



# OKLAHOMA

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## Question Submitted by: The Honorable Stratton Taylor, Oklahoma House of Representatives, The Honorable Ben Brown, House of Representatives

1982 OK AG 7

Decided: 01/20/1982

Oklahoma Attorney General

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Cite as: 1982 OK AG 7, \_\_ \_\_

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¶0 The Attorney General has received your opinion request, wherein you ask, in effect:

- 1. May a commissioner of a state agency operating under the Open Meeting Act delegate his right to vote in a regularly scheduled commission meeting to another commissioner by the use of a proxy vote?**
- 2. If the answer to the foregoing is in the negative, what is the effect of a decision decided by the proxy vote?**

¶1 The purpose of the Oklahoma Open Meeting Act, 25 O.S. 301 (1977) et seq., is expressly stated in 25 O.S. 302 of the Act,:

"It is the public policy of the State of Oklahoma to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems."

¶2 Any attempt to construe the meaning of the Open Meeting Act must begin with a determination of legislative intent. See, e.g., *Riffe Petroleum Co. v. Great Nat'l. Corp., Inc.*, Okl., 614 P.2d 576 (1980). Statutes are to be construed so as to accomplish the intent of the Legislature, rather than to encourage the evils against which the statutes are directed. *AMF Tuboscope Co. v. Hatchel*, Okl. 547 P.2d 374 (1976); *Bell v. United Farm Agency*, Okl., 296 P.2d 149, 150 (1956). Accordingly, a previous opinion of the Attorney General stated that "the Open Meeting Act must be given a construction which will effectuate and not subvert the intention of the Legislature in facilitating an informed citizenry's right to participate in government...." Okla. A.G.Op. No. 80-215.

¶3 To further this goal, the Act sets out with specificity the manner of operation of those public bodies which are subject to its provisions:

"The Act requires that: minutes of meetings of public bodies be kept; the members present and absent be noted; all matters considered and actions taken be reflected, and that the vote of each member be publicly cast and recorded." *Berry v. Board of Gov. of Reg. Dentists*, Okla., 611 P.2d 628, 631 (1980) (footnote omitted).

¶4 The definition of "meeting" within the Act is "the conducting of business of a public body by a majority of its members being *personally together*." 25 O.S. 304(2) (1977) (Emphasis added). And, with respect to votes cast at meetings of public bodies, the Act requires that "the vote of *each member* shall be publicly cast and recorded." 25 O.S. 305 (1977) (Emphasis added). Votes may not be taken nor decisions made at informal meetings or by electronic or telephonic means. 25 O.S. 306 (1977). In addition, voting by mail has been found to violate the Open Meeting Act, Okla. A.G.Op. No. 80-144; as has voting on personnel matters in executive session, Okla. A.G.Op. No. 81-069.

¶5 Words used in statutes, unless there is some indication to the contrary, are to be given their ordinary and common definitions. *State ex. rel. Western State Hospital v. Stoner*, Okl., 614 P.2d 59 (1980). "Personal" is defined as "[a]ppertaining to the person; belonging to an individual; *limited to the person....*" *Black's Law Dictionary*, 1029 (5th Ed. 1979). Because effect is to be given to *all* of a statute, *Spiers v. Magnolia Petroleum Co.*, 206 Okl. 510, 244 P.2d 852 (1952), the use of the word "personally" in the definition of "meetings" under the Act is not without significance. The logical inference which must be drawn from the inclusion of the adverb "personally" is that the Legislature intended for members of a public body to be physically *present with one another* for a "meeting" to take place. Further, this physical presence is necessarily a prerequisite to voting at a meeting of that public body, as is illustrated by the restrictions placed on voting noted above.

¶6 Proxy voting is the antithesis of personal voting. "Proxy" is defined as "[a] person who is *substituted or deputed by another to represent him and act for him*, particularly in some meeting or public body..." *Black's Law Dictionary*, 1391-92 (5th Ed. 1979) (Emphasis added). The procedure of voting by proxy does not conform to the standard for voting under the Open Meeting Act. As expressed in an Opinion of the Attorney General which dealt with the use of a document containing signatures of members of a public body, which signatures had been obtained by private meetings:

"Permitting a single member of the governing body to obtain a consensus or vote of that body by privately meeting alone with each member, would be to condone decision-making by public bodies in secret, which is the very evil against which the Open Meeting Act is directed." Okla. A.G.Op. No. 81-069

¶7 This rationale applies also to proxy voting. The requirements that members be physically present for meetings to take place and that voting be done only at meetings, provide protection against secret decision-making and further the Legislative intent of facilitating the understanding of government by informed citizens. No such protection can be afforded if voting by proxy is condoned.

¶8 Having determined that a commissioner of a state body may not delegate his right to vote to another commissioner by use of a proxy, it is necessary to respond to your second question, which concerns the effect of a decision rendered by a state agency using such a voting procedure.

¶9 The Oklahoma Open Meeting Act provides:

"Any action taken in *willful violation* of this act shall be *invalid*." 25 O.S. 313 (1977) (Emphasis added)

¶10 Thus, actions which constitute "willful" violations of the Act are invalid. The Oklahoma Court of Appeals has recently interpreted the term "willful" as used in this provision:

"The word 'Willful' in 25 O.S. 313 (1977), providing that actions taken in willful violation of the Open Meeting Act shall be invalid, does not require a showing of bad faith, malice, or wantonness, but rather, encompasses both conscious, purposeful violations of the law and blatant or deliberate disregard of the law by those who know, or should know, the requirements of the Open Meeting Act."

¶11 *In the Matter of the Appeal of the Order Declaring Annexation Dated June 28, 1978*, Okl.App., \_\_\_ P.2d \_\_\_, 52 O.B.A.J. 1981, 1985 (Aug. 18, 1981). The Court rejected the argument that "good faith" precludes a finding of willfulness, stating:

"If willful is narrowly interpreted, if actions taken in violation of the Act could not be set aside unless done in bad faith, maliciously, obstinately, with a premeditated evil design and intent to do wrong, then the public would be left helpless to enforce the Act most of the time and public bodies could go merrily along, in good faith, ignoring

the Act. *Id.* at \_\_\_; 52 O.B.A.J. at 1985.

¶12 The giving of a proxy by one commissioner to another, which proxy is to be exercised at a meeting of the state agency, is a volitional act. Such an action is "willful" for purposes of the Open Meeting Act if it is either consciously violative of the law or if the actor knows or should know what the law is and chooses to disregard it. If the violation of the Act is "willful," then any decision reached through the use of a procedure which contravenes the Act is invalid. Therefore, if the proxy is the decisive vote, the decision so reached is invalid because it constitutes a willful violation of the Act.

¶13 It is, therefore, the official opinion of the Attorney General that:

1. A commissioner of a state agency operating under the Open Meeting Act cannot delegate his right to vote in a regularly scheduled meeting to another commissioner by use of a proxy;
2. Any action taken in "willful" violation of the Open Meeting Act is invalid. 25 O.S. 313 (1977). The term "willful," as used in the Open Meeting Act, does not require a showing of bad faith, malice or wantonness, and includes unintentional violations of the law and violations in disregard of the law. A decision which is decided on the strength of a proxy vote is invalid, because it constitutes a willful violation of the Open Meeting Act.

JAN ERIC CARTWRIGHT  
ATTORNEY GENERAL OF OKLAHOMA  
JUDITH COLEMAN NICHOLS  
ASSISTANT ATTORNEY GENERAL

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#### **Title 25. Definitions and General Provisions**

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<u>25 O.S. 301,</u>	<u>Short Title</u>	Cited
<u>25 O.S. 302,</u>	<u>Public Policy</u>	Cited
<u>25 O.S. 304,</u>	<u>Definitions</u>	Cited
<u>25 O.S. 305,</u>	<u>Recording of Votes</u>	Cited
<u>25 O.S. 306,</u>	<u>Vote By Electronic or Telephonic Communications</u>	Cited
<u>25 O.S. 313,</u>	<u>Actions Taken in Willful Violation of Act</u>	Discussed at Length

