

Open Meeting Law E-Mail Guidance

MIDDLESEX COUNTY DISTRICT ATTORNEY'S OFFICE

(Extracted from the Littleton Town Clerk Website – Effective July 2010, question should be directed to the Office of the Attorney General, not the District Attorney)

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INTRODUCTION

In light of the proliferation in the use of personal computers in recent years, it has become more common for persons, both at home and at work, to communicate through electronic mail, commonly known as "e-mail." In order to assist members of governmental bodies to comply with the Open Meeting Law in their use of this new technology, the following guidelines have been prepared. As every case will present its own set of circumstances, these guidelines must be considered general in nature. Specific questions concerning the proper use of e-mail, or other questions concerning the Open Meeting Law, may now be directed to the Attorney General's office.

DISCUSSION

The Open Meeting Law requires that "all meetings of a governmental body shall be open to the public" and that "no quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section." G.L. c. 39, § 23B. "Meetings" covered by the Law include discussion or consideration by a quorum of "any public business or public policy matter over which the governmental body has supervision, control, jurisdiction, or advisory power." G.L. c. 39, § 23A.

Thus, no substantive discussion by a quorum of members of a governmental body about public business within the jurisdiction of the governmental body is permissible except at a meeting held in compliance with the requirements of the Open Meeting Law. Like private conversations held in person or over the telephone, e-mail conversations among a quorum of members of a governmental body that relate to public business violate the Open Meeting Law, as the public is deprived of the opportunity to attend and monitor the e-mail "meeting."

Members of governmental bodies, should also be cautious about communicating via e-mail on an individual basis. This is because private, serial conversations may reach a quorum of members without the knowledge of all participants. Private, serial, discussions of public business involving a quorum violate the Open Meeting Law regardless of the knowledge or intent of the parties.

Certain housekeeping matters may, of course, be communicated outside of a meeting. Questions concerning meeting cancellations and scheduling often must be discussed outside of a meeting. Similarly, requests to put items on the agenda, so long as no substantive discussion occurs, are properly communicated outside a meeting. Other proper uses of e-mail may be to permit members of a governmental body to communicate with town department heads or staff. Both members of governmental bodies and town employees, however, must take care not to utilize such communications to poll board members or otherwise engage in deliberations.

Additionally, whenever an e-mail message is sent or received by a member of a governmental body; it is the recommendation of this office that a hard copy be created and immediately placed in a central file, where it can be provided as a public record on request.

CONCLUSION

Despite the convenience and speed of communication by e-mail, its use by members of a governmental body carries a high risk of violating the Open Meeting Law. Not only do private e-mail communications deprive the public of the chance contemporaneously to monitor the discussion, but by excluding non participating members such communications are also inconsistent with the collegial character of governmental bodies. For these reasons, e-mail messages among members of governmental bodies are best avoided except for matters of a purely housekeeping or administrative nature.