



**PIMA COUNTY ELECTION INTEGRITY COMMISSION
MEETING MINUTES FOR September 9, 2014, 2014**
<http://www.pima.gov/commission/ElectionIntegrity.shtml>

The Pima County Election Integrity Commission met in regular session on September 9, 2014 at 9:00 a.m. in the Herbert K. Abrams Building, 1st Floor Conference Room #1104 at 3950 S. Country Club Road, Tucson, Arizona.

ITEM 1. ROLL CALL

Present: Elaine Lim, Pat Pecoraro, Bill Beard, Chris Cole, Arnie Urken, Brad Nelson, Tom Ryan, Benny White, Barbara Tellman.

Others in Attendance: Donna Aversa, Attorney from Leonard & Felker, PLC; Ellen Wheeler, County Administrator's Office

Tom Ryan noted for the record that Mickey Duniho was not present and that he had resigned his position on the Election Integrity Commission. Tom wanted to thank Mickey publicly for his dedication to the issues and for his service to the Commission.

ITEM 2. PLEDGE OF ALLEGIANCE

The American flag was saluted with the Pledge of Allegiance.

ITEM 3. APPROVAL OF MINUTE SUMMARY – August 15, 2014

It was moved by Barbara Tellman, seconded by Arnie Urken and carried unanimously to approve the Minutes of the August 15, 2014 meeting.

ITEM 4. EXECUTIVE SESSION

Tom stated that the Commission must vote to go into Executive Session, and also decide who other than voting Commission members should attend. Sara Balentine is essential to the Session for the purpose of taking minutes.

Benny White requested to make a comment. He will not attend the Executive Session as an opposing party. An attorney is present to represent the Commission; Benny's position is that there were violations by individual Commission members. If the matter were to go to court, Benny would probably be called to testify in opposition to the position taken by several members of the Commission. Benny stated it is inappropriate for him to attend the meeting with the Commission and their attorney, which should be confidential between client and attorney. Therefore, Benny will not be attending the Executive Session. Benny would also like to comment that he did read the draft response provided to the Commission by Ms. Aversa, and it is very professionally done and provides a good defense of the client.

Bill Beard interjected a comment that it is his understanding from several legal-minded folks, some attorneys, that if he voted to go into and participated in that Executive Session, if he were ever to

discuss anything spoken of in the Executive Session, even if the information becomes public knowledge, he would be subject to further sanctions, outside of any legal proceedings that may occur regarding this matter. Therefore, Bill will not be attending the Executive Session.

Tom noted that, even without Benny and Bill, there would still be a quorum.

Donna Aversa said that as the attorney for the Commission, her client is the Commission, not any particular member. The purpose of this Executive Session is to give legal advice to the Commission and to answer any questions related to legal advice that any of the Commissioners might have. Donna agreed that the Executive Session is confidential, and any violation of that would be a violation of the Open Meeting Laws but also a breach of the attorney client privilege. No action is taken in Executive Session; once the Commission goes back into public session, then the agenda item is up for open discussion and any action.

Bill reiterated one of his main concerns in the first place. The practical consequences of this action are an attempt to shut people up from speaking their minds about election matters in Pima County.

Barbara Tellman asked what would happen if they did not go into Executive Session; Tom's understanding is they could not seek legal advice but could still discuss the complaint and the response. It's a question of legal issues that perhaps Donna would like to let the Commission know about, and questions the Commission may have for her.

MOTION & VOTE

Pat Pecoraro made a motion to go into Executive Session; Barbara Tellman seconded the motion. Those in favor: Barbara Tellman, Pat Pecoraro, Tom Ryan, Chris Cole, Elaine Lim and Arnie Urken voted in favor; Bill Beard voted "No," and Benny White abstained.

The Commission adjourned for Executive Session at approximately 9:07 a.m., in accordance with A.R.S. §38-431.03 (A) (3) and (4), for legal advice and direction regarding Arizona Attorney General's Open Meeting Law Complaint.

ITEM 5. OPEN MEETING LAW COMPLAINT RESPONSE – Tom Ryan

The Election Integrity Commission reconvened in open session at approximately 9:45. Tom Ryan reminded everyone that any discussion that took place during Executive Session is confidential and subsequent open session discussion should be treated as though Executive Session discussion never happened.

Everyone on the Commission has seen the draft response that Donna Aversa has prepared for the Attorney General's (AG) office. Tom asked that if there is anyone who has any suggestions, corrections, or changes to the draft, because if so, now is the time to make any changes. The Commission would then need to vote to accept the draft as amended. At the moment, the draft is confidential, but as soon as the Commission moves forward with sending it to the AG's office, it becomes public.

Barbara Tellman stated that the draft prepared by Ms. Aversa is very well prepared, thorough, and professional. Bill Beard concurred; but in reading the draft, one comes away with the impression that the Commission could have handled the situation [on May 9th during the call to the public] better. He also was under the impression beginning in July, it seemed to be

understood there were no other options than to have an attorney to handle the response, and no possibility of the Commission responding to the complaint with further training. Arnie suggested that there be a standardized schedule for training with new Commission members; Tom suggested that at a future meeting this issue be reviewed. At the moment, specifically the response to the AG is the issue.

MOTION & VOTE

Barbara Tellman made a motion that the draft be the response to the AG's office with the provision that the typographical errors be corrected; Chris Cole seconded the motion. The vote was called to finalize the draft and sent to the Attorney General: Tom Ryan, Chris Cole, Elaine Lim, Pat Pecoraro, Barbara Tellman and Arnie Urken voted in favor. Bill Beard and Benny White abstained. The motion was passed.

Donna Aversa requested that the Commissioners confirm today and that it be reflected in the minutes that each Commission Member has in front of them a copy of the overview from the *Arizona Ombudsman* website [a copy of this overview is incorporated into these minutes as Attachment 1, which also includes the following items]; a copy of the frequently asked questions of *Open Meeting Law 101*, also from the *Ombudsman* website; a link to the *Arizona Attorney General Agency Handbook* with the following sections: 7.2.2 and 7.7.7; a link to the Arizona Revised Statutes and A.R.S. §§38-431, 38-431.01, 38-431.02, 38-431.09; and that Commissioners have had the opportunity to discuss legislative intent and public policy; that the purpose of the Open Meeting Laws is for transparency in the Commission. Unfortunately, it is not to make the Commissioners' lives easier, but to promote working openly, and that the *Arizona Attorney General Agency Handbook* at 7.7.6 and A.R.S. §38-431.02 (G) and (H) indicate that the agendas must list the specific matters to be discussed, and that because of the Open Meeting Law, Commissioners are prohibited from discussing matters that are not on the agenda. Also regarding the call to the public, the *Arizona Attorney General Agency Handbook* at 7.7.7 and A.R.S. §38-431.01 (as well as in Attorney General Opinion I99-006, which is not included in the packet of materials provided by Ms. Aversa) reference the purpose for the call to the public and that members of the public are welcome to come and attend meetings. There is no obligation to have a call to the public, but the Commission exercises best practices by allowing members of the public to come forward and make statements. But with the call to the public, this Commission is limited in what it can do: 1. Thank them for coming. 2. Respond to criticism. 3. Direct matters to staff. 4. Put the matter on a future agenda item.

Barbara asked Donna to clarify the term "respond to criticism." Donna used an example that if someone directed a comment to her that she is an idiot and doesn't know anything about her duties on this Commission, she can respond that she was selected for serving on the Commission and she does understand. Typically, "criticism" as used in the statute refers to personal criticism. A more general criticism is harder to respond to. Clarifying questions for specific information may be asked but use caution that this does not lead into further discussion and conversation, which then takes you "off the road." The agenda is the road map, and when you deviate from that you can go off the road; the call to the public is an area where you can potentially go off the road if you are not careful.

Bill Beard asked what further communication the Commission could expect after the response is filed with the Attorney General's office. Donna said she will let the Commission know what response she gets. Her job will be to finalize the response letter and send it to the Attorney General's office as soon as possible. Working on the Open Meeting Law Enforcement Team (OMLET) is on top of the other duties these attorneys have in the AG's office, and they are

generally anxious to close out these cases, but also must do so in the normal course of their workload. Donna's anticipation is that Ms. Sterling will want to get to this and resolve it as quickly as possible. Donna will file the response, follow up with Ms. Sterling and respond back to the Commission.

ITEM 6. REVIEW OF PRIMARY ELECTION PROCESS

Brad Nelson reported that overall turnout for the Primary Election was 30% with 82% of votes being cast by early ballot and 18% cast at the polls, including provisional ballots. The poll workers faced a significant challenge with the five party ballots, Federal only, Oro Valley municipal ballots only; given the complexity of the ballots, poll workers did a pretty good job getting the correct ballot to the voters. The Recorder's office reported that there were 7 Federal only ballots cast.

- **Evaluation of Pilot Project – Brad Nelson**

There were two pilots being conducted; the e-poll book pilot and the going-without-a-scanner pilot. Data on the scannerless pilot is still being gathered and reviewed. The initial review suggests that the pilot was a success. Ballot accounting forms revealed that all ballots were accounted for; the few that had a number discrepancy went to a SNAG Board for review under political party observation, and were predominantly due to math errors on the part of the poll workers. The SNAG Board found the e-poll books to be a great help in tracking down discrepancies, since the hard-copy poll rosters go to the Recorder's office immediately after the election.

Bill Beard asked if there were any issues with poll workers not knowing the procedures for using the e-poll books; Brad responded that there were a few situations, one of which was Marana High School. It was not a problem with the e-poll book, but with connecting with the Wi-Fi network in the High School. Because of this the poll workers were not able to get the e-poll books working and went to using the hard copy rosters to be operational at 6:00 a.m. There were also individuals who did not want to sign electronically on the poll book, so the poll workers had the voters sign the hard copy of the poll roster. That may be a case where the voter will cast a provisional ballot in the future, but that particular issue is still under review. Another issue is that the names on the roster and on the e-poll books are not necessarily a mirror image. Brad cited the example of voters with the same first and last name registered at the same address, but with different middle names; the middle names did not appear in the e-poll book making it difficult to distinguish the correct voter. There were also issues scanning the brand new Arizona driver's license; there were no problems scanning the old style license. Also, in some instances, the e-poll book indicated that, instead of "EARLY BALLOT" on a voter's record as is noted in the hard copy rosters, it indicated that the voter had already voted, which was not necessarily the case. That voter may have perhaps not voted their early ballot and instead chose to come to vote at the polling location. Issues such as these will be addressed with the vendor.

Barbara Tellman asked Brad to comment on the Recorder's position of not using live voter registration data, therefore limiting use of valuable features on the e-poll book, such as directing voters to their proper polling location if they are in the wrong place. Brad stated that he does not presume to speak for the Recorder, but she has said that she is concerned about voter registration data going to a third party and maybe resident in "the cloud," regardless of what technology and security is in "the cloud." Her hope is that in the future when using e-poll books, she will be in control of the data and not a third party. The data that was loaded onto the e-poll books was only the voter data for that specific precinct.

Chris Cole raised the question of how an electronic signature could look, versus pen and ink such as in the hard copy rosters. Benny White stated that signatures are not compared on the signature roster; the presentation of identification by the voter is sufficient to satisfy the law.

Bill Beard asked why poll workers don't know where or even if they have the proper ballots at 6:00 a.m. when the polls open. He spoke with a constituent who told him her polling location couldn't find a Libertarian ballot for her until after multiple phone calls. Brad responded that the accounting forms provided to each polling location show exactly what their starting ballot inventory is and how many of each style. Because of the number of variations of ballot styles, including full and Federal only for each party, municipal ballots for Oro Valley, etc., and sufficient ballots to accommodate the registered voters in each category, there were multiple boxes of ballots for each precinct. The Federal only ballots did cause some confusion.

Pat Pecoraro asked Brad to comment on the fact that ballot counting is delayed to a degree by overvotes on the ballots brought in by the ballot boxes [from the scannerless precincts]. Brad responded that, although he was not in the counting room to observe this phenomenon, his understanding is that "pen rests" where the voter rests the pen on Candidate A, then on Candidate B, and then fills in the oval for Candidate C can be detected as an overvote by the tabulating equipment. It is his understanding that those ballots were sent from the counting room for duplication. Brad queried Pat as to whether the entire precinct was held up, or just the ballots that needed to be duplicated. Pat said the precinct was held until the duplicated ballots returned. Brad stated that since there are now other counties who have gone completely scannerless, he has requested the Secretary of State's office to "chime in" so that procedures for handling this situation can be standardized across the state. The Procedures Manual states that the only time a ballot can be duplicated is if it is an early ballot, because there is not the opportunity to spoil the ballot and receive another. A polling place ballot is to be spoiled and another given to the voter, because there is a polling place scanner that will detect the potential overvote scenario.

Benny White cited the same section of the Procedures Manual that when an oval is marked, all other marks are to be disregarded. Bill Beard added that this is another reason why scanners are necessary in the precincts. There should not be an outside body required to determine voter intent when it can be done at the precinct. He stated that Brad's description of what went on sums up why, among other reasons, precinct scanners must be in the polling locations. Tom Ryan asked for clarification—do all cases of an overvote get rejected by the counting machine, in the precinct and central count? The response is yes. Chris Cole's understanding is that if a pen rests in an oval, unless there is a certain percentage of the oval filled, it will not be detected by the equipment. Benny responded that the design of the equipment has a standard for detecting marks; however the standard varies between machines, in that different machines will detect different numbers of pixels and reject a ballot. Other variables are the color of ink used, the width of the stroke, etc. Benny again stated that members of the Commission need to come down to the Elections Department and observe the ballot counting to fully understand the process.

Elaine Lim reported that there were observers at 18 of the 25 scannerless precincts, each for from one to six hours. There were very few problems reported. The comments that came up were: short battery life on the e-poll books but aside from that the e-poll books were very positively received; some of the polling places did not distribute the survey forms requesting comments. Brad said each of the 25 pilot polling locations was provided with copies of a survey to hand out to voters soliciting input on the voters' overall experience with voting, with the e-poll books, and the metal ballot box. Approximately 80% were in favor of the e-poll books on a County-wide basis, 70% for the metal ballot boxes with 10% no's and 20% neutral on using them on a County-wide basis.

Barbara Tellman commented on the fact that voters need better education on the use of write-in votes. There were some 16,000 ballots with write-ins and most of them were nonsense. A lot of voters were filling in the bubble and not filling in a valid name. She asked how long it takes to process write-in ballots. Brad responded it takes approximately 30 people about 48 hours to process those. Arnie Urken noted that this is not a new issue, and there is no good public notification of write-in candidates. He asked Brad what he recommends doing to educate people on who are valid write-in candidates. Brad responded that it is not the legitimate write-in candidates that cause the problem; it is write-ins for Mickey Mouse and "None of the above," etc., that add so much time to processing write-ins. And the law requires that there be a write-in line for every race.

Benny brought up comments that he heard concerning the e-poll books on Election Day and has addressed 15 or 16 questions to the Recorder's office, including user interface issues. He also suggested that the ballot report be amended to list the number of signatures from not only all e-poll books, but also all signature rosters as well. Benny remains extremely concerned about recovery of ballots from the scannerless precincts. There will be as much as three times the turnout in the General Election, so it will take longer to count those ballots as it did in the Primary. The duplication process needs to be resolved. Also, there were about 15 of the 25 precincts that had some kind of problem with the ballot reports and had to go to the SNAG Board, which was made of 3 very conscientious, capable, competent Elections Department employees who are dedicated to making elections work and know how to look for answers to resolve issues. This SNAG Board dealt with 10% of the precincts in the County. If Pima County goes to all scannerless precincts, there will need to be 10 SNAG Boards. Staffing that many SNAG Boards will cause concern for the thoroughness of the process. It took 3 hours to deal with 10% of the precincts, to deal with the machines, moving the boxes around, getting ballots duplicated, etc., plus the extra staff required to do the tasks. The potential to lose control of the situation is increased. Doing the math, if it took 3 hours to process 10% of the precinct ballots, it will either take 30 hours or 10 times the number of people in the same amount of space to process 100% of the precinct ballots. With the precinct scanners, as long as the scanner comes in with the seals intact and it does not appear that the seals have been tampered with, the results are uploaded. Then an audit is done afterwards to make sure everything is correct. With the 25 precincts without scanners, all ballots must be accounted for. Brad confirmed that the poll workers physically open the metal ballot boxes at the end of the night and count the number of ballots in the box. That goes on the ballot report, and that number should equal the number of names in the poll list and on signatures captured on the e-poll book. Any variances should be documented on the ballot report, but sometimes the poll workers cannot explain the variance, in which case the SNAG Board reviews data and makes a determination.

Tom Ryan emphasized the weight in work that is required due to the change in the process. Why is the SNAG Board so much busier with the scannerless system? It seems there are: 1. The accounting issue; 2. The duplication issue; and 3. The fact that those ballots can't be counted on the central count equipment. Those are the three things that slow the process down. Brad noted that in the environment with scanners, the problems in the precinct were discovered by a precinct audit. So in effect, the SNAG Board was used after the counting to resolve issues. There will always be a certain number of problems; in this scenario, the problems were caught prior to tabulation. Brad said that, with the addition of the electronic poll book, problems can be remedied more quickly pre-tabulation than post-tabulation with the use of the hard copy rosters, because those rosters go immediately to the Recorder's office for their post-election use. It would take close to a day for the request to be made to the Recorder, the roster pulled and delivered to Elections, and for Elections to count the number of signatures on the roster. With the e-poll book, they can print a list of names in time-stamp order and resolve issues much more quickly.

- **Use of secrecy sleeves for ballots – Chris Cole**

Chris Cole received a complaint at the last Libertarian Party meeting that the poll workers were not handing out privacy sleeves. In personal experience, he has always received a privacy sleeve for his ballot. Chris asked Brad if poll workers were supposed to hand out privacy sleeves. Brad's response is that they are to offer the sleeve with the ballot. Chris said the complaint was that poll workers are not offering privacy sleeves, and this last Primary Election, Chris was not offered one. Elaine Lim mentioned that she observed a number of precincts, and there was one where privacy sleeves were not offered; the majority, though, the ballot was inserted into the privacy sleeve when it was handed to the voter. Brad stated that when the secrecy sleeve is offered, it should stay separate from the ballot, because there have been contentions that the reason the ballot is put into the secrecy sleeve prior to handing to the voter is to hide the fact there are votes already on it. Poll workers who are stationed near the ballot box are also instructed to stand at a reasonable distance so as not to be able to view how the voter marked their ballot, but be available if the voter needs assistance. Chris asked if there are procedures in place for coverage if that poll worker has to leave his post near the ballot box. Brad responded that the poll workers work as a team, and fill in for each other when one is absent from their post.

Benny asked to review language given to voters to advise them of the consequences of over-voting a ballot. Brad stated that there is a statement on the sample ballot that if the voter over-votes a race on their ballot, they may receive a replacement ballot if they choose; but if they choose not to receive a replacement, the votes for the over-voted race will not be counted but all other races will. Brad could not answer the question about whether there is language in materials included with the early ballot. The secrecy sleeves also have that statement addressing the over-vote situation.

- **Observer evaluations – Barbara Tellman**

The Democratic Party had observers at some of the polling locations, as well as observing the ballot processing and counting. Barbara noted that she is impressed with the care that the ballot processing boards take, and cited an example where she and Benny determined that there should be one more ballot because the count did not match. After eight hours of searching, Mary Martinson and Anne Lillie found an early ballot that had been left in the envelope. Elaine Lim discussed the new procedure instituted by the Elections Department for the duplication process, which has always been a problematic area. Those ballots that are duplicated now go to an additional board for review to ensure that the duplications are correct. Benny White raised a concern that there were an unusually high number of duplicated ballots during the Primary; he was told by Mary Martinson that a large number of early ballots had gotten wet causing them to curl and wrinkle and cause problems during counting. He cited this as an example of a reason for duplication of ballots.

ITEM 7. NEW CENTRAL COUNT ONLY SYSTEM

- **Ballot security procedures: Identification of changes from existing system & improvements in security from existing system – Bill Beard**

Bill requested this item because of the 4 to 0 vote at the Board of Supervisors meeting to purchase the central count system. There had been some interaction between Supervisor Carroll and Brad Nelson, and Bill got the clear indication that the Supervisors are under the impression that the old scanners can talk to the new central count system, and they will be used in conjunction with one another. The other issue is that there were some issues discussed at the current meeting about the potential problems of going scannerless. Bill would like to see some articulated procedures to fill in the holes created by going scannerless. Brad asked Bill what the ballot security issues are that he

perceives; Bill responded, what are the procedures in place to safeguard the ballots being handled at the polling place and transported from the polling location to central count? Brad responded that there will be observation by multiple poll workers who are of opposing political parties who count, seal, document and transport the ballots, only slightly different than what is now being done with the scanners. There is chain of custody documentation all the way through. When everything shows up at the election central, the seals are checked to make sure they haven't been tampered with, again under political party observation, and then ballots are removed. It is almost exactly the same security procedure in place right now. At this time, Brad does not see a need to change the procedures. Tom Ryan commented that in earlier discussion, there seems to be more ballot handling by the SNAG Board, in between the metal box and central count. He said he isn't sure this is really a security issue, but any time ballots are handled outside of the chain of custody, it poses a problem. Brad mentioned that where the SNAG Board is set up is under video surveillance and party observation. Benny White stated the opinion that security is better, not by taking the scanners out, but by use of the e-poll book. Now a name pops up when the driver's license is scanned, the voter signs, and it's done. In the old days of having to look up voters in active and inactive rosters, there were numerous instances of a voter casting a ballot without signing anything. Now there is a better record of what happened in that polling place that can be reviewed afterwards.

- **Integration with existing precinct scanners – Bill Beard**

Brad stated that the question posed to him by Supervisor Carroll was, will precinct scanners work with the new system, and the answer is yes. This was something discussed during the RFP process, that if at some future date, the Board chooses to bring scanners in, will they be compatible with the central count system and the answer is yes. The present scanners are not compatible.

Brad reached out to Pinal County who has the system that Pima County will eventually have. After they had run each precinct, they generated a precinct report on the off-chance that would be one of the precincts for hand-count audit. They also had duplicate ballots so those were subtracted from the precinct count rather than waiting for those duplicate ballots to come back, and then the duplicate ballots were run at a later time. The process going forward is under review by Pima County for accuracy and timeliness. Tom asked Brad if, presuming that Pima County goes all scannerless, and ballots come in to central count from the precincts, other than treating each precinct as a batch, they will be handled exactly the same as early ballots. Brad said he thought the answer to that is yes.

Benny White mentioned his frustration that the current version of the software for the new central count machine requires that after each batch of ballots tallied, a results report must be run and then sealed so it cannot be seen, in order to have a total for the hand-count audit. The vendor told Benny that a subsequent version will not require that a totals report be run at the end of each batch, and the totals for each batch will be encrypted and stored to be recalled at a later time. If they were to be decrypted and printed, there would be a record of that. His hope is that this version will be available and in place before the elections of 2016. Benny thinks that with the 850 machine they can run all ballots through and if ballots need to be duplicated, they can be duplicated and brought back; and as long as the count is in a polling place vote center report, the data base wouldn't know if they were an additional run or a duplicate run, so the duplicate ballots could be reintegrated into that box of ballots.

Barbara asked if there will be the possibility of going completely scannerless, or do we have to follow HAVA lines and have an accessible device of some kind and can anyone use it? Brad responded that there is a requirement to have an accessible device, and right now it is the TSX, for all Federal elections; in the Procedures Manual there is a requirement that a jurisdiction of a certain population level is required to have an accessible device. He is still looking at what accessible device will be used

in the 2016 elections. Having the new devices available for anyone to use is a possibility. Poll workers are instructed that the TSX machines were purchased with public funds for disabled persons to use. The device actually has a bright orange sign that displays information about the public law and how that device was provided for disabled use. If a non-disabled person wanted to use the device they could; however, it would be like a non-disabled car parking in a disabled parking spot. You may be holding up the use of that equipment by a person who truly needs it because of their disability. However, poll workers do not ask if someone is disabled.

Arnie Urken asked about the anticipated increase in length of ballots because of state law; what is the status of the law, and how will it impact what has been discussed during this meeting? Brad responded that the law impacted the Primary Election when Oro Valley was on the ballot; Oro Valley did elect all of their Council members and their Mayor, so there will be no runoff in the General. The next time this will impact the election is in 2016. During that election, we will have the Towns of Marana and Sahuarita, and the City of South Tucson on the ballot. The propositions generally have the greatest impact on ballot length. Even with those, Brad believes that Pima County is still 4 to 5 years away from using a two-page ballot.

Tom Ryan recalled that the ES&S vendor considered that the database was not proprietary, but rather, encoded in such a way that only their central count software could read it. Benny said he had raised that issue with the vendor and anyone who wanted to do an investigation would have to acquire that version of their software, or contract with ES&S to provide a service. The data could not be viewed with any kind of normal editing tool. Tom said that right now, the Elections Department is required to provide the database file; so what happens with that whole process with this new system? Brad said this is a question he needs to pose to the attorneys. Tom said they discovered that there is good reason for the ability to view the databases, because some issues that looked strange in the database had been noticed in the past, although the issues were resolved. But it appears that that capability is now lost, which he is opposed to. He would like to request the vendor to provide as much information as they can about that database. Benny suggested to Tom that the database issue should be something for the next Secretary of State to address. Legislation could state that in the event of an inquiry based on grounds, the Secretary of State would provide equipment at a nominal cost. Barbara recalled asking the vendor if there was a read-only form of the software, and was told it has not been developed but is possible to do. Tom said that would be an easy matter, because the capability exists in all software.

- **Proposed date of acquisition – Brad Nelson**

Bill Beard asked about the expected date for receiving the new system; Brad did not have that yet, as the contract will go to the Chair of the Board of Supervisors presumably this week, which will be the final signature on the contract. Once that happens, Brad guesses that Pima County will take possession in 45 days.

ITEM 8. PROPOSED COUNTY – U of A INITIATIVE ON THE FUTURE OF ELECTIONS SYSTEMS – Arnie Urken

Arnie Urken presented his draft letter [a copy of this draft is incorporated into these minutes as Attachment 2] for initial reading and discussion. He asked if there were any suggestions. Barbara Tellman asked Arnie if he had informally approached Dr. Jeff Goldberg on this matter and Arnie has.

Benny White offered his comments on the letter. It reads as though from one PhD to another PhD. The second thing is Benny has a hard time seeing that this is a roll for this Commission. This may be something that is interesting to the Commission, but would have no actual support from the County. Arnie responded that there are other commissions that do these sorts of things, because they need to

look at future contracts and specifications, where they can either sit back and accept what comes down or take a proactive roll and help shape what comes down to them as choices. Arnie is familiar with several projects, primarily in the area of water, where the County gets involved with the University as partners. Since there is no real expertise on the issue of election systems, one of the tasks would be to explore the possibility of redefining and repositioning what goes on in universities and in election administration to make some things possible. It may turn out that this is not worth doing, and that may be one of the things to come out of a preliminary investigation. But Arnie understands that the University of Arizona is in expansion mode, looking for new areas to get into. This is an opportunity that no one else is exploring, and it fits in with stated community goals of the University.

Barbara Tellman mentioned her experience with the University that they don't do something without getting a grant. She asked Arnie if it may be expected that Pima County would provide grant money for this. In discussing this venture with Dr. Goldberg, Arnie said this may be an opportunity for the University to receive some kind of grant funding. Where the funding would come from and other logistics would be part of the work involved.

Benny suggested adding political parties to the list of stakeholders. He said that one positive result may be a discussion on internet voting security. People want to vote over the Internet, so things such as security need to be figured out.

A wording change was suggested in the first sentence to state, "Pima County would like to explore collaborating with the University of Arizona..."

ITEM 9. REMOVAL OF COMMISSION MEMBER FOR NON-ATTENDANCE

Brad Nelson gave an update on this issue. Since the last meeting, Brad attempted to communicate with Matt Smith [EIC Green Party representative] to invite him to attend this meeting. This correspondence was sent via U.S. Mail and via e-mail, and Brad has not heard anything from Mr. Smith.

Mike Cease, Chairman of the Green Party of Pima County was present to make a statement on behalf of Matt Smith. Matt could not attend the meeting on Tuesday, September 9th because of his teaching schedule at Pima College. Because of his teaching schedule, he only has Fridays open to attend.

Since the Clerk of the Board has already been notified of Matt Smith's termination, the matter is closed. The Green Party may reappoint Mr. Smith if they wish.

ITEM 10. FUTURE AGENDA ITEMS

Tom Ryan has some items to add for the next meeting and he reminded everyone not to discuss them. He would like to add the following:

Cost of Elections with 5 Questions [previously proposed by Mickey Duniho]
Open Meeting Law Issues and Training
Early Ballot Hand Count Audit
Security of e-Poll Book: Data & Communication

ITEM 11. NEXT MEETING DATE

The next meeting date was set for Friday, October 17, 2014.

ITEM 12. CALL TO PUBLIC

Tom Ryan reminded all Commission members not to comment on any statement from the public. He also suggested a time limit of 4 minutes for each speaker. He notified public speakers that Commission members may not discuss nor respond to them on any issue raised.

Ingrid Saber, first Vice Chair of the Pima County Libertarian Party, and Treasurer for the Pima Association of Taxpayers. She listed a number of problems she has encountered at her polling location, such as poll workers not using privacy sleeves, write-in candidate lists not posted in obvious location, poll workers standing close enough to view her ballot as she put it in the scanner, being given a Libertarian Fed Only ballot, etc.

Mike Cease, Chairman of the Green Party of Pima County. He had previously shared with Brad Nelson that there were some mitigating circumstances to Matt Smith's absences to Election Integrity Commission meetings due to a trip out of the country. Matt had requested that a member of the Green Party attend in the audience to explain his absence and it was overlooked. Mr. Cease apologized to the Commission for this oversight.

ITEM 13. ADJOURNMENT

It was moved by Bill Beard and seconded by Barbara Tellman and unanimously carried to adjourn the meeting. The meeting adjourned at 12:01 p.m.



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OVERVIEW OF ARIZONA'S OPEN MEETING LAW

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Accordingly, Arizona's Open Meeting Law must be construed in favor of open and public meetings.

Meeting Notices, Agendas, and Minutes are often available on the public bodies' website.

For a list of many of the available websites go to our links.

STATUTES

PUBLIC MEETINGS AND PROCEEDINGS

The Arizona Open Meeting Law is located in A.R.S. §§ 38-431 through 38-431.09 at <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=38>

The statutes addressing conflict of interest for officers and employees are located in A.R.S. §§ 38-501 through 38-511 at <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=38>

PUBLICATIONS

1. Printable Ombudsman Booklet
2. Directions for printing the booklet
3. AZ Agency Handbook - Chapter 7 http://www.azag.gov/Agency_Handbook/ch07.pdf
4. Attorney General Opinions: 1999 to present - <http://www.azag.gov/opinions/>
5. Attorney General Opinions prior to 1999 - <http://azmemory.lib.az.us/cdm4/index.php?CISOROOT=/agopinions>
6. Open Meeting Law 101 (pdf)

LINKS

Welcome to the Arizona Ombudsman's resource for open meeting information. Here you will find web links to open meeting information for many of the public bodies throughout Arizona.

We encourage any comments and suggestions you have about these pages. If you are associated with a public entity of the state and would like your organization to be included, please e-mail your information to ombuds@azoca.gov or call us at (602) 277-7292 or (800) 872-2879.

To begin, please choose state, county, or city/town to find the information you are looking for.

Updated Links Coming Soon

RECENT DEVELOPMENTS IN ARIZONA'S OPEN MEETING LAW

Pending Legislation

NONE

FREQUENTLY ASKED QUESTIONS

What is a meeting?

A meeting is defined as a 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. This includes any gathering, regardless of its label that falls within this definition. A.R.S. § 38-431(4).

What is a public body?

A public body means the legislature, all boards and commissions of this state or political subdivision, all multimember 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. Includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, such public body. A.R.S. § 38-431(6).

What is a quorum?

A quorum is a majority of the members of the public body unless otherwise provided by law. For purposes of computing whether a quorum is present vacancies must be included unless otherwise provided for by law.

May a public body conduct a properly noticed meeting without a quorum of its members?

It could, however, it would not constitute a meeting as defined under A.R.S. § 38-431(4) and the members present could not take legal action. Legal action 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. A.R.S. § 38-431(3).

What is a disclosure statement or initial notice?

A disclosure statement identifies where a public body will post public notices of its individual meetings, including the physical and electronic locations. Public bodies must post the disclosure statement on their website. A.R.S. § 38-431.02. However, there are two exceptions. Special districts formed pursuant to Title 48, shall either post their disclosure statement on their website or file their disclosure statement with the clerk of the board of supervisors. A.R.S. § 38-431.02(A)(3)(c). Cities and Towns shall post their disclosure statement on their website or the League of Arizona Cities and Towns' website. A.R.S. § 38-431.02(A)(4)(a).

Do all public bodies have to post or file a disclosure statement?

Yes. Public bodies must file a disclosure statement identifying where the public notice of its meetings will be posted.

When must a public body post a notice that a meeting will take place? Notice must be posted 24 hours in advance of all meetings. A.R.S. § 38-431.02(C). The 24 hour period includes Saturdays if the public has access to the physical posted location in addition to any internet website posting, but excludes Sundays and other holidays prescribed in section 1-301.

Where must public bodies post meeting notices?

The notice must be posted on its website and at the locations identified in its disclosure statement. Please note the exceptions provided for special districts formed under Title 48 as well as cities and towns set forth under A.R.S. § 38-431.02(A)(3)(c) and -431(A)(4)(b). The public body must also provide additional notice as is reasonable and practicable. The posting locations should be where the public has reasonable access: normal business hours, should not be geographically isolated, should not have limited access, and should not be too difficult to find.

Do members of the public have to sign an attendance sheet before attending a public meeting?

No. The public may attend a meeting anonymously. However, persons that wish to address the public body are required to provide a name for the minutes. They do not have to provide any other personally identifying information such as phone number or address.

May the public body prevent members of the public from speaking at a public meeting?

Yes. The open meeting law does not require that a public body offer a call to the public. The public has a right to attend meetings, not participate in meetings. Ariz. Att'y Gen. Op. 78-1. If the public body allows a call to the public, the public body determines when attendees may address the public body and may place time restrictions. In addition, 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, but may respond to criticism, ask staff to review a matter, or ask that a matter be placed on a future agenda.

May a board member ask the staff to review a matter raised by a member of the public during the call to the public even if it was not an agenda item?

Yes. At the end of the call to the public, public officials may ask staff to review a matter, or ask that a matter raised by a member of the public be put on a future agenda.

May attendees videotape a public meeting?

Yes, so long as it does not actively interfere with the conduct of the meeting. A.R.S. § 38-431.01(F).

Does a public meeting held at 6:00 am violate the open meeting law?

Possibly. The open meeting law provides that the public body must provide the public with access to all public meetings. A.R.S. § 38-431.01(A). It cannot invoke procedures that will obstruct or inhibit public attendance. This includes commencing a meeting at an unreasonable time. See Arizona Agency Handbook Section 7.10.1.

What happens if a room is too small to accommodate the number of people that want to attend a public meeting?

It depends. The public body must provide the public with access to all public meetings. The requirement is not met if the meeting is held in a room too small to accommodate the reasonably anticipated number of observers. If the room is too small, the public body should recess and resume the meeting in a larger location. Of course, in doing so, it must notice the time and place of resumption. This action does not require 24 hour notice.

Are advisory committees and subcommittees required to take meeting minutes?

Yes. A 2007 statutory amendment requires subcommittees and advisory committees to take meeting minutes. A.R.S. §§ 38-431(6) and -431.01(B).

May a public body withhold meeting minutes until they are approved?

No, a public body must make its minutes available for inspection within three working days after the meeting. A.R.S. § 38-431.01(D). In no event should minutes be withheld from the public pending approval.

In 2006, the Legislature imposed additional posting requirements upon cities and towns with populations of more than 2,500 persons. They must post a statement showing legal actions taken during the meetings or any recording of the meeting on their website within three working days after the meeting. City and town councils must also post any approved minutes on their site within two working days after the approval of the minutes. A.R.S. § 38-431.01(D).

In 2007, the Legislature decided that advisory committees and subcommittees must also take minutes or record all of their meetings, including executive session. A.R.S. §§ 38-431(6) and -431.01(B). Advisory committees and subcommittees established by public bodies of cities and towns with populations greater than 2,500, must post a statement describing legal action or any recording of a meeting on its website within ten working days of the meeting. A.R.S. § 38-431.01(E)(3).

When can a public body meet in executive session?

A public body may meet in executive session for one of seven reasons: 1) personnel discussions, 2) confidential records, 3) legal advice, 4) litigation, contract negotiations, and settlement discussions, 5) employee salary discussions, 6) discussion regarding international, interstate, and tribal negotiations, and 7) discussion regarding the purchase, sale, or lease of real property. A.R.S. § 38-431.03.

Are communications between the public body and its attorney during executive session subject to the attorney-client privilege?

Communications that occur with governmental bodies in executive session can be subject to the attorney-client privilege. Regardless, statements made in executive session are confidential whether or not they are otherwise privileged, subject to only a few exceptions. The Arizona Court of Appeals held that an attorney cannot testify about communications made during executive session even pursuant to a grand jury subpoena. *State ex. rel. Thomas v. Schneider*, 212 Ariz. 292, 130 P.3d 991 (App. Div. 1, 2006)(review denied September 26, 2006).

May board members communicate via e-mail?

It depends. E-mail communications are treated the same as any other form of communication between board members. For information and hypotheticals illustrating the use of e-mail, please review Attorney General Opinion 105-004. A copy of the Opinion may be found at <http://www.azag.gov/opinions/2005/105-004.pdf>.

Are homeowner associations subject to the open meeting law?

No. Because they are not governmental public bodies, homeowner associations are not subject to the open meeting law. They are governed by A.R.S. §§ 33-1801 et seq. Complaints against homeowner associations are a private cause of action.

What committees are subject to Arizona's Open Meeting Law?

Any entity, however designated, that is officially established on motion or order of a public body or 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 is subject to all of the open meeting law requirements.

A.R.S. § 38-431.01 was amended and requires subcommittees and advisory committees to take meeting minutes or record all of their meetings, including executive sessions.

A.R.S. § 38-431(E)(3) also requires subcommittees and advisory committees established by public bodies of cities or towns with a population of more than 2,500 persons to post a statement describing legal action or any recording of a meeting on its internet website within ten working days of the meeting.

May board members discuss issues or express opinions to the public outside a properly noticed meeting?

Yes. A.R.S. § 38-431.09 clarifies that if a member of a public body individually expresses an opinion or discusses an issue with the public, through public broadcast or at a venue other than a public meeting, the member is not in violation of the open meeting law, if the opinion is not directed at another public official and there is no concerted plan to engage in collective deliberation to take legal action.

How long must internet postings required under A.R.S. § 38-431.01(E) remain on the website?

One year from the date of posting. A.R.S. § 38-431.01(J).

Were there any 2010 amendments to Arizona's Open Meeting Law?

Yes. A.R.S. § 38-431.01 and -431.02 were amended:

1. Requires the secretary of state, the city or town clerk, or the county clerk to conspicuously post open meeting materials on their website.
2. Requires an elected official or appointed member of a public body to review open meeting law materials at least one day before taking office.
3. Requires the public bodies of Arizona, including public bodies of the state, counties, and cities and towns, to conspicuously post a statement on their website about the physical and electronic locations where all public notices of their meetings will be posted. In the alternative, cities and towns may post a statement on a website of an association of

cities and towns stating where all public notices will be posted. The statement must include physical and electronic posting locations.

4. Requires the public bodies of this state to post public meeting notices on their website and give other reasonable notice as is practicable.

5. Allows a public meeting to be held, even if technological failure prevents the posting of public notices online, as long as the public body complies with all other public notice requirements.

6. Requires special taxing districts to conspicuously post a statement on their website about the physical and electronic locations where all public notices of their meetings will be posted and individual meeting notices on their website or file a statement with the clerk of the Board of Supervisors stating where all public notices of their meetings will be posted.

7. Reiterates that if an executive session is scheduled, a notice of the executive session must state the provision of law authorizing the session and must provide notice to members of the public body and to the general public.

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OPEN MEETING LAW 101

Arizona's Open Meeting Law in a Nutshell

Information compiled by:
Liz Hill, Assistant Ombudsman – Public Access
Last revised August 2010

Two core concepts

“All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.” A.R.S. § 38-431.01(A).

“It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonable necessary to inform the public of the matters to be discussed or decided.” A.R.S. § 38-431.09.

Why do we have an Open Meeting Law?

1. To protect the public.
 - a. To avoid decision-making in secret.
 - b. To promote accountability by encouraging public officials to act responsively and responsibly.
2. To protect public officials.
 - a. To avoid being excluded (notice).
 - b. To prepare and avoid being blind sided (agenda).
 - c. To accurately memorialize what happened (minutes).
3. Maintain Integrity of government.
4. Better informed citizenry.
5. Build trust between government and citizenry.

What constitutes a meeting?

A meeting is a gathering, in person or through technological devices of a quorum of a public body at which they discuss, propose or take legal action, including deliberations. A.R.S. § 38-431(4). This includes telephone and e-mail communications.

Who must comply with Open Meeting Law?

Public bodies. "Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember 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. A.R.S. § 38-431(6).

"Advisory committee" or "subcommittee" means 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(1).

The Secretary of State, Clerk of the County Board of Supervisors, and City and Town Clerks must conspicuously post open meeting law materials prepared and approved by the Arizona Attorney General's Office 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. A.R.S. § 38-431.01(G)

What is Required under the Open Meeting Law?

1. Notice

Public bodies must post a disclosure statement on their website or file a disclosure statement as provided for by statute. The disclosure statement states where the public body will post individual meeting notices. A.R.S. § 38-431.02(A)(1) through (4).

The open meeting law requires at least 24 hours notice of meetings to the members of the public body and the general public. A.R.S. § 38-431.02(C).

Notice must be posted on the public body's website, unless otherwise permitted by statute. Notice must also be posted at any other electronic or physical locations identified in the disclosure statement and by giving additional notice as is reasonable and practicable. A.R.S. § 38-431.02(A)(1) through (4).

2. Agenda

Agendas must contain information reasonably necessary to inform the public of the matters to be discussed or decided. A.R.S. § 38-431.09.

Agendas must be available at least 24 hours before the meeting. A.R.S. § 38-431.02(G).

3. Public's Rights

The public has a right to:

- Attend
- Listen
- Tape record
- Videotape

Public has no right to:

- Speak
- Disrupt

4. Calls to the Public

An open call to the public is an agenda item that allows the public to address the public body on topics of concern within the public body's jurisdiction, even though the topic is not specifically included on the agenda. Ariz. Att'y Gen. Op. I99-006.

Although the Open Meeting Law permits the public to attend public meetings, it does not require public participation in the public body's discussions and deliberations and does not require a public body to include an open call to the public on the agenda. *See* Ariz. Att'y Gen. Op. No. I78-001.

An individual public officer may respond to criticism, ask staff to review an item or ask that an item be placed on a future agenda, but he or she may *not* dialogue with the presenter or collectively discuss, consider, or decide an item that is not listed on the agenda. A.R.S. § 38-431.01(H); Ariz. Att'y Gen. Op. I99-006. Note that individual members of the public body may respond to criticism by individuals who addressed the public body during the call to the public, but the public body may not collectively discuss or take action on the complaint unless the matter is specifically listed on the agenda. A.R.S. § 38-431.01(H).

Public bodies may impose reasonable time, place, and manner restrictions on speakers. Restrictions must be narrowly tailored to affect a compelling state interest and may not be content based. Ariz. Att'y Gen. Op. I99-006.

A member of the public body may not knowingly direct a staff member to communicate in violation of the Open Meeting Law. A.R.S. 38-431.01(I).

In sum:

- *Calls to the public are permitted, but not required.*
- *Should be added as an agenda item.*
- *Public body may limit speaker's time.*
- *Public body may require speakers on the same side with no new comments to select spokesperson*
- *Public body may set ground rules:*
 - *civility*
 - *language*
 - *treat everyone the same*

5. Executive Sessions

Public bodies may hold private executive sessions under a few limited circumstances. In executive sessions, the public is not allowed to attend or listen to the discussions, and the public body is not permitted to take final action. A.R.S. § 38-431.03(D).

Members of the public body may not vote or take a poll in executive sessions. A.R.S. § 38-431.03(D).

There are seven authorized topics for executive sessions:

1. Personnel (must provide 24 hours written notice to employee).
2. Discussion or consideration of records exempt by law from public inspection.
3. Legal advice – with public body’s own lawyer(s).
4. Discussion or consultation with public body’s lawyer(s) to consider pending or contemplated litigation, settlement discussions, negotiated contracts.
5. Discuss and instruct its representative regarding labor negotiations.
6. Discuss international, interstate, and tribal negotiations.
7. Discuss the purchase, sale, or lease of real property.

Notice and Agenda: Agendas for executive sessions may describe the matters to be discussed more generally than agendas for public meetings in order to preserve confidentiality or to prevent compromising the attorney-client privilege. A.R.S. § 38-431.02(I). Nonetheless, the agenda must provide more than a recital of the statute that authorizes the executive session.

6. Minutes (A.R.S. §§ 38-431.01(B), (C), (D) and -431.03(B))

Public bodies must take meeting minutes of all meetings, including executive sessions.

May be recorded or written, keeping in mind that permanent records must be on paper.

Public session meeting minutes must include:

- Date, time and place of meeting;
- Names of members of the public body present or absent;
- A general description of matters considered; and
- 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.

Executive session minutes must include:

- Date, time and place of meeting;
- Names of members of the public body present or absent;
- A general description of matters considered;
- An accurate description of all instructions given; and
- Such other matters as may be deemed appropriate by the public body.

The minutes or a recording of the public session must be open for public inspection no later than three working days after the meeting, except as otherwise provided in the statute. A.R.S. § 38-431.01(D).

Cities and towns with a population of more than 2,500 persons must post approved city and town council minutes on its website within two working days following approval. A.R.S. § 38-431.01(E)(2).

Minutes of executive sessions must be kept confidential except from certain individuals. A.R.S. § 38-431.03(B).

How long meeting minutes are maintained is determined by the public body's record retention and destruction schedule authorized by Arizona State Library and Archives.

Persons in attendance may record any portion of a public meeting, as long as the recording does not actively interfere with the meeting. Acceptable recording equipment includes tape recorders, cameras, or other means of reproduction. A.R.S. § 38-431.01(F).

7. Where to turn for help

Self-help resources available:

The Arizona Ombudsman – Citizens' Aide handbook – The Arizona Open Meeting Law (available on line at www.azoca.gov under open meetings/publication)

The Arizona Ombudsman's website, www.azoca.gov

Arizona Agency Handbook, Chapter 7, www.azag.gov – Quick Links

Attorney General Opinions – www.azag.gov – Quick Links

Questions/File a complaint:

Arizona Ombudsman-Citizen's Aide (602) 277-7292

File a complaint/Enforcement authority

Attorney General's Open Meeting Law Enforcement Team (602) 542-5025

County Attorney's Office

CHAPTER 7

OPEN MEETINGS

7.1 Scope of this Chapter. This Chapter discusses Arizona's Open Meeting Law, A.R.S. §§ 38-431 to -431.09, with particular emphasis on the application of the Open Meeting Law to the day-to-day operations of state officers, bodies, and agencies. This Chapter shall be conspicuously posted on the Secretary of State's website for state public bodies, the city or town clerk for municipal public bodies and the county clerk for all other local public bodies. A.R.S. § 38-431.01(G). Individuals elected or appointed to public office shall review this Chapter at least one day before taking office. *Id.*

This Chapter does not resolve all issues that may arise under the Open Meeting Law, but rather is intended to serve as a reference for public officials who must comply with the law. Anyone faced with a situation not specifically addressed in this Chapter should consult their legal counsel before proceeding.

7.2 Arizona's Open Meeting Law.

7.2.1 History of Arizona's Open Meeting Law. All fifty states have enacted some type of legislation providing the public with a statutory right to openness in government. In addition, the United States Congress in 1976 enacted the Federal Open Meeting Act, 5 U.S.C. § 552b. Arizona's Open Meeting Law was first adopted in 1962 and has been amended several times since its enactment. For a detailed discussion of the early history of the Open Meeting Law through 1975, see Ariz. Att'y Gen. Op. 75-7.

7.2.2 Legislative Intent. The Legislature has repeatedly expressed its intent that the Open Meeting Law be construed to maximize public access to the governmental process. In first enacting the Open Meeting Law in 1962, the Legislature declared that: "It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly."

In 1978, after a series of court opinions narrowly construing the Open Meeting Law, the Legislature reiterated its policy by adding A.R.S. § 38-431.09. That statute now provides:

It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform 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 multimember 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 multimember 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 multimember 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 multimember 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

However, when the public notice is issued well in advance of a meeting, as in the case of notice of regularly scheduled meetings, see Section 7.6.6, it may be more appropriate to state how the public may obtain a copy of the agenda and distribute it accordingly.

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 a meeting 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 legal action, including that taken after an executive session, 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 Ariz. 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(H). 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. *Thurston 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 litigation, 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. § 38-431.07(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. Att'y Gen. Op. 108-001.

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. § 38-431.01(H) 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 future agenda. *Id.* See also Ariz. Att'y Gen. Op. 199-006.

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 not discuss items 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. § 38-431.02(D). See Section 7.6.5 for a discussion of what constitutes an actual emergency.

To use the emergency exception, the public body must do several things. First, the public body must give "such notice as is appropriate to the circumstances" and must "post a notice within twenty-four hours declaring that an emergency session has been held" and setting forth the same information as is required in an agenda for a regular meeting. A.R.S. § 38-431.02(D); see Form 7.9.

Next, prior to the emergency discussion, consideration, or decision, the public body must announce in a public meeting the reasons necessitating the emergency action. A.R.S. § 38-431.02(J). If the emergency discussion or consideration is to take place in an

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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, 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.
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 prescribed in section 38-431.03. In addition to the members of the public body, officers, appointees and employees as provided in section 38-431.03 and the auditor general as provided in section 41-1279.04, only individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities may attend the executive session.
3. "Legal action" 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 and towns, school districts and special districts.
6. "Public body" means 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. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.
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.

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38-431.01. Meetings shall be open to the public

A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting.

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.

C. Minutes of executive sessions shall include items set forth in subsection B, paragraphs 1, 2 and 3 of 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.

D. The minutes or a recording of a meeting shall be available for public inspection three working days after the meeting except as otherwise specifically provided by this article.

E. A public body of a city or town with a population of more than two thousand five hundred persons shall:

1. Within three working days after a meeting, except for subcommittees and advisory committees, post on its website, if applicable, either:

(a) A statement describing the legal actions taken by the public body of the city or town during the meeting.

(b) Any recording of the meeting.

2. 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 specifically provided by this article.

3. 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.

I. 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 E of this section must remain on the applicable website for at least one year after the date of the posting.

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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. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

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. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

3. Special districts that are formed pursuant to title 48:

(a) May 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) May post all public meeting notices on their website and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

(c) If a statement or notice is not posted pursuant to subdivision (a) or (b) of this paragraph, shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give additional public notice as is reasonable and practicable as to all meetings.

4. The public bodies of the cities and towns shall:

(a) Conspicuously post a statement on their website or on a website of an association of cities and towns 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 or on a website of an association of cities and towns and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.

B. If an executive session is scheduled, a notice of the executive session shall state the provision of law authorizing the executive session, and the notice shall be provided to the:

1. Members of the public body.

2. General public.

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 section 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 section 1-301.

H. Agendas required under this section shall list the specific matters to be discussed, considered 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, 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.

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38-431.09. Declaration of public policy

A. It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Toward this end, any person or entity charged with the interpretations of this article shall construe this article in favor of open and public meetings.

B. Notwithstanding subsection A, it is not a violation of this article if a member of a public body expresses an opinion or discusses an issue with the public either at a venue other than at a meeting that is subject to this article, personally, through the media or other form of public broadcast communication or through technological means if:

1. The opinion or discussion is not principally directed at or directly given to another member of the public body.
2. There is no concerted plan to engage in collective deliberation to take legal action.

ATTACHMENT 2

TO: Pima County Election Integrity Commission
FROM: Arnie Urken
SUBJECT: Future Election Systems in Pima County
DATE: September 8, 2014

The attached draft letter and supporting documents outline a proposed collaboration between Pima County and the University of Arizona to educate Pima County leaders and community about the technological options and social objectives associated with choices about the evolution of elections in our future.

The attachments identify the most salient issues for stakeholders and include questions related to these issues that can serve as a starting point for planning a multi-disciplinary programmatic effort.

I have talked with Chuck Huckleberry about the broad concept of such an initiative and he encouraged me to pursue it.

Thanks,

Arnie

DATE

Dr. Jeffrey Goldberg
Dean of Engineering
University of Arizona
PO Box 210072
Tucson, AZ 85721

Dear Jeff:

Pima County would like to collaborate with the University of Arizona to investigate and plan our next purchase of an election system. Although we are purchasing a new voting system from Election Systems and Software, we realize that it is not too early to be proactive about changes in technology and social expectations.

These changes challenge us to think ahead about specifications for the next purchase of an election system. In particular, new technology now enables us to lower the costs and improve the reliability of election processes. But grasping these opportunities requires us to engage citizen, educational, business, legal and government stakeholders to define a model of elections for the future.

More than a century ago, US inventors began to design new voting machines and devise a curriculum for educating people to improve the management of elections. Since then, the pace and complexity of technological changes have dominated our social capacity to transform the potential of computer-mediated processing of voting data to serve individual voters. In fact, the US pioneered in setting standards for the design of reliable election systems, but the world has changed significantly since the first version of national voluntary voting system standards was developed over thirty years ago. The elections process, including underlying manual, electronic, mechanical, logistical, and sociological processes comprise a very interesting and complex system.

Approximately seven years ago, the Board of Supervisors formed the Election Integrity Commission (EIC) to advise the County on how to manage election system reliability and costs. The EIC has initiated a dialog about the attributes of an ideal election system. A goal of the Commissions' conversation has been to create a model standard for voting operations that can serve as a benchmark for election planning in Pima County, Arizona, and beyond. This model standard would integrate ideas about technological and social specifications for new election systems.

Partnering with the University of Arizona to investigate the future of election systems would enable the County and its stakeholders to institutionalize the development comprehensive knowledge about new voting technology and its social implications. This advance could include the creation of new professional and scholarly research and curricular growth to extend the UA's leadership in informatics and big data analysis. The elections process, including underlying manual, electronic, mechanical, logistical, and sociological processes comprise a very interesting and complex system.

We envision a sequence of international scholarly and community conferences to nurture this partnership. Please let me know whom I should contact at the University of Arizona to coordinate the start of this new initiative.

Sincerely,

Chuck Huckleberry

Most Important Voting System Topics of Interest

	Election Budgets	Individual Privacy	Reliability	Social Media	Taxes	Time Requirements
Businesses	✓	✓	✓	✓	✓	✓
Computer Scientists			✓	✓		
Election Administrators	✓	✓	✓		✓	✓
Journalists		✓	✓	✓	✓	
Lawyers	✓	✓	✓			✓
Legislators	✓	✓	✓	✓	✓	✓
Poll Workers	✓	✓	✓			✓
UA Research Managers		✓	✓	✓		✓
Voters	✓	✓	✓	✓	✓	✓
Voting System Vendors	✓	✓	✓	✓	✓	✓

Stakeholders

Some Issue-Oriented Concerns

Election Budgets

- What is the cost per vote of different types of elections?
- How much does election equipment cost?
- How much do election budgets subsidize political party operations?
- What revenues could governments derive from marketing election data while protecting privacy and information security?

Individual Privacy

- How secure is election data?
- What types of individual voting data are shared with political parties?
- What types of personal information do governments and political parties sell to outside marketing firms?
- Can individuals verify that their votes are recorded and counted correctly?
- Can individuals share their votes and voting information with friends, family or others?
- Can my political party conduct an election using ranked voter input?
- Can I sell or trade my vote?
- Do election law changes tend to push technological innovation or vice versa?

Reliability

- How reliable are election system machines and software?
- Why can't I deliver my vote(s) via Fed Ex or UPS?
- Why do some states follow federal voluntary standards of performance while other states rely on their own experts to evaluate system reliability?
- How reliable is Internet voting?

Social Media

- Is it illegal to tweet, Instagram, or email a picture of my voting choices to friends, family or others?
- Can I text friends or others from the voting booth or voting line to get information that would help me in making voting choices?
- Can I check websites from the voting booth or voting line to get information that would help me in making voting choices?
- Can I privately listen to or watch content on phones or other devices while am in a voting booth or voting line?

Taxes

- How much do county, sub-county, and state governments spend on election administration?
- Is tax money used to buy insurance to cover costs incurred by voting equipment breakdown and human error?
- Would privatizing elections reduce taxes?

Time Requirements

- How much time can a voter spend in a voting station?
- Why aren't all elections held by mail ballot?
- Why don't elections last for more than one day?

