

Open Meetings Act Committees and Social Media

Dexter Community Schools Board of Education

July 13, 2020 – Open Session

For Educational Purposes Only

Scott Eldridge, Principal

517-483-4918

eldridge@millercanfield.com

The logo for Miller Canfield, featuring the name in a blue, serif font. The word "MILLER" is positioned above "CANFIELD", with the letters "M" and "C" being significantly larger and overlapping the other letters.

Presentation Outline

- Open Meetings Act (basics)
- Sub-quorum Committees
- Email/Instant Messaging/Social Media Use



INTRODUCTION TO THE ACT

- The intent of the Open Meetings Act (OMA) is to provide openness and accountability in government and is interpreted to accomplish this goal.

Booth Newspapers v Wyoming City Council
168 Mich App 459 (1988)

- The OMA is construed liberally in favor of openness.

Wexford County Prosecutor v Pranger
83 Mich App 197 (1978)

- Attempts to avoid the OMA are regularly met with disapproval by the courts.

Booth Newspapers v Wyoming City Council
168 Mich App 459 (1988)

- “We do not countenance the use of strained legalisms or evasions to undermine the intent of the OMA to promote open and responsible government.”

People v Whitney
228 Mich App 230, 249 (1998)

DEFINITIONS (Sec. 2)

- **Public Body** - means any State or Local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by State constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

MCL 15.262

DEFINITIONS

- **Meeting** - means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.
 - This includes a quorum of a committee or subcommittee.
- **Decision** - means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

DEFINITIONS

- **Deliberation** – While the Act does not define deliberation, the courts have provided guidance:
 - “deliberation” includes “discussing,” which, in turn, is defined as “the act of exchanging views on something”
- *Hoff v Spoolstra*, unpublished, 2008 (COA No. 272898)
 - Other courts hold that deliberation includes engaging in “discourse” about a matter within the public body’s purview
- *Tuscola Wind III, LLC v. Almer Charter Township*, 2018 WL 3861678, (E.D.Mich., 2018)
 - Black's Law Dictionary . . . defines this word as “the act of carefully considering issues and options before making a decision or taking some action; esp., the process by which a jury reaches a verdict; as by analyzing, discussing, and weighing the evidence”. The word “discussion” is defined as the act of exchanging views on something; a *debate*.
- *Ryant v Cleveland Twp.*, 239 Mich. App. 430 (2000).

REQUIREMENTS (Cont.)

- All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public, except for closed sessions.
- All decisions of a public body shall be made at a meeting open to the public.

MCL 15.263(2); MCL 15.263(3)

OMA – Sub-quorum Meetings

What about subquorum meetings or communications?

- OAG # 5183 (Mar. 8, 1977)
 - Committees that are “merely advisory” or “only capable of making recommendations concerning the exercise of governmental authority” are not subject to the OMA...**BUT...**
- OAG # 7000 (Dec. 1, 1998)
 - Committees are subject to the OMA where effectively authorized to determine whether items of board business will be (or not be) referred to full board for action.
 - Citing *Schmiedecke v Clare School Bd*, 228 Mich App 259; 577 N.W.2d 706 (1998) (sub-quorum personnel committee given the authority to make only a recommendation on policy regarding evaluation of administrators violated the OMA), abrogated on other grounds, *Speicher v Columbia Twp Bd of Trustee*, 497 Mich 125 (2014).

OMA – Sub-quorum Meetings

***Nicholas v Meridian Charter Twp Board*, 239 Mich App 525 (2014)**

- The Michigan Court of Appeals has held that a violation of the OMA occurs when:
 - (1) a committee of a board holds a properly noticed meeting, but without noticing the fact that a quorum of the full board would be in attendance;
 - (2) a quorum of a board actually attends the committee meeting; and
 - (3) a board member who is not a committee member participates in the discussion.
- Under *Nicholas*, a violation could occur even if a single non-Committee Board member spoke at the Committee meeting at which a quorum of the Board was present.

OMA – e-Deliberations

Court of Appeals Holds Emails Among a “Quorum” of a Public Body Violates the OMA

Markel v Mackley, Case No. 327617 (Mich. Ct. App., Nov. 1, 2016)(unpublished)

- Four members of a seven-member elected public body engaged in numerous email exchanges regarding matters of public policy which would soon come before the public body for consideration.
- Only three of the members on the group emails actively exchanged thoughts and plans to handle the matters.
- The fourth member on the group emails simply received the emails but did not actively engage in the exchange.
- Court held: public body deliberated and violated OMA

Questions?



Scott R. Eldridge
517.483.4918
eldridge@millercanfield.com