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Title 38. Public Officers and Employees
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Article 3.1. Public Meetings and Proceedings

38-431. Definitions

In this article, unless the context otherwise requires:

1. “Advisory committee” or “subcommittee” means any entity, however designated, that is officially established, that is established, that is officially established, or by the presiding officer of the public body, and whose membership has been specifically provided 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.

2. “Executive session” means a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons specifically provided in section 38-431.03.

3. “Legislative body” means a collective decision, commitment or promise made by a public body pursuant to the constitution, the public body’s charter, bylaws or specified scope of appointment and the laws of this state.

4. “Meeting” means 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.

5. “Political subdivision” means all political subdivisions of this state, including without limitation all counties, cities, towns, school districts and special districts.

6. “Public body” means the legislature, all boards and commissions of this state or political subdivisions, all multimeer governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.

7. “Quasi-judicial body” means a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.

38-431.02. Notice of meetings

A. Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of this state, including governing bodies of charter schools, shall:
   (a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
   (b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings.
2. The public bodies of the counties and school districts shall:
   (a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
   (b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings.

B. All public bodies shall provide for the taking of written minutes or a recording of all their meetings, including executive sessions. For meetings other than executive sessions, such minutes or recording shall include, but not be limited to:

1. The date, time and place of the meeting.
2. The members of the public body recorded as either present or absent.
3. A general description of the matters considered.
4. An accurate description of all legal actions proposed, discussed or taken, and the names of members who propose each motion. The minutes shall also include the names of the persons, as given, making statements or presenting material to the public body and a reference to the legal action about which they made statements or presented material.
5. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2, 3 and this section, an accurate description of all instructions given pursuant to section 38-431.03, subsection A, paragraphs 4, 5 and 7 and such other matters as may be deemed appropriate by the public body.
6. The minutes or a recording of a meeting shall be made available for public inspection three working days after the meeting except as otherwise specifically provided by this article.
7. A public body of a city or town with a population of more than 1,500 shall:
   (a) Within three working days after a meeting for which a recording has been made, post the recording on its website.
   (b) Within two working days following approval of the minutes, post approved minutes of city or town council meetings on its website, if applicable, except as otherwise provided by this article.
8. Within ten working days after a subcommittee or advisory committee meeting, post on its website, if applicable, either:
   (a) A statement describing legal action, if any.
   (b) A recording of the meeting.

F. All or any part of a public meeting of a public body may be recorded by any person in attendance by means of a tape recorder or camera or any other means of sonic reproduction, provided that there is no active interference with the conduct of the meeting.

G. The secretary of state for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies shall conspicuously post open meeting law materials prepared and approved by the attorney general on their website. A person elected or appointed to a public body shall review the open meeting law materials at least one day before the day that person takes office.

H. A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda. However, members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action.

1. A member of a public body shall not knowingly direct any staff member to communicate in violation of this article.

J. Any posting required by subsection F of this section must remain on the applicable website for at least one year after the date of the posting.
C. Except as provided in subsections D and E of this section, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in § 1-301.

D. In case of an actual emergency, a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. If this subsection is utilized for conduct of an emergency session or the consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I of this section.

E. A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A of this section, and if, before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.

F. A public body that intends to meet for a specified calendar period, on a regular day, date or event during the calendar period, and at a regular place and time, may post public notice of the meetings at the beginning of the period. The notice shall specify the period for which notice is applicable.

G. Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours before the meeting, except in the case of an actual emergency under subsection D of this section. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in § 1-301.

H. Agenda required under this section shall list the specific matters to be discussed or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.

I. Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. The agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege.

J. Notwithstanding subsections H and I of this section, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, if the matter was not listed on the agenda and a statement setting forth the reasons necessitating the discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately before the executive session.

K. Notwithstanding subsection H of this section, the chief administrator, presiding officer or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, if:

1. The summary is listed on the agenda.

2. The public body does not propose to discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.

§ 38-431.03. Executive sessions

A. Upon a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:

1. Discussion or consideration of employment, assignment, appointment, pro-motion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.

2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.

3. Discussion or consultation for legal advice with the attorney or attorneys of the public body.

4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.

5. Discussion, consultation or consideration for international or interstate negotiations or for negotiations by a city or town, or its representatives, regarding collective bargaining.

6. Discussion, consultation or consideration for international or interstate negotiations or for negotiations by a city or town, or its representatives, regarding collective bargaining.

7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.

B. Minutes of and discussions made at executive sessions shall be kept confidential except from:

1. Members of the public body which met in executive session.

2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph 1 of this section.

3. The auditor general requested in connection with an audit authorized by law as provided.

4. A county attorney or the attorney general when investigating alleged violations of this article.

C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.

D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.

E. Except as provided in section 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session.

F. Disclosures of executive session information pursuant to this section or section 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or section 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that reviews executive session information shall take appropriate action to protect privileged information.

§ 38-431.04. Writ of mandamus

Where the provisions of this article are not complied with, a court of competent jurisdiction may issue a writ of mandamus requiring that a meeting be open to the public.

§ 38-431.05. Meeting held in violation of article; business transacted null and void; ratification

A. All legal action transacted by any public body during a meeting held in violation of any provision of this article is null and void except as provided in subsection B.

B. A public body may ratify legal action taken in violation of this article in accordance with the following requirements:

1. Ratification shall take place at a public meeting within thirty days after discovery of the violation or after such discovery should have been made by the exercise of reasonable diligence.

2. The notice for the meeting shall include a description of the action to be ratified, a clear statement that the public body proposes to ratify a prior action and information on how the public may obtain a detailed written description of the action to be ratified.

3. The public body shall make available to the public a detailed written description of the action to be ratified and all deliberations, discussions and decisions by members of the public body that preceded and related to such action. The written description shall also be included as part of the minutes of the meeting at which ratification is taken.

4. The public body shall make available to the public the notice and detailed written description required by this section at least seventy-two hours in advance of the public meeting at which the ratification is taken.

§ 38-431.06. Investigations; written investigative demands

A. On receipt of a written complaint signed by a complainant alleging a violation of this article or on its own motion to investigate any alleged violation of this article, or at the request of the county attorney for the county in which the alleged violation occurred, the board of county commissioners may begin an investigation.

B. In addition to other powers conferred by this article, in order to carry out the duties prescribed in this article, the attorney general or the county attorney for the county in which the alleged violation occurred, or its designee, may:

1. Issue written investigative demands to any person.

2. Administer an oath or affirmation to any person for testimony.

3. Examine under oath any person in connection with the investigation of the alleged violation of this article.

4. Examine by means of inspection, studying or copying any account, book, computer, document, minutes, paper, recording or record.

5. Require any person to file on prescribed forms a statement or report in writing and under oath of all the facts and circumstances requested by the attorney general or county attorney.

C. The written investigative demand shall:

1. Be served on the person in the manner required for service of process in this state or by certified mail, return receipt requested.
2. Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified.
3. Prescribe a reasonable time at which the person shall appear to testify and within which the document or object shall be produced and advise the person that objections to or reasons for not complying with the demand may be filed with the attorney general or county attorney on or before that time.
4. Specify a place for the taking of testimony or for production of a document or object and designate a person who shall be the custodian of the document or object.

D. If a person objects to or otherwise fails to comply with the written investigation demand served on the person pursuant to subsection C, the attorney general or county attorney may file an action in the superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in Maricopa county or in the county in which the alleged violation occurred. Notice of hearing the action to enforce the demand and a copy of the action shall be served on the person in the same manner as that prescribed in the Arizona rules of civil procedure. If a court finds that the demand is proper, including that the compliance will not violate a privilege and that there is not a conflict of interest on the part of the attorney general or county attorney, that there is reasonable cause to believe there may have been a violation of this article and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe. If the person fails to comply with the court’s order, the court may issue any of the following orders until the person complies with the order:
   1. Adjudging the person in contempt of court.
   2. Granting injunctive relief against the person to whom the demand is search on entering the facility.
   3. Granting other relief the court deems proper.

38-431.07. Violations; enforcement; removal from office; in camera review
A. Any person affected by an alleged violation of this article, the attorney general or the county attorney for the county in which an alleged violation occurred may commence a suit in the superior court in the county in which the public body ordinarily meets, for the purpose of enforcing compliance with, or the prevention of violations of, this article, by members of the public body, to determine the applicability of this article to matters or legal actions of the public body. For each violation the court may impose a civil penalty not to exceed five hundred dollars against a person who violates this article or who knowingly aids, agrees to aid or attempts to aid another person in violating this article and order such equitable relief as deems appropriate in the circumstances. The civil penalties awarded pursuant to this section shall be deposited into the general fund of the public body concerned. The court may also order payment to a successful plaintiff in a suit brought under this section of the plaintiff’s reasonable attorney fees, by the defendant state, the political subdivision of the state or the incorporated city or town of which the public body is a part or to which it reports. If the court determines that a public officer with intent to deprive the public of information violated any provision of this article the court may remove the public officer from office and shall assess the public officer or a person who knowingly aided, agreed to aid or attempted to aid to the public officer in violating this article, or both, with all of the costs and attorney fees awarded to the plaintiff pursuant to this section.
B. A public body shall not expend public monies to employ or retain legal counsel to provide legal services or representation to the public body or any of its officers in any legal action commenced pursuant to any provisions of this article, unless the public body has authority to make such expenditure pursuant to other provisions of law and takes a legal action at a properly noticed open meeting approving such expenditure prior to incurring any such obligation or indebtedness.
C. In any action brought pursuant to this section challenging the validity of an executive session, the court may review in camera the minutes of the executive session, and if the court in its discretion determines that the minutes are relevant and that justice so demands, the court may disclose to the parties or admit in evidence part or all of the minutes.

38-431.08. Exceptions; limitation
A. This article does not apply to:
   1. Any judicial proceeding of any court or any political caucus of the legislature.
   2. Any conference committee of the legislature, except that all such meetings shall be open to the public.
   3. The commissions on appellate and trial court appointments and the commission on judicial qualifications.
   4. Good cause exception determinations and hearings conducted by the board of fingerprinting pursuant to section 41-619.55.
B. A hearing held within a prison facility by the board of executive clemency is subject to this article, except that the director of the state department of corrections may:
   1. Prohibit, on written findings that are made public within five days of se finding, any person from attending a hearing whose attendance would constitute a serious threat to the life or physical safety of any person or to the safe, secure and orderly operation of the prison.
   2. Require a person who attends a hearing to sign an attendance log. If the person is over sixteen years of age, the person shall produce photographic identification which verifies the person’s signature.
the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings. A.R.S. § 38-431.09(A). In keeping with this expressed intent, any uncertainty under the Open Meeting Law should be resolved in favor of openness in government. Any question whether the Open Meeting Law applies to a certain public body likewise should be resolved in favor of applying the law.

7.3 Government Bodies Covered by the Open Meeting Law.

7.3.1 Generally.

The provisions of the Open Meeting Law apply to all public bodies. A public body is defined in A.R.S. § 38-431(6) as follows: “Public body” means the legislature, all boards and commissions of this state or political subdivisions, all multimeter governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.

This definition specifically includes public bodies of all political subdivisions. A political subdivision is defined in A.R.S. § 38-431(5) to include “all political subdivisions of this state, including without limitation all counties, cities and towns, school districts and special districts.”

The definition of public body encompasses five basic categories of public bodies: 1) boards, commissions, and other multimeter governing bodies; 2) quasi-governmental corporations; 3) quasi-judicial bodies; 4) advisory committees; and 5) standing and special committees and subcommittees of any of the above. See A.R.S. § 38-431(6).

7.3.2 Boards and Commissions.

All boards and commissions and other multimeter governing bodies of the state or its political subdivisions or of the departments, agencies, institutions, and instrumentalities of the state or its political subdivisions are covered by the Open Meeting Law. See A.R.S. § 38-431(6). The multimeter governing body must be created by law or by an official act pursuant to some legal authority. See id. Examples of public bodies created by law include the Arizona Legislature, county boards of supervisors, city and town councils, school boards, the governing boards of special districts, and all state, county, and municipal licensing and regulatory boards. See, e.g., Ariz. Att’y Gen. Op. 107-001 (Open Meeting Law applies to board appointed by governing bodies of various
political subdivisions to administer employee benefits program). Ariz. Att’y Gen. Op. I04-001. (Open Meeting Law applies to joint underwriting association because it’s a multimeber governing body created by statute). The Open Meeting Law applies only to multimeber bodies and does not apply to the deliberations and meetings conducted by the single head of an agency. See Ariz. Att’y Gen. Ops. 192-007, 75-7. Accordingly, the director of a department is not subject to the Open Meeting Law when meeting with staff members to discuss the operations of the department.

7.3.3 Quasi-Governmental Corporations.

The boards of directors of corporations and instrumentalities of the state or its political subdivisions are subject to the Open Meeting Law when the members of the board are appointed or elected by the state or its political subdivisions. See A.R.S. § 38-431(5), (6). For example, the Board of Directors of the Phoenix Civic Improvement Corporation falls into this category. The Open Meeting Law does not apply, however, to a private non-profit hospital association that has a board of directors elected by the electorate of the hospital district. Prescott Newspapers, Inc. v. Yavapai County. Hosp. Area, 163 Ariz. 33, 785 P.2d 1221 (App. 1989). See Ariz. Att’y Gen. Op. I07-001.

7.3.4 Quasi-Judicial Bodies.

The Open Meeting Law defines a quasi-judicial body as “a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.” A.R.S. § 38-431(7). This definition was added by the Legislature in 1978 to reverse the Arizona Supreme Court’s decision in Ariz. Press Club, Inc. v. Ariz. Bd. of Tax Appeals, 113 Ariz. 545, 558 P.2d 697 (1976), which held that the Open Meeting Law did not apply to bodies conducting quasi-judicial functions, such as license revocation proceedings. See Ariz. Att’y Gen. Op. 78-245. The Arizona Board of Tax Appeals and similar quasi-judicial bodies are now expressly covered by the Open Meeting Law. A.R.S. § 38-431(6). (7).


7.3.5 Advisory Committees.

Advisory committees are subject to all of the requirements of the Open Meeting Law. A.R.S. § 38-431(6)(A). (B). An advisory committee is defined as any group officially established, on motion and order of a public body or by the presiding officer of the public body, and 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(6). This definition does not include advisory groups established by the single head of an agency unless they are created pursuant to a statute, city charter, or other provision of law or by an official act pursuant to some legal authority. See Ariz. Att’y Gen. Op. I02-007; Section 7.3.2.

7.3.6 Special and Standing Committees and Subcommittees.

Special and standing committees and subcommittees of, or appointed by, any of the public bodies described above are also covered by the Open Meeting Law. A.R.S. § 38-431(6). A special or standing committee may consist of members of the public body who have been appointed by or authorized to act for the public body. A.R.S. § 38-431(6). The fact that a committee consists, in whole or in part, of persons who are not members of the public body does not affect its status as a public body subject to the Open Meeting Law. See Ariz. Att’y Gen. Op. I80-202.

7.4 Government Bodies and Proceedings Not Covered by the Open Meeting Law.

The Legislature has determined that certain public bodies need not comply with all or portions of the Open Meeting Law in particular circumstances. This section identifies some of those limited exceptions.

7.4.1 Judicial Appointment Commissions.

The Commissions on Appointee and Trial Court Appointments and the Commission on Judicial Qualifications are expressly exempt from the Open Meeting Law. A.R.S. § 38-431.08(A)(3).

7.4.2 Proceedings Before Courts.

The Open Meeting Law does not apply to judicial proceedings of courts within the judicial branch of government. A.R.S. §§ 38-431(1), 431.08(A)(1).

7.4.3 The Legislature.

Meetings of legislative conference committees must be open to the public; however, the committees are exempted from all other requirements of the Open Meeting Law. A.R.S. § 38-431.08(A)(2). The Open Meeting Law does not apply to the activities of a political caucus of the Legislature. Id. § (A)(1), cf. Ariz.
Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974). Public officials may not circumvent public discussion by splitting the quorum and having separate or serial discussions with a majority of the public body members. Splitting the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that is or may be presented to the public body for a decision. Public officials should refrain from any activities that may undermine public confidence in the public decision making process established in the Open Meeting Law, including actions that may appear to remove discussions and decisions from public view.

For example, Board members cannot use email to circumvent the Open Meeting Law requirements. See Ariz. Att’y Gen. Op. 105-004 at 2. “[E]ven if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a ‘meeting.’” Des Plaines Bd. of Regents of Univ. and Cnty. Coll. Sys. OF Nev., 114 Nev. 388, 956 P.2d 770, 774 (1998) (rejecting the argument that a meeting did not occur because the board members were not together at the same time and place.) Additionally, “[t]o free members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations, or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technical devices under the [Open Meeting Law].” See Ariz. Att’y Gen. Op. 105-004 at 1. This may be true even if none of the members of the public body respond to the email. Id. at 2-3. If the one-way communication proposes legal action, then it would violate the Open Meeting Law. Id. However, other one-way communications, with no further exchanges, are not per se violations, and further examination of the facts and circumstances is necessary to determine if there is a violation. Id. at 3.

7.5.3 Applicability to Staff Members and Others.

The Open Meeting Law further provides that members of public bodies shall not knowingly direct any staff member to communicate in violation of the Open Meeting Law. A.R.S. § 38-431.01(H). People knowingly agreeing to aid or attempting to aid another person in violating the Open Meeting Law can be held liable for civil penalties, attorneys’ fees, and costs pursuant to A.R.S. § 38-431.02(F). The notice provisions in the Open Meeting Law require public bodies to provide notice to Members of the Public Body. A.R.S. § 38-431.02(A). Notice to the public body and to the general public is required in advance of the meeting. Id. § (A)(1)(b).

In addition to complying with the requirements of the Open Meeting Law, the notice must conform with the provisions of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12133 (Supp. 1992). See Sections 15.25.2 - 15.25.5. Public bodies should include a statement such as the following in any notices they issue: “Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting [name of designated agency contact person] at [telephone number and TDD telephone number]. Requests should be made as early as possible to allow time to arrange the accommodation.”

7.6 Notice of Meetings.

7.6.1 Generally.

Notice of meetings, exclusive of executive sessions, must be given to the members of the public body. A.R.S. § 38-431.02(C). Generally, this requirement is met by mailing or hand-delivering a copy of the notice to each member of the public body.

7.6.2 Notice to the Public.

Notice of all meetings, including executive sessions, must be given to the members of the public body. A.R.S. § 38-431.02(C). Generally, this requirement is met by mailing or hand-delivering a copy of the notice to each member of the public body.

7.6.3 Notice to the Public.

Notice of all meetings, including executive sessions, must be given to the public. A.R.S. § 38-431.02. Giving public notice is a two step process. Id.

7.6.3.1 Disclosure Statement.

The first step is for the public body to conspicuously post a disclosure statement identifying the physical and electronic locations where public notices of meetings are available. See Form 7.2, 7.3, 7.4. Public bodies shall also give “additional notice” to the public body and to the public by reconvening in public session and following the procedures described in Section 7.6.6. Notice of a meeting at which the public body is to consider the ratification of a prior act taken in violation of the Open Meeting Law must be given twenty-four hours in advance of the meeting. A.R.S. § 38-431.02(A). See Form 7.2. Public bodies of the State, counties, school districts, and governing bodies of charter schools must post the disclosure statement on their websites. Id. § (A)(1). Public bodies of cities and towns must post the required information on their own websites or on the website of an association of counties and cities. Id. § (4). The notification location identified in the statement must be a place to which the public has reasonable access. The location should have normal business hours, should not be geographically isolated, should not have limited access and should not be too difficult to find.

7.6.3.2 Public Notice of Meetings.

Once the disclosure statement has been filed or posted, the public body must give notice of each of its meetings by posting a copy of the notice on its website.
Each public body should keep a record of its notices, including a copy of each notice that was posted and information regarding the date, time, and place of posting. A suggested procedure is to file in the records of the public body a copy of the notice and a certification in a form similar to Form 7.8.  

7.7 Agendas. 

7.7.1 Generally. 

In addition to notice of the time, date, and place of the meeting, the public body must provide an agenda of the matters to be discussed, considered, or decided at the meeting. A.R.S. § 38-431.02(G). Although this Section provides guidelines for the preparation of agendas, it does not answer every question that will arise. Specific problems should be discussed with the public body's legal counsel. A public body should not have problems if it in good faith follows the Legislative declaration of policy that agendas “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). If there is a doubt, all questions should be resolved in favor of greater disclosure of information.

7.7.2 Contents of the Agenda – Public Meeting. 

The agenda for a public meeting must contain a listing of the “specific matters to be discussed, considered or decided at the meeting.” A.R.S. § 38-431.02(H). This requirement does not permit the use of generic agenda items such as “personnel,” “new business,” “old business,” or “other matters” unless the specific matters or items to be discussed are separately identified. See Thurstino v. City of Phoenix, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). The degree of specificity of the agenda depends on the circumstances. For example, if an environmental board is going to consider the approval of pesticides for application within 1/4 mile of a school, a listing such as “Approval of pesticides for application within 1/4 mile of a school” is sufficient. However, if the board is going to consider removing a pesticide from the approved list, the agency should specify the pesticide being considered for removal. See Form 7.7 (Sample Notice and Agenda).

It is likely that the public body will find it necessary to discuss any particular agenda item in executive session with the public body's attorney, the agenda should plainly state so. For example, the agenda might include a provision stating “The Board may vote to hold an executive session for the purpose of obtaining legal advice from the Board's attorney on the approval of pesticides for application within 1/4 mile of a school pursuant to A.R.S. § 38-431.03(A)(3).”

7.7.3 Contents of the Agenda – Executive Session. 

7.7.4 Distribution of the Agenda. 

The agenda for an executive session must contain a “general description of the matters to be considered.” A.R.S. § 38-431.02(I). The description must amount to more than just a recital of the statutory provisions authorizing the executive session, but should not contain any information that “would defeat the purpose of the executive session or compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege.” Id. 

In preparing executive session agenda items, the public body must weigh the legislative policy favoring public disclosure and the legitimate confidentiality concerns underlying the executive session provision. For example, if a board desires to consider the possible dismissal of its executive director, the board may list on the agenda “Personnel matter – consideration of continued employment of the board's executive director.” However, when the public disclosure of the board's decision on charges against an employee might needlessly harm the employee's reputation or compromise the employee's privacy interests, the board may eliminate from the agenda description the identity of the employee being considered. If it is already public knowledge that the board is considering charges against the employee, disclosure of the employee's identity in the agenda would not defeat the purpose of the executive session.

7.7.5 Consent Agendas. 

Public bodies may use “consent agendas” so long as certain requirements are met. Consent agendas are typically used as a time-saving device when there are certain items on the agenda which are unlikely to generate controversy and are ministerial in nature. Some examples are approval of travel requests and approval of minutes. Public bodies often take one vote to approve or disapprove the consent agenda as a whole. When using a consent agenda format for some of the items on an agenda, public bodies should fully describe the matters on the agenda and inform the public where more information can be obtained. A good practice is to require that an item be removed from the consent agenda upon the request of any member of the public body. See Form 7.7 (Sample Notice and Agenda). 

Public bodies should take caution when using consent agendas. The Arizona Supreme Court has held that taking action on the consent agenda, even if an executive session is not being considered, must be preceded by a disclosure of “that amount of information sufficient to apprise the public in attendance of the basic subject matter of the action so that the public may scrutinize the action taken during the meeting.” Karol v. Bd. of Educ. Trustees, 122 Az. 95, 98, 593 P.2d 649, 652 (1979). The court also specifically condemned the practice of voting on matters designated only by number, thereby effectively hiding actions from public examination. Id.

7.7.6 Discussing and Deciding Matters Not Listed on the Agenda. 

The public body may discuss, consider, or decide only those matters listed on the agenda and “other matters related thereto.” A.R.S. § 38-431.02(J). The "other matters" clause provides some flexibility to a public body but should be used cautiously. The "other matters" must in some reasonable manner be "related" to an item specifically listed on the agenda. Thurstin v. City of Phoenix, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). If a matter not specifically listed on the agenda is brought up during a meeting, the better practice, and the one that will minimize subsequent problems, is to defer discussion and decision on the matter until a later meeting so that the item can be "specifically" listed on the agenda. If the matter demands immediate attention and is a true emergency, the public body should consider using the emergency exception described in Section 7.6.9. 

However, if action is taken at a meeting on an item not properly noticed, then that particular action violates the Open Meeting Law and is null and void. Johnson v. Tempe Elementary Sch. Dist. No. 3 Governing Bd., 199 Ariz. 567, 570, 20 P.3d 1148, 1151 (App. 2001). A.R.S. § 38-431.05(A). The public body may ratify the action pursuant to A.R.S. § 38-431.05(B), although the violation may still subject the public body to the penalties described in A.R.S. § 38-431.05(A). Any other actions that were taken at the meeting and were properly noticed are not void. Karol, 122 Ariz. at 98, 593 P.2d at 652; Ariz. Arty. Gen. Op. 908-909. 

7.7.7 Calls to the Public. 

In 2000, the Legislature clarified the limitations on open calls to the public during public meetings. A.R.S. § 38-431.05(F) now provides that a public body may make an open call to the public to allow individuals to address the public body on any issue within the jurisdiction of the public body. Members of the
public body may not discuss or take action on matters raised during the call to
the public that are not specifically identified on the agenda. Id. Public body
members may, however, respond to criticism made by those who have addressed
the public body, ask staff to review a matter, or ask that a matter be put on a

The best practice is to include language similar to the following on the agenda to
explain in advance the reason members of the public body cannot respond to
topics brought up during the call to the public that are not on the agenda: “Call
to the Public This is the time for the public to comment. Members of the Board
may discuss topics that are not specifically identified on the agenda.

Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public
comment will be limited to directing staff to study the matter, responding to any
criticism or scheduling the matter for further consideration and decision at a
later date.”

7.7.8 Current Event Summaries.

The Open Meeting Law allows the chief administrator, presiding officer or a
member of a public body to present a brief summary of current events without
listing in the agenda the specific matters to be summarized, provided that the
summary is listed on the agenda and that the public body does not propose,
discuss, deliberate or take legal action at that meeting on any matter in the
summary unless the specific matter is properly noticed for legal action. A.R.S. § 38-
431.02(K). Public bodies should limit the use of this provision to appropriate
situations and should strive to provide as much advance information as possible
to the public.

7.7.9 Emergencies.

A public body may discuss, consider, and decide a matter not on the agenda
when an actual emergency exists requiring that the body dispense with the
advance notice and agenda requirements. A.R.S. § 38-
431.01(D). In no event should minutes be withheld from the public pending
approval. Minutes must be reduced to a form that is readily accessible to the
public.

7.8.1 Form of and Access to the Minutes.

Minutes may be taken in writing or may be recorded by a tape recorder or video-
tape recorder. A.R.S. § 38-431.01(B), see Forms 7.10, 7.11. The minutes or a
recording of a public meeting must be available for public inspection within
three working days of the meeting. A.R.S. § 38-
431.01(D). Public bodies concerned about distributing minutes before they have been officially approved at
a subsequent meeting should mark the minutes “draft” or “unapproved” and
make them available within three working days of the meeting. If the minutes
have been recorded by a mechanical recorder, allowing the public to have access
to that recording is sufficient. However, if the minutes were taken in shorthand,
these minutes must be typed or written out in longhand in order to comply with
this requirement. See Form 7.10. The minutes of an executive session are
confidential and may not be disclosed to anyone except certain authorized
persons. A.R.S. § 38-431.03(B), see Section 7.8.4. To ensure confidentiality,
minutes of executive sessions should be stored separately from regular session
minutes to avoid inadvertent disclosure.

The approved minutes of all city or town council meetings must be posted on the
city’s website within two working days of their approval. A.R.S. § 38-
431.01(F)(2). In no event should minutes be withheld from the public pending
approval. Minutes must be reduced to a form that is readily accessible to the
public. See A.R.S. § 38-431.01(D). A public body of a city or a town with a
population exceeding 2,500 people shall, within three working days after any
meeting, post on their website a statement showing legal actions taken by
the public body or any recordings made during the meeting. A.R.S. § 38-
431.01(D). Public meetings are open to the public and are not executive
sessions.

7.8.2 Contents of the Minutes of Public Meetings.

The minutes of a public meeting must contain the following information:
1. *The date, time and place of the meeting.* A.R.S. § 38-431.01(B)(1).
2. *The members of the public body recorded as either present or absent.* Id. §
(B)(2).
3. *A general description of the matters discussed or considered.* Id. §
(B)(3). Minutes must contain information regarding matters considered or
discussed at the meeting even though no formal action or vote was taken
with respect to the matter. See id. § (B)(4).
4. *An accurate description of all legal actions proposed, discussed or taken,
and the names of persons who proposed each motion.* Id. This does not
require that the name of each person who votes on a motion be indicated,
but only that the member who proposed it be shown in the minutes.
Generally, however, the agency, for its own benefit, will include the names of
the member who seconded and those who voted in favor of or against
the motion. In any case, it is wise for the minutes to reflect how the body voted
and any procedural breakdown of the vote, e.g., 3 in favor, 1 against, 1
abstention.
5. The name of each person *making statements or presenting material to the
public body and a [specific] reference to the legal action.* (see item 4) to
which the statement or presentation relates. Id.
6. If the discussion in the public session did not adequately disclose the
subject matter and specifics of the action taken, the minutes of the public
meeting at which such action was taken should contain sufficient
information to permit the public to investigate further the background or
specific facts of the decision. See Section 7.7.5; Karol, 222 Ariz. 95, 593
P.2d 649.
7. If matters not on the agenda were discussed or decided at a meeting because
of an actual emergency, the minutes must contain a full description of the
nature of the emergency. A.R.S. § 38-431.02(F), see Sections 7.7.5 and
7.9.
8. If a prior act was ratified, the minutes must contain a copy of the disclosure
statement required for ratification. A.R.S. § 38-431.05(B)(3); see Section
7.11.2; Form 7.10.

7.8.3 Contents of the Minutes of Executive Sessions.

The minutes of executive sessions must contain the following information:
1. *The date, time and place of the meeting.* A.R.S. § 38-431.01(B)(1), (C).
2. *The members of the public body recorded as either present or absent.* Id. §
(B)(2), (C).
3. *A general description of the matters considered.* Id. § (B)(3), (C); see Section 7.8.2(3).
4. An accurate description of all instructions given to attorneys or designated
representatives pursuant to A.R.S. § 38-431.03(A)(4), (5) and (7). See
Sections 7.9.7, 7.9.8 and 7.9.10.
5. A statement of the reasons for emergency consideration of any matters not
on the agenda. See A.R.S. § 38-
431.02(E), Section 7.8.2(7).
6. Such other information as the public body deems appropriate. For example,
the public body might record in its minutes that those present were advised
that the information discussed in the session and the session minutes are
confidential. See Form 7.11.
7. “A party who asserts that a public body violated the open meeting laws has
the burden of proving that assertion.” Tanque Verde Unified Sch. Dist. No.
2003). However, Arizona courts have held that once a compliant alleges
facts from which a reasonable inference may be drawn supporting an Open
Meeting Law violation, the burden of proof immediately shifts to a public
body to prove that an affirmative defense or exception to the Open Meeting
Law authorized an allegedly inappropriate executive session. Fisher v.
Maricopa County Stadium Dist., 185 Ariz. 116, 122, 912 P.2d 1345, 1351
Hence, the best practice is for public bodies to tape record or keep detailed
minutes of executive sessions in order to ensure that they are prepared to
meet their burden of proof in the event a lawsuit is filed.

7.8.4 Confidentiality of Executive Session Minutes.

The minutes of an executive session and all discussions that take place at an
executive session are confidential and may not be disclosed to anyone, A.R.S. § 38-
431.03(B), except that they may be disclosed to the following people:
1. Any member of the public body that met in the executive session and
members who did not attend the executive session. A.R.S. § 38-
431.03(B), except that they may be disclosed to the following people:
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members who did not attend the executive session. A.R.S. § 38-
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431.03(B), except that they may be disclosed to the following people:
1. Any member of the public body that met in the executive session and
members who did not attend the executive session. A.R.S. § 38-
431.03(B), except that they may be disclosed to the following people:
3. Staff personnel, to the extent necessary for them to prepare and maintain the minutes of the executive session.

4. The attorney for the public body, to the extent necessary for the attorney to represent the public body.


6. The Attorney General or County Attorney when investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.03(B)(4).

7. The entity for purposes of a confidential inspection where an open meeting violation has been alleged. A.R.S. § 38-431.07(C).

The Open Meeting Law requires that a public body advise all persons attending an executive session or obtaining access to executive session minutes or information that such minutes and information are confidential. A.R.S. § 38-431.03(A). Public bodies should maintain executive session minutes in a secure file separate from the public meeting minutes to guard against accidental disclosure.

7.9 Executive Sessions.

Section 38-431.03, A.R.S., contains an exception to the general requirement of the Open Meeting Law that all meetings must be open to the public. That Section provides seven specific instances in which a public body may discuss matters in an executive session. An executive session is defined as "a gathering of a quorum of members of a public body from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03(A)]". A.R.S. § 38-431(2). An executive session may be convened solely for the purpose of discussing matters in executive session under the Personnel Matters provision, 7.9.3 Authorized Executive Sessions.

A.R.S. § 38-431(2)

An executive session may be held when the public body is considering or will consider the following:

1. An executive session may be held when the public body is considering or will consider the following:
   a. A quorum of members of a public body, from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03(A)], for the purpose of discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A).
   b. An executive session may be held when the public body is considering or will consider the following:
      a. A quorum of members of a public body, from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03(A)], for the purpose of discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A).
   c. An executive session may be held when the public body is considering or will consider the following:
      a. A quorum of members of a public body, from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03(A)], for the purpose of discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A).
   d. An executive session may be held when the public body is considering or will consider the following:
      a. A quorum of members of a public body, from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03(A)], for the purpose of discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A).
   e. An executive session may be held when the public body is considering or will consider the following:
      a. A quorum of members of a public body, from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03(A)], for the purpose of discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A).
   f. An executive session may be held when the public body is considering or will consider the following:
      a. A quorum of members of a public body, from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03(A)], for the purpose of discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A).
   g. An executive session may be held when the public body is considering or will consider the following:
      a. A quorum of members of a public body, from which the public is excluded for one or more of the reasons prescribed in [A.R.S. § 38-431.03(A)], for the purpose of discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A).

7.9.3 Authorized Executive Sessions.

The Open Meeting Law permits only seven categories of topics to be discussed in executive session. A.R.S. § 38-431.03(A). These categories are discussed in Sections 7.9.4 – 7.9.10. Because courts are likely to strictly construe these provisions, unless the proposed discussion plainly falls within an executive session category it should take place only in a public meeting. Finally, the Open Meeting Law does not require that these discussions take place in executive session. If public disclosure of the proposed discussion is not required, by any other statutory provision and government interests are not threatened, a public body may choose to conduct its discussions in a public setting.

7.9.4 Personnel Matters.

The discussion or consideration of employment, assignment, appointment, promotion, demotion, salaries, discipline, resignation, or dismissal of a public officer, appointee, or employee of a public body may take place in an executive session. A.R.S. § 38-431.03(A)(1). City of Flagstaff v. Bleiker, 123 Ariz. 436, 609 P.2d 49 (App. 1979). This authorization for an executive session applies only to discussions concerning specific officers, appointees, and employees. If the affected officer, appointee, or employee requests, such discussions must be conducted in a public meeting and not in an executive session. A.R.S. § 38-431.03(A)(1).

Although the public body may permit the public body to discuss personnel matters in executive session, the public body may discuss the entire matter in a public meeting.

Public bodies should take care to ensure that the scope of executive sessions for personnel discussions is limited to true personnel matters. The Attorney General has opined that the Open Meeting Law prohibits public bodies from conducting in executive sessions lengthy information gathering meetings that explore the operation of public programs under the guise of conducting a personnel evaluation. Only the actual evaluation - discussion or consideration of the performance of the employee - may take place in an executive session. Ariz. Att’y Gen. Op. 196-012. A public body that wishes to discuss or consider an employee’s evaluation in executive session, pursuant to A.R.S. § 38-431.03(A)(1), should adopt a bifurcated process that would permit the public body to gather information about public programs at a public meeting, while allowing the public body to enter executive session to discuss or consider the actual evaluation. Ariz. Att’y Gen. Op. 196-012. Similarly, a public body may not discuss a class of persons in executive session under the Personnel Matters provision. For instance, a public body may not use this executive session provision to discuss a potential reduction in force. Each employee who will be discussed in executive session must get the notice as required by A.R.S. § 38-431.03(A)(1).

7.9.5 Confidential Records.

An executive session may be held when the public body is considering or discussing "records exempt by law from public inspection." A.R.S. § 38-431.03(A)(2). This specifically includes situations in which the public body is receiving and discussing "information or testimony that is specifically required to be maintained as confidential by state or federal law." Id. This provision allows the use of an executive session whenever the public body intends to discuss or consider matters contained in records that are confidential by law. See Ariz. Att’y Gen. Op. 190-035, 187-131. However, when confidential matters can be adequately safeguarded, the discussion may take place during a public meeting. Cf. Ariz. Att’y Gen. Op. 187-038 (medical records). The record being considered need not be expressly made confidential by statute, but rather may fall within the category of confidential records discussed in Chapter 6 of this handbook. For example, to preserve confidentiality, preliminary audit reports of state agencies prepared by the Auditor General are confidential and should be discussed by the public body in executive session. Ariz. Att’y Gen. Op. 180-035. Similarly, complaints against licensees that are investigated by a public body may be discussed in executive session. Ariz. Att’y Gen. Op. 183-066. In 2000, the Legislature revised the statute to allow public bodies to take testimony in executive sessions in certain situations. Public bodies should ensure that state or federal law requires that the public body maintain confidentiality of the information it receives before convening an executive session under A.R.S. §
7.9.6 Legal Advice.
A public body may also go into executive session for the purposes of:
- "discussion or consultation for legal advice with the attorney or attorneys of the public body." A.R.S. § 38-431.03(A)(5). For this exemption to apply, the attorney giving the legal advice must be the attorney for the public body. Id. For purposes of this discussion, the "attorney for the public body" means a licensed attorney representing the public body, whether that attorney is a full time employee of the body, the attorney general or county, city, or town attorney responsible for representing the public body, an attorney hired on contract, or an attorney provided by an insurance carrier to represent the public body.

This provision authorizes consultations between a public body and its attorney. Accordingly, the only persons allowed to attend this executive session are the members of the public body, the public body's attorney, and those employees and agents of the body whose presence is necessary to obtain the legal advice. The mere presence of an attorney of the public body in the meeting room is not sufficient to justify the use of this executive session provision. This provision can only be used for the purpose of obtaining "legal advice," which involves the exchange of communications between lawyer and client. Once the legal advice has been obtained, the public body must go back into public session unless some other executive session provision applies and has been identified in the notice. See City of Prescott v. Town of Chino Valley, 166 Ariz. 490, 803 P.2d 891 (1990). Discussion between the members of the public body about what action should be taken is beyond the realm of legal advice, and such discussions must be held in public session.

7.9.7 Litigation, Contract Negotiations, and Settlement Discussions.
A public body may hold an executive session for the purpose of: "[d]iscussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contract disputes that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation." A.R.S. § 18-38.1-01(A)(4). This provision allows consideration and instruction only - it does not allow a public body to conduct contract negotiations or settlement discussions in an executive session.

This provision allows a public body to give its attorneys instructions on how they should proceed in contract negotiations, pending or contemplated litigation involving the public body, and settlement discussions. For example, the public body might authorize its attorney to settle a lawsuit on the most favorable terms possible up to a certain amount. Of course, if the attorney were to obtain an agreed settlement, the public body must formally approve it at a public meeting.

This provision is unique in that it permits public bodies to "instruct" their attorneys. In these limited situations, the public body must be able to discuss an agreement that it may enter into as a result of the executive session. The presence of an attorney of the public body in the meeting room is not sufficient to justify the use of this executive session provision. This provision can only be used for the purpose of obtaining "legal advice," which involves the exchange of communications between lawyer and client. Once the legal advice has been obtained, the public body must go back into public session unless some other executive session provision applies and has been identified in the notice. See City of Prescott v. Town of Chino Valley, 166 Ariz. 490, 803 P.2d 891 (1990). Discussion between the members of the public body about what action should be taken is beyond the realm of legal advice, and such discussions must be held in public session.


This provision also permits a city or town, or its designated representatives, to enter into executive session with "members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town." A.R.S. § 38-431.03(A)(6). This is the only type of executive session in which negotiations with another party can take place.

7.9.8 Discussions with Designated Representatives Regarding Salary Negotiations.
A public body may meet in executive session to discuss and consult with its representatives concerning negotiations for the purchase, sale, or lease of real property. A.R.S. § 38-431.03(A)(7). This provision does not authorize an executive session for purposes of meeting with representatives of the party with whom the public body is negotiating. For example, a school district violates open meeting laws by choosing a site for a proposed high school in executive session. Tanque, 206 Ariz. At 204, 431 P.3d at 879.

This provision permits a public body, in executive session, to consult and discuss with its representatives its position on negotiating salaries or compensation paid in the form of fringe benefits of employees of the public body." A.R.S. § 38-431.03(A)(5).

This provision permits a public body, in executive session, to consult and discuss with its representatives its position on negotiating salaries or compensation paid in the form of fringe benefits and to instruct representatives on how they should deal with the employee organizations. It does not authorize an executive session for purposes of meeting with the employees' representative if the public body or any standing, special, or advisory committee or subcommittee of the public body conducts the negotiations, those negotiations must be conducted in a public meeting.

This provision also allows the public body to "instruct" its representatives. The discussion in Section 7.9.7 of the practice of confirming instructions in public session and the minute-taking requirements applies with equal force to this Section.

7.9.9 International, Interstate, and Tribal Negotiations.
A public body may go into executive session for the purpose of: "[d]iscussion, consultation, or consideration for international and interstate negotiations." A.R.S. § 38-431.03(A)(6). This provision does not apply to meetings at which
1. The notice and the agenda should state that one or more members of the public body will participate by telephonic, video or internet communications. In the appropriate notice, insert the following after the first sentence: “Members of the [name of public body] will attend either in person, by telephone, video or internet conferencing.”

2. The public meeting place where the public body normally meets should have facilities that permit the public to observe and hear all telephone, video or internet communications.

3. The public body should develop procedures for clearly identifying all members participating by telephonic, video or internet communications.

4. The minutes of the meeting should identify the members participating by telephonic or video communications and describe the procedures followed to provide the public access to all communications during the meeting.

7.10.3 Record of the Proceedings.

A public body of a city or town with a population of more than 2,500 people must post on its website either a recording of the meeting or a statement of the legal actions taken during the meeting. A.R.S. § 38-431.01(E)(1). This statement must be posted within three working days of the meeting and must remain accessible on the website for at least one year thereafter. Id. (f).

7.11 Quorum

Public bodies frequently struggle with questions about quorum. Arizona statutes generally define a quorum as a majority of the members of a board of commission. A.R.S. § 1-216. This definition is in the absence of a more specific definition. Vacant positions do not reduce the quorum requirement.

7.11.1 Effect of Disqualification on the Quorum Requirement.

Board members may be disqualified from voting on a particular matter for a variety of reasons, most commonly because they have a conflict of interest. The disqualified status of a board member may make it difficult for the public body to obtain quorum. The general rule on disqualification is that a disqualified member, even though present at a meeting of the public body, may not be counted for purposes of convening the quorum to discuss or decide the particular

7.11.2 Procedure for Ratification.

The Open Meeting Law provides a detailed procedure for ratification. A.R.S. § 38-431.05(B). That procedure is as follows:

1. The decision to ratify must take place at a public meeting held in accordance with the Open Meeting Law.

2. Ratification must take place within thirty days after discovery of the violation or after such discovery should have been made by the exercise of due diligence.

3. The public notice of the meeting at which ratification is to take place, in addition to complying with the other requirements of the Open Meeting Law, see Sections 7.6 and 7.7, must include (a) a description of the action to be ratified, (b) a clear statement that the public body proposes to ratify a prior action, and (c) information on how the public may obtain a written description of the action to be ratified. See Form 7.12.

4. In addition to the notice and agenda of the meeting, the public body must make available to the public a detailed written description of the action to be ratified and a description of all prior deliberations, consultations, and decisions by the members of the public body related to the action to be ratified.

5. The description required under paragraph 4 must be included as part of the minutes of the meeting at which the decision to ratify was made.

6. The public notice, agenda, and written description discussed in paragraphs 3 and 4 must be made available to the public at least seventy-two hours prior to the public meeting.

7.13 Sanctions for Violations of the Open Meeting Law.

7.13.1 Notification.

All legal action transacted by any public body during a meeting held in violation of any provision of the Open Meeting Law shall be nullified and the public body shall be subject to sanctions. A.R.S. § 38-431.05(A). The procedures for ratification are described in Section 7.11.2.

The Arizona Supreme Court, however, has held that legal actions taken in violation of the Open Meeting Law are voidable at the discretion of the court. Karol, 122 Ariz. at 97, 599 P.2d at 651. In the Karol case, the court held that: "[A] technical violation having no demonstrated prejudicial effect on the complaining party does not nullify all the business in a public meeting when to conclude otherwise would be inequitable, so long as the meeting complies with the intent of the legislature." Id., 122 Ariz. at 98, 599 P.2d at 652. This decision imposes a substantial compliance test and requires a weighing of the equities before the court will declare an action void. The decision, however, preceded the 1982 amendment to the Open Meeting Law which specifically authorizes the public body to ratify its prior action.

7.13.2 Investigation and Enforcement.

The 2000 Legislature enacted substantial revisions to the Open Meeting Law, including extensive changes to the investigatory and enforcement provisions. See 1984 Ariz. Sess. Laws, ch. 121, § 1 (hist). The Attorney General and County Attorneys are authorized to investigate alleged Open Meeting Law violations and enforce the Open Meeting Law. A.R.S. § 38-431.06.

The Open Meeting Law now specifically provides that the Attorney General and County Attorneys shall have access to executive session minutes when they are investigating alleged violations of the Open Meeting Law. A.R.S. § 38-431.05(B)(4). The Open Meeting Law also provides that disclosure of executive session information (such as disclosure to the Attorney General) does not constitute a waiver of the attorney-client privilege and directs courts reviewing executive session information to protect privileged information. Id. ¶ 4(f).

The investigative authority of the Attorney General and County Attorneys was strengthened by the 2000 Legislature. The Attorney General and County Attorneys may issue written investigative demands to any person, administer oaths or affirmations to any person for the purpose of taking testimony, conduct examinations under oath, examine accounts, books, computers, documents, minutes, papers and recordings, and require people to file written statements, under oath, of all the facts and circumstances requested by the Attorney General or County Attorney. A.R.S. § 38-431.06(B). If a person fails to comply with a
7.13.3 Civil Penalties.

The court may impose a civil penalty not exceeding five hundred dollars against any person for each violation of the Open Meeting Law. A.R.S. § 38-431.07(A). This penalty can be assessed against a person who violates the Open Meeting Law or who knowingly aids, agrees to aid or attempts to aid another person in violating the Open Meeting Law. Id. This penalty is assessed against the individual and not the public body, and the public body may not pay the penalty on behalf of the person assessed, see id.

7.13.4 Attorney’s Fees.

The court may also order payment of reasonable attorney’s fees to a successful plaintiff in an enforcement action brought under the Open Meeting Law. A.R.S. § 431.07(A). Normally those fees will be paid by the state or political subdivision of which the public body is a part or to which it reports. Id. However, if the court determines that a public officer violated the Open Meeting Law “with intent to deprive the public of information,” the court must assess against that public officer or a person who knowingly aided, agreed to aid or attempted to aid the public officer in violating the Open Meeting Law all of the costs and attorney’s fees awarded to the plaintiff. Id. As in the case of an award of civil penalties, the public body may not pay such an award of attorney’s fees assessed against the public officer individually. See id.

7.13.5 Expenditure for Legal Services by Public Body Relating to the Open Meeting Law.

A public body may not retain counsel or expend monies for legal services to defend an action brought under the Open Meeting Law unless the public body has legal authority to make such an expenditure pursuant to other provisions of law and it approves the expenditure at a properly noticed open meeting prior to incurring the obligation. A.R.S. § 38-431.07(B).

7.13.6 Removal From Office.

If the court determines that a public officer violated the Open Meeting Law “with intent to deprive the public of information,” the court may remove the public officer from office. A.R.S. § 38-431.07(A).

Frequently Asked Questions

1. What action is required to occur in an open meeting?

All legal action of a public body is required to occur at an open meeting. A.R.S. § 38-431.01(A). Legal action is collective decision, commitment or promise made by a public body pursuant to the constitution, the public body’s charter, bylaws or specified scope of appointment and the laws of this state. A.R.S. § 38-431(3).

2. What is a subcommittee?

A subcommittee is any entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and 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(2).

3. When is it appropriate for a public body to hold an emergency meeting?

A public body may hold an emergency meeting when due to unforeseen circumstances, immediate action is necessary to avoid some serious consequence that would result from waiting until the required notice could be given. The existence of an actual emergency does not dispense with the need to give twenty-four hours’ written notice to an employee to be discussed in an executive session. A.R.S. § 38-431.03(A)(1); see Sections 7.7.9 and 7.9.4.

4. What must be included on an agenda?

An agenda must include the date, time, and place of the open meeting and all specific matters to be discussed, considered or decided at the open meeting. The description of each agenda item must include information reasonably necessary to inform the public.

The agenda must include the statutory citation for any executive sessions as well as a general description of the matters to be considered in executive session.

5. Where should a public body post an agenda?

The public body is required to post all agendas at the physical and electronic locations listed on their disclosure statement. A.R.S. § 38-431.02.

6. Does the public have a right to speak during a meeting?

...
The public does not have a right to speak or disrupt the meeting. However, the public body may allow comment from the public.

7. Is the public body required to answer questions from the public during an open meeting?
The public body may answer questions from the public, if the item is properly listed on the agenda.

8. Is the public body required to have a call to the public?
A call to the public is not mandatory but the public body may put a call to the public on their agenda.

9. What is required to be included in the minutes of an open session?
The minutes of an open session must include the date, time and place of the meeting, members present and absent, a general description of the matters to be considered, an accurate description of the legal action, the names of members who propose each motion, the names of people making statements or presenting material, and the names of members and there is no plan to engage in collective deliberation to take legal action. Attorney General Opinion I07-013.

10. Is the public body required to approve the minutes?
No. The open meeting law does not require a public body to approve their minutes.

11. Can board members discuss their views with the public outside of an open meeting?
Yes. Members of the public body may discuss their views with members of the public as long as the communication is not principally directed at or directly given to other board members and there is no plan to engage in collective deliberation to take legal action. Attorney General Opinion I00-001.

12. If a public body violates the open meeting law, how does the public body fix the error?
If the public body violates the open meeting law, they are required to ratify that legal action by following the procedure in A.R.S. § 38-431.05.

13. What are the penalties for violating the open meeting law?
Violation of the open meeting law may result in a civil penalty of up to $500 for each violation, such equitable relief as the court deems appropriate, reasonable attorney’s fees, and removal of a public officer from office.

Part IV

Legal Authority

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Public Bodies

The Open Meeting Law applies to all public bodies in the state of Arizona.

For purposes of open meeting law, community hospital association was not “institution of the state or a political subdivision” thereof, association was not creation of law itself, but rather creation of group of private individuals acting together as authorized by statutes governing creation of private nonprofit corporations. Prescott Newspapers, Inc. v. Yavapai Community Hosp. Ass’n (App. Div. I 1989) 163 Ariz. 33, 785 P.2d 1221, review denied.

Under the definition set forth in A.R.S. § 38-431(6), the Board of Trustees appointed to administer the Northern Arizona Public Employees Benefit Trust constitutes a multimember governing body of an instrumentality of one or more political subdivisions and must comply with the requirements of the Arizona Open Meeting Law. Op. Atty. Gen. No. I07-001.

Corporate boards of charter school operators generally are not “public bodies” subject to Arizona’s Open Meeting Law. However, because the Open Meeting Law applies to charter school governing boards, if a quorum of the charter school governing board discusses charter school business at a meeting of the corporate board of the charter school operator, the Open Meeting Law applies to that discussion. Op. Atty. Gen. No. I00-009.

Advisory committees created by the Governor pursuant to executive order are not public bodies and are not subject to the open meeting law. A.R.S. §§ 38-431 41-106. Op. Atty. Gen. No. I92-007.

Community hospital association was not subject to the Open Meeting Law, § 38-431 et seq., where association’s board was elected, rather than appointed by the county hospital district, a political subdivision; word “appointed”, in provision of § 38-431 defining “public body” to include boards and commissions of state or political subdivisions whose boards of directors are “appointed” by the state or political subdivision, did not encompass the election, rather than appointment, of the board members. Op. Atty. Gen. No. I84-091.

Where tenured faculty member has a hearing pursuant to personnel grievance proceedings in the state university system, the Open Meeting Law, § 38-431 et seq., would apply because, if the university president’s recommendation is appealed, the staff grievance and appeals committee could be construed as an advisory committee to the board of regents, a multi-member public body subject to the Open Meeting Law. Op. Atty. Gen. No. I84-077.
The employees benefit trust which is governed by a board of trustees appointed by the governing board of the Mammoth/San Manuel Unified School District, is a public body within the meaning of this section, and therefore is subject to provisions of the Open Meeting Law. Op. Att'y Gen. No. 183-018.

Any scheme or device designed to circumvent the purposes of the Open Meeting Law would be subject to close scrutiny, and would constitute a violation subjecting the governing body and participating members to the sanctions provided for in the Open Meeting Law. Op. Att'y Gen. No. 183-025.

Provision of this section dealing with discussion or consideration of personnel matters, including salaries, with respect to a public officer, appointee, or employee of any public body is limited to discussions relating to individual employees, not with respect to all or a class of employees, and, therefore, is not applicable to budget discussions. Op. Att'y Gen. No. 181-058.

Whether a meeting is in violation of the Open Meeting Law, § 38-431 et seq., depends upon the substance of the matters discussed, not the label given to the meeting or the location of the meeting. Op. Att'y Gen. No. 179-4.

The Open Meeting Law, § 38-431 et seq., requires that all proceedings before the tribunals, including their deliberations, must be conducted in an open meeting and that any member of the public, including "interested parties" may attend. Op. Att'y Gen. No. 178-245.

Open Meeting Act, § 38-431 et seq. applies only to multi-member bodies, i.e., bodies containing three or more members, and therefore, single heads of agencies, during course of conducting their official business in such capacity, are not "governing bodies" capable of taking "legal action" and are not, therefore, subject to the act, but agency which is under direction of a single person is not exempt from the act, and it is likely that the agencies will contain advisory councils or other bodies which fall within the act. Op. Att'y Gen. No. 75-7, p. 44, 1975-76.

Agencies which are supported solely by fees, are not subject to the Open Meeting Act, § 38-431 et seq. Op. Att'y Gen. No. 75-7, p. 44, 1975-76.

The policy supporting the Open Meetings Law is to open the conduct of the business of government to the scrutiny of the public and to ban decision-making in secret. Long v. City of Glendale (App. Div. 1 2004) 208 Ariz. 319, 95 P.3d 519, review denied.

Executive Sessions

38-431 et seq., and must be taken during a public meeting in conformance with that law. Karol v. Board of Ed. Trustees, Florence Unified School Dist. Number One of Pinal County (1979) 122 Ariz. 95, 593 P.2d 649.

Election of officers for the state retirement system investment advisory council constitutes legal action and must take place in a public session for which proper public notice has been given pursuant to the Open Meeting Law, § 38-431 et seq., and violation of the Open Meeting Law may constitute grounds for removal of a public officer from his official position. Op. Att'y Gen. No. 78-97.

Legal action, as defined in this section extends beyond mere formal act of voting; discussions and deliberations by governing body members prior to final decision are an integral and necessary part of any “decision, commitment or promise” and are included within the definition of “legal action” Op. Att'y Gen. No. 75-8, p. 55, 1975-76.

Meetings

The definition of “meeting” under A.R.S. § 38-431 includes the gathering of a quorum of a public body through technological devices and would encompass serial communications of a quorum of the public body through the Internet or other online medium. Measures must be taken, however, to provide clear notice to the public about when the Board will be deliberating in its online meeting and to facilitate the public’s access to the meeting. Op. Att'y Gen. No. 108-008, 2008 WL 4509818.

The “political caucus” exception to the Open Meeting Law, § 38-431 et seq., applies to partisan-elected public bodies in the exercise of their purely legislative functions; scope of permissible caucus activity is limited to considering party policy, with respect to a particular legislative issue, and the discussion must be limited to considering matters of party policy and cannot be used to reach a collective decision, commitment, or promise by members of the caucus when that membership constitutes a quorum of the public body. Op. Att'y Gen. No. 183-128.

In executive sessions, board of regents is permitted to deal with personnel matters, hear reports from its staff, form up its agenda, receive communications from its legal advisers, discuss contemplated actions, and debate policy. Op. Att'y Gen. No. 73-9.

Merit system council of state highway department is not a “governing body” and is not governed by this article, and, since it was established exclusively to consider “information regarding the employment or dismissal” of employees, it may hold executive sessions which are not open to the general public, and its recommendations to director of highways or to the commissions may remain confidential until the commission, which is the “governing body” meets to act upon such recommendations. Op. Att'y Gen. No. 63-40.

Evaluation and review of the superintendent's job performance was a personnel matter which school board could elect to discuss in executive session unless the superintendent requested the discussion occur at an open meeting; the decision to hold an executive session must be made on a case-by-case basis by means of a majority vote. Op. Att'y Gen. No. 81-090.

Arizona Open Meeting Law, § 38-431 et seq., is applicable to school board committees regardless of whether such committees are composed of school board members, and executive sessions of such committees are permissible only for the limited purposes enumerated in § 38-431.03. Op. Att'y Gen. No. 180-202.

Legal Action

School board violated open meeting law when, in executive session, it decided to appeal trial court's ruling in an employment case, as decision to appeal was a “legal action,” in that it transcended discussion or consultation and entailed a commitment of public funds. Johnson v. Temple Elementary School Dist. No. 3 Governing Bd. (App. Div.1 2000) 199 Ariz. 567, 20 P.3d 1148, as amended, review denied.

Deliberations by a majority of a public body in respect to a matter that foreseeably could come to a vote by that body constitutes “legal action” for purposes of the open meeting law. Valencia v. Cota (App. Div.1 1980) 126 Ariz. 555, 617 P.2d 63.

Open meeting law does not permit governing board of public body to take legal action while in executive session, whether or not session was called for purpose of taking such legal action. Cooper v. Arizona Western College Dist. Governing Bd. (App. Div.1 1980) 125 Ariz. 463, 610 P.2d 465.

Formulation of a board of education's intention not to offer a contract to probationary teachers is a “legal action” within meaning of open-meeting law, § 38-431 et seq., and must be taken during a public meeting in conformance with that law. Karol v. Board of Ed. Trustees, Florence Unified School Dist. Number One of Pinal County (1979) 122 Ariz. 95, 593 P.2d 649.

Substantial Compliance

Court must determine whether there has been substantial compliance with open meeting law by reviewing the whole of the proceeding, rather than its several parts. Carefree Imp. Assn. v. City of Scottsdale (App. Div.1 1982) 133 Ariz. 106, 649 P.2d 985.

Substantial compliance with provisions of open meeting law, § 38-431 et seq., with respect to termination proceedings before personnel board will satisfy requirements of those provisions when a technical violation has no demonstrable effect on a complaining party. City of Flagstaff v. Blecker (App. Div.1 1979) 123 Ariz. 436, 600 P.2d 49.

Instrumentality

An accommodation school is not a separate political entity with the power to tax; when a county school superintendent acts in a solo capacity as the governing board for an accommodation school, the superintendent is exempt from complying with the open meeting requirement, but when a county board of supervisors convenes a quorum to discuss accommodation schools and other matters, is subject to requirement as a multi-member public body; also, the superintendent has the power to establish and operate an accommodation school whereas the county board has the power to budget funds for the superintendent to operate the school. Op. Att'y Gen. No.I98-066, July 28, 1998.

Electronic Communications

E-mail communications among a quorum of the board are subject to the same restrictions that apply to all other forms of communications among a quorum of the board. E-mails exchanged among a quorum of a board that involve discussions, deliberations or taking legal action on matters that may reasonably be expected to come before the board constitute a meeting through technological means. While some unilateral e-mail communications from a board member to a quorum would not violate the OML [Open Meeting Law], a board member may not propose legal action in an e-mail. Finally, a quorum of the board cannot use e-mail as a device to circumvent the requirements of the OML. Op. Att'y Gen. No. 105-004.