

committee's final recommendation without reviewing the other applicants, the committee's meetings still would be subject to the Act. Although not required to by any express provision, the commission, as a matter of practice, would be delegating to the committee its authority to select employees.

Example 16:

A state board appoints a committee composed of two board members (less than a quorum of the board) and several members of the public to draft proposed regulations in accordance with the board's instructions regarding the substance of the regulations. The board will review the proposed regulations, make all final decisions regarding the text of the regulations and determine whether to hold a public hearing on them. Provided the committee is not statutorily created and charged with drafting regulations for the board, meetings of the committee to draft the regulations will not be subject to the Act.

Example 17:

Pursuant to statute, two incorporated villages establish an intercommunity water supply association empowered to provide a supply of water to the villages' inhabitants. The villages are the association's only members and each village appoints three persons to serve at its pleasure as commissioners of the association. To fulfill its duties, the association is granted certain government powers, including the power of eminent domain. Because it is formed by public bodies and is authorized to perform certain functions on behalf of those bodies, the association also is a public body subject to the Act.

C. Telephone Conferences

The Law

If otherwise allowed by law or rule of the public body, a member of a public body may participate in a meeting of the public

body by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person, provided that each member participating by conference telephone can be identified when speaking, all participants are able to hear each other at the same time and members of the public attending the meeting are able to hear any member of the public body who speaks during the meeting.

Commentary

This provision sets forth requirements for members of a public body who attend a meeting by conference call. The Act does not itself authorize attendance by telephone. But if members of a public body have independent authority by law or regulation to participate in meetings by telephone, the requirements will apply.

Example 18:

The state student loan authority is granted the same powers as those exercised by nonprofit organizations incorporated under state law. The Nonprofit Corporation Act allows a nonprofit's board of directors to "participate in a meeting ... by means of a conference telephone or similar communications equipment" and provides that "participation by such means shall constitute presence in person at a meeting." This law authorizes a member of the authority's governing board who is unable to attend a meeting in person to participate by conference telephone if the requirements of the Open Meetings Act are met.

Commentary

Even where attendance by telephone is allowed, it would defeat the purposes of the Open Meetings Act if this were done by a large number of board members. That is why the legislature provided that participation by telephone conference may occur only when

“difficult or impossible.” Thus, in all cases where it is possible, members of a public body should attend meetings in person. Participation by telephone should occur only when circumstances beyond the member’s control would make attendance in person extremely burdensome. The provision is not intended to encourage participation by telephone in cases where personal attendance would be merely inconvenient or would be more efficient or economical for the public body.

D. Notice Requirements

The Law

Any meetings at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs and at which a majority or quorum of the body is in attendance, and any closed meetings, shall be held only after reasonable notice to the public. The affected body shall determine at least annually in a public meeting what notice for a public meeting is reasonable when applied to that body. That notice shall include broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

Commentary

This Subsection requires that reasonable notice be given of public meetings at which proposed rules, regulations, resolutions or formal action will be discussed or adopted. In effect, this means a public body must give notice of all public meetings of a quorum of the public body. The notice must include licensed broadcast stations and newspapers of general circulation that have made a written request for notice of the public body’s meetings.

Example 19:

The governing body of an irrigation district wishes to call a special meeting to discuss an

emergency situation resulting from flood damage. The action of simply calling a meeting is not formal action for purposes of the notice provisions of the Act, since requiring notice of a meeting to call a meeting is obviously impractical. This might be overcome by a policy of the public body authorizing the chairman or president to call such meetings as he or she deems necessary.

Commentary

This Subsection also requires each public body to determine its notice procedures at least once a year in a public meeting. Accordingly, each public body should adopt an annual resolution or other announcement at a regularly scheduled open meeting stating its procedure for giving notice of meetings. The Act does not impose any specific maximum or minimum requirements, and what constitutes reasonable notice may vary according to the type of meeting or public body. In general, however, a reasonable notice must adequately, accurately, and sufficiently in advance inform the public of the meeting’s time, place and date, and should be published or posted in a place and manner accessible to the public, such as a central location at the public body’s main office where the public is allowed, as well as on a web site if the public entity has one

Example 20:

The mayor of the Village of Las Ropas calls a special meeting of the Board of Trustees. The public meeting notice states that the meeting will be held the following Monday at 8:30 a.m. in the Village Hall. At 4:30 p.m. on the Friday preceding the meeting, the meeting notice is posted on the door of the Village Clerk’s office in the Village Hall. The Village Hall closes at 5:00 p.m. on weekdays and is not open at all on weekends. The meeting notice is not reasonable for purposes of the Act because members of the public interested in attending the meeting have no meaningful opportunity to see the notice before the meeting.