

Frequently asked questions about public bodies

Is a committee or board created by a public official subject to the Open Meeting Law?

It depends.

The OML does not apply to committees or boards informally appointed by individual officials to carry out duties that are assigned to such officials. Accordingly, where a public official creates a committee to advise that public official on a decision that he or she has sole responsibility for the committee or board would not be subject to the Open Meeting Law. See *Connelly v. School Committee of Hanover*, 409 Mass. 232 (1991), in which the SJC held that a high school principal selection committee appointed by the school superintendent to assist him in choosing candidates was not a governmental body subject to the OML. Because the superintendent could have chosen a school principal entirely on his own without creating the committee to advise him on a candidates, his informal creation of a committee did not subject the body to the Open Meeting Law.

However, where a public official creates a committee because they are required to do so by law, regulation or at the direction of a governing authority such as a City Council or Board of Selectmen, then the committee will likely be subject to the Open Meeting Law.

Are Special Education Parent Advisory Council (“SEPAC”) groups public bodies subject to the Open Meeting Law?

While a SEPAC itself is generally not a public body subject to the Open Meeting Law, the leadership group may be a public body subject to the Open Meeting Law. Massachusetts law requires that membership in a school’s SEPAC be offered to all parents of children with disabilities and other interested parties. See G.L. c. 71B, § 3. In many cases, the SEPAC establishes or elects a leadership or governing committee. That group of elected or appointed officers will likely constitute a public body under the Open Meeting Law, and it is therefore advisable that such groups comply with the Open Meeting Law’s requirements.

Are Insurance Advisory Commissions (IACs) and Public Employee Committees (PECs) public bodies subject to the Open Meeting Law?

No, the Attorney General’s Office has determined that IACs created pursuant to G.L. c. 32B, § 3, and PECs created pursuant to G.L. c. 32B, § 19, are not public bodies subject to the Open Meeting Law. See OML 2015-22. Both groups, formed for employee negotiation purposes under the Municipal Health Insurance Reform Act, G.L. c. 32B, serve the interests of public employees, rather than the public, and thus are not public bodies subject to the Open Meeting Law. See G.L. c. 30A, § 18. However, bodies created by a municipality to negotiate with a PEC may be public bodies, though some of their discussions may be appropriate for executive session under G.L. c. 30A, §§ 21(a)(2), (3), the purposes allowing for discussion of strategy with respect to collective bargaining and for conducting collective bargaining sessions.

Are “Special Commissions” or “Special Legislative Commissions” public bodies subject to the Open Meeting Law?

Yes, although they are subject to different requirements from other public bodies for holding executive sessions and posting meeting notices. While state public bodies designated as “Special Commissions” or “Special Legislative Commissions” pursuant to G.L. c. 4, § 2A, (collectively “Special Commissions”) are public bodies and must follow the requirements of the Open Meeting Law, G.L. c. 4, § 2A, contains separate requirements for executive sessions and notice for them:

Private or executive meetings of each special commission shall be open to the public unless a majority of the members of such commission shall vote otherwise. A notice of each such meeting shall be filed with the clerk of either branch, and the notice or a copy thereof shall be publicly posted in the office of such clerk at least twenty-four hours prior to such meeting, excluding Saturdays, Sundays, and legal holidays.

Assuming that a majority of a Special Commission votes to do so, the statute appears to provide that a Special Commission may enter into executive session for any purpose, not just the 10 enumerated in the Open Meeting Law. However, the Special Commission must still follow certain procedural requirements for entering into executive session outlined in G.L. c. 30A, § 21(b), including convening first in open session, publicly announcing whether the Special Commission will return to open session following its executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called, and keeping accurate minutes of its executive session.

With respect to meeting notices, Special Commissions must file a meeting notice with the clerk of either the House or Senate. That notice must be published in the office of the House or Senate clerk at least 24 hours prior to the meeting, not including Saturdays, Sundays, and legal holidays. Other than the time and manner of posting, notices must still meet the requirements found at G.L. c. 30A, § 20(b) and 940 CMR 29.03. Although Special Commissions are not required to post notices in the same manner as other state public bodies, in the interest of transparency, the Attorney General recommends that Special Commissions still follow the notice requirements for state public bodies found at G.L. c. 30A, § 20(c), specifically that Special Commissions additionally post their meeting notices to a website at least 48 hours before meetings, not including Saturdays, Sundays, and legal holidays, and that they send a copy of each meeting notice to the Regulations Division of the Secretary of the Commonwealth at regs@sec.state.ma.us.