

OPEN MEETINGS ACT

Training for Academic Policy Committees

ASD Charter Schools

October 27, 2010

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I. INTRODUCTION

- A. Open Meetings Act, AS 44.62.310-.312
- B. Presentation/Agenda:
 1. Purpose of the OMA
 2. What is/is not a meeting?
 - issues: email
social gatherings
 3. Executive Sessions
 4. Notices

II. PURPOSE OF THE OPEN MEETINGS ACT

- A. The State policy regarding open meetings is set forth at AS 44.62.312.
- B. Purpose is to allow for open decision making and accountability.
 - public knowledge of both the final action and the deliberative process
 - public understanding of the controlling rationale for a decision
- C. To meet these goals, meetings of the APC must:
 1. be properly noticed (AS 44.62.310(e)), and
 2. open to the public (AS 44.62.310(a)).

D. Importance of open meetings policy to individual members:

[O]penness may inspire public officials to a higher quality of work. The public's watchful eye might promote a higher rate of attendance at meetings, improve planning of meetings, and encourage more thorough preparation and more complete discussion of issues by participating officials. Moreover, openness leads to better informed decision making because open meetings generate public input and criticism.

The government also benefits from openness because better preparation and public input allow agency members to gauge public preferences accurately, and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs. The benefits of openness, therefore, inure to both the public affected by government decision making and the decision makers themselves.¹

E. Exemptions are to be construed narrowly to effectuate the policies just discussed and to avoid “unnecessary executive sessions.” AS 44.62.312(b)

III. WHAT IS A MEETING?

A. Fact scenarios: Has a “meeting” transpired for purposes of the OMA?

- members gather at a regularly scheduled APC meeting
- a majority of the APC members appear at your school’s “Family Fun Night”
- those same members go to local restaurant to have dinner but do not discuss APC business
- while at dinner they do discuss a matter coming before the APC for action, but do not go so far as to indicate how they will vote
- one APC member emails another and expresses views on a matter coming before the APC
- the APC member receiving the email adds a comment in reply and also copies two other members, who similarly provide their input on the issue

¹ Barrett, *Facilitating Government Decision Making: Distinguishing between Meetings and Nonmeetings under the Federal Sunshine Act*, 66 TEX. L. REV. 1195, 1196-97 (1998).

B. Meeting Defined

1. Statutory definition: (AS 44.62.310(h)(2)(A))

- more than 3 or a majority, whichever is less; and
- a matter upon which the body is empowered to act is considered by members collectively

2. Municipal Code defines: (AMC 1.25.005)

- Continued meeting
- Informal meeting
- Regular meeting
- Special meeting
- Work session

3. Judicial construction:

Brookwood v. MOA, 702 P.2d 1317 (Alaska 1985):

- Held: “meeting includes every step of the deliberative and decision making process when a government unit meets to transact public business”

Hickel v. Southeast Conference, 868 P.2d 919 (Alaska 1994):

- Held: “one-on-one” conversations preceding actual meeting where decision was arrived at with “dearth of [substantive] discussion on the record” violated OMA

4. General Principles

- Communications trees violate the OMA, whether done in person, by phone, or by other electronic means
- *Simultaneous* deliberative discussions by four members, or a majority of the APC, whichever is less, outside a noticed and public meeting, will violate the OMA

- *Serial* deliberative discussions by four members, or a majority of the APC, whichever is less, outside a noticed and public meeting, will violate the OMA
- C. The meetings of advisory boards and APC subcommittees are also covered by the Act.
- AS 44.62.310(h)(1) and (h)(2)(B)
 - SB 48, amending (h)(2)(B), eff. 8/23/09
 - now requires the same number of members (more than three or a majority, whichever is less) for the gathering of an advisory group to constitute a “meeting”
- D. Does the Act strictly prohibit all communications outside a public meeting?
- No
1. Constituent communications are okay.
 2. Informational communications between APC members are okay if not engaged in for deliberation, give and take, or commitments on votes.
 3. Guidelines for Email Usage
 - email agenda items
 - email information (“for information only, do not respond”)
 4. One on one discussions on matters coming before the APC for action do not violate the OMA but be wary of serial communications.
- E. Social Gatherings
- OMA does not prohibit APC members from attending social functions provided the gathering remains social.
 - no business discussed
 - event not given under circumstances in which it could be reasonably inferred that it is intended to influence APC members

IV. EXECUTIVE SESSIONS:

Procedural and substantive aspects

A. How to convene an executive session.

1. AS 44.62.310(b) provides the steps:
 - Convene in public session
 - Motion to convene must “clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private”
2. Limits on actions and discussion during the executive session.
 - Only subjects mentioned in the motion can be discussed, unless auxiliary to the main question
 - Action cannot be taken in executive session except to give direction to an attorney or labor negotiator

B. What can be considered in executive session?

- Four Categories:
- 1) finances
 - 2) reputation and character
 - 3) confidential by law
 - 4) confidential records

1. Immediate knowledge of a matter by the public would clearly have an adverse effect upon the finances of the District or charter school.
 - Financial transactions
 - Litigation
2. Public discussion of a matter would tend to prejudice the reputation and character of a person. However, the person has the right to request a public meeting.
 - Adverse personnel matter related to performance
 - Parent conflicts

3. Matters which by law, charter, or ordinance are required to be confidential.
 - Attorney/client communications that require confidentiality
4. Consideration of public records that are confidential by law.
 - FERPA
 - Juvenile records
 - Personnel evaluations
5. Anchorage School Board Policy 333.96, Evaluation of Charter School Personnel
 - Confidential matters
 - Confidential records

V. WHEN DOES THE OMA NOT APPLY?

“A governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding.”

AS 44.62.310(d)(1)

VI. REMEDIES FOR VIOLATION OF THE OMA

- A. Action is voidable if challenged within 180 days.
- B. The APC may cure a violation by conducting a substantial and public reconsideration of the matter. The reconsideration must occur in another, properly noticed, meeting.
- C. The statute addresses factors the court should consider in determining whether or not to void the action.
 - AS 44.62.310(f)(1)-(9)

VII. NOTICE OF MEETINGS

“Reasonable public notice shall be given for all meetings required to be open under this section.” AS 44.62.310(e).

- Notice must include: date, time, and place
- May be given using print or broadcast media; and
- Must be posted at “principal office of the public entity”
- Municipal Code details greater specificity re notice requirements: AMC 1.25.015.0

VIII. QUESTIONS