

Library Boards and the Open Public Meetings Act

1

New Jersey Library Trustees Assn.

July 28, 2021

Disclaimer

- ▶ The materials and information provided in this presentation are for informational purposes and do not constitute legal advice.
- ▶ Participation in this seminar does not create an attorney-client relationship.
- ▶ You should contact your attorney to obtain advice with respect to any particular issue or problem.

Open Public Meetings Act

Public Policy

- ▶ Public has the right to
 - ▶ adequate advance notice of meetings
 - ▶ attend all meetings of public bodies

Non-Emergency Notice Requirements – “Adequate Public Notice”

- ▶ What:
 - ▶ Date, time, location & agenda (to extent known)
- ▶ When:
 - ▶ At least 48 hours in advance
- ▶ How:
 - ▶ Posted in a prominent location
 - ▶ Provided to at least 2 newspapers
 - ▶ Filed with the municipal/county clerk
 - ▶ May post it on-line but this is not a substitute for above

Annual Meeting Notice

- ▶ In lieu of notice for each regular meeting,
 - ▶ Board can adopt a meeting schedule at its annual (aka reorganization) meeting
 - ▶ Must provide notice of that schedule as above except no need to include agenda
- ▶ This annual meeting notice is “adequate public notice”

Quorum/Compliance Statement

- What is a Quorum?
 - Majority of the board and
 - Necessary to conduct any business
- At the start of every meeting, the chair must announce that adequate notice of the meeting has been provided, specifying the time, place, and manner of the notice. This statement must be entered in the meeting minutes

Minutes

- ▶ Minutes
 - ▶ Must contain the time, date and place of meeting, the members present, the subjects considered, the actions taken, the vote of each member
 - ▶ Public session minutes must be made promptly available to the public
 - ▶ Must keep minutes of closed sessions

Circumvention Prohibited

- No person or public body shall fail to invite a portion of its members to a meeting for the purpose of circumventing the provisions of the Act.
 - No revolving door committee meetings

Executive Session

- How:
 - Must adopt a resolution stating general nature of the matters to be discussed and the time and circumstances under which the matters discussed can be made public
- Why: Board may meet in closed session to discuss
 - Litigation – pending or anticipated
 - Attorney Client Privilege
 - Contract Negotiations
 - Negotiation of Collective Bargaining Agreements
 - Personnel Matters – Rice Notice

Executive Session

- Rice Notice – notifies employee(s) that the board will be discussing hiring, promotion, evaluation, disciplining, or terms and conditions of employment of the employee(s) in closed session unless the employee(s) affected ask that the matter be discussed in public
- Play it safe and always give Rice notice when the board may consider action regarding employee(s).

Cannot take official action in closed session but you may take a straw poll

Emergency Meetings

- ▶ When the board must meet and cannot provide 48 hours notice
- ▶ At beginning of the meeting, Board must adopt, by affirmative vote of 3/4 of the members attending, a resolution stating that the subject of the meeting was so urgent that a delay in meeting to provide adequate notice would likely result in substantial harm.
- ▶ Meeting is limited to action on the urgent matter
- ▶ Must provide notice of the meeting as soon as possible thereafter

Enforcement-Penalties

- ▶ Court order to ensure compliance with the Act
- ▶ Knowing violations –
 - ▶ Civil penalty of \$100 for 1st offense; \$100-\$500 for 2+ offense
- ▶ If a trustee believes that a board meeting is being held in violation of OPMA, he/she shall immediately state this at the meeting with specific reasons which shall be recorded in the minutes of that meeting. If a trustee's objections to the meeting are overruled by the majority of those present, such a member may continue to participate at such meeting without penalty.

State of Emergency Rules N.J.A.C. 5:39-1.1 et seq.

Library may hold a remote public meeting to conduct public business during a declared emergency if the emergency reasonably prevents a local public body from safely conducting public business at a physical location with members of the public present.

State of Emergency Rules

N.J.A.C. 5:39-1.1 et seq.

- “Declared emergency” means a public health emergency, pursuant to the “Emergency Health Powers Act,” N.J.S.A. 26:13-1 et seq., or a state of emergency, pursuant to P.L.1942, c.251 (C.App.A.9-33 et seq.), or a state of local disaster emergency which has been declared by the Governor and is in effect.
- “Remote public meeting” means a public meeting that is conducted by any means of electronic communication equipment permitted per regulation.

Remote Meetings during Declared Emergency

- ▶ During a declared emergency, a remote meeting can be held if the emergency reasonably prevents a local public body from safely conducting public business at a physical location with members of the public present.
- ▶ Capacity on the platform should be consistent with the reasonable expectation of the public body for public meetings of the type being held and shall not be limited to fewer than 50 public participants (beyond those persons required to conduct business at the meeting).

Methods of Holding Remote Meeting

- ▶ Library must use a technology that is routinely used in academic, business, and professional settings, and can be accessed by the public at no cost.
 1. Audio-only teleconferencing
 2. Electronic communications platforms with video and audio
 3. Internet-accessible technology, such as live-streaming.
- ▶ If using #2 or 3, a telephonic conference line shall be also be provided to allow members of the public to dial-in by telephone to listen and provide public comment.

Attendance by Electronic Means

General Rules

- Trustee may not attend a meeting via email, text messaging or the like.
- In order to be able to participate and vote at a meeting, a Trustee attending via electronic means must have the ability to review all documents and presentations which are being considered at the meeting as well as the opportunity for simultaneous aural communications among all participating Trustees.

Notice Requirements

- Adequate notice of a remote public meeting must include clear and concise instructions for accessing the remote public meeting, the means for making public comment, and where relevant documents, if any, will be made available.
- The Library must also provide electronic notice of a remote public meeting and shall be posted on the Library's website
- Must post notice on door to the main entrance of the meeting site and handicap entrance.

Notice Requirements

► If during a declared emergency the Library only provides electronic notice of a remote public meeting and does not give adequate public notice, the Library may only conduct public business on those matters:

1. Necessary for the continuing operation of the library that is related to the declared emergency;
2. Required due to imminent time constraints

Revised Annual Notice

If Library has previously provided annual meeting notice and later must conduct remote meetings, the annual notice shall be revised at least seven days prior to the next regularly scheduled meeting, indicating which meetings will be held remotely and shall contain clear instructions for accessing those remote meetings, the means for making public comment, and where relevant documents, if any, will be made available.

Revised Annual Notice

The revised annual notice shall be posted on the Library's website and posted on the doors of the main public entrance to the building where the public would routinely attend meetings held by the Library and any designated handicap-accessible entrance. These notices must be viewable from the outside.

Public Access to Remote Meetings

- Public must have similar access to a remote public meeting as members and staff of the Library.
- For example - If a remote public meeting is held by audio and video, the public must also be able to participate in both audio and video capacities.
- A Library board meeting held in-person may not prohibit members of the public from attending in person.

Availability of Documents

Documents and presentations that would otherwise be viewed or made available to members of the public physically attending a Library board meeting must be visible on a video broadcast of the remote meeting or made available on the Library's website.

Public Comment during Remote Meeting

- By resolution, the Library must establish procedures for public comment.
- At the beginning of the meeting the chair must announce those procedures and an explanation of the audio muting function of the electronic communications platform.
- The resolution must contain the following procedures:

Public Comment during Remote Meeting

- ▶ A disruptive member of the public will be muted and warned that continued disruption may result in their being prevented from speaking or removed. Disruptive conduct includes shouting, interruption, and use of profanity;
- ▶ If an individual continues to be disruptive after the initial warning, he/she may be muted while public comment continues. If time permits, the disruptive individual shall be allowed to speak after all others have been given the opportunity to make their comment. Should the person remain disruptive, the individual may be muted or kept on mute for the remainder of the remote public meeting or removed from the remote public meeting.

Public Comment during Remote Meeting

- The Library may require members of the public to state, prior to providing public comment, whether they wish to speak and to identify themselves prior to speaking.
- Must allow members of the public to make public comment by audio, or by audio and video, if the remote public meeting is held over both audio and video, during the meeting.
- In advance of the remote public meeting, the Library must allow public comments to be submitted by e-mail and in written letter form by a reasonable deadline.

Public Comment during Remote Meeting

- May accept text-based public comment.
- Public comments submitted before the remote meeting shall be read aloud.
- If the Library imposes a reasonable time limit on public comments, the same limits can be placed on the reading of written comments.
- May pass over duplicate written comments but note and summarize each duplicate comment for the record.

Public Comment during Remote Meeting

- May not summarize certain duplicative comments while reading others.
- Must be able to mute the audio of all members of the public and allow the public to mute themselves.
- Library must be able to regulate participation by individual members of the public.
- A telephonic audio conference call line must have a queueing or similar function for regulating public comment.

Tech Requirements

- See N.J.A.C. 5:39-1.4(i) for the technical requirements for platforms used to host remote meetings.
- If the board goes into executive or closed session it shall ensure that audio or video of the session cannot be accessed, except by those individuals that are participating in the session. A separate non-public conference line or e-platform session may be employed for this purpose.

Post Covid Meeting

- Once the state of emergency is over, boards will have to resume in person, face-to-face meetings.
- However, some trustees may participate remotely via phone or Zoom/Webex/Teams, etc. if the Board amends its bylaws.
- Trustees not physically present must be able to hear all trustees attending the meeting and all trustees attending the meeting must be able to hear those trustees who are attending remotely

Post Covid Meeting

- Trustees attending remotely must be able to see all presentations and documents that are available to those trustees attending in person.
- If you want to allow the public to participate remotely as well as face to face, notice of a meeting must include an adequate description of how to view/listen and participate.

Sample Bylaw Provision

- Electronic Attendance. Trustees shall make every effort to physically attend each meeting of the Board of Trustees. In the event a Trustee cannot physically attend a meeting for a legitimate cause, a Trustee may attend a meeting via electronic means such as, but not limited to, [*telephone, Zoom, etc.*], however a Trustee may not attend a meeting via email, text messaging or the like. In order to be able to participate and vote at a meeting, a Trustee attending via electronic means must have the ability to review all documents and presentations which are being considered at the meeting as well as the opportunity for simultaneous aural communications among all participating Trustees.

Questions

- When a board is meeting virtually, do the cameras have to be on for all board members, or is audio only sufficient?
 - The regulations only require a person to appear via video when giving sworn testimony. Otherwise, the option is to have audio only or audio and video.
- Do virtual board meetings have to be recorded?
 - NO, BUT if you do record as a matter of course and maintain the recording, it will be a public record under OPRA.

Questions

- ▶ Does the recorded meeting need to be posted for later public viewing?
 - ▶ There is no requirement to post the recorded meeting.
- ▶ Do board members need to give permission for recording?
 - ▶ No. Note that *Per Tarus v. Pine Hill*, subject to reasonable restrictions, a member of the public can record a meeting.

Questions

- ▶ If members of the public are at the meeting, do they need to give permission to be recorded?

- ▶ No, but to be on safe side before you start recording Zoom provides the following:

By continuing to be in the meeting, you are consenting to be recorded



Michael A. Cerone, Jr., Esq.
1360 Clifton Avenue #288
Clifton, NJ 07012
Phone - 973 778 1601
Email - MACJRESQ@VERIZON.NET