



BULLETIN

LOCAL GOVERNMENT LAW BULLETIN

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NOTICE REQUIREMENTS OF THE OPEN-MEETINGS LAW

David M. Lawrence

The 1978 legislature adopted amendments to the North Carolina open-meetings law, effective October 1, 1978, which redefine the coverage of the law and add a requirement of public notice of official meetings. Beginning October 1, the law will cover all "public bodies," a new term defined in the amendments. Each county and city government will probably include a number of public bodies, most of which will look to the county or city attorney for guidance in meeting the new notice requirements of the law. (The requirements are codified as new G.S. 143-318.8.) The purpose of this Local Government Law Bulletin is to assist county and city attorneys as they provide that guidance. Further questions about this bulletin or the amendments should be addressed to David M. Lawrence at the Institute.

NOTICE OF REGULAR MEETINGS

If a public body has adopted a schedule of regular meetings, it satisfies the notice requirements for those meetings by filing a copy of the schedule in a central location. For each public body that is a part of county government, that central location is with the clerk to the board of commissioners. For each public body that is a part of city government, that location is with the city clerk. A first step, then, is to determine what are public bodies that are "part of a county [or city] government."

"Public body" is defined in rewritten G.S. 143-318.2(b). The definition has two significant features: the power or powers exercised by a group, and the manner of its establishment. First, a public body must exercise or be authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. Obviously that is a broad, inclusive list. Second, and this is the limiting part of the definition, the group must have been established in one of five listed ways:

- 1) By the State Constitution;
- 2) By an act or resolution of the General Assembly;
- 3) By a state agency, pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation;
- 4) By action of the governing board of a county, city, or other local government;

- 5) By executive order of the Governor or action of the head of a state department or division.

For local public bodies, the second and fourth methods of establishment are most likely to be used.

The open-meetings law amendments do not specify what is necessary for a public body to be a part of county or city government. Among the factors that seem to me to be relevant, however, are the following:

- Establishment of the body by the county commissioners or city council.
- Appointment of the body's members by the county commissioners or city council.
- Inclusion of the public body in the county's or city's budget.
- Use by the public body of staff services of the county or city.
- Reliance by the public body on the county or city attorney for legal advice.

Using these criteria, I have compiled the following lists of public bodies that seem to me to be part of a county or city government. Each of these bodies exists pursuant to the General Statutes. Therefore, each county or city attorney should also review the local acts applicable to the county or city and the governing board's ordinances to identify any other local boards that are (1) public bodies and (2) part of the county or city government.

Public Bodies Found in Both County and City Governments

Air pollution control boards (143-215.112)
Airport authorities, boards, and commissions (63-53 and local acts)
Community appearance commissions (160A-451)
Economic development commissions (158-8)
Election boards (163-30 and 163-280)
Historic district commissions (160A-396)
Historic properties commissions (160A-399.2)
Hospital boards (Ch. 130 and local acts)
Human relations boards and commissions (160A-492)
Library boards of trustees (153A-265)
Manpower boards and commissions (160A-492)
Parks and recreation boards and commissions (160A-354)
Planning boards and commissions (153A-321 and 160A-361)
Transportation authorities (160-496.3)
Water safety committees (75A-26)
Zoning boards of adjustment (153A-345 and 160A-388)

Public Bodies Found in County Government

Boards of county commissioners
Ambulance commissions (153A-250)
Boards of equalization and review (105-322 and local acts)
Boards of health (130-13)
Industrial facilities and pollution control financing authorities (159C-4)
Jury commissions (9-1)

Mental health boards in single-county area mental health programs (122-35.39)
Boards of social services (108-7)

Public Bodies Found in City Government

City councils
Cemetery trustees (160A-349.1)
Firemen's relief fund trustees (118-6)
Parking authorities (160-477)

In addition, any committee of a public body is itself a public body, and the committee must also comply with the notice requirements of the statute.

Finally, there is a small group of public bodies that are clearly related to particular counties or cities but frequently considered as separate from county or city government. Although these bodies are established or appointed by a board of county commissioners or a city council, they are separate corporate bodies and usually handle their own budgeting and financial administration and retain their own counsel. Each of these bodies should reach an understanding with the appropriate county or city as to whether the body is part of the county or city government for purposes of the open-meetings law. The bodies are:

A.B.C. boards (18A-16 for counties, local acts for cities)
Hospital authorities (131-93)
Housing authorities (157-4)
Redevelopment commissions (160A-504)

NOTICE OF SPECIAL MEETINGS

If a meeting is held at a time or place other than the time and place shown on the filed regular meeting schedule, it is a special meeting and special notice is required. At least 48 hours before the meeting, notice of the meeting must be (1) posted, either on the public body's principal bulletin board or at the door of its usual meeting room, and (2) mailed or delivered to each news medium that has asked for special meeting notice. (In many states, such a list of news media is called a "sunshine list," and I will follow that practice here.) News media that wish to receive notice of special meetings must apply to the public body's clerk or secretary or to some other person designated by the body. The public body may require an annual renewal of the request and may charge each requesting news medium up to \$10 a year to cover the costs of providing notice. Although the statute indicates that each public body is to decide whether annual renewal of requests are required and whether a fee is charged, it seems appropriate for a board of county commissioners or city council, should it wish to, to set a uniform policy for all public bodies that are part of county or city government.

Given these requirements, the following steps should be taken before October 1.

- I. Each board of county commissioners and city council should decide whether to adopt a uniform policy--applying to all public bodies in county or city government--regarding annual renewals and charges for inclusion on the sunshine list; and if so, what the policy should be.

- II. Each public body should decide:
 1. Who should receive requests for inclusion on its sunshine list.
 2. Who is to post and mail or deliver notices of its special meetings.
 3. Where special meeting notices will be posted.
 4. If the commissioners or council have not adopted a uniform policy,
 - a. whether sunshine list requests must be renewed annually; and
 - b. whether news media will be charged for inclusion on the sunshine list, and if so, how much.

NOTICE OF EMERGENCY MEETINGS

A public body may hold a meeting on less than 48 hours' notice "because of generally unexpected circumstances that require immediate consideration by the public body." Notice of an emergency meeting must be given, either by phone or by the same means used to notify the body's members, to each "local" news medium on an emergency-meeting sunshine list. (The special-meeting sunshine list is not limited to local news media.) There is no express authority to require annual renewals of requests to be on the emergency sunshine list. However, the statute does direct that the notice "be given at the expense of the party notified."

Presumably, the same person who receives requests for inclusion on the special-meeting sunshine list will receive requests for inclusion on the emergency-meeting list. Similarly, the same person who posts and mails notice of special meetings presumably will give notice of emergency meetings.

One other step that public bodies may want to consider regarding emergency meeting notice is to work out a definition of "local" news media. There is none in the statute. A board of county commissioners or city council could appropriately adopt a definition applicable to all county or city public bodies. If it does not do so, any public body could produce such a definition if it wished.