

Navigating the Open Meeting Law in the Telecommunications Age

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As public officials and administrators, many of us are probably familiar with Arizona's Open Meeting Law. Arizona Open Meeting Law, *A.R.S. § 38, Chapter 3, Article 3.1 Public Meetings and Proceedings*, is chock-full of requirements our Governing Board or City/Town Council members must follow when conducting their business as a public body. The Open Meeting Law legislation is designed to meet the following objectives:

1. Inform the public
2. Maintain integrity of government
3. Build trust between government and the public

The purpose of the Open Meeting Law is to allow for transparent and public access to the governmental process and to allow for public scrutiny of government. Arizona Open Meeting Law, requires that all meetings of a public body shall be public, all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings, and all legal action of the public body shall occur during a public meeting. (See [A.R.S. §38-431.01\(A\)](#).)

There are a lot of questions about how the Open Meeting Law affects your organization:

- What constitutes a meeting in the context of the Open Meeting Law?
- Does this mean all instances in which members of a public body meet or communicate must be public and conducted in accordance with the Open Meeting Law?
- If I am Board member of a local School District and have coffee with a fellow Board member, does this constitute a meeting subject to the Open Meeting Law requirements?
- If I am a City Council member and email other members of the Council, do the Open Meeting Law requirements apply then?
- Does it matter what is discussed, or how many members participate in the discussion? Does the Open Meeting Law apply when discussions amongst members don't occur at the same time or place?

There are endless questions we could pose in the context of inquiring when the Open Meeting Law requirements apply. A further understanding of what constitutes a meeting under the Open Meeting Law statute will help us unpack these questions.

Arizona Open Meeting Law defines a meeting as “the gathering, in person, or through technological devices, of a quorum of the members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to that action”. (See A.R.S. A.R.S. § 38-431(4)(a).) It is important to note that a meeting, as defined in the Open Meeting Law, includes telephone, e-mail, video conferencing, and any other means of telecommunication. Arizona Attorney General Opinion I79-4 also concludes that it does not matter where the meeting occurs or how the meeting is labeled. So long as the definition of a meeting is met, as defined in statute, the Open Meeting Law requirements apply regardless of what the meeting is called or where the meeting takes place.

Board and Council members should exercise caution and awareness when gathering or communicating with each other in social settings to ensure they are not violating the Open Meeting Law. It is often advised that members take a conservative approach and assume the Open Meeting Law applies whenever a majority of the Board or Council discusses the business of the Board or Council.

Board and Council meetings have traditionally been conducted in person, consisting of discussions amongst members that take place at the same time and place. We already know from our discussion above that the Open Meeting Law applies to meetings of Board and Council members conducting business by telephone and video conferencing methods where discussion amongst members takes place at the same time, though not in the same place. However, with today's technology, now, more than ever, members of public bodies are communicating and facilitating discussion when members are neither in the same place nor engaging in discussion at the same time.

In an increasingly remote environment, members of public bodies are using electronic communications, such as email and text message, when communicating and discussing matters. How and when do these types of communications constitute a meeting under the Open Meeting Law?

In response to the need to address guidance on electronic communications, the Arizona State Legislature modified the definition of meeting to include the following instances of electronic communication:

1. "A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action." (See A.R.S. § 38-431(4)(b)(i).)
2. "An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action." (See A.R.S. § 38-431(4)(b)(ii).)

To summarize, if a Board or Council member sends an electronic communication via phone, text, email, fax, or any other means of electronic communication, to a majority of the Board or Council, and the communication expressly proposes legal action, a violation of the Open Meeting Law would occur if one or more members responds, or if no member responds. Additionally, if a Board or Council member sends an electronic communication to a majority of the Board or Council that involves discussion of potential or likely legal action on a matter, and one or more members engages with a response, a violation of the Open Meeting Law would occur.

[Arizona Attorney General Opinion I05-004](#) further illustrates the application of the Open Meeting Law principles to electronic communications, hypothetical examples of the use of electronic communications, and measures to consider implementing to ensure compliance with the Open Meeting Law when using electronic communications.

As we communicate more and more frequently using electronic means, it is important that members of public bodies understand how and when a meeting, as defined, under the Open Meeting Law, has taken place when using electronic communications in order to avoid a violation. As with any legal matter, if you are unsure of the applicability of the Open Meeting Law, or how to comply with the Open Meeting Law, it is recommended to consult your legal counsel.

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