
Coates' Canons Blog: Airing Dirty Laundry in Public: Does the Law Require It?

By Frayda Bluestein

Article: <https://canons.sog.unc.edu/airing-dirty-laundry-in-public-does-the-law-require-it/>

This entry was posted on April 28, 2010 and is filed under [Open Government](#), [Open Meetings](#)



Members of elected and appointed boards often disagree with each other. That can be

considered to be a good thing – perhaps a sign that the board represents different points of view and reflects the various perspectives of its constituents. Sometimes, though, relations become strained. The disagreement becomes hostility and interferes with the board's effectiveness. In some cases there may be just one member – maybe even the presiding officer – who is perceived by others on the board as being difficult, or as abusing or exceeding his or her authority. If the situation gets bad enough, board members may feel the need to censure or otherwise publicly reprimand a member of the board. In any of these situations, whether the problem is general group dysfunction, or individual misbehavior, the board may want to take a time out, go into closed session, and either have it out, or work it out. Does the open meetings law require them to air their dirty laundry in public, or can they meet in closed session for this purpose?

In almost every case, board relations must be discussed in open session. Public bodies, as defined by the **open meetings law**, must conduct their business in open meetings, unless a specific provision of the law authorizes a closed session. There is no authority for board members to meet in closed session to discuss their working relationships, nor is there authority for closed sessions to discuss the performance or behavior of one or more of the board's individual members.

There is authority for closed sessions to evaluate and discuss the performance of an "individual public officer or employee" under **G.S. 143-318.11(6)**. However this subsection specifically says: "A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting" (emphasis added). This means that the board must meet in open session to discuss the behavior of one or more of its members, and to discuss or vote on a motion of censure or other statement of disapproval of one of its members.

Note that I said "in almost every case" this must be done in open session. The only possible situation I can envision for which a closed session might be authorized, would be one in which the board wishes to confer with its attorney, for example, about what options they might have for dealing with errant board members, or to seek clarification on the legal authority of the presiding officer or other individual board members. For such consultations, the authority in **G.S. 143-318.11(3)** provides authority for a closed session. It would be necessary, however, for there to be an actual need for such legal consultation. It would not be sufficient to simply include the attorney in the meeting in order for the closed session to be authorized.

One final point: the exception in **143-318.11(6)** also provides authority to "hear or investigate a complaint, charge or grievance by or against an individual public officer" (presumably, including a member of the body itself) in closed session – but after hearing and investigating such a complaint, any discussion among the board members, and any final decision about how to respond to the complaint would have to occur in open session.



Links

- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.10.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.11.html