

E-mail Communications and the Open Meeting Law



E-mail communications are treated the same as any other form of communication between members of the public body.



Serial e-mails between a quorum of members on a subject that may come before the board for legal action (including discussion or deliberation) violate the Open Meeting Law.



E-mail exchanges among a quorum of the members that involve proposals, discussions, deliberations, or taking legal action on matters that may come before the board constitute a “meeting” and, therefore, violate the Open Meeting Law.



A unilateral e-mail from one board member to a quorum of the other board members that proposes an agenda item will not violate the Open Meeting Law PROVIDED the member does not expound upon the item or propose a course of action AND PROVIDED that the other board members do not respond to the e-mail in any way (including a response to the sender only.)



E-mails from third parties to a quorum of the members would not violate the Open Meeting Law PROVIDED that members do not “reply to all” (or to enough members to constitute a quorum) if responding back to the third party.



An e-mail request for information from a member to staff does not violate the Open Meeting Law even if the other board members are copied on the e-mail and the response from the staff person. HOWEVER, the board members may not engage in discussions or share opinions (via e-mail or other forms of communication) related to the information provided outside of a properly noticed public meeting.



E-mail communications of members related to their official duties, even on home computers or personal cell phones, tablets or other devices, are public records and must be maintained for inspection and, if requested, reproduction.



BOTTOM LINE: Communications via electronic media should be used very cautiously and should NEVER discuss, deliberate or propose legal action on matters that may foreseeably come before the public body for action. **When in doubt, ALWAYS err on the side of openness – IF IT’S IFFY, DON’T HIT SEND!!!!**

For additional information and hypotheticals illustrating the use of e-mail and other electronic communications, please review Attorney General Opinion I05-004.

A copy of the Opinion may be found at:

<http://www.azag.gov>
Search for “2005 opinions”

