
Coates' Canons Blog: How to Approve Minutes and General Accounts of Closed Sessions

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The North Carolina open meetings law requires public bodies to prepare minutes of all official meetings, and to prepare minutes and general accounts of closed sessions. G.S. 143-318.10(e). Minutes and general accounts of closed sessions may be withheld from public inspection “so long as public inspection would frustrate the purpose of a closed session.” (For more about public access to closed session minutes, see my blog posts [here](#) and [here](#).) When the purpose of the closed session is *not* frustrated by public inspection, the closed session minutes and general accounts can be circulated to the members of the public body and approved at any open meeting. But when the purpose of the closed session *would be frustrated* and the minutes and general accounts are withheld from public inspection, it is often assumed that the minutes and general accounts can only be approved in a closed session. Not so. As described in this blog post, there are at least three options for approving minutes and general accounts.

Why do we have minutes and general accounts?

First let’s review the distinction between minutes and general accounts. Minutes provide a formal record of the actions taken in meetings of public bodies. As described by the North Carolina Supreme Court, minutes “should contain mainly a record of what was done at the meeting” and their purpose is “to reflect matters such as motions made, the movant, points of order, and appeals, not to show discussion or absence of action.” *Maready v. City of Winston-Salem*, 342 N.C. 708, 733, 467 S.E.2d 615, 631 (1996) (citing Henry M. Robert, *Robert’s Rules of Order Newly Revised* § 47, at 458 (9th ed. 1990)). Minutes should also include any information needed to demonstrate that the actions taken by the body were legally valid. For example, to show the existence of a quorum, minutes should list which members were present and which were absent.

The *Maready* case held that there was no legal requirement for minutes to contain a summary of what was discussed at the meeting. Following that decision the legislature amended the open meetings law, adding the requirement for a “general account” of closed sessions. The general account is a narrative that describes in general terms the discussion that takes place so that there is some record of the meeting even if no official action is taken. The statute requires the general accounts to be prepared such that “a person not in attendance would have a reasonable understanding of what transpired.” While minutes and general accounts document two separate types of information, they may certainly be combined into a single document.

Are drafts of minutes and general accounts subject to public inspection?

In this discussion, I’m assuming that the drafts of minutes and general accounts may lawfully be withheld from public inspection if public access would frustrate the purpose of the closed session. As described in my blog post [here](#), the North Carolina Supreme Court has held that draft records are subject to the public records law. Draft minutes and general accounts surely must be entitled to the same status under the public records law as are the final versions, assuming their content would frustrate the purpose of the closed session. Were it otherwise the protection in the statute would be meaningless. If at the time of approval, circumstances have changed and the information has become public, both the drafts and the final versions would be subject to public inspection.

Approving closed session minutes and general accounts

While no statute or case specifically requires board approval of minutes and general accounts, such approval is important for several reasons. Since minutes function as the official record of board actions, it’s important to make sure that they accurately reflect the actions taken. In addition, board members may have differing opinions about what and how much other information should be included in the minutes and how detailed the general account should be. It is up to the board,

voting by majority, to settle on the final version. And while minutes and general accounts that have not been approved by the board may still be useful as evidence of what transpired at the meeting, a formal vote to approve the minutes is required for them to be considered the official record of the meeting.

For minutes of open sessions, approval is easily accomplished at a meeting by individual motion or inclusion in an consent agenda. The same process can be used if for closed session minutes and general accounts if at the time of approval, public inspection will not frustrate the purpose of the closed session.

What are the options for approving confidential closed session minutes and general accounts?

Option 1. Approve them in the closed session before returning to open session. This is a good method for a public body that doesn't meet very often, and also for a public body that doesn't expect to meet more than once. A person in the meeting can be designated to draft the minutes and general account as the session takes place, and the members can review and approve them before they return to open session.

Option 2. Approve them in a later closed session. A closed session to approve closed session minutes and general accounts is authorized under G.S. 143-318.11(a)(1) (to prevent the disclosure of information that is privileged or confidential or is not a public record.) As noted above, the open meetings law creates an exception to the public records law for minutes and general accounts that, if disclosed, would frustrate the purpose of the closed session, so the exception for records that are not public will apply. In addition, minutes and general accounts of closed sessions held under G.S. 143-318.11(a)(6)(to consider personnel matters) are confidential personnel records. (See *Times News Publishing Company v. Alamance-Burlington Board of Education*, 242 N.C. App. 375 (2015), summarized in a blog post here.) So minutes and general accounts of personnel-related sessions may be discussed in closed session under the personnel authorization or the more general exception for nonpublic records, cited above. Option 2 is not ideal for boards that don't meet regularly.

Option 3. Circulate draft to members and approve the final draft in open session. The draft minutes and general accounts can be circulated to the members in a secure way, so as to avoid exposure. Some units have developed mechanisms for having minutes reviewed and approved by board members individually. Examples include circulating a single copy to be signed by each board member, or putting the draft minutes on a password protected website for review and approval. Another practice is to provide a copy to each member and request that each copy be returned upon review so that confidentiality is maintained.

Whatever review process is used, even if all or a majority indicate they approve, the official approval must be made by vote at a meeting. If there is no discussion necessary and everyone has seen the draft, the matter could be voted on in an open session by reference without disclosing the draft. It might be suggested that such a vote would violate the provision in G.S. 143-318.13 that prohibits a public body from deliberating, voting, or otherwise taking action on any matter by reference "with the intention of making it impossible for persons to understand what is being deliberated, voted, or acted upon." I don't think this provision prohibits a board from voting in open session on a matter that is confidential or otherwise not subject to public access. In the case of closed session minutes and general accounts, the public can be informed that the board is voting on the minutes and general account of the closed session on June 5, 2018, which are not subject to public inspection under G.S. 143-318.10(e). There is nothing more that the public would have a right to know.

If board members can submit their suggested changes or corrections to the clerk individually and there is no need for discussion about the content, this option could work well. It may not be appropriate, however, if the members need to discuss the draft. The clerk and the board members would have to be careful not to create a violation of the open meetings law by engaging in a discussion in person or in using near-simultaneous electronic communication. Even if there hasn't been unlawful discussion, this approach might send a confusing message to the public about the board's ability to do business in the public eye without having to disclose details of matter being decided. If discussion is necessary options 1 or 2 should be used.

For more on the legal requirements for minutes:

Who Needs Minutes



Signing Minutes and Ordinances

Approving Minutes of Meetings You Didn't Attend

Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.10.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.11.html
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-318.11
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_143/GS_143-318.13.pdf