one another" does a true conflict exist.[9]

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1 Colorado Sunshine Law, Ch. 456, 1973 Colo. Sess. Laws. 1660.

2 C.R.S. §§ 24-6-301-309.

3 C.R.S. §§ 24-6-401-402.

4 *Id.*

5 C.R.S. § 29-9-101.

6 1991 Colo. Sess. Laws 142.

7 *Benson v. McCormick*, 195 Colo. 381, 383, 578 P.2d 651, 653 (Colo. 1978).

8 *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996).

9 *Id.*

Home rule municipal charters or ordinances may contain additional, or perhaps different, open meeting procedures. Although the Open Meetings Law contains a declaration of "statewide concern,"[10] the power of the General Assembly to bind home rule municipalities in this area has not been tested.[11]

SCOPE OF THE OPEN MEETINGS LAW: "LOCAL PUBLIC BODIES" AND "MEETINGS"

The OML imposes open meeting, notice, and minutes requirements on "meetings" of "local public bodies." The definitions of these two critical terms determine the reach of many OML requirements.

WHAT IS A "LOCAL PUBLIC BODY"?

The OML defines a "local public body" to include any board, committee, commission or other policymaking, rulemaking, advisory or formally constituted body of a political subdivision of the state, such as municipalities.[12] Additionally, any public or private entity that has been delegated any "governmental decision-making function," is a "local public body" and must conduct its meetings consistent with the Open Meetings Law.[13] However, "persons on the administrative staff" of a local public body are specifically excluded.[14]

WHAT CONSTITUTES A "MEETING"?

The Open Meetings Law defines a "meeting" as "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication."[15]

In a decision affecting the scope of the OML as a whole, the Colorado Supreme Court has provided important direction concerning what sort of meetings are covered by the Open Meetings Law. The court clarified that for a "gathering" to be subject to OML requirements "there must be a demonstrated link between the meeting and the policy-making powers of the government entity holding or attending the meeting."[16] The court went on to explain that such a link exists when the meeting is "convened to discuss or undertake ... a rule, regulation, ordinance, or formal action."[17] On the other hand, "merely discussing matters of public importance" does not trigger the requirements of the Open Meetings Law.[18]

Meetings conducted by "telephone, electronically, or by other means of communication"

Technological advancements have provided various methods for public officials to confer; conference calls and other once nontraditional forums for discussion are now commonplace with many local public bodies. In response, the General Assembly has included electronic and "other means" of communication under the statutory definition of "meeting."[19] In adding electronic communications to the statute, the General Assembly noted the unique circumstances that the use of e-mail and the like create, and the need to balance the privacy interests of public officials with the public's interest in open governance.[20] The Open Meetings Law now explicitly subjects the e-mail communication of elected officials that discusses pending legislation or other public business to the statutory requirements.[21]

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10 C.R.S. § 24-6-401.

11 The Colorado Court of Appeals has recognized the authority of home rule municipalities to enact their own rules and regulations governing open meetings; however this decision did not involve a conflict between a local provision and state law, so the Court did not rule directly on whether home rule provisions supersede conflicting requirements of the Open Meetings Law. *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761, 762 (Colo. App. 1986).

12 C.R.S. § 24-6-402(1)(a).

13 *Id.*

14 *Id.*

15 C.R.S. § 24-6-402(1)(b).

16 *Board of County Commissioners of Costilla County v. Costilla County Conservancy District*, 88 P.3d 1188, 1194 (Colo. 2004). *See also Intermountain Rural Electric Ass'n v. Colorado Public Utilities Com'n*, 298 P.3d 1027 (Colo. App. 2012) (Discussion of legislation outside scope of Public Utilities Commission's public business, so gathering was not a "meeting.").

17 *Costilla County*, 88 P.3d at 1194. Additionally, the Court of Appeals has held that Open Meetings Law requirements apply to the quasijudicial meetings of local public bodies. *Lanes v. State Auditors Office*, 797 P.2d 764 (Colo. App. 1990).

18 *Costilla County*, 88 P.3d at 1191.

19 C.R.S. § 24-6-402(1)(b). Of course, a meeting is also described as a "gathering" which, in the context of e-mail communications, is presumed by many municipal attorneys to imply that such e-mail communications must occur in a "chat-room" format or otherwise be very contemporaneous, in order to constitute a "meeting." At this writing however, no Colorado court decision had adopted this presumption.

20 *See* 1996 Colo. Sess. Laws 1479 (legislative declaration). For a judicial perspective on this balance, see *Denver Publ'g Co. v. Bd. of Cnty. Comm'rs of Cnty. of Arapahoe*, 121 P.3d 190 (Colo. 2005).

21 C.R.S. § 24-6-402(2)(d)(III). This requirement presents numerous potential practical problems for local government officials seeking to comply with the openness, notice and other requirements of the Open Meetings Law in the e-mail context. Close consultation with the municipal attorney is advised.

Chance meetings and social gatherings
The Open Meetings Law provides expressly that chance meetings or social gatherings of public officials "at which discussion of public business is not the central purpose", are not subject to the provisions of the Open Meetings Law.[22]

Retreats
Under the OML's expansive definition of "meeting," any kind of "gathering" to discuss public business can qualify, regardless of how it may be labeled. Thus, if the retreat is attended by three or more members of the local public body, or by a quorum of the body (if fewer than three), the retreat qualifies as an open meeting, to which requirements for notice also may apply.[23] However, an unlimited number of administrative staff members may attend the retreat without triggering OML requirements, due to the specific exclusion of administrative staff from the "local public body" definition.[24]

See Appendix 1 for sample meeting procedures.

THE "OPENNESS" REQUIREMENT

Whenever three or more members (or a quorum of the members, if fewer than three) of the "local public body" get together and public business is discussed, or formal action may be taken, the gathering is a meeting that the OML directs shall be open to the public.[25]

PROVIDING NOTICE OF THE MEETING

The public cannot exercise its right to attend open meetings unless given sufficient notice. Therefore, the Open Meetings Law requires that the public receive "full and timely notice" of any meeting held.[26] The statute prescribes the notice requirement as follows:

> *Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body's first regular meeting of each calendar year. The posting shall include specific agenda information where possible.*[27]

"Full and timely" notice
The statute does not specify or limit what may constitute "full and timely" notice. The statute does provide, however, as an example of full and timely notice, posting notice of a meeting in a designated public place 24 hours before the meeting.[28] There are doubtless other forms of "full and timely" notice.

Indeed, the courts have found that the notice provisions of the Open Meetings Law establish a "flexible standard," the requirements of which may vary depending on the particular type of meeting involved.[29]

The Supreme Court has explained that in determining whether a given notice is "full" for purposes of the OML, courts will apply "an objective standard, meaning that a notice should be interpreted in light of the knowledge of an ordinary member of the community to whom it is directed."[30]

See Appendix 2 for examples of meeting notices.

"CURING" OML VIOLATIONS

The OML does not expressly address whether subsequent action by a public body can "cure" past OML violations. Nonetheless, the Court of Appeals, in a case involving various "openness" and notice violations, has held that a state or

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22 C.R.S. § 24-6-402(2)(e).

23 C.R.S. § 24-6-402(2)(c).

24 C.R.S. § 24-6-402(1)(a).

25 C.R.S. § 24-6-402(2)(b). Note that while the participation of three or more members will trigger "openness" requirements, an anticipated "majority or quorum" is required in order to trigger notice obligations. See C.R.S. § 24-6-402(2)(c).

26 C.R.S § 24-6-402(2)(c).

27 *Id.*

28 The Supreme Court has clarified the OML requirement that posted notices include "specific agenda information where possible." It is "possible" to include in such notice only whatever specific agenda information was "available at the time of posting" the notice. *Town of Marble v. Darian*, 181 P.3d 1148, 1155 (Colo. 2008). Furthermore, the court in *Town of Marble* found that general agenda topics permitted action thereon, as "the possibility of formal action is inherent in consideration of topics at public meetings." The fact that the agenda did not specifically forecast action on the topic did not render the notice less than "full." *Id.*

29 *Town of Marble*, 181 P.3d at 1152; Benson, 195 Colo. at 383, 578 P.2d at 653; *Lewis*, 934 P.2d at 851; *VanAlstyne v. Housing Authority of the City of Pueblo*, 985 P.2d 97, 100 (Colo. App. 1999).

30 *Town of Marble*, 181 P.3d at 1152.

local public body can cure a prior OML violation by holding a subsequent meeting that fully complies with the OML and does not involve the mere "rubber stamping" of earlier decisions made in violation of the OML.[31]

EMERGENCY MEETINGS

Unlike similar statutes from other states, the Colorado Open Meetings Law contains no reference to emergency meetings, which by their very nature present a challenge in terms of public notice. The Colorado Court of Appeals has recognized the need for municipalities to hold emergency meetings on occasion, and has upheld an ordinance providing for such meetings without prior public notice, where action taken would be ratified at a subsequent public meeting for which full and timely notice is provided.[32] The court defined an emergency as "an unforeseen combination of circumstances or the resulting state that calls for immediate action,"[33] and acknowledged that the notice requirement may be affected by the type of meeting involved.[34] While this decision finds no conflict between a local emergency meeting ordinance and the Open Meetings Law, officials should remain mindful of the law's intent and give as much notice as possible under the circumstances.

DIRECT NOTIFICATION REQUIREMENT

The Open Meetings Law contains a provision requiring the clerk to maintain a list of persons who have requested, within the previous two years, direct notification of meetings.[35] The person requesting direct notification can designate all meetings or can limit the request to meetings at which specified policies will be discussed.[36]

The clerk is required to provide these persons with "reasonable advance notice" of such meetings. The statutes specify neither what type of notice nor what time frame will be considered "reasonable;"[37] however, it is provided that unintentional failure to give this direct notification will not invalidate actions taken at an otherwise properly noticed meeting.[38]

MINUTES

The clerk, or other official in the clerk's absence, must take the minutes of any meeting of the local body "at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur."[39] Thus, while the Open Meetings Law requires that most meetings at which public business may be discussed are open, the possibility of some sort of formal action is necessary to trigger the minutes requirement. If an executive session is called at any point during the meeting, the minutes must reveal the topic of discussion in the executive session.[40]

After the meeting, the minutes must be recorded promptly and are considered a public record open to inspection.[41] Many clerks utilize recording devices from which the actual "minutes" are transcribed at a later date. If an electronic recording serves as the actual minutes of the jurisdiction, the OML requires that, if electronic recording was the practice as of Aug. 8, 2001, the jurisdiction must continue to electronically record its open meeting minutes.[42]

PUBLIC VOTING

Following a decision by the Court of Appeals holding that a home rule charter provision requiring use of confidential ballots for council appointments did not violate the OML,[43] the General Assembly amended the statute to expressly prohibit adoption of any "policy position, resolution, rule, regulation or formal action by secret ballot;" that is, a ballot "cast in such a way that the identity of the person voting or the position taken in such vote is withheld from the public."[44]

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31 *Colorado Off-Highway Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation*, 292 P.3d 1132 (Colo. App. 2012).

32 *Lewis*, 934 P.2d at 851. *But see VanAlstyne*, 985 P.2d at 100, as to the limits of subsequent ratification of action taken in prior nonemergency meeting held without proper notice.

33 *Lewis*, 934 P.2d at 851 (quoting Webster's Third New International Dictionary (2005)).

34 *Id.*

35 C.R.S § 24-6-402(7).

36 *Id.*

37 *Id.*

38 *Id.*

39 C.R.S § 24-6-402(7).

40 *Id.*

41 *Id.*

42 C.R.S § 24-6-402(2)(d.5)(II)(A).

43 *Henderson v. City of Ft. Morgan*, 277 P.3d 853 (Colo. App. 2011).

44 C.R.S § 24-6-402(2)(d)(IV).

EXECUTIVE SESSIONS

Because the underlying principle of the Open Meetings Law is that the formation of public policy is the public's business and, therefore should not (generally) be conducted in secret, the exceptions to "openness" provided in the OML, are limited to topics where the General Assembly has determined that private discussion may better serve the public interest.

Topics of executive sessions

Executive sessions are private meetings of the public body from which the general public is excluded. Executive sessions are permitted under the OML for consideration of the following topics:

- *Property transactions*
  An executive session may be held to discuss the purchase, acquisition, lease, transfer or sale of real, personal, or other property interests so long as the executive session is not held to conceal an official's personal interest in the property.[45]
- *Attorney conferences*
  Although the mere presence of an attorney does not justify an executive session, the governing body may call an executive session "for the purposes of receiving legal advice on specific legal questions."[46]
- *Confidential matters under state or federal law*
  If any state or federal law requires confidentiality of a particular matter to be discussed, an executive session may be called. When announcing that it will go into executive session for this purpose, the governing body must announce the specific statutory citation or rule that requires the confidentiality of the matter to be discussed.[47]
- *Security arrangements or investigations*
  The specialized details of security arrangements or investigations may be discussed in executive session.[48]
- *Negotiations*
  A governing body may call an executive session to "determine positions relative to matters that may be subject to negotiations," develop a "strategy for negotiations," and instruct the negotiators.[49]
- *Personnel matters*
  Personnel matters may be discussed in executive session; however, if the discussion involves a specific employee, that employee may request an open meeting. If the discussion involves more than one employee, an executive session may be held unless all of the employees request that the meeting be open to the public.[50] While "personnel matters" is not defined, it is provided that this term does not include discussions of any member of a local public body, any elected official, the appointment of any person to fill a vacancy in a local public body or elected office, or discussion of personnel policies that do not require discussion of particular employees.[51]
- *Documents protected under Open Records Act*
  Discussion that involves consideration of documents protected by the mandatory nondisclosure provision of the Open Records Act may be held in an executive session. However, discussion of documents protected under the "work product" or "deliberative process" privileges in the Open Records Act must occur in an open meeting unless an independent basis for an executive session concerning such documents exists.[52]

The sections of the Open Meetings Law specifying the permitted topics for discussion in executive session have not been interpreted by the courts, and many are open to varied interpretations. Councils or boards often consider other factors beyond the legal question of whether an executive session may lawfully be held when determining whether to close a meeting to the public. Executive sessions are often controversial. While the statute may permit an executive session for discussion of a particular topic, sometimes the most politically productive way to confront an issue is during an open meeting.

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45 C.R.S § 24-6-402(4)(a).

46 C.R.S § 24-6-402(4)(b).

47 C.R.S § 24-6-402(4)(c). *See, e.g., Gillies v. Schmidt*, 556 P.2d 82, 86 (Colo. App. 1976).

48 C.R.S § 24-6-402(4)(d).

49 C.R.S § 24-6-402(4)(e). This is an apparent exception to the general prohibition on adoption of a formal position in executive session. *See* C.R.S. § 24-6-402(4).

50 C.R.S § 24-6-402(4)(f)(I). *See also Gumina v. City of Sterling*, 119 P.3d 527, 532 (Colo. App. 2004). (Finding, by extension, that prior notification of employee to be discussed is a condition precedent to a lawful executive session, if the session is announced to discuss personnel matters).

51 C.R.S § 24-6-402(f)(II).

52 C.R.S § 24-6-402(4)(g); *See also infra* pages 11 to 14 (discussing items falling under the mandatory nondisclosure provisions of the Open Records Act).

Procedure for calling an executive session

The governing body may only call an executive session at a regular or special meeting.[53] While the Open Meetings Law requires "full and timely notice" of the regular or special meeting, nothing in the statute requires any particular notice of the governing body's intention to hold an executive session as part of that meeting. Thus, there is apparently no notice requirement that would impair the governing body from spontaneously calling an executive session during one of its meetings.

The governing body must first announce the topic of discussion, including the specific citation to the OML that authorizes consideration of the announced topic in executive session, as well as "identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized." The body must then vote on whether to hold the session for discussion of the topic(s) announced. Two-thirds of the quorum present must vote affirmatively before the governing body can close the meeting to the public.[54] The minutes of the regular or special meeting must reflect the topic of discussion at the executive session.[55]

Colorado's Court of Appeals has held that failure to comply with the procedural prerequisites of an executive session can result in an executive session not being convened. The session is simply part of the open meeting, and the record of such session is thus open to full public inspection, under the Colorado Open Records Act.[56]

Sample executive session procedures are provided in Appendix 1.

Deliberation is the purpose ...

The purpose of calling an executive session is merely to deliberate on sensitive matters that could be compromised by premature public disclosure, and no "adoption of any proposed policy, position, resolution, rule, regulation, or final action" may be taken in executive session.[57] The discussion on the record at the open meeting must indicate what policy considerations and motivations led to the final decision.[58]

Further, the governing body cannot utilize a subsequent open meeting to simply "rubber stamp" the position adopted by it while in executive session.[59] The public cannot "participate in a public meeting if [it] witnesses only the final recorded vote."[60]

The executive session record

The Open Meetings Law requires that executive sessions be electronically recorded.[61] The executive session record must be retained for at least 90 days following the date of the executive session.[62] The record may then be disposed of, as are other government records, consistent with the local government's records retention policy.[63]

The requirement that a record be made of the executive session is solely to permit policing of the requirements that discussion in an executive session focus solely on the matter(s) for which the session is called and that the session be used for deliberation only, rather than for decision making. Thus, the Open Meetings Law provides that the executive session record is not a public record[64] and may only be reviewed by a judge, following certain preliminary showings, to determine if the body stayed substantially "on topic" and did not engage in unlawful decision making.[65]

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53 C.R.S. § 24-6-402(4).

54 *Id.*

55 C.R.S § 24-6-402(2)(d)(II). Prior to a 1996 amendment this statute required the minutes to reflect the "general topic" of the executive decision. The effect of this amendment is unclear. Presumably, the minutes should indicate the topic of discussion at the executive session with at least the same specificity as the public announcement of the topic prior to the session pursuant to C.R.S § 24-6-402(4).

56 *Gumina*, 119 P.3d at 527.

57 C.R.S. § 24-6-402(4); *Hudspeth v. Board of County Comm'rs*, 667 P.2d 775, 778 (Colo. App. 1983); *Einarsen v. City of Wheat Ridge*, 604 P.2d 691, 693 (Colo. App. 1979). *But see* Note 49 regarding negotiating positions.

58 *Hudspeth*, 667 P.2d at 778.

59 *Littleton Educ. Assoc. v. Arapahoe Cnty. Sch. Dist. No. 6*, 553 P.2d 793, 798 (Colo. 1976); *Bagby v. School Dist. No. 1*, 528 P.2d 1299, 1302 (Colo. 1974); Hudspeth, 667 P.2d 775 (Colo. App. 1983). *But see*: comment on page 4 regarding right to cure OML violations recognized by Court of Appeals.

60 Bagby, 528 P.2d at 778.

61 C.R.S. § 24-6-402(2)(d.5)(II)(A).

62 C.R.S. § 24-6-402(2)(d.5)(II)(E).

63 Required pursuant to C.R.S. §§ 24-80-101-112.

64 C.R.S. § 24-6-402(2)(d.5)(II)(D).

65 *See generally* C.R.S. § 24-72-204(5.5). The Open Records Act requirements concerning how executive session records are reviewed are discussed on page 17.

PENALTIES FOR VIOLATION OF OPEN MEETINGS LAW

The underlying goal of sunshine laws is to create an atmosphere of openness in public matters, not to "punish" those who violate the provisions. In keeping with this prevailing philosophy, the Colorado law contains no criminal sanctions for noncompliance. Persons seeking redress for alleged violations of the Open Meetings Law must satisfy conventional "standing" requirements, that is, they must show an "injury in fact to a legally protected interest."[66]

Although members of governing bodies do not risk criminal punishment for transgressions, any action taken at a meeting that does not comply with the Open Meetings Law requirements is void.[67] Courts may also enforce the requirements of the Open Meetings Law through injunction.[68] Of course, there is also the potential for a serious loss of confidence in the government when official actions are invalidated because laws aimed at assuring open government are violated.

Furthermore, after in camera review of an executive session record, the court may make public any portions of the record that reveal the body getting substantially "off topic" or engaging in unlawful decision-making while in executive session.[69]

Finally, if the court finds that a public body has violated the Open Meetings Law, it must award the prevailing citizen or citizen's costs and reasonable attorney fees.[70] A prevailing public body, on the other hand, may only be awarded costs and attorney fees if the court finds the action frivolous, vexatious or groundless.[71]

SPECIAL PROVISION REGARDING CHIEF EXECUTIVE OFFICER SEARCH COMMITTEE PROCEDURES

A "search committee" of a local public body is required to take the following steps in connection with a search for a "chief executive officer of an agency, authority, institution, or other entity" in an open meeting:

- establish job search, including writing the job description;
- set the deadline for applications; and
- formulate the requirements for applicants, the selection procedures, and the time frame for appointing or employing the chief executive officer.[72]

A list of finalists must be made public no less than 14 days prior to the date on which one of the finalists is appointed or employed.[73]

66 *Pueblo School Dist. v. Colorado High School Activities Assoc.*, 30 P.3d 752, 753 (Colo. Ct. App. 2000). (Plaintiff with actual notice of meeting lacks standing to complain of district's alleged failure to provide "full and timely notice.")

67 C.R.S. § 24-6-402(8); *See Gray v. City of Manitou Springs*, 598 P.2d 527, 529 (Colo. Ct. App. 1979).

68 C.R.S. § 24-6-402(9).

69 C.R.S. § 24-72-204(5.5) and page 30 *infra*.

70 C.R.S. § 24-72-204(5.5). Furthermore, this award does not require that the violation be "knowing or intentional." *Zubeck v. El Paso County Retirement Plan*, 961 P.2d 597, 601-602 (Colo. App. 1998).

71 C.R.S. § 24-6-402(9).

72 C.R.S. § 24-6-402(3.5). Among the questions raised by this language is the extent to which this statute may apply when a local government does not formally designate a "search committee," as when the governing body itself conducts the process of hiring a chief executive officer. Also unclear is the potential scope of the term "chief executive officer;" it seems clear that at least city managers in municipalities utilizing the council–manager form of government would be included.

73 C.R.S § 224-6-402(3.5). The statute does not specify how this list is to be made public. For the definition of "finalist," as used in this statute, *see* C.R.S. § 24-72-204(3)(a)(XI).