



**GOVERNING BOARD AGENDA ITEM  
AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10**

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**DATE OF MEETING:**      **April 7, 2015**

**TITLE:**            **Discussion of Governing Board Town Hall Meetings**

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**BACKGROUND:** At the Governing Board meeting of March 24, 2015, Mr. Leska requested that an item be placed on the Board’s agenda to discuss the potential of holding one to two “Town Hall Meetings” each year at school sites, for the purpose of soliciting community input on matters of District business.

Mr. Leska previously held his own individual Town Hall meeting on January 31, 2015 at the Oro Valley Public Library, at which he reported some 30 to 40 people were present, consisting of students, teachers, parents, and grandparents.

Mr. Leska has indicated that, at his individual town hall meeting, he discussed his background and some of the legislation then pending in the State Capitol. He then “opened the floor up” to audience concerns. Mr. Leska described the following issues that were raised:

- Student Attendance Policies – District and State
- State Budget Cuts and Implications for District
- District Staffing Levels
- Post Retirement Employment
- Teach for America
- Student Data Collection and Retention
- Teacher Performance Data Collection and Retention
- AZMERIT
- Restrictions of Access to School Campuses

Each of the foregoing matters presented to Mr. Leska are certainly within the jurisdiction of the Board as matters the whole Board may at some time consider, deliberate upon, or discuss with the potential of also taking action that in some manner affects such matters.

As the Board Members consider the potential of the full Board holding similar “Town Hall” meetings to hear from the public on matters of concern to the Board, it is important to remain mindful of the implications and requirements of the Arizona Open Meetings Law relative to such meetings. As the Board Members know, whenever a meeting of the Board occurs, “All *discussions, deliberations, considerations, or consultations* among a majority of the members of a public body regarding matters that may foreseeably require final action or a final decision by the governing body, constitute “legal action” and, therefore, must be conducted in a public meeting or executive session in accordance with the Open Meeting Law. *Arizona Agency Handbook*, Arizona Attorney General, p. 7-6, (2013), citing A.R.S. §§ 38-431.01(A) and 38-431(3), Ariz. Att’y Gen. Ops. 75-8, I79-4 and I05-004.

The Open Meeting Law rules do not prohibit a member of a public body from voicing an opinion or discussing an issue with the public either at a venue other than a public meeting of the body. *Id.* Thus, when Mr. Leska

held his individual meeting with members of the public to solicit their concerns and respond to them, the law was not implicated. Where, however, the entire Board (or merely a quorum of the same) would be meeting for the same purpose, compliance with the Open Meeting Law would be required.

Compliance with the Open Meeting Law, of course, requires not only the posting and publication of a notice of the time, date, and place of the meeting, as well as an agenda of the matters to be discussed, considered, or decided at the meeting. A.R.S. § 38-431.02(G). After the meeting is properly held, the Board must also public and maintain minutes of the meeting. A.R.S. § 38-431.01(B). Both of these requirements under the Open Meeting Law present particular challenges in the context of a town hall type of meeting of the Governing Board.

The Governing Board may only *discuss, consider,* or decide those matters listed on their posted and published agenda for a meeting and "other matters related thereto." A.R.S. § 38-431.02(H). While the "other matters" clause might suggest there is some flexibility for a public body in this respect, the Arizona Attorney General has stated the clause should be construed narrowly, noting that the "other matters" must in some reasonable manner be "related" to an item specifically listed on the agenda. *Arizona Agency Handbook*, Arizona Attorney General, p. 7-14 (2013). Thurston v. City of Phoenix, 157 Ariz. 343, 344, 757 P.2d 619, 620 (App. 1988). Whenever matters not specifically listed on an agenda are brought up, the Arizona Attorney General has stated, "The better practice, and the one that will minimize subsequent litigation, is to defer discussion and decision on the matter until a later meeting so that the item can be specifically listed on the agenda". *Id.*

By its very nature, a town hall meeting is intended to be an opportunity for members of the public to raise issues of concern to them. The unpredictability of that kind of meeting is antithetic to the Open Meeting Law which is very much about predicting and publishing in advance the topics of discussion, consideration and action. It is impossible to list matters that will be discussed by the Board at a Town Hall meeting, because those matters are raised by the public itself within the context and at the time of the meeting.

The Administration is aware that, at a recent meeting, Mr. Leska learned that a Governing Board from another state holds town hall meetings at which its individual members separate from one another in "stations" of a sort and members of the public can rotate from one member's station to another to make comments or discuss matters of concern with the individual members. This remains problematic under the Open Meeting Law.

The collective gathering of the Board in a meeting and the consequential mandate for Open Meeting Law compliance cannot be negated by separating the Board members apart. As the Attorney General has expressly stated, "Public officials may not circumvent public discussion by splintering the quorum and having separate or serial discussions with a majority of the public body members. Splintering the quorum can be done by meeting in person, by telephone, electronically, or through other means to discuss a topic that has been or later may be presented to the public body for a decision." *Id.* While this splintering concern is primarily focused on communications between Board Members, it is important to recognize that the very purpose of a town hall meeting is to hear from constituents who have concerns and may seek legal action from the Board as a whole as to those concerns.

A "Round Robin" kind of approach where members of the public rotate from member to member, presumably not only presenting their matters of personal concern but also soliciting and reasonably expecting individual Board Member response to those concerns invites violations of the Open Meeting Law, because Board Members are discussing, considering, deliberating, and potentially deciding matters in a manner that excludes members of the public from hearing all of that discussion, consideration, deliberation and decision-making. Consider the following example:

*At a Town Hall Meeting, a member of the public, Mr. John Jones, wishes to express his concern regarding the District's policy on a significant matter. He hopes not only to express his concern about the current policy, but also to affect how the policy might be revised.*

*When the Board Members break into their individual stations to hear from the public, Mr. Jones begins by addressing his concerns at the first station for Board Member 1. He tells Board Member 1 what his concerns are. Board Member 1 responds by echoing the concern and promising to ask for action to address the information he has just received from Mr. Jones. Standing at the same station when Mr. Jones addresses Board Member 1 are Mrs. Meredith Mason and Mr. Thomas Thompson, two parents who disagree with the merits of Mr. Jones' comments and concerns. They therefore remain at station 1 to provide their input on the policy at issue, while Mr. Jones moves on to Stations 2 and 3, where he shares his concerns in a similar but not exactly the same way with Board Members 2 and 3. Because they were at a different station, Mrs. Mason and Mr. Thompson never hear Board Members 2 and 3 respond to Mr. Jones, and they conclude the only Board Member who intends any action on the matter to be Board Member 1.*

*In a later Board Meeting, the policy matter comes up for Board discussion and action. Because of the extensive discussion which occurred, however separately at the town meeting, the Board Members vote after very little discussion at the subsequent meeting to dramatically change the policy, just as Mr. Jones proposed. Mrs. Mason and Mr. Thompson are very surprised to later learn that the Governing Board voted to change policy, and they feel they had no notice or warning of the same. In fact, they feel misled because when they were present at Stations 2 and 3, they never heard anything from Board Members 2 and 3 suggesting that they felt the policy should be changed.*

*When they later learn that Board Members 2 and 3 did in fact not only comment on the policy matter at their Town Hall stations, but that the Board members actually formed opinions on the matter and promised Mr. Jones to take action at a future Board meeting, Mrs. Mason and Mr. Thompson feel disenfranchised and left out of the decision making process of the Board. They consequently file an Open Meeting Law violation complaint with the Arizona Attorney General.*

*In addition, Board Members 4 and 5 are greatly concerned about the policy change because Mr. Jones never spoke to them at the Town Hall meeting. They were therefore surprised by the proposal to change the policy which was made from the dais, with no advance notice, by Board Member 1 and supported by vote by Board Members 2 and 3. Board Members 4 and 5 feel that they have been denied equal access to information because of the limited discussion that occurs at the subsequent meeting. Board Members 1, 2 and 3 did not of course intend any slight; they simply did not realize that the extensive discussion Mr. Jones had with them was not also shared with Board Members 4 and 5.*

Another aspect of Open Meeting Law compliance to be considered when holding whole Board town hall meetings is the preparation of minutes. If Board members were to meet with members of the public in stations, there would need to be a means of recording the minutes at each station and then ultimately preparing them in a manner that accurately reflects the discussion, deliberation and consideration that occurs at each station, while at the same time distinguishing individual communication from communication involving the Board as a whole – a function that could prove difficult.

Town Hall Meetings, in function, are much like the Governing Board's current practice with respect to Call to the Audience – moments when the public is specifically invited to inform the Board on concerns, desires and

opinions of matters within the jurisdiction of the Board. The Board allows members of the public two opportunities during each of its regular and special meetings to address matters of concern that are not on the agenda – once at the beginning of each meeting and once before the end of the meeting. In addition, the Board allows members of the public to address the Board and provide input on specific matters that are listed on each agenda – at the time of (and preceding) the Board’s action on those items.

Notably, Call to the Audience presents certain challenges under the Open Meeting Law – challenges the legislature and Attorney General have addressed. In 2000, the Legislature addressed the inherent limitations on open calls to the audience during public meetings by revising A.R.S. § 38-431.01(H) to provide that a public body may allow open calls to the audience to allow individuals to address the public body on any issue within the jurisdiction of the public body, while at the same time noting and reminding that members of the public body may not discuss or take action on matters raised during the call to the public that are not specifically identified on the agenda. As Board Members will recall, the law does allow public body members to respond to criticisms made by those who have addressed the public body, ask staff to review a matter, or ask that a matter be put on a future agenda. A.R.S. § 38-431.01(H); *See also* Ariz. Att’y Gen. Op. I99-006.

So limited is the ability of the Board to respond to Call to the Audience matters, the Attorney General advises that, “The best practice is to include language similar to the following on the agenda to explain in advance the reason members of the public body cannot respond to topics brought up during the call to the public that are not on the agenda:

"Call to the Public: This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to A.R.S. § 38-431.01(H), action taken as a result of public comment will be limited to directing staff to study the matter, responding to any criticism or scheduling the matter for further consideration and decision at a later date."

*Arizona Agency Handbook*, Arizona Attorney General, p. 7-14 (2013).

With a Town Hall meeting essentially constituting a large scale open call to the audience, the limitations on Board Member response to open call to the audience arguably apply under the Attorney General’s analysis. Thus, Board Members are well advised that, in the context of a Town Hall Meeting, they should only briefly respond to matters of criticism, direct staff to study an issue raised, or ask that a matter be scheduled for further consideration and decision at a later date.

Such a limited response from Board members in the context of a Town Hall meeting, however, can beg the question, “Then why have this meeting?” from the public that attends. Invited to, as Mr. Leska has previously described it, “have some give and take” with members of the Board, members of the public can obviously feel disenfranchised and frustrated by the limitations which the Open Meeting Law places on the Board Members by virtue of the fact that a quorum or more is meeting.

Thus, Board Members may wish to evaluate whether the existing mechanisms of Open Call to the Audience presented twice at each Board Meeting, as well as obvious means of public communication through mail, email and telephone provide adequate opportunities for the public to address matters of concern to the Board Members without raising complicating factors and compliance matters under the Open Meeting Law.

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**RECOMMENDATION:** This Board item is presented for the Board’s discussion and study. The Administration does believe, however, that the current means of the public addressing matters of concern (within the jurisdiction of the Board) to the Board are to be preferred over those of “Town Hall Meetings” for the reasons cited above.

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**INITIATED BY:**

*Todd A. Jaeger*

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Todd A. Jaeger, Associate to the Superintendent

Date: April 6, 2015

*Patrick Nelson*

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Patrick Nelson, Superintendent