

Open Meetings Act—Definitions and Requirements

Definitions

Public Body	Any local legislative or governing body, including a board, commission, committee, subcommittee, authority or council, empowered to exercise governmental or proprietary authority or function.
Meeting	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.
Closed Session	A meeting or part of a meeting of a public body which is closed to the public.
Decision	A determination, action or vote on a motion, proposal, recommendation, resolution or ordinance, on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.
Person	An individual, corporation, partnership, organization, or association. This does not include an individual serving a sentence of imprisonment in a state or county correctional facility in this state or any other state, or in a federal correctional facility.

Requirements for Meetings

- All meetings of a public body shall be open to the public and shall be held in a place available to the general public. A person may tape record, video tape, broadcast live, and telecast live the proceedings. A public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.
- All decisions of a public body shall be made at a meeting open to the public.
- All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public, except for closed sessions.
- A person shall be permitted to address a meeting of the public body under rules established by a public body; a person shall not be excluded from a public meeting except for breach of the peace at the meeting.
- The Act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid the Act.
- Notice of regular meetings shall be posted within ten days after the first meeting in each calendar or fiscal year.
- For a rescheduled regular or a special meeting, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting in a prominent and conspicuous place at both the public body's principal office and, if the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, on a portion of the website that is fully accessible to the public. See Fact Sheet: OMA—Posting Requirements for more details.
- Minutes must be taken.

Open Meetings Act—Calling Closed Meetings

Introduction

The Michigan Open Meetings Act (OMA) provides that all meetings of a public body shall be open to the public and be held in a place available to the general public. (MCL 15.261 et seq.) The OMA also provides, however, for those situations in which a public body may meet in closed or executive session. (MCL 15.268) The circumstances under which a public body may go into a closed session are specifically spelled out in the Act, as is the procedure for going into a closed session.

How do we call a closed session?

From an open meeting, a two-thirds roll call vote is required, except for closed sessions permitted under MCL 15.268(a) (discipline, personnel evaluation, etc. of official/employee) or MCL 15.268(c) (collective bargaining) which require a majority vote. A roll call vote and the purpose for calling a closed session shall be entered into minutes of the open meeting.

When may closed sessions be held?

- To consider dismissal, suspension or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer or employee if requested by the named person. [majority vote]
- For strategy and negotiation sessions connected with negotiation of collective bargaining agreement if requested by either negotiating party. [majority vote]
- To consider purchase or lease of real property up to the time an option to purchase or lease of that property is obtained. [two-thirds roll call vote]
- To consult with an attorney regarding trial or settlement strategy in connection with specific pending litigation, but only if an open meeting would have detrimental financial effect on municipality's litigating or settlement position. [two-thirds roll call vote]
- To review and consider contents of application for employment or appointment to public office if candidate requests that application remain confidential. [two-thirds roll call vote] Interviews by public body for employment or appointment to public office must be held in an open meeting. (The Act does contain an exception to this requirement for the selection of college/university presidents under certain conditions.)
- To consider material exempt from discussion or disclosure by state or federal statute. [two-thirds roll call vote]

NOTE: Each of the purposes which allow a closed session begins with "to consider," "to consult," or "to review." Any action must be taken in open session.

How do we end a closed session?

A member of the public body moves to return to open session. The public body performs any action required as a result of the closed session in open session. The meeting then proceeds with other matters or adjourns in the normal fashion.

Open Meetings Act—Email Quorum Violation

Introduction

The Michigan Court of Appeals has ruled that email deliberations among a quorum of public body members violates the Open Meetings Act (OMA). The November 1, 2016, unpublished opinion was issued by a three-judge panel in the case of *Markel v Mackley*, Case No. 327617.

Meeting requirements

Section 3 of the Michigan Open Meetings Act, PA 267 of 1976, as amended (OMA), requires that:

- “All meetings of a public body shall be open to the public and shall be held in a place available to the general public,” and
- “All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.”

Interpreting these provisions, the Court explained that, “[u]nder the OMA, public bodies must conduct their meetings, make all of their decisions, and conduct their deliberations (when a quorum is present) at meetings open to the public,” (quoting *Speicher v Columbia Twp Bd of Trustees*, 497 Mich 125, 134-135 (2014).

Deliberations

In *Markel*, four members of a seven-member elected public body engaged in numerous email exchanges regarding matters of public policy which would soon come before the public body for consideration. Three of the members on the group emails actively exchanged thoughts and plans to handle the matters. The fourth member on the group emails simply received the emails but did not actively engage in the exchange. At subsequent public meetings, the matters were handled just as had been planned in the email exchanges. The Court found that the group emails constituted a “meeting” under the OMA because there was a quorum present and deliberations occurred on a matter of public policy. Furthermore, the Court found that, “Because the meeting was held privately via email, the four defendants violated [Section 3(3) of the OMA] which required such deliberations to be open to the public.”

The Court acknowledged that the mere receipt of an email by a public body quorum does not, itself, constitute “deliberation” and that there must be some level of discussion on the issue of public policy being presented. While the Court ultimately ruled that such a finding is often fact-specific, in reaching its decision it relied on the facts that:

- 1) The members who received the emails were not “mere observers,” and that their tacit agreement to the substance of the email was later demonstrated at public meetings by, “acting consistently with decisions made in the emails;”
- 2) None of the members objected to their inclusion on the emails; and
- 3) The response by members to some of the emails, but not all, could indicate participation on behalf of a member.

While the Court’s ruling did not specifically address group text messages, the rationale applied in this case would apply equally to group text messages and other forms of electronic communications. Thus, members of Michigan public bodies must act with great care to avoid group communications that may constitute an impermissible “meeting” under the Open Meetings Act. See the following Fact Sheets: OMA—Definitions and Requirements, OMA—Posting Requirements, OMA—Calling Closed Meetings, and OMA—Closed Meeting Minutes.

This Fact Sheet was provided by the law firm of Miller Canfield.