

## **Basic Coverage of the Act**

**1. What kinds of groups are subject to the open meetings law?**

The law extends to any public body.

**2. Is “public body” defined?**

Yes, and the definition is very broad. In general, a public body is any authority, board, commission, committee, council, or other body of state or local government that meets both of two conditions. First, it must have at least two members. And second, it must be authorized to exercise at least one of the following five functions: legislative, policy-making, quasi-judicial, administrative, or advisory. It is hard to imagine a formal group that is not authorized to exercise at least one of the listed functions.

(Special provisions also declare certain hospital corporations to be public bodies; see Questions 11 and 12.)

**3. Then does that mean that advisory boards and commissions are subject to the law?**

Yes, it does. “Advisory functions” are among the listed functions that make a group subject to the law.

**4. What about committees of public bodies, such as the finance committee of a city council?**

They are also public bodies; the statute specifically extends to “committees.”

**5. What is the status of a joint board or committee established by two local governments?**

It is a public body. The statute includes in the definition of public body boards and commissions of “one or more” local governments.

**6. But if a single officer or employee holds some sort of formal hearing, to determine, for example, whether an employee’s dismissal was justified, then that officer or employee who holds the meeting is not a public body?**

That’s correct. It takes at least two people to make a public body.

**7. If a group of public officials meet together informally, do they constitute a public body? For example, what if all the mayors in a particular county get together for lunch to talk about common problems?**

The kind of “group” involved in the example is probably not a public body. There needs to be some minimal amount of structure to a group before it meets the statutory conditions. The group probably needs to have been

“elected or appointed” by someone or some entity with authority to do so, rather than being self-created. In addition, it’s not clear that such a discussion group is exercising even one of the five required functions listed in Question 2.\*

**8. What about groups made up of professional staff?**

The statute is unclear. It provides that “‘public body’ does not include a meeting solely among the professional staff of a public body.” On one reading of the quoted language, if all the members of an otherwise-covered group are professional staff of an organization, the group is not a public body. A city, for example, might have a subdivision review board that approves subdivision plats. If the board is made up entirely of city staff, it would not be a public body. There is an alternative reading of the exclusionary language, however. Under this alternative reading, the language may intend only to make clear that an informal gathering of professional staff, meeting in the normal course of their work, is not a public body. On this reading, any *formal* body with defined powers, constituted by law or ordinance, would be a public body regardless of its membership. Thus, the subdivision review board described above would be a public body, despite its membership, because it is established by city ordinance and charged with the formal power of reviewing and approving subdivisions. It will probably take judicial action or further legislative action for this ambiguity to be resolved.\*

**9. What if a group’s membership includes some professional staff and some other persons, such as representatives of specific interest groups or members of the public?**

In that case the exclusion would not apply, regardless of its meaning. If such a combination group has been formally created by some person or body with authority to do so, and if the group has any of the five functions listed in Question 2, the group is a public body. If a small group of staff persons, though, simply invite one or more outsiders to join them in one or a series of meetings, the resulting group would be self-created and therefore not a public body.

**10. Our city appropriates money each year to a number of private, nonprofit agencies. In one or two cases, the city council appoints the board of directors of these agencies. Are they subject to the law?**

Some of them probably are. One type of nonprofit corporation—those governing certain hospitals—is subject to the law by specific provision. With other nonprofit corporations, if the only connection to local government is

\*Throughout this book, the asterisk indicates a question and an answer for which there is a case notation; see pages 43 through 53.

funding from a county or city, the nonprofit corporation almost certainly is not a public body. Such a corporation may be subject to the law, however, if it has ties to a county, city, or other local government that extend past public funding. Its status will depend on the nature and breadth of those ties.

**11. Let's talk about these nonprofit entities in more detail. What nonprofit hospital corporations are subject to the open meetings law?**

Those that meet any one of three qualifying definitions. First, if a hospital is owned by a county, city, hospital district, or hospital authority but is operated by a nonprofit corporation, the operating corporation is a public body if a majority of its board of directors are appointed by the governing board of the county, city, hospital district, or hospital authority that owns the hospital. Second, even if the governing board does not appoint a majority of the members of the hospital corporation, the hospital directors are still a public body if a county or city has outstanding general obligation or revenue bonds issued on behalf of the hospital or if a county or city makes current appropriations (other than for the medical care of prisoners or indigents) to support the hospital. Third, if a hospital that was owned by a public entity has been sold to a nonprofit corporation under the conditions of Section 131E-8 of the North Carolina General Statutes (hereinafter G.S.), which is the only statute that permits such a sale, the corporation that acquired the hospital is a public body, and so is any subsidiary of that corporation or any nonprofit corporation that owns the corporation to which the hospital has been sold.

It should be noted that it is the governing board of such a corporation that is subject to the open meetings law. If such a board has committees, the law does not seem to include the committees within the meaning of "public body."

**12. What about the other kind of nonprofit corporation—one that has significant ties to local governments?**

Here the law is ambiguous. It extends to authorities, boards, commissions, and so forth "of the State, or of one or more" local governments. In other contexts, including that of the public records law, North Carolina courts have held nonprofit corporations to be local government agencies if there are significant ties between the corporation and one or more local governments. In the major public records case dealing with this issue, the court of appeals found that the county had clear supervisory responsibilities and control over the corporation, as indicated by the following factors: (1) upon its dissolution, all the corporation's assets would vest in the county; (2) all appointments to fill vacancies on the board of directors of the corporation had to be approved by the county; (3) county facilities were leased to the corporation for \$1.00 a year; (4) the board of county commissioners was empowered to review and approve the corporation's annual budget; (5) the

county was entitled to conduct a supervisory audit of the corporation; (6) the corporation was required to report its rates and charges to the county; (7) county revenue bonds financed improvements to the facilities operated by the corporation; (8) revenues collected by the corporation were county revenues for purposes of revenue bond repayment; and (9) the corporation could not change its corporate existence or amend its articles of incorporation without county consent. This pattern of supervision and control was sufficient to cause the court to hold that the corporation was an agency of the county for purposes of the public records law. A comparable pattern of connections would probably cause such a corporation to be held a county agency for purposes of the open meetings law as well. Courts in other states have extended their open meetings laws to nonprofit corporations with close ties to local or state government.\*

**13. Sometimes local governments appoint members to task forces or other groups, but other, private organizations also make some appointments to these groups. Is the resulting group a public body?**

That depends on how large the group is, how many of its members are appointed by government, and what other ties there are between the group and one or more local governments. If the group has thirty members, for example, and only ten are appointed by local governments, and if there are no other significant ties between the group and local government of the sort listed in the preceding question, then the group is probably not a public body. But if a majority of the members are appointed by government, and there are additional connections to government, the answer probably changes.

**14. Could a local government that is appropriating funds to a nonprofit corporation that is not subject to the open meetings law require it to comply with the law as a condition of receiving the funds?**

Absolutely. A number of local governments do just that.

**15. If a local government does impose such a condition on nonprofit groups that would not otherwise be subject to the open meetings law, may a citizen sue to require a recipient group to comply with the law?**

Perhaps. Normally only those who are party to a contract may sue to enforce the contract, and only the granting government and the recipient agency are party to the grant contract. But sometimes courts interpret contracts as being primarily for the benefit of persons who are not party to the contract and allow these so-called third party beneficiaries to sue to enforce the contract. At least one court in another state has interpreted a contract of the sort under discussion here as being primarily for the benefit of the public and has allowed public enforcement of the contract, and therefore of the open meetings law, against the agency receiving public funds.\*