

To: Debra K. Davenport

May 2, 2000

**Re: Applicability of Open Meeting Law to
Corporate Board of Directors of a
Charter School Operator**

Auditor General

**I00-009
R99-013**

Question Presented

Your predecessor asked under what circumstances, if any, the Open Meeting Law applies to a corporate board of directors of a charter school operator.

Summary Answers

Because Arizona's Open Meeting Law applies to a charter school governing board, the Open Meeting Law applies to a meeting of a charter school operator's corporate board of directors if (1) a quorum of the charter school governing board is present, and (2) there is discussion about matters that could foreseeably come to a vote before the charter school governing board.

Background

The Legislature created charter schools in 1994 as an alternative to traditional public schools. 1994 Ariz. Sess. Laws, 9th Special Session, ch. 2. The State Board of Education, the State Board for Charter Schools, and any school district governing board may sponsor a charter school by contracting with "a public body, private person or private organization." A.R.S. §§ 15-183(B), (C). The laws authorizing charter schools do not limit the type of private organization that may operate a charter school, and many charter schools are operated by corporations with boards of directors.

School district governing boards oversee traditional public schools. See Ariz. Const. art. XI, § 2. Similarly, the charter school laws require that the "charter" entered into between the sponsoring public agency and the operator of the school ensure that there will be "a governing body for the charter school that is responsible for the policy and operational decisions of the charter school." A.R.S. § 15-183(E)(8).⁽¹⁾ These charter school governing boards are public bodies subject to the Opening Meeting Law, A.R.S. §§ 38-431 to -431.09. Ariz. Att'y Gen. Op. I95-10.

Analysis

Arizona's Open Meeting Law requires that public bodies conduct their business in public meetings. See A.R.S. §§ 38-431.01, -431.09. Because the Open Meeting Law applies only to meetings of public bodies, the issue here is whether a meeting of a corporate board of a charter school operator is ever a meeting of a public body.

Generally, a corporate board is not a "public body" under the Open Meeting Law. See *Prescott Newspapers, Inc. v. Yavapai Community Hosp. Ass'n*, 163 Ariz. 33, 38, 785 P.2d 1221, 1226 (App. 1989) (holding that a non-profit hospital association was not a public body subject to the Open Meeting Law). Therefore, normally a meeting of a corporate board of a charter school operator is not subject to the Open Meeting Law.

However, even though a private corporate board is not a public body subject to the Open

Meeting Law, the charter school governing board is. See Ariz. Att'y Gen. Op. I95-10. Therefore, if a corporate board meeting is, for the purposes of the Open Meeting Law, a meeting of the charter school governing board, the Open Meeting Law applies.

Under the Open Meeting Law, a "meeting" is "the gathering of a quorum of members of a public body to propose or take legal action, including any deliberations with respect to such action." A.R.S. § 38-431(3). In 1975, this Office concluded that "legal action" subject to the Open Meeting Law includes "all discussions, deliberations, considerations or consultations among a majority of the members of a governing body regarding matters which may foreseeably require final action or a final decision of the governing body." Ariz. Att'y Gen. Op. 75-8. The court of appeals has expressly approved this broad definition of legal action for issues that are not the subject of an executive session. *Valencia v. Cota*, 126 Ariz. 555, 556-57, 617 P.2d 63, 64-5 (App.1980). Because the Open Meeting Law applies to all discussions by a quorum of a public body on matters that may ultimately come to a vote before that body, "the substance of the matters discussed and not the label given to the meeting or its location" determine whether the Open Meeting Law applies to a gathering of members of a public body. Ariz. Att'y Gen. Op. I79-4.

For these reasons, because the charter school governing board is a public body, the Open Meeting Law applies to all discussions among a quorum of a charter school governing board of matters "that foreseeably could come to a vote" by the charter school governing board -- no matter where these discussions occur and what the gathering is labeled. See *Valencia*, 126 Ariz. at 556-57, 617 P.2d at 64-5; Ariz. Att'y Gen. Op. 75-8. The scope of what may foreseeably come to a vote before the charter school governing board is found in A.R.S. § 15-183(E)(8), which gives the charter school governing board jurisdiction over all matters regarding "the policy and operational decisions of the charter school."

Therefore, if a quorum of a charter school governing board discusses charter school business at a corporate board meeting, that portion of the corporate board meeting is subject to the Open Meeting Law. Even if charter school governing board members are also members of the charter school operator's corporate board, they must comply with the Open Meeting Law if a quorum of charter school governing board members are present for a discussion of charter school business at a corporate board meeting. The charter school governing board's obligation to conduct its business as the Open Meeting Law requires does not vanish merely because its "meeting" occurs at a corporate board meeting. These principles governing deliberations by a quorum of a public body are not unique to charter school governing boards but apply to all public bodies subject to the Open Meeting Law.

To the extent the corporate board also discusses matters unrelated to the charter school, those board discussions are not subject to the Open Meeting Law because only matters that may foreseeably come before a vote of the charter school governing board must be discussed in public if a quorum of the charter school governing board is present. In addition, if a majority of the members of the charter school governing board are not present at a corporate board meeting, then that corporate board may discuss any matters relating to a charter school the corporation operates at that meeting because the Open Meeting Law does not apply to less than a quorum of a public body.

Conclusion

Corporate boards of charter school operators generally are not "public bodies" subject to Arizona's Open Meeting Law. However, because the Open Meeting Law applies to charter school governing boards, if a quorum of the charter school governing board discusses charter

school business at a meeting of the corporate board of the charter school operator, the Open Meeting Law applies to that discussion.

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1. In its 2000 regular legislative session, the Legislature amended A.R.S. § 15-183(E)(8) by striking the charter school governing board's responsibility for "operational" decisions. *See* 2000 Ariz. Sess. Laws ch. 90. When this amendment becomes effective, charter school governing boards will be responsible only for policy decisions. This statutory change does not alter the analysis of this Opinion.

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