



## FLATHEAD COUNTY SUPERINTENDENT OF SCHOOLS

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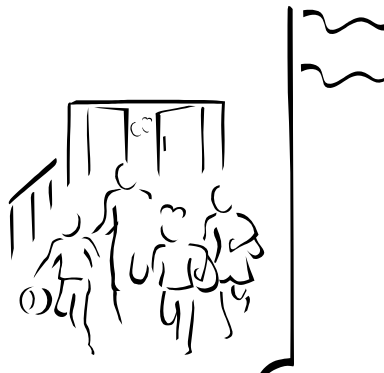
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# TRUSTEES OF FLATHEAD COUNTY RURAL SCHOOL BOARDS

***Thank you** for devoting time and energy to our children, to your respective communities and to the promise public education offers! A well-known resource for schools, the **Montana School Boards Association (MTSBA)**, has stated, "With your successful election to your local school board, you now hold one of the most **important elected positions** in the State of Montana." (Tony Koenig, Staff Attorney, MTSBA). Under some circumstances trustees are appointed. With such an important position, knowledge of your duties and of their performance is essential. Thank you for accepting!*



# Montana Constitution

**THE CONSTITUTION OF THE STATE OF MONTANA  
AS ADOPTED BY THE CONSTITUTIONAL CONVENTION MARCH 22, 1972, AND AS RATIFIED  
BY THE PEOPLE, JUNE 6, 1972, REFERENDUM NO. 68  
PREAMBLE**

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

**ARTICLE X  
EDUCATION AND PUBLIC LANDS**

Section

1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Nondiscrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

**Section 8. School district trustees.** The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

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(**quick** reference)

**RELEVANT LAWS** (Montana Code Annotated, 2013)

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<b>20-3-323</b>	<b>District policy and record of acts</b>

\*\*\*\*\* Information insert on Understanding School Finance

\*\*\*\*\* Information insert – watch for . . . .

## Montana Code Annotated 2013

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- 20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall: (1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;
- (2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;
  - (3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;
  - (4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;
  - (5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;
  - (6) participate in district boundary change actions in accordance with the provisions of the school districts chapter of this title;
  - (7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;
  - (8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;
  - (9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;
  - (10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;
  - (11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;
  - (12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;
  - (13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

- (14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;
- (15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;
- (16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;
- (17) set the length of the school term, school day, and school week in accordance with [20-1-302](#);
- (18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;
- (19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;
- (20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;
- (21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;
- (22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except that trustees from a first-class school district may share the responsibility for visiting each school in the district;
- (23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;
- (24) provide that an American flag manufactured in the United States that measures approximately 3 feet by 5 feet be prominently displayed in each classroom in each school of the district no later than the beginning of the school year starting after July 1, 2014, except in a classroom in which the flag may get soiled. Districts are encouraged to work with civic groups to acquire flags through donation, and this requirement is waived if the flags are not provided by a civic group.
- (25) for grades 7 through 12, provide that legible copies of the United States constitution, the United States bill of rights, and the Montana constitution printed in the United States or in electronic form are readily available in every classroom no later than the beginning of the school year starting after July 1, 2014. Districts are encouraged to work with civic groups to acquire the documents through donation, and this requirement is waived if the documents are not provided by a civic group.
- (26) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in [20-5-110](#);
- (27) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;
- (28) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in [20-9706](#), that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;
- (29) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of [20-1-303](#);
- (30) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in [32-1-115](#); and
- (31) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

**History:** (1), (3) thru (18), (23)En. Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; Sec. 75-5933, R.C.M. 1947; (2), (19) thru (22)En. Sec. 63, Ch. 5, L. 1971; Sec. 75-5934, R.C.M. 1947; R.C.M. 1947, 75-5933(1) thru (18), 75-5934; amd. Sec. 1, Ch. 682, L. 1979; amd. Sec. 72, Ch. 575, L. 1981; amd. Sec. 2, Ch. 135, L. 1987; amd. Sec. 1, Ch. 145, L. 1987; amd. Sec. 2, Ch. 498, L. 1989; amd. Sec. 9, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 767, L. 1991; amd. Sec. 1, Ch. 402, L. 1993; amd.

Sec. 5, Ch. 633, L. 1993; amd. Sec. 6, Ch. 22, L. 1997; amd. Sec. 2, Ch. 311, L. 1997; amd. Sec. 102, Ch. 584, L. 1999; amd. Sec. 5, Ch. 133, L. 2001; amd. Sec. 2, Ch. 377, L. 2001; amd. Sec. 3, Ch. 21, L. 2003; amd. Sec. 2, Ch. 340, L. 2003; amd. Sec. 8, Ch. 138, L. 2005; amd. Sec. 21, Ch. 44, L. 2007; amd. Sec. 1, Ch. 266, L. 2013.

**20-3-321. Organization and officers.** (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees, but not later than 15 days after the election. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.

(3) The presiding officer of a board of trustees of an elementary district may be any trustee of the board, including an additional trustee as provided for in 20-3-352(2). If an additional trustee is chosen to serve as the presiding officer of the board of trustees of an elementary district described in 20-3-351(1)(a), the additional trustee may not vote on issues pertaining only to the elementary district.

**History:** En. 75-5927 by Sec. 56, Ch. 5, L. 1971; amd. Sec. 5, Ch. 122, L. 1975; R.C.M. 1947, 75-5927; amd. Sec. 4, Ch. 514, L. 1999; amd. Sec. 1, Ch. 14, L. 2011; amd. Sec. 4, Ch. 271, L. 2011.

**20-3-325. Clerk of district.** (1) As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees must have one of their members or a district employee act as clerk for the meeting, and that person shall supply the clerk with a certified copy of the proceedings. The clerk of the district must be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(a) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(b) prepare the annual trustees' report required under the provisions of 20-9-213.

(2) The clerk of the district shall provide the county treasurer with a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000. If the clerk of the district fails to provide the required 30-hour notice, the district must be assessed a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.

**History:** En. 75-5935 by Sec. 64, Ch. 5, L. 1971; amd. Sec. 7, Ch. 266, L. 1977; R.C.M. 1947, 75-5935; amd. Sec. 1, Ch. 196, L. 2005.

**20-4-402. Duties of district superintendent or county high school principal.** The district superintendent or county high school principal is the executive officer of the trustees and, subject to the direction and control of the trustees, the executive officer shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

- (3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;
- (4) select all textbooks and submit the selections to the trustees for their approval in accordance with the provisions of 20-7-602;
- (5) select all reference and library books and submit the selections to the trustees for their approval in accordance with provisions of 20-7-204;
- (6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause a pupil of the district;
- (7) report the pupil attendance, absence, and enrollment of the district and other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent, or county superintendents when reporting for a joint district; and
- (8) perform other duties in connection with the district as the trustees may prescribe.

**History:** En. 75-6113 by Sec. 94, Ch. 5, L. 1971; R.C.M. 1947, 75-6113; amd. Sec. 2, Ch. 135, L. 1981; amd. Sec. 2, Ch. 337, L. 1989; amd. Sec. 3, Ch. 343, L. 1999.

**20-4-403. Powers and duties of principal.** (1) Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections (4), (5), (6), (7), and (8) of 20-4-402 and shall have general supervision of such school and the personnel assigned to such school.

(2) If granted authority by the board of trustees, a school principal in a district that does employ and appoint a district superintendent may suspend for good cause any pupil of the school where the principal is employed.

**History:** En. 75-6114 by Sec. 95, Ch. 5, L. 1971; R.C.M. 1947, 75-6114; amd. Sec. 3, Ch. 135, L. 1981.

**2-3-202. Meeting defined.** As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

**History:** En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404; amd. Sec. 2, Ch. 183, L. 1987.

**2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

- (4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.
- (b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).
- (5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.
- (6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

**History:** En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993; amd. Sec. 1, Ch. 218, L. 2005.

**2-3-103. Public participation -- governor to ensure guidelines adopted.** (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public. The agenda for a meeting, as defined in 2-3202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter. Public comment received at a meeting must be incorporated into the official minutes of the meeting, as provided in 2-3-212.

(b) For purposes of this section, "public matter" does not include contested case and other adjudicative proceedings.

(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

**History:** En. 82-4228 by Sec. 3, Ch. 491, L. 1975; amd. Sec. 24, Ch. 285, L. 1977; amd. Sec. 2, Ch. 452, L. 1977; R.C.M. 1947, 824228(1), (5); amd. Sec. 1, Ch. 425, L. 2003.

**20-3-322. Meetings and quorum.** (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a final budget meeting, as prescribed by 20-9-131; and

(c) (i) in first-class elementary districts, not less than one regular meeting each month; or (ii) in any other district, regular meetings at least quarterly.

(2) (a) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c)(i) or (1)(c)(ii) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency or as provided in subsection (2)(b), meetings must be conducted in school buildings or, upon the unanimous vote of the trustees, in a publicly accessible building located within the district.



(b) This section does not prohibit the trustees from meeting outside the boundaries of the school district for collaboration or cooperation on educational issues with other school boards, educational agencies, or cooperatives. Adequate notice of the meeting as well as an agenda must be provided to the public in advance. Decisionmaking may occur only at a properly noticed meeting held within the school district's boundaries.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency or to consider a violation of the student code of conduct, as defined in accordance with district policy, within a week of graduation.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of this section, "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.

**History:** En. 75-5930 by Sec. 59, Ch. 5, L. 1971; R.C.M. 1947, 75-5930; amd. Sec. 2, Ch. 154, L. 1991; amd. Sec. 1, Ch. 50, L. 1993; amd. Sec. 1, Ch. 211, L. 1997; amd. Sec. 1, Ch. 467, L. 1999; amd. Sec. 1, Ch. 86, L. 2003; amd. Sec. 1, Ch. 438, L. 2005; amd. Sec. 1, Ch. 444, L. 2009.

**20-3-332. Personal immunity of trustees.** (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office.

(3) An additional trustee, as provided for in 20-3-352(2), who is chosen as a nonvoting presiding officer of the board of trustees of an elementary district is entitled to all of the immunization, defenses, and indemnifications described in subsection (1) of this section.

**History:** En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973; R.C.M. 1947, 75-5941; amd. Sec. 1, Ch. 479, L. 1983; amd. Sec. 1, Ch. 310, L. 1999; amd. Sec. 1, Ch. 343, L. 2007; amd. Sec. 2, Ch. 14, L. 201

## Access to public meetings

### What are the laws governing access to meetings?

Montana's 1972 Constitution includes a "Right to Know" clause intended to protect the citizen's right to inspect public records and attend meetings of public agencies at all levels of state government. This clause, along with other sections of Article II of the constitution, provide the cornerstone upon which subsequent laws and conflicts are founded.

These important sections include:

**Section 3 Right of Participation.** The public has the right to expect government agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

**Section 9 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 the state government and its subdivision, except in cases where the demand of individual privacy clearly exceeds the merits of public disclosure.

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Chapter 2, Section 3 of Montana Code Annotated further defines access to meetings in Montana.

2-3-201 Declares the Legislature's intent that "public boards, commissions, councils and other public agencies in this state exist to aid in the conduct of the peoples' business." It further declares that provisions of this part of the law "shall be liberally construed," that is, in favor of openness.

2-3-202 Defines a meeting as the convening of a quorum of a public agency to hear, discuss or act upon a matter over which the agency has control or advisory power.

2-3-203 Says all meetings of governmental bodies of the state, political subdivisions or organizations supported in whole or in part by public funds shall be open to the public, including committees and subcommittees. The presiding officer may close a meeting for discussion of a matter involving individual privacy, but only if the officer determines that the demand of individual privacy clearly exceeds the merits of public disclosure. The right to individual privacy may be waived by the individual about whom the discussion pertains. Meetings may be closed to discuss litigation strategy when an open meeting would have a detrimental effect on the position of the public agency. Meetings in which the only parties are public bodies may not be closed to discuss litigation strategy.

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**For what reasons can a meeting of a governmental body be declared closed to the public?**

As noted above, meetings can be closed should the body discuss matters involving individual privacy (personnel) if the presiding officer determines that the demand of individual privacy clearly exceeds the merits of public disclosure. Public bodies may not close meetings to discuss collective bargaining strategy, *Great Falls Tribune v. Great Falls Public Schools* (1992). Also § 2-3-203. Nor may public bodies close a meeting to discuss litigation strategy in which the only parties are public bodies, *Associated Press v. State Board of Public Education*, 246 Mont. 386, (1991).

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### **What must the officer do to close a meeting?**

Meeting closures are at the discretion of the meeting's officer. Before closing a meeting, the presiding officer must explain in open session the reasons for closing the meeting and must also explain each item the body intends to discuss in private before closing the meeting. For example, a school board may not close a meeting to discuss personnel matters, then move on to other business while in closed session. It should also be noted that individuals may waive their rights to privacy and allow meetings to remain open even when personnel matters are being discussed. Additionally, boards can only close meetings at the request of an individual seeking privacy.

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### **Can governmental bodies meet by telephone or other electronic means?**

Yes, but they must allow the public to participate as outlined in statutory law. Section 2-3-202, MCA defines a meeting as "the convening of a quorum of the constituent membership of a public agency or association ... whether corporal or by means of electronic equipment ..." Specifically, the state Supreme Court has ruled that a telephone conference with a quorum is subject to the Open Meeting Act. *Board of Trustees, Huntley Project School District No. 24 vs. Board of County Commissioners*, 37 St. Rep. 175 (1980). Therefore, all laws governing public access to such meetings would apply, and could be closed only for the exceptions noted (when an individual's right to privacy clearly exceeds the public's right to know or when litigation strategy is being discussed). Requirements that the body give notice of the meeting in ample time to allow the public to participate also apply to telephone meetings.

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### **Are public agencies required to post their agendas?**

While Montana's Open Meetings law does not strictly require public agencies to post their agendas, recent rulings combined with other Montana statutes clearly indicate that agencies do post agendas. In the 1980 case of *Board of Trustees vs. Board of County Commissioners*, supra, the Montana Supreme Court ruled that "(w)ithout public notice, an open meeting is open in theory only, not in practice." Further, the Public Participation Act requires agencies to develop procedures to "assure adequate notice" before a final decision and to assist public participation in its decision-making before the decision is made (2-3-103, MCA). Public notice must be given even for meetings that can be legitimately closed to the public.

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### **Can public agencies close meetings to discuss strategy for collective bargaining negotiations?**

No. The Supreme Court threw out that exception to the Open Meetings Act in 1992. *Great Falls Tribune vs. Great Falls Public Schools*). In 1993, the Legislature amended 2-3-203 to remove the exception.

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**Does the Open Meetings Act apply to committees of the whole? What types of "public agencies" fall under the provisions of the Open Meeting Act?**

Section 2-3-203 MCA says the meetings of public agencies and certain associations of public agencies must be open to the public. According to the law, these include public or governmental bodies, boards, bureaus, commissions, agencies of the state or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds. Further, any committee or subcommittee appointed by a public body ... for the purpose of conducting business which is within the jurisdiction of that agency is subject to the requirements of the Open Meetings Act. This would apply to committees of the whole, as well as to "work sessions" sometimes held by school boards. Additionally, the meetings of associations composed of public or governmental bodies that regulate the rights, duties or privileges of any individual must be open to the public.

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**Can meetings of public agencies and governmental bodies be closed to discuss job reviews?**

Yes. The Court has ruled that the public's right-to-know is not absolute, that an individual's right to privacy must be weighed against it. In *Missouliau v. Board of Regents*, 207 Mont. 513, (1984), the Court ruled that the closure of university presidents' job performance evaluation meetings was necessary to protect individual privacy of university presidents and other university personnel.

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**Can a governmental body close proceedings during a hiring process?**

Governmental bodies, such as school boards hiring superintendents and fair boards hiring managers, can close their proceedings to the public in order to protect the privacy of the candidates if those candidates have a reasonable expectation of privacy *Missouliau v. Board of Regents*, supra. Governmental bodies have chosen to keep candidate searches open by asking the candidates whether they mind public interviews, thereby eliminating the expectation of privacy. If the candidates were not told beforehand that the proceedings were to be open, for instance, a governmental body could justifiably close a meeting. Nevertheless, an argument can be made that the hiring process should be open if the body is looking to fill a position that is important to the community.

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**Should a meeting to discuss the discipline/termination of a city employee be closed for privacy where the employee wants the meeting to be open?**

No, according to section 2-3-203(3), MCA: "The right of individual privacy may be waived by the individual about whom the discussion pertains, and, in that event, the meeting must be open."

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### **What are the remedies if a meeting was closed illegally?**

A decision made in an improperly closed meeting may be voided by an action brought in district court within 30 days of the decision (2-3-213, MCA) and a successful plaintiff can be awarded attorney fees (2-3-221, MCA).

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### **Can pictures or recordings be taken in open meetings?**

Yes. Under 2-3-211, MCA, "accredited press representatives may not be excluded from any open meeting ... and may not be prohibited from taking photographs, televising, or recording such meetings."

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### **Are agencies required to keep and provide access to minutes of their proceedings?**

Yes. Under 2-3-212, appropriate minutes of all meetings shall be kept and shall be available for inspection by the public. Minutes must include the date, time and place of the meeting; a list of the individual members of the public body, agency or organization in attendance; the substance of all matters proposed, discussed or decided; and, at the request of any member, a record by individual members of any votes taken. Minutes should be published within 21 days after adjournment of the session, or within 30 days for certain financial information [7-5-2123(2), MCA.]. Nevertheless, minutes should be available upon request, even if they are in draft form and have not been approved by the governmental body. The Public Records Act, 2-6-101, et seq, and Article II, Section 9 of the Montana Constitution do not allow the withholding of draft documents. County commissions are required by law to post their agendas (7-5-2123, MCA) and also to keep a "minute book" (7-5-2129, MCA).

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### **Does the passing of notes and whispering among members of governmental bodies violate the Open Meetings Act?**

There are no court cases--nor sections of statute--that address this issue, but the FOI Hotline has taken the position that these are borderline activities that violate the spirit if not the exact letter of the law. The constitutional guarantee is for the public to be able to observe the deliberations of the public body. Obviously, if those deliberations consist in part of the passing of notes or the exchanging of whispered comments, the public is being deprived of the opportunity to observe the deliberations in a meaningful way. This is little different than of the board met behind closed doors. These are practices that should be discouraged.

**20-3-332. Personal immunity of trustees.** (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office.

(3) An additional trustee, as provided for in 20-3-352(2), who is chosen as a nonvoting presiding officer of the board of trustees of an elementary district is entitled to all of the immunization, defenses, and indemnifications described in subsection (1) of this section.

**History:** En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973; R.C.M. 1947, 75-5941; amd. Sec. 1, Ch. 479, L. 1983; amd. Sec. 1, Ch. 310, L. 1999; amd. Sec. 1, Ch. 343, L. 2007; amd. Sec. 2, Ch. 14, L. 2011.

*School finance is complex!*

*For helpful information, check the OPI website under “Understanding School Finance” or find this information on our website under the School Finance link.*

## Information of interest—watch for

If your district is a member of the **Montana School Boards Association**, your school receives a monthly e-mail letter entitled “**Trustee**” or it is available on the Montana School Boards Association website. You might ask your district clerk/business manager to download this and include it in your packet.

The Board chair, administrator, and clerk set the agenda for school board meetings. You should have your **packet** and agenda approximately a week in advance to prepare for the school board meeting itself.

The **Montana School Boards Association** also provides a **website**, [www.mtsba.org](http://www.mtsba.org), covering all aspects of running schools. They provide various **training** conferences throughout the year in different areas of the state. For a fee, trainings can be given to individual school districts. You might consider viewing this website and following the procedure to “log on”.

Your school district might be a member of the **Montana Small Schools Alliance**, an organization of mainly multi-grade rural districts with headquarters in Dillon, Montana. Their website is [www.mtsmallschools.org](http://www.mtsmallschools.org).

The office of the Flathead County Superintendent of Schools puts out a “**Statistical Bulletin**” every year in December. We mail copies to each district—one for the clerk/business manager, the administrator, and one for each school board member. This gives a profile of all county schools for the previous year—enrollments (past and present), out-of-district enrollments, home and private school enrollments, expenditures per pupil, salary and benefit expenditures per district, plus more. We think it is a valuable source of information, not only for our County Commissioners and legislators, but for school board trustees as well. Current and past copies of the Statistical Bulletin are on our website—[flathead.mt.gov/schools](http://flathead.mt.gov/schools). You may also e-mail the superintendent directly with questions: [msheffels@flathead.mt.gov](mailto:msheffels@flathead.mt.gov).

The Office of Public Instruction (OPI) has a user-friendly website with school information: [www.opi.mt.gov](http://www.opi.mt.gov).

Other suggested resources: