



OPEN MEETINGS ACT UPDATE November 13, 2020

On November 10, Martha Watson and I attended a webinar put on by the BDL's law firm, Foster Swift, on the recent changes to the Michigan Open Meetings Act (OMA). Presented by associate Leslie Dickinson, it was a highly informative 90-minute presentation and question and answer session.

In large part, we are already doing what is required of us, so I won't belabor things that we already know or are already doing, and I'll just cover aspects that directly involve trustees.

You may have noticed some differences both the public notice for this meeting and in the agenda. These changes are required from the amended OMA. Affecting Trustees directly is that during the roll call you will need to state for the minutes where you are physically located. County/Twp./City & State is sufficient, for example "I am attending this meeting from Union Twp., Michigan" is fine, you don't have to state a street address. If a trustee is on military service, they are not required to state their location. Trustees are not required to state a reason for attending virtually.

Speaking of reasons, the OMA now allows for virtual meetings for any reason through 12/31/2020. From 1/1/2021 virtual attendance may be used only in 3 instances: 1) a trustee is away on military service, 2) a trustee has a medical condition which prevents them from attending in person (and Foster Swift believes that being in an at-risk group for COVID-19 would qualify), or 3) there is a statewide or locally declared state of emergency.

That is to say, if the Branch County government has not invoked the relevant state emergency declaration acts, only trustees with a medical condition would be allowed to attend virtually. Trustees are not required to divulge the medical condition, as this would run afoul of HIPAA.

From 1/1/2022 onward, only trustees away on military service would be permitted to attend virtual meetings.

Taken as a whole, the above changes basically invalidate the BDL Board policy for Virtual Attendance at Board Meetings, certainly by January 2022.

If the pandemic is still in effect, and social distancing is still required, we could be in a bit of a hardship in that we'll be required to have a socially distant in-person meeting when we have no facilities large enough to conduct such a meeting. When I asked Ms. Dickinson what our options were in that case, she said to either hold the meeting outdoors or find other temporary accommodations for the meeting.

Foster Swift is not aware of any bills currently in the works to further amend the OMA to permit virtual meetings after the above dates, so at the moment it looks possible that we may have to adapt starting in January if there is no lawfully declared emergency.

Submitted by John Rucker