



Five Ways to Avoid Violating the Open Meetings Act

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Municipal boards, commissions, Zoning Board of Appeals and many municipal committees are subject to the Open Meetings Act ("OMA"). While officials often receive training regarding the basics of the OMA, municipalities often make some common mistakes that can easily be avoided. Below we have addressed five mistakes and how to avoid them.

1. Remember the OMA When Communicating by E-mail.

Using e-mail to conduct business may result in a violation of the OMA. The OMA requires that meetings be open to the public:

All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this Act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting.

MCL 15.263(1). A "meeting" is "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." In addition, all decisions have to be made at a meeting open to the public. If municipal board members are discussing or seeking a consensus on board issues, such an action must be made in an open meeting.

Using e-mail to communicate with other Board members about policy and other Board decisions may violate the OMA. Generally, two members of a board (unless they are considered a quorum of a subcommittee or other "public body") are not prohibited from discussing board issues with one another; however, if a quorum of the board or subcommittee discusses matters via e-mail, then the board

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might find itself in violation of the OMA. By way of example, if an e-mail was sent to several board members regarding an issue and board members replied to all recipients of that e-mail, there may be a tendency for a "discussion" to take place. Even if only one or two members responded, messages and responses from other board members may be forwarded to other members so that it may look as though a "round robin" type of discussion is occurring. The OMA requires that all decisions of public bodies be made in the open. Since there is no notice and no opportunity for the public to participate in e-mail discussion, this type of "meeting" does not comply with the OMA.

To avoid this common mistake, the municipality should develop an e-mail policy that addresses both use of e-mail and the retention of e-mail records.

2. Be Careful How the Municipality Handles the Public at Meetings.

As stated above, the right to attend a meeting of a public body includes the right to tape record, videotape, and broadcast the public proceedings via live radio and television. The municipality may not prevent an attendee from videotaping or recording a board meeting. If the municipality asks a person to refrain from videotaping the meeting, they would be in violation of the OMA.

Similarly, the OMA provides that all persons in attendance at a public meeting have the right to address the public body. Municipalities should consider how it handles the public comment portion of the meeting. Although municipalities can place reasonable limitations on speakers during public comment, such as limiting each speaker to a reasonable amount of time, they may not limit the total time of public comment. For example, they should not have a policy that limits the total time of public comment to a half hour.

3. Avoid the Appearance of a Secret Meeting.

As previously noted, discussing municipal business with a quorum of board members outside of an open meeting violates the OMA. Some lawsuits are filed because the public body makes a decision at a meeting with absolutely no discussion. When it appears there should have been a public discussion, such as when the issue is controversial, members of the public sometimes assume that a meeting was held in private and discussion took place "behind closed doors," and file a lawsuit. Obviously, a quorum of the municipal board should not be discussing business if they are not at a meeting open to the public; however, they may also avoid such lawsuits by taking extra effort to discuss topics on the record so there is no appearance of an unlawful meeting.

4. Avoid Decisions in Closed Session.

The OMA requires that all decisions be made at an open meeting. A "decision," is defined in part as any determination, action, vote or disposition, on public policy may not be made in the closed session. To avoid an OMA violation, no substantive motions or Board actions should be taken in closed session.

5. Understand the Specific Reasons a Municipality May Move Into Closed Session to Discuss Employment Issues.



The OMA contains specific reasons that a board may meet in closed session regarding employment related issues. For example, a closed session may be called (1) to consider the dismissal, suspension, discipline, complaints, charges or periodic personnel evaluations of a public officer or employee, if the named person requests a closed hearing; or (2) for strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement, if either party requests a closed session. These two exemptions are specific and narrow. Thus, not every employment-related issue falls into these two categories. For example, a municipality may not meet in closed session to negotiate the new contract for their manager. Similarly, a municipality may not meet in closed session to discuss budget cuts that may result in layoffs or the reduction of benefits. To avoid an OMA violation, they should only discuss the topics specifically allowed by law.

If you have further questions about how to remain OMA compliant when conducting meetings, contact Anne Seuryneck at (616) 726-2240 or at aseuryneck@fosterswift.com.