



Emergency Meetings of County Boards

Given the recent Spring blizzards and flooding occurring throughout the state, our office received calls about boards conducting "emergency meetings"; therefore, a review of the current statutes, cases and Attorney Generals opinions follows.

The Attorney General has indicated that an "emergency meeting" may be conducted by electronic and telecommunications equipment including radio and telephone conferences. *1975-76 Rep. Att'y Gen. 150* (Opinion No. 116, dated August 29, 1975). On the other hand, the open meetings statutes do not generally authorize the use of telephone conference calls for non-emergency meetings of a public body, and absent members of a public body may not be counted to achieve a quorum through the use of a conference call. *Op. Att'y Gen. No. 92019* (February 11, 1992). [Section 84-1411 has been amended a number of times to allow specified public bodies including the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act or the Municipal Cooperative Financing Act, the board of an educational service unit, the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, a community college board of governors, the governing body of public power district, the governing body of a public power and irrigation district, or the Educational Service Unit Coordinating Council to meet by telephone conference call in certain circumstances. *See* 1999 Neb. Laws LB 461; 2000 Neb. Laws LB 968; 2007 Neb. Laws LB 199; 2009 Neb. Laws LB 36, 2012 Neb. Laws LB 735, 2013 Neb. Laws LB 510 and discussion below.]

When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency must be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day. Section 84-1411(5).

In *Steenblock v. Elkhorn Township Board*, 245 Neb. 722, 515 N.W.2d 128 (1994), the Court indicated, in a case involving allegations of a violation of the public meetings statutes, that an emergency is defined as "any event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition." In that case, the Court held that a township board meeting to consider the job status of a township employee, convened as an emergency meeting because of a snowstorm, was not a proper emergency meeting because the employee was given two weeks'

notice of his resultant termination, and because the reasons given for the employee's termination were based upon his past performance.

The Attorney General has also stated that an item of an emergency nature is one that requires immediate resolution by the public body, and one which has arisen in circumstances impossible to anticipate at a time sufficient to place on the agenda of a regular, called, or special meeting of the body. *1975-76 Rep. Att'y Gen. 150* (Opinion No. 116, dated August 29, 1975).

In *1995 Att'y Gen. Op. No. 53*, the Attorney General indicated that action taken during a meeting of the Nebraska Equal Opportunity Commission by a telephone conference call which did not comply with the requirements of the public meetings statutes for emergency meetings was void.

The Court of Appeals in *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009), examined a series of situations presented to the county board. The situation and the decision by the court follow:

- Personnel Letter (not considered an emergency, insubstantial and not voidable);
- Homeland Security Resolution (no basis to consider action an emergency, not found as subs a substantial violation of the Open Meetings Act);
- Transfer of Funds (no basis for finding action as an emergency, the action is voidable because complaint was more than 120 days, considered a substantial violation of the Open Meetings Act since the item involved the handling of public money, the action taken was considered void);
- Letter Concerning Wind Energy (no indication of what the letter would say, item and action taken was not an appropriate emergency, and found to be voidable because it was a substantial violation of the Open Meetings Act);
- Grant for Pagers (found to be an appropriate emergency, and it did not involve the expenditure of the County taxpayers' funds);
- Waiver of Notification (court, after reading related entry, was not sure what this matter was really about, action was found not to be an appropriate emergency. Because the action occurred within the 120 days prior to the suits being filed, the action was void); and
- Road Resolution (board agreed to administratively effectuate a prior decision, and in that context, the court found that the action taken was of pressing necessity).

NOTICE REQUIREMENTS

Notice requirements are set out for county board meetings in Neb. Rev. Stat. § 84-1411. Under § 84-1411(1), an agenda maintained at the office of a public body for public inspection must be kept continually current and may not be altered later than 24 hours before the scheduled commencement of the public meeting (or 48 hours before commencement of a meeting of a city council if that meeting is noticed outside the corporate limits of the municipality). A public body may modify an agenda to include items of an emergency nature only at such

public meeting. When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Subsection 4 provides, "Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day. The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting."

Potential Rules and Regulations for County Board Meetings

County boards are subject to the requirements of the Open Meetings Act (Neb. Rev. Stat. §§ 84-1409 to 84-1414). Included within the act are provisions governing the rights of the public and the county board. Section 84-1412 provides: "[T]he public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section [84-1410](#), may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing."

Additionally, section 84-1412 goes on to provide "It shall not be a violation of (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings."

Several years ago, Beth Bazyn Ferrell, NACO Legal Counsel, drafted a [Sample Policy for County Boards -- Commissioners](#) and a [Sample Policy for County Boards -- Supervisors](#) to potentially use for their meetings. Recently, I was contacted by a county official wondering if we had any potential policies to use to address portable electronic devices in county board meetings. I drafted the following sample policy for possible use by county boards.

Sample Policy for Use of Portable Electronic Devices in County Board Meetings

Portable electronic devices, as used in this rule, mean cell phones, personal computers, personal digital assistants, tablets, and other similar devices capable of transmitting, receiving, recording, or storing messages, images, sounds, data or other information by electronic means.

Portable electronic devices in a county board meeting room may be used but must be silenced and placed in "airplane mode" at all times. Such devices may be used by members of the public to display demonstrative evidence to the board or for any other business related to the county board meeting.

In county board hearing rooms, attendees may use portable electronic devices to take notes and to transmit and receive data communications so long as the device is completely silent and they do so in an inconspicuous way that does not interfere with the dignity and process of the county board's business conduct. Under NO CIRCUMSTANCES may persons use these devices to make or receive telephone calls. Nor shall portable electronic devices be used in a manner that interferes with county board proceedings or the work of county officials or personnel. If media representatives or members of the public, videotape, televise, photograph, broadcast, or record its meetings with a portable electronic device, such activities shall not interfere with the conduct of county board business or the participation of meeting attendees.

Failure to comply with these policies will result in the violator being removed from the county board meeting room.

IF COURTHOUSE HAS PUBLIC ACCESS TO WIRELESS ACCESS

Security Considerations Wireless access is by nature an insecure medium. As with most public wireless networks, any information being sent or received over the County's wireless network could potentially be intercepted by another wireless user. Users should not transmit their credit card information, passwords and any other sensitive personal information while using the wireless connection.

Anyone using the wireless network provided by the County is forewarned that there can be no expectation of privacy when using the wireless network. Users assume all associated risks and agree to hold harmless the Court and its employees for any personal information (e.g., credit card) that is compromised, or for any damage caused to user's hardware or software due to electric surges, security issues or consequences caused by viruses or hacking. All users of wireless access should have up-to-date virus protection on their personal laptop computers or wireless devices.

COUNTY OFFICIALS AND THEIR STAFF WILL NOT PROVIDE TECHNICAL ASSISTANCE. The County assumes no responsibility for laptop configurations, security or changes to data files resulting from connection to the County's wireless network and cannot guarantee that a user's hardware will work with the County's wireless connection. If a user has problems accessing the Internet over these connections, **STAFF WILL NOT ASSIST IN MAKING CHANGES TO THE USER'S NETWORK SETTINGS OR PERFORM ANY TROUBLESHOOTING ON THE USER'S OWN COMPUTER.** Users should refer to their owner's manuals or other support services offered by their device manufacturer. **ACCESS IS NOT GUARANTEED AND use of the wireless access provided by the County is a courtesy extended by the County.** The County reserves the right to deny or terminate access to anyone at any time.

Notice of Proposed Rulemaking: Overtime Update

On March 7, 2019, a proposed rule was announced by the United States Department of Labor (the Department) that is estimated to make more than a million more American workers eligible for overtime.

Under a salary level established in 2004, currently enforced law provides employees with a salary below \$455 per week (\$23,660 per year) must be paid overtime if they work more than 40 hours per week. Workers making at least this salary level may be eligible for overtime based on their job duties.

The new proposal by the Department would boost the proposed standard salary level to \$679 per week (\$35,308 per year). The eligibility for overtime varies based on job duties for individuals receiving above this amount.

In developing the proposal, the Department received extensive public input from six in-person listening sessions held around the nation and more than 200,000 comments that were received as part of a 2017 Request for Information (RFI). Commenters who participated in response to the RFI or who participated at a listening session overwhelmingly agreed that the currently enforced salary and compensation levels need to be updated.

The Notice of Proposed Rule Making includes:

- The proposal increases the minimum salary required for an employee to qualify for exemption from the currently-enforced level of \$455 to \$679 per week (equivalent to \$35,308 per year).
- The proposal increases the total annual compensation requirement for “highly compensated employees” (HCE) from the currently-enforced level of \$100,000 to \$147,414 per year.
- A commitment to periodic review to update the salary threshold. An update would continue to require notice-and-comment rulemaking.
- Allowing employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid annually or more frequently to satisfy up to 10 percent of the standard salary level.
- No changes of overtime protections for:
 - Police Officers
 - Fire Fighters
 - Paramedics
 - Nurses
 - Laborers including: non-management production-line employees
 - Non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, and construction workers
- No changes to the job duties test.
- No automatic adjustments to the salary threshold.

January 1, 2020 is expected to be the approximate effective date of the final rule.

The Department will consider all timely comments in developing a final rule. The Department encourages any interested members of the public to submit comments about the proposed rule electronically at www.regulations.gov, in the rulemaking docket RIN 1235-AA20. Once the rule is published in the Federal Register, the public will have 60 days to submit comments for those comments to be considered.

Additional information on the overtime issue can be obtained at:
<https://www.dol.gov/whd/overtime2019/index.htm>

Editor's Note: Legal Line is a feature that will periodically appear in NACO E-Line. This article has been prepared by Elaine Menzel of the NACO legal staff. Legal Line is not intended to serve as legal advice. Rather, it is published to alert readers to court decisions and legal or advisory matters important to county government. For a specific opinion on how the information contained in this article or that which will be discussed in future issues relates to your county, consult your county attorney or personal counsel.