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TO: The Honorable Detroit City Council

FROM: David Whitaker, Director   
Legislative Policy Division Staff

DATE: October 4, 2023

RE: **REPORT ON WHEN A QUORUM OF THE DETROIT CITY COUNCIL MAY  
GATHER OUTSIDE OF AN OPEN MEETING WITHOUT VIOLATING THE  
OPEN MEETINGS ACT**

Council Member Coleman A. Young II requested that the Legislative Policy Division (LPD) examine when a quorum of Detroit City Council may gather outside of an open meeting without violating the Open Meetings Act (OMA).

The OMA provides that “all decisions of a public body shall be made at a meeting open to the public,” and that, with limited exceptions, “all deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.”<sup>1</sup>

The OMA defines a “decision” as “a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.”<sup>2</sup> Therefore, all deliberations of a quorum of a public body regarding matters that the body may take official action on must occur during a public meeting subject to the requirements of the OMA.

The Michigan Supreme Court has held that the OMA forbids any deliberations that occur outside of an open meeting, regardless of whether the deliberations lead to a formal action or whether a formal vote is taken at the meeting.<sup>3</sup> Any form of informal consensus building or conferences among a quorum of a public

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<sup>1</sup> MCL 15.263(2) and (3).

<sup>2</sup> MCL 15.262(d)

<sup>3</sup> *Booth Newspapers, Inc. v. Univ. of Michigan Bd. of Regents*, 444 Mich. 211, 229 (1993)

body that occurs outside of an open meeting violate the OMA because these actions achieve the same purpose that is meant to occur during a formal meeting.<sup>4</sup>

Section 8 of the OMA provides the purposes for which a public body may deliberate during a closed session.<sup>5</sup> However, even during a closed session, courts strictly construe the OMA to only allow discussion of the topic that falls under the closed session exception, and a public body may not discuss matters of public policy during a closed session without violating the OMA.<sup>6</sup>

Aside from closed sessions, the OMA states that it does not apply to “a committee of a public body that adopts a non-policymaking resolution of tribute or memorial, if the resolution is not adopted at a meeting,” nor does it apply to “a meeting that is a social or chance gathering or conference not designed to avoid this act.” The OMA does not define “social or chance gathering” or “conference.” However, prior Michigan Attorney General opinions and the Open Meetings Act Handbook issued by the Michigan Attorney General provides the following guidance on the subject:

In addition to a purely social gathering<sup>7</sup> or chance gathering that does not involve discussions of public policy among the members of the board, a quorum may accept an invitation to address a civic organization,<sup>8</sup> listen to the concerns of a neighborhood organization, or observe demonstrations, if the board doesn’t deliberate toward, or make, a decision.<sup>9</sup>

A board quorum also may meet for a workshop, seminar, informational gathering, or professional conference designed to convey, to the conference participants, information about areas of professional interest common to all conference participants rather than a more limited focus on matters or issues of particular interest to a single public body.<sup>10</sup> However, when gatherings are designed to receive input from officers or employees of the public body, the OMA requires that the gathering be held at a public meeting.<sup>11,12</sup>

The “social or chance gathering” exception should be narrowly construed similar to the closed session exception, in that matters of public policy may not be discussed even if a quorum of a public body meets by chance.<sup>13</sup> Any discussion between members of a public body at a social or chance gathering should be strictly limited to general matters which are unrelated to matters that come before the body for a decision.

The guidance from the Michigan AG states that a quorum of a public body may attend certain meetings, presentations, demonstrations, conferences, or training sessions without automatically violating the OMA. The OMA defines a “meeting” as “the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.” Therefore, a quorum of a public body may, for example, attend and even address an event for a civic organization so long as the purpose of the event is not to deliberate on a public policy and no deliberation occurs during the event because such events do not constitute a “meeting” under the OMA.

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<sup>4</sup> *Id.*

<sup>5</sup> MCL 15.268

<sup>6</sup> *Wexford Cnty. Prosecuting Att’y v. Pranger*, 83 Mich. App. 197, 201-204(1978).

<sup>7</sup> OAG, 1979-1980, No 5437, p 36 (February 2, 1979).

<sup>8</sup> OAG, 1977-1978, No 5183, p 21, 35 (March 8, 1977).

<sup>9</sup> OAG, 1977-1978, No 5364, p 606, 607 (September 7, 1978).

<sup>10</sup> OAG, 1979-1980, No 5433, p 29, 31 (January 31, 1979).

<sup>11</sup> OAG No 5433 at p 31

<sup>12</sup> [Michigan Open Meetings Act Handbook, updated October 2022](#), pg. 9

<sup>13</sup> OAG, 1979- 1980, No 5437, p 36, 37

However, a quorum of a public body should exercise caution if they choose to attend events and take care to ensure that, for example, a meeting designed for information gathering does not lead to deliberation among the members. As the Michigan Attorney General has stated, “if a gathering designed to provide information develops into deliberations on matters of public policy or leads to decisions on matters within the jurisdiction of the council, the members will have crossed the boundary of the exemption in section 3(10) of the Open Meetings Act, supra, and will have violated the Act.”<sup>14</sup>

Importantly, members of a public body may not attend a meeting designed to receive input from officers or employees of the public body without violating the OMA because “presentations of administrators are part of the deliberative process through which decisions on public policy are reached.”<sup>15</sup>

The OMA expressly states that the exception for conferences only applies to “a conference not designed to avoid the act.”<sup>16</sup> Therefore, labeling a meeting between a quorum of a public body as a “conference” will not avoid a violation of the OMA if the members of the public body engage in deliberation during the meeting. Violations of the OMA may result in invalidation of actions taken by the public body and intentional violations of the OMA may result in individual liability for the member(s) who engaged in the violation.

The legislative intent of the OMA is to promote transparency to the public regarding the decisions of public governing bodies, and Michigan courts strictly construe the statutory exceptions to adhere to this purpose.<sup>17</sup> In other words, the OMA exceptions for closed sessions, social and chance gatherings, and conferences are not broad exceptions. Accordingly, members of a public body should always err on the side of transparency and avoid engaging in any discussion that could be construed as deliberation with other members outside of a public meeting.

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<sup>14</sup> OAG, 1977-1978, No 5364 (September 7, 1978).

<sup>15</sup> OAG, 1979-1980, No 5433, p 29 (January 31, 1979).

<sup>16</sup> MCL 15.263 (10).

<sup>17</sup> *Wexford Cnty. Prosecuting Att'y v. Pranger*, 83 Mich. App. 197, 201-204(1978).