

Boards of Health/Agency Functions

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BOARDS OF HEALTH/AGENCY FUNCTIONS

Local Board of Health Requirements

The Administrative Regulation [902 KAR 8:150](#) provides requirements for the local health department board of health.

The above reference 902 KAR 8:150 includes guidance for:

1. Establishing local boards of health (governing boards), policies and procedures;
2. Functions of the boards;
3. Composition of the board;
4. Meetings of the board;
5. Minutes of board meetings;
6. Conflicts of interests for members of the Board;
7. Training requirements for board members;
8. Establishment of board regulations; and
9. Employing legal counsel.

Establishing Internal Policies and Procedures

Governing boards of health's primary function is to establish policies that govern the operations of the local health departments. Recognizing that it is not the responsibility or the expectation of board members to manage the daily operations of the organization, this understanding of roles and responsibilities allows for a successful structure. Their policies and procedures must be in compliance with [KRS 212.230](#).

Internal board regulations and ordinances must be indexed and placed in an agency's local board of health policy manual. New policies shall be placed in the manual no later than thirty (30) days after approval by the board and the cabinet, if applicable.

Internal board regulations and ordinances KRS 67.076 and KRS 67.077 Ordinance Procedures;

Suggested process:

1. Motion, second, and majority vote to adopt
2. First Reading
3. Vote on first reading.
4. Public hearing (special public meeting within 60 days)
5. Second Reading (next meeting) and discussion of all issues presented at public hearing
6. Vote on second reading.

Consultation with Board of Health Counsel is advised

Employment of Counsel

County, city-county and district boards formed by [KRS 212.020](#), [KRS 212.270](#), [KRS 212.640](#), and [KRS 212.855](#) may employ counsel as needed to act as legal advisor for the board.

LHD Director's Responsibility to Board

The agency director is responsible for presenting the policies, regulations and standards/guidelines of the Department for Public Health to the board for their information and action and to keep the board informed and aware of the activities of the health department.

The agency director also has the responsibility for executing the policies and plans adopted by the board and for reporting regularly on their progress. Regular reports should include at least quarterly:

- Program/Service Report
- Financial Summary
- Personnel Action Summary

In the absence of a local health officer, the Secretary of the Cabinet for Health and Family Services or his duly appointed representative shall serve as health officer for the county concerned. [KRS 212.170](#), [KRS 212.240](#)

Governing Board Functions (902 KAR 8:150)

A governing board must:

- Assure that the services provided meet the needs of the local citizenry, to protect and promote public health.
- Establish priorities and objectives based on a community assessment and resources of the agency for:
 - Service delivery, considering federal and state disease prevention and health promotion objectives; and
 - Specific health and safety needs of the community.
- Assure that financial controls and program evaluation measures are ongoing to facilitate effective and efficient agency services and operations.
- Interview and hire an agency director in accordance with [902 KAR 8:040 through 902 KAR 8:140](#).
- Communicate board policies and priorities to the agency director:
 - Evaluate the performance of the agency director, at least annually. The director/administrator must have clear direction from the board and is accountable for execution of board policies;
 - Review information and data provided by the agency director to assess the effectiveness and efficiency of the agency in complying with federal and state public health laws, regulations, and board policies; and
 - Promote professionalism in health department operations in fulfilling its public health mission.

Non-Governing Board Functions (902 KAR 8:150)

A non-governing board must:

- Maintain a membership on the county public health taxing district board. Prepare the annual public health tax resolution.
- Maintain trusteeship of the county public health tax.
- Provide for maintenance and upkeep of the agency building.
- Determine the appropriate use of the facility by community groups and other agencies.

- Provide the district board with information regarding specific public health needs and concerns of the city-county or county board.

Taxing District

Where applicable, a taxing district function is created in accordance with [KRS 212.720](#) and [KRS 212.750](#) for all county boards of health (independent county-governing boards) and counties within districts (non-governing boards).

If a county has a public health tax, the tax resolution form CH-61 or CH-62 is used by the local board of health in establishing their public health tax rate. Form CH-61 is completed by Fiscal Court Taxing Counties and Form CH-62 is completed by Ballot Taxing Counties. If a county does not have a public health tax, the fiscal court makes an appropriation to the health department using Form CH-31. These forms may be accessed at: <http://chfs.ky.gov/dph/Local+Health+Department.htm>. For additional questions or assistance, please contact the Local Health Operations Branch. This function is not applicable to district boards of health.

The minimum acceptable level of local support shall be determined annually by the Commissioner of the Department for Public Health per [902 KAR 8:170 Section 3 \(2\)](#).

The taxing district funds are to be used for the maintenance and operations of local health department. Operations include initiatives designed to improve the public health status of their citizens. Additionally the funds are for local health department capital improvements for the purchase or construction of new or additional facilities.

CONFLICTS OF INTEREST

Board Members And Conflicts Of Interest

Board of health members must comply with [902 KAR 8:150](#) and [KRS 45A.340](#), Conflicts of interest of public officers and employees.

LOCAL BOARDS OF HEALTH APPOINTMENTS/MEMBERSHIP

Nominations

Nominations for board of health members [KRS 212.020](#) “submitted to the secretary shall be accepted from any source and shall be solicited and obtained from the county judge/executive, fiscal court, and county health department staff; and nominations of physicians, dentists, nurses, engineers, optometrists, veterinarians, and pharmacists shall be solicited and obtained from the county's medical society, dental society, nursing association, engineering association, optometric association, veterinarian association, and pharmacists' association, respectively.”

Nomination forms are forwarded to the Administration and Financial Management Division no later than November 1.

Nominations for vacancies should be submitted as necessary.

Appointments/Membership

The Secretary of the Cabinet for Health and Family Services appoints members to 118 of the 120 county or city-county boards of health based on [KRS 212.020](#) and [KRS 212.640](#). Fayette and Jefferson County board members are appointed by the mayor and fiscal court respectively.

- Membership is for 2 years and there is no restriction on the number of terms a member may serve, and includes the county judge executive or designee, the mayor, city manager or designee of the city-county containing a city of the second class and a fiscal court appointee.
- Physicians, dentists, pharmacists and fiscal court appointees are appointed in even-numbered years; nurses, engineers, optometrists, veterinarians and laypersons are appointed in odd-numbered years.
- If one or more of the professionals do not reside in the county or are unwilling to serve, the secretary may appoint a resident layperson in lieu of the vacancy.
- Members of boards of health receive no compensation for their services.
- Board of health members must reside in the county in which they serve, [KRS 212.855](#).
- The Secretary of the Cabinet for Health and Family Services shall remove any member, other than the county judge/executive or fiscal court appointee, who fails to attend three (3) consecutive scheduled meetings and may remove board members according to [KRS 65.007](#). The fiscal court may remove its appointee in like fashion.
- A member of a county or city/county board within that particular district must fill membership on the district board of health. [KRS 212.855](#)
 - If the term of a county board of health member expires or the member cannot complete his/her term, the seat on the district board of health is declared vacant and the county or city-county board of health appoints another of its members to fill any un-expired portion of the term on the district board.
 - Appointed members of district boards may not begin to serve on the district board until the Secretary has certified their eligibility to serve on the district board.
 - District board members hold office for a term of two (2) years or until the successors are appointed.
- In accordance with [KRS 212.020](#) and [KRS 212.640](#) each county and city/county board of health must contain twelve (12) members.

- In accordance with [KRS 212.855](#) each district board (except the Northern Kentucky District) must include the county judge/executive or his designee from each county in the district as an ex officio voting member, and one (1) additional resident per county per (15,000) population or fraction thereof, which must include the mayor, city manager, or designee of the city manager of each second class city as an ex officio voting member, except that the total number of members from any county cannot exceed seven (7) members.
- The composition of the boards must be in accordance with [KRS 212.020](#), [KRS 212.640](#) and [KRS 212.855](#).

Professional Members

- A person eligible for membership as a professional member shall be qualified and maintain a current license in Kentucky in their respective profession. [KRS 212.020](#), [KRS 212.640](#) and [KRS 212.855](#).

Board Chairperson 902 KAR 8:150

- The board shall elect a chairman from its membership on an annual basis and that chairman may serve more than (1) consecutive term.

Secretary of Board 902 KAR 8:150

- Officers shall be elected or appointed members of the board except that the agency director may serve as secretary to the board. An agency director of a district agency may serve as secretary to the district board and as secretary to the non-governing board within the district; or the agency director may designate an employee to serve as secretary of a city-county or county board. When agency staff is serving as secretary, the secretary has no voting powers.

Persons Not Eligible for Membership 902 KAR 8:150

- An employee of an agency shall **not** serve as a member of the board.
- A person shall **not** serve on a board and receive in excess of \$2,000 per year in contract payments, unless approved in writing by the Cabinet.
- State officials, members of the General Assembly, superintendents of school districts, and members of local boards of education are **not** eligible for appointment to local boards of health. Such positions are considered incompatible under [KRS 61.080](#).

MEETINGS OF BOARDS OF HEALTH

Quorum ([902 KAR 8:150](#))

A quorum must be present in order to conduct business. "Quorum" means a simple majority of the members of the board, with any vacant position counted when determining the number to be present for a quorum to exist.

A majority of the quorum is required to approve actions of the board.

A telephone poll vote is **not** permitted on an issue considered by the board.

In order to attain a quorum, a public agency may conduct any meeting, other than a closed session, through video teleconference. (meeting shall comply with the requirements of KRS 61.820 or 61.823 as appropriate.)

61.805 Definitions for KRS 61.805 to 61.850.

As used in KRS 61.805 to 61.850, unless the context otherwise requires:

Proxy

A member of a board must **not** be represented by a proxy at a board meeting, except for the designated officials of a county; or city of the second class.

Meeting Schedule

Meetings of a board and its committees must comply with the Kentucky Open Meetings Law, [KRS 61.805 through KRS 61.850](#).

Meetings of a board must be held at specific times and places convenient to the public.

The board must provide a schedule of regular meetings, which must be made available to the public and published in a local newspaper of general circulation.

Board meetings must be held in locations accessible to individuals with disabilities.

A qualified interpreter for the deaf and hard of hearing must be made available upon request to the board chairman or agency director at least ninety-six (96) hours prior to the scheduled meeting.

Executive Committee

A board may establish an executive committee for the execution of specific tasks.

- The executive committee is subordinate to the board
- Matters delegated to the executive committee must be specified in the minutes
- Executive committee must report its actions at the next regular board meeting
- An action of an executive committee must be confirmed by the board and reflected in the board minutes.

Frequency of Meetings

- Governing county boards and district boards of health shall hold a regular meeting at least once every three months and such other special or regular meetings as necessary.
- Non-governing county or city-county boards (those within a district) shall hold a regular meeting at least once every twelve months. ([KRS 212.230](#))

Special Called Meetings (KRS 61.823)

The following procedures shall apply when a board of health wishes to conduct a special called meeting:

- Only the chairperson or a majority of the board members may call a special meeting;
- The board of health shall provide written notice of the special meeting that shall state the date, time and location of the meeting.
- Discussion shall be limited to only those items on the agenda.
- Written notice shall be delivered by fax, mail, or in person to every board member, as well as to any media organization that has filed a written request to receive notice of special meetings. The notice shall be delivered at least 24 hours prior to the meeting, or if not possible because of an emergency, the board shall make a reasonable effort to notify board members and the media. Notice of the special called meeting shall also be posted in the lobby or reception area of the local health department.
- At the beginning of the special called meeting, the chairperson shall briefly describe the emergency circumstances precluding 24-hour, (when applicable), notice and these comments shall be reflected in the minutes.

Executive/Closed Session Meetings (KRS 61.805 through 61.815)

Boards of health may conduct closed meetings for any of the following reasons:

- To deliberate on the future acquisition or sale of real property, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency;
- To discuss proposed or pending litigation against or on behalf of the local health department or board;
- To discuss issues or concerns which might lead to the appointment, discipline, or dismissal of an individual employee or board member without restricting that individual's right to a public hearing if requested; and
- To discuss a specific proposal with a representative(s) of a business entity if open discussions would potentially put the interests of the business at risk.

The following procedures shall apply when a board of health conducts an executive or closed session meeting:

- Notice of the executive or closed session shall be given in the regular open meeting; the general nature of the business to be discussed and the reason(s) for the closed session shall be indicated.
- A closed session shall be held only after a motion is made and carried by a majority vote in open session.
- No final action shall be taken during a closed session.
- No matter shall be discussed in closed session other than those publicly announced prior to convening the closed session.

Minutes of a closed meeting are not required to summarize or record the discussion or any statements made by a board member(s). (See attached OAG 81-387 in this section.)

No announcement or action is required after a closed session unless a final action is to be taken in open session. (See attached OAG 80-248 in this section.)

MINUTES OF BOARD MEETINGS

Minutes of Board Meetings must comply with the following: [902 KAR 8:150](#) (Section 6):

- Actions of the board must be made a part of the minutes.
- The secretary and chairman of the board must sign minutes.
- Minutes must include the following information:
 - Name of the board;
 - Date, time, and location of the board meeting;
 - Listing of board members present and absent;
 - Acknowledgment of a quorum;
 - Review and approval or correction of the minutes of the last meeting;
 - Presentation of old business;
 - Presentation of new business;
 - Statement of each motion made, identification of member moving and seconding motion, with tabulation of the vote by the members voting either for, or against;
 - Scheduled date of next meeting; and
 - Motion to adjourn.
- Board minutes must be available in an alternative format within a reasonable period of time when requested by a member of the public demonstrating the need.
- A permanent copy of official minutes must be maintained and kept on file by the agency.
- A draft electronic signed copy of the minutes of the board meeting must be submitted to the Cabinet within two weeks after the date of the meeting.

TRAINING FOR BOARD MEMBERS

A new member appointed to the board must receive training from the agency director or other appropriate agency representative. Ideally the training should occur prior to the new member's first board meeting.

The training must include discussion or written materials on the following topics:

- Statutory responsibilities and functions of the cabinet, agency, and the board;
- Board laws, regulations, and local ordinances; and
- Board members' responsibilities and functions.
- Agency service sites and the services provided at these sites;
- Agency staff by discipline or profession;
- Review of agency medical and environmental services, budget and annual report;
- Board minutes for the last calendar year; and
- Tour of the agency's main facility, or if feasible, a tour of satellite or remote site.

DPH has developed a WEBCAST-Local Health Department Board Orientation that we encourage new board members to review. This may be accessed through Train at <https://ky.train.org> – Course Number 1016388.

OAG 81-387

Minutes of Executive Sessions

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF KENTUCKY

October 26, 1981

OPINION BY: Steven L. Beshear, Attorney General; Carl Miller, Assistant Attorney General

OPINION:

On behalf of the State Board of Education you have requested an official clarification of OAG 81-235 relative to one point, that being whether a public agency, and specifically the State Board of Education, is required by law to keep minutes of its executive sessions.

OAG 81-235 dealt particularly with KRS 160.272(2) and generally with KRS 61.835. The former statute, which applies only to district boards of education, provides that when a district board meets its secretary shall be present at the meeting and shall record in a book provided for that purpose all of the official proceedings. That statute does not apply to the State Board of Education or any other deliberative body.

KRS 61.835, a part of the Kentucky Open Meetings Law, applies generally to the meetings of public bodies, including the State Board of Education, and reads as follows:

“The minutes of action taken at every meeting of any such public agency, setting forth an accurate record of votes and actions at such meetings, shall be promptly [*2] recorded and such records shall be open to the public inspection at reasonable times no later than immediately following the next meeting of the body.”

KRS 156.030(5) [as amended by Executive Order of the Governor] provides that the Superintendent of Public Instruction shall select a secretary for the State Board of Education who shall be an employee of the Kentucky State Department of Education and that it shall be the duty of the secretary to handle the Board's correspondence and maintain a permanent record of its proceedings. There is no statute expressly providing that the secretary must be present in a closed session of the State Board of Education.

There is no statute prescribing the necessary contents of the minutes of a public body except the provision of KRS 61.835 that the minutes shall set forth an accurate record of votes and actions at such meetings. Case law has established the rule that a public agency only speaks authoritatively through its minutes. County Board of Education v. Durham, 198 Ky. 732, 249 S.W. 1028 (1923). The minimum statutory requirement for minutes is, therefore, that they record formal motions made in a meeting and the vote of the members [*3] on the motion. Anything more than such a record is a matter of parliamentary procedure and the discretion of the public body.

KRS 446.080 provides that all words and phrases used in the statute shall be construed according to common and approved usage of language. In order to determine the meaning of the word “minutes” as used in KRS 61.835, we have consulted the foremost authority on parliamentary procedure, Roberts' Rules of Order, Newly Revised, published by Scott Foresman and Company, 1970, Section 47, pp. 389-391. Roberts says that minutes should contain mainly a record of what was done at the meeting, not what was said by the members. Roberts makes no distinction as to open meetings and closed or executive sessions but does discuss the situation when a deliberative assembly forms itself into “a committee of the whole” and says that “the proceedings of a committee of the whole should not be entered in the minutes, but the fact that the assembly went into committee of the whole and the committee report should be recorded.” Id., p. 391. We believe that when a public body goes into closed session as permitted by statute it is, in effect, a committee of the whole and, [*4] therefore, the proceedings of the closed session

should not be entered in the minutes except to show that the closed session was held and if a formal action was taken in the closed session.

Against the background of the foregoing discussion of the statutes we conclude the following opinion:

- (1) The State Board of Education is not required to have its secretary present in a closed session.
- (2) Minutes of a meeting, open or closed, are not required to show any more than the formal action taken and the votes cast by the members. It is not required to summarize the discussion or record what any of the members said.
- (3) The minutes of the body when a closed session is held should show the statutory formality provided by KRS 61.815 was observed before going into a closed session, the general subject of the closed session, i.e., personnel matter, litigation, etc., but need not show information which would defeat the purpose of holding a closed session on authorized subject matter.
- (4) The deliberative body may exercise its discretion as to whether an additional record should be made of a closed session beyond what we have indicated as the statutory minimum.
- (5) No final action **[*5]** of a positive nature should be taken in a closed session but a decision to take no action on a matter under discussion can be made in a closed session. KRS 61.815.

OAG 80-248

Open Meetings

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF KENTUCKY
April 24, 1980

OPINION BY: Steven L. Beshear, Attorney General; Carl Miller, Assistant Attorney General

OPINION:

You have requested an opinion of the Attorney General on several questions pertaining to the Kentucky Open Meetings Law and specifically to KRS 61.815 which deals with the requirements for conducting a closed session. Since the wording of that statute is what seems to us to be a near enigma, we will take this occasion to make an analysis of the relationship between KRS 61.810 and 61.815.

KRS 61.810 reads as follows:

"All meetings of a quorum of the members of any public agency at which any business is discussed or at which any action is taken by such agency, are declared to be public meetings, open to the public at all times, except for the following:

- "(1) Deliberations for decisions of the Kentucky Parole Board.
- "(2) Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of the specific piece of property to be acquired for public use or sold by a public agency.
- "(3) Discussions of proposed or pending litigation against [*2] or on behalf of the public agency.
- "(4) Grand and petit jury sessions.
- "(5) Collective bargaining negotiations between public employers and their employees or their representatives.
- "(6) Discussions or hearings which might lead to the appointment, discipline or dismissal of an individual employee, member or student without restricting that employee's member's or student's right to a public hearing if requested, provided that this exception is designed to protect the reputation of individual persons and shall not be interpreted to permit discussion of general personnel matters in secret.
- "(7) Meetings between public agencies and industrial prospects.
- "(8) State cabinet meetings and executive cabinet meetings.
- "(9) Committees of the General Assembly other than standing committees.
- "(10) Meetings which federal or state law specifically requires to be conducted in privacy.
- "(11) Meetings which the Constitution provides shall be held in secret." (Emphasis ours.)

Authorized closed sessions fall into two general classifications: (a) those authorized because of the nature of the agency or because of a statutory or constitutional provision; (b) those authorized [*3] because of the subject matter to be discussed. Briefly summarized, there are five subject matter exceptions to the Open

Meetings Law: acquisition or sale of real property; litigation; collective bargaining; personnel matters; new industry.

The first paragraph of KRS 61.815 presents a problem of statutory interpretation. It reads as follows:

"Except those public agencies excluded under KRS 61.810(1), (3), (4), (6) but only so far as it relates to students, KRS 61.810(7) (8), (9), (10) and (11), the following requirements shall be met as a condition for conducting closed sessions authorized by KRS 61.810:"

Following this introductory paragraph are four subsections of the statute prescribing the procedure for going into and coming out of a closed session.

Taken literally the introductory paragraph of KRS 61.815 excludes from any formality concerning going into a closed session every exception listed in KRS 61.810 except (2), (5) and (6) as it relates to students-acquisition or sale of real property, collective bargaining negotiations and personnel matters. Such [*4] a literal interpretation would mean that an agency could go into closed session without any of the formalities set forth in KRS 61.815 under the other eight exceptions listed. However, for reasons we will state below, we do not believe that the literal interpretation comports with the legislative intent. We believe that the legislative intent is that agencies, per se, which are exempt from complying with the Open Meetings Law, such as the Parole Board, juries, the Governor's cabinet, committees of the General Assembly and other agencies exempted by statute or by the Constitution do not have to go through the formalities set forth in KRS 61.815, and that agencies which are not exempt per se but which go in closed session to deal with an excepted subject matter must observe those formalities.

Our interpretation is derived, in part, by certain phrases in KRS 61.815. The introductory paragraph in the statute begins with the words "except those public agencies excluded..." This indicates that it is the nature of the agency which allows for dispensing with formality in going into closed session.

Also, KRS 61.815(1) indicates that when the closed session is based upon subject matter [*5] the formalities must be observed. It reads:

"(1) Notice shall be given in regular open meetings of the general nature of the business to be discussed in the closed session and the reason for the closed session;"

A third reason underlying our interpretation is practicality. When a public agency which is generally required to hold open meetings finds it necessary to go into a closed session to deal with a particular excepted subject matter, the spirit of the Open Meetings Law and the concern of the public is best served by observing the steps set forth in KRS 61.815. For such an agency, convened in a regular or special meeting in accordance with KRS 61.820-61.825, to go into closed session without first giving notice in open session of the general nature of the business to be discussed and without first passing a motion in open session, would create doubt in the minds of members of the public as to whether the Open Meetings Law was being properly observed and could, in fact, lead to laxity in observing the law.

For the above stated reasons our opinion is that the general rule to be followed is that in every case where an agency goes into closed session because of a subject matter [*6] exemption, except in the case involving the disciplining of a student, the procedures of KRS 61.815 must be observed.

Now, to answer your questions.

Can a governing body just announce that it is going into a closed session to discuss litigation or must it be more specific?

Answer: We believe that it is sufficient to state that the reason for the closed session is "litigation". If a suit has already been filed by or against the agency, it may be more satisfying to the public if the body announces that it is going into closed session to discuss the litigation of a named suit, but we believe it is not required by the statute to name the suit since that statute expressly states that notice shall be given of

“the general nature of the business to be discussed.” We believe that the term “general nature” is satisfied by a term expressing one of the statutory subject matter exemptions such as “litigation”, “personnel matter”, “collective bargaining”, etc. It is not necessary to be more specific.

- (2) Following return to regular session, is the governing body compelled to announce that no action will be taken on the matter discussed in the closed session if that be the case? **[*7]**

Answer: KRS 61.815(3) provides: “No final action may be taken at a closed session.”

We believe that the application of this provision allows for latitude dictated by common sense. For example, if the subject of the closed session is the acquisition of real property for a public use and the governing body decides in the closed session that it should acquire by eminent domain a particular piece of property, the whole purpose of the open meeting exception would be defeated if the body had to come back into open session and announce its decision if “publicity would be likely to affect the value of a specific piece of property to be acquired for public use if sold by a public agency.” KRS 61.810(2). Take for another example, a situation where a closed session is held on a personnel matter “to protect the reputation of individual persons”, and after discussing charges made against a particular employee the agency decides that the charges are groundless and decides to take no action against the named individual. In such a case a person’s reputation could be damaged simply by a statement in open session that he had been under discussion.

The statute says “no final action may be **[*8]** taken in a closed session” but it does not state that some action must be taken in an open session after the closed session. The statute does not mandate that the body must make an announcement of any kind after a closed session.

As our final point in this discussion we call attention to KRS 61.815(4) which provides:

“No matter may be discussed at a closed session other than those publicly announced prior to convening the closed session.”

It is the responsibility of the agency body and of each individual member of the body to see that this provision is obeyed. KRS 61.991 provides a penalty of a fine of not more than \$100 upon conviction of a member of a public agency who attends a meeting not held in accordance with the Open Meetings Law.