Board and Commissions Open Meeting Law

Open Meeting Law

A.R.S. 38-431 et. seq.

- A.R.S. 38-431.09 - Public's business must be done in public
- Properly noticed meetings
- Posted agenda

- Quorum must be present for a meeting to be held
- 24 hours notice except for an actual emergency

Public Bodies

All Public Bodies must comply with the Open Meeting Law

"Public Body" includes:

- City Council
- Boards and commissions of the City
- All corporations and other instrumentalities whose boards of directors are appointed or elected by the City Council (i.e., Municipal Property Corp.)
- All quasi-judicial bodies of the City (i.e. Board of Adjustment
- Standing, special or advisory committees or subcommittees of the City (i.e. Council subcommittees)

Public Bodies do not include:

- Staff meetings
- Staff appointed committees that advise staff
- Single department head

What is a Meeting?

- A meeting occurs ANY TIME a quorum of the public body discusses, proposes, or takes legal action.
- Can be a traditional meeting or an electronic meeting.

How Do We Have a Legal Meeting?

Post an agenda in the official posting places and website at least 24 hours in advance.

Agenda MUST include:

- Date, time and place
- Description of matters to be discussed or decided (or where an agenda can be obtained)

Agenda MAY include:

- Unscheduled public appearances
- Report on current events from chair members and staff person in charge

Unscheduled Public Appearances

- Citizens may only address the public body on issues in its jurisdiction
- No discussion
- Members of the public body may respond to criticism, ask staff to review a matter, or request a future agenda item

When Can a Public Body Meet in Private?

Executive Sessions - A.R.S. 38-431.03

Employment, discipline or resignation of public officer, appointee or employee

Obtain legal advice

Contract negotiations or litigation

Discussion regarding security and critical infrastructure

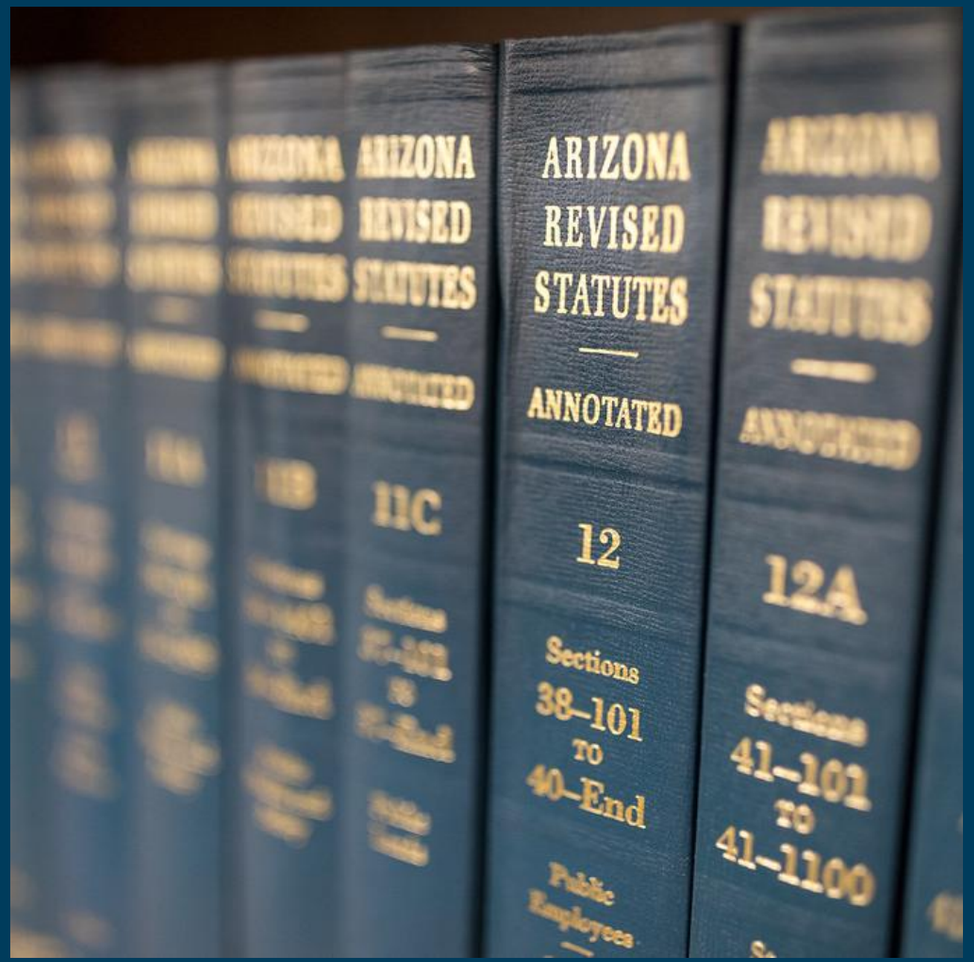
Negotiations for purchase, sale or lease of real property

Discuss records exempt by law from public inspection

Employee organization negotiations

Executive Sessions

- Minutes must be kept but are confidential from inspection (except in the case of an investigation)
- No legal action may be taken in executive session
- May instruct attorneys regarding contracts, litigation, and settlement discussions
- May instruct representatives regarding purchase of real property
- May instruct representatives regarding negotiations with employee organizations



Can we discuss matters not on the agenda?

Minutes

The official record of meetings.

Draft minutes must be available within 3 working days and must include:

Members present or absent

Names of persons making statements or presenting to the public body

Date, time and place

Description of matters discussed, all legal actions proposed, discussed or taken, including members who propose each motion and the vote of each member

Open Meeting Pitfalls

Serial meeting—a series of gatherings of less than a quorum

Attending other meetings

Forwarding or reply all to emails

Not providing sufficient detail on an agenda

Social Media and A.R.S. § 38-431.09

Discuss and/or take action on items not listed on agenda

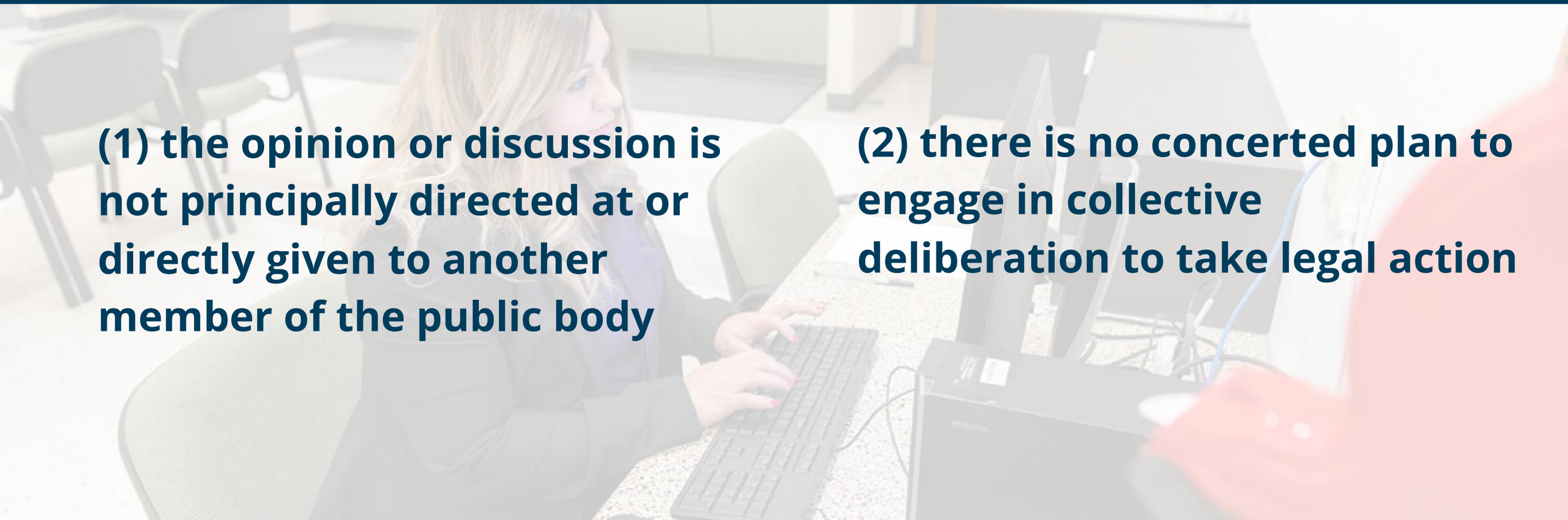
Serial Meetings or Splintering the Quorum

It is not necessary for a public body to communicate simultaneously in order for a meeting to occur. A series of gatherings of less than a quorum MAY constitute a meeting if City business is discussed.

This means that if a councilmember talks to two other councilmembers about City business and then one of those councilmembers talks to another councilmember about the same thing, a meeting has taken place but no notice or agenda so OML violation.

Serial Meetings Continued

Under A.R.S. § 38-431.09, you may express your opinion or discuss an issue with the public personally, through the media, 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

Emails

When you use e-mails to discuss City business, care must be taken not to violate the Open Meeting Law as e-mails can easily create a meeting inadvertently by:

- An e-mail to a quorum of the public body proposing legal action
- An e-mail exchange of facts and/or opinions if it is foreseeable that the topic may come before the public body for action
- Forwarding or responding to e-mails involving a majority of the council — be careful of chain e-mails
- **REMEMBER DO NOT REPLY ALL!**

Social Media and Social Events

Members of public bodies should not post or comment on each other's website or municipal websites where those comments could be interpreted as proposing legal action or discussion or deliberation/decisions on City issues. These types of postings would violate the Open Meeting Law because they would be "meetings" .

It is NOT a violation of the Open Meeting Law when there is a gathering of a quorum of the public body, i.e., a wedding, but DO NOT talk about City business.

What Happens if We Violate the Open Meeting Law?

A.R.S. 38.431.07

- Actions taken are null and void
- The Attorney General may investigate
- A public official may be removed from office
- $500/day civil penalty
- Costs for enforcement may be assessed
- Public monies can not be used for legal counsel

Conflict of Interest

How Do You Know if You Have a Conflict of Interest?

Pecuniary Interest—will you gain or lose something of value from your decision?

If so, is your pecuniary interest remote or substantial?

If it is substantial, then you have a conflict!

How Do You Know if You Have a Conflict of Interest?

Common Remote Interests A.R.S. 38-502(10)

- The interest of a non-salaried officer of a non-profit corporation
- The interest of an attorney of a contracting party
- The ownership of less than three percent of the shares of a corporation for profit
- The interest of a public officer or employee in being reimbursed for his actual and necessary expenses incurred in the performance of official duty
- The interest of a recipient of public services generally provided by the City
- The interest of a member of a trade, business, occupation, profession or class of persons consisting of at least ten members which is no greater than the interest of the other members of the trade, business, occupation or profession or class of persons

What To Do if You Have a Conflict of Interest?

Fill out a disclosure form

No discussion or action

Make conflict known

Avoid any appearance of influence

Conflict of Interest Law Violations

A.R.S. 38-510

- Civil suit may be filed
- Court may award attorney's fees
- Class VI Felony—intentional or knowingly
- Class I Misdemeanor—reckless or negligent
- Forfeiture of office
- Cancellation of contract – A.R.S. §38-511

Public Records

What is a Record?

- Evidence of the organization and all of its decisions, procedures, functions, and operations
- Made or received by any governmental agency
- Informational or historical data
- Any medium or format

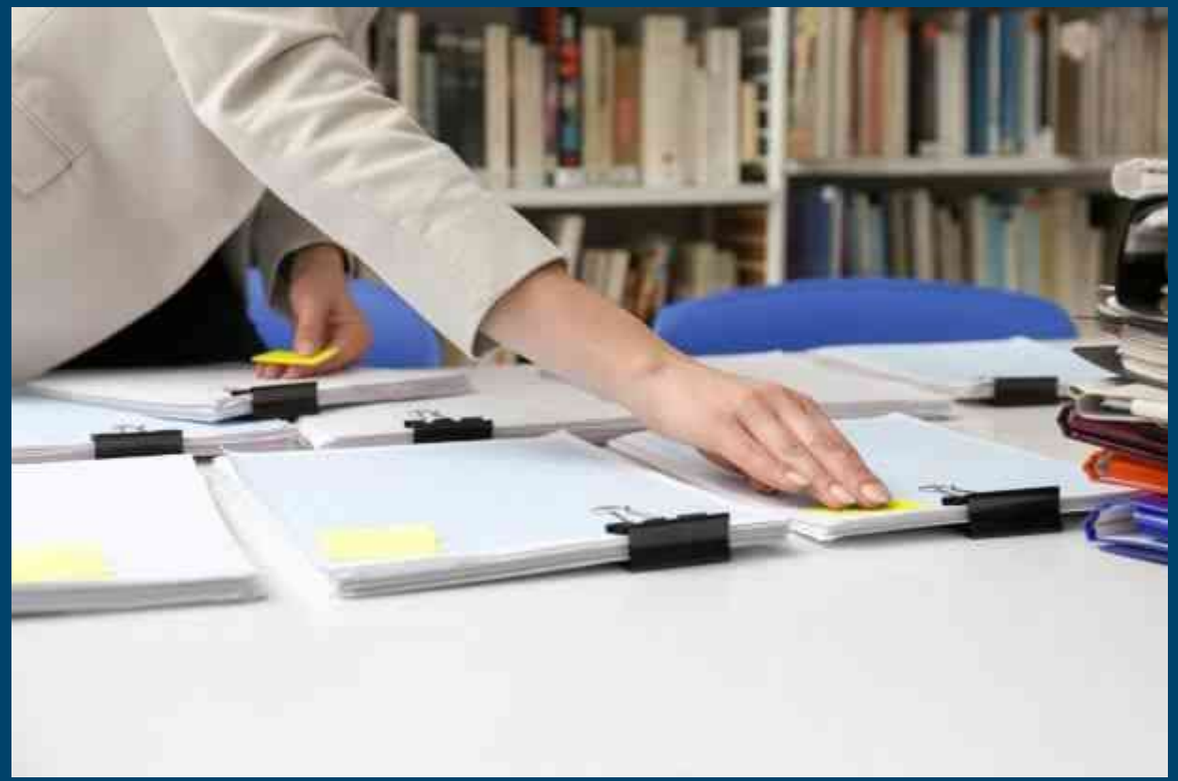
What is not a Record?

- Library or museum material solely for reference or exhibition
- Extra copies for convenience or reference
- Stocks of publications for sale or distribution

Email is a Public Record

It is important to understand that electronic communications are public record and may be provided in response to a public records request or a subpoena.

Records are categorized by their content and not the format or medium in which they are created.



Please note that not all emails are records. However, if an email meets the definition of a record then it must be kept according to the State Retention Schedules.

Who Has to Comply with Public Records Laws?

Members of Public Bodies

Includes Council, Board, Commission, Subcommittee Members

Employees of Public Officers and Public Bodies

Questions?