

Maine Recovery Council

Governance Committee

March 28, 2024

1 M.R.S.A. § 406. PUBLIC NOTICE

- Public notice shall be given for all public proceedings as defined in section 402, if these proceedings are a meeting of a body or agency consisting of 3 or more persons.
- This notice shall be given in ample time to allow public attendance and shall be disseminated in a manner reasonably calculated to notify the general public in the jurisdiction served by the body or agency concerned. In the event of an emergency meeting, local representatives of the media shall be notified of the meeting, whenever practical, the notification to include time and location, by the same or faster means used to notify the members of the agency conducting the public proceeding.

1 M.R.S.A § 402.

DEFINITIONS

2. **Public proceedings.** The term "public proceedings" as used in this subchapter means **the transactions of any functions** affecting any or all citizens of the State **by any of the following:**
- B. Any board or commission of any state agency or authority...
 - F. Any advisory organization, including any authority, board, commission, committee, council, task force or similar organization of an advisory nature, established, authorized or organized by law or resolve or by Executive Order issued by the Governor and not otherwise covered by this subsection, unless the law, resolve or Executive Order establishing, authorizing or organizing the advisory organization specifically exempts the organization from the application of this subchapter; and...

1 M.R.S.A. § 401. DECLARATION OF PUBLIC POLICY; RULES OF CONSTRUCTION

The Legislature finds and declares that public proceedings exist to aid in the conduct of the people's business. It is the intent of the Legislature that their actions be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly. It is further the intent of the Legislature that clandestine meetings, conferences or meetings held on private property without proper notice and ample opportunity for attendance by the public not be used to defeat the purposes of this subchapter.

1 M.R.S.A. § 401.

DECLARATION OF PUBLIC POLICY; RULES OF CONSTRUCTION

This subchapter does not prohibit communications outside of public proceedings between members of a public body unless those communications are used to defeat the purposes of this subchapter.

This subchapter shall be liberally construed and applied to promote its underlying purposes and policies as contained in the declaration of legislative intent.

FOAA Frequently Asked Questions

“When does a meeting or gathering of members of a public body or agency require public notice?”

Public notice is required of all public proceedings if the proceedings are a meeting of a body or agency consisting of 3 or more persons. 1 M.R.S. § 406”

- <https://www.maine.gov/foaa/faq/index.shtml#proceedings>

FOAA Frequently Asked Questions

Can members of a body communicate with one another by e-mail outside of a public proceeding?

The law does not prohibit communications outside of public proceedings between members of a public body **unless those communications are used to defeat the purposes of the FOAA.** 1

M.R.S. § 401

E-mail or other communication among the members of a body that is used as a substitute for deliberations or decisions which should properly take place at a public meeting may likely be considered a "meeting" in violation of the statutory requirements for open meetings and public notice. "Public proceedings" are defined in part as "the transactions of any functions affecting any or all citizens of the State..." 1 M.R.S. § 402 The underlying purpose of the FOAA is that public proceedings be conducted openly and that deliberations and actions be taken openly; clandestine meetings should not be used to defeat the purpose of the law. 1 M.R.S. § 401 Public proceedings must be conducted in public and any person must be permitted to attend and observe the body's proceeding although executive sessions are permitted under certain circumstances. 1 M.R.S. § 403 In addition, public notice must be given for a public proceeding if the proceeding is a meeting of a body or agency consisting of 3 or more persons. 1 M.R.S. § 406

Members of a body should refrain from the use of e-mail as a substitute for deliberating or deciding substantive matters properly confined to public proceedings. E-mail is permissible to communicate with other members about non-substantive matters such as scheduling meetings, developing agendas and disseminating information and reports.

Even when sent or received using a member's personal computer or e-mail account, e-mail may be considered a public record. 1 M.R.S. § 402(3) As a result, members of a body should be aware that all e-mails and e-mail attachments relating to the member's participation are likely public records subject to public inspection under the FOAA.