

OPEN MEETING LAW TRAINING
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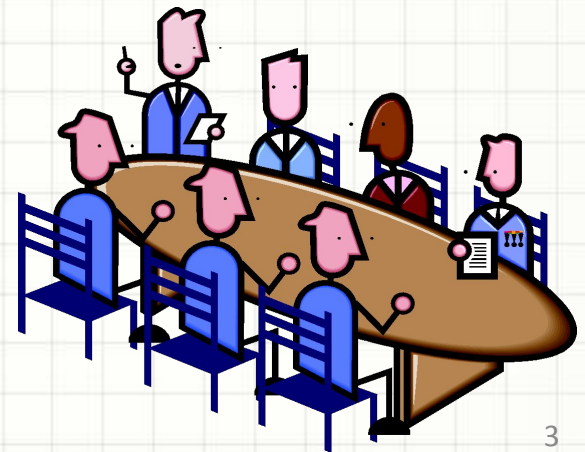
Disclaimers

- This presentation is not a substitute for legal advice on the Open Meeting Law (OML).
- This presentation does not purport to represent the official policy of the Attorney General's Office (AGO).

Legislative Intent Behind Open Meeting Law

- Declaration of Public Policy:

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe this article in favor of open and public meetings. A.R.S. § 38-431.09(A).



Open Meeting Law – Core Provisions

- ❖ Under Arizona’s OML, “all meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.” A.R.S. §38-431.01(A).
- ❖ Open Meeting Law requirements are set forth in A.R.S. § 38-431 through A.R.S. § 38-431.09 (available at azleg.gov).
- ❖ “All legal action transacted by any public body during a meeting held in violation of any provision of [the Open Meeting Law] is null and void” (unless ratified). A.R.S. §38-431.05.

Applicability of Open Meeting Law

“**Public Bodies**” includes “all boards and commissions of this state” as well as:

- Subcommittee of or appointed by the public body
- Standing committees
- Special committees
- Advisory committees

A.R.S. §38-431(6)

Advisory Committees & Subcommittees

- ◆ “Advisory Committee” or “Subcommittee” means:
 - ◆ Any entity, however designated;
 - ◆ Officially established on motion or order of the public body or by the presiding officer;
 - ◆ Appointed to make a recommendation concerning a decision to be made or considered by the public body. A.R.S. §38-431(1)
- ◆ Advisory Committees must comply with OML requirements, including taking minutes or recording meetings.

Definition of Meeting

- “Meeting” is a gathering, in person or through technological devices of a quorum of a public body to:
 - Discuss
 - Propose
 - Deliberate
 - Take legal action

A.R.S. § 38-431(4)(a)

- A quorum is a majority of the public body seats (unless specific statutory provision specifies a different number).

A.R.S. §1-216(B)

Definition of Meeting Includes:

- 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.
- 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.

A.R.S. § 38-431(4)(b)

Is it Still a Meeting without a Quorum?

- ◆ You don't have a quorum-then technically it is not a meeting,

BUT:

- ◆ Beware of serial communications
- ◆ Beware of “wheel and spoke” communications
 - » Meeting with individual members
 - » Reporting what other members said
 - » Polling the members

Legal Action

- "*Legal action*" means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body's charter, bylaws or specified scope of appointment and the laws of this state. A.R.S. § 38-431(3)
- All discussions, deliberations or consultations among a majority of members of the public body regarding matters that may *foreseeably require final action* constitute legal action and must take place in an open meeting.
- **Safest course of action:** Assume the Open Meeting Law applies whenever a majority of the body discusses the business of the public body.

Attorney General Agency Handbook, § 7.5.1

Possible Pitfalls

- Potential violations regarding items that could foreseeably come before a public body include:
 - Emails between less than a quorum that are forwarded to a quorum.
 - Emails between less than a quorum that are then communicated to enough other members so that the total number aware constitutes a quorum (serial communications).
 - Emails proposing motions or taking legal action.

Allowable emails

- Allowable for staff to send an e-mail to board members.
- Passive receipt of information from staff, without more, does not violate the open meeting law. (Ex. board packets).

However: staff may not send opinion or substantive communication about board business from a board member to enough other members to constitute a quorum.

- Best practice to include in an email:
“To ensure compliance with the Open Meeting Law, recipients of this message should not forward it to other members of the Board. Members of the Board may reply to this message, but they should not send a copy of their reply to other members.”

Emails and public records requirements

- E-mail communications of board members related to their official duties are public records that must be maintained for public inspection and reproduction.
- This applies to other forms of electronic communications too.

What about social events & conferences?

If more than a quorum may be present, best practice is to:

1. Post a “courtesy notice” announcing social event where a quorum may be present
2. Include statement that no public body business will be discussed and no action will be taken
3. Consider appearances

Notice of Public Meetings

- *When* notice of meeting and agenda is posted – no later than 24 hours before meeting (unless emergency), preferably much earlier
- *Where* meeting notice and agendas are posted
- *Where* meeting will be held – public access.
 - Remote conferencing, best practices. AGO Agency Handbook § 7.10.3.
- *What* the public body will discuss – agenda

A.R.S. §38-431.02.

Agendas

- Agendas must contain information reasonably necessary to inform the public of the matters to be discussed or decided.
A.R.S. § 38-431.09.
- Agendas for public meetings shall list the *specific* matters to be discussed, considered or decided at the meeting.
A.R.S. § 38-431.02(H).
- Avoid general descriptions such as “Executive Director report,” “new business,” “Councilmember priorities”
- If there is a timed item, you may not hear that item before the scheduled time.

Agenda pointers

If a matter is not listed on the agenda,

- You cannot discuss it.
- “The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.” A.R.S. § 38-431.02(H).
- All discussion must be *reasonably related* to an adequately-described agenda item.
- Add new items to the agenda for future meeting.

Meeting Minutes

- ◆ Must have them
- ◆ In writing, or recorded (audio or video)
- ◆ Minutes or recording of meeting must be available to public within 3 working days after the meeting
- ◆ Minutes also required for executive sessions

A.R.S. §38-431.01(C) – (E)

Executive Sessions

- Executive session is an exception to the public meeting requirement.
 - Possibility of executive session must be included in the meeting notice and agenda. The specific reason for executive session must be listed on the agenda.
 - Nine specific limited reasons for executive session, including:
 - = Discussion or consultation for legal advice with the attorney(s) of the public body. A.R.S. § 38-431.03(A)(3)
 - = Discussion or consideration of records exempt by law from public inspection. A.R.S. § 38-431.03(A)(2)
- A.R.S. § 38-431.03(A)

Executive Session

- Requires a public majority vote of the members constituting a quorum to go into executive session. Motion should state the reason for executive session, for example:

“I move that we go into executive session to obtain legal advice from our attorney on item 6 on the agenda.”

- No voting or informal decision-making in executive session.
- Limit executive session to specific purpose for which it was convened, then return to public meeting.

A.R.S. § 38-431.03

Executive Session

- Separate minutes/recording are kept. A.R.S. § 38-431.01(D)
- Discussion is confidential. Chair must read confidentiality statement aloud, such as: “Minutes of and discussion held in executive session must be kept confidential.”
- However, minutes may disclosed to designated individuals or entities, *i.e.*, other Committee members or Auditor General.

A.R.S. § 38-431.03(B)



Executive Session

The only people who may attend:

- “Individuals whose presence is *reasonably necessary* in order for the [board] to carry out its executive session responsibilities”
 - Board members
 - Key staff members
 - Staff person to take minutes
 - Auditor general
 - Board’s legal counsel.

A.R.S. § 38-431(2)

Public Participation

All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to *attend and listen to* the deliberations and proceedings.

A.R.S. § 38-431.01(A).

Public's rights

- Attend meetings
- Listen to deliberations
- Cannot require sign-in, but people presenting to the public body must identify themselves for the minutes
- Record meetings so long as there not “active interference” A.R.S. § 38-431.01(G)
- Expect Americans with Disabilities Act compliance
- No right to speak, unless public body allows

Call to the Public

- Calls to the public are permitted, but not required
- Must be included as an agenda item
- Public body may limit speaker's time
- Members of the public who speak must provide a name

A.R.S. § 38-431.01(I)

Call to the Public

- Public body can address any issue within jurisdiction of the public body.
- Public body's response is limited to:
 - Directing staff to study the matter.
 - Asking that a matter be placed on a future agenda.
 - Responding to criticism.

A.R.S. § 38-431.01(I)

Consequences for OML Violations

- Any legal action taken in violation of the Open Meeting Law is null and void, unless ratified in accordance with OML.

A.R.S. § 38-431.05

Consequences for OML Violations

- Penalties
 - Civil penalties for knowing violation, up to \$2500 for subsequent violations
 - Such equitable relief as the court deems appropriate
 - Reasonable attorneys' fees
- If intent to deprive the public of information, Court may remove public officer from office.
- Sanctions may be imposed upon any person who knowingly aids, agrees to aid or attempts to aid another person in violating this article.

A.R.S. §38-431.07(A).

Options

- ◆ Ratification (A.R.S. § 38-431.05)
- ◆ Consider self-reporting
- ◆ Cooperate with County Attorney, Attorney General or Ombudsman's Office and move early to remedy the problem
- ◆ Consider training and changes to policy to prevent violations in the future

Resources

- Arizona Agency Handbook
- <https://www.azag.gov/sites/default/files/docs/agency-handbook/ch07-2013.pdf>
- Arizona Revised Statutes §§ 38-431 to 38-431.09
- <https://www.azleg.gov/arsDetail/?title=38>



QUESTIONS?