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## Coates' Canons Blog: Board Members at Candidate Forums: Does the Open Meetings Law Apply?

By Frayda Bluestein

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Three members of a five-member city council are up for reelection. They attend multiple candidate events, including candidate forums. The Chamber of Commerce and League of Women Voters sponsor forums for candidates that are open to the public. A neighborhood and other private groups or organizations invite candidates to forums open only to their members. If all three incumbent board members attend and participate in a candidate forum, does the open meetings law *require* it to be open to the public? What if the three candidates meet privately to discuss running as a slate, and agree upon a platform? Would this violate the open meetings law?

No North Carolina cases address political activities of sitting board members. Cases from other states suggest that the open meetings law would not apply to political gatherings that do not involve the transaction of public business.

While candidates for elective office generally seek the broadest possible access to the public, they may also choose to meet privately with donors or specific interest groups. For members of local government boards in North Carolina, the open meetings law becomes an issue when incumbent board members who constitute a majority of their board participate in political events that are not open to the public. Media representatives and others who are excluded often assert that a gathering of a majority of the board to talk about city matters triggers the notice and access requirements under the open meetings law.

The North Carolina open meetings law applies to official meetings of public bodies. G.S. 143-318.10(a). The candidate forum raises the question of whether a gathering for political campaign purposes meets the definition of an "official meeting" under the law. That definition is:

"[A] meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body *for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body.* However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article." G.S. 143-318.10(d) (emphasis added).

At the closed campaign event, are the three board-member candidates deliberating or transacting public business, or are they, instead, engaged in their own private purpose of running for office? It is certainly likely that they will discuss matters that have or will come before them as council members, but in the context of a campaign. Although incumbents have dual roles as candidates and sitting board members, it seems possible to recognize a distinction between campaigning and transacting the official city business.

Courts in other states have recognized that a gathering that includes a majority of a board does not always constitute a meeting, even when it involves public issues. An Illinois case rejected a claim that attendance by the entire school board at a political event constituted a meeting, where the facts did not indicate that they deliberated or otherwise engaged with each other regarding school board matters. The court's reasoning, excerpted below, supports that idea that the purpose and context of the gathering can make a difference.

"There was no examining or weighing of reasons for or against a course of action, no exchange of facts preliminary to a decision, no attempt to reach accord on a specific matter of school district business. Instead, the evidence shows that the participants' discussions were exclusively political in nature. This Court is wary of a finding that candidate's political rhetoric must be devoid of reference to the actions of the body to which they seek election at the peril of rendering them

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subject to the penalties of an open meetings statute. Such a holding would greatly interfere with the ability of the electorate to make informed choices among candidates. Since all members of the District 89 school board were present at this event, it might be argued that the gathering *could* have risen to the standard of a 'meeting.' However, the defendants' evidence shows that *it did not.*" *Nabhani v. Coglianese*, 552 F. Supp. 657, 661 (N.D. Ill. 1982).

If a North Carolina court adopted this reasoning, it would conclude that incumbents do not violate the statute simply by participating in a forum at which they discuss their views, beliefs, promises, accomplishments, and virtues as candidates, even with respect to current and future issues that face the board. As the Illinois court observed, such meetings could easily cross the line. So board members must be careful to stick to their independent campaign purposes and should avoid interactions that might constitute deliberation or other collective transaction of city business.

As the Illinois court notes, the fact that the discussion involves issues that may or have come before the board can't be the deciding factor or else the open meetings law would apply to every candidate debate or other political event that includes all candidates responding to questions about the relevant issues facing the city. As noted by a Virginia court, that state's law "shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth." *Beck v. Shelton*, 267 Va. 482, 493 (Va. 2004). Virginia's FOIA provision explicitly recognizes the distinction between transacting the public business and engaging with citizens at various types of functions. The law does not apply to meetings "at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting." Va. Code § 2.2-3707(G).

North Carolina's statute does not explicitly address or exempt campaign-related gatherings. The language in the Virginia exception, however, supports the notion that elected officials can participate in these types of meeting and even discuss public business, without being involved in transacting the business of the public entity. As such, it would be reasonable for a North Carolina court to interpret such meetings as being outside the scope of our open meetings law, simply because they do not involve any of the activities included in the definition of an official meeting.

What about a majority of a board that meets to develop a platform and run as a slate? Even though such deliberations are for a political purpose, the setting and context make for a much more difficult analysis. The argument for recognizing the dual roles of board member and candidate may still apply, but it's difficult to imagine how positions on very specific matters could be developed without the candidates deliberating as a group and reaching consensus. Unlike the individual candidate interaction with citizens at forums or debates, this activity involves deliberation among board member candidates. Perhaps it's possible for board members to develop a slate based on broad policy positions as opposed to specific issues, but even then, the need for deliberation and discussion to reach consensus as a group may simply be too difficult to distinguish from the transaction of public business.

But how do we know what's really happening in the closed forum or the meeting of the slate of candidates? As I pointed out in this blog post about road trips and parking lot conversations, we may just have to trust that the candidates are staying within their roles as candidates. And the candidates will have to make their own judgments about whether to participate in private events or collective campaign platforms.

## Links

- [www.ncga.state.nc.us/gascrpts/statutes/statutelookup.pl?statute=143-318.10](http://www.ncga.state.nc.us/gascrpts/statutes/statutelookup.pl?statute=143-318.10)
- [canons.sog.unc.edu/?p=6623](https://canons.sog.unc.edu/?p=6623)