



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

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OPINION 13-0075

Ms. Alison Miller
Executive Director
Vermillion Parish Tourist Commission
P.O. Box 1106
Abbeville, LA 70511-1106

90 – B – 4 – PUBLIC MEETINGS – State & Local Governing Bodies

La. Const. Art. XII, §3

La. R.S. 42:14

A public body may not utilize telephone conference calls during a public meeting to obtain a quorum.

Dear Ms. Miller:

Our office received your request for an opinion submitted on behalf of the Vermillion Parish Tourist Commission ("Commission"). You have asked whether it is permissible for a public body to utilize telephone conference calls during a public meeting to obtain a quorum.

The right to observe the deliberations of public bodies, except in cases established by law, is guaranteed by La. Const. art. XII, §3. The Open Meetings Law, La. R.S. 42:12 *et seq.*, describes and defines this constitutional right.

Our office has consistently opined that the Open Meetings Law requires that a quorum of a public body be physically present at a meeting. La. Atty. Gen. Op. Nos. 99-385, 00-423, 01-256, 02-0106 and 06-0311. Specific to voting, La. R.S. 42:14(C) requires that all votes be made "viva voce." Previous opinions have interpreted this "live voice" requirement to require the person voting to be physically present, and further, that appearance by telephone or video telephone does not satisfy this requirement. *Id.* Thus, these opinions have stated that any participation by telephone, whether it is to obtain a quorum or to allow voting by non-present members, is a violation of the Open Meetings Law. La. Atty. Gen. Op. Nos. 01-256, 02-0106 and 06-0311.

This interpretation is consistent with the right to observe a public body's deliberations. Additionally, we note this interpretation is consistent when considering other state laws which specifically address the use of telephone or video telephone in a meeting. By way of example, consider the following:

Committee meetings between sessions; video conferencing

A legislative committee meeting that is held between sessions of the legislature and during which no vote on any matter having the effect

of law is to be taken may be conducted by video conference. Each house of the legislature may adopt rules of procedure to provide for and accommodate committee meetings by video conference, including but not limited to rules governing attendance and participation of members of the legislature in and quorums of committees for such meetings. Such rules shall provide for public participation in such meetings in accordance with R.S. 42:11 et seq. For the purposes of this Section and any rules adopted by either house of the legislature pursuant to this Section, **"video conference" shall mean a method of communication which enables persons in different locations to participate in a meeting and to see, hear, and otherwise communicate with each other. No committee meeting shall be held pursuant to this Section unless a quorum of the committee is present, in person, at the location at which the meeting was advertised to take place.**

La. R.S. 24:7 (Emphasis added).

Louisiana Medical Disclosure Panel; creation; membership; powers; duties

Notwithstanding the provisions of the Open Meetings Law, R.S. 42:11 et seq., or any other law, **if any member of the panel is physically present at a meeting, any number of the other members of the panel may attend the meeting by use of telephone conference call, videoconferencing, or other similar telecommunication methods for purposes of establishing a quorum or voting or for any other meeting purpose allowing a panel member to fully participate in any panel meeting.** The provisions of this Subsection shall apply without regard to the subject matter discussed or considered by the panel at the meeting. A meeting held by telephone conference call, videoconferencing, or other similar telecommunication method:

- (1) Shall be subject to the notice requirements of R.S. 42:11 et seq.
- (2) Shall not be held unless the notice of the meeting specifies the location of the meeting at which a member of the panel will be physically present.
- (3) Shall be open to the public and audible to the public at the location specified in the notice.
- (4) Shall provide two-way audio communication between all panel members attending the meeting during the entire meeting, and, if the two-way audio communication link with any member attending the meeting is disrupted at any time, the meeting shall not continue until the two-way audio communication link is reestablished.

La. R.S. 40:1299.39.6(R) (Emphasis added).

Board of directors

The board of directors, or any committee of the board, may hold a meeting by means of conference telephone, facsimile, or similar communications equipment provided that all persons participating in the meeting can communicate with each other. Participation in a meeting pursuant to this Paragraph shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. **The provisions of this Paragraph shall not apply to any public body or any other entity provided for in R.S. 42:13.**

La. R.S. 12:224(E)(10) (Emphasis added).

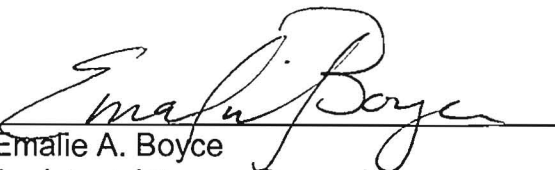
Statutes such as the above, which authorize the use of telephone and/or video conferencing, would not be necessary if this practice were generally permissible under the Open Meetings Law. This is evident from the qualifying language in the above, i.e., La. R.S. 24:7 still requires that a quorum of the legislative committee be physically present before any members of the committee may participate by video conference and the language addressing the permissive use of telephones by a non-profit board of directors in La. R.S. 12:224 specifically notes that it does not apply to any public body or any other entity provided for in the definitions section of the Open Meetings Law (La. R.S. 42:13).

In light of the above, it remains the opinion of this office that it is not permissible for a public body to utilize telephone conference calls during a public meeting to obtain a quorum.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: 
Emalie A. Boyce
Assistant Attorney General

JDC: EAB