

Open Meeting Law

- 1983 Court Decision (*Moberg v. Robbinsdale School District*) defined “meeting” as a gathering of a quorum or more of the City Council at which they discuss, decide, or receive information as a group on matters relating to city business
- “Electronic gatherings” did not exist in 1983

Serial communication between members can also violate the Open Meeting Law!



Quote From 1983 Court Decision

“Of course, serial meetings in groups of less than a quorum for purposes of avoiding public hearings or fashioning agreement on an issue may also be found to be a violation of the statute **depending upon the facts of the individual case.**”

Definition of “Serial Meeting”

Gatherings of less than a quorum for the purposes of avoiding public meeting or fashioning agreement on an issue and done with the intent of avoiding the requirements of the OML

Serial Meeting Determination

- Whether a “serial meeting” has occurred depends on two factual determinations:
 - What was the purpose of the meeting; and
 - What was the intent of the elected officials who participated in the meeting?

1996 North Mankato Case

- Applicants for city administrator were serially interviewed by all five members of the City Council in one-on-one closed interviews
- The five city councilmembers were present in the same building, but each conducted separate interviews in five different rooms.
- Because there was no quorum present in any of the rooms, the trial court found there was no meeting

1996 North Mankato Case

- Court of Appeals reversed and sent the case back for the trial court to make a factual determination on whether the council members used the one-on-one interview process in order to avoid the requirements of the OML
- Trial court found that the private interviews were not conducted for the purpose of avoiding a public meeting.
- The case was again appealed, and the court of appeals upheld the trial court's decision.
- Conclusion: Gatherings involving less than a quorum of a public body held for the purpose of avoiding the requirements of the OML constitute “serial meetings” and violate the OML.

E-Mails and Open Meetings

- Can e-mails constitute a “serial meeting”?
- A 2012 Unpublished Court of Appeals Decision (*O’Keefe v. Carter*) said no
- 2009 and 2017 IPAD Advisory Opinions said yes

O'Keefe v. Carter

- Recently defeated town board member sued for open meeting violations
- Claims were based on email exchanges between town board members
- Email exchanges are not “meetings” because the OML does not apply to written communications, like email

IPAD Advisory Opinion No. 09-20

- Newspaper reporter sends email to a board member asking for comments on a previously published newspaper article
- Board member sends a proposed statement to other board members
- Seven board members respond with comments **and cc all other board members**

IPAD OPINION 09-20

- Emails among members of joint powers board (Metro Gang Strike Task Force) concerning contents of press release violated the Open Meeting Law

IPAD OPINION 09-20

- Commissioner concluded that a quorum or more of the board commented and provided direction to the board member regarding the statement
- The group emails were the functional equivalent of a “meeting”

IPAD OPINION 09-20

- If the board member had taken action without consulting a quorum of the board, no violation would have occurred
- A “one-way communication” is permissible

Social Media

In 2014, the OML was amended to state that “use of social media by members of a public body does not violate the open meeting law as long as the social media use is limited to exchanges with all members of the general public.” Emails are not considered “social media” for purposes of the new law.

Hypothetical #1

- Mayor learns that a legislative committee is having a hearing in two days on a bill that she believes will adversely affect the City.
- Mayor contacts all council members, and they gather at her house that night. The mayor gets authority to send a letter to the chair of the committee opposing the bill.
- OML Violation? YES

- Instead of scheduling a gathering at her house, the mayor schedules a Zoom session with all of the council members. During the Zoom session, the mayor gets authority to send a letter to the chair of the committee opposing the bill.

OML Violation? YES

- Instead of holding a Zoom session, the mayor drives to each council member's homes. Each council member gives her approval to send a letter to the chair of the committee opposing the bill.

OML Violation? YES

Instead of meeting individually with each council member, the mayor calls each of them individually. Each council member gives her approval to send a letter to the chair of the committee opposing the bill.

OML Violation? YES

Instead of calling each council member individually, the mayor emails each council member seeking approval to send a letter to the chair of the committee opposing the bill. Each council member individually emails the mayor and gives her approval to do so.

OML Violation? YES

- Instead of individually emailing each council member, the mayor sends a group email to all council members seeking approval to send a letter to the chair of the committee opposing the bill. Each council member individually emails the mayor giving her approval to do so.

OML Violation? YES

- Same as above, except that each council member copies all other council members on their reply email to the mayor OML Violation? YES
- Instead of the mayor individually meeting with, calling, or emailing each council member, the mayor asks the city administrator to do so. After doing so, the city administrator tells the mayor that each council member has authorized her to send a letter to the chair of the committee opposing the bill.

OML Violation? NO

- What should the mayor and council members have done? Call an emergency meeting

Hypothetical #2

- Council members receive their packets. One of the items is a controversial matter that the council has not previously discussed at a meeting.
 - Council Member A contacts Council Member B to discuss the matter before the council meeting. OML Violation? NO
 - Council member A then contacts Council Members C and D to discuss the matter. OML Violation? Probably
 - Council Member A does not contact any council member other than Council Member B, but Council Member B contacts all the other council members and tells them about her conversation with Council Member A. OML Violation? Probably

ADVICE

- Don't rely on *O'Keefe*
- With respect to the OML, treat emails (or tweets or text messages) like phone calls
- Do not engage in email conversations, serial or otherwise, between more than one other council member
- Even a "one-way" email can quickly turn into a series of emails
- Work through the city administrator
- Remember that emails between council members will almost always be public data