

King George County, Virginia



December 13, 2023

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 Council:

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. On behalf of the King George County Board of Supervisors, I am writing to seek 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, including events where fewer than a quorum engage in public comment or events hosted by third parties that may not be open to the public or satisfy accessibility needs.

Of note, “meeting” under Texas Government Code § 551.001 and Cal. Gov’t Statute § 54952.2(C) include specific exclusions such as 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 (and may not remain entirely silent). The Board seeks your guidance and perhaps support for a legislative change in the interest of clarity and to facilitate implementation.

The amendment suggestions drafted by Senator Stuart (LD 24103187), and Ms. Rhyne and Mr. Crim (LD24101703) would provide clarity in particular as to meetings of local political parties (proposed subpart c in the definition of meetings) and informational gatherings and public forums (amendments to existing subparts a and b in the definition of meetings); however, further clarity could be provided by defining “public business”. In addition to a definition of public business yet to be articulated, proposed amended subparts (a) – (c) in the definition of meeting in Va. Code § 3701 would benefit from the following additional clarification:

"For purposes of the gatherings referenced in (a), (b), and (c) above, and educational trainings open to and actually attended by members of multiple public bodies from multiple jurisdictions, no discussion or transaction of public business shall be deemed to occur so long as the primary purpose of the meeting is not to discuss or transact public business, and, a majority of members of a particular public body do not discuss among themselves public business."

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", with a stylized flourish 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
Joe Lerch, VACo