

Open Meetings and Closed Sessions

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36,000-foot view...

Open Meetings law applies to...

“Official meetings” of “public bodies”



143-318.10

What is a public body?

- 2 or more members
- Elected, appointed, or otherwise intentionally created
- Governmental (not private)
- Authorized to exercise any one of 5 public functions

Functions

- Legislative
- Policy-making
- Quasi-judicial
- Administrative
- Advisory

Is this a public body?

- ? Three state agency department heads that meet once a week to increase inter-agency communication and cooperation.
- ? The Governor establishes a Teacher Advisory Committee to provide input on the state of educators in North Carolina.
- ? A county manager appoints a committee of five employees to organize employee appreciation day events.

What is an official meeting?

- A majority of the members of a public body...
- ...gathering simultaneously in person or electronically...
- ...to conduct a hearing, deliberate, vote or otherwise transact public business.

Is this an illegal meeting?

Fourteen members of the Governor's twenty-six member AI Leadership Council meet for lunch and discuss several agenda items for next month's regular meeting.



Is this an Illegal Meeting?

A majority of city council members engage in an email discussion, responding directly to each other in a nearly real time electronic conversation.





Is this an Illegal Meeting?

The Local Government Commission has eight members. One member calls each other member individually to urge them to support his proposed guideline change.

Law requires **notice** and **opportunity** to attend

Type of Meeting	Definition
Regular	Official meetings that happen according to a set schedule
Special	Meetings that occur at any other time, date, or location than what is listed on the regular meeting schedule
Emergency	Meetings that are required to address an unexpected circumstance that needs immediate attention
Recessed	Meetings that are continued to another date, time, and/or place

Law requires **notice** and **opportunity** to attend.

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Type of Meeting	Definition
Regular	File schedule with the Secretary of State (for state bodies) and post on website
Special	Send notice to sunshine list, post on website, and post on principal bulletin board at least 48 hours before the meeting
Emergency	Send notice to sunshine list, post on website, and call, email, or otherwise notify members
Recessed	Make motion to recess in open session stating the time, date, and location of recessed meeting and post on website

Closed Sessions

- Limited authority to meet in closed session
- ***Process:*** Motion in open session, stating general purpose of closed session
 - ***Special rules*** for:
 - Preservation of confidential records: Must cite the law that makes the record confidential.
 - Attorney-client privilege: If there is litigation, must identify the parties.



Permitted Closed Session Purposes

Preserve confidentiality of records

Prevent premature disclosure of scholarship, prize, honorary degree, or similar award

Preserve attorney-client privilege

Discuss economic development

Discuss bargaining position for property acquisition

Consider performance, qualifications, appointment of public employees and public officers

Matters involving investigations of alleged criminal misconduct

Discuss local board of education emergency response and safety

Public safety as it pertains to terrorism

To view a recording released pursuant to 132-1.4A (body cam footage from law enforcement)

Closed Session Myths

Myth

Reality

It's illegal to talk publicly about what happens in closed session.



Statute doesn't prohibit it, but some topics are confidential under other laws.

The open meetings law establishes who can be included and excluded from closed sessions.



Open meetings law is silent on this question, but other laws may be relevant.

A closed session can be held without notice to the public.



A closed session must be part of an official meeting, which requires notice to the public.

Keeping Minutes

- Must keep “full and accurate minutes”
- Must accurately reflect the substance of all official acts taken and the vote by which action was taken
- Best practice is to have the board officially approve minutes of their meetings
- Minutes are public records
 - Special exception for general accounts of closed sessions



Violations of the Law: What Happens?

Scenarios:

- Board takes final action to hire or fire an employee in closed session.
- City council enters closed session under attorney-client privilege purpose without the attorney participating.
- A majority of a state committee discussed public business at a restaurant without proper notice and access.

Court Order

1. Declaring that a violation occurred
2. Prohibiting future violations
3. Invalidating actions taken
4. Personal liability (intentional action; not following attorney's advice)





What about remote meetings?

The Post-Covid Era



G.S. 166A-19.24

- Subsection (h)
 - Only applies during states of emergency and does not supersede any authority for remote meetings in the open meetings law



Lingering Questions

- Are remote meetings permissible outside of a state of emergency?
- Can remote participants count toward quorum?



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Lingering Questions

- Can remote participants vote?
- Do policies and bylaws matter?



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State of N.C. vs. Anson County



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Broader impacts?



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Potential Challenges

- Open Meetings Law
 - G.S. 143-318.16, -16A





What's the
bottom line?

Key takeaways for state-level bodies

1. Authority to conduct remote meetings remains unclear.
2. If relying on the open meetings law as authority, follow the procedures laid out in G.S. 143-318.13.



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Key takeaways for state-level bodies

3. Ensure that bylaws/rules of procedure/policies address:

- Authority
- Definition of remote meeting
- Quorum
- Voting

Resources

- Blogs

- <https://canons.sog.unc.edu/2024/08/the-court-of-appeals-addresses-emergency-meetings-and-remote-quorum/>
- <https://canons.sog.unc.edu/2021/07/public-meetings-after-the-lifting-of-the-state-level-state-of-emergency/>
- <https://canons.sog.unc.edu/2022/08/can-appointed-boards-continue-to-meet-remotely/>

We're here to help!



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