

Open Meetings

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5 Questions About Open Meetings

1. What meetings are subject to open meetings requirements?
2. What is an “official meeting” of a “public body?”
3. What is the right of access?
4. When is closed session allowed?
5. What are the sanctions for violations?

1. What meetings are subject to open meetings requirements?

“Official meetings” of “public bodies”



2a. What's a Public Body?

Public Body

- 2 or more members
- Intentionally created or appointed
- Governmental (not private)
- Exercising any one of 5 functions

Functions

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

Statutory Exception for Staff Only

- Does not apply to meetings only of employees
- But note: an employee group with final decision-making authority may be covered



Is This a Public Body?

- ? The mayors of all the cities in Wake County meet for lunch once a month.
- ? The board chair, the manager, and the clerk comprise the agenda committee and meet monthly to prepare the meeting agenda.
- ? The manager appoints a committee of employees to organize employee appreciation day events.

2b. What's an Official Meeting?

- A majority of the members
- Gathering simultaneously in person or electronically
- To conduct a hearing, deliberate, vote, or otherwise conduct public business.



Majority vs. Quorum

- In most cases, a majority for purposes of “official meetings” is the same as a quorum under G.S. 160A-74 and 153A-43.
- Note special case for cities:
 - Five member board plus mayor: quorum is four
 - Three members can take action if non-voting mayor
 - Three is a functional majority for an official meeting under the open meetings law

Social gatherings are OK!



There must be no discussion of public business among a majority of the public body

More on Public Bodies

- A committee of a public body is itself a separate public body
- Advisory committees entirely composed of private citizens are public bodies
- Note that small public bodies are particularly challenging.
 - A two-person or three person committee conducts an official meeting when two people are talking (or emailing or texting) each other about the business of the body.

Is This an Illegal Meeting?



Three members elect – not yet sworn in - meet with two members of the current five member board.

Is This An Illegal Meeting?



After a board meeting has adjourned, a majority of the board is seen continuing to talk in the parking lot.

Is This An Illegal Meeting?



A board member calls each other member individually to discuss a matter that will come before the board and to urge them to support his proposed approach.



Is This An Illegal Meeting?



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



Note On Group Email

- There is no problem with a single email that includes all or a majority of a public body.
- The open meetings law issue arises only if there is an electronic simultaneous exchange of emails – analagous to a conversation.
- Note that the emails are public records (unless an exception applies).

Electronic Meetings

- Boards should exercise restraint when all members are copied on emails and avoid engaging in discussions in near simultaneous time frame.



What Happens When a Majority Shows Up?

- Board members attend a local meeting or event.
- Three member committee of a five-member board; fourth member attends a meeting.
- Majority of board attends a partisan political meeting.

Key Question: Are they gathering together to transact the business of the public body?

Prohibited Meetings

- Open meetings law requires notice and access
- In effect, it prohibits meetings if notice and access is not possible
 - Email communications (even if emails are publicly available)
 - Meetings at inaccessible locations

3. What is the Right of Access?

Law requires notice and opportunity to attend

Type of Meeting	Notice Requirements
Regular	Notice filed, posted, on website
Special	48 hour notice to "sunshine list"; posted on website
Emergency	Notice to news media who have requested it, in same manner as given to members of the public body
Recessed	Post on website

Calling Special Meetings

- Counties: Chair or majority of board may call special meeting on 48 hours written notice. GS 153A-40
- Cities: Mayor/Mayor Pro Tem, or two members may call special meeting on 6 hours notice, or in a meeting in which all members are present. GS 160A-71
- This is *in addition to* the Open Meetings Law notice Requirements

The Right of Access

- Attend the meeting
- May record or video tape
- No right to speak except at monthly public comment period



Meeting Location

- Must be of reasonable size and must be accessible, but there is no legal obligation to accommodate everyone if there is a larger than expected crowd.
- Problems:
 - Restaurants
 - Private homes
 - Gated communities
 - Site visits
- Note limitation on county governing board meetings outside of the county

Closed Sessions

Limited authority to meet in closed session



Process: Motion in open session, stating general purpose of closed session

Closed Session Purposes*

- Preserve confidentiality of records
- Preserve attorney client privilege
- Discuss economic development
- Discuss bargaining position for property acquisition
- Consider performance, qualifications, appointment, of public employees and public officers (not members of the board itself or other boards)
- Matters involving alleged criminal misconduct

**Partial list: See G.S. 143-318.11 for complete description.*

Motions for Closed Session

- Must state the authorized purpose of the closed session (need not cite the statute)
- 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.



Closed Session Myths

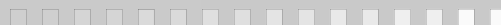


Myth: Boards cannot vote or take action in closed session.

Truth: Some closed session provisions specifically allow it.

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

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



Minutes and General Accounts

- Public bodies must create and retain minutes of meetings and general accounts of closed sessions.
- Minutes legal function is to document actions taken; typically provide a summary
- General Accounts: So that a person not in attendance would have a reasonable understanding of what transpired.
- Minutes and general accounts are public records, but may be withheld from public as long as necessary to avoid frustrating the purpose of the closed session.

Violations of the Law: What Happens?

- Board takes action in a closed session to increase the manager's salary.
- Email records indicate that a majority of the board discussed a pending rezoning matter in a near real time exchange.
- Board members take up a matter not included in a special meeting notice.

Are they automatically void?

5. What Are the Sanctions for Violations?



Court Order:

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

Opportunity to Cure?

- Actions are not automatically invalid, but there is a risk of challenge.
- Technical defects may be curable by taking action in a proper meeting.

Aspects of Meetings That Are Not Governed by the Open Meetings Law

- Public hearings
- Quorum
- Rules of procedure
- Voting Rules
- Public Comment Periods

Remote Participation In Meetings

- Open Meetings Law: requires notice and access to electronic meeting, but does not authorize them for any specific public body.
- County and city governing board have specific quorum requirements.
- Legal issue: Must a board member be physically present to count toward quorum?
- Board can authorize for appointed boards

Practical Implications

- Can be a legal risk if the person is necessary for a quorum or is the deciding vote
- Otherwise, probably no legal risk
- Board must decide whether to allow, and under what circumstances
- Make sure technology works before the call
- Local Government Law Bulletin on Remote Participation