

## **ARE CONVERSATIONS IN EXECUTIVE SESSION CONFIDENTIAL?**

No. There is no explicit statutory requirement that conversations occurring during executive session be kept confidential.

Executive session is a meeting of a public body, typically the municipality's legislative body, from which the public is excluded. It is a limited exception to Vermont's Open Meeting Law, which requires that "all meetings of a public body ... be open to the public at all times..." 1 V.S.A. § 312(a).

A public body can enter into executive session for a limited number of reasons. The motion to enter into executive session must indicate the nature of the business to be discussed and be approved by the public body. This vote must be taken during the course of the open meeting and its result recorded in the minutes. 1 V.S.A. § 313.

Attendance in executive session is limited to members of the public body. At its discretion, the board may invite its staff, clerical assistants, legal counsel and anyone who is a subject of the discussion or whose information is needed, to attend the executive session. 1 V.S.A. § 313(b). No formal or binding action can occur in executive session, except actions relating to the securing of real estate options. Minutes do not need to be taken; if they are, they are not required to be made public. 1 V.S.A. § 312(b).

Although Vermont law does not shield statements made in executive session from disclosure, members typically carry that expectation in with them, and rightly so. After all, disclosure severely undermines the whole reason for going into executive session, which is to allow members and others the opportunity to disclose and discuss sensitive matters without reservation.

Unfortunately, not everyone shares the same expectations of confidentiality. If a public body is unable to come to some informal understanding of the need for each member to keep conversations in executive session *in* executive session, a policy codifying that expectation may be in order.

Members of public bodies must realize that their first allegiance is to the municipality and its inhabitants and that disclosing sensitive information acquired during the course of executive session could be to the municipality's detriment.

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