

STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>by</p> <p>TERRY GODDARD ATTORNEY GENERAL</p> <p>December 24, 2007</p>	<p>No. I07-013 (R07-028)</p> <p>Re: Open Meeting Law and Comments to the Media Concerning Issues that May Come Before a Public Body</p>
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TO: The Honorable Steve M. Gallardo
The Honorable David Lujan
Arizona House of Representatives

Question Presented

You have asked whether Arizona’s Open Meeting Law (“OML”) prohibits a member of a public body from speaking to the media concerning matters that may come before the public body.

Summary Answer

The OML does not prohibit a member of a public body from speaking to the media concerning matters that may come before the public body.

Analysis

All meetings of public bodies¹ must comply with the OML. Ariz. Att’y Gen. Op. I05-004. Under the OML, a “meeting” is:

the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.

A.R.S. § 38-431(4).

Your inquiry concerning comments to the media stems from the theory that the OML may be violated if one member of a public body comments to the media concerning a matter that may come before the public body, and a quorum of the public body reads or hears those comments. When addressing e-mails among a quorum of the members of a public body, this Office advised that a member cannot propose legal action to a quorum of the public body outside of a meeting that complies with the OML. Ariz. Att’y Gen. Op. I05-004. Other conduct within the OML requires more than a single communication because it involves discussion, taking legal action and deliberations. *Id.*

Although a single e-mail to a quorum of a public body proposing legal action violates the OML, a comment reported through the media does not. The distinction is that an e-mail to a quorum of the board involves a “gathering” of a quorum, and a member’s comment to the media does not. A gathering of a quorum under the OML does not require simultaneous interaction.

¹ A “public body” subject to the OML includes

the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.

A.R.S. § 38-431(6).

Ariz. Att’y Gen. Op. I05-004. “[E]ven if communications on a particular subject between members of a public body do not take place at the same time or place, the communications can nonetheless constitute a ‘meeting.’” *Id.* The OML also includes a gathering through technological devices. For example, members of a public body may gather by telephone, video conference and e-mail. *Id.* (discussing e-mail meetings); Ariz. Att’y Gen. Op. I91-033 (conducting business at open meetings by use of telephone or video conference); *Arizona Agency Handbook* § 7.10.2 (Ariz. Att’y Gen. 2001) (addressing participation in meetings by telephone and video conference).² In addition, board members may “gather” illegally through polling and other devices intended to circumvent the law. Ariz. Att’y Gen. Op. 75-8. Yet, the term “gathering” indicates that the OML does not apply to every situation in which a quorum of a board may become aware of what another member has said.³

A statute is interpreted in light of its “context, subject matter, historical background, effects and consequences, and spirit and purpose.” *Zamora v. Reinstein*, 185 Ariz. 272, 275, 915 P.2d 1227, 1230 (1996). “The OML is intended to open the conduct of government business to public scrutiny and prevent public bodies from making decisions in secret.” Ariz. Att’y Gen. Op. I05-004 at 1 (citing *Karol v. Bd. of Educ. Trs.*, 122 Ariz. 95, 97, 593 P.2d 649, 651 (1979)). Media reports about the work of public bodies supports the interest of open government, which is the same purpose that the OML serves.

Unlike e-mails to a quorum of members, a message communicated to the media reaches other members of a public body indirectly, if at all. In addition, when the media disseminates the

² The reference to “technological devices” in the definition of “meeting” was added to the OML in 2000 “to prohibit a quorum of a public body from secretly communicating through technological devices, including facsimile machines, telephones, and electronic mail.” Ariz. Agency Handbook, § 7.5 (Ariz. Att’y Gen. 2001).

³ “Gathering” is not defined in the OML statutes. In addition, the dictionary provides little guidance, defining gathering as a meeting or assembly, with assembly defined as a group of persons gathered together. *Webster’s II New College Dictionary* 69, 472 (2005).

information, it is open to and intended for the public. These characteristics distinguish a communication with the media from the types of communications that this Office has previously advised are “meetings” subject to the OML. Therefore, a communication with the media that may reach a quorum of the board’s members is not a “gathering” of the public body, and, for that reason, it is not a meeting. A contrary conclusion would virtually eliminate the concept of a “gathering” from the definition of a meeting. It also undermines the purpose of the OML. If members of public bodies refrain from speaking to the media, then government becomes less open to the public, not more. *Cf. Mills v. Alabama*, 384 U.S. 214, 218-19 (1966) (recognizing role of press in “free discussion of governmental affairs”). For these reasons, the language and purpose of the OML indicate that it does not limit the ability of members of public bodies to communicate with the media.⁴

Conclusion

The OML does not prohibit a member of a public body from speaking to the media regarding matters that may come before the public body. A meeting subject to the OML requires a gathering of a quorum of members of the public body, and a gathering does not occur when members merely hear or read a comment, including a proposal for legal action, made by another member in the media.

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⁴ Of course, there are some limits on the information members of public bodies may share with the general public, including the media. For example, members may not disclose minutes of or discussions made at an executive session except to certain authorized individuals. A.R.S. § 38-431.03(B); *see also* Ariz. Att’y Gen. Op. I96-012 (recognizing executive sessions are exception to openness requirement).