
Coates' Canons Blog: A Road Trip, a Parking Lot Conversation, and a Site Visit: Are These Illegal Meetings?

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A North Carolina county board of elections, which has three members, is scheduled to meet

with representatives of the State Board of Elections in Raleigh. May they legally travel together in one car to the meeting? Three members of a five-member town council are seen conversing in the parking lot after a board meeting. Are they violating the open meetings law? In connection with a pending economic development project, board members are invited to visit the site of an existing facility. If a majority of the board visits the site at the same time, have they violated the law? These are just a few examples of situations in which members of public boards or committees may find themselves in the same place at the same time. When does a gathering like that trigger the notice and access requirements under the open meetings law?

What's an Illegal Meeting?

An illegal meeting is one that is held without proper notice. In some cases, it may also include a meeting for which notice was given, but the location does not accommodate public attendance. We typically think about the open meetings law as requiring decisions and deliberations of public bodies to be held in the open, but the core legal requirements are the provision of notice and opportunity to attend. Here's a summary of the basic notice requirements for local governments:

Regular Meetings: File regular meeting schedule with the clerk.

Special Meetings: At least 48 hours before the meeting, post written notice on principal bulletin board or usual meeting room; post to the website, if the unit maintains one; mail, email, or deliver to media organizations and individuals who have filed written requests to receive notice.

Emergency Meetings: Immediately after notice is given to the members of the public body, provide notice to media organizations and individuals who have filed written requests to receive notice. Notice may be given by email, telephone, or the same method used to notify the members of the public body.

(See **G.S. 143-318.12.**)

For city and county governing boards, there is also a requirement for notice to the board members themselves. (See, **G.S. 160A-71, 153A-40.**)

What types of meetings trigger the notice requirement?

The open meetings law requires notice of "official meetings of public bodies." **G.S. 143-318.10.** Public bodies include elected and appointed boards, as well as committees established by public bodies. An official meeting occurs when a

majority of the public body gathers together or simultaneously communicates (for example, by telephone) to do any of the following things: *conduct hearings, participate in deliberations, vote, or otherwise transact the public business*. If a majority gathers or communicates together, but the meeting does not involve any of the things listed in the statute, no notice or opportunity for public access is required. Further, the law specifically provides that a social meeting or other informal “gathering together of the members of the public body does not constitute an official meeting unless called or held to evade the spirit and purposes of [the open meetings law].” **G.S. 143-318.10(d)**.

What if a majority shows up at the same place separately?

The definition of official meeting suggests a required element of intention. If three members of a five-member public body all turn up at a meeting or event without having planned to meet, assemble or gather there, no violation occurs. If they meet, assemble or gather and talk about board business once they arrive, or if they’ve planned in advance to attend, the outcome might be different. But if the matters discussed or observed at the gathering don’t involve public business the notice requirements do not apply.

Road trips, parking lot conversations, and site visits.

It should be clear from this brief overview of the law, that it’s impossible to know if a meeting is an illegal one if you don’t know what is being discussed. So a road trip or a parking lot conversation is not inherently illegal. Just gathering together doesn’t violate the law. If the members are standing around in the parking lot deciding where to go for beers after the meeting (or if they’re texting about that during the meeting), there is no requirement to provide public notice or an opportunity to observe that discussion. For these and other chance or planned gatherings, the key issue is whether public business is being discussed.

Gathering at a site visit presents a slightly different issue. Even if the members who are present at a site don’t interact, notice may nonetheless be required. The statute probably applies when a majority of the members are simply receiving information about public business as a group – even if they don’t talk about it. This appears to constitute the transaction of public business. As David Lawrence argues in his book **Open Meetings and Local Governments in North Carolina**, receiving information is part of the deliberative process.

How do we know what they’re talking about in the car or in the parking lot?

We don’t. We have to trust them. Just like we have to trust that when they meet in closed session, they will stick to topics about which they have authority to meet away from public view.

Should public officials avoid these situations?

This is a great question, but it raises an ethical, not a legal issue. Sometimes when a majority of a public body will be gathering together simultaneously, say for a meeting or training session, and they believe public business may be discussed, they err on the side of caution and provide notice. That’s a good and safe practice. It’s not practical, though, and may not be legally valid, if the meeting is held in place where the public cannot attend – like someone’s car, for example. To avoid even the suspicion of an improper meeting, members of public bodies may choose to simply avoid these types of gatherings. On the other hand, it’s pleasant and efficient to travel together on public business. It may even save the taxpayers money.

My point is this: some public officials and members of the public have the impression that it is simply illegal for a majority of the members of a public body to be together at the same place at the same time. That’s just not true. They can trust me on that. The question is, do they trust their public officials?

Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-318.12
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-71
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-40
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-318.10



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- www.sog.unc.edu/publications/books/open-meetings-and-local-governments-north-carolina-some-questions-and-answers-eighth-edition-2017