

HOW TO COMPLY WITH THE OPEN MEETINGS LAW A CHECKLIST

Make sure county commission has written rules of procedure

- And make sure you follow them!
- Keep personal copy of rules and have working knowledge of adopted procedures

Make sure proper notice is given of ALL meetings

- Adopt a regular meeting schedule at organizational meeting
 - Including “work sessions”, if regularly held
- Make sure notice is properly posted at all times
- Post notice and contact media of any changes to regular schedule

Follow rules for special and emergency meetings

- Post five days' notice and contact media for special meeting
 - Requires written consent from majority of body
- Post notice and contact media as soon as special meeting set
 - Can be called by commission chair
- Must post agenda and cannot conduct any other business at meeting

Make sure all deliberation is conducted in a “legal” meeting

- No impromptu or “serial” meetings
- No polling of members by phone or email
- No electronic communications to circumvent the law

Follow the proper process for convening and conducting an executive session

- Establish quorum of the body first
- Motion to convene executive session setting out grounds by recorded vote
 - Make sure you have one of the nine proper grounds
 - Make sure you have statement that grounds exist where necessary
- Follow any special rules applicable to stated ground
- State whether body will reconvene after executive session
- Do not deliberate or vote in executive session

Make sure all committees established by the body follow the open meetings law

- Committees must give notice, hold open meetings, keep minutes, etc.
- Applies whether or not quorum of body sits on committee

Make sure minutes are kept of all meetings

- No minutes of executive sessions
- Minutes not “public record” until approved by commission



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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
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Honorable J.T. "Jabo" Waggoner
Senate Majority Leader
Member, Alabama State Senate
Alabama State House
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Open Meetings Act of 2005 – Boards of
Trustees – Colleges and Universities –
Committees – Meetings

A quorum of the board of trustees may attend a committee meeting, where notice was properly given for the committee meeting under the Open Meetings Act ("OMA"), without also providing notice of a board meeting, as long as the board does not deliberate matters at the committee meeting that it expects to come before the board at a later date.

If a quorum of the board has prearranged a board meeting to occur at the committee meeting, the board must provide notice of this meeting under the OMA.

A quorum of the board may not hold an impromptu board meeting at the committee meeting, at which it deliberates specific matters expected to come before the board at a later date, such as other board business, without violating the OMA.

Dear Senator Waggoner:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) If a standing committee of a state university board of trustees holds a committee meeting to discuss committee business on university issues and university business where notice is properly given for the committee meeting, and if a majority of the voting membership of the board of trustees attends the committee meeting, does this then become an illegal or improper board of trustees meeting under the Open Meetings Act of 2005?

(2) If this is not a violation, would it be a violation of the act if the board members present discussed other board business that was not a part of the committee's responsibilities during this same committee meeting?

FACTS AND ANALYSIS

The Open Meetings Act of 2005 is codified in section 36-25A-1, *et seq.*, of the Code of Alabama. ALA. CODE §§ 36-25A-1 to 36-25A-11 (Supp. 2010). The purpose of the OMA was to help provide the public with transparency in regards to the governmental process. The act applies to "meetings of a governmental body" and requires all meetings of a governmental body to be open to the public. ALA. CODE § 36-25A-1(a) (Supp. 2010). The OMA requires a governmental body to post notice of all meetings. ALA. CODE § 36-25A-3(a) (Supp. 2010). The holding of a meeting by a governmental body without giving the proper notice is a violation of the OMA. ALA. CODE § 36-25A-9 (Supp. 2010).

This Office has stated that the board of trustees of a university is a governmental body as defined by section 36-25A-2(4) of the OMA. Opinion to Honorable William G. Cale, Jr., President, University of North Alabama, dated April 30, 2007, A.G. No. 2007-086. A "governmental body" includes "all standing, special, or advisory committees or sub-committees" of the body. ALA. CODE § 36-25A-2(4) (Supp. 2010). Thus, a standing committee of the board of trustees of a university must give notice of its meetings. Your request presumes that notice of the standing committee meeting was properly given.

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex*

parte Ala. Dep't of Mental Health & Mental Retardation, 840 So. 2d 863, 867 (Ala. 2002). Courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001).

The definition of "meeting" in the OMA is limited to the following three types of gatherings:

(6) MEETING. a. Subject to the limitations herein, the term meeting shall only apply to the following:

1. The *prearranged gathering* of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body at a time and place which is *set by law or operation of law*.

2. The *prearranged gathering* of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body during which the body, committee, or subcommittee of the governmental body is *authorized*, either by law or otherwise, *to exercise the powers which it possesses or approve the expenditure of public funds*.

3. The *gathering*, whether or not it was prearranged, of a quorum of a governmental body or a quorum of a committee or a subcommittee of a governmental body *during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the body, committee, or subcommittee at a later date*.

ALA. CODE § 36-25A-2(6) (Supp. 2010) (emphasis added).

Section 36-25A-2(6)a.1 and a.2 addresses prearranged meetings. Paragraph one addresses prearranged gatherings or meetings that are set by law or operation of law. (For example, a statute may require a board to meet once a month on the first Monday of the month.) Paragraph two addresses prearranged gatherings or meetings that are not automatically

set by law, but which the governmental body may set to occur on a particular date and time, during which the body may exercise the powers it possesses or approve the expenditure of public funds. (For example, the board itself sets the date and time of its next board meeting to occur on a specific date next month.)

The third type of meeting that is covered by the OMA is a gathering of a quorum of a body, whether prearranged or not, and during this gathering, members of the body deliberate matters that, at the time of the gathering, the members expect to come before the body at a later date. A gathering such as this is considered a meeting under the OMA and, if prearranged, notice of the meeting should be given under the OMA. If the gathering is not prearranged, and a deliberation as described above takes place at this gathering, a meeting has occurred, and the OMA would appear to be violated. It does not matter if a vote is taken at this gathering; if a matter is deliberated at this gathering that the members of the body expect to come before the body at a later date, a "meeting" has occurred. Essentially, a quorum of a governmental body may gather for various reasons (for example, in a social setting), and such a gathering does not constitute a meeting. If, however, deliberation on a matter that the members expect to come before the body at a later date occurs at this gathering, a meeting has occurred.

Therefore, a quorum of the board of trustees may attend a committee meeting, where notice was properly given for the committee meeting, without also providing notice of a board meeting, as long as the board does not deliberate matters at the committee meeting that it expects to come before the board at a later date. If a quorum of the board has prearranged a board meeting to occur at the committee meeting, the board must provide notice of this meeting under the OMA. A quorum of the board may not hold an impromptu board meeting at the committee meeting where the board deliberates specific matters expected to come before the board at a later date, such as other board business, without violating the OMA.

CONCLUSION

A quorum of the board of trustees may attend a committee meeting, where notice was properly given for the committee meeting under the Open Meetings Act, without also providing notice of a board meeting, as long as the board does not deliberate matters at the committee meeting that it expects to come before the board at a later date.

Honorable J.T. "Jabo" Waggoner
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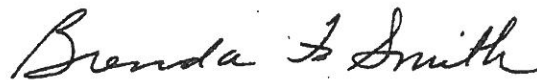
If a quorum of the board has prearranged a board meeting to occur at the committee meeting, the board must provide notice of this meeting under the OMA.

A quorum of the board may not hold an impromptu board meeting at the committee meeting, at which it deliberates specific matters expected to come before the board at a later date, such as other board business, without violating the OMA.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/GWB

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PROPOSED CHANGES TO OPEN MEETINGS LAW

SB 191 by Sen. Cam Ward

Prohibition against "Serial Meetings"

The 2014 legislation to amend Alabama's open meetings law had, as its main objective, tougher language to prohibit "serial meetings". Under this bill, Ala. Code § 36-25A-1(a) would have been amended to specifically provide that serial meetings could not be utilized to circumvent the law.

The legislation included a lengthy and detailed definition of "serial meeting", which was the basis for most of the negotiations between the Alabama Press Association and interest groups representing governmental bodies (including the ACCA). The final agreed-to definition would have provided prohibited small groups of board members meeting consecutively to avoid gatherings of a quorum of the body, but included specific exemptions for some certain activities (such as preliminary interviews of department heads), which would actually have benefited county government in many ways – an excellent example of negotiating out the "danger" in proposed legislation.

The "final" version of the "serial meeting" definition in the bill read as follows:

SERIAL MEETING. a. The term serial meeting applies to any series of gatherings of two or more members of a governmental body, at which:

1. Less than a quorum is present at each individual gathering and each individual gathering is attended by at least one member who also attends one or more other gatherings in the series.
2. The total number of members attending two or more of the series of gatherings collectively constitutes a quorum.
3. There is no notice or opportunity to attend provided to the public in accordance with the Alabama Open Meetings Act.
4. The members participating in the gatherings deliberate specific matters that, at the time of the exchange, the participating members expect to come before the subcommittee, committee or full governmental body at a later date.
5. The series of gatherings was held for the purpose of circumventing the provisions of this chapter.
6. At least one of the meetings in the series occurs within seven calendar days of a vote on any of the matters deliberated.

b. The term serial meeting may not include:

1. Gatherings at which no deliberations were conducted or the sole purpose was to exchange background and education information with members on specific issues shall not be considered a serial meeting under this chapter.
2. A series of gatherings related to a search to fill a position required to file a statement of economic interests with the Alabama Ethics Commission pursuant to § 36-25-14 until the search has been narrowed to three or fewer persons under consideration.
3. A series of gatherings by the trustees of an institution of higher learning established by the Alabama Constitution including, but not limited to, a search to fill a position that directs such institution or a department or major division thereof, including the position of president, vice-president, provost, dean, department head, or athletic coach.
4. A gathering or series of gatherings involving only a single member of a governmental body.

Economic Development “Gatherings”

In addition to the provisions of the bill related to serial meeting, the final version of SB 191 proposed changes to the definition of “meeting” to allow governmental bodies more leeway in certain economic development “gatherings”.

First of all, *Ala. Code § 36-25A-1(b)(1)* would have been amended to provide that occasions where a quorum of a governmental body gathers, “for on-site inspections or meetings with applicants for economic incentives or assistance from the governmental body” would not be considered a “meeting” under the law.

Additionally, under newly-created *Ala. Code § 36-25A-1(b)(3)*, occasions when a quorum of a subcommittee, committee, or full governmental body gathers to discuss an economic, industrial, or commercial prospect or incentive that does not include a conclusion as to recommendations, policy, decisions or final action on the terms of a request or an offer of public financial resources” would not be considered a meeting.

Applicability of Law and Standing to Sue

The 2014 bill included a few other more technical changes worthy of mention:

- Included language to strengthen exemptions for the Legislature
- Included language purporting to clarify who can sue under the law
- Provided for a minimum penalty of \$1.00

SB 191 “died in the basket” on the last night of the 2014 session after passing both houses of the legislature. It will most likely be introduced early in the 2015 session. And county government will work hard to make sure the beneficial language in the 2014 bill remain part of the effort to amend this law.