



E-MAIL & ARIZONA'S OPEN MEETING LAW

In a legal opinion issued on July 25, 2005, Arizona Attorney General Terry Goddard outlined the State's position on situations in which e-mail correspondence among members of a public body would fall subject to A.R.S. §38-431.09, otherwise known as Arizona's Open Meeting Law.

The Attorney General's analysis was drafted in response to the question:

“What are the circumstances under which the OML [Open Meeting Law] permits e-mail to and from members of a public body?”

Although the question was submitted in specific reference to communications among members of a school board, the Attorney General's opinion would also likely apply to municipal council members or other “members of a public body”. The opinion referenced situations in which e-mails are exchanged among *fewer* public officials than the number that would otherwise constitute a meeting quorum. However, it also discussed the potential for e-mails to be subsequently forwarded to *enough* public officials to establish a quorum over time. The opinion also included a discussion of e-mail exchanges that may not create a *per se* violation of the Open Meeting Law and it provided specific examples of when the law would apply to e-mail correspondence.

In his 12-page opinion, Mr. Goddard offered the following Summary Answer and Conclusion:

Summary Answer

Board members must ensure that the board's business is conducted at public meetings and may not use e-mail to circumvent the OML requirements. When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under the OML. While some one-way communications from one board member to enough members to constitute a quorum would not violate the OML, an e-mail by a member of a public body to other members of the public body that proposes legal action would constitute a violation of the OML.

Conclusion

E-mail communications among a quorum of the board are not subject to the same restrictions that apply to all other forms of communications among a quorum of the board. E-mails exchanged among a quorum of a board that involve discussions, deliberations or taking legal action on matters that may reasonably be expected to come before the board constitute a meeting through technological means. While some unilateral e-mail communications from a board member to a quorum would not violate the OML, a board member may not propose legal action in an e-mail. Finally, a quorum of the board cannot use e-mail as a device to circumvent the requirements in the OML.

It is recommended that municipal officials review the Attorney General's opinion and remain cognizant of its conclusions when communicating among themselves via e-mail in order to ensure that their e-mail communications do not violate Arizona's Open Meeting Law.

For a complete copy of the Attorney General's opinion, please go to <http://www.azag.gov/opinions/2005/105-004.pdf>