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Re: Concerns Relating To Arizona's Open Meeting Law and COVID-19

The Office has received multiple inquiries concerning the impact of COVID-19 in light of public bodies' responsibilities under Arizona's Open Meeting Law (the "OML"), including whether public bodies may conduct public meetings remotely through technological means. This informal opinion addresses these concerns.

The OML permits a public body to hold a remote meeting through technological means. *See generally Arizona Agency Handbook* § 7.10 (Ariz. Att'y Gen. 2018);¹ Ariz. Att'y Gen. Op. I08-008 ("after providing proper notice and an agenda in accordance with the Open Meeting Law and implementing procedures designed to safeguard the public's access to the meeting, a public body can conduct an online meeting to allow deliberation and discussion about matters within the public body's jurisdiction").

Providing the public as much notice in advance is key. "Notice enables members of the public to attend public meetings by informing them of when and where to go, and how to get information regarding the matters under consideration." *Arizona Agency Handbook* § 7.6.1. At a minimum, a public body must provide its notice and agenda at least 24 hours in advance, absent an emergency. *See* A.R.S. § 38-431.02(C), (G). If a public body chooses to hold a remote meeting, then the public body should follow best practices and provide as much advance notice

as is reasonably practicable. For example, a public body could:

- Post a statement on its website informing the public that a meeting will be held remotely through technological means;
- Provide a website location for a video conference and post directions on how to access a meeting;
- Provide a conference call number for telephonic meetings; or
- Provide technical support for questions, concerns, or difficulty accessing a meeting.

The Open Meeting Law also establishes a right for the public to attend and listen to a public body's deliberations and proceedings. A.R.S. § 38-431.01(A). This requires the public body to ensure that both the public and any members attending by technological means can hear any discussion from the public body and/or other persons making statements to the body. *Arizona Agency Handbook* § 7.10.3. Depending on how a public body chooses to conduct a remote meeting (i.e. the public body members attend the meeting at their normal meeting place and no members of the public are present, or if the individual members and staff also remotely attend a meeting), a public body should review the guidelines listed in § 7.10.3 of the *Arizona Agency Handbook*.

Public bodies that conduct remote meetings should consider implementing procedures to minimize any difficulties arising from remote conferencing. For example, a public body could:

- Ask members of the public body, staff, presenters, and members of the public to identify themselves each time they begin speaking;
- Include copies of any presentations, documents, etc. that will be discussed at a meeting with the agenda, and post any information relevant to the public meeting on the public body's website;
- Ask all participants to ensure microphones/phones are muted when not speaking;
- Record the meeting; or

¹ The Office's 2018 edition of the Arizona Agency Handbook is available at <https://www.azag.gov/outreach/publications/agency-handbook> (last visited on March 13, 2020).

- Take any additional steps the public body deems necessary to ensure that its meetings are conducted publicly and openly.

The OML permits, but does not require, a public body to include a call to the public on its agenda. A.R.S. § 38-431.01(H). (There may be other statutes not analyzed in this opinion that require public participation and comment.) If the public body holds a remote meeting, the public body may still choose to conduct a call to the public. The OML does not prohibit members of the public from addressing a public body through technological means. *See* A.R.S. § 38-431(4). But if the public body does agendize a call to the public, the public body should consider the above guidelines.

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In sum, the OML generally permits public bodies to conduct remote meetings through technological means. Nonetheless, the public body must conduct such meetings in a way that satisfies the above notice and access requirements, which are designed to further the OML's underlying purpose. *See* A.R.S. § 38-431.09 ("It is the public policy of this state that meetings of public bodies be conducted openly ... any person or entity charged with the interpretations of [the OML] shall construe this article in favor of open and public meetings."). Transparency is the core of legality. Throughout any circumstance, the government must remain accountable to the people.



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