

Open Meetings, Public Records, and Conflicts of Interest

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*The opinions contained are those of the author

Commission Counsel

- Resource to help Water Infrastructure Authority comply with rules for open meetings and public records
- Advise State Water Infrastructure Authority and individual members on conflicts of interest
- Serve as parliamentarian during meetings using Robert's Rules of Order

Materials Provided in Notebook

- Guide to Open Government and Public Records
- Sections of the NCGS - the most important ones for our purposes are
 - NCGS § 143-318.9 - open meeting
 - NCGS § 132-1 et seq. - public records
 - NCGS § 138A - State government ethics
- Executive Order No. 34 - Governor's appointees

- The Legislature has ensured the ability of the people of North Carolina to watch their government in action and to have access to public records.

Open Meetings and Public Records

- “Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina . . . exist solely to conduct the people’s business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.” N.C.G.S. 143-318.9

Open Meetings and Public Records

Open Meetings

- **Requires Notice to Public** – different types of notice for regular meeting and emergency meeting
- **Official Meetings** – the gathering together of a majority of the Authority as a whole or in a committees or study groups for the purpose of conducting business of the Authority
 - In order to have a meeting must have a quorum - a majority of the “duly qualified” members of the Authority or its committees
 - Cannot evade Open Meetings Law by circulating e-mails discussing business or holding a “social event” if business is discussed

- Electronic meetings- Allowed under statute but pose challenges
 - Must provide access for public
 - Must allow all members to participate
- No secret ballots
- Must keep minutes

Open Meetings

- Closed sessions: limited by NCGS 143-318.11 to legally confidential information, attorney-client discussions
- Motions required to enter closed session and re-enter open meeting
- Meeting of staff not subject to Open Meetings Law

Open Meetings

- Public records and public information are the property of the people of North Carolina.
- Public records include written materials and other information created or received by individual members of the Authority and staff in connection with public business.
- “Personal” records that are created or received by persons conducting business as part of their responsibilities with the Water Infrastructure Authority, including e-mails, are public records.

Public Records

Best Practice Tips:

- What not to do – New Jersey example
- Keep separate e-mail for Authority business
- Always send a copy of email to denr.swia@ncdenr.gov
 - Captures emails as part of public record
 - Makes it easier to find any emails if a request for records is received

- Any person has the right to examine or obtain a copy of public records.
- People requesting public records do not have to reveal their identity or the reason for requesting the information.

Public Records

- Anyone denied access to public records may bring a civil action in court against the agency or the official who denied access.
- If the court orders the agency or official to provide access to the public records, the court SHALL order the agency or official to pay attorney's fees if the denial of access was without substantial justification.

Public Records

State Ethics Act

- December 12, 2013 Letter to Secretary Skvarla from State Ethics Commission
 - Preliminary determination that Authority is covered by State Ethics Act.
 - If Authority disagrees, explain why in writing by January 27, 2014
 - State Ethic's Commission will review determination at Feb meeting

The State Ethics Act requires that an appointee must remove himself or herself, to the extent necessary to protect the public interest, from any proceeding in which the member has an **actual conflict of interest** or

in which the member's impartiality might be questioned due to the member's

- familial,
- personal, or
- financial relationship with a participant in the proceeding.

See NCGS 138A-36(a) and (c).

State Ethics Act

- The requirement to “recuse” applies to rule-making.
- Trustee is required to determine whether there is a conflict of interest with a matter before the Authority. This is the decision of each Trustee.
- The Trustee may confer with the Chairman and with legal counsel and may seek the opinion of the Ethics Commission.

Conflicts of Interest

- The Authority may draft Bylaws to establish procedures for conducting business pursuant to authority in NCGS 159G-70.
- Until then, will rely on Robert's Rules of Order for guidance in running the meetings.

Internal Operating Procedures

Executive Order No. 34

- Applies to Governor's appointees
- Adds requirement that appointees act in best interest of public
 -
- Regular attendance at meetings is a duty of each member. Additional attendance requirements under EO 34 (75% during calendar year)