

# Arizona's Open Meeting Law

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Summary for Independent Oversight  
Committee (IOC) Members

# Enforcement Authority

- Arizona Attorney General's Open Meeting Law Enforcement Team (OMLET):
  - Investigates complaints
  - Can commence lawsuits against individuals for open meeting law violations.
- County Attorney's Office
- The Courts

# The Open Meeting Law is:

A series of statutes, found at A.R.S. §§ 38-431 through 431.09, that are intended to:

- Maximize public access to government.
- Open deliberations and proceedings to the public.
- Prevent public bodies from making decisions in secret.

# “Public Bodies”

- Under A.R.S. § 38-431, “public body” means:
  - All councils, boards, commissions of the state or political subdivisions
  - This definition includes:
    - Standing committees
    - Special committees
    - Advisory committees
    - Subcommittees

# What must an IOC do?

- Provide notice of all meetings
- Have an agenda for all meetings
- Hold all meetings in public
- Permit the public to attend
  - Exception: authorized executive sessions
- Take all action in public
- Create/prepare meeting minutes or a recording

# A.R.S. § 38-431(4) - What is a Meeting?

- A “meeting” is a gathering, in person or through technological devices, of a quorum of a public body.
  - Discuss
  - Propose
  - Deliberate
  - Take legal action

# A.R.S. § 38-431(4) - What is a Meeting?

- A.R.S. § 38-431(4)(b) now includes:
  - (i) 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.
  - (ii) 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.

# Facts vs. Opinion?

- There is no distinction between discussing facts vs. discussing opinions among a quorum
- Deliberation = “collective acquisition and exchange of facts preliminary to a final decision”
- Therefore, two-way discussion of facts (among quorum) regarding potential board business = violation



## A.R.S. § 38-431.02 - Notice of Meetings

Notice must be provided, at least 24 hours prior to a meeting, to all members of the public body and to the general public.

- 24 hours may include Saturdays if the public has access to the physical posting location.
- May not include Sundays or other legal holidays prescribed under A.R.S. § 1-301

# A.R.S. § 38-431.02 - Notice of Meetings

- Notices must be posted on the ADOA website and on the ADOA bulletin board and must include:
  - The name of the committee
  - Date, Time, and Place of the Meeting
    - Place = Address and room number
  - A copy of the agenda OR information on how to obtain a copy of the agenda

# Seminars, Site Visits, or Social Events

If a quorum of IOC members could be present at an event outside of an IOC meeting, such as a seminar, site visit, or social event, committees can post a “courtesy agenda” announcing the event.

- Identify date, time, and purpose (location details will vary depending on event).
- State that no business of the public body will be discussed and no legal action will be proposed or taken.

# A.R.S. § 38-431.02(H) - Meeting Agendas

- Must list the specific matters to be:
  - discussed,
  - considered, or
  - decided
- Must include information reasonably necessary to inform the public.
- All discussion must be reasonably related to an adequately described agenda item.

# If a topic is not on an agenda:

- You cannot discuss it!
- New discussion items must wait for a future meeting.

# The Public's Rights at a Meeting

- Members of the public have the right to:
  - Attend
  - Listen
  - Tape record
  - Videotape
- Members of the public have no right to:
  - Speak
  - Disrupt

# A.R.S. § 38-431.01(H) - Calls to the Public

- Having a “call to the public” is optional for IOC’s.
- Problems to watch for:
  - Discussing matters not listed on the agenda.
    - If a matter is not an agenda item, the IOC’s response (at the end of the call to the public) is limited to:
      - Direct staff to study the matter
      - Ask that a matter be placed on a future agenda
      - Respond to criticism

# Executive Sessions

- Public excluded
- Only permitted for specific matters
  - A.R.S. §§ 38-431.03(A)(1) through (7)
- Must include possibility of executive session in the meeting notice and agenda
- Must vote to enter executive session
- Discussion is confidential
- No action permitted!
- Must have minutes or recording



# Executive Sessions

- Notice must include the statutory section authorizing the executive session
- Agenda must provide a general description of the matters to be discussed or considered
  - Needs to be more than a statutory citation
  - Need not contain information that would:
    - Defeat the purpose of the executive session
    - Compromise the legitimate privacy interests of a public officer, appointee, or employee
    - Compromise the attorney-client privilege

# Executive Sessions

Who may attend an executive session:

- Members of the IOC
- Persons subject to a personnel discussion
- Auditor general
- Individuals whose presence is reasonably necessary in order for the IOC to carry out its executive session responsibilities (i.e. a staff member to take minutes/run tape)

# Executive Session Pitfalls

- Inappropriate disclosure
  - What happens in executive session stays in executive session!
  - Chair must remind members about the confidentiality requirement every time.
    - A.R.S. § 38-431.03(C)
- Taking legal action.
  - All votes must take place in public!

## A.R.S. § 38-431.01(B) - Meeting Minutes/Recordings

“All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, the minutes or recording shall include:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters considered.
4. An accurate description of all legal actions proposed, discussed or taken, including a record of how each member voted. The minutes shall also include the names of the members who propose each motion and the names of the persons, as given, who make statements or present material to the public body and a reference to the legal action about which they made statements or presented material.”

# Access to Meeting Minutes/Recordings

- Minutes or a recording of a public meeting shall be open to public inspection within three working days after the meeting.
- Meeting minutes of executive sessions shall only be released to:
  - Members of the committee
  - Officers, appointees, or employees who were the subject of discussion or consideration (only that portion)
  - Auditor general in connection with an audit
  - County attorney, attorney general or ombudsman when investigating alleged violations

# Executive Session Meeting Minutes

- Shall have written minutes or a recording
  - Burden of proof – *Fisher* case
- Shall include the following:
  - Date, time and place of meeting
  - Members present & absent
  - General description of matters considered
  - An accurate description of all instructions given
  - Such other matters as deemed appropriate by the public body
- Shall be kept confidential (A.R.S. § 38-431.03(B))

# When in Doubt?

- RESOLVE ALL DOUBTS IN FAVOR OF OPENNESS.
- Remember: legal action taken during a meeting held in violation of any provision of the open meeting law is null and void unless ratified.

# A.R.S. § 38-431.07(A) - Penalties

- Individual members who violate and any persons who aid, attempt, or agree to aid – must be “knowingly”
  - Civil penalty (paid by individual) up to \$500 second violation.
  - Up to \$2,500 penalty for third violation and on.
  - Such equitable relief as the court deems appropriate
  - Reasonable attorneys’ fee
- Public body may not pay or reimburse for penalty imposed on individual



# A.R.S. § 38-431.07(A) - Penalties

- If “knowingly” violated “with intent to deprive the public of information” –
  - Court may remove public officer from office and
  - Charge officer and any person that aided, agreed to aid, or attempted to aid, all the costs and attorney’s fees