



ATTORNEY GENERAL ISSUES OPINION ON OPEN MEETING LAW

On February 23, 2024, the Arizona Attorney General's Office issued an opinion discussing provisions of the Open Meeting Law. **Ariz. Atty. Gen. Op. I24-004 (Feb. 23, 2024)**. The opinion specifically addressed whether 1) a school district's advisory committees were subject to the Open Meeting Law and 2) whether the school district superintendent's meetings with board members violated the Open Meeting Law.

Advisory Committees

The Opinion clarified the types of committees that are subject to the Open Meeting Law.

- **Subject to Open Meeting Law:** Committees that are formed by the governing board, whether formally or informally, or at the direction of the governing board are subject to the Open Meeting Law. In addition to looking at "the initial moment at which the committee is formed," a committee may also be subject to the Open Meeting Law depending on "the degree and type of the board's involvement" in directing the committee's work. Notably, the absence of any board member on a committee does not insulate the committee from application of the Open Meeting Law; however, the presence of multiple board members on a committee increases the possibility that it is subject to the Open Meeting Law.
- **Not Subject to Open Meeting Law:** Committees that are formed by a school superintendent or other administrator are not subject to the Open Meeting Law, even if the work of the committee "may result in the [administrator] bringing a recommendation to the governing board."

An analysis of whether a committee is subject to the Open Meeting Law "requires a holistic view of all relevant factors, including . . . the circumstances of the committee's formation, membership, purpose, and subsequent operation."

Administrator Discussions with Board Members

The school district at issue in the Opinion (Scottsdale Unified School District) held "2x2x1 meetings," in which the superintendent held three separate, private meetings with the five governing board members (two members at one meeting, two at another meeting, and one at the final meeting) to provide them with information before their public board meetings. The Attorney General did not find that *all* 2x2x1 meetings (or similar meetings with less than a quorum of board members) violate the Open Meeting Law, but held that the circumstances of *these* 2x2x1 meetings did violate the Law.

- **Discussions Allowed Outside of a Public Meeting:** Board members can gather information outside of a public meeting, and they can discuss the information with another board member or members "so long as the discussion does not directly or indirectly involve a quorum of board members." Thus, simply sharing information with board members does not trigger the Open Meeting Law. To ensure that meetings do not violate the Open Meeting Law, board members should take care not to respond to or offer their views on such shared information with a quorum of the board, either by having separate or serial discussions with a majority of the board members.
- **Discussions Not Allowed Outside of a Public Meeting:** The 2x2x1 meetings at issue in the Opinion violated the Open Meeting law because the meetings involved more than just information gathering. Board members also "asked questions, received answers, and . . . engaged in a dialogue" with the superintendent and each other. In addition, the 2x2x1 meetings were held "with the express intent of decreasing board deliberation at the public meeting."

Although school administrators can meet with less than a quorum of board member outside of a public meeting, "this practice should be used sparingly and with substantial precautionary measures."

If you have questions about whether a meeting is subject to the Open Meeting Law, please contact us for an analysis of the particular facts of the meeting.

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analysis of the particular facts of the meeting.

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