

*[See Page 4, for relevant highlighted subsection K]*

[Arizona Revised Statutes Annotated](#)

[Title 38. Public Officers and Employees \(Refs & Annos\)](#)

[Chapter 3. Conduct of Office](#)

[Article 3.1. Public Meetings and Proceedings \(Refs & Annos\)](#)

A.R.S. § 38-431.02

§ 38-431.02. Notice of meetings

Effective: July 29, 2010

[Currentness](#)

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:<sup>1</sup>

(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<sup>2</sup>

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 § 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 § 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.

#### Credits

Added by Laws 1974, Ch. 196, § 4, eff. May 22, 1974. Amended by Laws 1978, Ch. 86, § 3; Laws 1982, Ch. 278, § 3; Laws 2000, Ch. 358, § 3; Laws 2002, Ch. 247, § 1; Laws 2006, Ch. 294, § 2; Laws 2009, Ch. 27, § 2; Laws 2010, Ch. 88, § 2.

#### Notes of Decisions (25)

#### Footnotes

<sup>1</sup> Section 48-101 et seq.

A. R. S. § 38-431.02, AZ ST § 38-431.02

Current through legislation effective June 7, 2019 of the First Regular Session of the Fifty-Fourth Legislature (2019).

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Notes Of Decisions (25)

### Construction and application

Notice requirement of statutory open meeting law was not in conflict with notice requirement of constitutional open meeting clause and thus did not create implied prohibition on applying statutory open meeting law to the Independent Redistricting Commission (IRC) in absence of express law-making authority over Independent Redistricting Commission (IRC) on part of state, where constitution's explicit requirement was more restrictive than statutory requirement. [State ex rel. Montgomery v. Mathis \(App. Div.1 2012\) 231 Ariz. 103, 290 P.3d 1226 . States 27\(1\)](#)

Memorandum suggesting guidelines for state agencies to follow in giving notice of public meetings under the Open Meeting Act, § 38-431 et seq. follows Op.Atty.Gen. No. 75-7, p. 44, 1975-76.

### Necessity for notice

Board of education was not required under Open Meeting Law, § 38-431 et seq., to give prior notice to probationary teacher before discussions concerning renewal of her contract could be held in executive session. [Cooner v. Board of Educ. \(App. Div.1 1982\) 136 Ariz. 11, 663 P.2d 1002 . Education 593\(2\); Public Employment 455](#)

School district board is required to give twenty-four hours notice of a meeting, including an executive session. Op.Atty.Gen. No. 180-118, [1980 WL 88503 .](#)

### Requisites of notice

Town's executive sessions were improperly noticed in violation of this section of Open Meeting Law where there was no general statement made as to their subject matter. [City of Prescott v. Town of Chino Valley \(App. Div.1 1989\) 163 Ariz. 608, 790 P.2d 263 , review granted in part, affirmed in part and vacated in part 166 Ariz. 480, 803 P.2d 891 . Municipal Corporations 89](#)

The definition of "meeting" under [A.R.S. § 38-431](#) includes the gathering of a quorum of a public body through technological devices and would encompass serial communications of a quorum of the public body through the Internet or other online medium. Measures must be taken, however, to provide clear notice to the public about when the Board will be deliberating in its online meeting and to facilitate the public's access to the meeting. Op.Atty.Gen. No. 108-008, [2008 WL 4509818 .](#)

Notice of school district board meeting shall include the specific provision of the statute authorizing the executive session. Op.Atty.Gen. No. 180-118, [1980 WL 88503 .](#)

Although written notice to the employee is not required as to a school board executive session in which evaluations or other information relating to the employment, assignment, appointment, promotion, demotion, disciplining, or resignation of a school employee is to be discussed or considered by the school board, the notice must describe the matters concerning the employee to be considered by the board, and the description must be sufficient to enable the employee to make the initial decision as to whether he desires to have the matters discussed in a public session. Op.Atty.Gen. No. 179-49, [1979 WL 23118 .](#)

Notice to be given school district employee by school board of an executive session of the board at which evaluations or other information relating to the employment, assignment, appointment, promotion, demotion, disciplining, or resignation of the employee are to be discussed or considered by the board must be given sufficiently in advance of the proposed meeting to enable the employee to make a determination as to whether he desires a public hearing and to prepare an appropriate request of a public hearing. Op.Atty.Gen. No. 179-49, [1979 WL 23118](#).

### **Sufficiency of notice**

Generally, whenever a statute requires that notice be given and does not specify manner in which the notice is to be given, personal notice is required. [Carefree Imp. Ass'n v. City of Scottsdale \(App. Div.1 1982\) 133 Ariz. 106, 649 P.2d 985](#) .  
[Notice 9](#)

When "jurisdictional notice" is mandated in a certain manner, any means of notice other than that prescribed is ineffective, and failure to comply with mandated notice will render any action void. [Carefree Imp. Ass'n v. City of Scottsdale \(App. Div.1 1982\) 133 Ariz. 106, 649 P.2d 985](#) . [Notice 9](#)

Even though notices of special city council meeting to be held Monday at 7 o'clock a.m. were posted at places required by this section on the preceding Saturday, they were not effective "public notices" because of public's lack of access to them and thus failed to satisfy requirement of open meeting law, § 38-431 et seq. [Carefree Imp. Ass'n v. City of Scottsdale \(App. Div.1 1982\) 133 Ariz. 106, 649 P.2d 985](#) . [Municipal Corporations 92](#)

Defendant mayor's conduct of releasing minutes of an executive session of city council to news media was not chargeable under Public Meetings and Proceedings Law, § 38-431.01 et seq., where no notice of executive session was given other than an announcement by vice mayor, in that the "executive session" did not conform to statutory requirements for holding of an executive session under the open meeting law. [State v. Murphy \(App. Div.2 1982\) 131 Ariz. 354, 641 P.2d 268](#) . [Municipal Corporations 174](#); [Public Employment 1063](#)

Notice of an executive session of school board which informed all teachers, including certified probationary teachers, that their contracts would be discussed constituted reasonable notice. [McCown v. Patagonia Union High School Dist. \(App. Div.2 1981\) 129 Ariz. 127, 629 P.2d 94](#) . [Education 93](#)

School board's announcement that meeting would be reconvened "if necessary" did not give sufficient public notice as to time and place of reconvening so as to comply with Open Meeting Law, § 38-431 et seq. [Ahnert v. Sunnyside Unified School Dist. No. 12 \(App. Div.2 1980\) 126 Ariz. 473, 616 P.2d 933](#) . [Education 93](#)

This section requires posting of notice, at designated place of public notice, of time and place of continuation of recessed meeting, and where no notice of particular meeting was ever posted at place designated and only public announcement of intention of board to reconvene was verbal announcement by chairman of board to persons present, there was not giving of notice as required by statute, either for separate meeting or for continuation of recessed meeting. [Cooper v. Arizona Western College Dist. Governing Bd. \(App. Div.1 1980\) 125 Ariz. 463, 610 P.2d 465](#) . [Administrative Law And Procedure 1070](#)

Meeting wherein school board reinstated its dismissal of teacher was not violative of open meeting law because superintendent, though unable to state when he had posted notice of meeting, was sure that he had met requirement of not less than 24 hours' notice. [Hokanson v. High School Dist. No. Eight \(8\) of Pima County \(App. Div.2 1978\) 121 Ariz. 264, 589 P.2d 907](#) . [Education 93](#)

### **Failure to give notice**

Even if board of education was required by open meeting law to give personal notice to probationary teacher of executive session at which nonrenewal of her contract was discussed, failure to give such notice did not invalidate action taken at subsequent public meeting where public meeting was properly noticed, action taken refusing to renew teacher's contract satisfied requirements of teacher tenure law, and teacher was offered opportunity at the meeting to be heard. [Cooner v. Board of Educ. \(App. Div.1 1982\) 136 Ariz. 11, 663 P.2d 1002](#) . [Education 593\(2\)](#); [Public Employment 455](#)

When a public body violates the open meeting law (OML) by discussing, proposing, or taking legal action on a matter not properly noticed on the agenda, that violation does not nullify all other legal action taken at the meeting when the violation has no demonstrated prejudicial effect on the complaining parties. Op.Atty.Gen. No. I08-001, [2008 WL 733185](#) .

School district board's failure to give notice to the public that it would hold executive session at its regularly scheduled meeting, failure to give notice to public of the statutory section authorizing the executive session, and failure to take minutes of the executive session would render all business transacted at any subsequent public meeting concerning matters discussed in executive session null and void. Op.Atty.Gen. No. I79-45, [1979 WL 23114](#) .

#### **Posted agenda**

City's adoption of annexation ordinance violated agenda requirement set forth in subd. H of this section and ordinance was void; although city made two of three annexation proposals available for inspection 24 hours before city council meeting, as required by the law, city did not make third annexation proposal, which was adopted at meeting, available for inspection, and information provided to public on two proposals which were available failed to indicate that additional tract included in third proposal would be annexed. [Thurston v. City of Phoenix \(App. Div.1 1988\) 157 Ariz. 343, 757 P.2d 619](#) . [Municipal Corporations 92](#)

In regard to meetings of school district governing board, it is illegal to discuss employees or matters which have not been specifically listed on legal agenda for the meeting, except in case of actual emergencies. Op.Atty.Gen. No. I90-019, [1990 WL 484053](#) .

Unless an actual emergency requires addition of an agenda item, any action on a subject not contained in the posted agenda must be delayed to allow a minimum of 24 hours public notice. Op.Atty.Gen. No. I79-192, [1979 WL 23259](#) .

#### **Actual emergency**

Circumstances surrounding city council's decision to hold special meeting to consider annexation ordinance could not be fairly characterized as an "actual emergency" within meaning of this section. [Carefree Imp. Ass'n v. City of Scottsdale \(App. Div.1 1982\) 133 Ariz. 106, 649 P.2d 985](#) . [Municipal Corporations 92](#)

#### **Discussion notwithstanding agenda**

Annexation proposal, which was not made available for inspection 24 hours before city council meeting as required by agenda requirement set forth in this section, did not qualify as relating to other agenda items so that it might have been properly considered without prior availability pursuant to subd. J of this section allowing a public body to discuss, consider or decide matters listed on the agenda and related matters. [Thurston v. City of Phoenix \(App. Div.1 1988\) 157 Ariz. 343, 757 P.2d 619](#) . [Municipal Corporations 92](#)

**Editor's and Revisor's Notes (2)**

**HISTORICAL AND STATUTORY NOTES**

Former § 38-431.02, added by Laws 1962, Ch. 138, § 2, and relating to nonapplicability of article to executive sessions, was repealed by Laws 1974, Ch. 196, § 3.

**Reviser's Notes:**

In subsection D (now E) "subsection" was substituted for "paragraph" pursuant to authority of § 41-1304.02.

**Context and Analysis (9)**

**Cross References (3)**

Military family relief fund, advisory committee meetings, see [§ 41-608.04](#).

Post-9/11 veteran education relief fund, see [§ 41-612](#).

Public hearing notices, city or town limits, extension by annexation, see [§ 9-471](#).

**Administrative Code References (4)**

Commission orders, see [A.A.C. R12-4-609 et seq.](#)

Execution of a charter, see [A.A.C. R7-5-204](#).

Internal organization and control of the board, see [A.A.C. R13-4-102 et seq.](#)

Meetings, see [A.A.C. R4-23-102](#).

**ALR Library (1)**

[33 American Law Reports 5th 731](#), Emergency Exception Under State Law Making Proceedings by Public Bodies Open to the Public.

**Encyclopedias (1)**

[147 Am. Jur. Proof of Facts 3d 115](#), Proof of Notice or Lack of Notice in Zoning or Land Use Proceedings.