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PUBLIC MEETINGS AND PUBLIC RECORDS

FIFTH EDITION
2017

ALABAMA
ASSOCIATION OF
SCHOOL BOARDS

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AASB
Boardmanship
Series

Developing excellent school board leaders through
quality training, advocacy and services

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Foreword

Alabama's Open Meetings Act and public records laws are designed to ensure that the public has access to the documents and decisionmaking of public bodies. This edition of the AASB Boardmanship Series, *Public Meetings and Public Records* should assist boards in this fulfilling their obligations under the law and also provide some practical tips to consider when dealing with public access issues. Nevertheless, it's important to remember that this publication should be used as a tool and is not intended to be a substitute for the local board attorney's advice.

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INTRODUCTION

In 2005, the Alabama Legislature repealed the state's 1920s-era Sunshine Law, codified in the criminal code, and replaced it with a modern, comprehensive law known as the Open Meetings Act ("the OMA"). Subsequent amendments and helpful interpretation from appellate court decisions have prompted us to update our original guidance.

The public policy behind the OMA and the former Sunshine Law is the same: the public's business must be conducted in public. At its most basic level, this means that public bodies, including school boards, must provide notice to the public before they meet and they must conduct their deliberations in public, with limited exceptions.

This guide to the OMA is just that: a guide. It is not a verbatim copy of the law, but should be used to give school officials a practical understanding of how this law works and how the courts have interpreted it over the past several years. Because the law has been amended multiple times and more amendments may come in the future, it is important to remain up to date on this law. School officials should always consult their local board counsel before making decisions about how the OMA applies to a particular situation.

The OMA defines and uses certain terms. Correct application of the OMA depends almost entirely upon understanding these terms. We strongly encourage you to review these definitions in concert with using this booklet.

THE OPEN MEETINGS ACT

The fundamental provision of the OMA states:

> …the deliberative process of governmental bodies shall be open to the public during meetings…Except for executive sessions…or as otherwise expressly provided by other federal or state laws or statutes, all meetings of a governmental body shall be open to the public and no meetings of a governmental body may be held without providing notice…[1]

Simply stated, school boards need to consider and make decisions in public unless they have a legally permissible reason to do so in private.

The OMA covers not only the school board, but board committees and subcommittees appointed by the board and comprised of board members.[2] Advisory groups and task forces appointed by the board are not covered as long as they are formed for the sole purpose of making recommendations and are made up of people who are not paid for their service on those bodies.[3] Merely being appointed by the board is not enough to automatically trigger the OMA. If the body is board appointed and its members are compensated for their service on the advisory group or task force, they must comply

with the OMA. This means that a textbook advisory committee appointed by the superintendent is not subject to the OMA. The same committee appointed by the Board is also not subject to the OMA unless the committee is compensated for serving on the committee.

WHAT IS NOT A MEETING?

The definition of the word "meeting" is the most important part of the OMA. In order to properly apply the law, it must first be determined if the gathering at issue is a meeting as not all gatherings are meetings subject to the OMA. The following gatherings are not meetings, even when attended by a quorum of the board or one of its committees as long as the participants do not deliberate matters they expect to come up for a board vote:

- Social gatherings;
- Conventions;
- Conferences;
- Training programs;
- Press conferences and media events;
- Association meetings and events;
- Gatherings for on-site inspections or meetings with applicants for economic incentives or assistance from the board; or
- Gatherings, in person or by electronic communication, with state or federal officials for the purpose of reporting or obtaining information or seeking support for issues of importance to the subcommittee, committee, or full board, such as receiving a report from an auditor or receiving information from the State Department.[4]

In addition to these gatherings which are specifically excluded from the definition of meeting, one other gathering of the board is not considered a meeting, even though deliberation occurs. Occasionally, boards will convene in a quasi-judicial capacity to hear a discipline matters. If that hearing could be conducted in executive session under the OMA, the board can decide to provide no notice or public access at all.[5] The precise nature of the hearing determines if it is a meeting or not. Student discipline hearings, like expulsion hearings, and specified employee discipline hearings, like suspension or termination hearings conducted pursuant to the Students First Act, may be conducted in executive session. For these type of hearings, the board has the option to conduct them during a publicly noticed meeting and then convening an executive session or simply convening the hearing without providing public notice or public access. More information regarding quasi-judicial hearings can be found in the discussion of executive sessions later in this booklet.

If a gathering does not constitute a meeting, the OMA is not triggered. Even if a quorum of the full board gathers for these type of events, no public notice or access is

required, as long as no deliberation occurs. If deliberation occurs, a non-meeting is likely converted to a meeting subject to the Act.

WHAT IS A MEETING?

For school boards, a meeting is defined as:

- The prearranged gathering of a quorum of the board or a quorum of a board committee or subcommittee at a time and place which is set by law or operation of law;
- The prearranged gathering of a quorum of the board or a quorum of a board committee or subcommittee during which the full board or board committee or subcommittee is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds;
- The gathering, whether or not it was prearranged, of a quorum of the board during which the members of the board deliberate specific matters that, at the time of the exchange, the participating members expect to come before the full board at a later date; and
- The gathering, whether or not it was prearranged, of a quorum of a committee or subcommittee of the board during which the members of the committee or subcommittee deliberate specific matters relating to the purpose of the committee or subcommittee that, at the time of the exchange, the participating members expect to come before the full board, committee, or subcommittee at a later date.[6]

For purposes of the OMA, "quorum" is defined as a majority of the voting members of the board, committee or subcommittee.[7] While "half plus one" seems like a simple concept, two important points must be noted that may not be immediately apparent. First, the superintendent is not a voting member of the board, and therefore, is not considered in determining whether a quorum exists. Second, be wary of newly elected or appointed board members who have yet to officially take office. By law, those persons count towards the quorum.[8] An example may be helpful. Three board members represent a quorum of a five-member board. In the days following the general election, the sitting president of the board meets with two successful candidates at a local coffee shop to discuss issues they will be considering once they take office the following month. This discussion would constitute a meeting under the OMA because these three people represent a quorum, even though two of them have yet to be sworn or take office. If sitting board members wish to meet with newly elected or appointed board members, proper notice and public access must be provided as if it were a typical board meeting.

"Deliberation" is another important term to understand. Deliberation is defined as:

- an exchange of information or ideas among a quorum of members of a subcommittee, committee, or the full board;
- intended to arrive at or influence a decision as to how any members should vote on a specific matter;

- that, at the time of the exchange, the participating members expect to come before the body immediately following the discussion or at a later time.[9]

Even if a quorum of a board gathers, if they are not deliberating, the OMA is not triggered.

A WORD ABOUT ELECTRONIC COMMUNICATIONS

It is also important to remember that board members cannot circumvent the OMA by use of electronics.[10] It is a violation of the OMA to deliberate via email, text message or phone calls in an effort to make decisions outside of a properly called meeting. To do so would provide neither public notice or public access to the decision-making process. Therefore, while it is acceptable to communicate electronically about routine matters, e.g. checking schedules for an upcoming board meeting, or to receive information, e.g. emailing the board packet ahead of the next meeting, it is imperative that board members not REPLY ALL, poll votes ahead of a meeting or otherwise permit themselves to slip into electronic conversations amongst themselves that constitute deliberation.

Additionally, the question has arisen regarding electronic participation during a properly called meeting. For example, a board member will be traveling during the regular monthly meeting, but would like to call in by phone or Skype. This is permissible, but members must be physically present to participate, vote or count towards the quorum. The absent member can listen in by phone or Skype or some other means, but may not participate in the discussion in any way.[11]

NOTICE

One of the primary goals of the OMA is to provide public notice of a meeting before it is held. The minimum amount of notice required is determined by the type of meeting planned, but remember that the better practice will generally be to give as much notice as practicable.

HOW MUCH NOTICE MUST BE GIVEN?

MEETINGS REQUIRING SEVEN DAYS' NOTICE: ANNUAL MEETINGS

If a board is required by law to meet at a specified time and place, it must post notice of the meeting at least seven calendar days in advance of the date scheduled for the meeting.[12] For school boards, this applies to the annual meeting at which officers are elected. City boards are required to hold their annual meetings each May and county boards are required to have an annual organizational meeting each November. While these statutorily required meetings do not specify a designated location, it is recommended that boards provide the seven-day advance notice for this meeting.

MEETINGS REQUIRING 24-HOUR NOTICE: REGULAR AND SPECIAL CALLED MEETINGS AND BUDGET HEARINGS

The majority of a board's meetings will be regular or special called meetings, including the required budget hearings. Notice for these meetings must be given "as soon as practicable" after the meeting is called, but at least 24 full hours before the meeting is scheduled to begin.[13] This means that if a board decides on Monday that it needs to meet on Tuesday at noon to take action on new hires, the notice for that meeting must be posted no later than noon on Monday. Posting notice at 1:00 PM on Monday for Tuesday's meeting would be insufficient.

Of course, more than 24 hours' notice can and should be provided if possible. For example, if during a board meeting, the board sets the date for its next meeting, it seems practicable to post notice of the next meeting shortly after the meeting ends.

MEETINGS REQUIRING ONE-HOUR NOTICE: EMERGENCY MEETINGS

In two specific circumstances, the OMA allows the board to meet with only one hour's notice:

- When a board meets to accept the resignation of a public official or public employee; and
- When emergency circumstances require immediate board action to prevent physical injury to persons or property.[14]

If the board calls an emergency meeting, these are the only two types of items that can be considered. The board cannot consider other items for the sake of convenience. Additionally, the board cannot determine that a particular matter constitutes an emergency and use this provision unless that matter falls into one of the two specified reasons. For example, the superintendent is furiously making hiring decisions on Tuesday afternoon and students are set to arrive for the first day of school the following morning. Naturally, it is important to get teachers in the classroom to greet students on the first day of school and the superintendent and board consider this need an emergency. The OMA does not. In this scenario, the board would have to provide the full 24-hour notice before convening a meeting to consider these new hires.

WHAT MUST BE INCLUDED IN THE NOTICE?

Once it has been determined how much notice is necessary, it is important to determine what must be included in the notice. All notices must contain the following items:

- the name of the board;
- the date and time of the scheduled meeting;
- the location of the scheduled meeting;
- a general description of the nature and purpose of the meeting; and
- if available, a preliminary agenda must be posted with the notice.[15]

Here is an example of a proper meeting notice:

> The Bestville City Board of Education will hold a special-called meeting on June 30, 2017, at 5:00 PM. The meeting will be held in the Board Meeting Room of the Bestville City Board of Education Central Office, located at 100 Best Street, Bestville, Alabama. The purpose of the meeting is to address routine personnel and real estate matters.

The OMA does not require a preliminary agenda be posted, but doing so is the better practice. If a preliminary agenda is created, it must be posted. While additional items can be added to the agenda ultimately approved at the start of the meeting, care should be taken to apply the rule of reason when doing so.[16] If the board knows that it intends to terminate the CSFO at a special called meeting, but the notice says only that the meeting will be to address "routine personnel matters," it would potentially violate the OMA to make a surprise amendment to the agenda to include termination of the CSFO at the start of the meeting. Of course, if there is no such intent and the board is merely reacting to a last minute occurrence, it can amend the agenda as appropriate. The notice or preliminary agenda should give the public fair notice of what they can expect at the meeting.

HOW MUST THE NOTICE BE PROVIDED?

Notice of all meetings must be posted "on a bulletin board, at a place convenient to the public" in the board's Central Office.[17] The notice must also be sent directly to any member of the public or news media who registers with the board to receive notice of meetings. That notice may be sent by any reasonable method, including email, telephone, fax or U.S. mail. The board can set reasonable rules for registering for direct notice as well as payment of any associated cost for providing direct notice, such as postage. The board may also provide additional forms of notice at its discretion.[18]

CONDUCTING THE MEETING

Once the board has provided proper and timely notice, the meeting can be convened. This section discusses how the meeting is conducted pursuant to the OMA.

PARLIAMENTARY PROCEDURE

Alabama law requires boards to conduct meetings using rules of parliamentary procedure adopted by the board.[19] Most boards have adopted Robert's Rules of Order in their policy manuals and conduct meetings according to its dictates. The board must conduct the meetings according to its approved rules unless state law requires a different procedure. For example, the OMA defines procedures that must be used to go into executive session. These state law procedures must be followed rather than the board's adopted parliamentary procedure if the procedures conflict.

The purpose of adopting rules of parliamentary procedure is to provide order to the board meeting. However, board members should not use these rules as a method of stifling healthy discussion of matters of importance.

VOTING

Votes taken during a properly called meeting must be public. Secret votes or ballots are strictly forbidden. Votes may be taken by voice or written ballot, as long as each member's vote is identified publicly and recorded in the minutes on every board action, including motions to convene into executive session.[20] There is one limited, but rarely used exception to the requirement for public votes, which relates to quasi-judicial hearings. This will be discussed further in the Executive Sessions section of this booklet.

Additionally, state law requires that votes may only pass by approval of a majority of the whole board; not by approval of a majority of those present.[21] For example, a seven-member board convenes, but only four members are present at the meeting. A motion before the board receives three votes, but the fourth member votes against the motion. This motion fails as it was not approved by a majority of the whole board.

A WORD ABOUT WORK SESSIONS

Many boards use work sessions outside of the regular or special-called board meetings as an opportunity to meet together, review extensive data or documents and discuss matters of importance to the board in more detail than can be accomplished during the typical board meeting. Despite this, there is no provision for work sessions in the OMA. For this reason, if a quorum of the board is meeting, the requirements of the OMA apply as if this were a typical board meeting, including public notice and public access. The requirement to take minutes also applies, but because work sessions generally involve no official actions or votes, abbreviated minutes are appropriate. Documenting the time, date, location, members present and general topics discussed should be sufficient. The minutes for the work session should be approved at a subsequent regular board meeting along with the minutes of other board meetings.

SERIAL MEETINGS

In 2015, the legislature specifically prohibited serial meetings, a series of small gatherings of less than a quorum of members designed to circumvent the OMA. The following characteristics must be satisfied to constitute a serial meeting:

- involve a series of gatherings of two or more members of the board;
- each gathering must be attended by less than a quorum of the board members;
- when taken together, the total number of members attending the small gatherings constitute a quorum of the board;
- the public was not notified or allowed to attend the series of gatherings;

- the board members deliberated matters that they expected to come before the board at a later date;
- at least one of the gatherings was held within seven calendar days of a vote on any matter deliberating; and
- the series of gatherings were held for the purpose of circumventing the OMA.[22]

In order to constitute a serial meeting, each of these elements must be established. If one is not met, the gatherings do not constitute a serial meeting.

An illustration may be helpful to understand the prohibitions. The Best Place Board of Education has seven members. The board wants to discuss problems it is having with the CSFO, but does not want to do so during a board meeting. On July 1, Member 1 and Member 2 speak on the phone and decide they will each talk with the other members about the CSFO problem. On July 2, Member 1 meets Members 3 and 4 at a restaurant to discuss their concerns. On July 3, Member 2 has a conference call with Members 5 and 6 to discuss their concerns. Later that night, Members 1 and 2 meet Member 7 at a coffee shop and fill him in on the conversations they have had with the others. On July 7, a motion is made to terminate the CSFO and the board approves the action. This series of gatherings and conversations would constitute a serial meeting and would violate the OMA.

It should be noted that the plain language of the OMA would seem to permit the same series of gatherings as long as the board did not take action within the seven-day timespan. Nevertheless, boards should not use this loophole with the intent of circumventing the Act. Doing so only puts boards at risk of the law being amended further to place more restrictions on boards operating in good faith.

Intent is also an important element of the serial meetings issue. It is not illegal for board members to speak in small groups, especially when they are unaware that other board members may be doing the same. When there is no intent to circumvent the Act, the gatherings do not constitute a serial meeting.

Certain other small gatherings do not constitute a serial meeting. Those relevant to school boards are as follows:

- gatherings held to exchange background and education information on a specific issue as long as no deliberation occurs;
- gatherings held related to the search to fill a Statement of Economic Interests-eligible position until the search is narrowed to three or fewer applicants; and
- gatherings involving only a single member of the board.[23]

If small groups of board members wish to meet in a series of meetings under these limited circumstances, they may do so without providing public notice or public access.

RECORDS OF THE MEETING

MINUTES OF THE MEETING

The OMA requires boards to maintain accurate minutes for every meeting. Those minutes must reflect the following items:

- the date, time and place of the meeting;
- the members present; and
- the actions taken during the meeting.[24]

The minutes should reflect every recommendation made by the superintendent, the motions made by individual board members, including the name of the board member making any motions and seconds, the votes of each individual member and the outcome of the vote. The minutes are not designed to be a transcript of the meeting, but only to document the actions taken during the meeting.

It is also recommended that the notice provided for the meeting be attached to the minutes as well as any important documents, such as those in the board packet for the relevant meeting.

The minutes become a public document only after they are approved by the board, typically at the board's next regular meeting. Those minutes must be made available to the public "as soon as practicable".

RECORDING THE MEETING

The OMA specifically permits the meeting to be recorded by the public, including the news media. Anyone can record the meeting by audio, video or photography, or even livestream the meeting as long as doing so does not disrupt the meeting. Boards may adopt reasonable rules to regulate recording. The only portion of the meeting that is not subject to being recorded or photographed is executive session.[25]

EXECUTIVE SESSIONS

While the goal of the OMA is to require public bodies to conduct their business in public, the legislature recognizes that certain matters may need to be discussed in private. While a board is never required to go into executive session, there are only nine statutory reasons a board can go into executive session.[26] Even if a board feels it has a solid justification for wishing to discuss a subject in private, it may not do so if that reason does not fall into one of the nine reasons provided by the OMA.

MOST COMMONLY USED REASONS FOR CONVENING EXECUTIVE SESSION

Of the nine statutory reasons for entering executive session, only six typically apply to school boards. They are discussed below by their typical designations.

GOOD NAME AND CHARACTER

The so-called "good name and character" reason--likely the most used reason for entering executive session--is actually much broader than suggested by its name. Each of these topics is covered by this reason:[27]

- general reputation and character (of any person);
- physical condition (of any person);
- professional competence (of any person);
- mental health (of any person); and
- job performance (of employees not required to file a Statement of Economic Interests).

General reputation and character is defined by the OMA as "characteristics or actions of a person directly involving good or bad ethical conduct, moral turpitude, or suspected criminal activity, not including job performance."[28]

Professional competence is defined by the OMA as "the ability of an individual to practice a profession within the profession's acceptable standards of care and responsibility. A profession is a vocation requiring certification by the State of Alabama or passage of a state licensing examination that may only be granted to or taken by persons who have completed at least three years of college-level education and obtained at least a college-level degree."[29] Examples of professions that could trigger this reason include a certificated educator, a licensed attorney or a registered nurse.

Job performance is defined by the OMA as "the observed conduct or actions of a public employee or public official while on the job in furtherance of his or her assigned duties. Job performance includes whether a person is meeting, exceeding, or failing to meet job requirements or whether formal employment actions should be taken by the governmental body. Job performance does not include the general reputation and character of the person being discussed."[30]

It should be noted that the job performance of employees that are required to file a Statement of Economic Interests must always be discussed in public. This includes board members, the superintendent, the CSFO, supervisors, principals and administrators, no matter their salaries, and any other employee making over $75,000 per year. Therefore, while the job performance of a teacher making $45,000 can be discussed in executive session, the job performance of the superintendent or a school principal must be discussed in public.

While the OMA takes care to define these reasons, it is not clear how the definitions may interact. For example, the OMA allows a board to discuss the health problems of the superintendent in executive session, but it may not discuss his job performance in

executive session. It is unclear whether the impact of that health problem on the superintendent's job performance may also be discussed in executive session. Situations such as this underscore the need for the board to consult with its attorney before going into executive session.

Finally, the "good name and character" provision also provides that the salary, compensation and job benefits of all employees must be discussed in public.[31]

FORMAL HEARINGS

Another common reason boards enter executive session is to conduct a formal hearing to consider the discipline or dismissal of a student or employee, or to hear formal written complaints or charges brought against a student or employee. This reason may only be used if another state or federal law expressly permits the closed hearing.[32] For example, the Students First Act expressly permits employees to opt for an open or closed hearing if they are recommended for termination or suspension, but no such option is provided if they are recommended for a transfer. The Family Educational Rights and Privacy Act, or FERPA, is the federal law that protects student information from public disclosure. Therefore, student discipline hearings may be conducted in executive session.

It is important to remember that even if the board is conducting a formal hearing, there must be another statute that provides for the proceeding to be closed or the board cannot use this as a basis for going into executive session. For example, at first blush, a hearing to consider a grievance filed against the superintendent would seem to fall neatly into the category of complaints filed against an employee, but there is no separate law which permits grievance hearings to be held in private. Therefore, this reason cannot be used to enter executive session or otherwise close the grievance hearing.

It is also important to remember that hearings that properly fall under this reason can be conducted in two ways at the board's discretion:

- By convening a public meeting and then entering executive session to conduct the hearing (if the employee wishes the hearing to be private); or
- By simply convening the hearing without convening a public meeting first.

Remember, for employee hearings, whether an open meeting is convened first is the board's option. Whether the hearing itself is public or private is the employee's option.

DELIBERATION FOLLOWING QUASI-JUDICIAL HEARINGS

A closely related reason for entering executive session is to deliberate and discuss evidence received during a quasi-judicial hearing. While the above-referenced "formal hearings" reason permits the board to enter executive session to conduct the hearing itself, it is important to remember that not all quasi-judicial hearings can be conducted in executive session.[33] As noted above, transfer hearings must be conducted in public because the Students First Act does not permit them to be closed. Nevertheless, when the

board hears a transfer matter, it is still sitting in a quasi-judicial capacity. The same is true for other hearings, like termination hearings, that the employee has asked to be heard in public. In either circumstance, the board has the option to convene in executive session to deliberate and discuss the evidence it has received once the hearing is concluded.

If this provision is used to enter executive session, it is important to remember that the board must return to open session to vote on the action it will take. The only caveat to that requirement is that the board may vote in executive session if it issues a written decision which can be appealed to a hearing officer, court or other body that can conduct a public hearing or appeal. Few, if any boards, have ever used this limited exception to vote in private.

LITIGATION

Another common reason for entering executive session is to discuss pending or potential litigation with the board attorney or meet with a mediator.[34] Pending or potential litigation refers to litigation already filed in the courts or litigation that has not been filed, but is likely imminent if the board takes or does not take a particular action.

Before voting to enter executive session, the board must receive an oral or written declaration from an attorney licensed by the State of Alabama that this exception applies to the planned discussion. The declaration must be reflected in the minutes.[35] As noted, this reason is based upon the need for the board to receive legal advice from their attorney. Therefore, the attorney needs to be present at the meeting and enter executive session with the board. The board cannot use this exception to discuss pending or potential litigation amongst themselves without their attorney. A sample certification, whether provided orally or in writing, can state as follows:

> My name is James Litigator and I am an attorney licensed to practice law in the State of Alabama. I certify that the executive session proposed by the Bestville Board of Education involves pending litigation and the purpose of the session is to discuss the litigation with me. Therefore, the proposed session is permitted by the Open Meetings Act.

While the board can enter executive session to receive legal advice, it must return to open session to deliberate the action it will take or vote on any actions in public. For example, the board enters executive session to receive legal advice regarding whether it should settle an EEOC charge filed against it by an employee. The attorney explains that if the board does not agree to settle the EEOC charge for a specified amount of money, a federal lawsuit will likely be filed against the board. The board can receive this legal advice during executive session, but must return to public session to deliberate the matter and/or vote on any settlement.

It should also be noted that settlements approved by the board cannot be confidential. While it may not be necessary to publicly detail the provisions of an approved settlement agreement verbally during the meeting, the underlying settlement agreement is a public document. This means the name of the settling parties, the amounts received and any other provisions of the settlement agreement are public.

SECURITY

Another reason a board can enter executive session is to "to discuss security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or other infrastructures…the public disclosures of which could reasonably be expected to be detrimental to public safety or welfare."[36] Examples of matters that can be discussed under this provision include consideration of adopting new school safety measures, details of safety protocols and other discussions regarding keeping stakeholders safe without disclosing protections to the public.

REAL ESTATE

Another commonly used reason to enter executive session is for the board to discuss what consideration (usually, money) it is willing to offer or accept for the purchase, sale, exchange, lease or market value of real property.[37] Nevertheless, there are two circumstances that would prohibit entering executive session for this reason:

- If a condemnation action has begun to acquire the real property; or
- If a board member with a personal interest in the real property intends to participate in the executive session.

In light of this prohibition, it may be prudent to have board members declare that each has no interest in the real property, even if the identity of the real property owner is not disclosed to the public. These declarations should, of course, be recorded in the minutes.

In addition to board members and the superintendent, the only other persons permitted to enter executive session for this reason are those representing the interests of the board, such as a real estate agent or the board attorney. Additionally, before the board can enter into a contract to purchase, exchange or lease real property, the "material terms" of the contract must be disclosed in a public meeting.

LEAST COMMONLY USED REASONS FOR CONVENING EXECUTIVE SESSION

In addition to these reasons, there are several other reasons that rarely apply to school boards.

CRIMINAL INVESTIGATIONS

This exception covers discussions that would disclose an undercover law enforcement agent or informant or that involve the criminal investigation of a person (excluding public officials) in which allegations of specific misconduct have been made. This exception also allows executive sessions to discuss whether to file criminal charges. Before a board can discuss criminal investigations in executive session, the attorney general, assistant attorney general, district attorney, assistant district attorney or a law enforcement officer with the power to make arrests must tell the board, orally or in writing, that public discussion of the matter "would imperil effective law enforcement." This statement must be entered into the minutes of the meeting.[38]

TRADE NEGOTIATIONS

The board may meet in executive session to discuss negotiations involving matters of trade or commerce where it is in competition with private industry or entities. Before the board votes to go into executive session, a person involved in a recruitment or retention effort or someone with personal knowledge that the discussion will involve matters protected by the Alabama Trade Secret Act must declare, orally or in writing, that public discussion of the matter would be detrimental to the board's position or negotiations or the "location, retention, expansion or upgrading of a public employee or business entity" in the area served by the board or would disclose information protected by the Alabama Trade Secrets Act. The declaration must be included in the board's minutes.[39]

COLLECTIVE GROUP NEGOTIATIONS

This exception covers discussion of strategy to prepare for negotiations between the board and a group of its employees. Before the board goes into executive session, its representative in the negotiations must declare, orally or in writing, that public discussions of this matter would be detrimental to the board's negotiating position. The declaration must be included in the minutes of the meeting.[40]

PROCEDURE FOR CONVENING EXECUTIVE SESSION

If the board has a legally permissible reason or reasons for going into executive session, it must precisely follow this procedure:

- have a quorum present;
- convene a properly noticed public meeting;
- consider a motion to go into executive session for one or more of the nine reasons authorized by the OMA;
- if required by the OMA, receive a declaration that the proposed executive session is in compliance with the OMA;
- pass the motion by majority vote; and
- announce whether it expects to reconvene in public following the executive session, and if so, approximately what time.[41]

The statement of reconvention is helpful so that members of the public can determine whether they wish to remain until the end of executive session or not. These steps are mandatory and minutes must reflect that all steps were taken.

PRACTICAL POINTERS FOR EXECUTIVE SESSIONS

Merely being aware of the executive session provisions may not be enough to keep the board in strict compliance with the OMA. In the years since the OMA has been in place in its modern form, we have developed several practical pointers for remaining in compliance with the law.

STATUTORY REASONS VS. FACTUAL REASONS

One common area of confusion surrounding executive sessions is what must be disclosed when providing the public the reason(s) for the executive session. The OMA requires the board announce the statutory reason, not the factual reason. Here are some examples of proper and improper reasons to provide for the proposed executive session:

DO NOT GIVE THE FACTUAL REASON	GIVE THE STATUTORY REASON
To discuss whether Principal Barry has a drinking problem	To discuss good name and character
To discuss settlement of Barry v. Best Place Board of Education lawsuit	To discuss pending litigation
To discuss whether to place the Best Place Elementary School property on the market	To discuss real estate

LIMITATION ON DISCUSSING OTHER TOPICS

Once a board has properly entered executive session, one of the most important points to remember is that the board can only discuss matters related to the reason(s) approved during the public portion of the meeting. It is the nature of human conversation that discussions can veer into other related areas, but boards must be vigilant against this during executive session. If a board wishes to discuss a matter that is outside the scope of the reason given during the public meeting, it must adjourn the executive session to do so. If the reason is appropriate for executive session, but is not covered by the reason initially provided, it must reconvene in open session and follow all of the steps to reconvene into executive session using the proper basis. For example, the board properly enters executive session to discuss the good name and character of a principal. During the course of the discussion, a concern is raised about how the principal treated a teacher who filed an EEOC charge and how his actions may impact that litigation. If the board wishes to discuss the pending EEOC charge, it must adjourn the "good name and character" executive session, reconvene the open meeting and begin the process to convene the "pending litigation" executive session.

In the event a board member becomes concerned that the discussion has veered beyond the scope of the reason provided, he should alert his fellow board members that they are off-topic and should end the discussion. If the other board members do not comply with that request, the concerned board member has an obligation to leave the executive session. This would be his only legal protection should the board get sued for violating the OMA.

PARTICIPANTS IN EXECUTIVE SESSION

As mentioned, the purpose of executive session is to give board members the opportunity to discuss sensitive matters that should be kept confidential from the public, and even board employees under certain circumstances. Therefore, reason dictates that there should be restrictions placed on who is permitted to enter executive session.

The typical executive session should be attended by all members of the board. Because the decision to enter executive session is a board decision, even a board member who did not vote to enter executive session has the right (but not the obligation) to attend with the remainder of the board. On rare occasions, a board may wish to enter executive session, but exclude a particular board member, either because the discussion involves the excluded board member or because that board member has lost the confidence of the remainder of the board. Again, because the decision to enter executive session is a board decision, no member can be forcibly excluded, but he can volunteer to exclude himself if he so chooses.[42]

Generally speaking, it will also be appropriate for the superintendent and board attorney to be present, unless there is some exceptional reason the board wishes to have a discussion outside of their hearing. For instance, the board is concerned that the superintendent may be engaged in an inappropriate relationship with a subordinate, so they enter executive session to discuss good name and character. Under those unique circumstances, it would be understandable that the board may want to have private discussions without the superintendent until they determine what course of action to take. While it is customary and appropriate to include the superintendent and board attorney in executive sessions, the board can properly dictate who is invited in.

The question is often raised as to whether the board secretary should be included in executive session. Because no minutes are maintained regarding what is discussed in executive session, the secretary should not be included unless there is some extraordinary reason for doing so.

On occasion, there may be a need to have other parties, such as an administrator or even a non-employee enter executive session with the board. This could be a school principal, the CSFO, HR Director or even a local public official. The board may need information from this person or may have questions that are not appropriate for the open meeting. This is permissible, but the board should use caution in limiting outside participation in its executive sessions. The more people permitted to enter, the less confidential the session becomes.[43]

CONFIDENTIALITY

Maintaining the confidentiality of executive session discussions is a common concern among board members. It is disheartening and harmful to hold an executive session only to learn the next day that the discussion has been leaked to others overnight. As mentioned above, the decision to enter executive session is a board decision; not a decision of individual members. Therefore, it is imperative that individual board members not violate the will of the board that the discussion should be confidential of the session, even if they disagree with the other board members.

While the clear intent of the law requires confidentiality of discussions in executive session, it must be noted that there is no penalty for disclosing the contents under the law. Also, because executive session does not rise to the level of a legal privilege, those discussions could be discoverable in a court of law. For example, the board enters executive session to discuss a suspected inappropriate relationship between a principal and teacher. The principal is later terminated and sues the board. If the board members are later deposed or required to testify in court regarding their decision to terminate the principal, they could be forced to testify regarding what was said in executive session.

The only exception to this statement relates to discussions had with the board's attorney for litigation. The attorney/client privilege is a legally recognized privilege and no court can force a board member to testify regarding discussions had with the board's attorney. This is yet another reason to ensure non-client parties, e.g. the board secretary, are not present when the board meets privately with its attorney.

IMMUNITY

The OMA grants board members and employees absolute privilege and immunity from suit for any statement made during a meeting that relates to an action pending before the board, so long as the meeting is conducted in compliance with the OMA.[44] Consequently, a board should document in its minutes the steps it takes to ensure compliance with the OMA's requirements for that meeting.

It must be noted that this immunity covers only state law causes of action, but would not protect a board member from a federal cause of action.

ENFORCEMENT
THE COMPLAINT AND RESPONSE

Board members suspected of violating the OMA may be sued by any of these parties:

- an Alabama citizen impacted by the violation more than the public at large;
- any media organization;

- the Attorney General; or
- the district attorney for the circuit where the board is located.[45]

No board member can sue the other members of his own board for a violation of the OMA.

The lawsuit must be filed within 60 days of the date the plaintiff knew or should have known of the alleged violation, but in any event, must be brought within two years of the alleged violation. The lawsuit must be filed in the county where the board is located. The complaint is not filed against the board as a whole. It must be filed against each board member who was in attendance at the subject meeting where the violation occurred in their official capacities. The complaint must be signed and sworn and must specifically state one or more of the following grounds justifying the suit:

- that the board members violated the OMA's notice requirements;
- that the board members violated another provision of the OMA during a meeting, except for executive session;
- that the board members entered executive session and discussed matters outside those stated during the motion to enter executive session; or
- that the board members intentionally violated some other provision of the OMA.[46]

If the lawsuit is filed by a citizen, he must also state in the complaint how he is or will be impacted more than the public at large.[47]

Once the lawsuit is served, the board members must respond to the complaint within seven business days of the date they receive the complaint. The court must hold a preliminary hearing within 10 business days of the defendants' response(s) being filed, or if no responses are filed, within 17 business days after the complaint is filed. The court can go beyond these deadlines, if necessary, but must hold this hearing as expediently as possible.[48]

THE PRELIMINARY HEARING

During the preliminary hearing, the plaintiff has the burden to establish each of these elements:

- that a board meeting occurred;
- that each board member named in the lawsuit attended the meeting; and
- substantial evidence that the board members violated the OMA with respect to notice, executive session, other non-executive session provisions of the OMA or intentional violation of the OMA.[49]

If the plaintiff meets the initial burden of proof, the court will set a discovery schedule and a hearing on the merits. The court also has the authority to enter a

temporary restraining order or injunction, if properly requested and supported by the plaintiff.

If the plaintiff fails to meet his initial burden, the court may dismiss the lawsuit immediately.[50]

THE HEARING ON THE MERITS

The court must hold a final hearing on the merits within 60 days of the preliminary hearing.[51] If the plaintiff establishes that the board appears to have held an improper executive session at the preliminary hearing, the board members must establish that the discussions held during the subject session were limited to the reason(s) provided in the motion to enter the session at the hearing on the merits. The court must hold an *in camera* proceeding or use some other method to protect the confidentiality of the subject matter discussed during executive session.[52] This may involve closing the courtroom to the public while taking testimony or some other means. If the court finds that the executive session was properly conducted, no party or attorney present during the closed hearing can disclose the confidential information received in any other legal proceeding.

PENALTIES

The final order on the merits of the lawsuit must be entered within 60 days of the preliminary hearing unless the parties agree to extend that period.[53] If a violation is found, the court must specifically state which claims the defendants violated in its final order.[54]

For each meeting held in violation of the OMA, the court is required to enter a civil penalty of $1.00 to $1,000.00, or half of each defendant's monthly salary on the board, whichever is less.[55] The penalty must be paid to the plaintiff. While the board can pay the legal fees of members sued pursuant to the OMA, it cannot pay the penalties nor can it reimburse board members for penalties assessed. If the violation relates to an executive session, monetary penalties can be imposed only against board members who voted to go into executive session and who remained in it while the board discussed matters beyond the scope of the motion to convene the executive session.

In certain circumstances, the court may invalidate action taken in a meeting that violates the OMA.[56] For that to happen, the complaint must be filed within 21 calendar days after public discovery of the illegal act, and the act must not be the result of mistake, inadvertence or excusable neglect. However, the action cannot be invalidated if such an order would unduly prejudice third parties who have relied in good faith on the act and changed their position.

PUBLIC RECORDS

Alabama’s public records law provides in pertinent part as follows:

> Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute.[57]

State law defines "public records" as:

> All written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business.[58]

WHAT IS A PUBLIC WRITING?

The sweeping "any" and "all" language used in these statutes and the increasing demands of the media for access to seemingly private documents raise legitimate questions regarding the types of records a board may shield from public scrutiny. The leading public records case in Alabama is *Stone v. Consolidated Publishing Co.*[59] The Alabama Supreme Court, taking both of the quoted statutes into account, defined a "public writing" as a record "reasonably necessary to record the required business and activities of a public office so that the status and condition of such business and activities can be known." Nevertheless, *Stone* also notes that the public's right is not unlimited as will be discussed in the next section.

The Alabama appellate courts have said financial records[60], résumés and employment applications[61], reports from attorneys shared with the others[62], and audit reports[63], may be public writings within the meaning of the statute. Additionally, personnel files, records of purchases, financial records, minutes of meetings and employee discipline records generally are public writings. According to the courts, each of these types of records may be reasonably necessary to record a public entity's required business and activities. All records, however, do not appear to be covered. For example, memoranda of conversations or notes of board members or the superintendent, as well as most routine correspondence, are probably excluded. They are simply not reasonably necessary to record the board's required business.

A WORD ABOUT DISCOVERY

It is important to note that even if a document is not a public writing, it may still be subject to disclosure through civil discovery. If a lawsuit is filed and the document at issue is requested through discovery or a subpoena, whether or not the document is public under our law is irrelevant.

COMMON AREAS OF CONCERN

SALARY RECORDS AND CONTRACTS

One of the most common areas of concern regarding public disclosure is salary and compensation records. Salary records are always public. This is true even though employees may be uncomfortable having their salaries accessible by members of the public.[64] The same is true for employment contracts or other contracts entered into by the board.[65]

EMPLOYEE EVALUATIONS

Similarly, employee evaluations are subject to public disclosure. Since evaluations exclusively cover areas of professional competence, such records are public documents and are generally subject to disclosure.[66]

EMPLOYEE DISCIPLINE

One common difficulty school officials will encounter in this area is the release of information related to termination or discipline of a school employee. Usually, this information is considered a public record subject to disclosure, but with important limitations related to the timing of the disclosure.

Whether this information is subject to immediate public disclosure while the employment action is pending will depend on the grounds for board action and surrounding circumstances. Generally speaking, the superintendent's recommendation is considered his "thought process" until the board has had an opportunity to act upon the recommendation. For example, the superintendent recommends termination of a high-ranking administrator. The recommendation letter contains allegations of interest to the public, so the media requests the letter be released. The letter does not become public at least until such time as the board has acted on the superintendent's recommendation, which usually occurs after the termination hearing.

Additionally, the due process concept of a "liberty interest" might, in certain circumstances, make superintendents, board members, and other board employees targets for lawsuits by employees who allege injury as a result of making public false or incorrect information of a stigmatizing nature.[67] Stigmatizing statements are those likely to tarnish the employee's good name, reputation, honor, or integrity, or those that seriously damage the employee's standing and associations in the community and would likely foreclose or limit future employment. Under current case law, a statement need not involve a matter of "moral turpitude" in order to be stigmatizing.[68] Nonetheless, lack of professional competence, reputation alone, or being labeled "hard to get along with" are insufficient to implicate a liberty interest under current case law.

The Alabama Supreme Court has ruled that records containing stigmatizing information are sensitive personnel records and can be withheld until the employee has had a meaningful opportunity to clear his or her name. Once that has occurred, the court held the information is no longer a sensitive personnel record and is subject to disclosure. Alabama courts have yet to define what constitutes a "meaningful opportunity".[69]

At a minimum, under state education employment laws it appears no disclosure could occur until after the employee's conference or hearing with the board and board action, if the grounds are stigmatizing. However, case law could be construed as prohibiting disclosure until the hearing officer rules and the time to file an appeal has expired or an appellate court has ruled. Withholding this information may provoke a challenge from news media who disagree with this interpretation of the law. In such circumstances, the board should discuss with its lawyer whether this information may be withheld from public disclosure until the employee has completely exhausted the opportunity to respond to the stigmatizing information, including the completion of any appeal.

BOARD PACKETS AND PERSONNEL ACTION REPORTS

Questions have also been raised regarding the board packets board members receive in preparation for board meetings. These are also generally considered public documents, but again, not until the board acts on them. A possible exception to this would be information which could be deemed sensitive or confidential, e.g., security information, confidential legal documents, etc.

One other document tends to receive a lot of attention towards the end of the year. The Personnel Action Report lists superintendent recommendations for personnel is routinely requested at the end of the year when nonrenewals are processed. While it remains true that the report becomes public once the board votes on it, it would be reasonable to ask the media to delay publication of the list until the superintendent has had an opportunity to notify the affected employees.

COMPUTER RECORDS AND EMAILS

Records maintained electronically that are necessary to conduct board business are just as subject to public records requests as records maintained on paper. Therefore, information that is maintained in a computerized database, but not reduced to hard copy, is still considered a public record. [70] Likewise, substantive correspondence transmitted electronically via email is likely a public record as well. Routine email communications that are not necessary to conduct board business are likely not subject to public disclosure.

PRIVATE INFORMATION ON OTHERWISE PUBLIC DOCUMENTS

If a Social Security number is included on a document that would otherwise be considered a public writing, the Social Security number must be redacted before any document or copy is released to the public. The public records law does not specifically require redacting information, but it seems to be within the "rule of reason" a court would use to determine whether the record should be disclosed. In other words, what would otherwise be a disclosable document with the information redacted should still be considered a disclosable document if the information can be redacted with minimal administrative burden. Consultation with your school board attorney is advised.

WHAT ARE THE EXCEPTIONS?

Public writings are subject to disclosure unless the document in question falls within one of the four exceptions listed in *Stone*. The four types of public writings which need not be disclosed are:

- Recorded information received by a public officer in confidence;
- Sensitive personnel records;
- Pending criminal investigations; and
- Records the disclosure of which would be detrimental to the public's best interest.

In the case of *Chambers v. The Birmingham News Company*, the Alabama Supreme Court told public officials:

> The exceptions set forth in *Stone* must be strictly construed and must be applied only in those cases where it is readily apparent the disclosure will result in undue harm or embarrassment to an individual, or where the public interest will clearly be adversely affected, when weighed against the public policy considerations suggesting disclosure.

Moreover, the court in *Chambers* declared a presumption of required disclosure and placed the burden of proving that the writings or records sought fall within one of the *Stone* exceptions and warrant non-disclosure on the government---here, the board. This is, to say the least, a heavy burden.

There are circumstances, however, when the exceptions allow a board to withhold a public writing from the public. Confidential reports and correspondence from the board attorney are the most obvious examples. In *The Advertiser Co. v. Auburn University*, the trial court held that an attorney's report was a public writing. Of course, attorney reports are normally received in confidence. In that case, Auburn University had waived the attorney-client privilege by furnishing copies of the report to others. The court appears to have said that confidential communications to and from attorneys, if not disclosed to third parties, fall within an exception to the statute.

Generally, information in personnel files such as employee background, date of hire, discipline records, promotions and salary is subject to disclosure. However, there may be information in such files which may be withheld. In *Blankenship v. City of Hoover*, the Alabama Supreme Court held that, while the rate of pay of individual employees must be provided, federal W-2 income tax forms may be withheld because such forms contain sensitive information such as whether the employee has elected to participate in income-deferral plans, insurance plans, or similar benefits which are more personal than public. Other examples of "personal" records contained in personnel files which probably can be withheld include health records and records regarding religious preferences or practices.

Here is a handy chart which may help you determine what records are typically considered public or private:

PUBLIC	PRIVATE
Payroll & Salary records[71]	Student records[72]
Employment Applications and résumés[73]	Records which could result in undue harm or embarrassment to an individual
Sex, race and dates of birth of employees[74]	Law enforcement records
Employee lists, e.g. names and titles[75]	Employee addresses and phone numbers[76]
Current assignment of employees[77]	Marital status of employees[78]
Rank and type of teaching certificate/endorsement[79]	Banking information of employees
Employee's employment experience[80]	Individual notes of board members made in preparation of evaluation[81]
Employee's date of hire and tenure date[82]	Details of work performed by attorneys
Disciplinary actions and reprimands	Employee medical history[83]
Transcripts of disciplinary hearings[84]	Confidential employment recommendations[85]
Superintendent recommendations once the board has taken action	Drug and alcohol test results[86]
Computer records, e.g. emails, information in databases, etc.	Social security numbers[87]
Standardized test scores by school or district	Private email addresses[88]
Employee evaluations	Doctor's excuses[89]
Bid documents[90]	
Contracts[91]	
Attorney invoices (identity and amount only)	
Internal audits[92]	
Employee timesheets[93]	
Personnel files of current and former employees[94]	
Grievances	
Settlement documents	

COMMONLY ASKED QUESTIONS

WHO CAN SUBMIT A REQUEST FOR RECORDS?

The law states that "any citizen" can request access to public documents. While the term "citizen" is undefined, a 2013 U.S. Supreme Court case held the Virginia public records law applied to citizens of that state only. We can apply the same holding to

Alabama. Of course, "citizen" is not limited to individuals. A "citizen" can be any Alabama resident, including parents, employees and public officials. Private businesses and media outlets are also considered "citizens" that can make requests under this law.[95]

CAN THE BOARD REQUIRE THE REQUESTING PARTY TO FILL OUT A FORM TO REQUEST RECORDS?

Yes. Our courts have held that an entity's policy of requiring persons fill out a form to request records was permissible as long as it is not used to dissuade or prevent access to public documents.[96]

CAN THE BOARD ASK THE PURPOSE OF THE REQUEST?

Yes. Requests made for purely speculative reasons or idle curiosity can be declined, but it should be noted that media interest is not considered "idle curiosity".

HOW QUICKLY MUST REQUESTS BE PROVIDED?

The law does not dictate the timeframe a request has to be processed. The law merely requires that records be made available during normal business hours and within a reasonable period of time that limits disruption of work.[97] Employees are under no obligation to stop their work to immediately comply with a request, but a rule of reason should be read into the law. An illustration is helpful. If a reporter comes to Central Office and demands a copy of the personnel file of every teacher in the district, this would obviously take an extensive amount of time to compile. It could reasonably take weeks to fulfill such a request. But if the same reporter requests a copy of the board minutes approved at last night's board meeting and they are sitting on the secretary's desk, it would be reasonable to comply with that request, if not immediately, at least on the same day.

CAN THE BOARD CHARGE FOR INSPECTION OR COPIES OF RECORDS?

Potentially. The general rule is that the records should be provided for inspection for free unless extensive staff time is required to comply with the request. Likewise, copies should be provided for free unless budgetary constraints justify a nominal fee, e.g. 10-25 cents per copy. Fees should not be used to restrict or discourage access to the records. Additionally, it is not appropriate to charge a legal fee to compensate an attorney to review a request since the law presumes requests to be permissible.[98]

In recent years, issues have arisen regarding whether the requester can inspect a document and then photograph it with his cell phone. This is permissible and does not justify a charge for copying since no expense is incurred by the Board.[99]

MUST THE BOARD PROVIDE RECORDS IN THE FORMAT REQUESTED?

No. The board is under no obligation to provide the information in any particular format, even if so requested. The information can be provided in paper form or

electronically. The custodian of records has the authority to determine the manner records shall be provided to protect the integrity of the records, minimize expense and limit disruption of work.[100]

CAN THE BOARD DECLINE A REQUEST IF IT IS MADE FOR PROFIT OR PERSONAL GAIN?

No. Our courts have held that our public records laws do not distinguish between requests made for the public good and those made for personal gain.[101]

DOES THE BOARD HAVE TO ANSWER WRITTEN QUESTIONS SUBMITTED?

No. It is important to remember that the laws at issue relate to records. While board personnel can answer questions, they are under no obligation to do so under the law. They are merely required to provide documents.

ENDNOTES

[1] *Ala. Code* §36-25A-1(a).
[2] *Ala. Code* §36-25A-2(4).
[3] *Ala. Code* §36-25A-3(a).
[4] *Ala. Code* §36-25A-2(6)(b).
[5] *Ala. Code* §36-25A-3(e).
[6] *Ala. Code* §36-25A-2(6)(a).
[7] *Ala. Code* §36-25A-2(12).
[8] *Ala. Code* §36-25A-2(12).
[9] *Ala. Code* §36-25A-2(1).
[10] *Ala. Code* §36-25A-1(a).
[11] Ala. A.G. Op. 2006-071, 2010-070.
[12] *Ala. Code* §36-25A-3(a).
[13] *Ala. Code* §36-25A-3(b).
[14] *Ala. Code* §36-25A-3(b).
[15] *Ala. Code* §36-25A-3(c).
[16] *Ala. Code* §36-25A-3(c).
[17] *Ala. Code* §36-25A-3(a)(4).
[18] *Ala. Code* §36-25A-3(a)(6).
[19] *Ala. Code* §36-25A-5(a).
[20] *Ala. Code* §36-25A-5(b).
[21] *Ala. Code* §§16-8-4, 16-11-5.
[22] *Ala. Code* §36-25A-2(13)(a).
[23] *Ala. Code* §36-25A-2(13)(b).
[24] *Ala. Code* §36-25A-4.
[25] *Ala. Code* §36-25A-6.
[26] *Ala. Code* §36-25A-7.
[27] *Ala. Code* §36-25A-7(a)(1).
[28] *Ala. Code* §36-25A-2(3).
[29] *Ala. Code* §36-25A-2(8).
[30] *Ala. Code* §36-25A-2(5).
[31] *Ala. Code* §36-25A-7(a)(1).
[32] *Ala. Code* §36-25A-7(a)(2).
[33] *Ala. Code* §36-25A-7(9).
[34] *Ala. Code* §36-25A-7(a)(3).
[35] *Ala. Code* §36-25A-7(a)(3).
[36] *Ala. Code* §36-25A-7(a)(4).
[37] *Ala. Code* §36-25A-7(a)(6).
[38] *Ala. Code* §36-25A-7(a)(5).
[39] *Ala. Code* §36-25A-7(a)(7).
[40] *Ala. Code* §36-25A-7(a)(8).
[41] *Ala. Code* §36-25A-7(b).

[42] Ala. A.G. Op. 2010-021.
[43] Ala. A.G. Op. 2006-088; *State Bd. Of Heating and Air Conditioning Contractors v. Wilson*, 726 So.2d 679 (Ala.Civ.App. 1998).
[44] *Ala. Code* §36-25A-8.
[45] *Ala. Code* §36-25A-9(a).
[46] *Ala. Code* §36-25A-9(a).
[47] *Ala. Code* §36-25A-9(a).
[48] *Ala. Code* §36-25A-9(a).
[49] *Ala. Code* §36-25A-9(b).
[50] *Ala. Code* §36-25A-9(c).
[51] *Ala. Code* §36-25A-9(c).
[52] *Ala. Code* §36-25A-9(d).
[53] *Ala. Code* §36-25A-9(e).
[54] *Ala. Code* §36-25A-9(g).
[55] *Ala. Code* §36-25A-9(g).
[56] *Ala. Code* §36-25A-9(f).
[57] *Ala. Code* §36-12-40.
[58] *Ala. Code* §41-13-1.
[59] *Stone v. Consolidated Publishing Co.,* 404 So.2d 678 (Ala. 1981).
[60] *Stone v. Consolidated Publishing Co.,* 404 So.2d 678 (Ala. 1981).
[61] *Chambers v. The Birmingham News Company,* 552 So.2d 854 (Ala. 1989).
[62] *The Advertiser Company v. Auburn University, 579 So.2d 645* (Ala. Civ. App. 1991).
[63] *Bedingfield v. The Birmingham News Company,* 595 So.2d 1379 (Ala. 1992).
[64] Ala. A.G. Op. 2015-037.
[65] Ala. A.G. Op. 2007-067; *Chambers v. The Birmingham News Company,* 552 So.2d 854 (Ala. 1989).
[66] Ala. A.G. Op. 1999-258.
[67] *Water Works and Sewer Board of the City of Talladega v. Consolidated Publishing, Inc.*, 892 So.2d 859 (Ala. 2004).
[68] *Clemons v. Dougherty County*, 684 F.2d 1365 (11th Cir. 1982).
[69] *Water Works and Sewer Board of City of Talladega v. Consolidated Pub., Inc.*, 892 So.2d 859 (Ala. 2004).
[70] Ala. A.G. Op. 1998-157.
[71] Ala. A.G. Op. 1996-003.
[72] *Kendrick v. Advertiser Co.*, 2016 WL 3474552 (Ala.).
[73] Ala. A.G. Op. 1996-105;
[74] Ala. A.G. Op. 1996-003.
[75] Ala. A.G. Op. 1988-079; Ala. A.G. Op. 2015-037.
[76] Ala. A.G. Op. 2008-073.
[77] Ala. A.G. Op. 1996-003.
[78] Ala. A.G. Op. 1996-003.
[79] Ala. A.G. Op. 1996-003.
[80] Ala. A.G. Op. 1996-003.
[81] Ala. A.G. Op. 1996-126.
[82] Ala. A.G. Op. 1996-003.

[83] Ala. A.G. Op. 1996-003.
[84] Ala. A.G. Op. 1991-328.
[85] Ala. A.G. Op. 1996-003.
[86] Ala. A.G. Op. 1996-003.
[87] Ala. A.G. Op. 2007-067.
[88] Ala. A.G. Op. 2013-046.
[89] Ala. A.G. Op. 2008-073.
[90] Ala. A.G. Op. 1995-010.
[91] Ala. A.G. Op. 1997-254.
[92] *Bedingfield v. Birmingham News Co.*, 595 So.2d 1379 (Ala. 1992).
[93] Ala. A.G. Op. 2008-073.
[94] Ala. A.G. Op. 2001-269.
[95] Ala. A.G. Op. 2001-107 (overruled by *McBurney v Young*, 133. S.Ct. 1709 (U.S. 2013)).
[96] *Blakenship v. City of Hoover*, 590 So.2d 245 (Ala. 1991).
[97] Ala. A.G. Op. 2008-073.
[98] Ala. A.G. Op. 2008-073.
[99] Ala. A.G. Op. 2009-076.
[100] Ala. A.G. Op. 2007-001.
[101] *Walsh v. Barnes*, 541 So.2d 33 (Ala.Civ.App. 1989).