

# The meeting's agenda is 'tentative', its minutes are not

How many of you have come across an agenda for a public body that is published in advance (in accord with the required 24-hour notice requirement), but when you get to the meeting, you find a large amount of business being discussed that is not on the agenda?

I'd venture every hand in Readerville is up.

Lawyers for public bodies respond to me, "But, the statute (610.020) says we only have to publish a 'tentative' agenda. We need some flexibility to add to the agenda at the last minute because we've realized we've forgotten something important. What if we are in a bind and it needs done before our next meeting date?"

We've heard all those excuses. They all mean that someone in the public body hasn't thought carefully about what needs to go on the agenda. Or they can mean that someone actually has thought about what needs to go on the agenda, thought about the crowd of protesters that agenda item would likely draw, and decided maybe they should just leave this issue off the table until the last minute and then add it when nobody is there to complain.

Okay, so that's not the way public bodies operate. At least most of them. But if that's true, then there shouldn't be a complaint about what I'm suggesting in regard to a lawsuit pending in appellate court here in Kansas City.

I'll spare you all of the details, but a citizens group has filed a Sunshine lawsuit against a fire protection district over a number of issues - one of them is that the board held a meeting with an agenda saying it was a closed meeting, and then ended up talking about a number of open meeting issues while there. Yes, I know the phrase is "tentative agenda". But if a discussion wanders into open meeting issues, rather than properly closed issues, someone on the board should point that out.

In this case, however, Missouri Press

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Association has authorized me to do an amicus brief advocating for a minor change that I think would make boards think twice in such situations. If a board is holding a meeting, any kind, where an agenda change is needed, it needs to add to its minutes the "good cause" for changing the published agenda.

Kind of a "stop and think twice" moment. I've always suggested in speeches that this step makes sure that there really is a "good cause" why this discussion couldn't be delayed to give the proper 24-hour notice that would allow this discussion to not need the post-script in the minutes that you'll have to rely on before a judge if you get sued. Will a judge really believe this topic was so urgent that waiting another 24 hours to discuss it was impossible?

We'll see what happens in the

appellate court. In the meantime, this poor public body is finding itself in a situation that when it rains, it pours. It has also implemented a policy requiring record-requestors to pay a \$50 deposit when they make a Sunshine request. This is not just their estimated cost for copies.

If the letter sent to them in March by Attorney General Andrew Bailey's general counsel is correct, this deposit is being imposed for any public records request. The AG's office points out that a flat-fee charge is never permissible, even if any portion of that fee is refundable.

The Sunshine Law does allow advance deposits on copying charges, but not advance payment of charges for record review time. There is no basis to charge for "researching, gathering, reproduction and communication," which is what the public body was claiming. Even if the public body has hired an outside contractor that is causing that charge, it is violating the law, this letter says.

Very interesting! I think there are some law enforcement agencies (even our state highway patrol) that have a policy of flat fee charges for records. "The choice to hire an outside contractor and voluntarily assume a variable cost, rather than the fixed cost of paid employees already on the ... payroll, should not be passed along to citizens....", the letter says.

There are lots of questions raised by this letter! For example, I'm thinking about the Kansas City, Mo., police department's policy, for one. There are others, I'm sure. I'm happy to forward this letter to you if you think it would be helpful.



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