

Board and Commission Training 2021

Town of Paradise Valley

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What is Open Meeting Law?

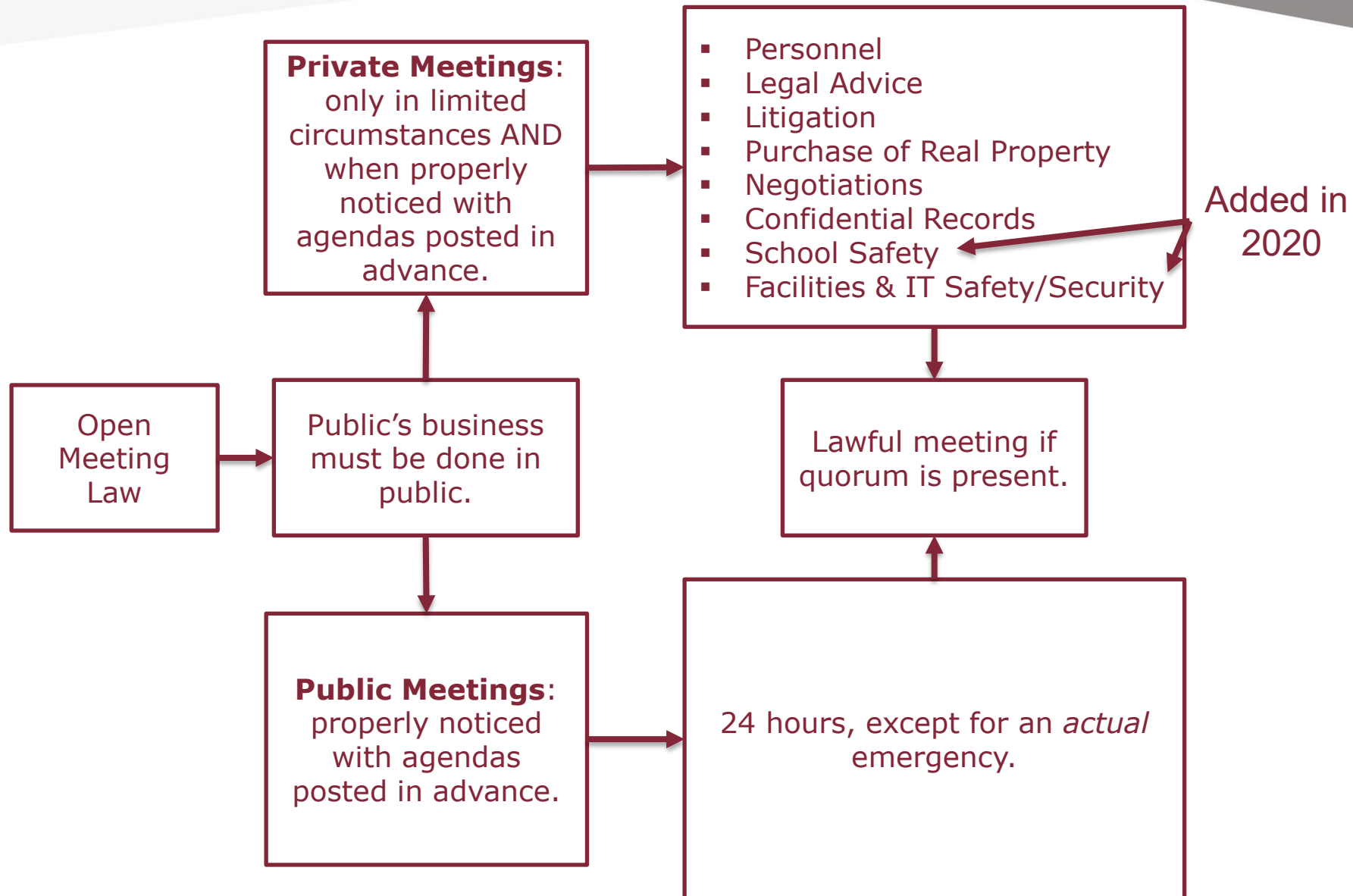
An Act mandating open deliberations and proceedings to the public and prohibiting public bodies from making decisions in secret. A.R.S. §§ 38-431 – 38-431.09



Core Concepts

- Official deliberations & proceedings conducted openly.
- Maximize public access & participation.
- Any uncertainty resolved in favor of openness.





When Does OML Apply?

Open Meeting Law applies when:

- You a **Public Body**; *and*
- You are **Meeting**.

But, *what* is a public body and *what* is a meeting?

What is a public body?

- Legislature (except caucus)
- Boards and commissions of this state or political subdivisions
- Multimember governing bodies
- Quasi-judicial bodies
- Standing, special, or advisory committees or subcommittees of, or appointed by, the public body

Circumventing OML

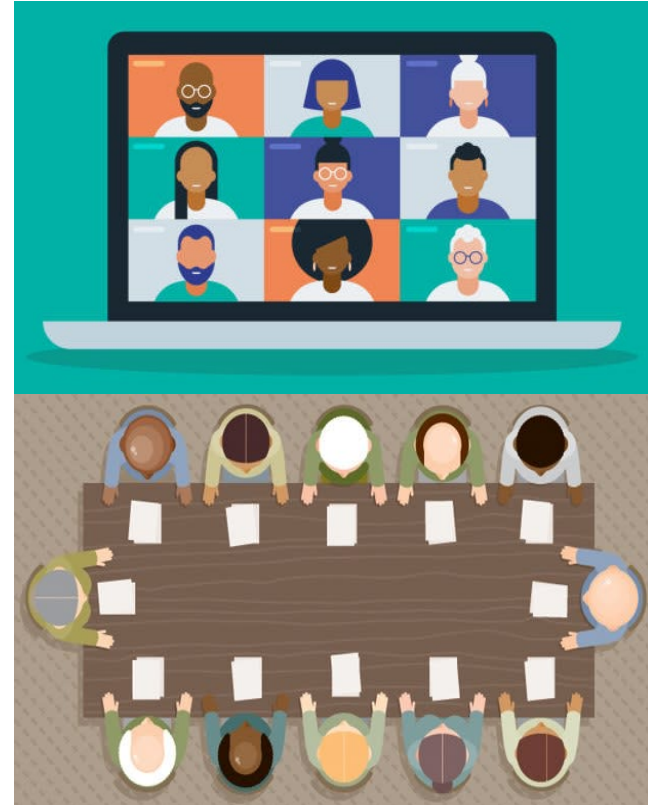
- Big No-No!
- The open meeting law specifically states that a member of a public body may not knowingly instruct staff to communicate in violation of the law.
 - A.R.S. § 38-431.01(I).

But, what *is* a Meeting?

How It Started



How It's Going



A meeting occurs any time a *quorum* of the public body discusses, proposes, or takes legal action.

Quorum?

Majority of the public body, unless otherwise noted in statute or governing documents.

- 7 persons; quorum = 4
- 5 persons; quorum = 3
- 3 persons; quorum = 2

Vacant positions *do not* reduce the quorum requirement.

- 7 persons; 2 absent; quorum = 4

Open Meeting Law Pitfalls Serial Meetings

Discussion among members with less than a quorum present



Later, same discussion had with other members



Enough additional members to constitute a quorum



Possible Serial Meeting

Open Meeting Law Pitfalls Serial Meetings

Always remember: A series of gatherings of less than a quorum *may* constitute a meeting if town business is discussed or proposed.



It Seems Simple, But Technology Can Complicate Things...



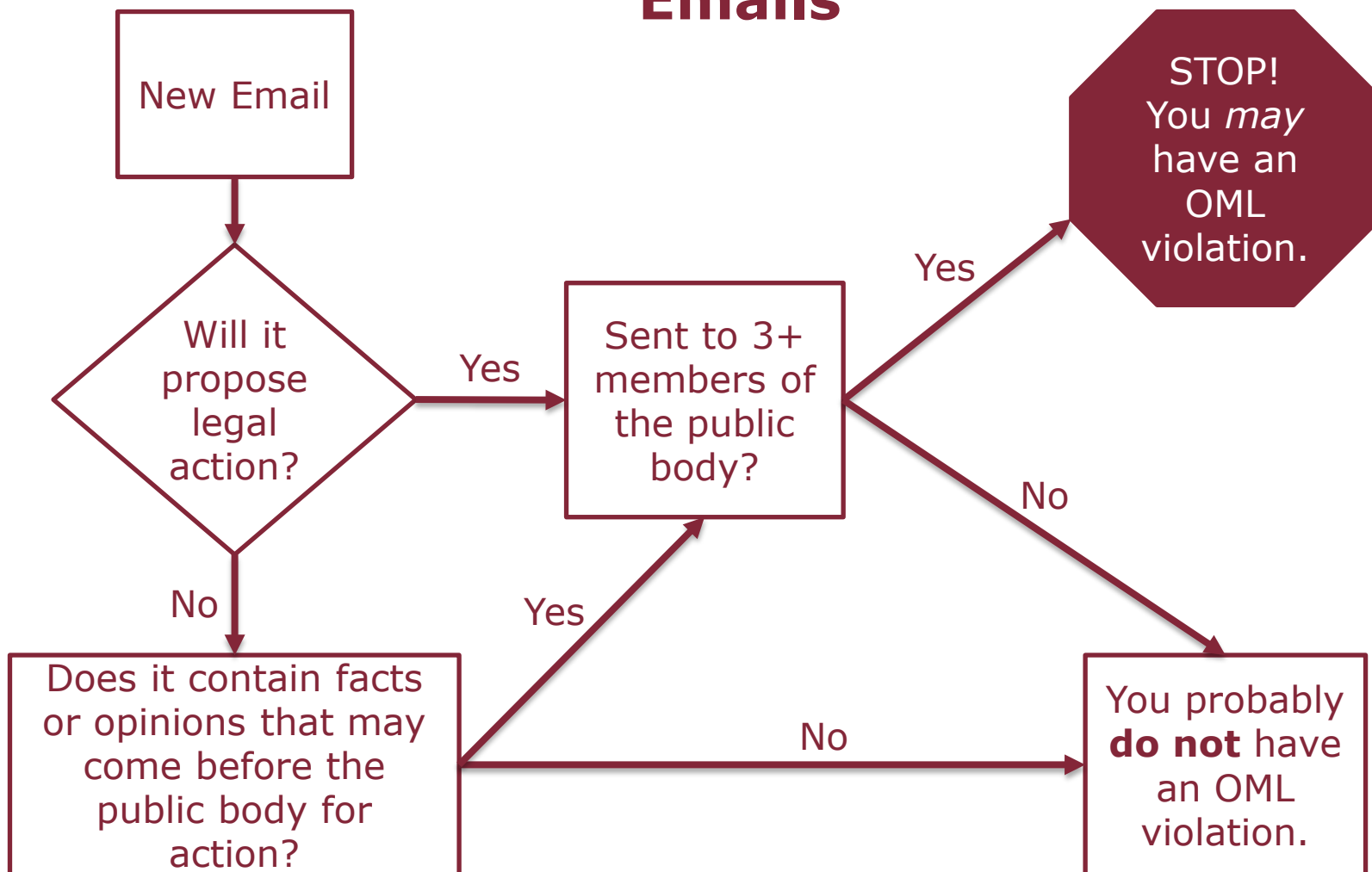
"That was a conference call, dummy! — You just declared war on everybody!"

Open Meeting Law Pitfalls Emails

Using “Reply All” and forwarding emails may lead to Open Meeting Law trouble.



Open Meeting Law Pitfalls Emails



Open Meeting Law Pitfalls Emails

Reminder: a one-way
communication can violate the
Open Meeting Law even without a
response!



Open Meeting Law Pitfalls Social Media

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

OML
problems?
Maybe.



Open Meeting Law Pitfalls Social Media

You may express your opinion or discuss issues with the public personally, through the media, or through technological means, if:

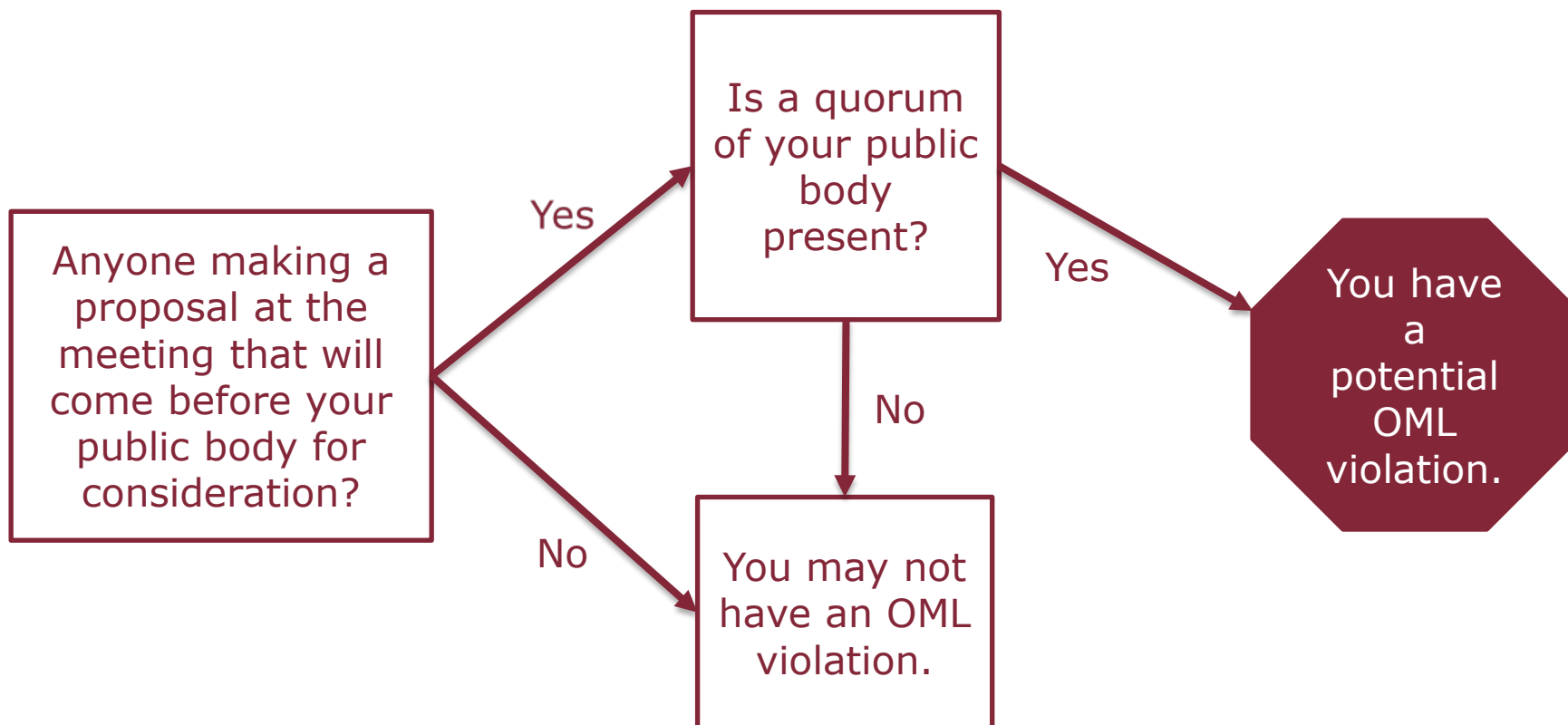
- The opinion or discussion is not principally directed at or directly given to another member of the public body; *and*
- There is no concerted plan to engage in collective deliberation to take legal action.

Open Meeting Law Pitfalls Social Media

Best Practices

- Be mindful of who you “friend” online.
- Do not post about board matters if “friends” with members, especially during a meeting!
- Do not comment on their or their friends’ posts if the matter relates to board business (legal action).
- Don’t create a group chat that includes a quorum of the board (remember the email pitfall?).

Open Meeting Law Pitfalls Attending Other Meetings



Open Meeting Law Pitfalls Attending Other Meetings

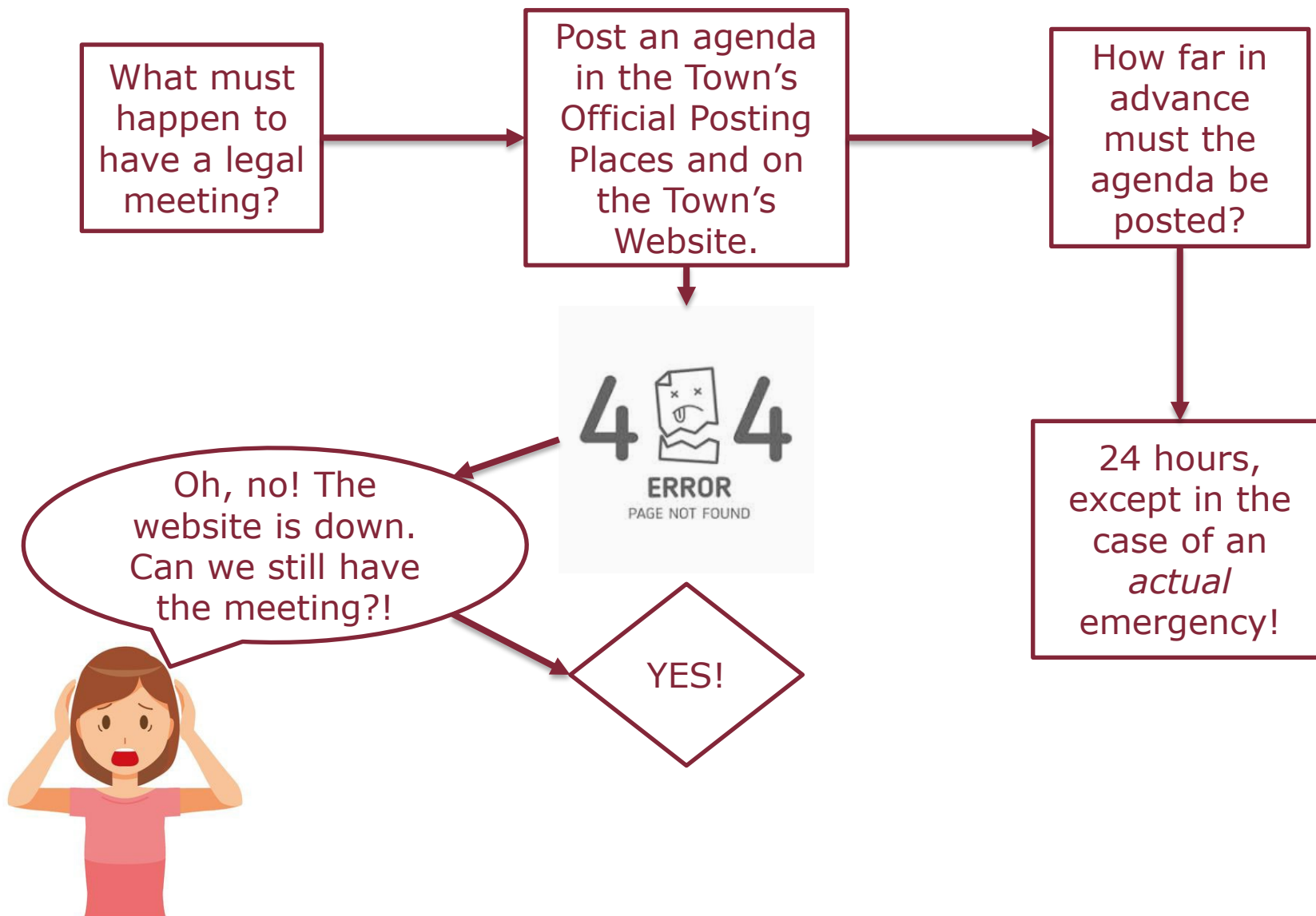
Options?

- Don't attend other public meetings;
- Don't make proposals at other public meetings; or
- Notice the meeting as if it's your own.

In general:

- Be mindful of informal discussions with other members of your public body.
- Text messages, emails, and comments made at other public meetings may be a "serial meeting," but merely reading a media comment from another member is not a meeting.

Calling a Meeting



Actual Emergency Exception (applicable in very limited circumstances)

Unless a flood or fire is racing through the Town, you probably *do not* have an actual emergency.



Executive Sessions

- Limited exception to public meeting.
- Must vote in open meeting for executive session.
- Agenda must state specific provision of law authorizing the session and specify the item.
- Must include a general description of matters to be considered.
- Listing only the statutory authorization is insufficient.

Executive Sessions

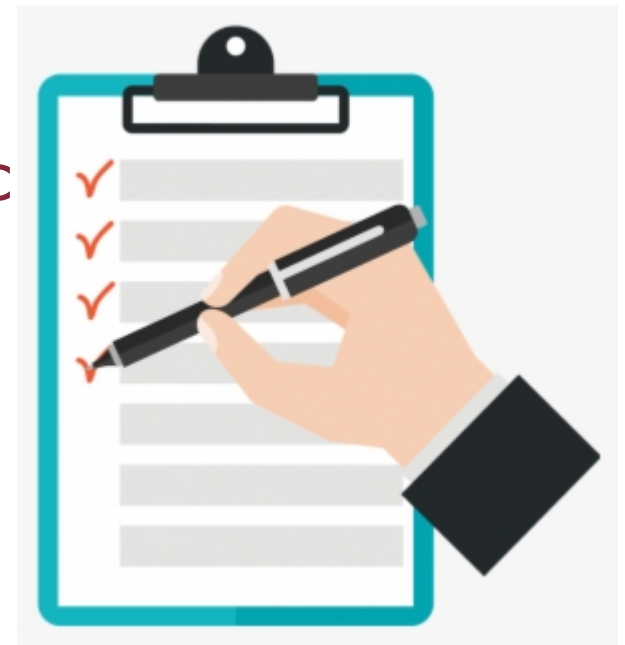
Authorized topics for executive sessions:

- Personnel (must provide 24 hours written notice to employee).
- Discussion or consideration of confidential records.
- Legal advice – with public body's own lawyer(s).
- Litigation.
- Labor negotiations.
- International, interstate, and tribal negotiations.
- The purchase, sale, or lease of real property.
- School safety operations, plans, or programs (2020).
- Safety and security of public body's buildings, facilities, and IT (2020).

Courts have construed exceptions to the OML very narrowly because of the policies that favor open and public meetings.

Agendas and Notices

- Date, time, and place of meeting.
- Agendas must list the specific matters to be discussed, considered, or decided at the meeting.
- Action may only be taken, discussed, or considered on listed items.



Agendas and Notices

Call to the public:

- Citizens may only address the public body on issues within its jurisdiction.
- Public body may not discuss the matter.
- At its conclusion, members may respond to criticism, ask staff to review a matter, or request a future agenda item.
- Do not use generic agenda items topics such as:
 - “personnel”
 - “new business”
 - “old business”
 - “other matters”

Agendas and Notices

Current Event Summaries:

- A member of the public body or the Town Manager may present a brief “summary of current events,” without listing in the agenda the specific matters to be summarized, *if*:
 - The summary & the person giving it are listed on the agenda.
 - The public body does not propose, discuss, deliberate, or take legal action at that meeting on any matter in the summary not properly noticed for legal action.

Agendas and Notices

Current Event Summaries:

- May only be given by a member of the public body or the Town Manager.
 - Only one person may report on the current events; no further discussion allowed!
- Town Manager may not delegate to a staff member.
- Reports on current events must truly be about current events—no proposals or department reports.

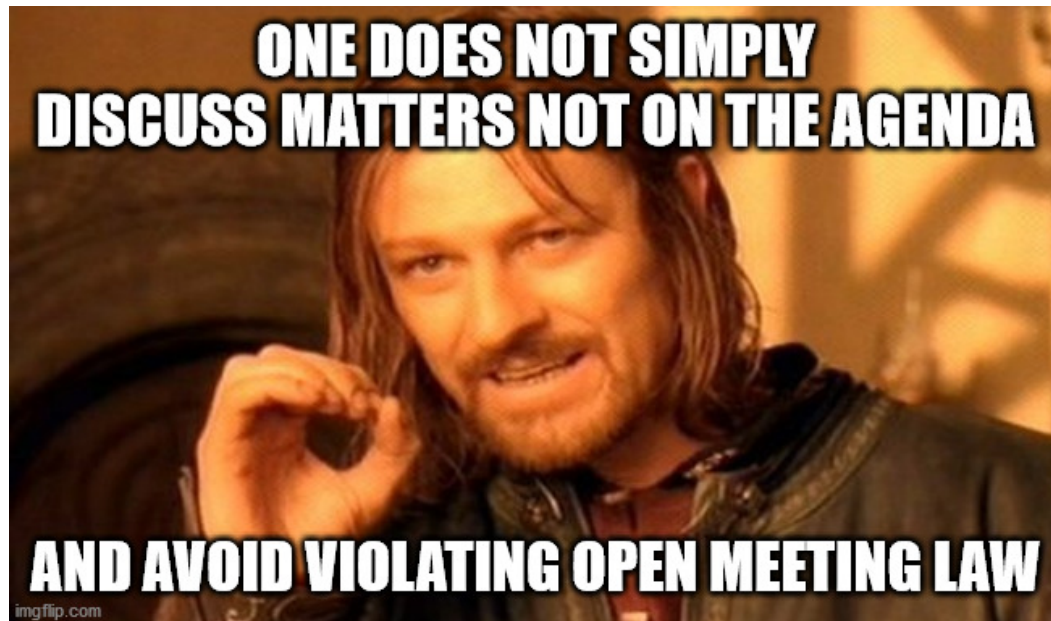
Agendas and Notices

Reports other than Current Event Summaries:

- May include department head reports on agenda.
- Must list the items department head will report on and state whether discussion or action will be taken.
- No generic agenda items, such as “Sheriff’s Department Report” or “Public Works Department Report”.
 - These must be separately listed agenda items containing information reasonably necessary to inform the public of matters to be discussed or decided.

Can we discuss matters not on the agenda?

- A. No.
- B. Seriously, No.
- C. Not if we don't want trouble.
- D. ~~Maybe, if it's an Actual Emergency.~~
- E. All of the above.



Meeting Minutes

- May be in writing or recorded.
- Minutes or statement of legal actions taken must be available for public inspection within 3 working days after the meeting.
 - If unapproved, mark as draft or unapproved—do not withhold pending approval.
- Post approved meeting minutes within 2 working days following approval.
- If recorded, the public must be able to access the recording.
- If written in shorthand, must be typed or written in longhand.

Meeting Minutes

Minutes must include the following:

- Date, time, and place.
- Members present or absent.
- Accurate descriptions of all legal actions proposed, discussed, or taken.
- Record of how each member voted.
- Names of the members who propose each motion.
- Names of persons speaking before the public body.

Meeting Minutes

- Minutes must remain on website for 1 year.
- Executive Session minutes must contain same contents as regular minutes plus:
 - An accurate description of all instructions given to attorneys or designated representatives.
 - If holding an emergency meeting, a statement of the reasons for emergency consideration of any matters not on the agenda;
 - Any other information as appropriate.

Subcommittee/Advisory Committee Minutes

- Subcommittees and advisory committees of cities and towns with a population of more than 2,500 shall take written minutes or record meetings; *and*
- Within 10 working days post a statement describing any legal action or post any recording of the meeting.

Open Meeting Law Violations

Actions taken are

NULL AND VOID



The attorney general investigates.

Open Meeting Law Violation Penalties

- \$500/day civil penalty.
- Removal of an officer.
- Assess the officer with all costs awarded to the plaintiff.
- May not spend public monies for legal counsel.



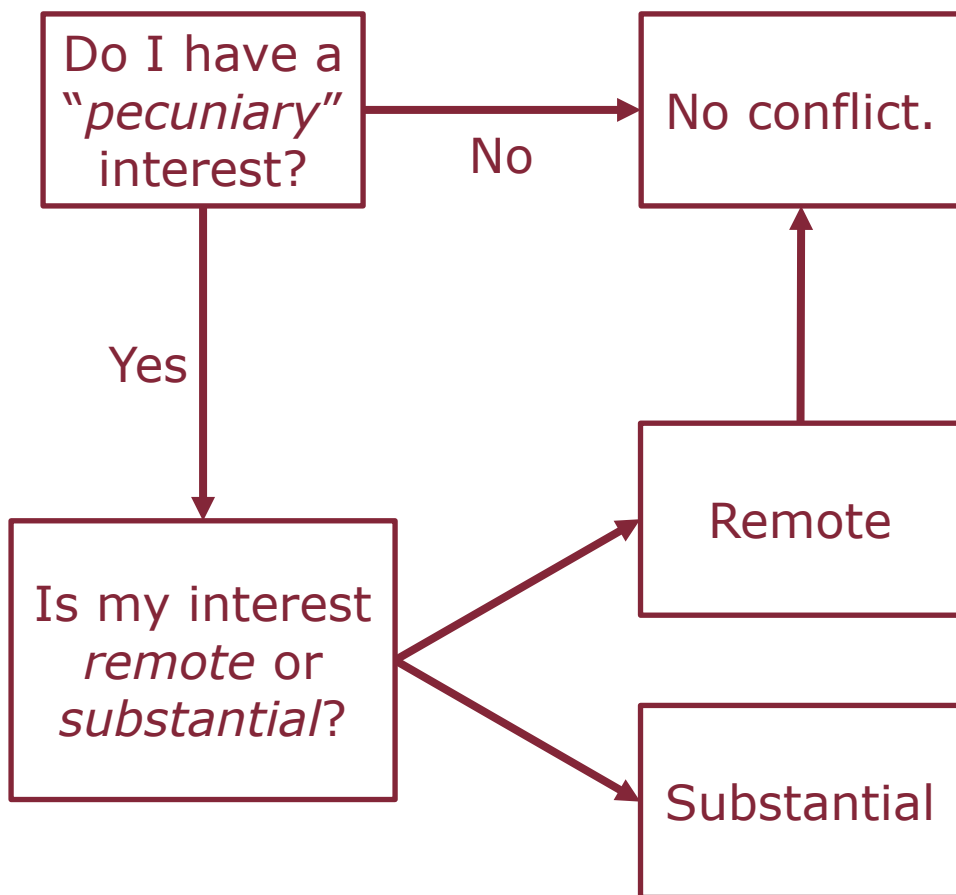
Conflicts of Interest

Steps to prevent self dealing:

1. Analyze every matter coming before your public body to determine if you have a conflict of interest.
2. Make your determination prior to the meeting addressing the matter.
3. Follow the statutory mandates for disclosing your conflict of interest.

Conflicts of Interest

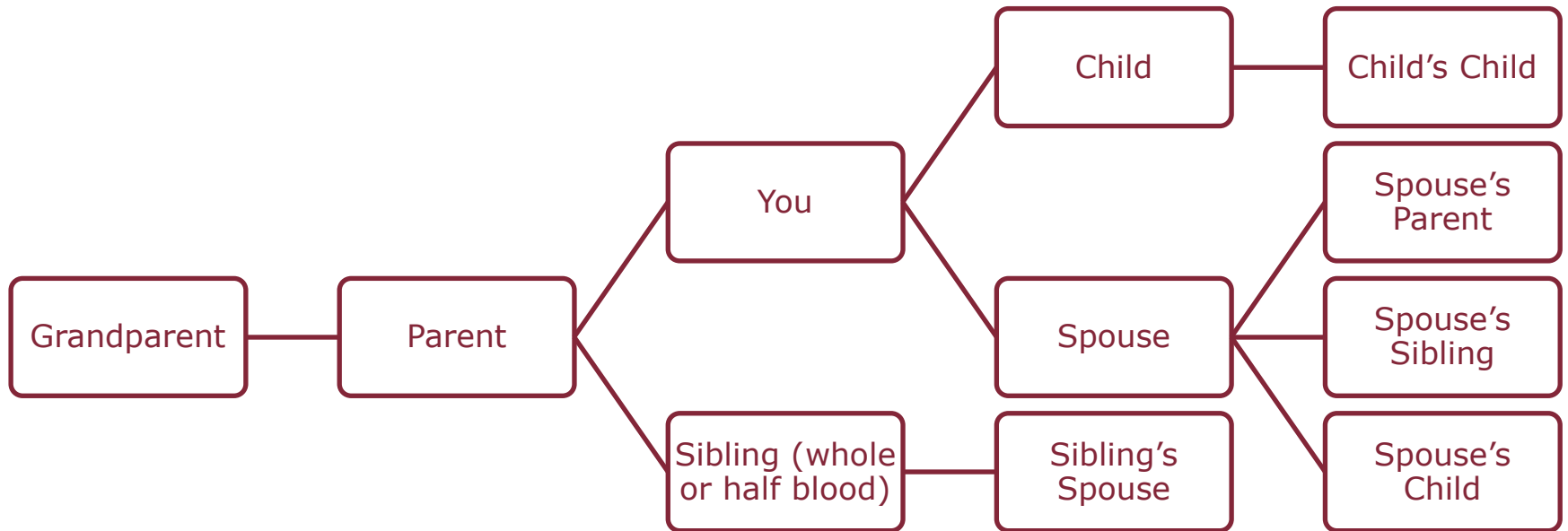
Do I have a conflict of interest?



You have a *pecuniary* interest when you, or someone fairly closely related to you, stand to gain or lose something of value from the decision.

Conflicts of Interest

Who are relatives?



Substantial Interests

You have determined you have a substantial interest. What should you do?

Do:

- Disclose your interest in the official records of the public agency.
- Recuse yourself and refrain from participating in any manner in the decision or contract, including any discussion of the matter.
- If there is **any** question, get the opinion of the Town Attorney; it may help you avoid “reckless” or “negligent.”

Do not:

- Ignore it and think it will go unnoticed.

What happens 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 any reckless or negligent violation of the law.
- Person found guilty may be required to forfeit his public office.
- Contracts entered into in violation of conflicts of interest laws **may** be cancelled or voided.

Questions?