
Coates' Canons Blog: What's a Public Body?

By Frayda Bluestein

Article: <http://canons.sog.unc.edu/?p=7990>

This entry was posted on February 03, 2015 and is filed under Board Member Powers & Authority, Board Structure & Procedures, Board Structures, Open Government, Open Meetings

North Carolina's Open Meetings Law requires all *official meetings of public bodies* to be open to the public (unless the public body has specific statutory authority to meet in closed session).

Think about whether the groups described in the following scenarios constitute public bodies:

1) For the past two years, a group of local officials has met quarterly for lunch. The group comprises the city manager, the mayor, the county manager, the chair of the board county commissioners, the superintendent of the local school district, and the chair of the local school board. They talk about issues that face their respective jurisdictions and share information about local issues. The officials share information from these meetings with the boards and staffs of their respective units.

2) For the past two years, every third Thursday of the month, the planning directors of the county and all the municipalities within the county meet for lunch. They talk about planning issues within the county, and they share other professional information and advice. Some of the units reimburse the attendees for the lunch expense because it is considered to be primarily a working lunch.

3) a) The mayor has created a 2020 Visioning Task Force consisting of community leaders and volunteers from various civic groups. The task force meets at the chamber of commerce and the mayor leads the discussions and organizes the agendas for each meeting. The mayor reports back to the city council about the group's progress but the board has never formally or informally commissioned or approved the task force, and no public funds or other city resources have been used for their work.

b) After a year of working on a vision for the future of the city, the 2020 Task Force has come up with a set of strategic initiatives. The task force presented the list to the city council and the council members provided feedback by individually putting green sticky dots next to the ones they liked best. The task force is now moving forward to implement the top three initiatives and the city is providing staff support and other resources for their work. No formal vote has ever been taken to appoint or approve the task force or its work.

The open meetings law defines public bodies as follows:

"[A]ny elected or appointed authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, constituent institutions of The University of North Carolina, or other political subdivisions or public corporations in the State that (i) is composed of two or more members and (ii) exercises or is authorized to exercise a legislative, policy-making, quasi-judicial, administrative, or advisory function..." G.S. 143-318.10

All of the scenarios described above involve groups of two or more people who meet to talk about matters involving local governments. But are they public bodies?

Of course I've carefully crafted these scenarios to raise one particular issue: None of these groups was actually "elected or appointed" by any governmental body. In the first two examples, the groups came together on their own initiative. In the other two, the 2020 Task Force starts out as the mayor's creation but later deals directly, but not formally, with members of the city council. In all but the last scenario, I think this means they are not public bodies.

North Carolina court cases have held that to create a public body, there needs to be some formal action and it must be

done by some person or entity with authority to do it. Courts have emphasized the importance of the specific language in the statute, delineating how public bodies are created and may be identified.

In *DTH Pub. Corp. v. Univ. of N. Carolina at Chapel Hill*, 128 N.C. App. 534 (1998), the court analyzed whether the Undergraduate Court at UNC Chapel Hill was public body. The court noted that, “[i]n 1994, the General Assembly amended the N.C.G.S. § 143–318.10 definition of ‘public body’ adding the phrase ‘elected or appointed’ and deleting previous requirements that the public body be established in certain enumerated ways.” The court observed that although the statute does not specifically delineate *who or what entity* must do the appointing, dictionary definitions of “appoint” and “appointment” suggest that “that the person or body doing the appointing must be one *authorized* to do so.” *DTH*, at 539. See also, *Chatfield v. Wilmington Hous. Fin. & Dev., Inc.*, 166 N.C. App. 703, 710 (2004).

The court in *DTH* concluded that the Undergraduate Court was a public body, reasoning that “the Undergraduate Court members are clearly appointed and confirmed by those who are authorized to do so under the laws of this State and pursuant to the policies and regulations of UNC–CH and UNC.” The court traced the authority as follows: “[T]he Student Body President and the Student Congress derive their authority to appoint and confirm Undergraduate Court members from the Chancellor, who in turn derives his authority on this matter from the UNC–CH Board of Trustees. The Chancellor and the UNC–CH Board of Trustees derive their authority from the Board of Governors of the University of North Carolina (UNC) which, in turn, derives its authority from N.C. Gen.Stat. § 116–11(2) (1994) and Article IX, Section 8 of our North Carolina Constitution.” This case demonstrates that the authority need not necessarily be direct.

So let’s look at the groups in the scenarios.

Self-Created Groups. The first two groups were not appointed or elected by any person or entity. Therefore they are not public bodies under the statute. Even though the officials in the first group talk about the work of the units they represent, and even though they share that information with the governing body, the statute simply does not require public access to these types of meetings.

Mayor/Chair-Appointed groups. The third scenario involves two phases. In the first part, the mayor appointed the task force. The issue is whether the mayor was authorized to make this appointment. If she was not, it’s not a public body under the statute.

Mayors have very few specifically delegated powers in North Carolina, as described in my [blog post here](#). The same is true of chairs of boards of county commissioners and local school boards. (Mayors do have specific authority for some types of appointments, such as housing authorities, and some local charters may augment the mayor’s authority to make appointments.) Mayors and board chairs are assumed to have various ceremonial powers, and local governing boards may implicitly or explicitly authorize many things that these leaders do beyond the scope of their statutorily delegated authority. If the facts and history indicate that the board in the past approved of the mayor’s appointing task forces, perhaps a case can be made that the council has delegated that authority to the mayor. If no such history or facts exist, however, there is no basis for concluding that she was authorized to appoint the task force as a public body of the city. Furthermore, the fact that the city did nothing else to signal its approval of the task force, and that it operated apart from the city suggests that it is not a public body of the city.

In the second part of the scenario, the council appears to recognize and approve the task force in a way that, in my view makes it a public body. Clearly, the council never took a formal vote to appoint or approve the task force and its work. But it seems too restrictive, and it would be inconsistent with the intent of the statute, to shield the work of a public body from public access merely because no formal vote was taken. If the city council treats a task force or other group in the same way it treats other appointed public bodies, it seems likely that a court would find the task force to be a public body under the statute. Key facts would be whether the council directs the work of the task force, and whether it allocates staff time, funding, and other resources to the group. Countervailing evidence would be a contractual relationship, which would indicate a private service for pay, rather than intentional creation of an agency or arm of the governmental entity.

Conclusion

The definition of public body may be more narrow than some would have thought or preferred. Conversations that may affect significant actions and decisions of state and local government entities may occur out of the public eye. On the other hand the statutory framework allows some flexibility for informal collaboration and allows the unit of government some



control over the bodies and structures through which it will govern.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=143-318.10