
Coates' Canons Blog: Can the Board Take Action in a Workshop Meeting?

By Frayda Bluestein

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A newly elected local government board member is attending an orientation session. Her hand shoots up. “One thing I’ve always been confused about is whether or not it’s legal for a board to take action in a workshop or retreat meeting.” All eyes turn to the board attorney for an answer. “That’s a great question,” the attorney says. “But I need one more piece of information to answer it.”

Can you guess what piece of information is missing?

If you guessed that the attorney needs to know what type of notice was given for the meeting, you got it right.

Types of Meetings

North Carolina statutes describe three main types of meetings – regular, special, and emergency – and set out the types of notice that must be provided to the public ([G.S. 143-318.12](#)) and to governing board members themselves ([G.S. 153A-40](#), [160A-71](#)).

There are no statutes or cases that limit the actions or subjects may be considered in a regular meeting. The general understanding is that the board may take up any business it wishes at a regular meeting, and that the board may modify the agenda before or even during the meeting. (For more on the process of developing and amending agendas, see my earlier blog post [here](#).)

The notice requirements for special and emergency meetings, however, create limitations on matters that may be considered in these types of meetings. As articulated in a case from another state:

[I]n giving notice of a general [regular] meeting, a public body is not required to state the meeting’s purpose. This distinction is obviously predicated upon the fact that such a meeting is not being held for any specific reason, but instead is being held because it is a regularly scheduled meeting. In contrast, the use of the term “special meeting” implies that such a meeting can only be held when there are specific reasons for holding it. Given the existence of such a reason, it follows that the notice of a special meeting must refer to those specific reasons, and that those specific issues are the only ones which can be addressed at such a meeting.

State ex rel. Young v. Bd. of Edn. Lebanon School Dist., Ohio App., 2013 WL 1196877, citing *Jones v. Brookfield Township Trustees*, 11th Dist. No. 92–T–4692, Ohio App., 1995 WL 411842.

There are two kinds of notice statutes: the open meetings law, and separate statutes requiring notice to governing board members. The open meetings law requires the notice of a special meeting to state the purpose of the meeting. [G.S. 143-318.12\(b\)\(2\)](#). Although there is no appellate case interpreting this requirement, it is generally assumed that the board is limited to those matters that are within the scope of the purposes as stated in the notice. The city and county board member notice statutes make the point more clearly, stating that only those items of business specified in the notice of a special meeting may be transacted at the meeting, unless all members are present, or those not present have signed a written waiver. [G.S. 153A-40\(b\)](#), [160A-71\(b\)\(1\)](#). It’s important to note that both types of notice must be given (the open meetings and board member notice), so the limitation in the open meetings law still applies even if board member notice is waived.

Emergency meetings, for which minimal notice is required, may be held only to address “generally unexpected

circumstances that require immediate attention.” [G.S. 143-318.12\(f\)](#). An emergency meeting is legally justified only if the matter must be addressed sooner than the 48 hours required under the open meetings law for notice of a special meeting. The open meetings law and county board-member notice statutes specifically provide that only matters related to the emergency may be considered at a meeting for which the minimal emergency notice has been provided. (The city board notice statute does not specifically provide for emergency meetings, which means that the 6-hour board member notice requirement for special meetings applies even in an emergency situation.)

It's Not What You Call It That Counts

Local governments use lots of different names for meetings. There are agenda meetings, retreats, budget workshops, strategic planning events, community forums, and meetings of committees and subcommittees. But it's the type of notice, not the name of the meeting, that determines which type of meeting it is (regular, special, or emergency), and what may be considered. If a board schedules a regular “workshop” meeting as part of its regular schedule of meetings, that's a regular meeting. The board is free to take up any business it deems appropriate, even though the meeting is described as a workshop. On the other hand, if the board reschedules a cancelled regular meeting for a time that's not on the regular meeting schedule, then it will be considered a special meeting, and the board will be limited to the purposes stated in the notice of the meeting, even though it's called a regular meeting. (As noted in my blog post on cancelling and rescheduling meetings, [here](#), the board also has the option of amending the schedule of regular meetings so that the rescheduled meeting is a regular, rather than a special meeting.) Note that when a board recesses a meeting, the original meeting continues at the new date and time, and the character and scope of the meeting does not change.

The Scope of the Purpose: Subject Matter and Type of Action

The stated purpose of a special or emergency meeting determines what may be done at the meeting. A violation of the open meetings law could occur if a public body's actions exceed the scope of the notice. The scope of the notice may have two dimensions. First, there is the scope of the subject matter. So if the purpose of a special meeting is to consider a personnel matter, a board would likely violate the statute by taking up a budget amendment for a construction project. A second dimension is the nature of any action taken. If a special meeting is called to “discuss” a complaint about roosters in residential neighborhoods, there could be a challenge if the board adopts an ordinance prohibiting roosters. [Note that the super majority requirements for adoption of ordinances on first reading ([G.S. 160A- 75](#); [153A-45](#)) provide some protection against hasty legislative decisions.]

What's In a Name?

Although the name of the meeting doesn't determine what kind of meeting it is, the name that is used to describe a special meeting may affect the public perception of its scope, and perhaps a court's interpretation of what actions may be undertaken. The concern about voting in a “workshop” meeting may be that calling a meeting a “workshop” could imply that no action will be taken. What about a special meeting called a “strategic planning retreat” at which board members use sticky notes to “vote” on their highest priorities for the upcoming fiscal year to be used in the budgeting process? Does a retreat imply discussion but not decision-making? Without any cases interpreting the statute, it's difficult to predict the significance of the specific wording of the statement of purpose or the name of meeting.

Given this uncertainty, clerks and others who prepare meeting notices should carefully consider the wording used to describe the meeting and its purpose. In cases where the board wants the flexibility to take action and vote, the statement of purpose should include that possibility. Notices could include language to make clear that the board will discuss or consider and possibly take action on the matter or matters that are the reason for the meeting. It might also be important to exercise care in describing meetings on the regular meeting schedule. If that schedule includes a workshop meeting, and specifically indicates that no action will be taken, that limitation would likely override the flexibility otherwise available at regular meetings.



Links

- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=143-318.12
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-40
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-71
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160A-75
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153A-45