Public meeting quorums using technology

Number: AGO 2020-03

Date: March 19, 2020

Subject:
Public meeting quorums using technology

The Honorable Ron DeSantis
Governor
The Capitol
Tallahassee, Florida 32399-0001

Dear Governor DeSantis:

Our office has received your letter dated March 17, 2020, requesting an opinion pursuant to Section 16.01(3), Florida Statutes, in light of recent developments arising from the spread of COVID-19. On March 9, 2020, you issued Executive Order No. 20-52, declaring a state of emergency statewide and requiring Florida government officials to take necessary and timely precautions to protect their communities.

You state that, as a result of the dangers of COVID-19, public safety directives encourage citizens to engage in "social distancing" and to avoid public gatherings, where possible. As a result, your office “has been contacted by numerous county and local government bodies regarding concerns for public meetings held in light of the COVID-19 public health emergency. These entities raise issues involving Florida Statutes and Attorney General Advisory Opinion interpretations that limit the ability to hold public meetings using communications media technology.”1

Question Presented

Under these circumstances, you ask the following question:

> Whether, and to what extent, local government bodies may utilize teleconferencing and/or other technological means to convene meetings and conduct official business, while still providing public access to those meetings?

It is my opinion under existing law that, if a quorum is required to conduct official business, local government bodies may only conduct meetings by teleconferencing or other technological means if either (1) a statute permits a quorum to be present by means other than in person, or (2) the in-person requirement for constituting a quorum is lawfully suspended during the state of emergency. If such meetings are conducted by teleconferencing or other technological means, public access must be afforded which permits the public to attend the meeting. That public access may be provided by teleconferencing or technological means.

Discussion

Article I, Section 24(b) of the Florida Constitution provides that "[a]ll meetings…of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public[.]" Florida's Sunshine Law, found in chapter 286, Florida Statutes, provides that "[a]ll meetings of any…agency or authority of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution,…at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken at such meeting." § 286.011(1), Fla. Stat. (2019). Section 286.0114, Florida Statutes, also provides, with respect to certain "propositions" before a board or commission, that an opportunity for public comment must be afforded.

Though the Florida Constitution and the Sunshine Law both require that, unless exempt by law, meetings of a local government body must be "public meetings" that are "open to the public," the text of neither provision requires that members of the public body be physically present during the meeting. Nor does either provision prescribe any particular *means* of holding meetings. Since 1997, Florida law has allowed many state agencies to conduct public meetings, hearings and workshops by "communications media technology" in full compliance with the Sunshine Law, and they regularly do so. *See* § 120.52(5)(b)2., Fla. Stat. (2019); Ch. 28-109, Fla. Adm. Code. No reported judicial decision has held that meetings conducted by such means violate the Florida Constitution or the Sunshine Law. The Legislature has also, by statute, permitted certain public entities other than state agencies to conduct meetings using communications media technology.2

When asked similar questions by local government bodies in the past, the Attorney General's office has made it clear that any requirement for physical presence of members derives from other law specifying that a quorum be present to lawfully conduct public business or that the meeting of a local government body be held at a place within the body's jurisdiction. *See* Ops. Att'y Gen. Fla. 1983-100 (1983), 1998-28 (1998), 2006-20 (2006). How a quorum is lawfully constituted, or where a meeting is "held," are questions distinct from the Sunshine Law and governed by other law. Indeed, a quorum is not required to be present for a meeting to be otherwise subject to the Sunshine Law.3

Some statutes governing the conduct of business by local government bodies (such as section 166.041, Florida Statutes) specifically include the requirement of a "quorum" or that a quorum be "present" to conduct certain kinds of public business, such as the adoption of ordinances or resolutions. See § 166.041(4), Fla. Stat. (providing that, for municipalities, a majority of members constitutes a quorum and an affirmative vote of a "majority of a quorum present" is necessary to adopt an ordinance or resolution). Other statutes require that meetings be held in a place within the jurisdiction of the local government body. For example, section 125.001(1), Florida Statutes, requires that meetings of a board of county commissioners "may be held at any appropriate place in the county." These statutes have not defined the term "quorum" or what it means to be "present." Nor have they defined what it means for a meeting to be "held" in a place.

Absent any statutory definition of these terms, the Attorney General's office has, in prior opinions, relied upon the plain meanings of the terms "quorum" and "present" by resorting to legal dictionaries and dictionaries of common usage. *See* Op. Att'y Gen. Fla. 2010-34 n.5-6 (referring to unabridged dictionary and legal dictionary for definition of term "quorum", which included the word "present", and concluding that "a quorum requirement, in and of itself, contemplates the physical presence of the members of a board or commission at any meeting subject to the requirement."). Doing so is a universally accepted mode of interpretation repeatedly endorsed by Florida courts. *See Lee Mem. Health Sys. v. Progressive Select Ins. Co.* , 260 So. 3d 1038, 1043 (Fla. 2018); *Berkovich v. Casa Paradiso North, Inc.*, 125 So. 3d 938, 941 (Fla. 4th DCA 2013) ("The common usage of the term 'quorum' requires the presence of individuals.") (citing Black's Law Dictionary 1284 (8th ed.2004)).

The term "quorum" is defined as "who must be present for a deliberative assembly to legally transact business." Black's Law Dictionary (11th ed. 2019). The word "present," is defined as "in attendance; not elsewhere." Black's Law Dictionary (11th ed. 2019); *see also* Webster's Third New International Dictionary Unabridged 1793 (2002 ed.) (defining "present" as "being before, beside, with, or in the same place as someone or something <both men were present at the meeting>.").

Thus, in the absence of a statute to the contrary, the Attorney General's office historically has taken a conservative approach, out of concern for the validity of actions taken by the public body, concluding that any statutory quorum requirement to conduct public business requires the quorum of members to be physically present and that members present by electronic means could not count toward establishing the quorum. A long line of opinions by my predecessors contain conclusions to that effect.

For example, in Attorney General Opinion 83-100, Attorney General Smith concluded that a county could not conduct a meeting unless members constituting a quorum were physically present (and, even then, that a physically absent member could not participate by telephone). Op. Atty' Gen. Fla. 83-100 (1983). In Attorney General Opinion 92-44, Attorney General Butterworth concluded that a county commissioner physically unable to attend a meeting because of medical treatment could participate and vote in commission meetings where a quorum of other commissioners was physically present. Op. Att'y Gen. Fla. 92-44 (1992). In Attorney General Opinion 98-28, Attorney General Butterworth concluded that a school board member could attend a meeting by electronic means, so long as a quorum was physically present at the meeting site. Op. Att'y Gen. Fla. 98-28. In Attorney General Opinion 2002-82, Attorney General Doran concluded that physically disabled members of a city board could participate and vote on matters as long as a quorum was physically present. Op. Att'y Gen. Fla. 2002-82 (2002). In Attorney General Opinion 2003-41, Attorney General Crist concluded that a member of a city human rights board who was physically absent from a board meeting but participated by telephone conference could not be counted toward the presence of a quorum. Op. Att'y Gen. Fla. 2003-41 (2003). And in Attorney General Opinion 2010-34, Attorney General McCollum concluded that the Coral Gables City Commission could not adopt an ordinance for the city's retirement board declaring that the requirements to create a quorum would be met if members of the board appeared via electronic means, because doing so would conflict with the statutory requirement in section 166.041, Florida Statutes that a quorum be present. Op. Att'y

Gen. Fla. 2010-34 (2010).

Conclusion

The nature, extent, and potential duration of the current emergency involving COVID-19 present unique circumstances. However, without legislative action, they do not change existing law. It is my opinion that, unless and until legislatively or judicially determined otherwise, if a quorum is required to conduct official business, local government bodies may only conduct meetings by teleconferencing or other technological means if either a statute permits a quorum to be present by means other than in-person, or the in-person requirement for constituting a quorum is lawfully suspended during the state of emergency.

Sincerely,

Ashley Moody
Attorney General

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1 Letter from Governor Ron DeSantis to Attorney General Ashley Moody dated March 17, 2020.

2 *Compare, e.g.*, § 163.01, Fla. Stat. (2019) (authorizing any separate legal entity created under subsection (7) of the Florida Interlocal Cooperation Act of 1969 to conduct public meetings and workshops by means of "conference telephone, video conference, or other communications technology by which all persons attending a public meeting or workshop may audibly communicate;" providing specific requirements; and providing that the "participation by an officer, board member, or other representative of a member public agency in a meeting or workshop conducted through communications media technology constitutes that individual's presence at such meeting or workshop"); § 373.079(7), Fla. Stat. (2019) (authorizing the water management district "governing board, a basin board, a committee, or an advisory board" to "conduct meetings by means of communications media technology in accordance with rules adopted pursuant to s. 120.54"); § 374.983(3), Fla. Stat. (2019) (authorizing the Board of Commissioners of the Florida Inland Navigation District to conduct board and committee meetings "utilizing communications media technology, pursuant to s. 120.54(5)(b)2"); § 553.75(3), Fla. Stat. (2019) (authorizing the use of communications media technology in conducting meetings of the Florida Building Commission or of any meetings held in conjunction with meetings of the commission); § 1002.33(9)(p)3, Fla. Stat. (2019) (authorizing members of each charter school's governing board to attend public meetings to "in person or by means of communications media technology used in accordance with rules adopted by the Administration Commission under s. 120.54(5), and specifying other requirements) *with* § 349.04(8), Fla. Stat. (2019) (authorizing the Jacksonville Transportation Authority to "conduct public meetings and workshops by means of communications media technology, as provided in s. 120.54(5)," but specifying that "a resolution, rule, or formal action is not binding unless a quorum is physically present at the noticed meeting location, and only members physically present may vote on any item").

3 Indeed, a quorum is not required to be present for a meeting to be otherwise subject to the Sunshine Law. *See Hough v. Stembridge,* 278 So. 2d 288 (Fla. 3d DCA 1973).