

CITY OF MESA
EDUCATION AND WORKFORCE
DEVELOPMENT ROUNDTABLE

Open
Meeting
Law

Conflict of
Interest

Part 1.

Open Meeting Law

Arizona Open Meeting Law

Arizona Revised Statutes

Title 38, Chapter 4, Article 3.1

A.R.S. § 38-431.09

"It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided."

Definition of a "Public Body" under the Open Meeting Law

A.R.S. § 38-431

"Public body" means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of...political subdivisions. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.

Open Meeting Law (OML)

Private

Only in limited circumstances:
Executive Session

Examples:
Confidential Records, Legal Advice, Contract Negotiations

- No Legal Action Can Be Taken (Collective Decision, Commitment or Promise)

Public's business must be done in public.

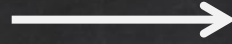
Public

Properly noticed meeting with a posted agenda

"Meeting" if a quorum of six is present

OML applies to subcommittees public bodies

What
actually is
a meeting?



"Means the gathering, in person or through technological devices, of a quorum of the members of a public body at which they discuss, propose or take legal action" on a subject that is reasonably likely to come before the public body.

Traditional Meetings



Electronic Meetings

Pitfalls in OML

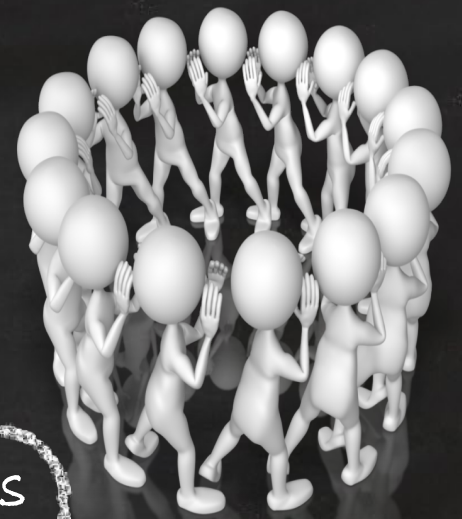
1. Social Events

- If a quorum is present at the social event, and members discuss topics that may reasonably require action, an OML violation may occur
- Best Practice: do not discuss Board business or items that may come before the Board with other members outside of a formal, noticed, and agendized meeting



Pitfalls in OML

2. Serial Meetings



What is a serial meeting?

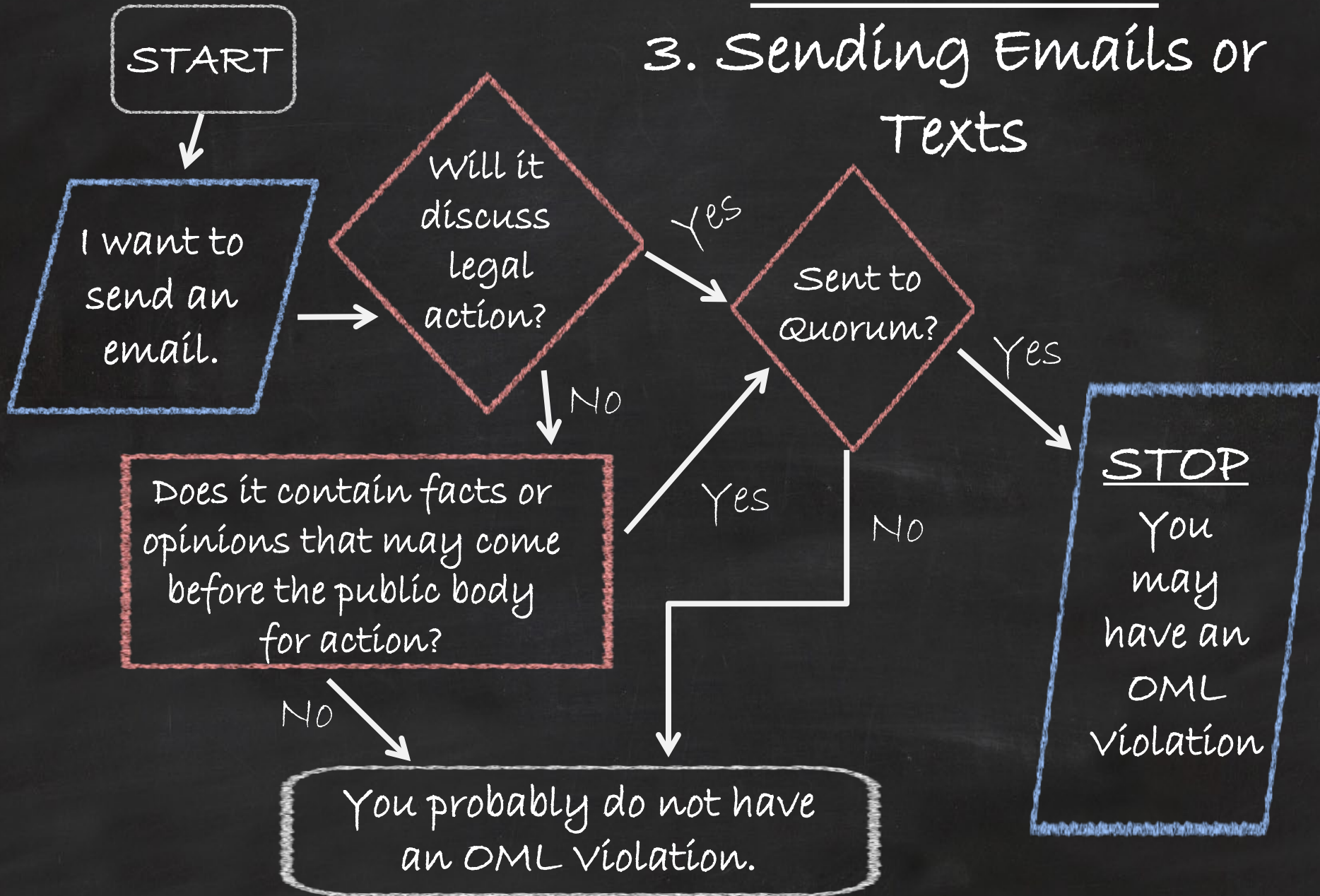
Series of gatherings or discussions (can be electronic) where less than a quorum is present.

Later, the same discussion is had with other members of the public body.

If the same discussion is held with enough members (quorum), can violate the OML.

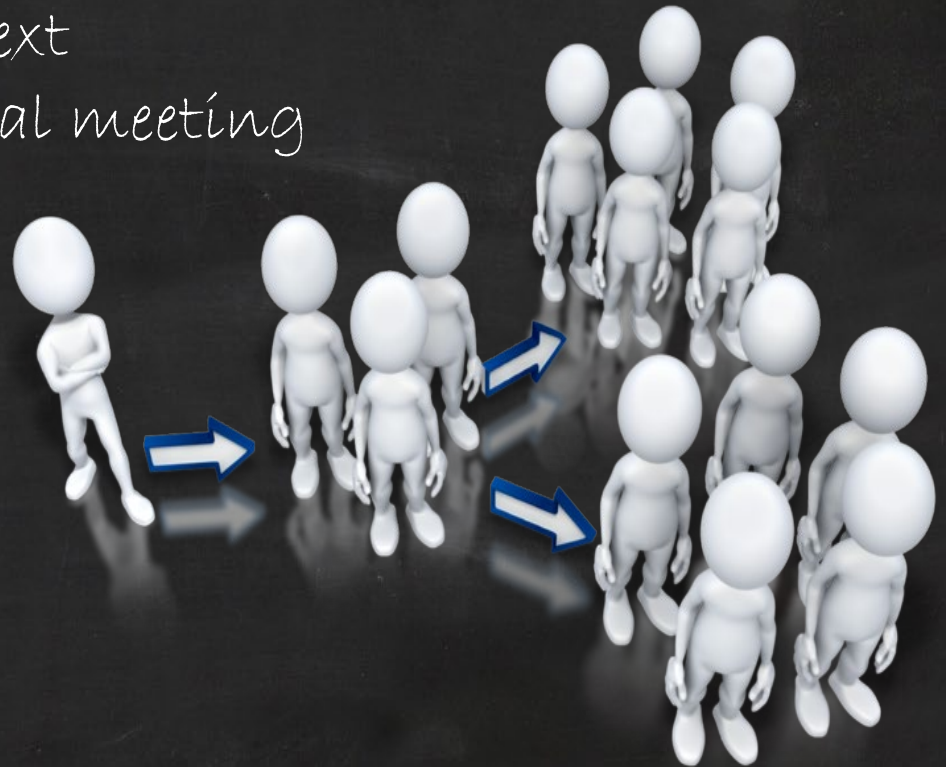
Pitfalls in OML

3. Sending Emails or Texts



Lesson: Be careful responding to emails and text messages.

- using "reply all" and forwarding emails may lead to OML trouble
- Mass texts or forwarding text messages can lead to a serial meeting in violation of the OML



Pitfalls in OML

4. Social Media

You post comments about the public meeting on your private page—where you just happen to be “friends” with or follow other members of your public body

Possible
OML
Problems

- Be careful liking comments; re-tweeting
- Do not direct comments/tweets to Board members

Meeting Agenda

Date,
Time
and
Place

Rule:

If no posted agenda
24 hours in advance,
no meeting

Public has right to
attend a public
meeting, does not
have right to speak

Agenda must
contain the
matters to be
discussed or
decided, or say
where a detailed
agenda can be
obtained

can we discuss matters not on
the agenda?

No, must be
reasonably
related to an
agenda item



Violations of the OML

ACTIONS taken by the Board are NULL and VOID.



The Attorney General or County Attorney may INVESTIGATE.

Potential Penalties

- \$500 civil penalty each violation
- REMOVAL of a Board member if the court makes a finding of intent
- Assess the Board member with ALL COSTS awarded to the Plaintiff
- MAY NOT spend public monies for legal counsel

Part II.

CONFLICT OF
INTEREST

Conflict of Interest Law

Arizona Revised Statutes

Title 38, Chapter 3, Art. 8 and

Mesa City Code 2-3-9

A.R.S. § 38-503

Any public officer who has, or whose relative has, a substantial interest in an issue before the Board must declare a conflict and refrain from participating in any manner in such decision.

A.R.S. § 38-502

"Substantial interest" means any non-speculative pecuniary or proprietary interest, either direct or indirect, other than a remote interest.

Who Does It Apply To?

- You
- Your children, parents, grandchildren, grandparents, siblings (whole or half) and their spouses
- Your spouse and your spouse's parent, siblings and children



Substantial vs. Remote Interest

- A substantial interest is any financial (pecuniary) or ownership (proprietary) interest in the issue (direct or indirect)
- A general feeling of sympathy or bias does not create a conflict
- Remote Interest
 - Certain economic interests are so remote they do not impermissibly influence a person's decisions or actions
 - Listed in ARS § 38-502(10)

Do I have a Conflict of Interest?

Do I have a financial or ownership interest?

NO



No Conflict

You have a pecuniary or proprietary interest when you stand to gain or lose something from the decision.

Yes

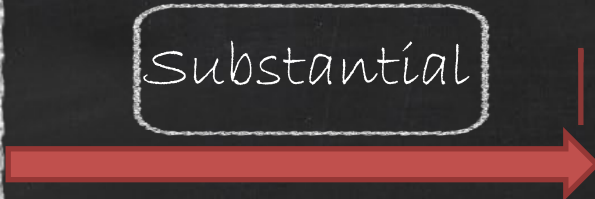


If it is an issue that will come before the Board, is my interest Remote or Substantial?

Remote



Substantial



Practice Tip: Avoid the Appearance of Impropriety

CONFLICT!

Questions to Ask Yourself

- Could the decision affect either positively or negatively an interest of my family or myself?
- Is that interest pecuniary or proprietary?
- Is the interest something that is defined as remote under the statute?

What do I do if I have a substantial interest?

Do not take part in the discussion or action

Withdraw from Participation

Make interest known in public records by explaining on the record you are withdrawing due to potential conflict

Complete a Public Officer Disclosure Form available in the City Clerk's Office

What can happen if I violate the conflict of interest laws?

- CIVIL SUIT to enforce the law
- Court may award reasonable attorney's fees
- Class VI Felony for INTENTIONALLY or KNOWINGLY violating the law
- Class I Misdemeanor for RECKLESSLY or NEGLIGENTLY violating the law
- Person found guilty might be required to FORFEIT their public office

Questions

Please Contact the City Attorney's Office

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