

Practice Tips FOR LOCAL GOVERNMENTS



These practice tips are intended to provide practical information to local government officials and staff about electronic communications and requirements under the Open Public Meetings Act (OPMA), [chapter 42.30 RCW](#). Electronic communications between members of an agency’s governing body can implicate the OPMA, and these practice tips will help guide you in identifying and addressing key issues in this regard. For more information and resources visit mrsc.org/opma.

ELECTRONIC COMMUNICATIONS CAN CREATE AN ILLEGAL “SERIAL” MEETING

If you, as a member of the governing body (e.g., city council, board of commissioners, planning commission), communicate with other members of the governing body by email or using social media, keep in mind that exchanges involving a majority of members of the governing body can be considered an illegal “meeting” under the OPMA. This principle also applies to text messaging, instant messaging, and the “chat” feature of video-conferencing software.

What types of email exchanges can constitute a meeting?

If a majority of the members of the governing body takes “action” on behalf of the agency through an email or other electronic exchange such as social media, that would constitute a meeting under the OPMA. “Action” under the OPMA includes mere discussion of agency business, and that any “action” may be taken only in a meeting open to the public. The participants in the email exchange don’t have to be participating in that exchange at the same time, as a “serial” or “rolling” meeting happens when a majority of the body are involved in the exchange. However, the participants must collectively intend to meet to conduct agency business.



Tips: As a member of the governing body, consider the following to avoid potential OPMA violations:

- Passive receipt of information via email is permissible, but discussion of issues via email by the governing body can constitute a meeting.
- An email message to a majority or more of your colleagues on the governing body is allowable when the message is to provide only documents or factual information, such as emailing a document to all members for their review prior to the next meeting.
- If you want to provide information or documents via email to a majority of members of the governing body, especially regarding a matter that may come before the body for a vote, have the first line of the email clearly state: “For informational purposes only. Do not reply.” Consider using the “BCC:” email line for all those who should not “reply all.”
- Unless for informational purposes only, don’t send an email to all or a majority of the governing body, and don’t use “reply all” when the recipients are all or a majority of the members of the governing body.
- Alternatively, instead of emailing materials to your colleagues on the governing body in preparation for a meeting, have a designated staff member email the documents or provide hard copies to each member. A staff member can communicate via email with members of the governing body in preparation for a meeting, but the staff member needs to take care not to share any email replies with the other members of the governing body as part of that email exchange.

PHONE CALLS AND VOICE MESSAGES CAN CONSTITUTE A MEETING

As with email exchanges, if a majority of the members of the governing body is taking “action” (see above) on behalf of the agency through phone calls or a voice mail exchange, that would constitute a meeting. Such a “telephone tree” occurs, for example, when members call each other to form a majority decision. As above, the calls and messages can constitute a serial or rolling meeting if the members collectively intend to meet and conduct agency business.



Tip: Be on the look out for mixed media. A conversation need not be held entirely in the same format for a rolling or serial meeting to occur. For example, an in-person conversation might be continued on via email and then transition to text.

KEY CONSIDERATION RELATED TO CONFERRING TO CALL A SPECIAL MEETING

Under [RCW 42.30.080](#), a special meeting (in contrast to a regular meeting) may be called at any time by the presiding officer of the governing body or by a majority of the members of the governing body. In order to give effect to this authority granted under [RCW 42.30.080](#), we believe it’s permissible for a majority of the members of the governing body to confer outside of a public meeting for the sole purpose of discussing whether to call a special meeting. This includes conferring for that purpose via phone, email or other electronic means.

USE OF SOCIAL MEDIA CAN IMPLICATE THE OPMA

If members of the governing body use social media (e.g., through a Facebook page or Twitter feed) to host a discussion about issues related to the agency and the discussion includes comments from a majority of the members of the governing body, that discussion could constitute a public meeting under the OPMA. There’s no authority under the OPMA regarding what would constitute adequate public notice – if that’s even possible – for this kind of virtual meeting, so it’s best to avoid this type of discussion on social media.



Tip: Social media can be an effective tool to solicit comments from the public, but social media shouldn’t be used by your agency’s governing body to collectively formulate policy or accept public testimony.

FAILURE TO COMPLY WITH THE OPMA CAN BE COSTLY

Violation of the OPMA can result in personal liability for officials who knowingly violate the OPMA and in invalidation of agency actions taken at a meeting at which an OPMA violation occurred. Attorney fees and court costs are awarded to successful OPMA plaintiffs. OPMA violations can also lead to a loss of public trust in the agency’s commitment to open government.

DISCLAIMER: These practice tips are meant to provide practical information to local government officials and staff about electronic records and requirements under the OPMA. The tips aren’t intended to be regarded as specific legal advice. Consult with your agency’s attorney for guidance on specific situations.