

ADMINISTRATIVE MEMORANDUM

SUBJECT Open Meetings Law, as Amended

NUMBER 108

DATE September 1, 1978

In 1978 the General Assembly substantially amended the Open Meetings Act (G. S. Chapter 143, Article 33B). The amendments will take effect on October 1, 1978, and will place new conditions on the meetings of State bodies subject to the Act. The great majority of the amendments were drafted and recommended to the legislature by the Legislative Study Commission for State Policies on the Meetings of Governmental Bodies. The authority of the Legislative Study Commission has been extended by the General Assembly to permit further critical review of Article 33B in 1979.

The Open Meetings Act as amended is attached to this memorandum, and the following paragraphs highlight its provisions as they will apply particularly to The University on and after October 1, 1978.

Coverage.

Generally, "official meetings" of "public bodies" of this State must, under G. S. 143-318.1, be conducted openly. "Public body" is defined under G. S. 143-318.2(b) with reference to an agency's mode of creation, its geographical jurisdiction, and its type of authority. Public bodies include the Board of Governors and its committees, institutional Boards of Trustees and their committees, the endowment fund boards of trustees (whether created pursuant to G. S. 116-36 or the resolution of the Board of Governors of April 11, 1974), and the Board of Directors of North Carolina Memorial Hospital and its committees. In addition, other bodies established by the Board of Governors or a Board of Trustees may be "public bodies" subject to the requirements of the Act. "Public bodies" do not include agencies, committees, or other bodies established by the President, the Chancellors, or other staff officers; nor does the term include meetings of professional staff within The University unless convening as a committee or other body formally created by modes specified in G. S. 143-318.2(b)(2) (such as action of an institutional Board of Trustees).

Public bodies are obligated to meet in open session when convening in an "official meeting." "Official meetings," under G. S. 143-318.2(d), are gatherings "at any time or place of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body"; but a social or informal gathering of members of a public body is not an official meeting "unless called or held to evade the spirit and purpose" of the Act.

Executive, closed, and private sessions (G. S. 143-318.3).

Public bodies, though generally required to hold meetings in the open, may convene in sessions that exclude the public when certain matters specified by the Act are under consideration. These include certain property matters, some personnel business, matters falling within a legally recognized privileged relationship (including consultation with legal counsel), student disciplinary cases, and (perhaps) meetings of the Board of Governors or an institutional Board of Trustees in response to riot or public disorder. These matters, which are exempt from the requirement that they be considered in open session, fall within one or another of three subsections of G. S. 143-318.3. Most are authorized to be considered in nonpublic session under subsection (a), which requires that executive sessions be preceded by a motion to go into executive session adopted by majority vote of the members present and voting. Recently the North Carolina Court of Appeals ruled that these requirements for "executive" sessions under subsection (a) do not pertain to "closed" sessions under subsection (b). Godsey et al v. Poe et al., ___ N. C. App. ___ (1978). As a matter of prudence, though, it would be wise for every exclusion of the public, whatever its statutory basis, to be preceded by a vote of the body on a motion stating the reason(s) justifying the nonpublic session.

While G. S. 143-318.3(b) permits closed sessions of public bodies when considering disciplinary cases involving students, the Act does not expressly authorize closed sessions for considering other student matters. This places the Act in potential conflict with the Federal "Family Educational Rights and Privacy Act of 1974" (FERPA or "Buckley Amendment") as the Federal statute prohibits disclosure of students' "education records" except as permitted under FERPA. Through the doctrine of "Federal preemption" FERPA would be found to authorize closed sessions when a public body considers student records in any context; but University public bodies should remember that the authority to convene in closed session to consider student education records derives from FERPA, not the Open Meetings Act.

Agencies excepted from the Act (G. S. 143-318.4).

The Open Meetings Act not only permits public bodies to consider certain matters in nonpublic session but also exempts some agencies from the strictures of the Act entirely. Exceptions pertinent to The University would appear to include: campus traffic and security forces, under G. S. 143-318.4(5); "study, research and investigative commissions and committees" of public bodies if established expressly for study, research, or investigation, under G. S. 143-318.4(7); and University agencies having quasi-judicial functions, such as the State Residence Committee and the institutional residence status appeal committees, if convening in a session held solely for adjudicatory matters, under G. S. 143-318.4(8).

September 1, 1978

Public notice of official meetings (G. S. 143-318.8).

Public bodies must give notice of their meetings as prescribed in G. S. 143-318.8. Notice is required even if the public body is meeting solely to review matters authorized for consideration in nonpublic session (unless, as observed previously, the public body has a quasi-judicial function and is convening solely in its adjudicatory role, in which case the body is exempt from the Act entirely with respect to the adjudicatory session). The appropriate notice for the various, recognized types of meetings follows this outline:

- (1) Regular meetings. The schedule as established must be filed, pursuant to G. S. 143-318.8(4), with the clerk or secretary of the public body; if revised, the schedule as revised must be filed "at least seven calendar days before the first meeting held pursuant to the revised schedule." The Act does not establish a deadline for filing the original schedule; it may reasonably be assumed, however, that requirements for filing an original schedule are no less than those for filing a revised schedule.
- (2) Official meetings held other than according to the filed schedule.
 - (a) Adjourned or recessed sessions of any official meeting, regular or otherwise. Where notice of the original meeting had been duly given and the time and place of the adjourned or recessed session was set at the original meeting, no further notice is required. If an official meeting were adjourned or recessed to a date later to be set, the adjourned or recessed session when set would be subject to statutory notice requirements for unscheduled meetings.
 - (b) Unscheduled meetings (other than emergency meetings). Written notice must be posted at the statutorily prescribed place and must be mailed (or delivered) at least 48 hours before the time of the meeting to news media that had filed written request for such notices pursuant to G. S. 143-318.8(b)(2). The public body may require the news media annually to renew their requests for written notice and "may charge a reasonable fee, not to exceed ten dollars (\$10.00) annually, to cover the cost of mailed or delivered notice." When the date, time, or place for a nonemergency official meeting of a public body is changed on an ad hoc basis (rather than by revising the body's regular meeting schedule), the meeting so changed becomes an unscheduled meeting, subject to the notice requirements of G. S. 143-318.8(b)(2).

- (c) Emergency meetings. An "emergency meeting" is a meeting "called because of generally unexpected circumstances that require immediate consideration by the public body." News media that in their written requests for notice of meetings had included their telephone numbers so as to receive notice of emergency meetings must be notified of emergency meetings "either by telephone or by the same method used to notify the members of the public body." This notice must be given "immediately after the notice has been given to those members" but is to be given "at the expense of the party notified." The agenda of a meeting noticed under this procedure is restricted to "business connected with the emergency."

These notice requirements will preclude in the future the familiar practice, in conjunction with meetings of the Board of Governors or the Boards of Trustees, of scheduling on short notice committee meetings either before or after the meeting of the parent body. One solution may be to establish a regular schedule of meetings for all committees of the parent body at designated times, perhaps after the meeting of the parent body, so that requisite notice requirements would have been met and, thus, the affected committee would be free to meet if pending business warranted a meeting. If no need for a meeting existed on a particular occasion designated as a regular meeting time, the meeting could be cancelled. Such cancellation could be easily effected if the chairman of the parent body during its meeting were to poll the committee chairmen of their intent to meet their respective committees following the meeting of the parent body.

Compliance.

The foregoing analysis is intended to apprise you of requirements of the Open Meetings Act pertinent to The University. Toward meeting those requirements, I am establishing the following administrative policies:

- (1) With respect to meetings of the Board of Governors, of its committees, and of other public bodies of the Board of Governors, expressly created by statute or by action of the Board of Governors, except the Boards of Trustees and their public bodies, the Secretary of The University of North Carolina shall be responsible for satisfying all notice requirements of G. S. 143-318.8. For such public bodies the Secretary shall maintain in a public and readily accessible place in the General Administration Building an official bulletin board on which shall be posted all meeting schedules, changes in meeting schedules, and notices of meetings required to be filed or noticed, as the case may be, by G. S. 143-318.8. The Secretary shall also respond promptly to all reasonable inquiries with

respect to meetings of public bodies required by this paragraph to be posted by him.

- (2) With respect to meetings of the Boards of Trustees, of their committees, and of other public bodies of the constituent institutions expressly created by statute or by action of the Boards of Trustees, the respective Chancellors shall be responsible for satisfying all notice requirements of G. S. 143-318.8. For such public bodies each Chancellor shall maintain in a public and readily accessible place in the principal administration building of his institution a bulletin board on which shall be posted all meeting schedules, changes in meeting schedules, and notices of meetings required to be filed or noticed, as the case may be, by G. S. 143-318.8. The respective Chancellor shall also respond promptly to all reasonable inquiries with respect to meetings of public bodies required by this paragraph to be posted by him.
- (3) Any schedule of meetings of a public body within The University of North Carolina set or revised prior to October 1, 1978, shall be posted as set or revised, as the case may be, in accordance with this Administrative Memorandum on or before October 1, 1978.
- (4) The Secretary of The University and the Chancellors shall each establish (and may amend) a policy consistent with this Administrative Memorandum concerning written notice to news media of unscheduled meetings of the public bodies under their respective purviews. The policy shall establish whether or not a notice fee is to be charged news media and what the fee, if any, shall be. The policy shall be applied uniformly.
- (5) The term "emergency meeting" and its definition, contained in G. S. 143-318.8(b)(3), shall be interpreted so that emergency meetings of public bodies within The University of North Carolina shall be infrequent.

Please address any questions concerning the Open Meetings Act to Mr. David Edwards of this office.



William Friday

Attachment

GENERAL STATUTES OF NORTH CAROLINA

Chapter 143, Article 33B.

[Effective 1 October 1978]

Meetings of Governmental Bodies.

§ 143-318.1. Public policy. --Whereas the public bodies that administer the legislative, policy-making, quasi-judicial, administrative, and advisory functions of this State and its political subdivisions exist solely to conduct the people's business, it is the public policy of this State that the hearings, deliberations, and actions of these bodies be conducted openly.

§ 143-318.2. All official meetings open to the public.--(a) Except as provided in G.S. 143-318.3, G. S. 143-318.4, and G.S. 143-318.5, each official meeting of a public body shall be open to the public, and any person is entitled to attend such a meeting.

(b) As used in this Article, "public body" means any authority, board, commission, committee, council, or other body of the State, or of one or more counties, cities, school administrative units, or other political subdivisions or public corporations in the State that is composed of two or more members and

- (1) exercises or is authorized to exercise any legislative, policy-making, quasi-judicial, administrative, or advisory function; and
- (2) is established by (i) the State Constitution, (ii) an act or resolution of the General Assembly, (iii) a resolution or order of a State agency, pursuant to a statutory procedure under which the agency establishes a political subdivision or public corporation, (iv) an

ordinance, resolution, or other action of the governing board of one or more counties, cities, school administrative units, or other political subdivisions or public corporations, or (v) an Executive Order of the Governor or formal action of the head of a principal State office or department, as defined in G. S. 143A-11 and G. S. 143B-6, or of a division thereof.

In addition, "public body" means a committee of a public body and the governing board of a "public hospital," as defined in G.S. 159-39. This provision shall not apply to committees which are not policy making bodies of public hospitals.

(c) "Public body" does not include and shall not be construed to include meetings among the professional staff of a public body, unless the staff members have been appointed to and are meeting as an authority, board, commission, committee, council, or other body established by one of the methods listed in subdivision (b)(2) of this section.

(d) "Official meeting" means any meeting, assembly, or gathering together at any time or place of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body; provided, however, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purposes of this Article.

§ 143-318.3. Executive, closed and private sessions.--(a) A

public body, by the votes of a majority of its members present, may, during any regular or special meeting when a quorum is present, hold an executive session and exclude the public while considering:

- (1) Acquisition, lease, or alienation of property;
- (2) Negotiations between public employers and their employees or representatives thereof as to employment;
- (3) Matters dealing with patients, employees or members of the medical staff of a hospital or medical clinic (including but not limited to all aspects of admission, treatment, and discharge, all medical records, reports and summaries, and all charges, accounts and credit information pertaining to said patients; all negotiations, contracts, conditions, assignments, regulations and disciplines relating to employees; and all aspects of hospital management, operation and discipline relating to members of the medical staff);
- (4) Any matter coming within the physician-patient, lawyer-client or any other privileged relationship;
- (5) Conferences with legal counsel and other deliberations concerning the prosecution, defense, settlement or litigation of any judicial action or proceeding in which the public body is a party or by which it is directly affected.

(b) This Article shall not be construed to prevent any public body from holding closed sessions to consider information regarding the appointment, employment, discipline, termination or dismissal of an employee or officer under the jurisdiction of such body and to hear and

consider testimony on a complaint against such employee or officer; provided, however, that final action on the discharge of any employee for cause after hearing shall be taken in open session if such discharge is within the exclusive jurisdiction of the public body. Nor shall this Article be construed to prevent any board of education or governing body of any public educational institution, or any committee or officer thereof, from hearing, considering and deciding in closed session (1) disciplinary cases involving students and (2) questions of reassignments of pupils under G.S. 115-178.

(c) When any county board of commissioners or the governing body of any municipal corporation or board of education is faced with the existence of a riot or with conditions indicating that a riot or public disorders are imminent, within the territorial jurisdiction of such board or governing body, the board of commissioners of such county or the governing body of such municipal corporation or board of education, as the case may be, may meet in private session with such law-enforcement officers and others invited to any such meeting, excluding other members of the public, for the purpose of considering and taking appropriate action deemed necessary to cope with the existing situation during any such emergency.

§ 143-318.4. Exceptions.--The agencies or groups following are excluded from the provisions of G.S. 143-318.2:

- (1) The Council of State
- (2) The Board of Awards
- (3) The Department of Correction
- (4) The Judicial Standards Commission
- (5) All law-enforcement agencies

- (6) Grand and petit juries
- (7) All study, research and investigative commissions and committees including the Legislative Services Commission.
- (8) All State agencies, commissions or boards exercising quasi-judicial functions during any meeting or session held solely for the purpose of making a decision in an adjudicatory action or proceeding.
- (9) Every board, commission, council or other body, or any committee thereof, authorized by statute to investigate, examine and determine the character and other qualifications of applicants for license to practice any occupation or profession in this State, or authorized to suspend or revoke licenses of, or to reprimand or take disciplinary action concerning any person licensed to engage in the practice of any occupation or profession in this State; provided, however, that nothing in this Article shall be construed to amend, repeal or supersede any statute, now existing or hereafter enacted, which requires a public hearing or other practice and procedure in any proceeding before any such board, commission or other body, or any committee thereof.
- (10) Any committee or subcommittee of the General Assembly has the inherent right to hold an executive session when it determines that it is absolutely necessary to have such a session in order to prevent personal embarrassment or when it is in the best interest of the State; and in no event shall any final action be taken by any committee or subcommittee except in open session.

(11) Any public body that is specifically authorized or directed by law to meet in executive or confidential session, to the extent of the authorization or direction.

§ 143-318.5. Advisory Budget Commission and appropriation committees of General Assembly; application of Article.--(a) The provisions of this Article shall not apply to meetings of the Advisory Budget Commission held for the purpose of actually preparing the budget required by the provisions of the Executive Budget Act (Article 1, Chapter 143, General Statutes of North Carolina), but nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-10 (or any similar statutes hereafter enacted) requiring public hearings to secure information on any and all estimates to be included in the budget and providing for other procedures and practices incident to the preparation and adoption of the budget required by the State Budget Act.

(b) Nothing in this Article shall be construed to amend, repeal or supersede the provisions of G.S. 143-14, relating to the meetings of the appropriations committees of the House of Representatives and the Senate of the General Assembly of North Carolina, and subcommittees thereof.

§ 143-318.6. Mandamus and injunctive relief.--Any citizen denied access to a meeting required to be open by the provisions of this Article, in addition to other remedies, shall have a right to compel compliance with the provisions of this Article by application to a court of competent jurisdiction for restraining order, injunction or other appropriate relief.

§ 143-318.7. Disruptions.--Any person who willfully interrupts, disturbs, or disrupts any official meeting required to be open to the public by this Article and who, upon being directed to leave such meeting by the presiding officer thereof, willfully refuses to leave such meeting shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment for not in excess of six months, pay a fine of two hundred fifty dollars (\$250.00), or by both such fine and imprisonment.

§ 143-318.8. Public notice of official meetings.--(a) If a public body has established, by ordinance, resolution, or otherwise, a schedule of regular meetings, it shall cause a current copy of that schedule, showing the time and place of regular meetings, to be kept on file as follows:

- (1) for public bodies that are part of State government, with the Secretary of State;
- (2) for the governing board and each other public body that is part of a county government, with the clerk to the board of county commissioners;
- (3) for the governing board and each other public body that is part of a city government, with the city clerk;
- (4) for each other public body, with its clerk or secretary, or, if the public body does not have a clerk or secretary, with the clerk to the board of county commissioners in the county in which the public body normally holds its meetings.

If a public body changes its schedule of regular meetings, it shall cause the revised schedule to be filed as provided in subdivisions (1) through (4) of this subsection at least seven calendar days before the day of the first meeting held pursuant to the revised schedule.

(b) If a public body holds an official meeting at any time or place other than a time or place shown on the schedule filed pursuant to subsection (a) of this section, it shall give public notice of the time and place of that meeting as provided in this subsection.

- (1) If a meeting is an adjourned or recessed session of a regular meeting or of some other meeting, notice of which has been given pursuant to this subsection, and the time and place of the adjourned or recessed session has been set during the regular or other meeting, no further notice is necessary.
- (2) For any other meeting, except an emergency meeting, the public body shall cause written notice of the meeting (i) to be posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room, and (ii) to be mailed or delivered to each newspaper, wire service, radio station, and television station that has filed a written request for notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be posted and mailed

or delivered at least 48 hours before the time of the meeting. The public body may require each newspaper, wire service, radio station, and television station submitting a written request for notice to renew the request annually and may charge a reasonable fee, not to exceed ten dollars (\$10.00) annually, to cover the cost of mailed or delivered notice.

- (3) For an emergency meeting, the public body shall cause notice of the meeting to be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written request, which includes the newspaper's, wire service's, or station's telephone number, for emergency notice with the clerk or secretary of the public body or with some other person designated by the public body. This notice shall be given either by telephone or by the same method used to notify the members of the public body and shall be given immediately after the notice has been given to those members. This notice shall be given at the expense of the party notified. An "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body. Only business connected with the emergency may be considered at a meeting to which notice is given pursuant to this subdivision.

(c) This section does not apply to the General Assembly. Each house of the General Assembly shall provide by rule for notice of meetings of legislative committees and subcommittees.