



AS 44.62.312 State policy regarding meetings

(a) It is the policy of the state that

- (1) . . . governmental units . . . exist to aid in the conduct of the people's business;
- (2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;
- (3) the people of this state do not yield their sovereignty to the agencies that serve them;
- (4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;
- (5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created; . . .

AS 44.62.312 State policy regarding meetings

(b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions.

Those sections of AS 44.62.310 subject to narrow construction:

(c) The following subjects may be considered in an executive session: ...

(d) This section does not apply to ...

AS 44.62.310 Government meetings public

- (a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. . . .
- (h) In this section,
- (1) “governmental body” means an assembly. . . or other similar body of a public entity with the authority to establish policies or make decisions for the public entity
- . . . “governmental body” includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;
- (3) “public entity” means ...; it does not include the court system or the legislative branch of state government.

AS 44.62.310 Government meetings public

(2) “meeting” means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity . . .

(e) Reasonable public notice shall be given for all meetings required to be open under this section

Anchorage Municipal Charter:
Section 17.05 - Public meetings

(a) All meetings of the assembly, the school board and other boards and commissions shall be public. The assembly by ordinance shall adopt procedures for maximum reasonable public notice of all meetings. At each such meeting the public shall have reasonable opportunity to be heard. An executive session may be held

Anchorage Municipal Code: *Chapter 1.25 - Public meetings*

1.25.005 - Definitions.

1.25.010 - Public meetings generally.

1.25.015 - Notice of meetings.

- A. Pursuant to AS 44.62.310(e), reasonable notice of meetings of the assembly, ... shall be announced as defined in the definition of the term "announcement" in section 1.25.005 as follows:
1. Regular meetings: Reference AMC 2.30.035D. and E. - Published at least **36 hours** prior,... distribute to Assembly members **72 hours** prior
 2. Special meetings: a minimum of **24 hours** prior
 3. ... continued meetings: a minimum of **24 hours** prior (except when exigencies require unusual haste)
 4. Work sessions: at least **48 hours** prior
 5. Committee meetings: at least **48 hours** prior
 6. Informal meetings: at least **24 hours** prior

Anchorage Municipal Code:
Chapter 1.25 - Public meetings

1.25.015 – Notice of meetings. Selected subsections:

- D.** The notice requirements of this chapter do not apply to gatherings at which no public business is discussed.
- F.** The board of ethics shall accept and consider complaints of violations of this chapter and may recommend that corrective action be taken ... the full range of corrective action afforded in state law under AS 44.62.310
- J.** Nothing in this chapter shall be construed to reduce the effect of applicable state law. This chapter shall be construed broadly to effectuate the greatest possible public notice of meetings consistent with the public good; circumstances not specifically addressed should be handled according to that principle.



- Five acts of *Open Meetings* spectacle!
- Five scenarios to surprise and amaze!
- Each ending in a question: *Does the act deserve your OMA* “cheers” or “jeers”?!



The Magically Appearing Assembly Chair!



Scenario



- The Open Meetings Act is designed to allow the public to watch board members deliberate and vote on agenda items.
- The Assembly just reorganized itself using secret voting and cloakroom discussions.
- To much public surprise, the new Assembly Chair is revealed at the first regularly noticed Assembly meeting.

Does the Assembly deserve OMA jeers?

YES

NO

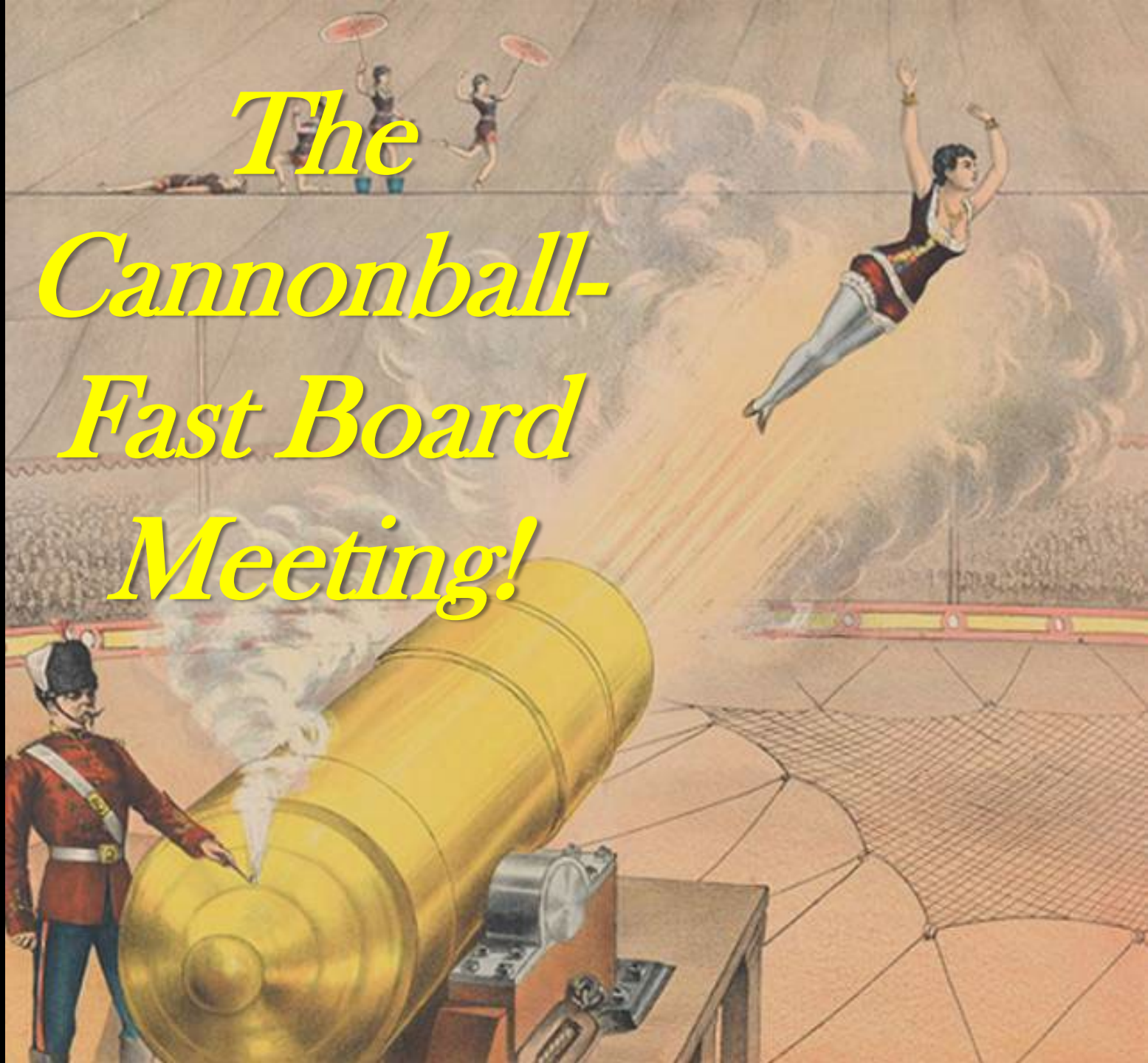
The Open Meetings Act Does Not Apply to “Votes . . . To Organize A . . . Body”

And AMC 2.30.010E.:

“At the close of nominations a secret ballot shall be taken.”

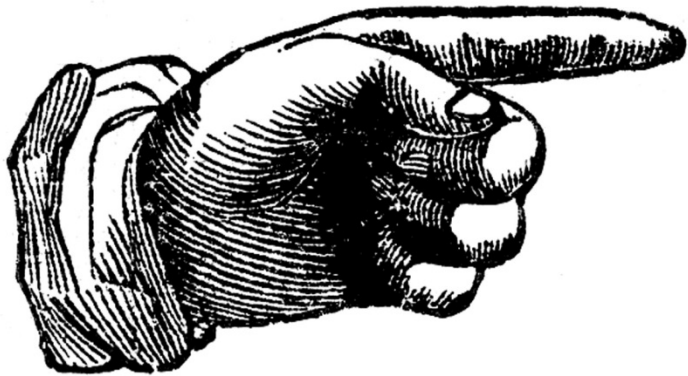
- Only the Votes are Secret, NOT the nominations and discussion

*The
Cannonball-
Fast Board
Meeting!*



Scenario

Please Notice This



- It's Wednesday and the District's Superintendent just submitted her resignation, effective immediately!
- The School Board wants to meet ASAP.
- The Board notices an emergency meeting for Friday.

Does the board deserve OMA jeers?

YES

NO

- Notice must be “reasonable” under the circumstances; no rule sets a minimum
- More notice for more significant public issues; notice should give a concerned party enough time to be involved in the deliberations
- Notice must include “date, time and place of the meeting” and info about teleconferencing; should let the public know what subjects will be covered

631 P.2d 67
Supreme Court of Alaska.

Charles R. **TUNLEY** et al., Appellants and Cross-Appellees,
v.
MUNICIPALITY OF ANCHORAGE SCHOOL DISTRICT et al., Appellees and Cross-Appellants.

Nos. 4796, 4797 and 4826.

Sept. 12, 1980.

As Amended on Denial of Rehearing Jan. 29, 1981.

Section 17.05. - Public meetings.



- (a) All meetings of the assembly, the school board and other boards and commissions shall be public. The assembly by ordinance shall adopt procedures for maximum reasonable public notice of all meetings. At each such meeting the public shall have reasonable opportunity to be heard. An executive session may be held to discuss pending litigation or any matter the immediate public knowledge of which would tend to affect adversely the finances of the municipality or to defame or prejudice the character or reputation of any person. The general matter for consideration in executive session shall be expressed in the motion calling for the session. No official action may be taken in executive session.
- (b) Except in emergency, the assembly, school board, and all municipal boards and commissions may take no official action between the hours of 12:00 midnight and 7:00 a.m., actual time. Action taken in violation of this paragraph is void.

State Law reference— Open meetings, AS 44.62.310.

V. WAS APPROPRIATE PUBLIC NOTICE OF SCHOOL BOARD'S MEETING CONCERNING THE SCHOOL CLOSURES GIVEN ?

17 In light of the impact any closure decision would have on both the child's and parent's interests in the maintenance of neighborhood schools, any closure decision should have been preceded by a public school board meeting at which those potentially affected were given sufficient notice in order to enable adequate preparation and presentation of their views. While the school board, at its February 15 meeting had given notice that it would consider at its next meeting on March 12 the possible closure of schools and that specific recommendations were to be made by the administration at that time, there was only five days notice to interested residents and parents of exactly which schools were strongly recommended for closure by the administration.

18 Five days is not sufficient time for appropriate preparation of opposition concerning an issue of this complexity and importance. Further, such short notice lessens the likelihood of a fair hearing before the school board and of the school board reaching a reasoned administrative decision. For these reasons we conclude that the five-day notice given did not satisfy the purposes of s 17.05 of the charter.³⁵

Since our holding is that the five-day notice was insufficient, this case is remanded to the superior court with directions to remand to the school board to conduct the public hearing after adequate notice.³⁶



*The "Work
Session"
Contortion
Act!*

Thiele's Photo Rooms 62 CANAL ST.,
GRAND RAPIDS.

“Work sessions” are meetings like any other meeting under OMA

- The Act does not create a separate category for work sessions
 - (the Code does!)
- They should be noticed and conducted like any other meeting; open to media, can be recorded

“Work sessions” under Code

- **Charter 17.05:**

(a) All meetings of the assembly, the school board and other boards and commissions shall be public. The assembly by ordinance shall adopt procedures for maximum reasonable public notice of all meetings. At each such meeting the public shall have reasonable opportunity to be heard. An executive session may be held

- **AMC 1.25.005 Definitions**

Work session means a gathering of assembly or school board members for the purpose of obtaining information and discussing an announced topic. Members may attend telephonically.

*Executive
Session
Pantomime*



Scenario



- The Assembly is asked to go into executive session to discuss two issues:
 - (1) A sensitive personnel issue involving allegations against a career employ, and
 - (2) A plan to save money (that could involving laying several employees)
- The career employee objects to the executive session and wants the allegations against her aired publicly.
- The board goes into executive session anyway, and discusses both issues.

Does the board deserve OMA cheers?

YES

NO

- Executive sessions are permissible only for very limited reasons

AS 44.62.310 Government meetings public

(c) The following subjects may be considered in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential;
- (4) matters involving consideration of government records that by law are not subject to public disclosure

AMC 2.30.030 Meetings

K. Executive sessions.

1. The assembly may recess to meet in executive session to discuss the following subjects if the express nature of the subject is stated in the motion calling for the session:
 - a. A specific legal matter, including pending litigation;
 - b. Labor negotiations with municipal employees;
 - c. Matters the immediate knowledge of which would clearly have an adverse effect upon the finances of the municipality;
 - d. Subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
 - e. Matters which by law, municipal charter, or ordinance are required to be confidential; or
 - f. Matters involving consideration of government records that by law are not subject to public disclosure.

- Executive sessions are permissible only for very limited reasons
- Matters, the immediate knowledge of which would clearly have an adverse impact on . . . finances
- But controversial ideas related to the budget not enough
- Subjects that tend to prejudice the reputation and character of any person...
- ... provided “the person may request a public discussion.”

SO WHAT?

- What is the consequence for the Assembly violating the Open Meetings Act?
- Assembly members cannot be named in an OMA lawsuit
- But OMA violations can provide the basis for a recall petition

MUNICIPAL OFFICIAL BALLOT A

Question 2: Walter Featherly

GROUNDS FOR RECALL AS SET FORTH IN PETITION

Walter Featherly, Anchorage School Board, committed misconduct in office and failed to perform prescribed duties by drafting, endorsing and imposing confidentially on the Superintendent, during an executive session, an action item consisting of nine new management and control policy directives that (1) were composed and developed during a round of private telephone calls among only four Board members, closed to public scrutiny, without public notice and open meetings, that (2) were never formally adopted in a regular school board meeting.

Walter Featherly committed misconduct in office and failed to perform prescribed duties by engaging in a round of private telephone calls among only four Board members, closed to public scrutiny, without public notice and open meeting, for the purpose of secretly plotting to later vote to oust the duly elected Board President before the end of his term, without first placing this item on a published agenda, without first hearing public comments, and without deliberating with other Board members in the telephonic scheming.

21 Dec 1992
06:24 PM

SPECIAL ELECTION
DECEMBER 15, 1992
MUNICIPALITY OF ANCHORAGE

	COUNT	PERCENT
PRECINCTS COUNTED - AREA WIDE	116	100.00
REGISTERED VOTERS - TOTAL	135,439	
VOTER TURNOUT - *** TOTAL ***	21,130	15.60
CARD COUNT - ALL CARD TYPES	42,257	
SHALL DOROTHY COX BE RECALLED FROM THE OFFICE OF SCHOOL BOARD MEMBER?		
YES	15,342	73.06
NO	5,656	26.94
SHALL WALTER FEATHERLY BE RECALLED FROM THE OFFICE OF SCHOOL BOARD MEMBER?		
YES	14,078	67.28
NO	6,845	32.72
SHALL CAROL STOLPE BE RECALLED FROM THE OFFICE OF SCHOOL BOARD MEMBER?		
YES	14,215	67.52
NO	6,839	32.48

SO WHAT?

- What is the consequence for the Assembly violating the Open Meetings Act?
- Assembly members cannot be named in an OMA lawsuit
- But OMA violations can provide the basis for a recall petition
- Assembly actions taken in violation of the OMA are not *automatically* void
- ... but they are *potentially voidable*.

- A lawsuit to void the action must be brought within 180 days
- The Assembly alleged to have violated the OMA can then cure any alleged defect by:
 - “holding another meeting in compliance with [the OMA]”
and
 - “conducting a substantial and public reconsideration of the matters considered at the original meeting”
- If that doesn’t (or can’t) happen, a court will then apply a balancing test
- A court may void the action if “the public interest in compliance . . . outweighs the harm that would be caused to the public interest and to the public entity by voiding the action”

The Serial Conversation



Scenario



- Assembly members have one-on-one conversations in which they discuss pending legislation, discuss their own preferences, and solicit each other's advice
- The pending legislation later passes with little comment.

Does the board deserve OMA cheers?

YES

NO

868 P.2d 919
Supreme Court of Alaska.

Walter J. HICKEL, Governor of Alaska, State of Alaska, et al., Petitioners/Appellants,
v.
SOUTHEAST CONFERENCE, a non-profit Alaska corporation, et al., Respondents/Appellees.
SOUTHEAST CONFERENCE, a non-profit Alaska corporation, et al., Petitioners/Cross-Appellants,
v.
Walter J. HICKEL, Governor of Alaska, State of Alaska, et al., Respondents/Cross-Appellees.

Nos. S-5553, S-5573, S-5093 and S-5154.
Feb. 18, 1994.

10 The superior court also held that the Board violated the Open Meetings Act by “meeting outside of noticed meetings to do the business of reapportionment.” In *Brookwood Area Homeowners Association v. Anchorage*, 702 P.2d 1317 (Alaska 1985), we held that “a ‘meeting’ includes every step of the deliberative and decision-making process when a governmental unit meets to transact public business.” *Id.* at 1323. We noted that “the question is not whether a quorum of a governmental unit was present at a private meeting. Rather, the question is whether activities of public officials have the effect of circumventing the OMA.” *Id.* at 1323 n. 6.

The superior court found that Board members had one-on-one conversations with each other in which they discussed reapportionment affairs and districting preferences, and solicited each other's advice. It also found that the “dearth of [substantive] discussion on the record, combined with the manner of *930 some Board members at trial, as well as other evidence presented at trial, convinces this court that important decision making and substantive discussion took place outside the public eye.” Our review of the record indicates support for the factual finding that the Board conducted some of its reapportionment business outside scheduled public meetings. Based on this finding, we agree with the superior court that the Board violated the Open Meetings Act.

The Serial Conversation



Q: Two Assembly members talking about what they think of pending legislation is harmless though, right?

A: Maybe! How many did those two talk to before each other?
After?

The Serial Conversation

Q: A large business invites Assembly Members to its offices to present a large development proposal, can they attend?

A: Maybe! No more than 3!

Alternatives compliant with OMA:

- Schedule a work session open to the public. Without public access, the “people's right to be informed” under the OMA is severely limited.
- The business can meet with each Assembly member individually to discuss their development project and to lobby
- Mail or email informational packet to Members

Group site visit? It's a public meeting if more than 3.

- Received “evidence” in the sense that observations of the site and an opportunity to assess the merits of safety concerns ... *Gold Country Ests. Pres. Grp., Inc. v. Fairbanks N. Star Borough*, 270 P.3d 787, 796 (Alaska 2012)
- Publicly noticing is the prophylactic

The Serial Conversation

Brookwood Area Homeowners Ass'n, Inc. v. Municipality of Anchorage,
702 P.2d 1317, 1322–23 (Alaska 1985):

Without public access to the Quadrant meeting, the “people's right to be informed” under the OMA was severely limited.

“meeting” includes every step of the deliberative and decision-making process when a governmental unit meets to transact public business.

...

not only government action but also government deliberation must be conducted in public. The trial court erred in its narrow construction of “action.” Action must encompass the Assembly's fact-gathering and deliberative sessions relating to public business.

E-Mail ~~The Serial Conversation~~



Q: All Assembly members received an email with information on an item on the agenda for the upcoming meeting, can I reply?

A: To one, not to all!



The Serial Conversation

Chat rooms!

From April 2022:

Three Palmer city council members face recall over Facebook group participation

There is an on-line Facebook group identified as "Mat-Su Moms for Social Justice." It is a group which has controlled access, and has approximately 350 members. Only members can post or see things which are posted. It is not open to the general public, but only to invited members. The allegation is that Council Members Brian Daniels, Sabrena Combs, Jill Valerius and Julie Berberich are members of the group, and that they participated in one or more conversations within this group which constituted a meeting in violation of the Alaska Open

Conclusions:

"... raise serious concerns about OMA compliance. At least one of the streams of communications in October 2020 appears to have violated the OMA. Even if none ... I recommend that Council Members not participate in communications by social media, e-mail or otherwise where a quorum of Council is included in the communication and that quorum is either discussing or being presented with information ... for deliberation on matters upon which the Council is empowered to act..."

Questions?

Remember, keep the public's business in the sunshine

Thank you!

