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RE: Advisory Letter Regarding the Ability for Local Public Bodies to Conduct Open Meetings Electronically

Dear Greg,

I write with regards to the request from your office for us to weigh in on the issue of whether local governing boards can carry out their meetings electronically and remain in compliance with Open Meeting Laws. This question comes on the heels of federal and state executive orders directed at preventing the spread of COVID-19 by significantly limiting – if not prohibiting – the ability to gather in person, yet governing must continue at all levels of state and local government.

QUESTION PRESENTED:

Can local governments carry out their necessary meetings via electronic means during these exigent circumstances?

BRIEF ANSWER:

Yes, because electronic meetings are allowed under N.C.G.S. §143.318.13, and the requirements of notice, access and minutes can be met through electronic means. Due to the unprecedented circumstances we are all faced with, and the fact that local governing bodies conducting meetings remotely is not expressly prohibited by statute, I conclude that local governments can carry out necessary meetings electronically and remain in compliance with Open Meetings Laws.

DISCUSSION:

At the outset, it is significant to note that the Public Policy behind the Open Meetings Laws is to ensure the hearing, deliberations, and actions of the public bodies “conduct[ing] the people’s business” be conducted openly. N.C.G.S. §143.318-9.

Generally speaking, a public body may hold an official meeting (defined in N.C.G.S. § 143-318.10(d)) by use of electronic means. N.C.G.S. §143-318.13. In that case, it shall provide a location and means whereby members of the public may listen to the meeting, the location of which should be specified in

the notice. *Id.* A fee of up to \$25 may be charged to each listener to defray the cost of providing the necessary cost and equipment. *Id.*

As with all meetings being made available to the public, public bodies should still comply with statutory requirements of notice, access and minutes.

1. Notice – The public body must provide notice of an official meeting. N.C.G.S. §143-318.12. Most meetings require 48-hours' notice and that should be met if at all possible. N.C.G.S. §143-318.12(b)(2). Emergency meetings may be called on short notice, but notice should still be provided. N.C.G.S. §143-318.12(b)(3).
2. Access – With few exceptions, an official meeting of a public body shall be open to the public. N.C.G.S. §143-318.10. Access should be reasonable. The Governor can, and has, limited the number of people that can physically attend a gathering. That limitation must be respected. This means the public must be given reasonable means of listening/participating in the meeting.
3. Minutes – Minutes are required and should be respected even when conducting the meeting electronically. N.C.G.S. §143-318.10(e). These may be in the form of sound or video and sound recordings. *Id.*

When public bodies are attempting to comply with statutes requiring a physical quorum, it is best that the physical quorum be met if at all possible. As of today, that would need to be no more than ten people in the meeting. Minutes should specifically record the person(s) that is not able to be physically present as not recusing himself or herself, but rather choosing to participate electronically. As discussed herein, if it is not possible for a quorum to be physically present, I believe it is reasonable for the governing body to meet electronically.

When meetings of public bodies are not necessary for immediate ongoing governance, I would encourage postponing that meeting until a future time when the meeting can occur in-person.

I realize this does not address all of the various statutory provisions that could be implicated, and that is not the intent of this letter. I have provided citations when available, but have also canvassed available information. All weighing in on this topic are in agreement: whatever is not explicitly addressed in the statutes should be met with reasonableness to allow transparency into the local governing process. That is to say that local governments must continue to run, people have been ordered to not convene in groups larger than ten, and reasonableness must prevail in a time like this. Again, these are unprecedented times and I feel confident a court will view efforts to remain transparent through a lens of reasonableness, which can be met through electronic meetings.

This is an advisory letter and has not been reviewed and approved in accordance with the procedures for issuing an Advisory Opinion of the Attorney General. Please let me know if I can be of further assistance.

Sincerely,

s// Shannon Cassell
Special Counsel

cc: Alec Peters, Chief Deputy Attorney General
Blake Thomas, Deputy General Counsel