Open Meeting Law and Minimum Notice Required

Initial question: What is the minimum notice required for a meeting and does it vary from library to library?

Response from Bob Cooper – December 12, 2008

The law does not vary for each library, but local interpretation of how a given city or county will comply with the law may. Thus, since MSL is not a regulatory agency, a definitive statement from a county or city attorney regarding local compliance with open meeting law is going to take precedence over any guidelines MSL puts forth. That said here are the basics which you can use to guide what you communicate to libraries with questions in this area of law. Keep in mind that there is no definitive answer here. The law clearly allows for the courts to be the sole decider of whether a violation has occurred. Thus, library boards that want to be safe would be well advised to pursue a course closer to excessive notice as opposed to minimal notice.

Drawing from some of our earlier workshops on this topic, consider the following. The open meeting laws themselves contain no explicit notice timeline or publication requirements. The length of the notice period is derived from Montana's public participation laws and centers on whether the agenda for the meeting involves an issue of significant public interest. Of course, significant public interest is not defined relative to open meetings. AG Opinion 47 – No 13 (1998) adds some clarity by referring to a decision (of a government body, like a library board) "which has meaning to or affects a portion of the community." Notice of a meeting must be given sufficiently in advance to permit the public to attend. The same AG opinion cited above indicates that the amount of notice required should increase with the relative significance of the decision to be made. 48 hours advance notice is generally considered to be sufficient.

In keeping with the intent of the law which is to allow and encourage public participation in government, posting meeting notices solely on the library door 48 hours in advance is the minimal a library board can do and have any hope of not being accused of non-compliance. Doing the minimum is potentially risky and I would not offer any guarantees that this would protect a given library board from being found in violation. To determine a safer course some questions need to be asked:

What is the significance of each agenda item to any portion of the community (which basically could be read to mean any individual in the community)? If the portion of the community affected (which in many cases would be any taxpayer) cannot be reasonably expected to have the opportunity to view a posted notice on a library door within a 48-hour period, then it would be prudent to expand the notice duration and/or the number of places the notice is posted. Thus, in addition to prominent physical posting of the notice in higher foot traffic areas (library, courthouse, community bulletin boards, etc), timely publication in a newspaper generally considered to be readily available throughout the local area is a very good idea. If newspaper posting is required locally and the newspaper refuses to cooperate, I would suggest getting that refusal in writing or an E-mail and sharing it with the city or county attorney. For very important issues, supplemental posting via appropriate radio and televisions stations also demonstrates that the board is committed to meeting both the letter and the intent of the law.

What is the standard practice for notifying the public of government meetings conducted in the community? Is the library board doing less than this local standard demonstrates?

Has a standard practice of notice been used in the past that is suddenly being altered in such a manner that could be interpreted as allowing less opportunity for the public to be aware of the meeting agenda?

Does the board frequently change its meeting regimen (time of month, day of week, time of day) which would contribute to the likelihood that the public would be unaware or misinformed of when the board was meeting? To be safe, avoid such irregularity, or strive to provide significantly more notice.

Is there any history within the community of local government or the library board itself being challenged in regard to open meeting law compliance?

Have members of the local press expressed any confusion or concern over meeting notices or other library board actions?

There are likely other questions that you can determine need to be considered in creating a margin of safety for a library in regard to providing adequate notice. The important thing these kinds of questions establish is that there is no firm statement that we can make as to a minimum that will apply to every library situation. Helping the library board review its individual circumstances in view of these questions might be more helpful to them in the long run anyway. We all prefer clear, easy answers, but that is not the way the law works.

Thus, I am growing increasingly uncomfortable with just telling a library to post on the library door 48 hours in advance and then jumping in my car to zoom down the road to the next library. I am significantly more comfortable with saying as we always should in these tricky legal areas, library boards should seek the advice of the city or county attorney (as appropriate) to ensure that the board is operating within the parameters set by this person who will have to defend the board in the event it is accused of being in violation.