



STATE OF MICHIGAN  
INDEPENDENT CITIZENS REDISTRICTING COMMISSION

## MEMORANDUM

TO: Michigan Independent Citizens Redistricting Commission (MICRC)

CC: MICRC & MDOS Staff

FROM: Julianne V. Pastula, Esq. *JP*  
General Counsel, MICRC

DATE: February 8, 2021

RE: **Open Meeting Act Guidance for Members Attending Conferences, Webinars or Other Non-MICRC Events**

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During its January 30<sup>th</sup> meeting, the Michigan Independent Citizens Redistricting Commission (MICRC) requested a writing on the Open Meetings Act, 1976, PA 267, MCL 15.261 through 15.275. More specifically, the MICRC requested guidance regarding potential interactions between members at the upcoming University of Michigan, Gerald R. Ford School of Public Policy, Center for Local, State and Urban Policy (CLOSUP) event regarding Communities of Interest on February 25<sup>th</sup>. While the format of CLOSUP is anticipated to be a webinar or streamed event, not an interactive forum, the guidance in this memorandum is also relevant to future events where a quorum of members<sup>1</sup> may be present regardless of the forum.

The Open Meetings Act (OMA) requires all decisions<sup>2</sup> of a public body<sup>3</sup> to be made at a meeting<sup>4</sup> open to the public and, with certain limited exceptions, all deliberations of a quorum of a public body must also take place at a meeting open to the public. *Speicher v. Columbia Twp. Bpd. of Trustees*, 497 Mich. 125 (2014). However, Section 3(10) states that “[t]his act does not apply to a meeting that is a social or chance gathering or conference not designed to avoid this act.”

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<sup>1</sup> For clarity, a quorum of the full Commission or a quorum of the membership of any Committee.

<sup>2</sup> “Decision” means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy. (MCL 15.262(d)).

<sup>3</sup> “Public body” means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement; or the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o. (MCL 15.262(a)).

<sup>4</sup> “Meeting” means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy, or any meeting of the board of a nonprofit corporation formed by a city under section 4o of the home rule city act, 1909 PA 279, MCL 117.4o. (MCL 15.262(b)).

Therefore, members who attend a social affair, assemble by chance or participate in a conference or training session, even if a quorum is present, will not be in violation of the OMA if they do not deliberate, discuss, decide or determine any issue that constitutes business to be held before the MICRC. For example, a quorum of members should refrain from discussing or deliberating any open matter on the MICRC agenda or any Commission business. Commenting on an action that the Commission has already taken would be appropriate as it is an example of an interaction that does not constitute deliberating or deciding a matter of public policy that is before the MICRC.

In Opinion of the Attorney General (OAG) 1981-1982, No. 6074, see attached, the Attorney General concluded that

[A] quorum of a public body may, without complying with the Open Meetings Act, *supra*, **attend a conference which is designed to focus upon issues of general concern to similar public bodies and which is intended primarily to provide general training or background information rather than to directly address and resolve issues particular to the public body.** It is my further opinion that a quorum of a public body may, at the initiative of a private group, meet with and listen to presentations by that group, provided that the members of the public body do not engage in any discussions or deliberations during the course of that meeting. It is my further opinion that if a quorum of the members of a public body engage in discussions or deliberations, or otherwise enter into the process of addressing and resolving particular issues of public policy pending before that public body, at such conference or gathering, discussion may not be conducted without complying with the Open Meetings Act, *supra*.

*Emphasis added.*

Therefore, training or informational sessions are appropriate to attend so long as members, particularly if a quorum is present at the event, refrain from discussing or resolving any issue pending before the MICRC. Members should exercise caution to not create a constructive quorum in verbal or electronic communications regarding MICRC business outside of an open meeting. In addition to these quorum considerations, members must also respect the parameters of Subsection 11 of article IV, §6 of the Michigan Constitution relative to communications with the public outside of an open meeting of the MICRC.

Based on the foregoing, it is appropriate for members to interact and socialize with one another if they attend conferences (i.e., training or informative in nature), attend the same holiday parties, or run into each other at the grocery store; however, MICRC business may not be deliberated or decided by a quorum of members at such interactions without violating the OMA. This allows all members to have the opportunity to attend and benefit from the information provided at these events, while respecting the transparency and open government principles enshrined in article IV, § 6 of the Michigan Constitution and the protocols required by the OMA.



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STATE OF MICHIGAN

**FRANK J. KELLEY, ATTORNEY GENERAL**

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Opinion No. 6074

June 11, 1982

OPEN MEETINGS ACT:

Impact upon workshop, seminar or other informational gathering attended by members of a public body

A public body may, without complying with the Open Meetings Act, attend a conference or informational gathering designed to focus upon issues of general concern and intended primarily to provide training and/or background information, provided that a public body may not, without complying with the Open Meetings Act, engage in discussions or deliberations during such a meeting or otherwise enter into the process of addressing or resolving issues of public policy.

Honorable R. Robert Geake

State Senator

The Capitol

Lansing, Michigan 48909

You have requested my opinion on the following question pertaining to the Open Meetings Act, 1976 PA 267; MCLA 15.261 et seq; MSA 4.1800(11) et seq:

Under what circumstances may a public body meet for a workshop, seminar or other study or informational gathering without complying with the requirements of the Open Meetings Act?

The Open Meetings Act, supra, requires that meetings of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on public policy must conform to the provisions of the Act regarding notice to the public, openness to the public, the keeping of minutes, and various other requirements. The Open Meetings Act, supra, does, however, contain several exemptions, including section 3(10), which provides:

'This act does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.'

The Open Meetings Act, supra, provides little direct guidance as to the precise scope of the exemption contained in section 3(10). Nowhere in the Act, for example, are the terms 'social or chance gathering' or 'conference' defined. However, these terms must plainly be construed in light of the provision contained in section 3(10) that the exemption applies only to gatherings which are 'not designed to avoid this act' and, further, in light of the general purpose and policy of the Act. As the Michigan Court of Appeals noted in Wexford County Prosecutor v Pranger, 83 Mich App 197, 204; 268 NW2d 344 (1978), 'the Michigan Open Meetings Act of 1977 is entitled to a broad interpretation to promote openness in government.' Accordingly, as the Court noted elsewhere in the same opinion, we must 'construe the closed session exceptions strictly to limit the situations that are not open to the public.' *Id* at 201.

The scope of the Open Meetings Act, Sec. 3(10), supra, has been considered in a number of Attorney General opinions. These opinions hold that the exemption contained in that section does not apply where a quorum of the members of a public body meet and discuss matters of public policy with a quorum of the public body present. OAG, 1977-1978, No 5298, p 434, 435 (May 2, 1978) states:

'[W]hen members of a public body meet informally, a quorum being present, to discuss matters which will subsequently be considered by the board, the conference is a meeting of the public body that must be open to the public.'



See also OAG, 1979-1980, No 5437, p 36 (February 2, 1979); OAG, 1979-1980, No 5444, p 55 (February 21, 1979).

However, a public body may accept an invitation to meet with a neighborhood organization or other group for the sole purpose of observing or gathering information without complying with the requirements of the Open Meetings Act OAG, 1977-1978, No 5364, p 606, 607 (September 7, 1978), concluded that a quorum of the members of a city council may accept an invitation to meet with a neighborhood organization or with the board of directors of a local bank, provided that the members of the public body did not discuss or deliberate upon public policy matters during such a meeting:

'The provision contains three separate exemptions from the requirement that an open meeting be held, these being: (a) a social gathering; (b) a chance gathering; and (c) a conference not designed to avoid the act.

'The gathering of a quorum of the members of a city council to meet with a neighborhood group or with a board of directors of a private corporation need not comply with open meeting requirements if the members of the council do not make any decisions nor hold any deliberations toward arriving at a decision. Stated in the affirmative, the members may listen to presentations by their constituents or observe demonstrations at the gathering without the need to comply with the act for such activity may be characterized as a 'conference' within the exception of section 3(10) of the Act.

'However, if a gathering designed to provide information develops into deliberations on matters of public policy or leads to decisions on matters within the jurisdiction of the council, the members will have crossed the boundary of the exemption in section 3(10) of the Open Meetings Act, supra, and will have violated the Act.'

It does not necessarily follow that a public body may avoid the requirements of the Open Meetings Act, supra, by simply designating the meeting as a 'conference' and refraining from engaging in any actual discussion or deliberations during the meeting. Indeed, such a tactic was considered and rejected in OAG, 1979-1980, No 5433, p 29 (January 31, 1979). That opinion considered the question of whether a public body could utilize the 'conference' exemption contained in the Open Meetings Act, Sec. 3(10), supra, to justify a closed meeting between the public body and certain of its officers and employees. The opinion observed that:

'[Section] 3(10) must be intended to clarify the purpose of the Act to provide for openness in government by exempting those types of gatherings where government business is not being considered. Thus, members of a public body who may meet at a social affair or by chance or at a conference, though they may constitute a quorum, need not comply with the requirements of the Act as long as they refrain from deliberating or deciding matters of public policy. To meet in these instances as a subterfuge to conduct public business in private is expressly forbidden by the qualifying terms found in Sec. 3(10) of the Act.

While nothing that public officials should always be receptive to comments from the public, even at social gatherings or conferences, the opinion observed that a meeting between a public body and its administrative staff or other employees may not be characterized as a 'social or chance gathering or conference' within the meaning of the Open Meetings Act, Sec. 3(10), supra, even though that meeting may involve only presentations made by the staff with no discussions or deliberations on the part of the public body. Under such circumstances, the opinion concluded, the public body's staff are not meeting:

'in order to bring particular public concerns to the attention of the [public body.] These presentations of administrators are part of the deliberative process through which decisions on public policy are reached. To label such a gathering of public officials to discuss public business as a 'conference', would defeat the intent of the legislature to encourage openness in government.' OAG, 1979-1980, No 5433, supra, at p 30.

OAG, 1979-1980, No 5433, supra, went on to provide some examples of meetings which would fall within the 'conference' exemption of the Open Meetings Act, Sec. 3(10), supra.

'An example of a conference which may be attended by a quorum of a public body without violation of the Act would be a conference of the American Association of State Transportation Officials; another example would be a conference of educators designed to provide information about areas of common professional interest to participants.' OAG, 1979-1980, No 5433, supra, at p 31.

What each of these examples have in common, it will be observed, is that neither is limited to matters or issues of interest to a single public body but instead has a relatively broad focus upon issues of general concern. Moreover, each of the examples involves a conference designed primarily to provide training or background information rather than to directly address and resolve particular issues of public policy pending before a specific body. Such conferences are clearly within the legislative intent of the Open Meetings Act, Sec. 3(10), supra. However, when a conference is scheduled by a public body for the express purpose of gathering information on or otherwise addressing a particular issue of public policy confronting that public body, that 'conference' must be considered to be a part of the deliberative process and, hence, would not fall within the exemption contained in the Open Meetings Act, Sec. 3(10), supra.

Thus, a public body may attend a workshop, seminar or other informational gathering without complying with the Open Meetings Act provided that (1) the purpose and function of the workshop, seminar or other informational gathering is to consider issues broader than those affecting the particular public body only; (2) the gathering is open to members of other public bodies or of the public generally and (3) the public body carefully refrains from any collective discussion of matters of public policy. However, if attendance at such a workshop, seminar or other informational gathering is limited to officers and employees of the public body only, an opportunity is presented for the public body to consider matters of public policy in the absence of proper notice to the public and an opportunity for the public to attend. To prevent a circumvention of the Open Meetings Act, supra, proper notice must be given to the public and such meeting must be open to the public.

It is my opinion, therefore, that a quorum of a public body may, without complying with the Open Meetings Act, supra, attend a conference which is designed to focus upon issues of general concern to similar public bodies and which is intended primarily to provide general training or background information rather than to directly address and resolve issues particular to the public body. It is my further opinion that a quorum of a public body may, at the initiative of a private group, meet with and listen to presentations by that group, provided that the members of the public body do not engage in any discussions or deliberations during the course of that meeting. It is my further opinion that if a quorum of the members of a public body engage in discussions or deliberations, or otherwise enter into the process of addressing and resolving particular issues of public policy pending before that public body, at such conference or gathering, discussion may not be conducted without complying with the Open Meetings Act, supra.

Frank J. Kelley

Attorney General

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State of Michigan, Department of Attorney General

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