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BRUCE E. BABBITT, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

August 19, 1975

DEPARTMENT OF LAW OPINION NO. 75-7 (R-9) (R75-131)

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REQUESTED BY: THE HONORABLE JAMES P. WALSH  
Arizona State Senator

- QUESTIONS:
1. Are state agencies which are supported solely by fees collected by the agency, covered by Arizona's Open Meeting Act?
  2. Are agencies under the direction of a single person covered by the Act?
  3. Are advisory groups covered by the Act?
  4. Are quasi-judicial proceedings of administrative agencies covered by the Act?
  5. What type of notice is required under the Act for regular and special meetings?

- ANSWERS:
1. See body of opinion.
  2. See body of opinion.
  3. See body of opinion.
  4. Yes.
  5. See body of opinion.

HISTORY OF ARIZONA'S  
OPEN MEETING LAW

The Arizona Legislature passed its first open meeting law in 1962. Chapter 138, Laws 1962 (hereafter referred to as the "1962 Act" or "Act"). The Act provided in Section 1 that:

It is the public policy of this state that proceedings and meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct

of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly. (Emphasis supplied.)

The 1962 Act went on to define "governing bodies" and "proceedings" and provided that official meetings at which legal action is taken by governing bodies shall be public. "Legal action", however, was not defined. The 1962 Act further provided that any minutes taken of the meetings shall be properly and accurately recorded and open to public inspection. A.R.S. § 38-431.01. It further declared that the Act should not be construed to prevent governing bodies from holding executive sessions subject to certain conditions. A.R.S. § 38-431.02. Finally the Act empowered the courts to issue writs of mandamus to require open meetings (A.R.S. § 38-431.02) and provided that business transacted in violation of the Act was null and void (A.R.S. § 38-431.04); that the Act was not intended to abridge a citizen's right to appeal (A.R.S. § 38-431.05); and that any person violating the Act was guilty of a misdemeanor (A.R.S. § 38-431.06).

There has been no reported judicial interpretation of the 1962 Act and it remained unchanged until the Legislature amended it in 1974 (Chapter 196, Laws 1974) and again in its last regular session (Chapters 48 and 71, Laws 1975). Opinions of the Attorney General have afforded the sole source of construction of the statute. Those opinions construed the Act as follows:

In Attorney General Opinion No. 62-18-C it was reasoned that a school board could go into executive session during a regular board meeting to discuss questions pertaining to operation and policy of the school district so long as any final action taken by the board was taken in an open meeting.

In Attorney General Opinion No. 63-40 it was determined that the Merit System Council of the State Highway Department was not a "governing body" and therefore not subject to the Act since its recommendations were only advisory and primarily dealt with the employment and dismissal of employees.

In Attorney General Opinion No. 66-18 it was concluded that the Act requiring public meetings applied to the Indian Affairs Commission and all business transacted by that body.

Finally, in Attorney General Opinion No. 73-9, wide latitude was afforded the actions of the Board of Regents in executive session, permitting the Board to deal with personnel matters, hear reports from its staff, firm up its agenda, receive communications from its legal advisers, discuss contemplated actions and debate policy.

Apparently in response to Attorney General Opinion No. 73-9 the Legislature amended the 1962 Act by enacting Chapter 196, Laws 1974. That legislation amended the state's open meeting act by amending A.R.S. § 38-431 (definitions) by expanding the definition of governing bodies, and adding a definition of "legal action"; A.R.S. § 38-431.01 was amended to provide that governing bodies, except for subcommittees, must provide for the taking of written minutes of all their meetings; A.R.S. § 38-431.02 (nonapplicability to executive sessions) and A.R.S. § 38-431.05 (noneffectiveness on right to appeal) were repealed; a new A.R.S. § 38-431.02 was added providing for public notice of all meetings; A.R.S. §§ 38-431.03 and 38-431.04 were renumbered as A.R.S. §§ 38-431.04 and 38-431.05 respectively, and a new A.R.S. § 38-431.03 was added providing that the article should not be construed to prevent governing bodies, upon majority vote of the members constituting a quorum, from holding executive sessions for specified purposes. Finally, A.R.S. §§ 38-431.07 and 38-431.08 were added providing for equitable relief and exceptions respectively.

In 1975 the Legislature again amended the Act by expanding the minute taking requirements and allowing the use of recording devices (Chapter 48, Laws 1975) and by exempting from the Act conference committees of the Legislature (Chapter 71, Laws 1975). In exempting conference committees, however, the Legislature did provide that all such meetings "shall be open to the public". A.R.S. § 38-431.08, as amended Laws 1975.

The remainder of this opinion discusses the application and meaning of the Act, as amended. To the extent that prior opinions of this office are inconsistent with the Act as construed in this opinion, they are superseded.

QUESTION 1

Are state agencies which are supported solely by fees collected by the agency covered by the Act?

The scope of this question includes the so-called 90-10 agencies which are self-supporting and do not receive appropriations from the Legislature. The Game and Fish Commission and the Board of Medical Examiners are examples of such bodies. The question posed is whether the statutory definition of "governing bodies" includes 90-10 agencies which do not directly receive or expend general tax revenues.

"Governing bodies" are defined in A.R.S. § 38-431, as amended Laws 1974, as follows:

"Governing bodies" means the governing bodies of the state, political subdivisions, incorporated cities and towns, and all agencies, boards and commissions of the foregoing, or any committee or subcommittee thereof, which are supported in whole or in part by tax revenues or which expend tax revenues. (Emphasis supplied.)

The term "governing bodies" thus encompasses a wide range of public bodies, subject to the limitation that the governing body is supported in whole or in part by tax revenues, or expends tax revenues.

Under Arizona case law, there is a clear distinction between "tax revenues" and other types of public monies such as "fees" collected by a governing body. In Stewart v. Verde River Irrigation & Power Dist., 49 Ariz. 531, 68 P.2d 329 (1937), the Supreme Court of Arizona defined "tax" as being derived from the:

. . . mandate of the public authorities, without (the taxpayers) being consulted in regard to its necessity, or having any option as to its payment. The amount is not determined by any reference to the service which he receives from the government, but by his ability to pay, based on property or income.

A "fee" on the other hand, is a sum voluntarily paid by a taxpayer who has:

. . . asked a public officer to perform certain services for him, which presumably bestow upon him a benefit not shared by other members of society.

49 Ariz. at 545, 68 P.2d at 335.

Accordingly, agencies which are supported solely by "fees" are not subject to the Act. However, there are very few, if any, state agencies which are supported solely by fees. Although the so-called fee supported, or 90-10 agencies, derive their direct operating funds from the fees they collect as part of their regulatory activities, they obtain a wide variety of support services from other agencies which are tax supported. For example, the Division of Finance of the Department of Administration audits claims and issues warrants in payment thereof and performs most of the purchasing activities for fee supported agencies. The Personnel Division provides all personnel services to such agencies including supporting services in connection with the recruitment, hiring and promotion of employees of the agency. In addition, such agencies are entitled to use services offered by the Library, Archives and Public Records Division of the Department of Administration, some of which are not available to the general public, such as the Library Loan Service. Insurance coverage for state agencies, including the fee supported agencies, is obtained and administered by the Department of Administration. Although the agencies are billed for their proportionate share of the premiums for such insurance coverage, the risk management services that accompany this coverage are provided without cost to the agency. The State Auditor General provides accounting services to fee supported agencies and all funds collected and expended by such agencies are handled through the Office of the State Treasurer. Finally, legal services are generally provided by the Attorney General to fee supported agencies.

All of the aforementioned agencies which provide direct services to fee supported agencies are supported primarily by tax revenues appropriated each year by the Legislature from the general fund. In our opinion, the sum of these services add up to a significant nexus between tax revenues raised by the sovereign power of the state and the support of fee supported agencies. Put differently, it cannot be

said that these fee supported agencies are not supported at least in part by tax revenues. While it is true that with respect to the so-called 90-10 agencies, 10% of the fees collected by such agencies are deposited in the general fund ostensibly for the purpose of defraying the cost of supportive services provided to those agencies, this fact does not erase the connection between tax revenues and the support of 90-10 agencies. The figure of 10% is an arbitrary figure and has no bearing on the actual amount of supportive services provided to the 90-10 agencies. The 10% is deposited in the general fund and commingled with tax revenues. In many cases, the value of the supportive services provided such agencies may exceed the amount of fees transmitted to the general fund. Accordingly, it cannot be said that the supportive services described above are purchased with the 10% of fee revenues transmitted to the general fund.

In resolving the question of whether fee supported agencies are subject to the Open Meeting Act, we feel compelled to look to the legislative purpose underlying the Open Meeting Act. Generally speaking, it is not appropriate to construe a statute to fulfill legislative purposes where there is no ambiguity in the language used. Although it is clear what "tax revenues" is meant to include, we believe there is a definite ambiguity in what the Legislature intended when it required the governing body to be "supported in whole or in part" by such revenues. The ambiguity is whether or not supportive services funded by tax revenues which are provided to the agency qualify the agency as being "supported in part by tax revenues". We believe such agencies were intended to be included under the Act. The avowed purpose of the Act is to open state government to public scrutiny. See § 1, Ch. 138, Laws 1962. The need for such openness in government is no less compelling in the case of a fee supported agency than in the case of an agency supported wholly by appropriated tax revenues. Indeed, the distinction between the two is nothing more than the technical funding procedures which have been established for the agencies. Whenever there is an ambiguity or a close question of interpretation with respect to a statute, it should be resolved in light of the purposes of the state and the evil to be remedied. Sellinger v. Freeway Mobile Home Sales, Inc., 110 Ariz. 573, 521 P.2d 1119 (1974); State Board of Directors for Junior Colleges v. Nelson, 105 Ariz. 119, 460 P.2d 13 (1969);

Industrial Commission v. Harbor Insurance Company, 104 Ariz. 73, 449 P.2d 1 (1968). There can be no doubt in this case that in order to fulfill the purposes of the statute, we must construe the term "governing body" to include all fee supported agencies receiving the supportive services described above.

QUESTION 2

Are agencies under the direction of a single person covered by the Act?

It is our opinion that the Act applies only to multi-member bodies; more specifically, it applies only to bodies containing three or more members. This opinion is based primarily on the statutory definition of "proceedings" in A.R.S. § 38-431.3. "Proceedings" is the key word used in stating the legislative purpose behind the Open Meeting Act<sup>1/</sup> and in describing the type of governmental activities which must be conducted in the public view.<sup>2/</sup> "Proceedings" is defined as follows:

"Proceedings" means the transaction of any functions affecting citizens of this state by an administrative or legislative body of the state or of any of its counties or municipalities or other political subdivisions when such a body is composed of three or more members and is charged with

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<sup>1/</sup> "It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly." (Emphasis supplied.) § 1, Ch. 138, Laws 1962.

<sup>2/</sup> "§ 38-431.01. Meetings shall be open to the public  
A. All official meetings at which any legal action is taken by governing bodies shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.\* \* \*"  
(Emphasis supplied.)

the transaction of such functions under any statute or under any rule or regulation of such legislative or administrative body or agency. (Emphasis supplied.)

A.R.S. § 38-431.3, as amended Laws 1974.

This definition read together with the policy statement and A.R.S. § 38-431.01 demonstrate an intent by the Legislature that the Act apply only to bodies composed of three or more members. Further support for our opinion that the Act applies only to multi-member bodies can be found in the definition of "legal action". "Legal action" is defined as follows:

"Legal action" means a collective decision, commitment or promise made by a majority of the members of a governing body consistent with the constitution, charter or bylaws of such body, and the laws of this state. (Emphasis supplied.)

A.R.S. § 38-431.2, as amended Laws 1974.

Obviously, there can be no "collective decision, commitment or promise" made by a single individual. Likewise, since the deliberations of a single individual are essentially mental processes, the public cannot "listen" to such deliberations as required under A.R.S. § 38-431.01.A, as amended. Moreover, the Legislature, in describing "legal action" as the act of a "majority of the members" of a governing body, clearly contemplated multi-member bodies.

Accordingly, it is our opinion that single heads of agencies, during the course of conducting their official business in such capacity, are not "governing bodies" capable of taking "legal action" and therefore subject to the Arizona Open Meeting Act. However, it should be noted that the agency which is under the direction of a single person is not exempt from the Act. Only the single head of that agency is exempt to the extent noted above. It is entirely likely that these agencies will contain advisory councils or other bodies which fall within the definition of "governing bodies" and must therefore comply with the Act.

QUESTION 3

Are advisory groups covered by the Act?

In a case involving Washington School District No. 6, Judge Pickrell of the Superior Court ruled that the district's textbooks selection committee, an advisory body, was subject to the Open Meeting Act. That decision is now before the Supreme Court on a special action and a decision in that case by the Supreme Court should answer your question. Although the arguments in support of Judge Pickrell's decision are persuasive to us, we believe it inappropriate to render an opinion on a matter presently under consideration by the Supreme Court.

QUESTION 4

Are quasi-judicial proceedings  
of administrative agencies  
covered by the Act?

A.R.S. § 38-431.08 provides the following exception to the Arizona Open Meeting Act: "The provisions of this article shall not apply to any judicial proceeding or any political caucus."

The question posed is whether the foregoing language, exempting "any judicial proceeding" applies to contested case proceedings before administrative agencies which bear some resemblance to judicial proceedings in courts. Examples of such matters are rate hearings before the Corporation Commission, and licensing procedures before such bodies as the Board of Medical Examiners and the Board of Air Pollution Control. These proceedings are commonly referred to as quasi-judicial proceedings and the administrative agencies conducting such proceedings are sometimes referred to as quasi-judicial bodies.<sup>3/</sup> On the other hand, the term

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<sup>3/</sup> Batty v. Arizona State Dental Board, 57 Ariz. 239, 112 P.2d 870 (1941). See also Morgan v. United States, 298 U.S. 468, 480, 80 L.Ed. 1288, 1295, 56 S.Ct. 906 (1936); Williams v. Bankers National Insurance Co., 80 Ariz. 294, 302, 297 P.2d 344 (1956); Allen v. Graham, 8 Ariz.App. 336, 446 P.2d 240 (1968); 1 Am.Jur.2d, Administrative Law, § 138; 73 D.J.S., Public Administrative Bodies and Procedures, § 114; but see Kasalica v. Industrial Commission of Arizona, 65 Ariz. 28, 173 P.2d 636 (1946).

"judicial", whether used to describe a body or the functions conducted by the body, is generally used to refer to courts or proceedings before courts.

The Arizona Constitution provides in Article 6, § 1 that:

The judicial power shall be vested in an integrated judicial department consisting of a supreme court, such intermediate appellate courts as may be provided by law, a superior court, such courts inferior to the superior court as may be provided by law, and justice courts.

In discussing this constitutional provision, the Arizona Supreme Court has stated its understanding of the distinction between judicial and quasi-judicial as follows:

Courts frequently use the phrases "judicial" power and "quasi-judicial" power indiscriminately and inaccurately. We think that the vital difference between the two is that "judicial" power, strictly speaking, is vested only in a court. [Citations omitted.] When, however, the power to hear and determine whether a certain state of facts which requires the application of a law exists is committed to an administrative or executive officer, although the particular power may be identical with one which is also exercised by a court, it is, strictly speaking, not "judicial" but "quasi-judicial" power. [Citations omitted.] Batty v. Arizona State Dental Board, 57 Ariz. 239, 112 P.2d 870 (1941).

Of course the ultimate question sought to be answered is whether the Legislature intended in enacting A.R.S. § 38-431.08 to exempt from the Open Meeting Act those proceedings of administrative agencies which are quasi-judicial in nature. Since the Legislature chose the word "judicial" and did not include the readily available phrase "quasi-judicial", we are constrained to limit the exemption to strictly judicial proceedings in the absence of compelling reasons to the contrary.

The Washington and California legislatures have expressly exempted quasi-judicial proceedings of administrative agencies. The Washington Open Meeting Act specifically exempts meetings which relate to quasi-judicial matters. R.C.W. 42.30.140. See also Washington Attorney General Opinion, 1971, No. 33. The California Open Meeting Law also includes an express provision authorizing executive sessions for quasi-judicial determinations made by state administrative agencies after an evidentiary hearing. Calif. Gov. Code § 11126. The Arizona Legislature, however, did not specifically exempt quasi-judicial proceedings, determinations or matters. It exempted only "judicial proceedings" and we think the use of that term evidences a legislative intent to exclude only proceedings before the courts of this state and not proceedings, although "judicial" in nature, before administrative agencies.<sup>4/</sup>

A more fundamental challenge to the application of open meeting laws to quasi-judicial proceedings was raised and rejected in a well-known Florida case, Canney v. Board of Public Instruction, 278 So.2d 260 (1973). In that case, the school board had held closed deliberations following an open quasi-judicial hearing. The board contended that such deliberations, being judicial in nature, were subject to the separation of powers doctrine and could not be regulated by the legislature any more than the deliberations of a court. In our view, the Florida court's conclusion that open meeting policy as applied to the executive branch of

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<sup>4/</sup> An argument could be made that in determining the scope of the exemption for "judicial proceedings" one must refer to the definition in A.R.S. § 38-431 of the term "proceedings". Since that term is defined in A.R.S. § 38-431 as including the functions of only administrative and legislative bodies to the exclusion of courts, it might be argued that the Legislature must have intended in exempting "judicial proceedings" to exempt proceedings of administrative or legislative bodies which are judicial in nature. It should be noted, however, that the definition of "proceedings" in A.R.S. § 38-431 is preceded by the caveat "unless the context otherwise requires", and for the reasons discussed in the body of this opinion we think it clear that the context in which "proceedings" is used, i.e., modified by the term "judicial", necessitates the conclusion that the Legislature intended to exempt only proceedings before the courts of this state.

government is generally a matter of legislative discretion is correct. Thus, while a decisional body may be characterized as quasi-judicial or its activities may be characterized as quasi-judicial in nature, such characterization does not make the body a judicial tribunal, nor does it transform the proceedings before that decisional body into "judicial proceedings". Had the Arizona Legislature intended to exempt from the Act proceedings before administrative agencies which are judicial in nature, it could have done so explicitly by using the phrase "quasi-judicial".<sup>5/</sup> Unless and until this Legislature chooses to do so, it is our opinion that the Arizona Open Meeting Law contains no exemption for quasi-judicial bodies or proceedings.

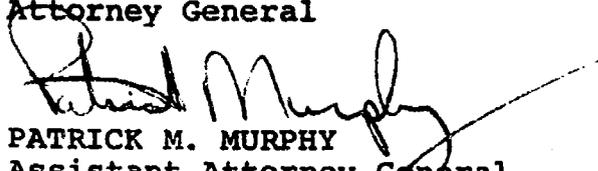
QUESTION 5

What type of notice is required under the Act for regular and special meetings?

This office has issued with this opinion a memorandum to all agencies which suggests guidelines for the agencies to follow in giving notice of public meetings under the Open Meeting Act. The memorandum reviews the applicable law and should be consulted for additional information.

Respectfully submitted,

BRUCE E. BABBITT  
Attorney General

  
PATRICK M. MURPHY  
Assistant Attorney General

PMM:lc

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<sup>5/</sup> Indeed, the Arizona Legislature in enacting a lobbyist registration and regulation act during the same session that it enacted the 1974 amendments to the Open Meeting Act, recognized the distinction between courts and quasi-judicial bodies by providing an exemption for "attorneys representing clients before any court or before any quasi-judicial body". A.R.S. § 41-1232.C. Moreover, the Arizona Legislature has, in other legislative enactments, used the phrase "judicial proceedings" to apply specifically to proceedings before the courts of this state. See, for example, A.R.S. §§ 38-520.A and 41-1010.1.

August 19, 1975

MEMORANDUM

TO: All State Agencies

FROM: Bruce E. Babbitt, Attorney General

RE: The Public Notice and Minute Taking Requirements Under Arizona's Open Meeting Act, as amended Laws 1975

Several questions have arisen as to the specific requirements imposed by Arizona's Open Meeting Act with respect to the giving of notice of public meetings. In addition, the Legislature, in its last regular session, amended the Open Meeting Act by including specific requirements with respect to the taking of minutes of public meetings. This memorandum is designed to clarify the public notice requirements imposed under the Act and to inform all state agencies of the recently enacted minute taking requirements.

If you have any questions regarding this memorandum, please call Roderick G. McDougall, Chief Counsel of the Civil Division at 271-3562.

PUBLIC NOTICE REQUIREMENTS

It has been stated that an "open meeting" is open only in theory if the public has no knowledge of the time and place at which it is to be held. 75 Harv.L. Rev. 1199 (1962). The right to attend and participate in an open meeting is contingent upon sufficient notice being given. Like other acts, Arizona's Open Meeting Act affords few statutory requirements for the mechanics of giving notice of meetings of governing bodies.

A.R.S. § 38-431.02, added Laws 1974, which sets forth the public notice requirements, provides as follows:

- A. Public notice of all regular meetings of governing bodies shall be given as follows:
  - 1. The state and its agencies, boards and commissions shall file a statement with the secretary of state stating where all

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notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

2. The counties and their agencies, boards and commissions, school districts, and other special districts shall file a statement with the clerk of the board of supervisors stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

3. The cities and towns and their agencies, boards and commissions shall file a statement with the city clerk or mayor's office stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

B. If an executive session only will be held, the notice shall be given to the members of the governing body, and to the general public, stating the specific provision of law authorizing the executive session.

C. Meetings other than regularly scheduled meetings shall not be held without at least twenty-four hours' notice to the members of the governing body and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances.

D. A meeting can be recessed and held with shorter notice if public notice is given as required in paragraph A of this section.

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The Open Meeting Act when originally enacted in 1962 made no specific provision for the giving of notice. While the requirements set forth in the 1974 amendments provide some guidelines, the particular mechanics of giving notice have not been set forth. Moreover, the language used in the 1974 amendments relating to notice is ambiguous, confusing and often contradictory. Without engaging in a long discussion of the many problems involved, we offer the following guidelines to be followed in complying with the notice requirements of A.R.S. § 38-431.02. Although an agency in following these guidelines will in some cases do more than required by the Act, it should never fall short of the Act's requirements. Being over-cautious is certainly justified, however, in view of the serious consequences for violating the Act. For example, a decision made in a meeting for which defective notice was given may likely be declared null and void by reason of A.R.S. § 38-431.05.

A. Statement to Secretary of State

Each state agency which is a governing body as defined in A.R.S. § 38-431 must file a statement with the Secretary of State stating where notices of all its meetings and the meetings of its committees or subcommittees will be posted. See Appendix A for a sample statement. The purpose of the statement is to provide information to the public regarding the place where it can find notices of the governing body's meetings. Generally, a governing body will post notices of its meetings directly outside the door to its offices or on a bulletin board in the lobby of the building in which the governing body's offices are located. Governing bodies which hold regular meetings on the same day of each month may post notices of such meetings by providing the information under the body's name in the building directory. For example, the directory listing in the lobby of the building might look as follows:

Arizona Accountancy Board      Room 202  
(Regular meetings every 2nd Monday of each month)

B. Regular Meetings

Regular meetings are generally those required to be conducted on a regular basis by statute and the dates of which are set by statute, rule, ordinance, resolution or

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custom. For each regular meeting, the governing body must post a Notice of Regular Meeting at the place described in the statement filed with the Secretary of State as described above. See Appendix B for a sample Notice of Regular Meeting. The posting of this notice must be done as far in advance of the regular meeting as is reasonable and in no event less than 24 hours prior to the meeting. In addition, the governing body must give additional notice as is reasonable under the circumstances. Several types of additional notices which might be given are described in Paragraph F below.

C. Special Meetings Other Than Emergency Meetings

Special meetings are all meetings other than regular meetings. For each special meeting, the governing body must post a Notice of Special Meeting at the place described in the statement filed with the Secretary of State. See Appendix C for a sample Notice of Special Meeting. The governing body should also give such additional notice as is reasonable under the circumstances. See Paragraph F below. This additional notice must include notice both to the general public and each member of the governing body. The several notices given, including the Notice of Special Meeting posted as described above, must be accomplished at least 24 hours prior to the time of the special meeting, except in the case of an emergency meeting covered under Paragraph D below.

D. Emergency Meetings

Emergency meetings are those special meetings in which the governing body is unable to give the required 24 hours notice. In the case of an actual emergency, the special meeting may be held "upon such notice as is appropriate to the circumstances". The nature of the notice required in emergency cases is obviously subject to a case by case analysis and cannot be specified by general rules. However, any relaxation or deviation in the normal manner of providing notice of meetings, either to the general public or to members of the governing body, must be carefully scrutinized and can be justified only for compelling practical limitations on the ability of the governing body to follow its normal notice procedures.

E. Executive Sessions

An executive session is nothing more than a meeting (regular or special) wherein the governing body is allowed under the Open Meeting Act to discuss and deliberate on matters in secret. See A.R.S. § 38-431.03. Separate notice need not be given of an executive session if it is held in conjunction with a properly noticed regular or special meeting. However, where only an executive session will be held, all notices of the meeting must state the specific provision of law authorizing the executive session, including a reference to the appropriate paragraph of Subsection A of A.R.S. § 38-431.03. See Appendix D for a sample Notice of Executive Session.

F. Additional Notice

In deciding what types of notice shall be given in addition to posting, governing bodies should consider the following:

1. Newspaper Publications

In many cases, notice of meetings can be disseminated by providing press releases to newspapers published in the area in which notice is to be given. In addition, paid legal notices in such newspapers may be purchased by the governing body.

2. Mailing List

Some bodies may wish to provide a mailing list whereby persons desiring to obtain notices of meetings may ask to be placed on a mailing list. All notices of meetings issued will then be mailed to those appearing on the current mailing list.

3. Articles or Notices in Professional or Business Publications

In addition, the governing body may obtain publication of articles or notices in those professional and business publications relating to the agency's field of regulation.

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It is not necessary that all of these types of notices be given. Indeed, merely providing notice through the use of a mailing list and by posting should be sufficient in most cases. Neither should the above listings be considered exclusive and, to the extent other forms of notice are reasonably available, they should be used.

#### REQUIREMENTS FOR TAKING WRITTEN MINUTES

The first requirement for taking written minutes of meetings of governing bodies was included in the Open Meeting Act by the Legislature in 1974. The 1974 amendment, however, provided very little detail as to what the minutes must include. The original minute taking requirement read as follows:

\* \* \*B. Governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their meetings. Such minutes shall be properly and accurately recorded as to all legal action taken and open to public inspection except as otherwise specifically provided by statute.

A.R.S. § 38-431.01.

In its last regular session, the Legislature amended this section to read in part as follows:

\* \* \*B. All governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their official meetings. Such minutes shall include, but not be limited to: (1) the day, time and place of the meeting, (2) the numbers of the governing body recorded as either present or absent, (3) an accurate description of all matters proposed, discussed or decided, and the names of members who proposed and seconded each motion.

C. The minutes or recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article. \* \* \*

A.R.S. § 38-431.01, as amended Laws 1975 (eff. 9/12/75).

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You should note that this section requires that the minutes or recording be open to public inspection, except as otherwise specifically provided by this article. The specific exception referred to is the provision in A.R.S. § 38-431.03 which provides that minutes of executive sessions shall be kept confidential.

BEB:PMM:lc

APPENDIX A - Statement to Secretary of State

STATEMENT OF WHERE ALL NOTICES  
OF THE MEETINGS OF THE  
ARIZONA BOARD OF REGENTS OR COMMITTEES  
OR SUBCOMMITTEES THEREOF WILL BE POSTED

TO: THE HONORABLE SECRETARY OF STATE  
and THE CITIZENS OF ARIZONA

Pursuant to A.R.S. § 38-431.02, the Arizona Board of Regents hereby states that all notices of the meetings of the Arizona Board of Regents and any of its committees and subcommittees will be posted in the offices of the Board located at 1535 West Jefferson, Phoenix, Arizona, which offices are open to the public from 8:00 A.M. to 5:00 P.M., Monday through Friday, except legal holidays, and at the press room of the State Senate Building, 1700 West Washington, Phoenix, Arizona. Such notice will indicate the time and place of the meeting and shall include or indicate the manner in which the public may obtain information concerning the Board's agenda for the meeting.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ARIZONA BOARD OF REGENTS

By \_\_\_\_\_

APPENDIX B - Notice of Regular Meeting of a Governing Body

NOTICE OF REGULAR MEETING

OF

ARIZONA BOARD OF REGENTS

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the general public that the Arizona Board of Regents will hold a regular meeting open to the public on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ .M. The meeting will be held at the following location: \_\_\_\_\_

Information concerning the Board's agenda for the meeting may be obtained by calling 271-4082.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ARIZONA BOARD OF REGENTS

By \_\_\_\_\_

APPENDIX C - Notice of Special Meeting of a Governing Body

NOTICE OF SPECIAL MEETING  
OF THE BUDGET COMMITTEE OF THE  
ARIZONA BOARD OF REGENTS

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Budget Committee of the Arizona Board of Regents and to the general public that the Budget Committee of the Arizona Board of Regents will hold a special meeting open to the public on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_ .M. The meeting will be held at the following location: \_\_\_\_\_

\_\_\_\_\_. Information concerning the Committee's agenda for the meeting may be obtained by calling 271-4082.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

ARIZONA BOARD OF REGENTS

By \_\_\_\_\_

APPENDIX D - Notice of Executive Session of a Governing Body

NOTICE OF EXECUTIVE SESSION  
OF THE  
ARIZONA BOARD OF REGENTS

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Arizona Board of Regents and to the general public that the Arizona Board of Regents will meet in executive session on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_, at \_\_\_\_\_ o'clock \_\_.M. The meeting will be held at the following location: \_\_\_\_\_

\_\_\_\_\_

This executive session is authorized under \_\_\_\_\_

\_\_\_\_\_.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

ARIZONA BOARD OF REGENTS

By \_\_\_\_\_