

ARIZONA'S OPEN MEETING LAW

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Governing Board Meeting
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Why Do We Do This Every Year?

- 1998 Consent Decree as a result of alleged Open Meeting Law (“OML”) violations
- Voluntary resolution

Remedy

- Annual Training each January
 - Must cover “all aspects” of OML and emphasize the strict requirements regarding executive sessions

Remedies

- Annual Training
 - “[M]ust emphasize that just because an attorney is present does not absolve the public body of its responsibilities or give its members cart blanche to discuss anything under the broad umbrella of “legal advice.””

Meetings shall be open to the public

- A.R.S. § 38-431.01(A):
 - 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.

What is “legal action”?

- "Legal action" means a collective decision, commitment or promise made by a public body. A.R.S. § 38-431 (3).

What is “legal action”?

- All discussions, deliberations, considerations, or consultations among a majority of the members of a public body regarding matters that may **foreseeably** require final action or a final decision by the governing body, constitute "legal action" and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law.

When in Doubt, Have An Open Meeting

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings.”

A.R.S. § 38-431.09.

Who is Covered?

The definition of public body encompasses five basic categories of public bodies:

- 1) **boards, commissions, and other multimember governing bodies (including school boards);**
- 2) quasi-governmental corporations;
- 3) quasi-judicial bodies;
- 4) **advisory committees;** and
- 5) standing and special committees and subcommittees of any of the above.

Exceptions for Student Matters

Actions concerning the

- "discipline,
- suspension or
- expulsion of a pupil"

are NOT subject to the Open Meeting Law, but we must post regular notice and take minutes of any hearing held by the Board concerning such matters. A.R.S. § 15-843.

Notices

- Notice of meetings must be posted at least twenty-four hours in advance to members of the public body and to the general public.
- The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting. Sundays and other holidays are excluded.

Notices

- Notice of the topics to be addressed at open meetings must be specific and should be easy for a member of the public to understand.
- Generally, it is a violation of the Open Meeting Law for Board Members to discuss any item that is not specifically noticed.

Meetings and Notices Should be Accessible to Persons with Disabilities

- A public body should include a statement such as the following in any notice it issues: "Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name of designated agency contact person] at [telephone number and TDD telephone number]. Requests should be made as early as possible to allow time to arrange the accommodation."

Executive Session

- "Executive session" means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in section 38-431.03.
- Only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.

Reasons for Holding an Executive Session

- Discussion or consultation for legal advice with the attorney or attorneys of the public body.
- Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

Executive Session

Notice of an executive session must state the exact subsection of the provision allowing for the executive session—a blanket notice of all the possible subsections is not sufficient.

Legal Advice

- Agendas may include the following language:
- "The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on any matter listed on the agenda pursuant to A.R.S. § 38-431.03(A)(3)."

Calls to the Public

- The public has the right to attend and listen to Board meetings, NOT the right to speak at the Board meeting.
- If the Board decides to include a call to the public, the Board may limit the amount of time given to each speaker.

Calls to the Public

- Members of the Board may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda.
- Board members may, however, respond to criticism made by those who have addressed the public body, ask staff to review a matter, or ask that a matter be put on a future agenda.

A Note About Electronic Communications

- E-mails and texts among Board members can easily become an unintentional violation of the Open Meeting Law.
- When Board members communicate by e-mail or text with District personnel, best practice is not to forward those communications to other members of the Board.
- Replies should be sent individually to staff, without copying other Board members.

If the Open Meeting Law is Violated

- All legal action taken is null and void unless subsequently ratified.
- A court may impose a civil penalty not exceeding \$500 against any person for each violation; the public body may not pay the penalty on behalf of the person assessed.
- Prosecution by Attorney General could also result in other equitable remedies

If the Open Meeting Law is Violated

- The court may also order payment of attorney's fees and costs; the public body may not pay these costs and attorney's fees.
- If the court determines a public officer violated the Open Meeting Law "with intent to deprive the public of information or of the opportunity to be heard," the court may remove the public officer from office.

Questions?