Changes to the Open Meetings Law

Act 2015-340

The Alabama Legislature passed legislation during the 2015 Regular Session to amend certain aspects of the Open Meetings Law, original enacted in 2005. This is the first time this law has been amended – and most of the amendments are aimed at clarifying the original intent of the law made murky by recent rulings from the Supreme Court of Alabama.

Many of the amendments are positive for local government, providing a little more latitude in the area of economic development discussions and interviewing for department head positions. Additionally, the changes clarify that committees created by a governmental body are subject to the Open Meetings Law and that governmental bodies cannot hold “serial meetings” to avoid the open meeting requirements of the law.

The following is an overview of the major changes in the law pursuant to Act 2015-340.

**Committees and Subcommittees**

The Act amends the definition of “meeting” to include the following as a fourth “gathering” that constitutes a “meeting”:

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

Committees and subcommittees are also now included in the list of circumstances that do not constitute a meeting, such as attending social gatherings or conferences and/or meeting with state or federal officials.

**Economic Development Gatherings**

The Act amends the section setting out what circumstances do not constitute a meeting to allow for “on-site inspections or meetings with applicants for economic incentives or assistance from the governmental body” as long as there is ***no deliberation***.

Additionally, occasions where a quorum of a body, committee, or subcommittee gathers to discuss an economic, industrial, or commercial prospect or incentive is not considered a meeting provided the discussion does not include conclusions “as to recommendations, policy, decisions or final action” – i.e., there is ***no deliberation***.

**Two Member Gatherings**

The Act clarifies that two members of a governmental body can talk together at any time as long as they do not deliberate – and specifically applies this provision to ”two members of a full governmental body having only three members”.

**Serial Meetings**

One of the major components of Act 2015-340 is specific language to define – and prohibit – serial meetings. The new Act sets out in detail when a serial meeting occurs and the circumstances under which these gatherings violate the law.

A serial meeting occurs when there is a series of gatherings of two or more members of a governmental body if each of the following applies:

* There is less than a quorum of the body present at each individual gathering and at least one member attends one or more other gatherings in the series.
* The total number of members attending two or more of the series of gatherings collectively constitutes a quorum.
* There is no notice or opportunity for the public to attend as provided in the law.
* The participating members deliberate specific matters they expect to come before the body at a later date.
* The series of gatherings was held for the purpose of circumventing the law.
* At least one of the gatherings in the series occurs within seven calendar days of a vote on any of the matters deliberated.

***It is important to note that the law requires proof that the gatherings were held for the purpose of circumventing the law.***

The Act provides that “gatherings” are not considered serial meetings if:

* There is no deliberation
* The sole purpose of the gathering was to exchange background and education information with members on specific issues.
* The gatherings are related to a search to fill a position for persons required to file a Statement of Economic Interests until the search has been narrowed to three or fewer persons under consideration.
* The gatherings only involve a single member of a governmental body.

There are a few other “exceptions” that do not generally apply to local government.

**Enforcement**

One of the cases recently decided by Alabama’s Supreme Court dealt with who had “standing” to bring an action for violation of the Open Meetings Law and who was entitled to receive penalties paid in the event of such violation. The new Act addresses these two issues in the following manner:

1. Only citizens who have been “impacted by the alleged violation to an extent which is greater than the impact on the public at large” can bring action under the law, and his or her petition must state specifically how he or she is or will be impacted to a greater extent than the general public.

* This is actually more limiting than the original law which allowed for actions by *any* Alabama citizen
* Actions can still be brought by any media organization, the attorney general, or the district attorney

2. Any civil penalties ordered by the court shall be payable to the plaintiff(s).

3. There shall be a minimum penalty of one dollar ($1.00).

In addition to these “clarifications”, the Act also requires that all causes of action based on or arising out of the same alleged violations shall be consolidated into one action.

* No member of a body shall be subject to further liability following a final order related to the same alleged violations.
* Clearly this is another plus for local government.

These amendments to the Open Meetings Law take effect on September 1, 2015.