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One of the most important laws municipal officials should understand is the Open Meetings Act, 1976 PA 267 (OMA). The following are common mistakes made by public bodies.

By Anne M. Seuryneck

# WAYS

## To Avoid Violating the Open Meetings Act

### 1

#### **Remember the OMA When Communicating By Email**

Improperly using email to conduct business may result in a violation of the OMA. A "meeting" is "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." MCL15.262. Because all decisions (defined in part as any determination, action, vote or disposition, on public policy) have to be made at an open meeting, using email to deliberate towards or make a decision could violate the OMA. By way of example, if an email was sent to councilmembers regarding a city policy issue and councilmembers replied to all recipients of that email, there may be a tendency for a "discussion" to take place outside of a lawful public meeting. To avoid this common mistake, the public body should educate its members on proper email use and may even develop an email policy that

addresses both use of email and the retention of email records.

### 2

#### **Do Not Prevent the Public From Taping A Meeting**

The OMA provides that the right to attend a meeting of a public body includes the right to tape record or videotape the meeting. MCL 15.263(1). Do not ask a member of the public to turn off a video camera.

### 3

#### **Do Not Improperly Limit Public Comment**

All persons in attendance at any public meeting have the right to address the public body. MCL 15.263(5). Although the public body can place reasonable limitations on speakers, such as limiting each speaker to a reasonable amount of time, the city or village may not limit the total time for public comment at any particular meeting. Avoid this mistake by not

enforcing a policy that limits the total time of public comment.

### 4

#### **Avoid the Appearance of a Secret Meeting**

Some lawsuits are filed because the public body makes a decision at a meeting with absolutely no discussion. When it appears there should have been a public discussion, such as when the issue is controversial, members of the public sometimes assume that a meeting was held in private and discussions took place "behind closed doors." This is especially true for cities or villages where councilmembers are frequently together at the city or village hall. Obviously, a quorum of councilmembers should not make decisions outside of a public meeting. However, councilmembers may also avoid such lawsuits by taking extra effort to discuss topics on the record so there is no appearance of an unlawful meeting.





## Avoid Decisions in Closed Session

Because all decisions must be made at an open meeting, no decision may be made in the closed session. Opinion of the Attorney General (OAG 5445). To avoid an OMA violation, no motions or board actions should be taken in closed session.



## Understand Closed Sessions Related to Employment

With respect to employment-related issues, a closed session may be called: (1) to consider the dismissal, suspension, discipline, complaints, charges, or periodic personnel evaluations of a public officer or employee, if the named person requests a closed hearing; or (2) for strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement, if either party requests a closed session. MCL 15.268(a) and (c). There is no general closed session for all "employment" matters. For example, a municipality

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may not meet in closed session to discuss budget cuts that may result in layoffs or the reduction of benefits. To avoid an OMA violation, the municipality should only discuss the topics specifically allowed by law.



## Adhere to the Notice Provisions

All public notices shall contain the name of the public body to which the notice applies, its telephone number if one exists, and its address, and shall always be posted at its principal office

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and any other locations considered appropriate by the public body. MCL 15.264. Special meetings must be noticed at least 18 hours in advance of the meeting and the notice shall state the date, time, and place of the meeting. MCL 15.265. Not complying with the posting and notice requirements may lead to a lawsuit for violating the OMA. If the public body fails to properly notice the meeting, the municipality could avoid a lawsuit by postponing the meeting and providing proper notice.

## 8 Use the Proper Procedure for Moving Into Closed Session

For certain closed sessions (the real estate, pending litigation, material exempt by statute, and employment application closed sessions), the council or commission may only move into closed session if 2/3 of the council appointed


and serving approve the closed session. With a six member board, four members must approve the closed session. If only four board members are present at the meeting and only three approve the closed session with one member voting "no," moving into closed session is not proper.

## 9 There Is No General "Contract Negotiation" Exemption

With the exception of strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement, the OMA does not have a special "general" exemption to allow public bodies to go into closed session to negotiate contracts. So, unless some other exemption would apply, a municipality may not generally meet in closed session simply to negotiate contracts.


## 10 Properly Make and Record Motions

A public body must make proper motions and record all motions in the minutes. For example, too often we see minutes that simply state that the public body moved into closed session. By not specifying the reason for the closed session, the public body would be in violation of the OMA. If possible, an official should develop a proposed motion in advance to be sure that it is correctly adopted and read into the minutes.

Understanding the basic requirements of the OMA is an important part of a new official's training. With proper education, municipal officials will avoid making these common mistakes. 

*Anne M. Seuryneck is an attorney with Foster, Swift, Collins & Smith, PC. You may reach her at 616-726-2240 or aseuryneck@fosterswift.com.*

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