

# **Best Practices for Official Minutes of Public Meetings:**

Practical Solutions to Common Problems  
& Divergent Standards Under State Law

**NACRA 2011 Legislative Conference**

Marriott Washington  
March 5, 2011

**Benjamin E. Griffith**

# The Board Speaks Through Its Minutes



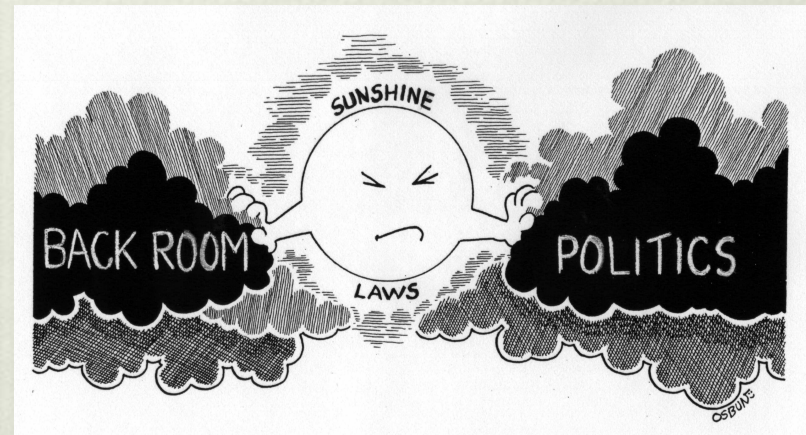




Minutes, like signposts,  
should<sup>A</sup> inform

# Overview of Local Government Access & Transparency

- ❖ Sunshine Laws
- ❖ Official Proceedings
- ❖ Closed or Executive Sessions





# The Need for Transparency in Government

- ❖ Personnel matters, particularly involving hiring, firing or disciplining employees; collective bargaining sessions;
- ❖ pending or imminent litigation involving the government body or its officials; and
- ❖ purchase or sale of public property or assets



# Consequences of Inaccurate or Insufficient Minutes

- ❖ the public's right to know and understand not only official actions of its elected representatives,
- ❖ *and* to know how and why those elected representatives reached a particular decision.

Due to technical difficulties,  
this meeting of the  
Clear Creek Amana School Board  
is not available on video.



# Mandamus Action to Compel Preparation of Accurate Minutes

- ❖ Lawsuits against public officials are not the best occasion for those officials to learn Latin, especially the Latin word “mandamus.”



# Equitable Estoppel to Cure Technical Omission from Minutes

- ❖ resolution passed in 1983 authorizing the Board president to execute lease
- ❖ lease filed in the land records of the chancery clerk's office
- ❖ Board subsequently approved amendment to the lease in 1990
- ❖ amendment filed in the land records of the chancery clerk's office
- ❖ amendment entered in the Board minutes.
- ❖ Above acts were sufficient "to ensure that no individual member of the Board had bound the Board without the benefit of the consent of the Board as a whole by executing the lease"



# Pragmatic Fairness in Evaluating Sufficiency of Minutes

- ❖ keep a correct record of its proceedings,
- ❖ in order for it to transact the business of the public body, the action should be properly entered in the minutes and records of its operations.



# Presumptions Arising from Official Minutes

- ❖ The minutes of governing body import verity,
- ❖ ordinarily are not subject to collateral attack in the absence of fraud or mistake,
- ❖ considered conclusive of the facts set forth in them, and
- ❖ may be relied upon by third parties who deal in good faith with the government body.





# Amendment of Minutes

- ❖ If unauthorized and improper alterations are made in their records, they must be restored to their original and legitimate form and condition.



# Nunc Pro Tunc Orders

- ❖ the inherent power of a judicial or other government body to make its records speak the truth, i.e., to record what is actually done but has not been recorded.





# Amendments Where No Intervening Rights Affected

- ❖ The *nunc pro tunc* doctrine has its limits, and changes or additions ordinarily may not be made in the minutes or records of the governing body without its authority, either expressly or by implication.



# Sunshine Law Violation Cured by Subsequent Open Vote

- ❖ Curative action in *Bassett v. Braddock*
- ❖ subsequent open, public vote cured, corrected, and rendered “sunshine bright” an initial violation of state law relating to the election of school board officers by secret written ballot).

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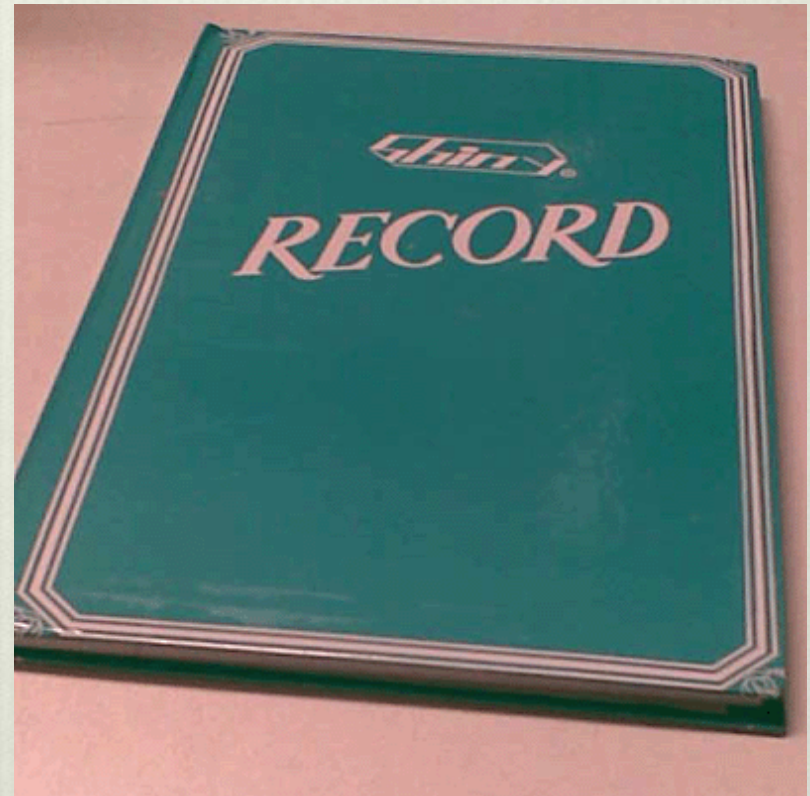


“Is that an ‘Aye’, Carstairs, or do you just need to go to the toilet again?”



# Clerk's ministerial duty to record official proceedings of government body

- ❖ Where clerk is notified of a meeting of the board and fails to attend, the board necessarily has authority to record its own proceedings and approve those minutes.



# Publication of minutes

- ❖ Many states require publication of the official minutes of meetings of government bodies in a newspaper having general circulation in the subject jurisdiction.





# Public Records in Private Hands



- ❖ private entities generally seek to avoid giving state or local government possession, custody or control of their private records.

# Read-Only Digital Document as Public Record



- ❖ Public Records in Private Hands –
- ❖ NCAA v. Associated Press



# Access to Public Records and Information in Digital Format

- ❖ little, if any, distinction between public information entered into a computer and similar information recorded in a traditional “hardcopy” format



# Best Practices for Holding Public Meetings

- ❖ Real Time
- ❖ On Demand
- ❖ Integrated Public Records
- ❖ ADA Compliance and Closed Captioning
- ❖ Searchable
- ❖ Downloading/and or syndication
- ❖ Sharing
- ❖ Protected and Authentic Records
- ❖ Formats and Data Standards
- ❖ Free



# Post-9/11 State Legislative Scrutiny of Freedom of Information and Sunshine Law



- ❖ National Conference of State Legislatures: number of states enacted legislation withholding from public disclosure
  - ~evacuation plans,
  - ~emergency response plans,
  - ~security measures
  - ~emergency health procedures,
  - ~disaster preparedness plans.

# 50-State Summary of Open Meetings Laws

- ❖ The Citizen Media Law Project provides a convenient and informative summary of Open Meetings Laws in all 50 states, accessible at

<http://www.citmedialaw.org/legal-guide>.



# Conclusion

- ◆ remain **vigilant** in adherence to the letter and spirit of public records acts.
- ◆ maintain a **balanced** perspective of the public interest.
- ◆ welcome the inevitable **scrutiny** of government decision-making.



"Which brings us to my next point."

# ANY QUESTIONS?

❖ Benjamin E. Griffith  
Griffith & Griffith, Attorneys  
P.O. Drawer 1680  
123 South Court Street  
Cleveland, MS 38732  
O:662.843.6100  
M:662.402.3133  
F:662.843.8153

E-Mail: [bgriff@griffithlaw.net](mailto:bgriff@griffithlaw.net)

*"Government is itself an art, one of the subtlest of arts."*

*~Felix Frankfurter*