Coates' Canons Blog: What are “Full and Accurate” Minutes?

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The open meetings law mandates that public bodies keep “full and accurate” minutes of their official meetings. G.S. 143-318.10(e). Separate statutes expressly require “full and accurate” minutes for meetings of city councils and boards of county commissioners. G.S. 153A-42 (boards of county commissioners); 160A-72 (city councils). The School of Government recently published a Local Government Law Bulletin that describes the level of detail necessary for minutes to qualify as full and accurate. The bulletin also addresses the components that a local board’s minutes should routinely contain, the approval process for minutes, and the scope of a board’s authority to amend minutes previously adopted. Readers can download the bulletin free-of-charge here. This blog post provides a condensed version of the bulletin’s contents.

“Full and Accurate” Defined

Although the words “full and accurate” might seem to imply that minutes must offer a comprehensive account of everything done or said at a meeting, the North Carolina Supreme Court has interpreted the phrase more narrowly. In *Maready v. City of Winston-Salem*, 342 N.C. 708 (1996), the plaintiff alleged that the defendant county’s board of commissioners had failed to keep full and accurate minutes of two closed sessions concerning economic development matters. The minutes for the closed sessions merely noted that “discussion” had occurred. *Maready*, 342 N.C. at 732.

The court held that the minutes satisfied the open meetings law’s “full and accurate” standard. It explained that a public body’s minutes “‘should contain mainly a record of what was *done* at the meeting, not what was *said* by the members.’” *Id.* at 733 (quoting Robert’s Rules of Order Newly Revised § 47, at 458 (9th ed. 1990)). In other words, minutes should “reflect matters such as motions made, the movant, points of order, and appeals – not . . . show discussion or the absence of action.” *Id*. The court pointed to the purpose of minutes, which is “to provide a record of the *actions taken* by a board and evidence that the actions were taken according to proper procedures.” *Id.* (internal quotation marks omitted). Since the board of county commissioners did not take any action during either of the closed sessions at issue in *Maready*, the court “perceive[d] no violation” of the open meetings law in the minutes’ one-word reference to “discussion.” 342 N.C. at 734.

Following *Maready* the North Carolina General Assembly amended the open meetings law to mandate that public bodies keep both minutes *and* a general account for each of their closed sessions. Session Law 1997-290, § 1. The *Maready* decision still states the applicable standard for *minutes*, however. The minutes for an open session in which no action took place may thus be quite brief, regardless of how long discussion lasted. On the other hand, although *Maready* plainly states that boards need not incorporate detailed accounts of discussions into their minutes, the court’s opinion in no way prohibits them from doing so. Because the minutes belong to the board, each local government “has discretion in determining the amount of detail to include[.]” Frayda S. Bluestein & David M. Lawrence, Open Meetings and Local Governments in North Carolina: Some Questions and Answers 79 (8th ed. 2017). The *Maready* decision establishes the minimum, not the maximum, level of detail that minutes must contain.

Exceptions to *Maready* Standard

The *Maready* minimum is not sufficient in at least two situations. When a meeting of a local government board involves a closed session or quasi-judicial hearing, the board must do more than merely document its actions.

Closed Sessions

In amending the open meetings law to require general accounts of closed sessions, the legislature aimed to force each

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public body to provide "some sort of record of the discussion that took place in the closed session, whether action was taken or not." Bluestein & Lawrence, *supra*, at 79. A general account of a closed session must be sufficiently thorough to give a person who was not present a reasonable understanding of what transpired. G.S. 143-318.10(e).

The case law interpreting "general account" supports at least two conclusions regarding the minutes and general accounts of closed sessions.

- *Detailed accounts of who-said-what are usually unnecessary*. In most instances, although a general account must document the substance of closed session discussion, it need not record what individual board members said about the matter(s) under consideration.
- *The minutes and general account may be combined into a single record.* In many jurisdictions, the minutes of each closed session double as the board's general account. This practice is lawful, so long as those minutes record any actions taken by the board and say enough about the discussion to afford a person who was not present a reasonable understanding of what transpired.

Quasi-Judicial Hearings

When a city or county board holds a quasi-judicial hearing – usually on a conditional or special use permit or a zoning variance request – "[t]he routine summary minutes that are acceptable for . . . routine governmental meetings will not suffice." David W. Owens, Land Use Law in North Carolina 152 (2d. ed. 2011). The minutes must instead provide a detailed record of the evidence presented, including witness testimony. Although the minutes need not amount to a verbatim transcript, most boards make audio recordings of their quasi-judicial hearings. In so doing, they make it possible to prepare a verbatim transcript in the event that a board's decision on a quasi-judicial matter prompts an appeal to superior court. *See In re Application of City of Raleigh*, 107 N.C. App. 505, 510 (1992) (verbatim transcripts make it easier for the courts to review quasi-judicial decisions).

Minutes – Recommended Components

The largest section in the Local Government Law Bulletin lists and examines certain components that should routinely appear in minutes. The section draws primarily on relevant state law and court decisions; *Robert's Rules of Order Newly Revised* and similar procedural manuals; and School of Government resources, especially the 2017 editions of *Suggested Rules of Procedure for a City Council* and *Suggested Rules of Procedure for the Board of County Commissioners*. It tackles a number of issues around which confusion frequently arises, such as the best way to record votes, which meeting documents to attach to the minutes and which to omit, and what information to include for public comment periods and public hearings.

Appendices at the end of the bulletin set out the recommended components in two checklists, one for minutes of meetings of city councils or boards of county commissioners, the other for minutes of meetings of local appointed boards. Because not every item on the checklists is self-explanatory, anyone planning to make use of the checklists should read the bulletin first.

Approving and Signing Minutes

From Draft Minutes to Official Minutes

The minutes of a meeting of a local government board are not official until the board approves them. Generally, for city councils or boards of county commissioners, the clerk sends copies of the draft minutes to the members several days before the next meeting. Many clerks label the documents "Draft" so that no one will mistake them for board-approved minutes. A member who thinks that the draft minutes need major changes may want to direct his or her request to the board, not to the clerk. *See* A. Fleming Bell, *The Attorney and the Clerk*, *in* County and Municipal Government in North Carolina 238 (Frayda S. Bluestein ed. (2d ed. 2014) ("Although the clerk records the draft minutes for the council or the board of commissioners, the governing board itself, acting as a body, must finally determine what the minutes will include.").

Board action to approve the minutes of the open session portion of a prior meeting must itself take place in open session.

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With regard to the approval of the minutes and general account of a closed session, things are a bit more complicated. The open meetings law permits a board to withhold the closed-session minutes and general account from public inspection "so long as public inspection would frustrate the purpose of the closed session." G.S. 143-318.10(e). The amount of time that a board may keep closed-session records under seal can therefore vary depending on the reason for the closed session. Nonetheless, so long as a lawful basis exists for declining to make the records public, the open meetings law allows the board to enter closed session for the purpose of approving the minutes and general account of a prior closed session. Bluestein & Lawrence, *supra*, at 82. Alternatively, if the board has securely furnished the draft minutes/general account to members in advance, the presiding officer might entertain a motion in open session "to approve the minutes and general account of the closed session held on January 22, 2019, which are not subject to public inspection under G.S. 143-318.10(e)." For more on the methods for approving the minutes of closed sessions, please see the blog post found here.

Members Who Did Not Attend a Previous Meeting

Board members are sometimes reluctant to vote on the minutes of meetings they did not attend. This issue can become acute when a majority of the members are new and presented with draft minutes of a meeting that took place before they assumed office. In an especially contentious political environment, new members might worry that people will see a vote to adopt the minutes as an endorsement of actions taken by their predecessors.

As explained more fully in the Local Government Law Bulletin and in a separate blog post, new members have every right to vote on the minutes of meetings they did not personally attend. Indeed, they *should* vote to approve draft minutes for an earlier meeting, "unless they have specific, reliable information or evidence that the minutes are not accurate[,]" in which case they may edit the draft minutes to conform to actual events. Bluestein & Lawrence, *supra*, at 83. State law obliges the board to keep minutes of that meeting, and the former members no longer have the authority to approve the minutes. If this legal obligation is to be satisfied, the new members must do it.

Signing Minutes – Customary, Not Mandatory

In many jurisdictions, the practice is for the presiding officer and the clerk to sign the official minutes. The absence of such signatures does not invalidate the minutes, for reasons set out in the blog post accessible here. If the board duly approved the minutes, they constitute the official record of the meeting, whether signed or not.

Corrections to Previously Approved Minutes

What if a board realizes that the previously approved minutes of a prior meeting omit or misstate an action taken by the board? Consistent with the notion that the minutes should be full and accurate, longstanding decisions by our state's supreme court allow the board to amend the old minutes to reflect what actually took place. In one case, the court went so far as to say that the defendant board of county commissioners had "not only the privilege, but the duty" to make the amendments necessary to ensure "that [its] proceedings were accurately entered upon the minutes." *Oliver v. Bd. of Comm'rs of Johnston Cnty.*, 194 N.C. 380, 385 (1927).

In another case, the plaintiff sued the county tax collector to avoid having to pay taxes allegedly levied by the board of county commissioners in violation of a state constitutional limit on property tax rates. *Norfolk Southern Railroad Company v. Reid*, 187 N.C. 320 (1924). The tax collector argued that, by incorrectly combining two separate taxes approved by the board, the minutes created the false impression that the board had acted contrary to the state constitution. In its opinion sending the case back to the trial court for further proceedings, the supreme court acknowledged that the board could amend the minutes to show that it had properly levied and apportioned the tax, but only if that was really the case. If the commissioners did vote for a tax in violation of the state constitution, "they ha[d] no power to amend" the minutes to say otherwise. Any change to the minutes had to be for the purpose of making them "speak the truth." *Id.* at 327.

Some case law indicates that a trial court may order a local government board to correct inaccurate minutes when the board is a party to the litigation. For more on that point, please see the relevant section of the Local Government Law Bulletin.

As a practical matter, when a board makes a correction to minutes that it previously approved, "the correction should be noted in the minutes of the meeting at which the correction is made, with an appropriate notation and cross-reference at

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the place in the minute book where the provision being corrected appears." Bell, *supra*, at 238. Put differently, corrections should be made in such a way that readers can readily ascertain what was changed when.

Links

- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.10.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_153a/GS_153a-42.html
- www.ncleg.gov/EnactedLegislation/Statutes/HTML/BySection/Chapter_160a/GS_160a-72.html
- www.sog.unc.edu/sites/www.sog.unc.edu/files/reports/20180867_LGLB-140_Layout_5.pdf
- www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/1997-1998/SL1997-290.pdf
- www.sog.unc.edu/publications/books/open-meetings-and-local-governments-north-carolina-some-questions-and-answers-eighth-edition-2017
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