

POLICY NOTES

Electronic Meetings in Georgia

by John O'Looney

In 1999, Georgia amended its Open Records and Open Meetings Acts, increasing the level of openness of public decision-making deliberations and information. The amendments

- made it possible for citizens to access public records and data that were produced under government contract but stored with private agencies;
- shortened the time period for the production of public records;
- encouraged public agencies to make public records available where practicable by electronic means, including via Internet access;
- expanded the list of organizations subject to open meetings requirements;
- mandated that agendas and summaries of matters covered in meetings be published; and
- required affidavits to close a meeting.

This policy note focuses on the open meetings amendments. While they gave an approving nod in the direction of promoting elements of electronic democracy, there remains a great deal of legal uncertainty about whether state and local governments in Georgia will be able to employ many of the new electronically based alternatives to single-site meetings. In some cases, holding meetings electronically will require further changes in Georgia's Open Meetings Act.

Georgia's "sunshine laws" currently stipulate that all meetings, with a few well-defined exceptions, are open to the public. A meeting is defined as "a gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body... at a designated time and place at which any public matter, official business, or policy of the agency is to be discussed or presented or at which official action is to be taken." Given this definition, how would an electronic meeting be legally understood? Some guidance is offered in response to two questions addressed by the attorney general (1994 Op. Att'y Gen. 94-11): (1) Can a state commission utilize a telephonic conference to conduct a meeting? and (2) Can a member who is not present in the meeting room but is present by means of telecommunications equipment be counted to reach a quorum?

Regarding the first question, the attorney general writes, "The Code was amended in 1992 so that the Open and Public Meetings Act (O.C.G.A. § 50-14-1(f)) states: 'An agency with statewide jurisdiction shall be authorized to conduct meetings by telecommunications conference, provided that any such meeting is conducted in compliance with this chapter.'" Existing Georgia law, then, appears to allow agencies with statewide jurisdiction to conduct meetings by telecommunications conference. Other agencies, however, such as regional boards or development commissions and local governments may be restricted in this practice. Further, some statewide agencies that might otherwise qualify for meeting via telecommunication channels may be prevented from doing so by other state law or agency regulations.

While responding positively to the second question, the attorney general did qualify the answer somewhat: "The telecommunications equipment being utilized should permit the members not present in the room to hear all matters being discussed, and to allow them to participate with all other members in discussions. Accordingly, all participants in the meeting, and members of the public in attendance, must be able to collectively hear and speak with each other."

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Existing Georgia law appears to allow agencies with statewide jurisdiction to conduct meetings by telecommunications conference.

Obviously, this opinion and current definitions of public meetings leave a number of unresolved issues concerning electronic meetings. Some of these arise from the 1999 General Assembly's expanded definition of a meeting. The effective meaning of a "meeting," which could possibly include such events as press conferences or conventions or participation in an electronic forum, has yet to be fully tested. Resolving issues of definition may alone help answer some of the questions raised by the potential of electronic meetings. However, it is likely that many of these questions will demand new policies. At least five major issue areas may need policy development:

Public Access. Under what conditions, if any, can a public agency hold a virtual or all-electronic meeting? Would providing Internet access in a single meeting room or at public libraries be sufficient?

Authorization. Currently, members of a public decision-making group are unlikely to meet without a call from an authorized member or at a regularly scheduled meeting. However, if an electronic forum exists for the discussion of a public issue, the potential for decision makers to discuss such issue is greatly increased because the officials do not have to arrange for a time and place to physically meet. If the electronic discussion forum allows for anonymity, decision makers may not even be aware that a quorum has been established.

Synchronicity. Electronic meetings, by taking place over an extended period of time (e.g., day, weeks) with substantial pauses between speakers and respondents, could enhance attendance and participation. However, this way of functioning could also impact the potential for citizen groups to form—because a critical mass of citizens is never present at any one point in time. Basic questions include Do long-term electronic discussion forums of decision makers and the public constitute a public meeting? Does electronic mail that is sent among a quorum-sized group of decision makers constitute a meeting? If the mail is sent to a smaller than quorum-sized group but subsequently forwarded to other decision makers, has a meeting occurred?

Citizen Feedback. Under current public meeting guidelines, public input is generally limited to a particular part of the meetings and to a certain length of time. Similar structures could be established for electronic meetings. Nonelectronic public meetings on controversial issues include spontaneous reaction by the public, which often serves as an important feedback process. Should electronic meetings guarantee a similar capability for citizens? If so, how? By vocalization? By text/chat? By responses to preset polling questions?

Intercitizen Communication. The thrust of open meeting law is to ensure that citizens can monitor and influence public decisions. When they are physically gathered together, groups of citizens with an interest in a policy issue have a chance to communicate with each other. Will electronic meetings ensure the same opportunities for citizen-to-citizen discussion?

As these issue areas suggest, Georgia legislators will have to make some strategic choices about the nature of public meetings in cyberspace. Unfortunately, at this point, there is very little research to guide them in their choices.

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Do long-term electronic discussion forums of decision makers and the public constitute a public meeting?

Will electronic meetings ensure the same opportunities for citizen-to-citizen discussion as do meetings at which citizens are physically gathered together?

Selected Resources

Center for Technology in Government. 1999. *Some Assembly Required: Building a Digital Government for the 21st Century*. Albany, N.Y.: CTG.

Democracies Online: <http://www.e-democracy.org/dol>.

Lessig, Lawrence. 1999. *Code and Other Laws of Cyberspace*. New York: Basic Books.

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