



5 TIPS TO AVOID AN OPEN MEETINGS ACT (OMA) VIOLATION

REMEMBER THE OMA WHEN COMMUNICATING BY E-MAIL.

Using e-mail to communicate with other Board members about policy and other Board decisions may violate the OMA. To avoid this common mistake, the municipality should develop an e-mail policy that addresses both use of e-mail and the retention of e-mail records.

BE CAREFUL HOW THE MUNICIPALITY HANDLES THE PUBLIC AT MEETINGS.

All persons in attendance at a public meeting have the right to address the public body. A municipality can place reasonable limitations on speakers during public comment, such as limiting each speaker to a reasonable amount of time, but may not limit the total time of public comment.

AVOID THE APPEARANCE OF A SECRET MEETING.

Discussing municipal business with a quorum of board members outside of an open meeting violates the OMA. Obviously, a quorum of the municipal board should not be discussing business if they are not at a meeting open to the public; however, they may also avoid a lawsuit by taking extra effort to discuss topics on the record so there is no appearance of an unlawful meeting.

AVOID DECISIONS IN CLOSED SESSION.

All decisions must be made at an open meeting. A "decision," is defined in part as any determination, action, vote or disposition on public policy. To avoid an OMA violation, no substantive motions or Board actions should be taken in closed session.

WHEN CAN A BOARD MEET IN A CLOSED SESSION?

A closed session may be called by a majority vote for the following purposes:

- To consider the dismissal, suspension, or discipline of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, or employee, staff member, or individual agent, if the named person requests a closed hearing; or
- For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement, if either party requests a closed hearing.

WHAT HAPPENS IF A PUBLIC BODY IS FOUND TO VIOLATE THE OMA?

The Courts could award damages (if the violations were found to be intentional), provide injunctive relief, or declare that any decisions that were made in violation of the OMA are void.

Intentional violations of the OMA are considered a misdemeanor and could result in criminal penalties. If the Court finds that a public body has violated the OMA, the Court may award attorneys fees to the person bringing the action. As a result, townships can avoid costly litigation by adhering to the requirements of the OMA and its closed session rules.

For more information regarding Michigan's Open Meetings Act, contact a Foster Swift municipal attorney.