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Sent: Monday, November 20, 2023 12:58 PM
To: foiacouncil@dls.virginia.gov
Cc: Seltzer, Cullen D. <cseltzer@sandsanderson.com>; McRoberts, Andrew R. <amcroberts@sandsanderson.com>
Subject: Draft legislative amendments to FOIA

Alan,
Cullen suggested I share these draft legislative amendments with you.

In § 2.2-3701, modify the definition of “meeting” and add a definition of “public business” as follows:

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through electronic communication means pursuant to § 2.2-3708.2 or 2.2-3708.3, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (a) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (b) at a public forum, informational gathering, candidate appearance, or debate, the purpose of which is to inform the electorate or to gather information from the public and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter. The attendance of members of a public body at the meeting of another public body does not constitute a meeting of the first public body so long as those members attending the other public body's meeting do not discuss or transact any public business.

"Public Business" means activity that the public body has undertaken or proposed to undertake on behalf of the people it represents.

In § 2.2-3713, add a new subsection G as follows, along with an enactment clause:

G. The remedies stated in this chapter are exclusive. No violation of this chapter shall render void any otherwise lawful action taken by a public body.

The enactment clause would be, “This enactment is declarative of existing law.”

I believe you're familiar with the situations that made these changes advisable, and the subsequent discussion about the uncertainty surrounding the legality of various planned and unplanned gatherings of public officials. I'm happy to discuss further at your convenience.

--Martin

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