

## Email Warning/Disclosure Regarding the Michigan Open Meetings Act

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Most municipal officials in Michigan know that under the Michigan Open Meetings Act, being MCL 15.262 *et seq.* (the “OMA”), members of a public body (such as a city commission, village council, township board, zoning board of appeals, board of review or planning commission) cannot deliberate toward any decision outside of a public meeting if a quorum is involved in those discussions or deliberations. Furthermore, the Michigan courts have gone so far as to hold that even “one-on-one” deliberations between two members of a public body can constitute a prohibited deliberation (and a violation of OMA) where a “round robin” occurs.

Unfortunately, many municipal officials have not considered that email messages (or even Facebook communications) can potentially be a violation of the OMA. How can that happen? Suppose that the mayor of a small city emails information about a particular issue before the city council to all members of the city council. It is unlikely that the single email by the mayor will constitute a violation of the OMA, because it would likely not be considered a “deliberation.” However, if one of the city councilpersons responds with an email discussion about the issue involved and hits “reply to all” so that all city councilpeople and the mayor receive that councilperson’s arguments, that could potentially constitute a violation of the OMA. In other words, email exchanges, under the wrong circumstances, could constitute a “deliberation” in violation of the OMA.

We recommend that the following disclosure/header be placed on all emails where the emails are sent to a majority (or more) of the members of a township board, city council, village council, planning commission, zoning board of appeals, or other government body in Michigan:

Warning – Responding substantively via email, giving your opinion through an email or engaging in any “back and forth” email exchange with a majority of the members of the Township Board could violate the Michigan Open Meetings Act. Therefore, do not respond to this email if you are sending it to a majority (or more) of the members of the Township Board. Any deliberations, back and forth or other substantive discussion or contact with the majority (or more) of the members of the Township Board should be done only at an open meeting that fully complies with the Michigan Open Meetings Act.

Every municipal official in Michigan must also be careful with regard to their emails and text messages that involve matters pertaining to the municipality involved. Most such emails and text messages are subject to public disclosure under the Michigan Freedom of Information Act, being MCL 15.231 *et seq.* (the “FOIA”). Even emails and text messages by a municipal official sent through a private computer, cell phone or account can potentially be subject to FOIA disclosure. In addition, a trail of emails or text messages could make it easier for the news media or even a prosecutor to prove a violation of the OMA.