

Public Meetings Law Decision in Lane County

Dumdi v. Handy

At the April 1, 2011 OCCA Board Forum we discussed the recent Oregon Circuit Court decision in a case involving violations of Oregon public meetings law by several Lane County Commissioners. Circuit Court Judge Michael Gillespie's ruling in the case is specific to the facts of this case; however, it does raise broader implications relating to email use and conversations between board members that serve as important reminders of what is required by Oregon's public meetings law.

Oregon's public meetings law requires the governing bodies of public bodies to deliberate and make decisions in the open. This includes meetings where the sole purpose is to gather information that may be used later to make a decision. Generally, the Oregon law applies to meetings of a governing body "for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter." For community college boards, a quorum is four board members. Meetings that fall under the public meetings law must be open to the public and must meet the notice requirements of the statute unless there is a specific exception provided (e.g. executive sessions).

Can a "meeting" occur through email communications? Prior to this case, no Oregon court has ruled on whether a conversation occurring between board members via email is a public meeting subject to the requirements of the public meetings law. In his opinion, Judge Gillespie concludes that email is a form of "electronic communication" falling within the definition of a form of deliberation that can be used in the conduct of a meeting. While the judge did not rule that email communications between commissioners in this case constituted a "meeting" for purposes of the law's requirements, this conclusion could be applied in future cases to find a violation of the law occurred as the result of a conversation that took place through an email exchange between board members. As a result, OCCA continues to advise board members to avoid clicking "reply" when information is shared via email. The one-way sharing of information and responses to administrative questions such as meeting availability are permitted, but back and forth conversations between board members through email should be avoided.

Do "serial conversations" between board members constitute a meeting? Judge Gillespie ruled that the commissioners involved in this case violated public meetings law through a series of private conversations that were held between the time an item had been "proposed" for the commissioners' consideration and the scheduled public meeting where the commissioners deliberated on the matter, even though quorum of the board was not present when the "serial" conversations occurred. The judge found the series of conversations violated the law because they were used to determine the outcome of the meeting and to avoid any public discussion during the public meeting. The take-away for community college board members is that you should avoid conversations between board members where the views of a quorum of board members are shared. One-on-one conversations between board members are still likely permissible as long as the views or thoughts of other board members are not

shared during those conversations. Thoughts and discussions on matters on which the board is deliberating should be aired in the course of the public meeting as required by statute.

Since our discussion last week, the parties in the case met and reached a settlement agreement. While Judge Gillespie must approve the settlement, it appears that as a result of the agreement, no appeal will be filed. The county will be found in violation of public meetings law around the time of the Commission's December 2009 meeting. In addition, none of the parties will admit fault, liability or wrongdoing, and the county will pay most of the attorney's fees. Two of the commissioners will be required to pay \$20,000 each over the next three years for attorney's fees that were expended in their defense. The finding of "willful misconduct" by the two commissioners will be withdrawn.

A copy of Judge Gillespie's decision can be accessed through this link:

<http://special.registerguard.com/documents/26294-dumdi-handy-decision-2011-01-18.html>

Please feel free to contact Karen Smith at ksmith@occa17.com or 503-399-9912 if you have questions about this case or the requirements of Oregon's public meetings law.