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Insights

Open Door Law: "Declared Emergency" Ends – Prepare For Your Next Virtual Meeting

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Until recently, members of a governing body could meet electronically with few limitations, such as attendance of a quorum, the public's ability to simultaneously attend and observe the meeting, the inclusion of certain information in the meeting's memoranda, and voting by roll call.

However, Indiana's declared public health emergency is now over, and governing bodies must be prepared to comply with the Open Door Law during any future virtual/hybrid meetings. Specifically,

A Plan Must be Adopted:

- The governing body shall adopt a written policy establishing the procedures that apply to electronic meeting participation.[1]

In-person Attendance is Required:

- Assuming no state or local disaster emergency has been declared, at least fifty percent (50%) of the members must be physically present at the meeting.[2]

There are Member-Specific Limitations:

- A member of the governing body may not electronically attend more than fifty percent (50%) of the body's meetings in a calendar year, unless that member's electronic participation is due to military service, illness or medical conditions, death of a relative, or an emergency involving actual or threatened injury to persons or property.[3]
- A member of the governing body may **participate** in a meeting by any electronic means so long as all members of the governing body can communicate with each other, and the public can simultaneously attend and observe the meeting.[4]
- A member of the governing body that participates electronically may **vote** so long as the member can be seen and heard.[5]

Attending Consecutive Electronic Meetings:

- A member may attend two (2) consecutive meetings by electronic communication, but must then attend one (1) meeting in person before another electronic meeting, unless the member's absence is due to:
  - Military service;
  - Illness or other medical condition;
  - Death of a relative; or
  - An emergency involving actual or threatened injury to persons or property.[6]

There are Topic-Specific Limitations:

- A member cannot attend the meeting electronically if the governing body is attempting to take final action to:
  - Adopt a budget;
  - Make a reduction in personnel;
  - Initiate a referendum;
  - Establish or increase a fee;
  - Establish or increase a penalty;
  - Use eminent domain authority; or
  - Establish, raise, or renew a tax.

Meeting Memoranda Must Include:

- The names of each member that was present physically, present electronically, or absent.
- Identify the electronic means of communication by which members of the governing body participated and by which the public attended and observed the meeting.[7]

Votes Must be by Roll Call:

- All votes taken during an electronic meeting must be by roll call.[8]

TAKEAWAYS

Because Indiana's statewide declared public health emergency is now over, and because the risk of Open Door Law non-compliance is time/expense associated with the potential undoing of any action at a defective meeting (*see* Ind. Code § 5-14-1.5-7), governing bodies should ensure compliance. That means, among other requirements, a written electronic meeting policy must be adopted, and considerations must be made based on the Open Door Law's limitations concerning each member's participation, as well as limitations on the meeting's topics.

If you have any questions about this alert, Indiana's Open Door Law, or other public access laws, please contact **Christopher W. Bloomer**.

Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.

[1] Indiana Code § 5-14-1.5-3.5(d).
[2] Indiana Code § 5-14-1.5-3.5(g).

[3] Indiana Code § 5-14-1.5-3.5(h).
[4] Indiana Code § 5-14-1.5-3.5(b).
[5] *Id.*
[6] Indiana Code § 5-14-1.5-3.5(j).
[7] Indiana Code § 5-14-1.5-3.5(e).
[8] Indiana Code § 5-14-1.5-3.5(f).