

Don't get burned by Michigan's Open Meetings Act!

Local officials need to know when a meeting is a *meeting*

by Don M. Schmidt with sidebar excerpted from the OMA

Local officials who don't have a solid understanding of the Open Meetings Act can get into trouble in a hurry. A good way to learn the practical application of the Open Meetings Act (OMA) is to study real-life situations that have resulted in court decisions. However, when applying the lessons learned from this type of analysis, local officials must use caution. Even a minor change in the facts in each situation could lead to a different conclusion by a court.

Is it a meeting if . . .

The mayor contacts each councilmember to find out his or her position on the city manager, before the manager's status is reviewed at a regularly scheduled council meeting? A city council and city manager were at odds. Some of the council members wanted to terminate the city manager. Before a meeting at which the city manager's status was to be considered and possibly terminated, the mayor contacted each councilmember to determine his or her position on the city manager.

It was claimed in the resulting lawsuit that the mayor's action in contacting each city councilmember constituted a meeting and thus was a violation of the OMA.

The court held that the mayor's action did not constitute a violation of the OMA. The court noted that the mayor was just trying to learn what sort of situation he was going to have at the meeting, and there was no attempt in his conversations with each councilmember to discuss the situation or to change any councilmember's position on the city manager. (*St. Aubin v Ishpeming City Council*, 197 Mich App 100 (1992))

It is likely the court would have reached a different decision had the evidence indicated that the discussions between the mayor and each councilmember had gone beyond a statement of the position of the councilmember on the city manager's status.

Is it a meeting if . . .

Several members of a public body – enough for a quorum – remain after an open meeting to engage in informal discussion?

After a meeting of a public body, a quorum remained in the meeting room and engaged in an informal

Overview of the Michigan Open Meetings Act

Basic intent

The basic intent of the Michigan Open Meetings Act is to require public bodies to conduct business at open meetings.

Key definitions

"Public body" means any local governing body (including a board, commission, committee, subcommittee, or authority) which is empowered (by state constitution, statute, charter, ordinance, resolution or rule) to exercise governmental or proprietary authority or perform a governmental or proprietary function.

"Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

"Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

"Decision" means a determination or vote of a public body to formulate public policy.

Notification of meetings

The public body must post a notice stating the dates, times and places of all its meetings.

Closed meetings

The law provides for closed meetings in a few specified circumstances.

Minutes of a meeting

Minutes must be kept for all OPEN meetings and are required to contain:

- a statement of the time, date and place of the meeting;
- the members present as well as absent;
- a record of any decisions made at the meeting and a record of all roll call votes; and
- an explanation of the purpose(s) for which a closed session is held.

Separate minutes must be taken of CLOSED meetings.

discussion. It was alleged that the discussion included inviting a person to speak at an upcoming meeting and financial matters. It was claimed that this discussion after the formal meeting constituted an illegal meeting under the OMA.

The members of the public body testified that innocent discussion had occurred following the meeting and that the person had been invited to speak to the board prior to the meeting.

After considering the testimony of all of the witnesses, the court determined that there had been no deliberation by a quorum of the remaining board members after the meeting and there was no violation of the OMA. The court stated that if a quorum is present but does not deliberate or render a decision, the OMA is not violated. (*Solom v Dickinson County Library Board*, COA #235062, June 14, 2002 (unpublished))

Is it a meeting if . . .

The school board president keeps individual board members informed about a separation agreement that is being negotiated with the superintendent?

A school superintendent and school board were having difficulty. The superintendent informed the school board president that he wanted to resign. The board president directed the school district's attorney to begin discussions for a separation agreement with the superintendent. The president informed the individual board members of the status of the situation and kept them informed as the process moved on. The board attorney negotiated a separation agreement with the superintendent, and the agreement was approved by the school board in a public meeting.

The court ruled that discussions by the president with individual members of the school board about the superintendent's desire to terminate his contract did not constitute a violation of the OMA.



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The court concluded that all decisions were made in open sessions of the board and that informal discussions among members of a public body regarding an issue before the body do not violate the OMA if no decision is made during the discussions and the intent of the discussions is not to violate the OMA. It was not shown that individual board members or sub-quorum groups made decisions regarding the termination of the superintendent's employment or approval of a severance package prior to the public meetings. (*Finn v Flint School District*, COA #237105, December 20, 2002 (unpublished))

Is it a meeting if . . .

The township supervisor addresses the planning commission with enough other township board members in attendance to equal a quorum?

A township supervisor addressed a meeting of the township planning commission regarding a zoning issue. Three other members of the township board were also present at the planning commission meeting, one of whom was a member of the planning commission.

It was alleged that the gathering of the three members of the township board and the township supervisor addressing the planning commission constituted a meeting of the township board which violated the OMA.

The court held that the supervisor's comments to the planning commission did not constitute deliberations and so long as the board members did not exchange any affirmative or opposing views, debate the matter at issue, or engage in any discussion about the statements made by the supervisor to the planning commission, the gathering did not qualify as a meeting of the township board for which notice was required. (*Ryant v Lelanau County*, COA # 230429, June 28, 2002 (unpublished))

Is it a meeting if . . .

A public body forms a task force that includes some of its members, and another member attends the task force meeting, making the total in attendance enough to be a quorum of the public body?

A public body appointed a task force to consider a certain issue. The task force included members

All members of public bodies should carefully consider the requirements of the OMA. If there is any doubt as to whether a certain course of action might violate the OMA, the public body's attorney should be consulted for advice and guidance before any action is taken. While there are civil penalties for violating the OMA, it should be remembered that there are also criminal penalties for intentionally violating the OMA. (MCLA 15.26)

For more information

Local officials will find more information about the Open Meetings Act and other aspects of effectively running meetings in the member section of the League's website, www.mml.org. Local officials should also consider attending some of the excellent training courses offered by the Michigan Municipal League. More information about a number of upcoming sessions is included in this issue of the magazine.

In addition, several MML publications offer more in-depth discussion of municipal topics. Among these are the *Handbook for Municipal Officials*, *Handbook for General Law Village Officials* and *Local Government Law and Practice in Michigan*. ♦

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of the public body and others, but not a quorum of the public body. Another member of the public body attended the task force meeting as a private citizen. This made a quorum of the public body at the task force meeting. One of the members of the public body who was on the task force responded to remarks made by the member who was attending as a private citizen.

It was alleged that the quorum of the public body being at the task force meeting and this exchange violated the OMA, and that the exchange between the two members constituted deliberations toward a decision.

The court stated that the remarks made by the one member in response to the other were primarily to clarify his statements. The court observed that none of the remarks could be considered responsive and that the two members of the public body did not engage in active debate. Thus, no deliberations took place during the meeting. (*Ryant v Cleveland Twp*, 239 Mich App 430 (2000))

Is it a meeting if . . .

A local government holds a properly noticed committee meeting, and a quorum of the elected body attends? Several of a township's committees held a properly-noticed committee meeting at which a quorum of the township board was present. Town-

ship board members discussed township business during these committee meetings.

It was claimed that the discussions by a quorum of the township board at the committee meetings was a violation of the OMA because the meetings were not properly noticed as meetings of the township board.

The court agreed, and held that because the members of the township board discussed township business at the committee meetings, this constituted deliberations which should have occurred in a properly noticed meeting of the township board. (*Nicholas v Meridian Charter Twp Bd.* (2000) 239 Mich App 525)

Observations

Clearly, the courts will not hesitate to find a violation of the OMA when the evidence indicates a violation has occurred. However, the courts also will require more than just the presence of a quorum of a public body to find a violation of the OMA. There must also be some evidence that the quorum engaged in deliberations by exchanging views, debating an issue or engaging in discussion on an issue; or that a decision was made. The courts will also look for evidence that the actions of the public body were motivated by intent to avoid the OMA. If that is the case, it is likely that the courts will find a violation of the OMA.