

# ARIZONA OPEN MEETING LAW

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# PURPOSE OF THE OML

- “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. A.R.S. § 38-431.09(A).
- Any uncertainty under the Open Meeting Law should be resolved in favor of openness in government.

# SOURCES OF LAW

- Arizona Revised Statutes §§ 38-431 to 38-431.09
- Arizona Agency Handbook, Chapter 7  
[https://www.azag.gov/sites/default/files/docs/agency-handbook/2018/agency\\_handbook\\_chapter\\_7.pdf](https://www.azag.gov/sites/default/files/docs/agency-handbook/2018/agency_handbook_chapter_7.pdf)
- Case law
- Arizona Attorney General Opinions

# OML APPLICATION

- Applies to “public bodies,” which include “multimember governing bodies of . . . political subdivisions” of the state, which include “counties, cities and towns, school districts and special districts.” A.R.S. § 38-431(5)-(6).
- Includes advisory committees, which are entities established by public bodies “whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.” A.R.S. § 38-431(1).
- Includes special and standing committees and subcommittees of a public body. A.R.S. § 38-431.01(A).

# GENERAL REQUIREMENTS

- All meetings of a public body shall be public, and all persons desiring to attend shall be permitted to attend and listen to the deliberations and proceedings. A.R.S. § 38-431.01(A).
- All legal action of public bodies shall occur during a public meeting. A.R.S. § 38-431.01(A).

# WHAT IS A MEETING?

- A meeting is “the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose, or take legal action, including any deliberations by a quorum with respect to such action.” A.R.S. § 38-431(4).
- It does not matter what label is placed on a gathering. It may be called a work or study session, or the discussion may occur at a social function.
- Can include communications among a majority of members via email, text message, or social media.

# 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.”

# AGENDAS

- The public body may discuss, consider, or decide only those matters listed on the agenda and other matters related thereto. Whether a matter is related to an agenda item will be construed narrowly.
- Agendas for public meetings must contain a listing of the specific matters to be discussed, considered, or decided at the meeting.
- Executive session agendas must specifically identify the reason for the executive session, and should cite the subsection of A.R.S. § 38-431.03 that permits the executive session.



# MEETING NOTICES

- Must be posted at least 24 hours in advance of the meeting time If not posted – meeting cannot be held
- Posting
  - Official posting board (legal)
  - Web (required)
  - Must be specific
  - The body, date, time, place
  - Specific agenda items to be discussed, considered, or decided
  - Reasonable description to inform public of what will be discussed

# RECORD OF MEETINGS

- A statement describing legal actions, minutes or a recording must be posted to Web and available to the public within 3 working days after the meeting.
- Approved minutes must be posted to Web within 2 working days after approval.
- Minutes are required of every meeting even if only discussion occurred on items with no action taken.
  - – If quorum lost then minutes must reflect up to that point.
- All public meetings require minutes including:
  - – date, time, place, members present and absent
  - – a general description of matters considered
  - – names of persons making statements
  - – description of legal actions taken (including motions and votes, as well as a presentation/discussion only)

# CALLS TO THE PUBLIC

- The OML does not establish a right for the public to participate in the discussion or in the ultimate decision of the public body.
- The public body may not discuss or take action on matters raised during the call to the public if they are not on the agenda.
- Members may respond to criticism by those who have spoken during a call to the public, ask staff to review a matter, or ask that a matter be placed on a future agenda.

# PENALTIES FOR VIOLATIONS OF THE OML

- Nullification or voiding of the action taken.
- Civil penalties of \$500 for each violation. Assessed against the person who violated the OML, not the public body.
- Attorneys fees. Can be paid by the public body, unless the person who violated the law acted with intent to deprive the public of information.
- Removal from office if the member acted with intent to deprive the public of information.

# COMMUNICATION: ONE-WAY VS. TWO-WAY

- Four activities must be conducted at a properly noticed meeting: (1) proposing legal action, (2) discussing legal action, (3) deliberating with respect to legal action, and (4) taking legal action.
- Three of these – discussing, deliberating, and taking legal action – require two way communication, *i.e.*, an exchange between members of the public body.
- However, proposing legal action does not require collective action. Consequently, members of public bodies must be particularly careful with communications that propose legal action.

# COMMUNICATIONS THAT VIOLATE THE OML

- E-mail discussions between less than a quorum of the public body's members that are forwarded to a quorum by a member or at the direction of a member would violate the OML.
- Member A on a five-member public body may not e-mail members B and C on a particular subject within the scope of the public body's responsibilities and include what members D and E have previously communicated to member A. This e-mail would be part of a chain of improper serial communications between a quorum on a subject for potential legal action.

# COMMUNICATIONS THAT VIOLATE THE OML

- A staff member who meets individually with each member of the public body regarding official business and shares the comments made by other members with a majority of members of the public body has facilitated a discussion or deliberation, and therefore has violated the OML.
- Discussions or deliberations (in person or through technological means) between less than a majority of the public body violate the OML when used to circumvent the purposes of the OML. Members may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the members.

## COMMUNICATIONS THAT MAY VIOLATE THE OML

- An e-mail from staff to a quorum of the public body's members would not violate the OML. However, if members reply to the staff member, they must not send copies to enough other members to constitute a quorum. Similarly, the staff member must not forward replies to the other public body members.
- One member on a three-member public body may e-mail a unilateral communication to another member concerning facts or opinions relating to the public body's business, but members may not respond to the e-mail because an exchange between two members would be a discussion by a quorum.



## COMMUNICATIONS THAT MAY VIOLATE THE OML

- An e-mail request by a public body member to staff for specific information does not violate the OML, even if the other members are copied on the e-mail. The staff member may reply to all without violating the OML as long as that response does not communicate opinions of other members. *However*, if members reply in a communication that includes a quorum, that would constitute a discussion or deliberation and therefore violate the OML.
- A member of a public body may voice an opinion or discuss an issue with the public outside a public meeting, via social media, or through traditional media outlets, so long as the opinion or discussion is not principally directed at or directly given to another member of the public body and there is no concerted plan to engage in collective deliberation to take legal action.

## COMMUNICATIONS THAT DO NOT VIOLATE THE OML

- If a staff member or a member of the public e-mails a quorum of members of the public body, and there are no further e-mails among members, there is no OML violation.
- A member of a public body may e-mail staff and a quorum of the members proposing that a matter be placed on a future agenda. Proposing that the public body have the opportunity to consider a subject at a future public meeting, without more, does not propose legal action, and, therefore, would not violate the OML.

## COMMUNICATIONS THAT DO NOT VIOLATE THE OML

- A member of a public body may copy other members on an e-mailed response to a constituent inquiry without violating the OML because this unilateral communication would not constitute discussions, deliberations or taking legal action by a quorum of the members.
- A member of a public body may use e-mail to send an article, report or other factual information to the other members or to a staff member with a request to include this type of document in the public body's agenda packet. The agenda packet may be distributed to members via e-mail.