

King George County, Virginia



November 20, 2023

Meetings Issues Subcommittee
Virginia Freedom of Information Act Council
Via email only: foiacouncil@dls.virginia.gov

Re: Guidance and Legislative Position Regarding Clarifying Required Meeting Notices

Members of the Subcommittee:

Thank you for working to provide guidance to public bodies on how best to implement the *Gloss v. Wheeler* ruling of the Virginia Supreme Court as it relates to when notices of a public meeting are required for joint appearances or attendance of a quorum of a public body. The King George County Board of Supervisors (Board) seeks greater clarity on what types of circumstances and subject matter require notices of public hearing. The Board fully supports the animating purposes of the Freedom of Information Act, but there is now uncertainty on what types of public engagement require advance public notice due to possible future transaction of public business.

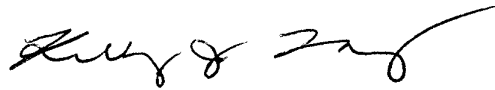
Without necessarily endorsing the particular drafting, the Board finds persuasive the definition of a "meeting" under Texas Government Code § 551.001 (attached). Of note, a meeting requires deliberation arising from a meeting called by the public body to consider taking formal action or for a quorum of members of the public body to receive information, give information, or ask/receive questions about matters under supervision or control of the public body. Specific exclusions include trainings/workshops or conventions, ceremonial events, press conferences, and candidate appearances (including forums or debates) where public business is merely "incidental" to a gathering organized by third parties. To be clear, the Board is cognizant that the *Gloss* ruling specifically preserved a meeting exemption for a "purely informational" public forum and candidate appearance or debate, but apart from these distinctions, there is remaining uncertainty applied to the variety of occasions at which a quorum may be present. The Board seeks your guidance and perhaps support for a legislative change in the interest of clarity and to facilitate implementation.

Some examples of events that may not have previously been identified as necessitating a notice of a public meeting prior to the *Gloss* decision include a citizen information meeting held by a developer to inform the public about a subdivision proposal which might be attended by a quorum; and, a holiday luncheon for employees at which employee recognition and appreciation may be addressed in brief remarks by one or more members of the Board as well as presentation of a service award to an employee of the year selected by the Board. Providing notices of such events poses practical difficulties as members of a public body must now coordinate their attendance at private or ceremonial

events (and also try to anticipate unrehearsed public addresses by other Board members or topics raised by third parties), and, members of the public may be confused by notices of meetings that do not meet the commonly held understanding of deliberation of public business or formal agenda (organized by or on behalf of a public body). Furthermore, open public access to events planned by third parties is not always assured, civil penalties may be incurred without intentional noncompliance, and the *Berry v. Board of Supervisors of Fairfax County* ruling now provides a possible avenue to render *void ab initio* undertakings by the Board by subsequent formal action that relate to incidental remarks or discussion by an individual member(s) of a public body at a private event.

Should additional information be helpful in your deliberations, you may contact me at klackey@co.kinggeorge.state.va.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelly J. Lackey". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kelly J. Lackey, County Attorney, on behalf of
King George County Board of Supervisors

cc: The Honorable Senator Richard H. Stuart
Alan Gernhardt, Executive Director, FOIA Advisory Council

§ 551.001. Definitions

In this chapter:

- (1) "Closed meeting" means a meeting to which the public does not have access.
- (2) "Deliberation" means a verbal or written exchange between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body.
- (3) "Governmental body" means:
 - (A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;
 - (B) a county commissioners court in the state;
 - (C) a municipal governing body in the state;
 - (D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;
 - (E) a school district board of trustees;
 - (F) a county board of school trustees;
 - (G) a county board of education;
 - (H) the governing board of a special district created by law;
 - (I) a local workforce development board created under Section 2308.253;
 - (J) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state;
 - (K) a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code;
 - (L) a joint board created under Section 22.074, Transportation Code; and

(M) a board of directors of a reinvestment zone created under Chapter 311, Tax Code.

(4) "Meeting" means:

(A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, or the attendance by a quorum of a governmental body at a candidate forum, appearance, or debate to inform the electorate, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, press conference, forum, appearance, or debate.

The term includes a session of a governmental body.

(5) "Open" means open to the public.

(6) "Quorum" means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.

(7) "Recording" means a tangible medium on which audio or a combination of audio and video is recorded, including a disc, tape, wire, film, electronic storage drive, or other medium now existing or later developed.

(8) "Videoconference call" means a communication conducted between two or more persons in which one or more of the participants communicate with the other participants through duplex audio and video signals transmitted over a telephone network, a data network, or the Internet.

History:

Amended by Acts 2021, Texas Acts of the 87th Leg. - Regular Session, ch. 361, Sec. 1, eff. 9/1/2021. Amended by Acts 2019, Texas Acts of the 86th Leg.- Regular Session, ch. 645, Sec. 1, eff. 6/10/2019. Amended by Acts 2017, Texas Acts of the 85th Leg. - Regular Session, ch. 917, Sec. 1, eff. 9/1/2017. Amended by Acts 2015, Texas Acts of the 84th Leg. - Regular Session, ch. 1236, Sec. 21.001, eff. 9/1/2015. Amended by Acts 2015, Texas Acts of the 84th Leg. - Regular Session, ch. 115, Sec. 1, eff. 5/23/2015. Amended by Acts 2013, Texas Acts of the 83rd Leg. - Regular Session, ch. 685, Sec. 1, eff. 6/14/2013. Amended by Acts 2013, 83rd Leg. - Regular Session, ch. 87, Sec. 1, eff. 5/18/2013. Amended By Acts 2007, 80th Leg., R.S., Ch. 165, Sec. 1, eff. 5/22/2007. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.23, eff. 9/1/1999; Acts 1999, 76th Leg., ch. 647, Sec. 1, eff. 8/30/1999; Acts 2001, 77th Leg., ch. 633, Sec. 1, eff. 9/1/2001; Acts 2001, 77th Leg., ch. 1004, Sec. 1, eff. 9/1/2001; Acts 2003, 78th Leg., ch. 1276, Sec. 9.012, eff. 9/1/2003. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. 9/1/1993.