

Can municipal public bodies use social media and programs such as Google Docs without violating the Open Meeting Law?

Yes, but only for limited purposes. Vermont's Open Meeting Law permits municipal public bodies to communicate electronically outside the context of a duly warned open meeting for the purpose of scheduling a meeting, creating an agenda, and distributing information to be discussed at a meeting. While other electronic communications – through platforms such as Google Docs, Facebook, Front Porch Forum, or texting are not explicitly addressed in the Open Meeting Law, they are likely prohibited if the communications are between a quorum (majority) of the members of the public body and the subject of discussion is a matter that is within the authority of that public body.

Vermont law does not explicitly state that the use of social media or software such as Google Docs violates the Open Meeting Law. Nor, on the other hand, does it carve out an explicit exception for these uses. However, the law is clear that participation at a meeting by electronic means is the legal equivalent to physical participation. As such, members of a public body must assume that electronic communication will be treated the same as in-person communication; therefore, electronic communication between a quorum of members will only be legal if it occurs in the context of a duly warned open meeting.

Note: The Open Meeting Law does allow members of a public body to attend and participate in a meeting electronically or by other means without being physically present, so long as certain requirements are met. For more information about how to meet electronically and how to comply with the Open Meeting Law, see “VLCT FAQs: Open Meeting Law” at <http://www.vlct.org/assets/MAC/Open%20Meeting%20Law/Open%20Meeting%20Law%20FAQs.pdf>.

What is a meeting? Vermont's Open Meeting Law governs “meetings of a public body.” Among other requirements, the law provides that all “meetings” of a public body are declared open to the public at all times unless otherwise specifically provided. A “meeting” is defined as “a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.” 1 V.S.A. § 310(2). However, the term meeting does not include “written correspondence or an electronic communication, including e-mail, telephone, or teleconferencing, between members of a public body for the purpose of scheduling a meeting, organizing an agenda, or distributing materials to discuss at a meeting, provided that such a written correspondence or such an electronic communication that results in written or recorded information shall be available for inspection and copying under the Public Records Act” That language makes it clear that using electronic communication for purposes of scheduling a meeting, organizing an agenda, and distributing materials that are going to be discussed at a meeting is not considered a meeting under the law. Understanding that these three actions are explicitly not considered meetings under the law therefore means that other forms of electronic communication between a quorum of members are. If the legislature had intended to make exceptions to the law and allow for a quorum of members to communicate using Google Docs and Facebook, it would have stated so.

Document Sharing Platforms (Google Docs). Less clear under the Open Meeting Law is whether it permits a few members of a public body to work, comment, share ideas, and make statements or corrections on a shared document, whether simultaneously in real-time or through a series of one-to-one communications over a period of time. Though it is a question of first impression that has yet to be addressed by a Vermont court, the law likely prohibits public bodies from doing this type of collaborative work outside the confines of an open meeting. This is because such action may violate the intent behind the Open Meeting Law, which is to assure that substantive conversations and decisions by municipal public bodies are made in public. By using a method of on-line communication such as Google Docs, to which the public has limited access, a public body is accomplishing what otherwise may only be accomplished in the context of an open meeting. If members, totaling a quorum, are indicating their approval or disapproval, or making comments and suggestions via Google Docs, whether simultaneously or serially as individual members, the use of the software therefore may be a violation of the Open Meeting Law.

To avoid a potential violation of the law, the Municipal Assistance Center recommends that members work independently to compose, comment, and edit documents. And while those drafts, comments, and edits may be disseminated (sent by one-way communication) to the other members, all discussions or decisions about those documents should take place during the course of a duly warned open meeting. Alternatively, a public body can designate a point person or several members to work collaboratively on a document using Google Docs outside of its meetings – just as long as the total number of members stays under the quorum threshold (i.e., less than the majority of the total membership of the public body).

There is one exception where the use of Google Docs would be appropriate: in the context of deliberative session, as allowed by the Open Meeting Law. A deliberative session is where a public body weighs, examines, or discusses the reasons for or against an act or decision based on the evidence received at a public hearing held in conjunction with a quasi-judicial proceeding. The law states that “[n]othing in [the open meeting law] ... shall be construed as extending ... to the deliberations of any public body in connection with a quasi-judicial proceeding” 1 V.S.A. § 312(e). Since deliberative sessions fall outside the context of the Open Meeting Law, they may be conducted by Google Docs or other electronic communication without violating the law.

Emails. In a related matter, public bodies using email for administrative purposes should be circumspect with respect to whom and how they reply to group emails. Generally, members should avoid clicking “reply all,” as that may create a group discussion that constitutes a meeting under the law. Communication among a quorum of members regarding the public body’s business is defined as a meeting and elicits the requirements of the Open Meeting Law: public notice, agenda, open to the public, public comment, and meeting minutes.

Social Media. Similarly, members must also be cautious of using social media platforms such as Facebook or Front Porch Forum. While these platforms may be useful tools in connecting with the public and providing transparency, a violation of the law may occur if a quorum of members has a dialogue concerning the public body’s business on those platforms. The use of Front Porch Forum is even more of a liability because the Open Meeting Law requires that all members of the public have the “right to be present, to be heard, and to participate.” *State of Vermont*

Emergency Bd., 136 Vt. 506, 508 (1978). Unlike Facebook, where most anyone can join and participate, Front Porch Forum restricts access to local residents only.

Even though using social media and document-sharing platforms is not formally addressed in the Open Meeting Law, local officials need to be aware that the Vermont Supreme Court interprets the law liberally in support of the overriding policy goal of open access to public meetings. And while the use of social media and digital document sharing platforms is not prohibited by the law, their use requires awareness and caution on the part of public bodies to avoid possible violations.

Carl Andeer, Staff Attorney I
Municipal Assistance Center