

**GOVERNING BOARD OF
RIM COUNTRY EDUCATIONAL ALLIANCE
MINUTES OF WORK STUDY SESSION**

JULY 12, 2018

**MINUTES OF THE REGULAR MEETING OF THE RIM COUNTRY
EDUCATIONAL ALLIANCE HELD ON JULY 12, 2018 AT THE MHA
FOUNDATION ACTIVITY CENTER, 304 E. AERO DR. PAYSON, ARIZONA, 85541**

CALL TO ORDER

Chairman Jon Cline called the meeting to order at 9:30 a.m.

ROLL CALL

BOARD MEMBER	PRESENT	BOARD MEMBER	PRESENT
Jon Cline	Present	Su Connell	Present
Larry Sugarman	Present	Ronnie McDaniel	Present
Rich Richey	Absent	H. Ted Pettet	Present

OTHERS PRESENT: Stan Garner, Sanja S. Long, Christina Estes-Werther

A. ANNOUNCEMENTS

None

B. CONSENT AGENDA

None

C. MINUTES

None

D. UNFINISHED BUSINESS

None

E. NEW BUSINESS

None

F. EXECUTIVE SESSION

None

G. REQUEST FOR THE PLACEMENT OF ITEMS OF A FUTURE AGENDA

None

H. CLAIMS

None

CLOSING ANNOUNCEMENTS

Next meeting is scheduled for August 9, 2018

ADJOURNMENT

Motion by Larry Sugarman, Seconded by Ronnie McDaniel, to adjourn the meeting.

Motion carried-4-0

Aye: Su Connell, Ronnie McDaniel, Ted Pettet, Larry Sugarman

Nay: none

Meeting adjourned by Jon Cline at 11:40 a.m.

Respectfully submitted,



Jon Cline, Chairman

Posted:
Date: 10.11.18
Time: 4:00 pm
Initials: JL

**GOVERNING BOARD OF
RIM COUNTRY EDUCATIONAL ALLIANCE (RCEA)
WORK STUDY SESSION AGENDA**

JULY 12, 2018

Due to the length of this meeting, the RCEA may recess and reconvene at the time and date announced.

Pursuant to A.R.S.. 38-431.02 notice is hereby given to the members of the RCEA and to the General Public that the Rim Country Educational Alliance plans to hold the above meeting.

Persons with a disability may request an accommodation such as a sign language interpreter by contacting Su Connell, RCEA Board Secretary, at 928-472-2588. Requests should be made early enough to allow time to arrange the accommodation..

CALL TO ORDER:

ROLL CALL:

BOARD MEMBER	PRESENT	BOARD MEMBER	PRESENT
Ronnie McDaniel		Su Connell	
Jon Cline		Larry Sugarman	
Richard Richey		Ted Pettet	

The Board provides Public Notice that a **Work Study Session** will be held on July 12, 2018 at 10:00 am at 306 E. Aero Drive, Activity Center, Payson, Arizona.

The Board reserves the right to consider any matter out of sequence.

A. ANNOUNCEMENTS

Comments by the Chairman, Board Members, and/or staff.

B. CONSENT AGENDA*

C. MINUTES

D. UNFINISHED BUSINESS

E. NEW BUSINESS

ANNUAL OPEN MEETING LAW TRAINING FOR RCEA BOARD MEMBERS.

F. EXECUTIVE SESSION

None

G. REQUEST FOR THE PLACEMENT OF ITEMS ON A FUTURE AGENDA

No Discussion Permitted

H. CLAIMS

CLOSING ANNOUNCEMENTS

Next meeting scheduled for August 9, 2018.

ADJOURNMENT

The RCEA may recess the public meeting and convene in Executive Session for the purpose of discussion or consultation for legal advice with the Town of Payson Attorney, who may participate telephonically, regarding any item listed on this agenda pursuant to A.R.S. § 38-431.03 (A)(3).

The Chair reserves the right, with the consent of Council, to take items on the agenda out of order.

CERTIFICATION OF POSTING

The undersigned hereby certifies that a copy of the attached notice and agenda was published at www.rimcountryeducationalalliance.org and duly posted at the following location: Bulletin Board located at 304 East Aero Drive, Payson, Arizona 85541 on the 9th day of July, 2018, at 4:45 pm, in accordance with the Policies and Procedures of RCEA.

By: Jon Cline, Chairman

as authorized by
Chairman Jon Cline

Posted:

7.9.18 Date

4:45pm Time

JC Initial



OPEN MEETING LAW

Christina Estes-Werther, General Counsel
League of Arizona Cities and Towns
Rim Country Educational Alliance – July 12, 2018

Presentation Overview

- Purpose: Legislative History/Policy
- Definitions
 - How the Open Meeting Law Applies
- Meeting Requirements
 - Notice/Agenda, Minutes
 - Executive Session
- Violations/Penalties
- Resources



! H.B. 2065 (Laws 2018, Ch. 229)

Training Materials

What Are Your Responsibilities?

A.R.S. § 38-431.01(G)



The clerk must 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.

Purpose of the Open Meeting Law

A.R.S. § 38-431.09

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas for those meetings contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.”

Interpret the OML in favor of open and public meetings.

Purpose of the Open Meeting Law

- This statement guides the public body when structuring a Council meeting, advisory group, subcommittee or work session and offers a reminder that any ambiguity in the law should favor transparency to the public.
- *When in doubt, be open to the public!*

Purpose of Open Meeting Law - Legislative History



Arizona State Capitol, Feb. 2012 (C. Werther)

Purpose of the Open Meeting Law

Legislative History

- Enactment: Laws 1962, Ch. 138, Sec. 2
 - Interpretation based on Attorney General Opinions (as reported in Ariz. Att’y Gen. Op. 75-7)
 - Ariz. Att’y Gen. Op. 62-18 (school board exec session).
 - Ariz. Att’y Gen. Op. 63-40 (application to Merit System Council).
 - Ariz. Att’y Gen. Op. 66-18 (application to Indian Affairs Comm’n).
 - Ariz. Att’y Gen. Op. 73-9 (Board of Regents exec session).

Purpose of the Open Meeting Law

Legislative History

- Amended: Laws 1974, Ch. 196, Sec. 1
 - Expanded definition of **governing bodies**;
 - Added definition of “legal action;”
 - Required taking of written minutes;
 - Added public notice requirements;
 - Clarified executive sessions;
 - Added provisions relating to violations and exceptions.

Purpose of the Open Meeting Law

Legislative History

- Highlights of other revisions:
 - Laws 1978, Ch. 86 Expanding scope to **include advisory committees.**
 - Laws 1982, Ch. 278 Revising provisions relating to notice, agenda, executive session and penalties.
 - Laws 2000, Ch. 358 **Expanded “meeting” to include technological devices;** investigation process for violations.

Purpose of the Open Meeting Law

Legislative History

- Highlights of other revisions (continued):
 - Laws 2006, Ch. 294 Some jurisdictions required to post notices/agendas on web sites.
 - Laws 2008, Ch. 135 Specifying a member of a public body is not subject to OML when expressing an opinion through media, with certain restrictions.
 - Laws 2010, Ch. 88 Requiring posting of notices online.

How Do I Know If The Open Meeting Law Applies???



How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

1. Are you a Public Body?

- Includes advisory/subcommittee.

2. Are you Meeting?

- Is a quorum of the public body gathering?
- Is the quorum taking legal action?



What is a Public Body?

A.R.S. § 38-431(6)

The legislature, **all boards and commissions of this state or political subdivisions**, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or **political subdivisions**, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or political subdivision.

A city or town is a public body.

What is a Public Body?

A.R.S. § 38-431 (6)

Public body includes all quasi-judicial bodies and **all standing, special or advisory committees or subcommittees** of, or appointed by, the public body.

What is a Public Body?

Advisory Committee or Subcommittee

A.R.S. § 38-431(1)

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.

What is a Public Body? Advisory Committee or Subcommittee

“Any entity, however designated...”

- Is the public body or presiding officer officially establishing the committee? ✓
- Is the committee tasked with providing a recommendation to the public body about a decision or course of conduct? ✓

If yes to both questions → **PUBLIC BODY**

What is a Public Body?

Advisory Committee or Subcommittee

Does OML apply if members of the Council are serving on the subcommittee?

- YES, the OML applies regardless of whether or not the subcommittee is made up of council members, in whole or in part. Ariz. Att'y Gen. Op. 180-202

How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

1. Are you a Public Body? **YES**

- Includes advisory/subcommittee.

2. Are you Meeting?

- Is a quorum of the public body gathering?
- Is the quorum taking legal action?



How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

- ❖ Is there a quorum of the public body gathering?
- ❖ A quorum is a majority of the full membership of the Council. See *A.R.S. § 1-216(B)*
 - ❖ *Unless otherwise noted in statute or governing documents.*
- ❖ How is a quorum affected by vacancies or disqualifications?



How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

Vacant positions do not reduce the quorum requirement. *See Agency Handbook 7.11*

- E.g., A seven-member council with two vacant seats (five seated members) still requires **four** members for a quorum.
- E.g., A six-member council with one vacancy (five seated members) still requires **four** members for a quorum.



How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

What about disqualification due to a conflict of interest?

- A disqualified member present at the meeting may not be counted for quorum purposes to discuss or decide the particular matter for which the member is disqualified.
- E.g., A seven-member council has four members present but one member has declared a conflict. The council cannot proceed on that matter until another member attends. See *Croaff v. Evans*, 130 Ariz. 353, 356, 636 P.2d 131, 134 (App. 1981).

How the Open Meeting Law Applies

A.R.S. § 38-431 (Definitions)

What if a majority of the council is disqualified so it is impossible to convene a quorum?

- The disqualified members must disclose on the record why they are disqualified but may proceed to act as if there were not disqualified. See *A.R.S. § 38-508(B)*

What is a Meeting?

A.R.S. § 38-431 (4)



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.**



HB 2065 expands the definition of meeting to include:

- A one-way electronic communication sent from one member of a public body to a quorum of the members and that proposes legal action; and
- An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or legal action on a matter that may likely come before the body.

What is Legal Action?

A.R.S. §§ 38-431 (3), 38-431.01(A), 38-431.03

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.

All LEGAL ACTION of public bodies shall occur during a public meeting.

What is Legal Action?

A.R.S. §§ 38-431 (3), 38-431.01(A), 38-431.03

LEGAL ACTION

=

All discussions, deliberations, considerations, or consultations that **may foreseeably require final action** or a final decision by the public body.

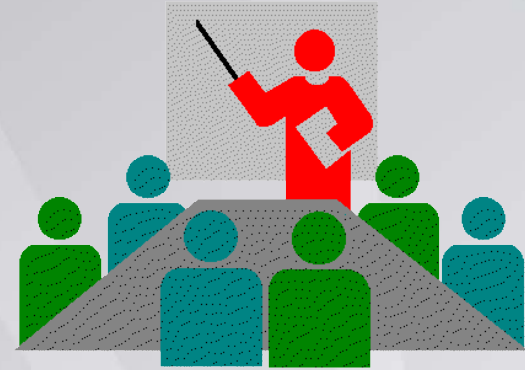
How the Open Meeting Law Applies

A city or town (or subcommittees) is a **public body**.

- Are you **meeting**?
 - Is there a quorum (majority of members) gathering?
 - In person, by phone, some type of online medium such as Skype, chats, e-mail, etc.
 - Are you discussing, proposing or taking legal action?
 - Is the matter being discussed, deliberated or proposed something that could result in final action by the Council?
 - Is the matter within your scope of work or purpose as a public body stemming from the Constitution, state and local laws or IGA?
 - If the answer is yes to the underlined questions, it's a meeting.

Public Body + Meeting = OPEN MEETING LAW APPLIES

Is it a Meeting?



Examples – Seven-member Council

Is it a “meeting” if:

- Four members discuss a Council matter by phone?
- Two members in-person discussing a Council matter with two members on the phone?
- At least four members are on an email discussing a Council issue?

Examples – Seven-member Council

Is it a “meeting” if:

- Four members at a social event discussing matters unrelated to the Council (not legal action).
- Three members are on the phone discussing a Council matter?

Splintering the Quorum



Separate or serial discussions with a majority of the members of the public body is prohibited.

- E-mail, Skype, Chat, Messenger, etc.
- Telephones, including Text Messaging
- Polling
- Staff
 - Cannot direct staff to communicate in violation of open meeting law.

Examples – Seven-member Council

Splintering the Quorum

Is it a “meeting” if:

- One of the three members on the phone texts a fourth member about the discussion?
- Two members discuss Council business via email with all six members copied on the email?
- Three members discuss Council issues via email and ask a staff member to forward the discussion to a fourth member?

Examples: Staff E-Mail



Is it a violation if:

- A member of the public e-mails the Council and there are no further e-mails among members of the Council?
- A Council member requests information from staff for specific information and the other members are copied on the e-mail?
 - The staff member replies to the full Council?
 - Members reply-all to a staff member's communication and ask for more information?

Examples: Staff E-Mail



Is it a violation if:

- A Council member asks staff for a copy of legislation and copies the Council on the email?
- A Council member hits reply all and asks for a copy of the AG Opinion relating to the legislation?
- A Council member hits reply all and suggests the Council file a lawsuit against the legislation?

E-Mail, Texting, & Other Electronic Communications

- OML restrictions apply – the law includes gathering of a quorum through technological devices.
- The type of medium doesn't negate the effect of the law - emails, texts, chat, skype, messenger, instant messaging – these are all technological devices.

See Ariz. Att'y Gen. Op. I05-004.



E-Mail, Texting, & Other Electronic Communications

- Avoid using devices among a quorum to discuss, deliberate, or propose legal action on a matter that may reasonably be expected to come before the Council.
 - Do not propose legal action.
 - Do not use technological devices to circumvent the requirements in the OML.

See Ariz. Att’y Gen. Op. 105-004.

Recap: What is a Meeting?

- If all the requirements of what constitutes a meeting are met, as a public body the open meeting law applies to you in your capacity as a public officer.
- Remember the purpose of the OML: public policy for open meetings to inform the public about matters to be discussed or decided.
 - You are their representative – the OML grants the public the right to attend and listen to the meetings.
 - They want to hear your voice, understand your deliberations, and know who is influencing your decisions about matters involving the city or town.

Who Can I Talk To???



- Other Council members if:
 - There is less than a quorum and no effort to circumvent the law by splintering the quorum.
 - Best Practice: Avoid using electronic mediums if discussing Council business – too easy to accidentally transmit to other members.
 - Not discussing matters coming before the Council (no legal action).
- Staff, including Attorney
- Constituents
 - May copy the full Council on responses– be careful that no one hits “Reply All” and begins a discussion.
- Media

AG Opinion & Legislative Changes Regarding Communications to the Press A.R.S. § 38-431.09(B)



- AG's office stated that the OML does NOT prohibit a member of a public body from speaking to the media (Ariz. Att'y Gen. Op. 107-013).
- 2008 Legislation: Public officials may express opinion publicly if it is not principally directed at another member and is not part of a concerted plan to engage in collective deliberation.

Social Event

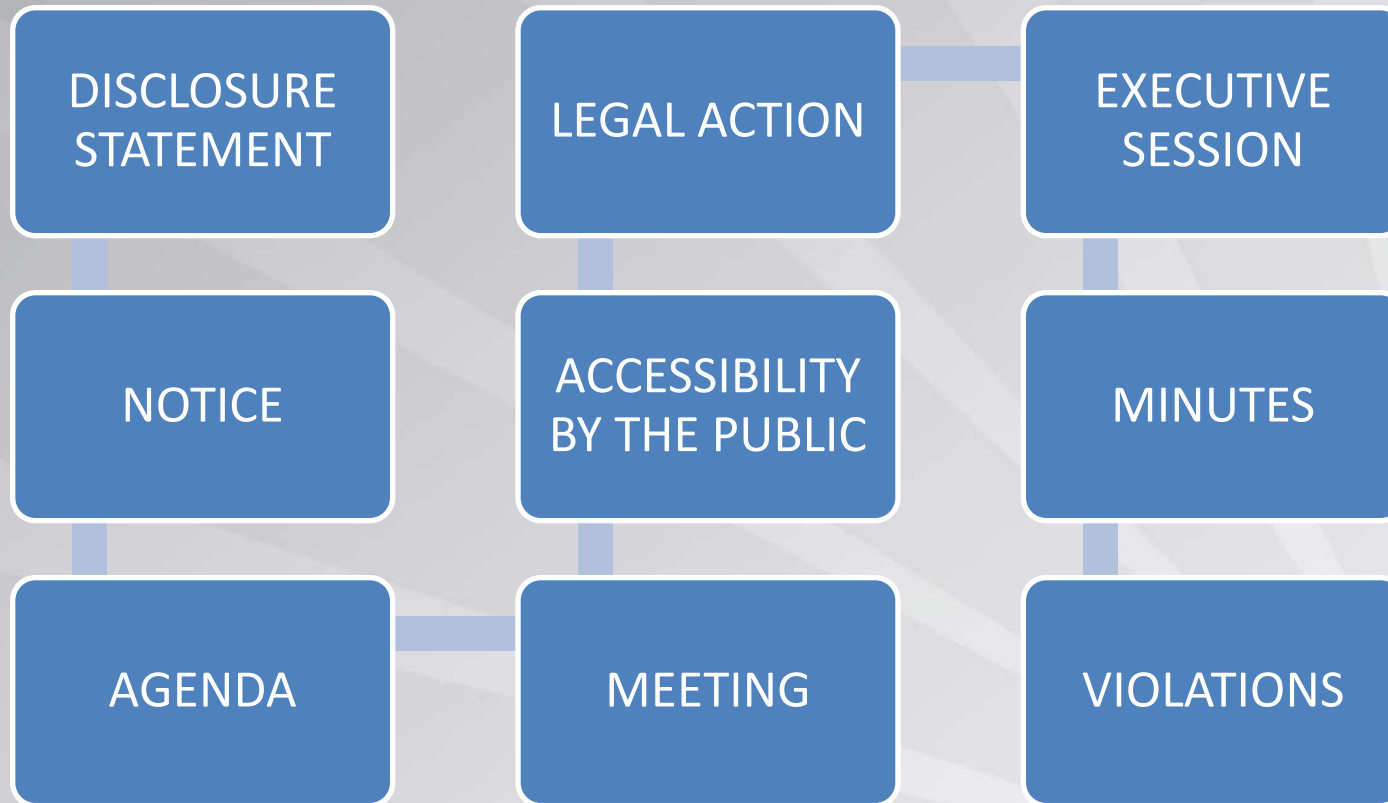


If more than a quorum will be present at a function, outing, etc., a **best practice** is to post a “courtesy agenda” announcing:

- The event;
- A quorum may be present; and
- A statement that no business of the Council will be discussed and no action will be taken.

A courtesy agenda is NOT required.

Council Meeting Map



Pre-Meeting Requirements

Disclosure Statement

- Tells the public where all meeting notices will be posted

Notice of the Meeting

- Members
- Public

Agenda



Notices Generally

A.R.S. § 38-431.02

- Why do we post notices?
 - Makes it possible for the public to attend the meeting;
 - Informs the public of when and where the meeting will be held; and
 - Provides the means for how the public will get information regarding matters under consideration.

Without notice, the goal of exposing public decision-making would be thwarted. See *Carefree Improvement Ass'n. v. City of Scottsdale*, 133 Ariz. 106, 649 P.2d 985 (Ariz. App. 1982).

Notices Generally

A.R.S. § 38-431.02

- Notices are a two step process:
 1. Disclosure Statement
 2. Public Notice of Each Meeting



Disclosure Statement of Notices

A.R.S. § 38-431.02(A)(4)

- *Conspicuously* post a disclosure statement identifying the physical and electronic locations where public notices of meetings will be displayed. The notification location must have:
 - Reasonable access by the public.
 - Normal business hours, not geographically isolated, no limitations on access or be difficult to find.

Public bodies must post disclosure statement on their websites.

Notices Generally

A.R.S. § 38-431.02

Contents

- Date, time, and place of meeting (including the street address of the building and room number or any other specific identifying information).



Public Notice of a Meeting

A.R.S. § 38-431.02(C),(G)

**NOTICE
OF
PUBLIC
HEARING**

- Must be posted at least 24 hours before the meeting.
 - Excludes Sundays and holidays;
 - Includes Saturdays **ONLY IF** the public has access to the physical and electronic posted locations.

Public Notice of a Meeting

A.R.S. § 38-431.02(C),(G)

**NOTICE
OF
PUBLIC
HEARING**

- Must include the agenda or where the public can obtain the agenda.
- Post on website and the location(s) identified in the Disclosure Statement.
- Provide “additional notice” of meetings as is “reasonable and practicable.”
 - News releases, e-mailing notices, newsletters, public access TV announcements, publications, etc.
- Three Exceptions to 24-Hour Notice Requirement...

Public Notice

Exception to 24 Hour Notice

A.R.S. § 38-431.02(D)

- Emergency Exception
 - Requires actual emergency.
 - “Notice as is appropriate to the circumstances.”
 - Must post public notice and agenda within 24 hours.

Public Notice

Exception to 24 Hour Notice

A.R.S. § 38-431.02(E)

- May recess and reconvene properly posted meeting within 24 hours.
 - But prior to recess--must announce time and place of resumption, OR
 - Method by which such notice will be given.

Public Notice

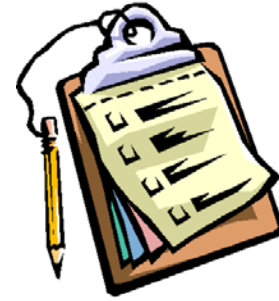
Exception to 24 Hour Notice

A.R.S. § 38-431.05(B)

- Ratification of prior legal action.
 - Posting is required 72 hours before meeting.

Agendas

A.R.S. § 38-431.02(H)



- Time, Date, Place of Meeting.
- Must list the specific matters to be discussed, considered or decided at the meeting. **Action may only be taken (discussed or considered) on listed items.**
- Agendas must contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided.
- **If there is doubt, all questions should be resolved in favor of greater disclosure of information!**

Agendas

A.R.S. § 38-431.02(H)

Contents

- ❖ Specific matters to be discussed, considered or decided at the meeting.
- ❖ Do not use generic agenda items topics such as:
 - ❖ “personnel”
 - ❖ “new business”
 - ❖ “old business”
 - ❖ “other matters”



Agendas

A.R.S. § 38-431.02

Thurston v. City of Phoenix, 157 Ariz. 343 (App. 1988)

The City was sued for violating the open meeting law (OML) because the council discussed the annexation of a particular parcel of land that was not listed on the agenda as a specific item (Item 22c). The Court rejected the City's assertions that the other annexation items on the agenda sufficiently included Item 22c. The Court found the City had failed to properly include Item 22c on the agenda, which resulted in a lack of notice to anyone affected by the parcel that was annexed. The Court affirmed the judgment of the trial court setting aside Phoenix Ordinance G-2700, adopted on November 21, 1984, by which over nine square miles were annexed by the city.

Agendas

A.R.S. § 38-431.02

Ariz. Att’y Gen. Op. 179-192



A question was raised whether a school board can take action on an item not published on its agenda when a majority of the members present vote to add a new item. The Attorney General opined that a school board cannot introduce and take action on an item which is not on the published agenda, even if a majority of the members present vote to add a new item. The law implicitly requires subject matter notice 24 hours in advance. If the posted notice to the public must be changed to reflect additional matters to be considered by the school board, the meeting must either be postponed or the 'actual emergency' justifying less than 24 hours' notice must be explained in the notice given or in the minutes of the meeting at which the actual emergency arises.

Agendas: Reports on Current Events

A.R.S. § 38-431.02(K)

- Presiding officer, chief administrator or a member of the public body may present brief “summary of current events.”
- **Provided:**
 - The summary is listed on the agenda.
 - 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.

Consent Agenda Items

- 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 (i.e. travel requests).
 - Must still provide information sufficient to apprise the public in attendance of the basic subject matter of the action.
- Public bodies often take one vote to approve or disapprove the consent agenda as a whole.
- Voting on Items in a Consent Agenda is Legal Action!

Agenda Pitfalls



- What if you fail to properly list an item the Council was planning to discuss?
 - Cannot discuss the item.
- What if a Council member begins speaking on a topic not listed on the agenda?
 - Instruct the member to cease discussion on the topic.
 - Ensure all members know how to properly place an item on the agenda.
- What happens if you take legal action on an item not listed on the agenda?
 - The item is null and void.
 - Sanctions by the Attorney General

At the Meeting



- Determine quorum.
- Record members present, absent.
- Parliamentary Rules of Procedure.
- Agenda order/changes.
- After hours meetings: do not lock entrance doors—accessibility required.
- Record motions and the maker.

Public Access

A.R.S. § 38-431.01(A)

The Council must provide the public with access to all meetings.

The Council cannot obstruct or inhibit attendance by:

- Requiring the public to sign-in prior in order to attend (but ok to require sign-in if person is speaking);
- Holding the meeting in a remote location;
- Holding the meeting in a room too small to accommodate the reasonably anticipated number of observers;
- In a place to which the public does not have access (e.g. private club); or
- Holding the meeting at an unreasonable time.

Calls to the Public

A.R.S. § 38-431.01(A),(H)




“All persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.”

A public body **may** make an open call to the public.

- Sign-in sheets (optional) but persons addressing the body should identify themselves—(include name and subject in minutes).
- Subject to reasonable time, place and manner restrictions.
- The public may address issues *within the jurisdiction* of the public body.
- Council members may NOT discuss or take action on matters raised during the call if the matter is not specifically identified on the agenda.
 - Council members may respond to criticism (Caution!)
 - Ask staff to review matter; or
 - Ask that the matter be put on a future agenda.

Council Member Attending By Phone

- Allowed? Check governing documents. 
- Generally, if there is a problem reaching a quorum, participation by telephone is OK, but:
 - The public must be able to hear the person on the phone;
 - The person on the phone must be able to hear everyone at the meeting; and
 - Participation on the phone must be noted on the agenda and reflected in the minutes.

Meeting Pitfalls

- Passing notes.
- Whispering to fellow Council members.
- Privately using modern technology.
- Quorum talking to individuals before the meeting officially starts or after the meeting officially ends.



Executive Sessions

A.R.S. §§ 38-431.02(I), 38-431.03

- Limited exception to public meeting.
 - Must vote in open meeting for executive session.
- Agenda must state specific provision of law authorizing the session and specify the item.
- Must include a general description of matters to be considered.
 - Listing only the statutory authorization is insufficient.

Executive sessions - Who May Attend?

A.R.S. § 38-431(2)

- Members of the public body.
- Persons subject to a personnel discussion.
- Auditor general.
- Individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities.
 - Clerk to take minutes/run tape.
 - Attorney to give legal advice.
 - Tip: Put on the record why certain staff are reasonably necessary.

Moving into Executive Session

A.R.S. § 38-431.03(A)



- The vote to move into an executive session must be conducted in the public meeting (motion can be made for e-session on a future date).
- Make sure the room is cleared and only those authorized to be present are in attendance; survey the room and ensure that there are no belongings or recording devices left behind by the public.
- Council members should put away all electronic devices.
- Once in the executive session, remind all those in attendance that all discussions are **confidential**.

Executive Session Purposes

A.R.S. § 38-431.03(A)

- There are seven statutory purposes for a public body to meet in executive session.
- Courts have construed exceptions to the OML very narrowly because of the policies that favor open and public meetings.

See Ariz. Op. Atty. Gen. No. I96-012 (Ariz.A.G.) citing *Fisher v. Maricopa County Stadium District*, 185 Ariz. 116, [912 P.2d 1345 \(App. 1995\)](#)

Executive Session Purposes

A.R.S. § 38-431.03(A)(1)

1. Personnel Matters: Employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation.
 - Written notice to employee not less than 24 hours before meeting (Confirm receipt of notice).
 - Employee may require the meeting be held in public.
 - You may conduct a personnel evaluation in executive session, but cannot use the session as an opportunity to conduct lengthy information gathering meetings that explore the operation of public programs under the guise of conducting a personnel evaluation.

Executive Session Purposes

A.R.S. § 38-431.03(A)(2)

2. Records exempt by law from public inspection.
 - These are records made confidential by statute. (i.e. criminal history record information; executive session minutes).
 - Look at rules or regulations that may limit disclosure of certain information and federal law.
 - Public officials and employees should review the confidentiality provisions that affect their areas of responsibility to avoid disclosure of confidential information.

**TOP
SECRET**

Executive Session Purposes

A.R.S. § 38-431.03(A)(3),(4)

3. Discussion or consultation for *legal advice* with the attorney of the public body.
4. Discussion or consultation with the *attorneys* to consider and instruct regarding contract negotiations, pending or contemplated litigation, or settlement discussions to avoid or resolve litigation.



Legal Advice in Executive Session

A.R.S. § 38-431.03(A)(3)

- Must be lawyers for the public body.
- Not lawyers for someone else.
- What is allowed:
 - Advice regarding the legal ramifications of facts.
 - Legal propriety, phrasing, drafting and validity of proposed legislation, including meanings, legal scope, and possible legal challenges.
- What is not allowed:
 - Discussion regarding the merits of enacting the legislation or what action to take based upon the attorney's advice.
 - Debate over what action to take (i.e., pros and cons, policy implications).



Executive Session Purposes

A.R.S. § 38-431.03(A)(5)

5. Discussions or consultations with employee organizations for *negotiating* salaries, salary schedules, or compensation. 💰
- For example, a public body may discuss related budgetary matters, program issues or other items in executive session that are necessary to its evaluation of an employee, but it is not appropriate to discuss a broad range of budgetary matters under the guise of salary in a personnel evaluation. This is public information. Ariz. Op. Atty. Gen. No. I96-012 (Ariz.A.G.)

Err on the side of caution - keep public discussions in the open meeting.

Executive Session Purposes

A.R.S. § 38-431.03(A)(6),(7)

6. Discussion, consultation re: interstate, international, or tribal negotiations.
7. Discussion or consultations to consider and instruct on negotiations for purchase, sale, or lease of real property.



Actual “negotiation,” not a discussion or recommendation. Ariz. Att’y Gen. Op. I80-159

Confidentiality of E-session

A.R.S. § 38-431.03(B)

- Minutes and discussions must be held confidential.
- Except from members of the body and certain other limited exceptions.
- Best Practice Tip: Keep these minutes apart from the public session minutes to avoid accidental disclosure but remember where you keep the confidential minutes!



Executive Session Pitfalls

- Failure to keep executive session discussion confidential.
- Failure to advise persons about the confidentiality requirement.
- Best practices for preserving confidentiality:
 - Do not fax backup materials to members.
 - Members should not take confidential materials home from the meeting.
 - Let staff destroy extra copies.

Post-Meeting - Meeting Minutes

A.R.S. § 38-431.01(B)



- Minutes can be in writing or via recording by a tape recorder or video tape recorder.
- Must be available for public inspection within 3 working days after the meeting (mark as draft or unapproved) – minutes should not be withheld from the public pending approval.
 - If recorded, the public must be able to access the recording.
 - If written in shorthand, must be typed or written in longhand.

Post-Meeting - Meeting Minutes

A.R.S. § 38-431.01(B)



- Minutes must contain:
 - Date, time and place of the meeting;
 - Members present/absent at the meeting;
 - A general description of the matters discussed or considered;
 - An accurate description of legal actions (including the names of those making statements; if an emergency exists, the nature of the emergency; or if a prior act was ratified, a copy of the disclosure statement required for ratification);

Post-Meeting - Meeting Minutes

A.R.S. § 38-431.01(B)



- Minutes must contain:
 - The name of each person making statements or presenting material to the public body and a reference to the legal action;
 - If items were discussed at an emergency meeting, a full description of the nature of the emergency.
 - If a prior act was ratified, a copy of the disclosure statement required for ratification.

 HB2065 requires that minutes contain the following:

- A record of how each member voted;
- A record of the names of members who propose each motion;
- Any speaker who presents material to the council.

Post-Meeting - Meeting Minutes

A.R.S. § 38-431.01(E)(2)



- Minutes must remain on website for 1 year.
- Subject to public records law and record retention requirements.
- Executive Session minutes must contain same contents as regular minutes plus:
 - An accurate description of all instructions given to attorneys or designated representatives.
 - If holding an emergency meeting, a statement of the reasons for emergency consideration of any matters not on the agenda;
 - Any other information as appropriate.

What If There Is An OML Violation?



Meeting Held in Violation of OML A.R.S. § 38-431.05(A)

All legal action is null and void.



Ratification

A.R.S. § 38-431.05(B)

When a public body must retroactively validate a prior act in order to preserve the earlier effective date of the action.

- Public meeting within 30 days after discovery of the violation.
- Special Notice Requirements:
 - Written description of the action to be ratified, a clear statement proposing ratification, and where the public can access the information;
 - Public shall be able to access all deliberations, consultations, and decisions by members relating to the action; and
 - Posted at least 72 hours in advance of the public meeting at which the ratification is taken.

Ratification

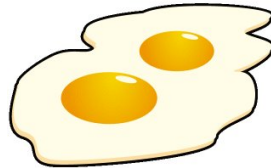
A.R.S. § 38-431.05(B)

Ratification validates a prior action in order to make the legal action valid and enforceable.

Ratification does NOT eliminate liability of the public body or others for sanctions under the Open Meeting Law, such as civil penalties and attorney's fees.

Complaints and Violations

- The AG has an Open Meeting Law Enforcement Team (OMLET) to handle inquiries, conduct investigations and enforcement proceedings relating to complaints of violations of the Open Meeting Law.



- Complaints are assigned to the Government Accountability & Special Litigation (GASL) unit.

OML Online Complaint Form

Verizon LTE 3:38 PM azag.gov

Open Meeting Law Complaint Form

Name: *

Address: *

City: *

State: *

Zip Code: *

Phone Number: *

Example: 4801234567

Email Address:

Name of public entity that is the subject of this complaint: *

Verizon LTE 3:38 PM azag.gov

Please describe the conduct that you believe violated the Open Meeting Law: *

List the date(s) on which you believe the violation(s) occurred: *

Please identify all members of the public body whom you believe violated the requirements of the Open Meeting Law: *

Verizon LTE 3:38 PM azag.gov

Declaration: I declare under penalty of perjury, that the facts and statements contained in this declaration, including any attached statements, are true, correct, and based upon my personal knowledge. I understand that the information contained in this declaration can only be altered by submitting a new declaration. By choosing to submit this form electronically, I certify and agree that by entering my name in the space below, I bind and legally obligate myself to the same extent as I would by signing my name on a printed paper version of this form.

Please enter your name

Attachments:

no file selected

Use this to upload any attachments that are related to your submission.

Files must be less than 50 MB.

Allowed file types: gif jpg jpeg png pdf doc docx.

Attachments:

no file selected

Files must be less than 50 MB.

Allowed file types: gif jpg jpeg png pdf doc docx.

Attachments:

no file selected

Files must be less than 50 MB.

Allowed file types: gif jpg jpeg png pdf doc docx.

COMPLAINTS

<https://www.azag.gov/complaints/omlet/omlet-complaint-form>

Investigations: Attorney General or County Attorney

A.R.S. § 38-431.06(A),(B)

Upon a written, signed complaint the AG or County Attorney may:

- Issue written investigative demands.
- Administer an oath or affirmation to any person for testimony.
- Examine under oath.
- Examine by means of inspecting accounts, books, computers, documents, minutes, papers, recordings, records.

Failure to Comply with AG or County Attorney

A.R.S. § 38-431.06(D)



- Possible filing of action in superior court for an order to enforce the demand.
- Failure to comply could result in:
 - Contempt of court.
 - Injunctive order against conduct.
 - Any other relief the court deems proper.



Consequences of a Violation



A.R.S. § 38-431.07

- Any person (or the Attorney General or county attorney) affected by alleged violation may commence suit in superior court to force compliance with OML *by the public body as a whole.* 
-  The Attorney General can bring an action against an individual member of the public body who **KNOWINGLY** violates the OML.
 - First Offense: The court may impose penalty as appropriate.
 - Second Offense: a civil penalty up to \$500.
 - Third/Subsequent Offense: not to exceed \$2,500
 - A person can be removed from office if the court determines the person **KNOWINGLY** violated OML.

Consequences of a Violation

A.R.S. § 38-431.07



- HB2065:

- ❗ The council is prohibited from paying, or reimbursing, the civil penalty for any member who is found to knowingly violate the OML;
- ❗ Adds a safe harbor provision - specifies that if the court finds that person who might otherwise be liable for an open meeting violation objected on a public record to the action of the public body, the court may choose not to impose a civil penalty on that person.

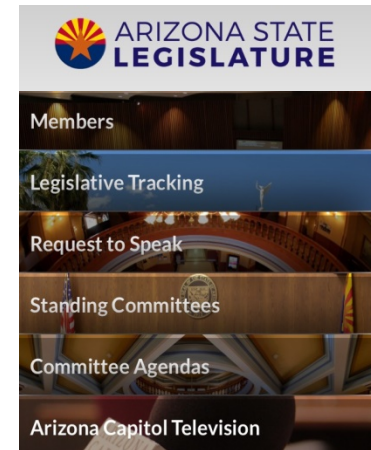
Best Practices

- Understand your role in the process
 - If an OML issue arises during the meeting, who addresses it? You or the attorney? Discuss beforehand with the attorney.
- Stay up-to-date on the law
 - Trainings (including requesting the League to present OML training to your Council)
- Ask questions
 - Fellow clerks, your attorney, ombudsman's office, League, etc.

Arizona Revised Statutes – www.azleg.gov

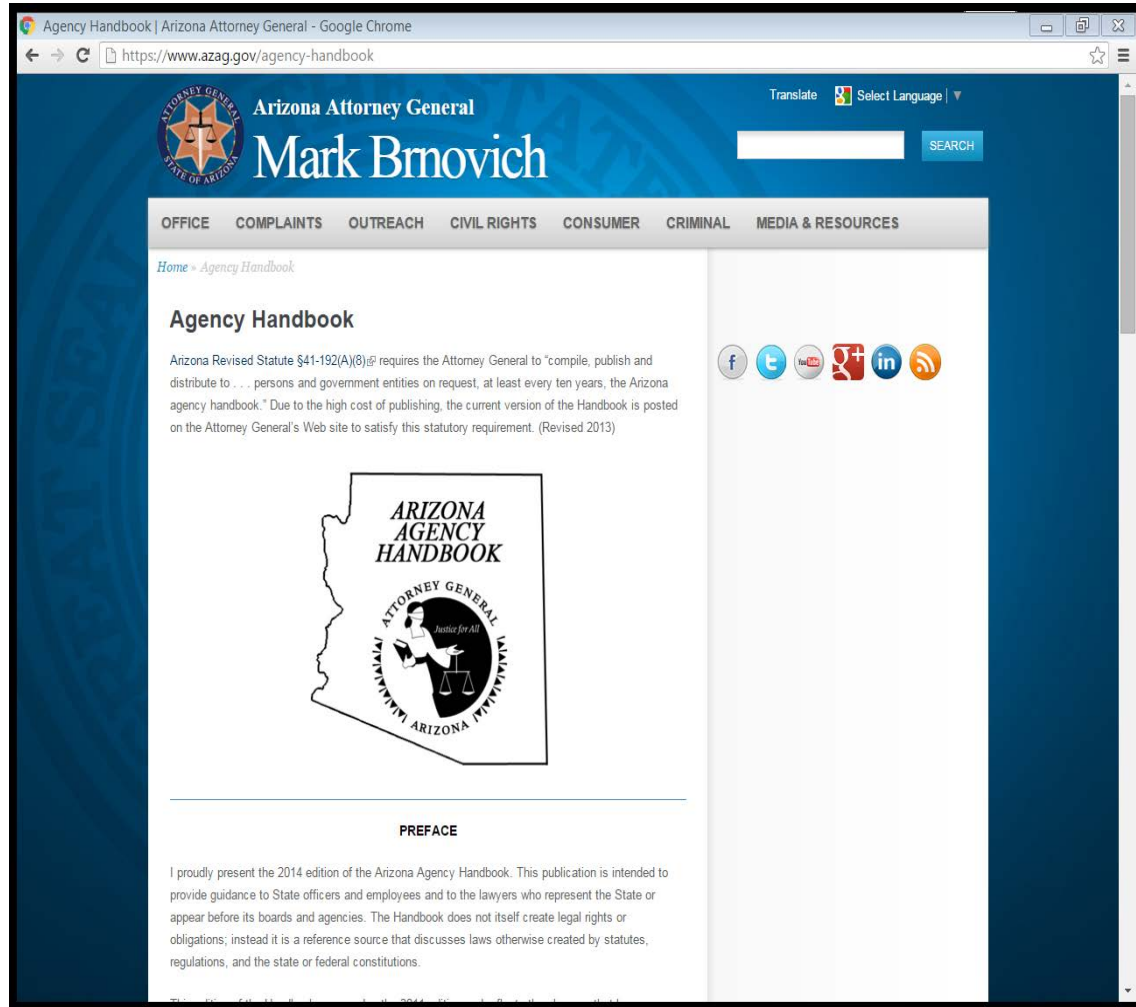
Title 38 Public Officers and Employees - Chapter 3 Conduct of Office - Article 3.1 Public Meetings & Proceedings

- **38-431** Definitions
- **38-431.01** Meetings shall be open to the public
- 38-431.02 Notice of meetings
- 38-431.03 Executive sessions
- 38-431.04 Writ of mandamus
- 38-431.05 Meeting held in violation of article; business transacted null and void; ratification
- 38-431.06 Investigations; written investigative demands
- **38-431.07** Violations; enforcement; removal from office; in camera review
- 38-431.08 Exceptions; limitations
- 38-431.09 Declarations of public policy



Resources

Arizona Agency Handbook – Ch. 7



The screenshot shows the Arizona Attorney General's website. The header includes the Arizona Attorney General logo, the name "Mark Brnovich", and a search bar. The navigation menu lists: OFFICE, COMPLAINTS, OUTREACH, CIVIL RIGHTS, CONSUMER, CRIMINAL, and MEDIA & RESOURCES. The main content area is titled "Agency Handbook" and contains the following text:

Arizona Revised Statute §41-192(A)(8) requires the Attorney General to "compile, publish and distribute to . . . persons and government entities on request, at least every ten years, the Arizona agency handbook." Due to the high cost of publishing, the current version of the Handbook is posted on the Attorney General's Web site to satisfy this statutory requirement. (Revised 2013)

Below the text is a graphic of the state of Arizona with the text "ARIZONA AGENCY HANDBOOK" and the Arizona Attorney General logo. The logo features a woman holding scales and the motto "Justice for All".

Below the graphic is a section titled "PREFACE" with the following text:

I proudly present the 2014 edition of the Arizona Agency Handbook. This publication is intended to provide guidance to State officers and employees and to the lawyers who represent the State or appear before its boards and agencies. The Handbook does not itself create legal rights or obligations; instead it is a reference source that discusses laws otherwise created by statutes, regulations, and the state or federal constitutions.

On the right side of the page, there are social media icons for Facebook, Twitter, YouTube, Google+, LinkedIn, and RSS.

http://www.azag.gov/Agency_Handbook/Agency_Handbook.html

Resources

The screenshot shows the homepage of the Arizona Ombudsman website. The header features the logo "Arizona Ombudsman CITIZENS' AIDE" on the left and "Arizona State Legislature" on the right. A navigation menu includes "Home", "About", "Resources", "Make a Complaint", "Open Meeting & Public Records Law", and "Child Safety (DCS)". A search bar is located on the right side of the header. Below the header is a large banner image showing a hand writing on a document. The main content area features a headline: "We make government more responsive to the people of Arizona." followed by a paragraph: "The role of the Ombudsman Office is to help people who are having a problem with an Arizona state agency, or who have a public records or open meeting law dispute with a state or local agency. We are an independent, apolitical agency that works directly for the State Legislature." Below this are four columns of content, each with an information icon and a title: "What We Do / Our Role", "Filing a Complaint?", "Helpful Resources", and "Ombudsman Law". Each column has a brief description and a "More >" link. The "Ombudsman Law" column includes a link to "Arizona Title 41 Article 5".

Arizona Ombudsman Citizens' Aide

<http://www.azoca.gov/open-meeting-and-public-records-law/open-meetings/>

Resources

League of Arizona Cities and Towns

<http://www.azleague.org/>

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