



THE UNIVERSITY OF ARIZONA

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To: Melanie Hingle
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From: Elizabeth W. Miller
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Re: Arizona Open Meeting Law and University of Arizona Organizations

ISSUE

Are components of the University of Arizona – such as shared governance organizations, committees, and task forces – subject to the Arizona Open Meeting Law?

BRIEF ANSWER

No. The Arizona Open Meeting Law only applies to a “public body.” Given the definition of a “public body” in the statute, no organization within the University of Arizona, e.g., student government, faculty senate, or advisory committees, fit within the statutory definition. Therefore, no committees or organizations within the University of Arizona are required to comply with the Arizona Open Meeting Law.

DISCUSSION

I. The Arizona Open Meeting Law

The Arizona Open Meeting Law is set out in Arizona Revised Statutes (“ARS”), Title 38, Chapter 3, Article 3.1, Sections 38-431 through 38-431.09. ARS Section 38-431.01(A) provides in relevant part, “All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.”

Section 38-431 (6) defines a “public body” as follows:

“Public body” means the legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of this state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by this state or a political subdivision. Public body includes all quasi-judicial bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body. Public body includes all commissions and other public entities established by the Arizona Constitution or by way of ballot initiative, including the independent redistricting commission, and this article applies except and only to the extent that specific constitutional provisions supersede this article.

Section 38-431 (1) further defines “advisory committee” or “subcommittee” as:

[A]ny entity, however designated, that is officially established, on motion and order of a public body or by the presiding officer of the public body, and whose members have been appointed for the specific purpose of making a recommendation concerning a decision to be made or considered or a course of conduct to be taken or considered by the public body.

Under Subsection 7, “quasi-judicial body” is defined as “a public body, other than a court of law, possessing the power to hold hearings on disputed matters between a private person and a public agency and to make decisions in the general manner of a court regarding such disputed claims.” Organizations or committees that are not created by a public body are not subject to the Open Meeting Law. *See* Ariz. Att’y Gen. Op. I92-007 (opining that committee that reported to Governor was not subject to the Open Meeting Law because the Governor was not a “public body”).

II. Applying the Open Meeting Law to University Organizations or Committees

There are no University of Arizona organizations, committees, or units that fit within the definition of a “public body” under the statute.

For example, the Faculty Senate does not fall within the definition of a “public body,” “advisory committee,” “subcommittee,” or “quasi-judicial body.” Nothing about the way the Faculty Senate was established, the way its members are drawn, its functions, responsibilities, powers, duties, or any other characteristics place it within the definition of a “public body” under the Arizona Open Meeting Law. The same is true for the student government bodies and various alumni and community advisory bodies that exist within the University. None of these University of Arizona organizations is required to follow the Arizona Open Meeting Law.

In contrast, committees established by the Arizona Board of Regents (ABOR) are subject to the Arizona Open Meeting Law and its requirements. ABOR is a “public body” as it is a board

of the state. ABOR committees, such as the Finance, Capital and Resources Committee or the Committee on Free Expression also fall within the definition of a “public body” and those committees are also subject to Arizona Open Meeting Law requirements. University-level committees, such as those created by the president, are not public bodies because those committees are neither appointed by ABOR nor do they report to or make recommendations to ABOR.

The Arizona Open Meeting Law includes significant requirements that dictate how public bodies must conduct business. These requirements include notice provisions, agenda setting measures, particular rights for participation from the general public, and directives as to minute-taking and record-keeping. See Open Meeting Law 101, *Arizona’s Open Meeting Law in a Nutshell* (available at: <https://azoca.gov/wp-content/uploads/Open-Meeting-Law-101.pdf>).

Some University organizations, such as Faculty Senate, elect to mirror certain aspects of the Open Meeting Law (e.g., the ability to conduct business in executive sessions) without expressly adopting all of the requirements of the statute. Operating procedures that share common language or requirements with the Open Meeting Law do not convert that organization to a “public body” or subject the organization to the requirements of the law.

There is a clear distinction between conducting meetings that are open to the public and being subject to the Open Meeting Law. As noted above, statutory requirements go well beyond simply allowing the public to attend. Additionally, there are distinctions between Open Meeting Law requirements and the process by which meetings are conducted. Conducting business in accordance with *Robert’s Rules of Order* is separate and distinct from the parameters of the Open Meeting Law. Choosing to adopt Robert’s Rules of Order as the process by which meetings are conducted does not and will not convert the organization that is conducting the meeting into a public body or subject it to the Arizona Open Meeting Law requirements.

Finally, for clarification, although University of Arizona organizations are not subject to the Arizona Open Meeting Law, they *are* subject to the Arizona’s public records laws. While that is beyond the scope of this memorandum, it should be noted given the inter-relationship of the topics.

CONCLUSION

No University of Arizona organizations, committees, or other units are subject to or required to comply with the Arizona Open Meeting Law. Such organizations’ decision to mirror or follow aspects of the Open Meeting Law does not render that organization a “public body” under the statute.