

Library Boards and Emergency Decision Making

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March 13, 2020

Michigan's Open Meeting's Act, 1976 PA 267, (MCL 15.260 et.,seq.) governs the requirements and procedures of meetings of Public Bodies. Under the OMA, Michigan Public Libraries are considered public bodies which must comply with the act. Therefore, the Boards of Michigan Public Libraries must make all decisions and discussions relating to "public policy" (and since the library is a public entity, virtually all decisions affecting the library are "public policy").

Part of the Michigan Open Meeting's Act, OMA, sets out requirements concerning proper notice of public meetings to the public, as well as rules on the establishment of a quorum for decision making. Generally, compliance with these requirements is not difficult. However, when the unexpected occurs in the form of natural disasters, unusually severe weather, public health events, or other serious unexpected events, the necessity of a public meeting to make required decisions can be an added, and extremely challenging task. However, there is currently no provision that would permit Boards to make decisions without a quorum out of the public sphere. Without a public meeting, the ability of the library to manage in an emergency (including the ability to perhaps even pay bills or payroll) could be seriously impaired.

Fortunately, Section 5 of the OMA permits public bodies to schedule "Emergency Meetings" in situations involving "severe and imminent threat to the health, safety, or welfare of the public." MCL 15.265. The OMA does not define "severe and imminent threat." Library Boards should consult their attorneys in order to confirm that their circumstances warrant an "emergency" meeting.

The closest definition I could locate in Michigan law appears in the Michigan Public Health Code definition of "imminent danger" [MCL 333.2251](#) :

"a condition or practice exists that could reasonably be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided. MCL 333.2251(5)(b)

The emergency option within the OMA states:

"Nothing in this section bars a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat. However, if a public body holds an emergency public meeting that does not comply with the 18-hour posted notice requirement, it shall make paper copies of the public notice for the emergency meeting available to the public at that meeting. The notice shall include an explanation of the reasons that the public body cannot comply with the 18-hour posted notice requirement. The explanation shall be specific to the circumstances that necessitated the emergency public meeting, and the use of generalized explanations such as "an imminent threat to the health of the public" or "a danger to public welfare and safety" does not meet the explanation requirements of this subsection. If the public body directly or indirectly maintains an official internet presence that includes monthly or more frequent updates of public meeting agendas or minutes, it shall post the public notice of the emergency meeting and its explanation on its website in the manner described for an internet posting in subsection (4). Within 48 hours after the emergency public meeting, the public body shall send official correspondence to the board of county commissioners of the county

in which the public body is principally located, informing the commission that an emergency public meeting with less than 18 hours' public notice has taken place. The correspondence shall also include the public notice of the meeting with explanation and shall be sent by either the United States postal service or electronic mail. Compliance with the notice requirements for emergency meetings in this subsection does not create, and shall not be construed to create, a legal basis or defense for failure to comply with other provisions of this act and does not relieve the public body from the duty to comply with any provision of this act."

According to the language above, in order to comply with the emergency meeting requirements, a board must:

- Have 2/3 of board members agree that an emergency meeting is necessary because the delay caused by the minimum 18-hour notice for a special meeting under the OMA would be detrimental *"to efforts to lessen or respond to the threat."*
- If the Board forgoes the minimum 18-hour notice period, the board must create a public notice for the meeting and include an explanation of the reasons why the board cannot comply with the minimum 18 hour posted notice requirement. This explanation must be specific to the situation at hand that is causing the need for an emergency meeting and cannot rely on generalized language like "imminent threat to the public health & welfare," or "danger to the public health and safety." etc.
- Paper copies of the notice described above must be made available at the emergency meeting for members of the public.
- If the public body (the library) has an official internet presence (webpage, Facebook, etc.) it must post the notice, complete with explanation, on the official Internet site for the body, following the same requirements as listed in MCL 15.265(4).
- Within 48 hours after the emergency public meeting, the public body shall send official correspondence to the board of county commissioners of the county in which the public body is principally located, via U.S. Mail, or e-mail, informing the commission that an emergency public meeting with less than 18 hours' public notice has taken place. The public notice of the meeting with explanation must be included.

It can often be challenging for even the most dedicated board member to attend every board meeting. This may be especially true during unusual and serious circumstances. However, emergency meetings still require a quorum in order to make decisions.

In instances where , because of the circumstances surrounding the need for a public meeting, the body cannot form a quorum in person, it may be possible for members to attend remotely, using Telephones, Facetime, Skype, Zoom, or the like. Currently, Michigan does not have any laws that would prohibit boards from attending meetings via remote means- and voting.

It is generally considered improper and not good practice to form a quorum via remote attendance, and to permit remote attending members to vote. HOWEVER, given that Michigan currently has no statutory prohibitions on this practice, and if remote attendance is the only method in which a board can meet to handle necessary business during an emergency, the board could probably elect to do so.

HOWEVER certain requirements must be complied with in order to ensure the transparency and public access mandated by the OMA:

Libraries MUST

- Make certain that members of the public attending the meeting can CLEARLY see and hear any member that is attending remotely. This means, if skyping, facetimeing, etc., that monitors, and screens must face the public- with captioning turned on. If telephoning in, call must be on speaker and loud enough for public to hear and discern the words.
- Ensure that board members attending remotely must clearly state their names and office (if any) EACH TIME BEFORE they speak. This is so members of the public clearly know who is speaking when.
- All votes MUST be via ROLE-CALL, so the public knows who is voting which way.
- Follow all the usual OMA requirements with respect to minutes, public comment, etc.

Libraries SHOULD

- Establish a written policy on remote access for emergency and non-emergency meetings. It is a good practice to include a process where members must notify the Board President and Director within 24 hours of the meeting of their intent to attend remotely (even better is a process where member must receive approval from the Board President). This permits the proper technology to be assembled in order to comply with the requirements above. It can also limit the number of remote attendees to those with a true need.
- Keep the agenda of the emergency meeting to necessary business. This is not the meeting to determine new building plans, or to handle business that is not urgent in light of the emergency at hand. Use the emergency option only for emergency decisions.

Resources:

Open Meetings Act Handbook, Mi. Atty Gen office (does not address emergency meetings)

https://www.michigan.gov/documents/ag/OMA_handbook_287134_7.pdf

<https://www.fosterswift.com/communications-New-Notice-Requirements-Added-Open-Meetings-Act.html>

Michigan Municipal League

https://www.mml.org/resources/publications/one_pagers/FS%20OMA%20Posting%20Requirements.pdf (emergency meeting notice)

https://www.mml.org/pdf/resources/publications/ebooks/HMO_by_chapter/Appendix%207%20Questions%20and%20Answers.pdf (see Q 40 on remote attendance to meetings).

See Also McInerney, Mark “*Open Meetings Act Update “Informal Meetings,” “Remote Attendance”*” (This is an article/opinion piece by an attorney at Clark Hill law firm. It is a good summation of the issue)

<https://www.clarkhill.com/alerts/open-meetings-act-update-informal-meetings-remote-participation>