



**State of North Carolina  
Department of Justice**

*Roy Cooper, Attorney General*

October 5, 2005

Dear Public Official:

From time to time our office has received inquiries about compliance with North Carolina's open meetings and public records laws. I believe that strict compliance with the law is critical to good government.

Enclosed you will find a North Carolina Attorney General's Advisory Opinion that gives an overview of these laws, including details on important public notice requirements and the limited circumstances when public bodies are allowed to close meetings.

The public's right to hear and see public business is of utmost importance and I hope you will weigh carefully the need to close a meeting against the people's right to know. I encourage you to use this information and I thank you for the work you do for the people of North Carolina.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink that reads "Roy Cooper".

Roy Cooper

RAC/sm

October 5, 2005

## **Advisory Opinion on Compliance with North Carolina's Open Meetings Law**

The General Assembly has made it the public policy of this State that hearings, deliberations and actions of public bodies should be conducted openly and with notice. North Carolina's open meetings law, Chapter 143, Article 33C of the General Statutes, sets out the requirements for notifying the public of official meetings and describes the limited circumstances under which closed meetings may be held. Clarification of public notice requirements and closed session requirements may serve to assist public bodies in complying with their responsibility to conduct public business in the open.

### **Closing a Public Meeting**

Public bodies may, but are not required to, go into a closed session for limited purposes. Those limited purposes are set forth in N.C.G.S. §§143-318.11(a)(1)-(9) and include:

- Preventing the disclosure of privileged or confidential information
- Preventing the premature disclosure of certain awards
- Consulting with the public body's attorney in order to maintain the attorney-client privilege
- Discussing economic incentives
- Establishing negotiating strategies for terms of employment contracts or the purchase of real property
- Consideration of qualifications for employment of an employee or applicant, or hearing a grievance
- Discussions surrounding criminal investigations
- Formulating plans for emergency responses by local boards of education
- Discussions regarding public safety as it relates to potential terrorist activities

A public body can only enter into a closed session while it is meeting in public. To go into a closed session, a motion to do so must be made during an open session. The motion, made in public, must specifically cite the provision under the law that provides the basis for entering into the closed session. So for example if a public body intends to discuss the award of an honorary degree to certain individuals it must do so in public

unless a member of the public body makes a motion to go into closed session. The public body must vote on the motion and if the motion carries the body can enter into a closed session for that limited purpose and no other. N.C.G.S. §143-318.11(c)

Once the purpose of entering into the closed session is completed, the public body must then re-open the meeting. During the closed session, the public body cannot engage in any other activities that are not related to the stated basis for the motion to enter into the closed session. Motions to adjourn or recess are not permissible activities that can take place in a closed session. Motions to enter into a closed session for some other purpose are not permissible activities that can take place in a closed session. Establishing future meeting dates or times and places for reconvening meetings are not authorized activities that can take place in a closed session. These activities must take place in an open session. Only those limited activities enumerated by statute and identified in a valid public motion that passes can take place in a closed session. All other activities must take place in public. Id. Similarly, as discussed below, if the activities for which the closed session was entered into are not complete and the public body wishes to recess and continue the closed session at a later time, the public body must give public notice of that decision including the time and location for the reconvened meeting.

Some motions to close a session must include additional information to be validly acted on. Specifically, if the reason to go into a closed session is to protect confidential information, the motion must cite the specific statute or law that protects the information from public disclosure. Without such information, the public body cannot entertain the motion. Id.

If the reason to go into closed session is to protect the attorney-client privilege, the motion must identify the parties to the litigation that is to be discussed. Without such information, the public body cannot entertain the motion. Id.

Finally, while in a closed session, the public body must still maintain full and accurate minutes of the session. N.C.G.S. §143-318.10(e). “When a public body meets in closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired.” Id. This can be achieved through recording the meeting or through a written narrative. Id. These recordings or narratives are public records but may be withheld from public inspection so long as inspection would frustrate the purpose of the closed session.

## **Public Notice Requirements**

In general, a public body which has established a regular schedule of meetings is required to keep a copy of the schedule on file. Any change to this schedule must be filed seven days in advance. Official meetings, other than emergency meetings, to be held other than on a regular schedule require 48 hours notice, by posting and mail or delivery to news media and other persons who have filed written requests for notification.

Emergency meetings require immediate notice to persons who have requested emergency meeting notification.

These requirements hold true when a public meeting is recessed without adjournment. Closed sessions held to evaluate prospective employees should be adjourned with notice as to when and where the continued meeting will be held, rather than reconvened at another location without further notice to the public.

Regardless of the reason for the closed session, a meeting reconvened without notice violates the open meetings law. N.C.G.S. §143-318.12(b) clearly states that if a public body recesses a meeting it is sufficient public notice for the time and place at which the meeting will be continued to be announced in open session. Otherwise, 48 hours notice must be given as in the case of any other non-regularly scheduled meeting.

It is critically important that the public business of our state be conducted openly. Providing notice of official meetings is a necessary element of this process. This is a general advisory opinion and is not intended to respond to any specific questions regarding compliance with the law.

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JB Kelly  
General Counsel

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Grayson Kelley  
Chief Deputy AG