Verde Valley Advisory Committee: Open Meeting Law Basics

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Basic Rule

“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. All legal action of public bodies shall occur during a public meeting.”
Covered Entities

- Public body’s governing board
- “Standing, special committees, advisory committees or subcommittees of, or appointed by,” the governing board
  - Any committee that the governing board gives authority to, regardless of what the committee is called
What Is a “Meeting”?

“Meeting” means a gathering
- in person or through technological devices,
- of a quorum of members of a public body
- at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.
What Is a “Meeting”?

- Three types of meetings involve board members sharing their opinions:
  - Discussing legal action
  - Deliberating with respect to legal action
  - Taking legal action

- One type of meeting requires only one-way communication:
  - Proposing legal action
What Is “Legal Action”?  

- “Legal action” is “a collective decision, commitment or promise” about any matter about which the public body has oversight or authority.
- No discussions, proposals or deliberations about any such matters outside of a public meeting.
Agendas

- Agendas must list the **specific matters** to be discussed, considered or decided at the meeting.

- What is “specific”? 
  - Common sense test: Agendas must contain enough information **reasonably necessary** to inform the public of the matters to be discussed or decided.
Agendas

“The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.”

- “other matters related thereto”—narrowly construed
- consideration of non-agenda items should be deferred to future meeting
E-Mail

“An e-mail from a board member to enough other members to constitute a quorum that *proposes legal action* would be a meeting within the OML, even if there is only a one-way communication and no other board members reply to the e-mail.”

AG Opinion 105-004
E-Mail

● Committee members may not exchange e-mail messages that involve “discussions, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action.”

● Committee members may not propose legal action even if there is no exchange of messages.
A committee member cannot send an e-mail to a quorum of the committee that “proposes legal action.”

- “We should install a crosswalk at Central and Main.” AG Example
- “Please put a discussion about the College’s purchase of additional land in Sedona on the next committee agenda because I think that we should be buying more land there to expand the campus.”
E-Mail

So what should committee members do?

The Attorney General says:

“I strongly recommend that board members communicate with a quorum about board business at open public meetings, not through e-mails.”
Other Electronic Communications

- Same rule for text messages. No different than email.
  - Gilbert Public Schools investigation by AG: ok to text about placing a matter on the agenda if no other discussion.
  - BUT, “recommend that the board minimize the amount of e-mail and telephonic communications regarding official business among themselves outside of a public meeting.”
More Potential “Meeting” Pitfalls

- “Hub and spoke” discussions
  - Directing a staff member to discuss matters with other committee members and then report back

- Splintering of quorum with serial discussions
  - Private, one-on-one discussions that are intended to lead to a collective agreement outside of a public meeting

- Social conversations between a quorum
  - Not prohibited, but an appearance of impropriety
  - Easy to fall into discussions about committee matters
Comments to the Media

- Not a violation of the law to express an opinion or discuss an issue with the public personally, through the media or through other technological means, but only if
  - Opinion or discussion is not “principally directed at or given to” another member of the Committee
  - No “concerted plan” to deliberate about later legal action
Open Call

- The public has the right to “attend and listen” to public meetings.
- Public has no right to participate.
- The committee may make an “open call” to the public to allow individuals to address any issue within the committee’s jurisdiction.
Open Call

- Responses to issues raised during open call:
  - May **not** discuss or take legal action on items not on agenda.
  - May . . .
    - Respond to criticism
    - Ask staff to review the matter
    - Ask that the matter be put on a future agenda
You can control your meetings so that they are efficient and effective.

“Phoenix resident Dianne ‘DD’ Barker is fighting for her rights – specifically, the right to perform cartwheels at public meetings. . . . She has been known to show off her gymnastic skills at the [board’s] regular gatherings.”

- You can prevent someone from disrupting your meetings.
- Take incremental action, but can remove the person if nothing else works.
Secret Ballots and Proxies

- “All legal action shall occur during a public meeting.”
- Peoria City Council voted by secret ballot on a matter this year. Complaint filed with AG’s Office, and Council reversed its decision and held vote in public.
- Secret ballots and proxies are not consistent with the public policy behind the law.
Attending Events

A quorum of committee members can attend an event where the public is excluded without violating the law.

- Must have both a quorum AND engage in discussion or action about board business to have a meeting subject to the Open Meeting Law.
Committee members need to remember that *all* e-mail and text messages between Committee members, Committee members and staff, and Committee members and the public are public records that need to be properly maintained and produced, if requested.
Violations

- Actions taken are deemed null and void unless ratified at a public meeting within 30 days after the discovery of the violation.
- Investigation by the Attorney General or a county attorney upon receipt of written complaint or on own initiative.
Violations

- Court may impose:
  - Up to $500 fine for each violation
    - Upon individual who violates law, whether violation was intentional or not
    - Upon individual who “knowingly aids, agrees to aid or attempts to aid another person” in violating the law
  - Attorneys’ fees for plaintiff
  - Removal from office if violation was intentional
Intent of the Law

“The Open Meeting Law is intended to open the conduct of government business to public scrutiny and prevent public bodies from making decisions in secret.”