

Remote Meetings: Navigating the New Legal Landscape

1. It's September 2020. The agenda for the regular meeting of the board of county commissioners (BOCC) includes a public hearing on a proposed rezoning. Although all commissioners are physically present for the meeting, the public isn't allowed to attend in person. The BOCC streams its meeting live online.

(True/False) Under new G.S. 166A-19.24, the board must accept any written comments on the proposed rezoning submitted between the date on which it first published the hearing notice and up to 24 hours after the hearing.

2. Same facts as Problem 1, except that one commissioner is participating in the meeting by conference call.

(True/False) The BOCC should not take final action on the rezoning until 24 hours after the public hearing.

3. Assume the Governor has rescinded Executive Order 116, which declared a state of emergency over COVID-19, and all related executive orders. Unlucky County has not yet rescinded its local emergency declaration, however, because of the high number of COVID-19 cases within its borders.

(True/False) G.S. 166A-19.24 applies to remote meetings of public bodies in Unlucky County.

4. It's September 2020, and (sadly) Executive Order 116 remains in effect. Four of the BOCC's seven members show up for the BOCC's regular monthly meeting. One of the four commissioners in attendance is taking part by Zoom. About 15 minutes into the meeting, that commissioner deliberately terminates her Zoom connection without any explanation and without being excused. Circle the most accurate statement.

(A) The BOCC still has a quorum because the member "left" the meeting without being excused by majority vote of the remaining members present.

(B) The BOCC lost its quorum when the member terminated her Zoom connection.

(C) It's not clear from the description whether the remote member's "departure" deprived the BOCC of a quorum.

(D) We're only four questions in, and I already hate these problems.

5. At this month's regular meeting, three of the BOCC's seven members are physically present, and one is attending by Zoom. The three commissioners in the meeting room can see the remote member, but technical difficulties prevent them from hearing him. The remote member can both see and hear his three

colleagues. When conducting the vote on a motion, the chair calls on the remote member, who uses a thumbs up to indicate approval or a thumbs down to show disapproval. The chair then announces the remote commissioner's vote. Circle the most accurate statement.

- (A) The remote commissioner's votes are likely invalid because the public could not hear him.
- (B) The remote commissioner's votes are likely valid because the chair announced them.
- (C) The remote commissioner's votes are likely invalid because the other commissioners could not hear him.
- (D) This question is as pointless as Trey Allen's jokes.

6. Three of the BOCC's five members are present for this month's regular meeting, which is being conducted by conference call. The second item of business is approval of the minutes for the BOCC's last meeting. The chair asks whether any commissioner objects to the draft minutes. Hearing no objections, she declares the minutes approved by unanimous consent. Circle the most accurate statement.

- (A) The minutes have not been approved because no commissioner seconded the motion.
- (B) The minutes have not been approved because the chair failed to conduct a roll call vote.
- (C) The minutes have not been approved because a BOCC may never act by unanimous consent.
- (D) Studies show that watching political commercials is a great way to reduce stress.

7. Circle the most accurate statement concerning the minutes for a remote meeting subject to G.S. 166A-19.24.

- (A) In addition to including other essential information, the minutes must indicate that the meeting was conducted by electronic means, record the names of any members who participated by electronic means, and note when such members joined or left the remote meeting.
- (B) In addition to including other essential information, the minutes must indicate that the meeting was conducted by electronic means, record the names of any members who participated by electronic means, note when such members joined or left the remote meeting, and state the number of people who live streamed the meeting.
- (C) In addition to including other essential information, the minutes must indicate that the meeting was conducted by electronic means, record the names of any members who participated by electronic means, note when such members joined or left the remote meeting, and set out the exact wording of any instant messages or text messages exchanged by commissioners during the meeting.
- (D) The minutes must include high quality caricatures of the commissioners.

8. The expectation was that all commissioners would attend this month's regular meeting of the BOCC in person. Two hours before the meeting, one of the commissioners informs the clerk that she will instead participate via Zoom.

(True/False) Under G.S. 166A-19.24, the meeting is no longer a regular meeting.

9. The BOCC's regular meeting schedule includes one meeting each month. This month the BOCC decides to meet over Zoom rather in person. Circle the most accurate statement.

- (A) Because the BOCC has turned its regular meeting into a remote meeting, no public comment period is required.
- (B) State law doesn't require the BOCC to hold a public comment period every month.
- (C) State law still requires the BOCC to hold a public comment period at this month's meeting.
- (D) Members of the public should be allowed to speak at the meeting, but only if they do so in a British accent.

10. (True/False) If a commissioner attends this month's regular meeting by conference call, and all other participating commissioners are physically present, the BOCC may provide members of the public with a phone number they can call to listen to the meeting. G.S. 166A-19.24 doesn't require the BOCC to stream the meeting live online in that situation.

11. The BOCC is holding a special meeting that was called to address a personnel issue. One commissioner is participating over Zoom. The only business item on the agenda is a closed session. After the closed session, the BOCC will return to open session for the sole purpose of adjourning the meeting.

(True/False) Under G.S. 166A-19.24, the BOCC must stream the adjournment live online.

Session Law 2020-3

PUBLIC BODIES/REMOTE MEETINGS DURING DECLARED EMERGENCIES

SECTION 4.31.(a) Article 1A of Chapter 166A of the General Statutes is amended by adding a new section to read:

"§ 166A-19.24. Remote meetings during certain declarations of emergency.

(a) Remote Meetings. – Notwithstanding any other provision of law, upon issuance of a declaration of emergency under G.S. 166A-19.20, any public body within the emergency area may conduct remote meetings in accordance with this section and Article 33C of Chapter 143 of the General Statutes throughout the duration of that declaration of emergency.

(b) Requirements. – The public body shall comply with all of the following with respect to remote meetings conducted under this section:

- (1) The public body shall give proper notice under G.S. 143-318.12 and under any other requirement for notice applicable to the public body. The notice shall also specify the means by which the public can access the remote meeting as that remote meeting occurs.
- (2) Any member of the public body participating by a method of simultaneous communication in which that member cannot be physically seen by the public body must identify himself or herself in each of the following situations:
 - a. When the roll is taken or the remote meeting is commenced.
 - b. Prior to participating in the deliberations, including making motions, proposing amendments, and raising points of order.
 - c. Prior to voting.
- (3) All documents to be considered during the remote meeting shall be provided to each member of the public body.
- (4) The method of simultaneous communication shall allow for any member of the public body to do all of the following:
 - a. Hear what is said by the other members of the public body.
 - b. Hear what is said by any individual addressing the public body.
 - c. To be heard by the other members of the public body when speaking to the public body.
- (5) All votes shall be roll call; no vote by secret or written ballots, whether by paper or electronic means or in accordance with G.S. 143-318.13(b), may be taken during the remote meeting.
- (6) The public body shall comply with G.S. 143-318.13(c).
- (7) The minutes of the remote meeting shall reflect that the meeting was conducted by use of simultaneous communication, which members were participating by simultaneous communication, and when such members joined or left the remote meeting.
- (8) All chats, instant messages, texts, or other written communications between members of the public body regarding the transaction of the public business during the remote meeting are deemed a public record.
- (9) The remote meeting shall be simultaneously streamed live online so that simultaneous live audio, and video, if any, of such meeting is available to the public. If the remote meeting is conducted by conference call, the public body may comply with this subdivision by providing the public with an opportunity to dial in or stream the audio live and listen to the remote meeting.

(c) Quorum. – A member of the public body participating by simultaneous communication under this section shall be counted as present for quorum purposes only during the period while simultaneous communication is maintained for that member. The provisions of G.S. 153A-44 and G.S. 160A-75 shall apply to all votes of each member of a county or municipal governing board taken during a remote meeting.

(d) Voting by Members of the Public Body. – Votes of each member of a public body made during a remote meeting under this section shall be counted as if the member were physically present only during the period while simultaneous communication is maintained for that member.

(e) Public Hearings. – A public body may conduct any public hearing required or authorized by law during a remote meeting, and take action thereon, provided the public body allows for written comments on the subject of the public hearing to be submitted between publication of any required notice and 24 hours after the public hearing.

(f) Quasi-Judicial Hearings. – A public body may conduct a quasi-judicial proceeding as a remote meeting only when all of the following apply:

- (1) The right of an individual to a hearing and decision occur during the emergency.
- (2) All persons subject to the quasi-judicial proceeding who have standing to participate in the quasi-judicial hearing have been given notice of the quasi-judicial hearing and consent to the remote meeting.
- (3) All due process rights of the parties affected are protected.

(g) Closed Sessions. – The public body may conduct a closed session as authorized in G.S. 143-318.11. While in closed session, the public body is not required to provide access to the remote meeting to the public.

(h) Not Exclusive. – This section applies only during emergency declarations and does not supersede any authority for electronic meetings under Article 33C of Chapter 143 of the General Statutes.

(i) For purposes of this section, the following definitions apply:

- (1) Official meeting. – As defined in G.S. 143-318.10(d).
- (2) Public body. – As defined in G.S. 143-318.10(b) and (c).
- (3) Remote meeting. – An official meeting, or any part thereof, with between one and all of the members of the public body participating by simultaneous communication.
- (4) Simultaneous communication. – Any communication by conference telephone, conference video, or other electronic means."

SECTION 4.31.(b) G.S. 143-318.10(a) reads as rewritten:

"(a) Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting. Remote meetings conducted in accordance with G.S. 166A-19.24 shall comply with this subsection even if all members of the public body are participating remotely."

SECTION 4.31.(c) G.S. 143-318.13 is amended by adding a new subsection to read:

"(d) Except as provided in G.S. 166A-19.24(b)(6), this section shall not apply to remote meetings conducted in accordance with this section even if all members of the public body are participating remotely."

SECTION 4.31.(d) G.S. 143-318.14A(e) reads as rewritten:

"(e) The following sections shall apply to meetings of commissions, committees, and standing subcommittees of the General Assembly: G.S. 143-318.10(e) and G.S. 143-318.11, G.S. 143-318.13 and G.S. 143-318.14, G.S. 143-318.16 through ~~G.S. 143-318.17~~ G.S. 143-318.17, and G.S. 166A-19.24."

SECTION 4.31.(e) G.S. 153A-43 reads as rewritten:

"§ 153A-43. Quorum.

(a) A majority of the membership of the board of commissioners constitutes a quorum. The number required for a quorum is not affected by vacancies. If a member has withdrawn from a meeting without being excused by majority vote of the remaining members present, he shall be counted as present for the purposes of determining whether a quorum is present. The board may compel the attendance of an absent member by ordering the sheriff to take the member into custody.

(b) Any member present by means of simultaneous communication in accordance with G.S. 166A-19.24 shall be counted as present for the purposes of whether a quorum is present only during the period while simultaneous communication is maintained for that member."

Public Comment Periods

§ 153A-52.1. Public comment period during regular meetings.

The board of commissioners shall provide at least one period for public comment per month at a regular meeting of the board. The board may adopt reasonable rules governing the conduct of the public comment period, including, but not limited to, rules (i) fixing the maximum time allotted to each speaker, (ii) providing for the designation of spokesmen for groups of persons supporting or opposing the same positions, (iii) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall, and (iv) providing for the maintenance of order and decorum in the conduct of the hearing. The board is not required to provide a public comment period under this section if no regular meeting is held during the month.

Open Meetings Law – Selected Provisions

§ 143-318.9. Public policy.

Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions exist solely to conduct the people's business, it is the public policy of North Carolina that the hearings, deliberations, and actions of these bodies be conducted openly.

§ 143-318.10. All official meetings of public bodies open to the public.

(a) Except as provided in G.S. 143-318.11, 143-318.14A, and 143-318.18, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function. In addition, "public body" means the governing board of a "public hospital" as defined in G.S. 159-39 and the governing board of any nonprofit corporation to which a hospital facility has been sold or conveyed pursuant to G.S. 131E-8, any subsidiary of such nonprofit corporation, and any nonprofit corporation owning the corporation to which the hospital facility has been sold or conveyed.

(c) "Public body" does not include (i) a meeting solely among the professional staff of a public body, or (ii) the medical staff of a public hospital or the medical staff of a hospital that has been sold or conveyed pursuant to G.S. 131E-8.

(d) "Official meeting" means 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.

(e) Every public body shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Such minutes may be in written form or, at the option of the public body, may be in the form of sound or video and sound recordings. When a public body meets in

closed session, it shall keep a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

§ 143-318.11. Closed sessions.

(a) Permitted Purposes. - It is the policy of this State that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a closed session is required:

- (1) To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.
- (2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award.
- (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded.
- (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations, or to discuss matters relating to military installation closure or realignment. Any action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures, shall be taken in an open session.
- (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.
- (6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

- (7) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.
 - (8) To formulate plans by a local board of education relating to emergency response to incidents of school violence or to formulate and adopt the school safety components of school improvement plans by a local board of education or a school improvement team.
 - (9) To discuss and take action regarding plans to protect public safety as it relates to existing or potential terrorist activity and to receive briefings by staff members, legal counsel, or law enforcement or emergency service officials concerning actions taken or to be taken to respond to such activity.
 - (10) To view a recording released pursuant to G.S. 132-1.4A.
- (b) Repealed by Session Laws 1991, c. 694, s. 4.
 - (c) Calling a Closed Session. - A public body may hold a closed session only upon a motion duly made and adopted at an open meeting. Every motion to close a meeting shall cite one or more of the permissible purposes listed in subsection (a) of this section. A motion based on subdivision (a)(1) of this section shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on subdivision (a)(3) of this section shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.
 - (d) Repealed by Session Laws 1993

§ 143-318.12. Public notice of official meetings.

(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) For public bodies that are part of State government, with the Secretary of State;
- (2) For the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) For the governing board and each other public body that is part of a city government, with the city clerk;
- (4) For each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

- (1) If a public body recesses a regular, special, or emergency meeting held pursuant to public notice given in compliance with this subsection, and the time and place at which the meeting is to be continued is announced in open session, no further notice shall be required.
- (2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting stating its purpose (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed, e-mailed, or delivered to each newspaper, wire service, radio station, and television station that has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. The public body shall also cause notice to be mailed, e-mailed, or delivered to any person, in addition to the representatives of the media listed above, who has filed a written request with the clerk, secretary, or other person designated by the public body. This notice shall be posted and mailed, e-mailed,

or delivered at least 48 hours before the time of the meeting. The notice required to be posted on the principal bulletin board or at the door of its usual meeting room shall be posted on the door of the building or on the building in an area accessible to the public if the building containing the principal bulletin board or usual meeting room is closed to the public continuously for 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually. The public body shall charge a fee to persons other than the media, who request notice, of ten dollars (\$10.00) per calendar year, and may require them to renew their requests quarterly. No fee shall be charged for notices sent by e-mail.

- (3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by e-mail, by telephone, or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to those members. This notice shall be given at the expense of the party notified. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this paragraph.
- (c) Repealed by Session Laws 1991, c. 694, s. 6.
- (d) If a public body has a Web site and has established a schedule of regular meetings, the public body shall post the schedule of regular meetings to the Web site.
- (e) If a public body has a Web site that one or more of its employees maintains, the public body shall post notice of any meeting held under subdivisions (b)(1) and (b)(2) of this section prior to the scheduled time of that meeting.
- (f) For purposes of this section, an "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body.

§ 143-318.13. Electronic meetings; written ballots; acting by reference.

(a) **Electronic Meetings.** - If a public body holds an official meeting by use of conference telephone or other electronic means, it shall provide a location and means whereby members of the public may listen to the meeting and the notice of the meeting required by this Article shall specify that location. A fee of up to twenty-five dollars (\$25.00) may be charged each such listener to defray in part the cost of providing the necessary location and equipment.

(b) **Written Ballots.** - Except as provided in this subsection or by joint resolution of the General Assembly, a public body may not vote by secret or written ballot. If a public body decides to vote by written ballot, each member of the body so voting shall sign his or her ballot; and the minutes of the public body shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the clerk or secretary to the public body immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

(c) **Acting by Reference.** - The members of a public body shall not deliberate, vote, or otherwise take action upon any matter by reference to a letter, number or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the public body to understand what is being deliberated, voted, or acted upon. However, this subsection does not prohibit a public body from deliberating, voting, or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted, or acted upon, are available for public inspection at the meeting.