

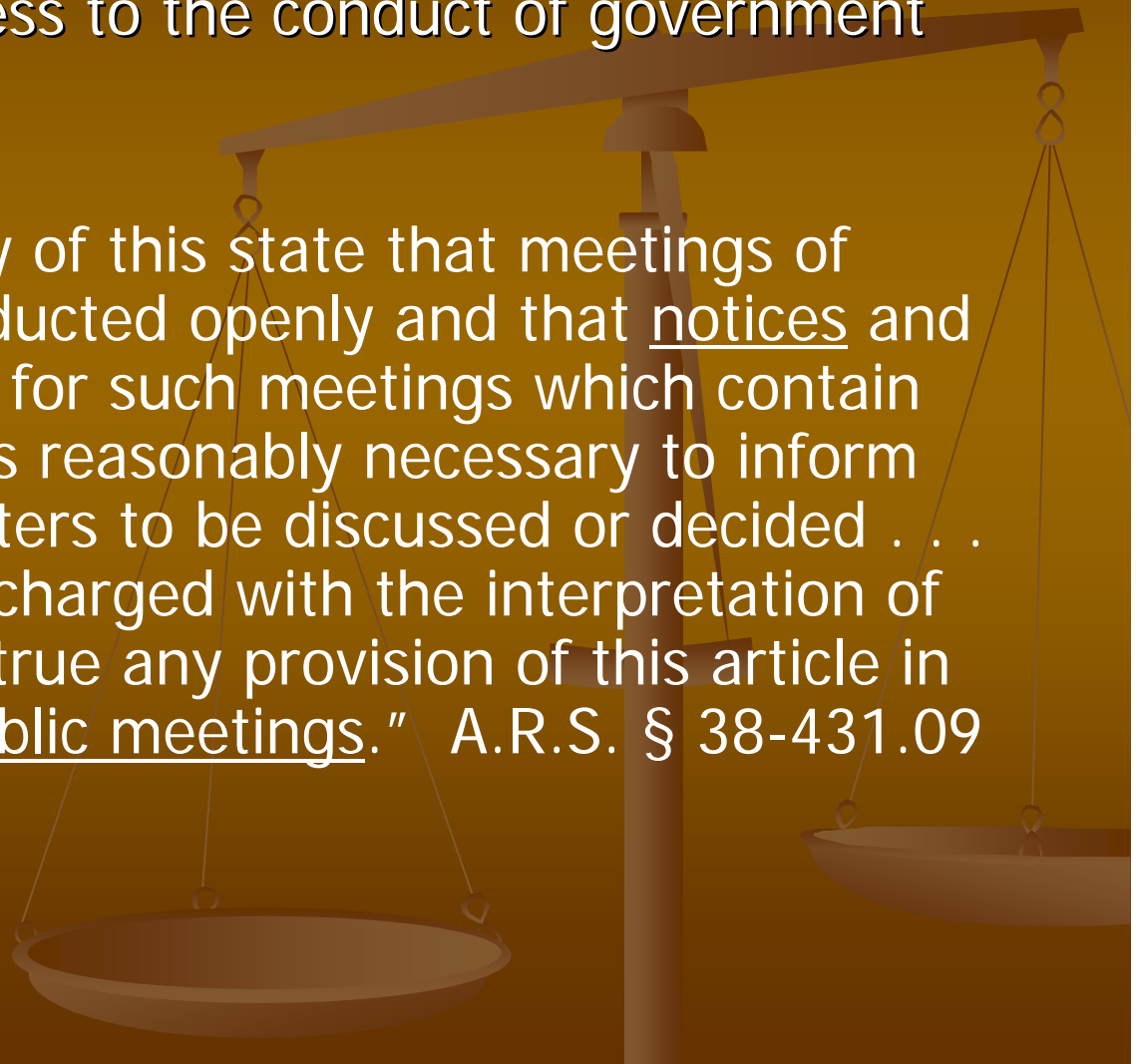


The Essentials of Arizona's Open Meeting Law

Kim C. Clark, General Counsel

Purpose of the OML

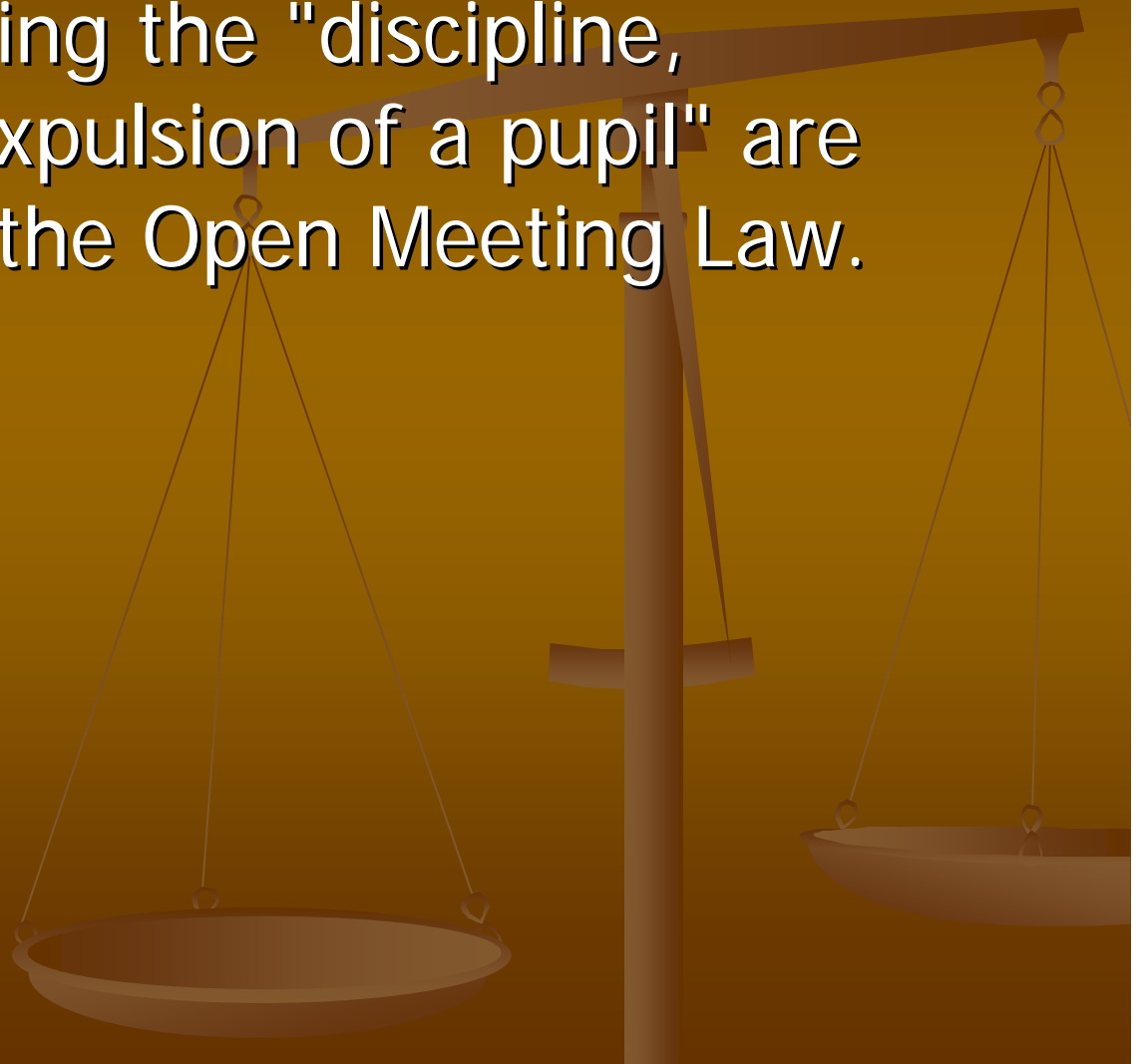
- To assure public access to the conduct of government business.
- “It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings.” A.R.S. § 38-431.09



An exception for school districts

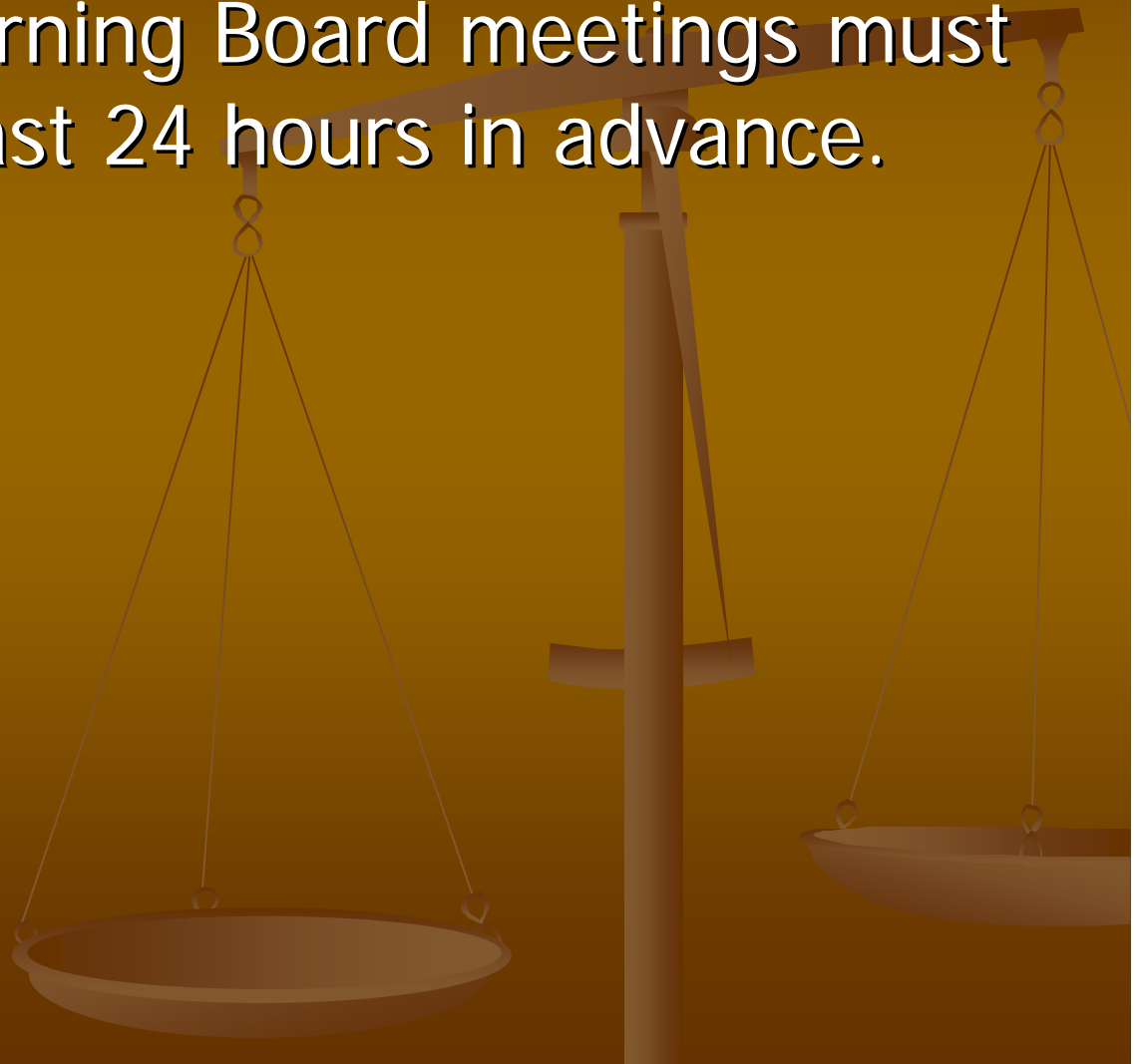
- Actions concerning the "discipline, suspension or expulsion of a pupil" are NOT subject to the Open Meeting Law.

A.R.S. § 15-843

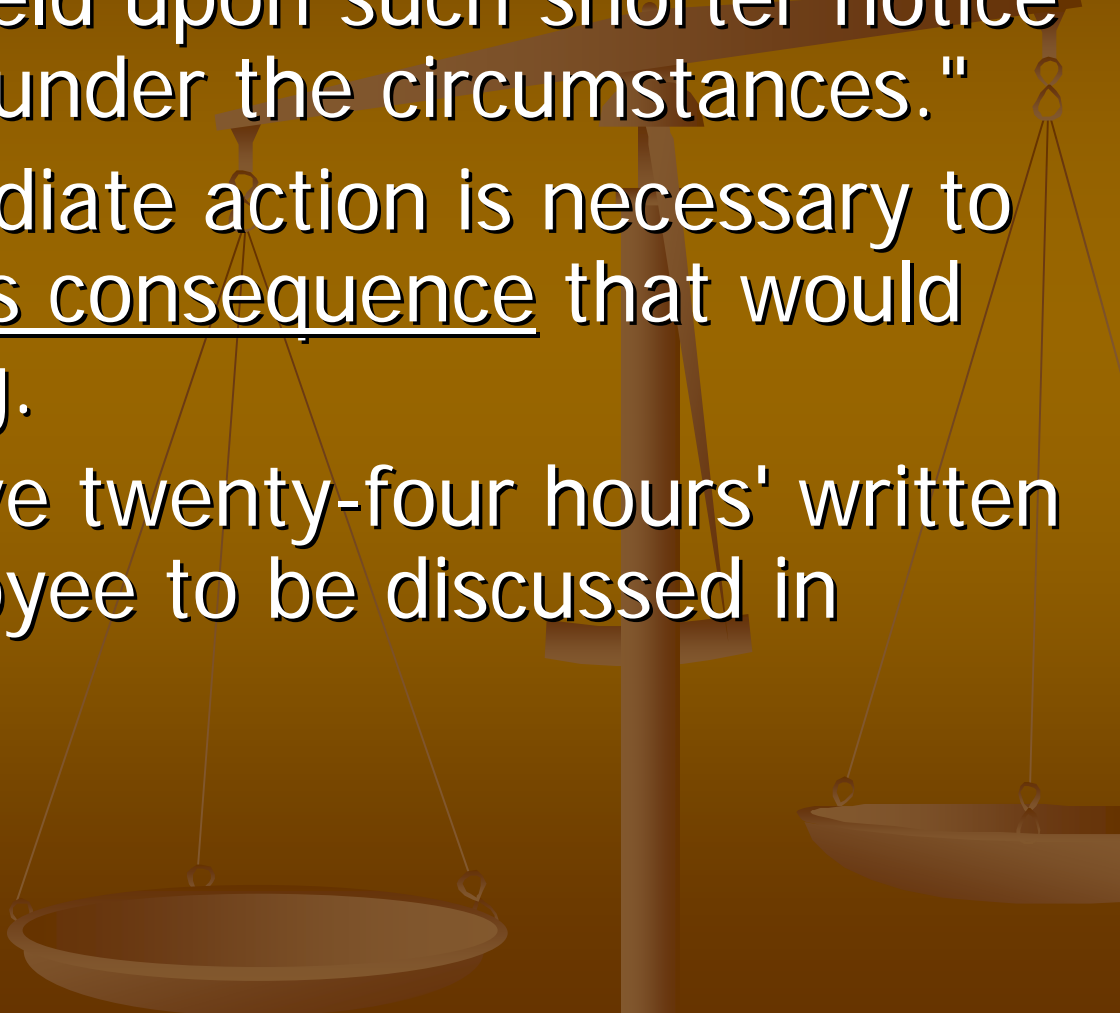


Notice

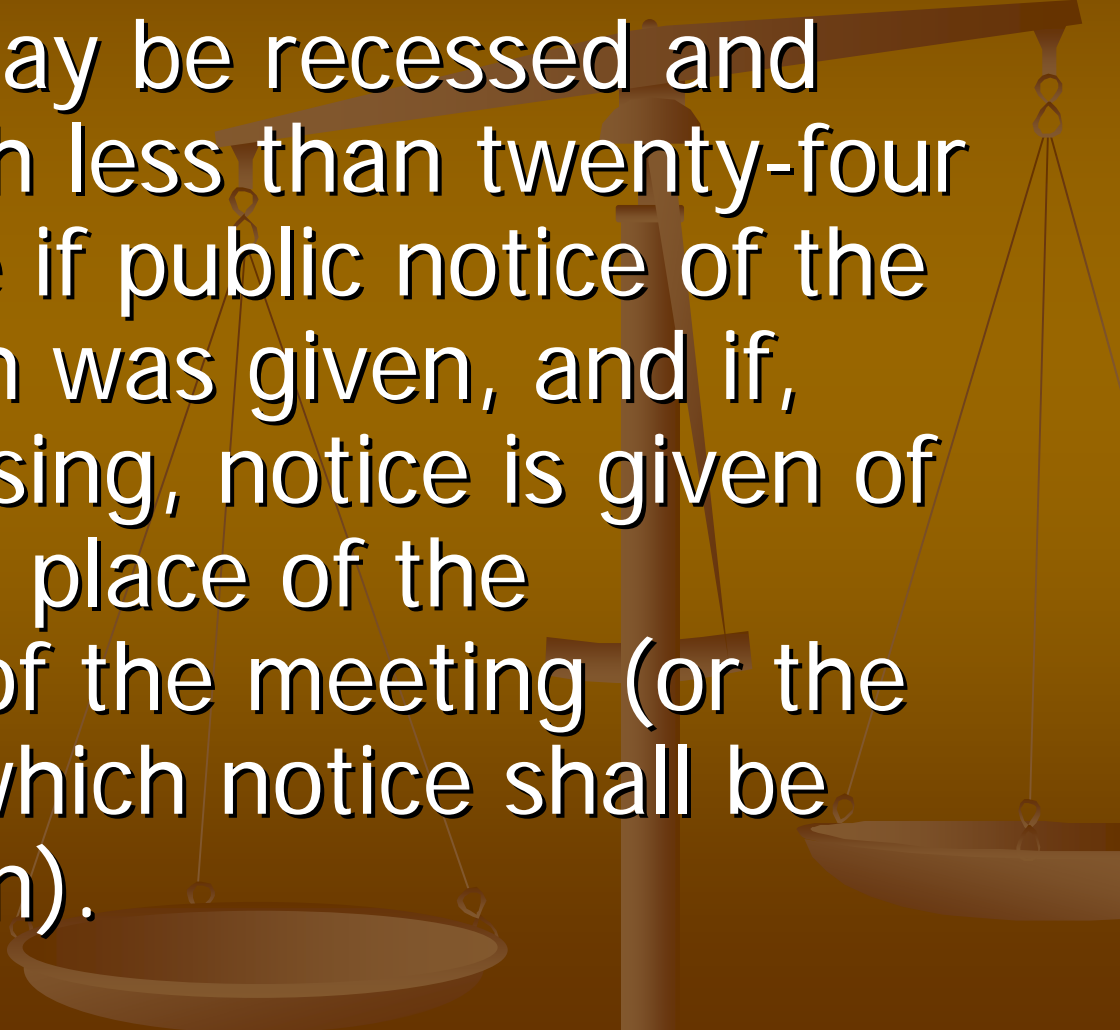
- Notices of Governing Board meetings must be posted at least 24 hours in advance.



Exceptions to Notice Requirements

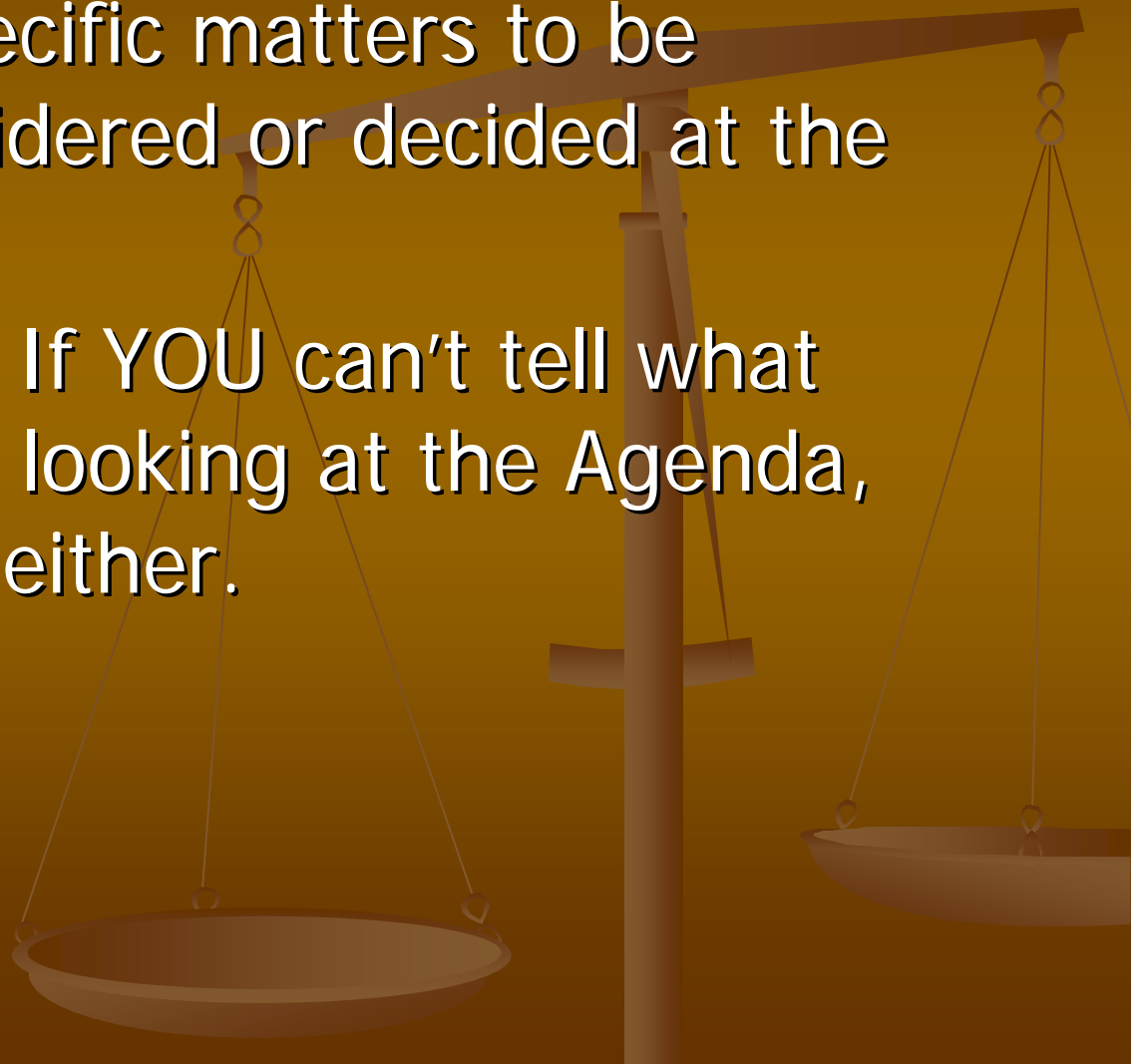
- Also, in the case of an "actual emergency," the meeting may be held upon such shorter notice as is "appropriate under the circumstances."
 - Only where immediate action is necessary to avoid some serious consequence that would result from waiting.
 - Always have to give twenty-four hours' written notice to an employee to be discussed in executive session.
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Reconvening a properly noticed meeting

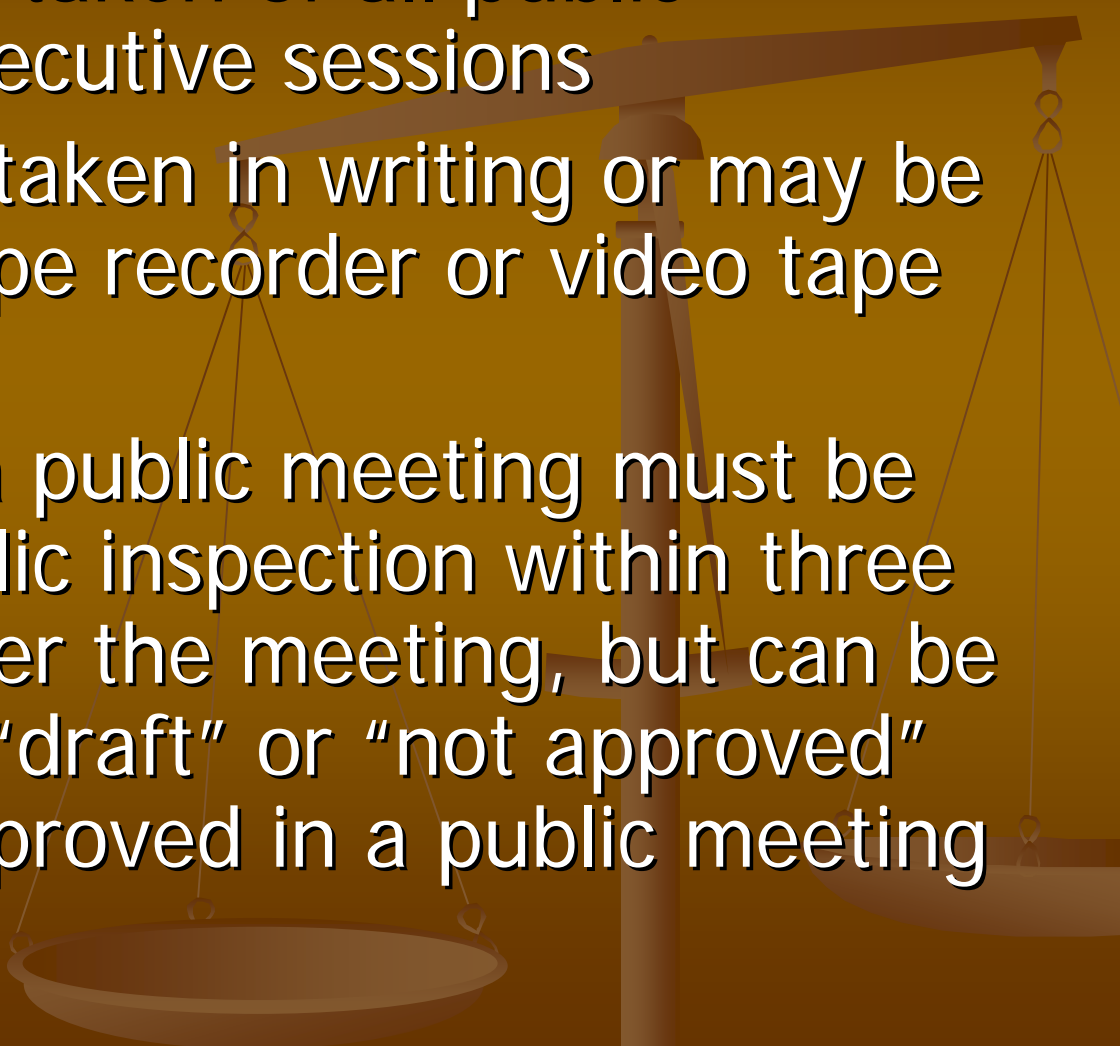
- A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session was given, and if, before recessing, notice is given of the time and place of the resumption of the meeting (or the method by which notice shall be publicly given).
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Agenda

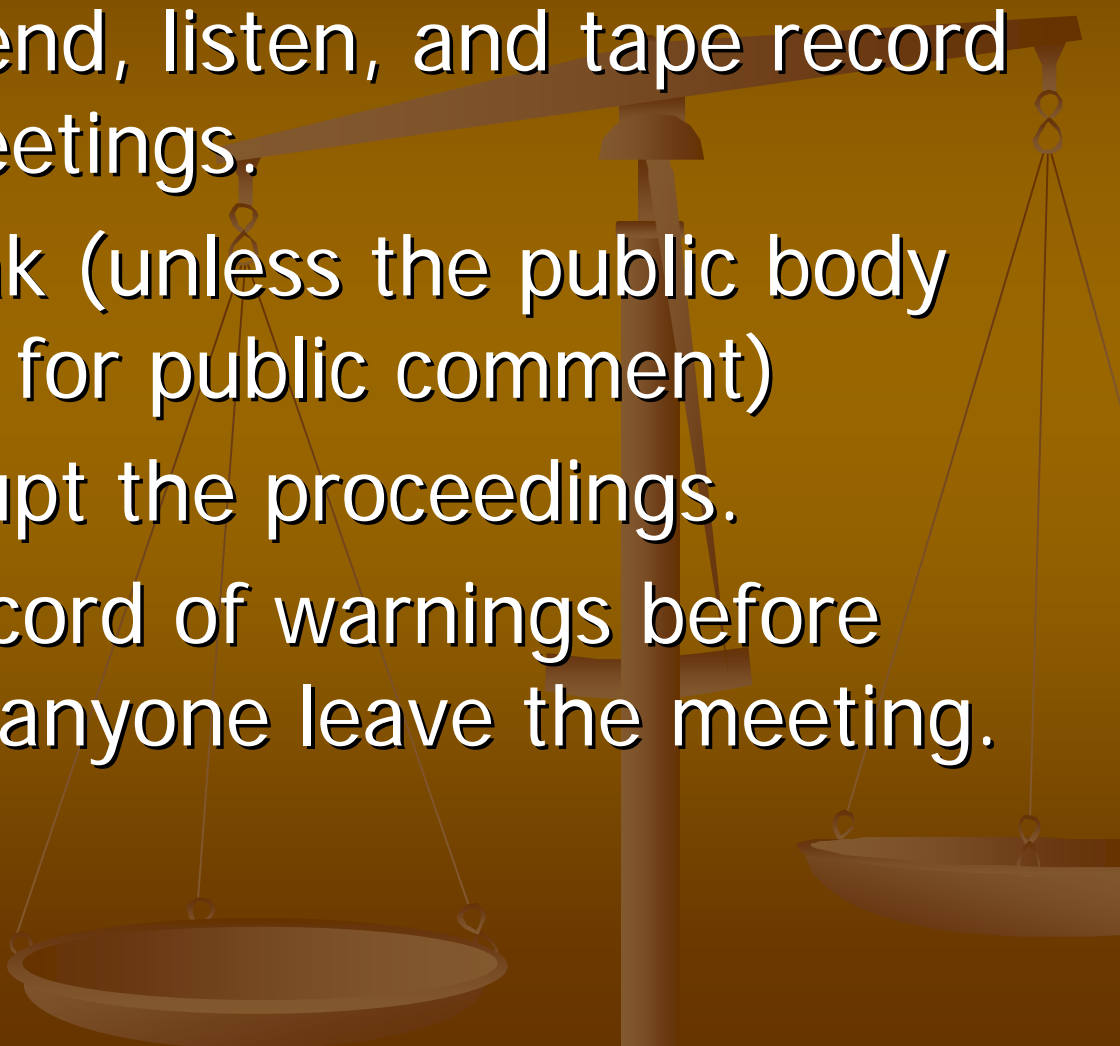
- Must list the specific matters to be discussed, considered or decided at the meeting.
- Practical point: If YOU can't tell what something is by looking at the Agenda, the public can't either.



MINUTES of the MEETINGS

- Minutes must be taken of all public meetings and executive sessions
 - Minutes may be taken in writing or may be recorded by a tape recorder or video tape recorder.
 - The minutes of a public meeting must be available for public inspection within three working days after the meeting, but can be clearly stamped “draft” or “not approved” until they are approved in a public meeting
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The Public

- Has right to attend, listen, and tape record or videotape meetings.
 - No right to speak (unless the public body designates time for public comment)
 - No right to disrupt the proceedings.
 - Make a good record of warnings before requesting that anyone leave the meeting.
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Call to the Public



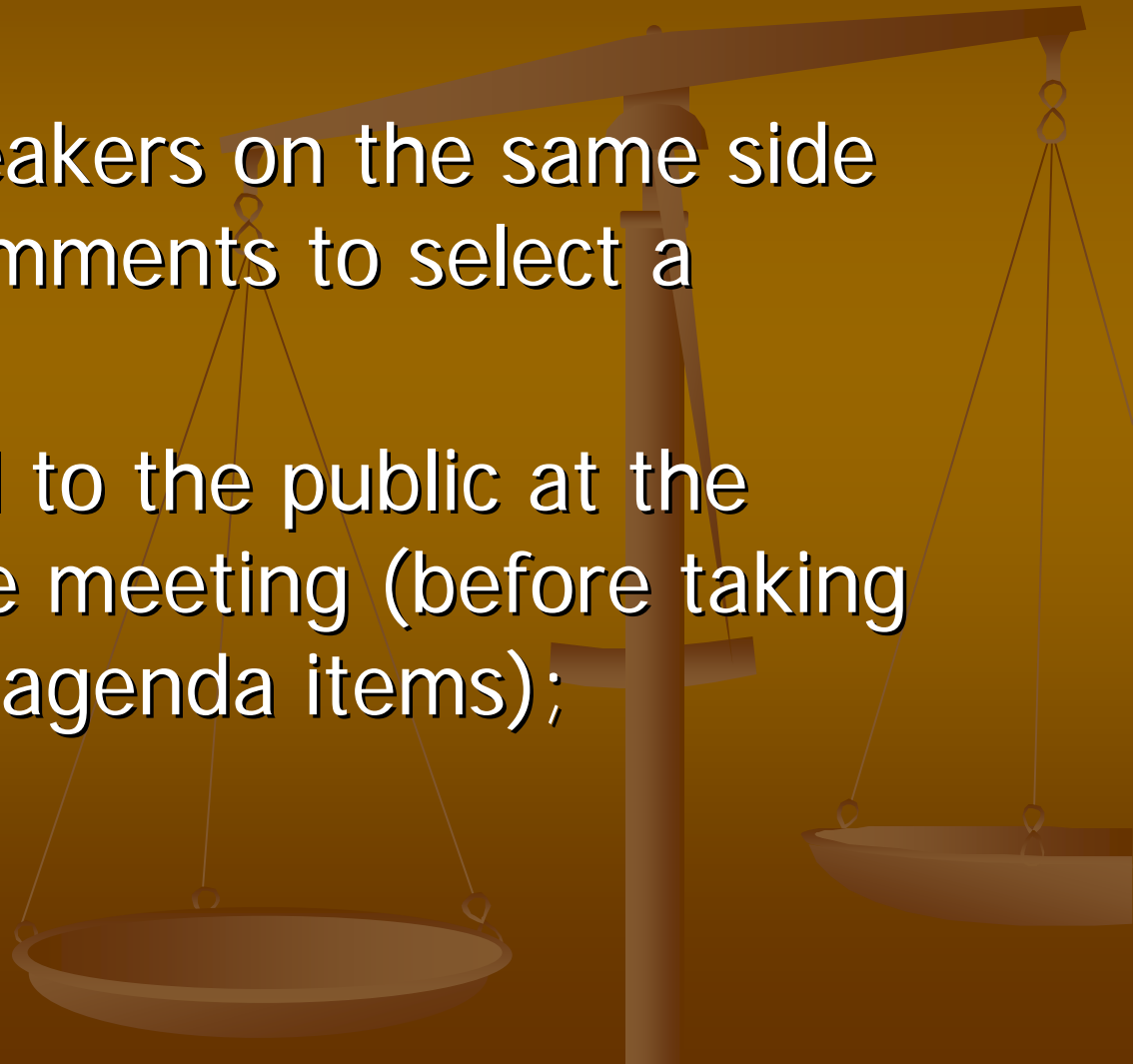
Responses to public comment are allowed only in limited circumstances:

1. To respond to criticism (limited to specific member to whom criticism was leveled);
2. To ask staff to review a matter;
3. To ask that a matter be placed on a future agenda.
4. Where an item is already noticed on the agenda.

Practical Tip: Remind the public of these rules prior to opening the meeting for public comment.

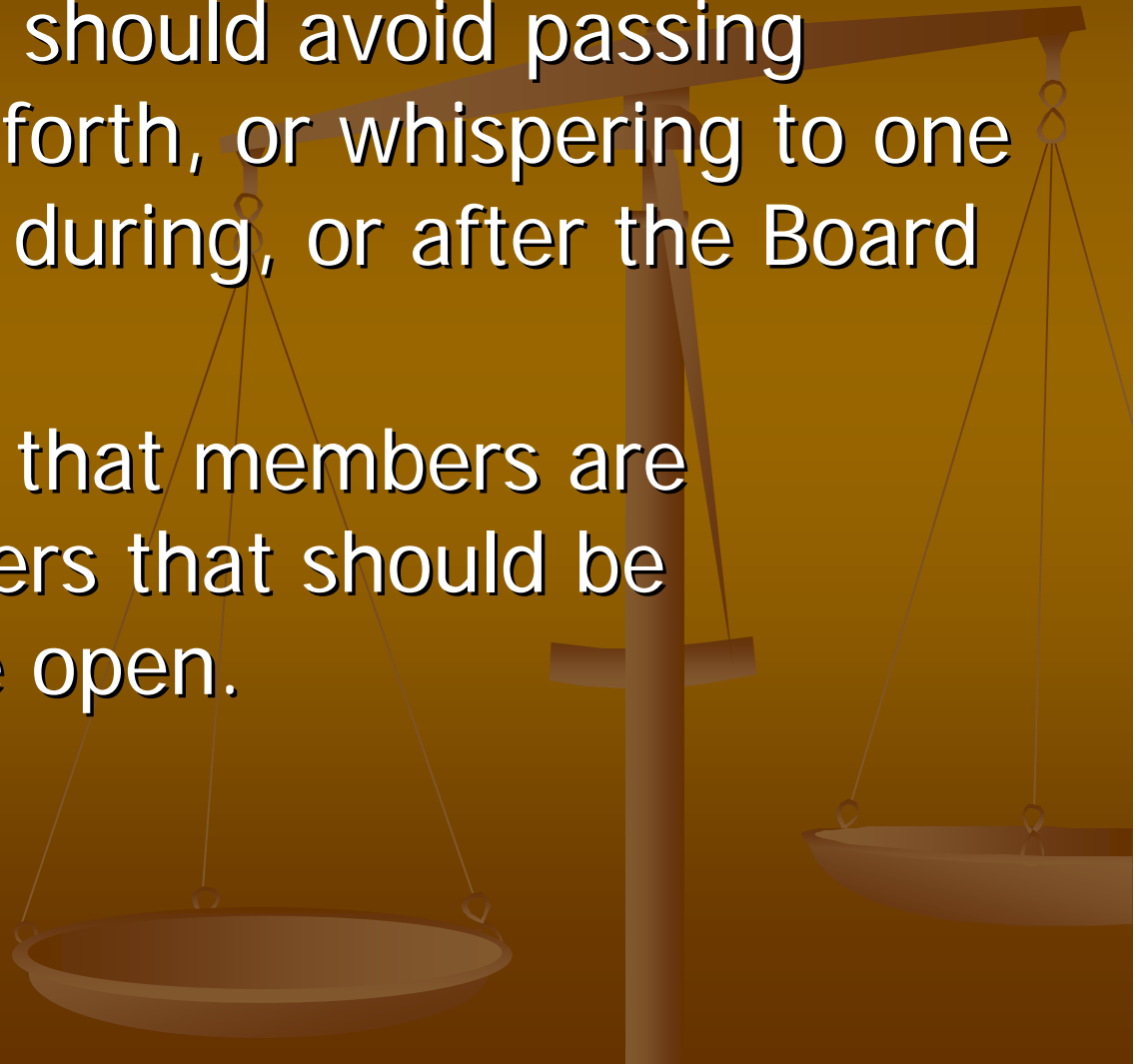
Calls to the Public (cont.)

- Can limit time;
- May require speakers on the same side with no new comments to select a spokesperson;
- Best to hold call to the public at the beginning of the meeting (before taking action on other agenda items);



No Side Discussions

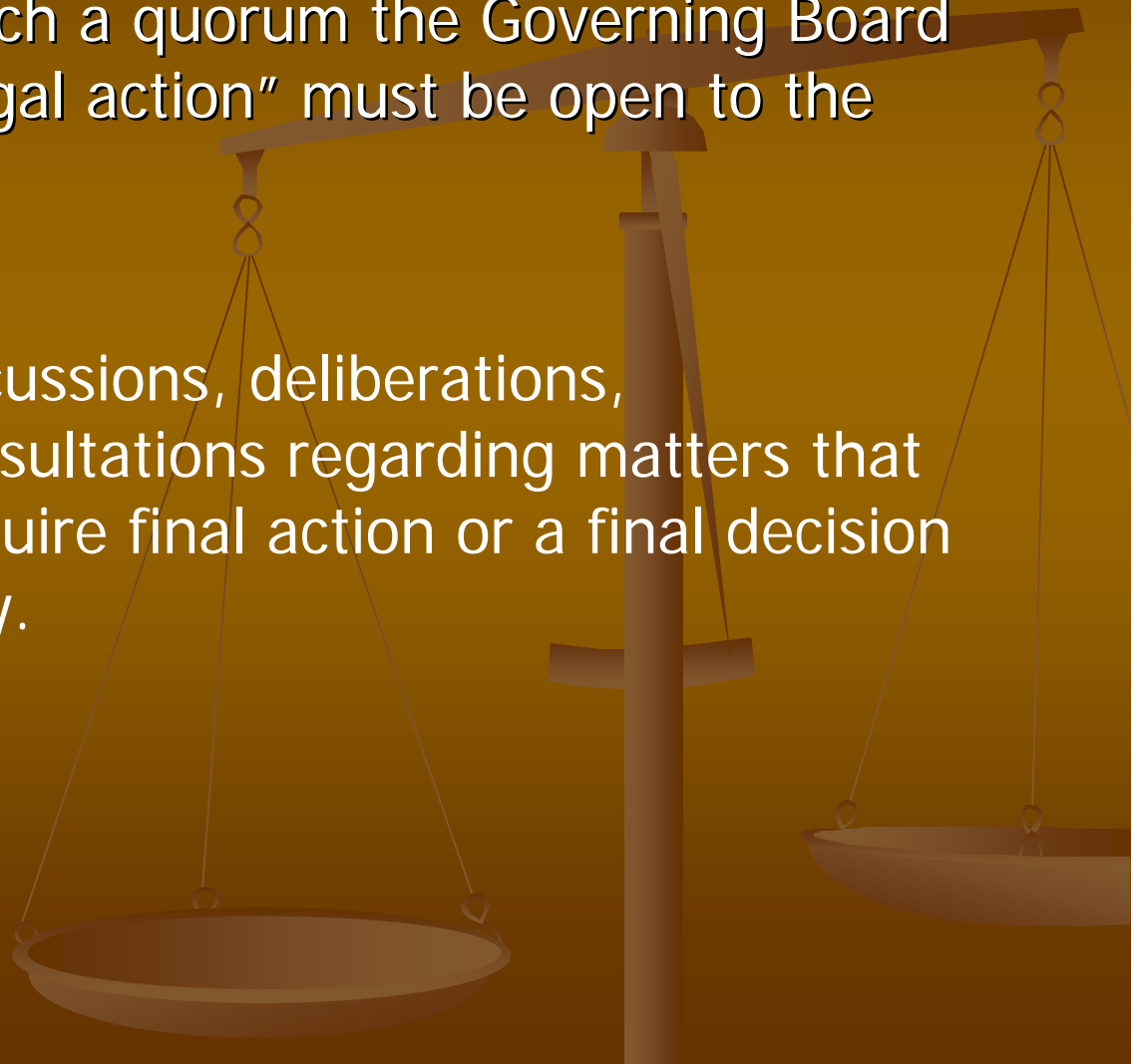
- Board members should avoid passing notes back and forth, or whispering to one another before, during, or after the Board meeting;
- Invites criticism that members are discussing matters that should be discussed in the open.



When does the OML apply?

- All “meetings” in which a quorum the Governing Board discusses or takes “legal action” must be open to the public.

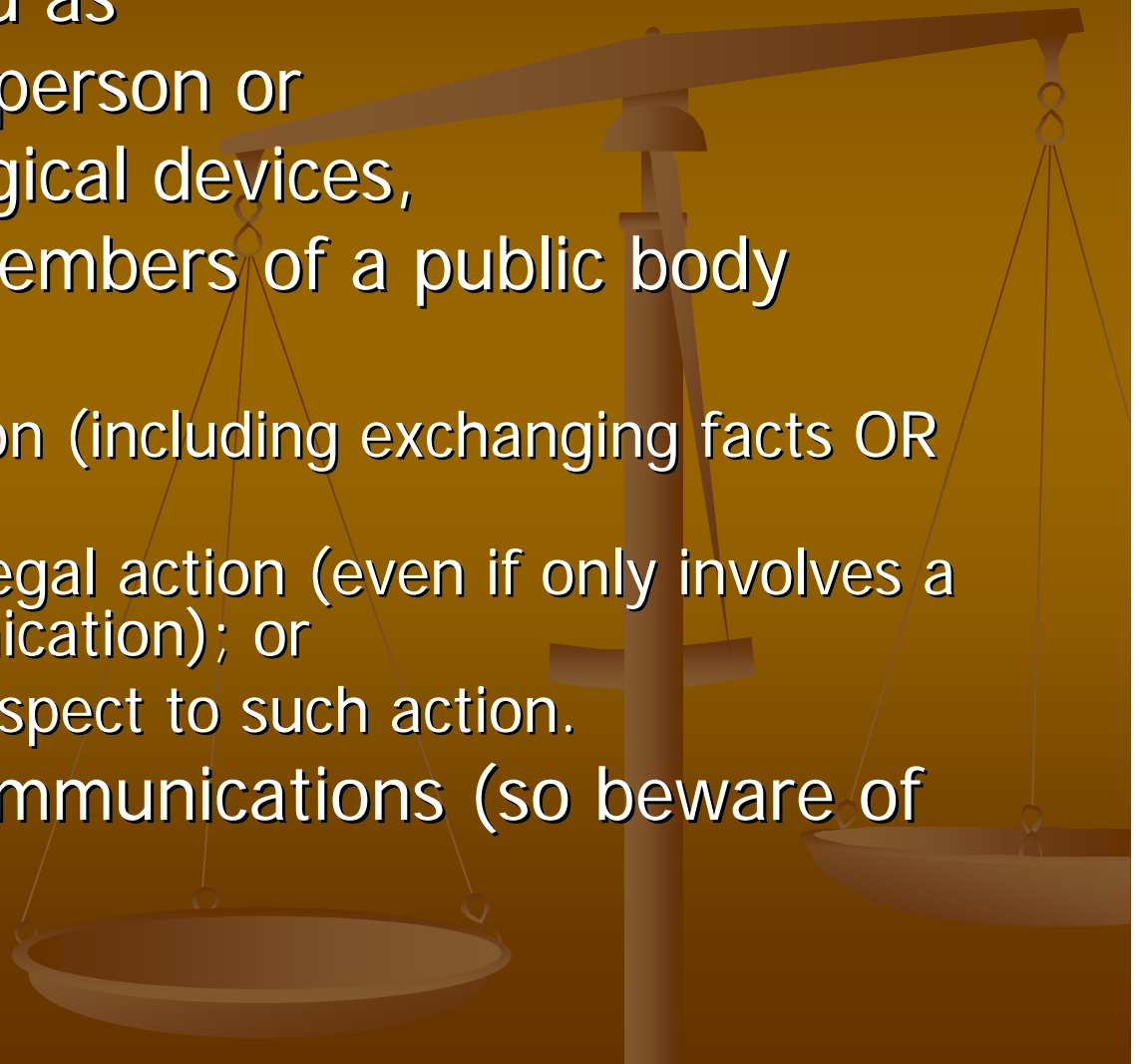
Legal Action = All discussions, deliberations, considerations, or consultations regarding matters that may *foreseeably* require final action or a final decision by the governing body.

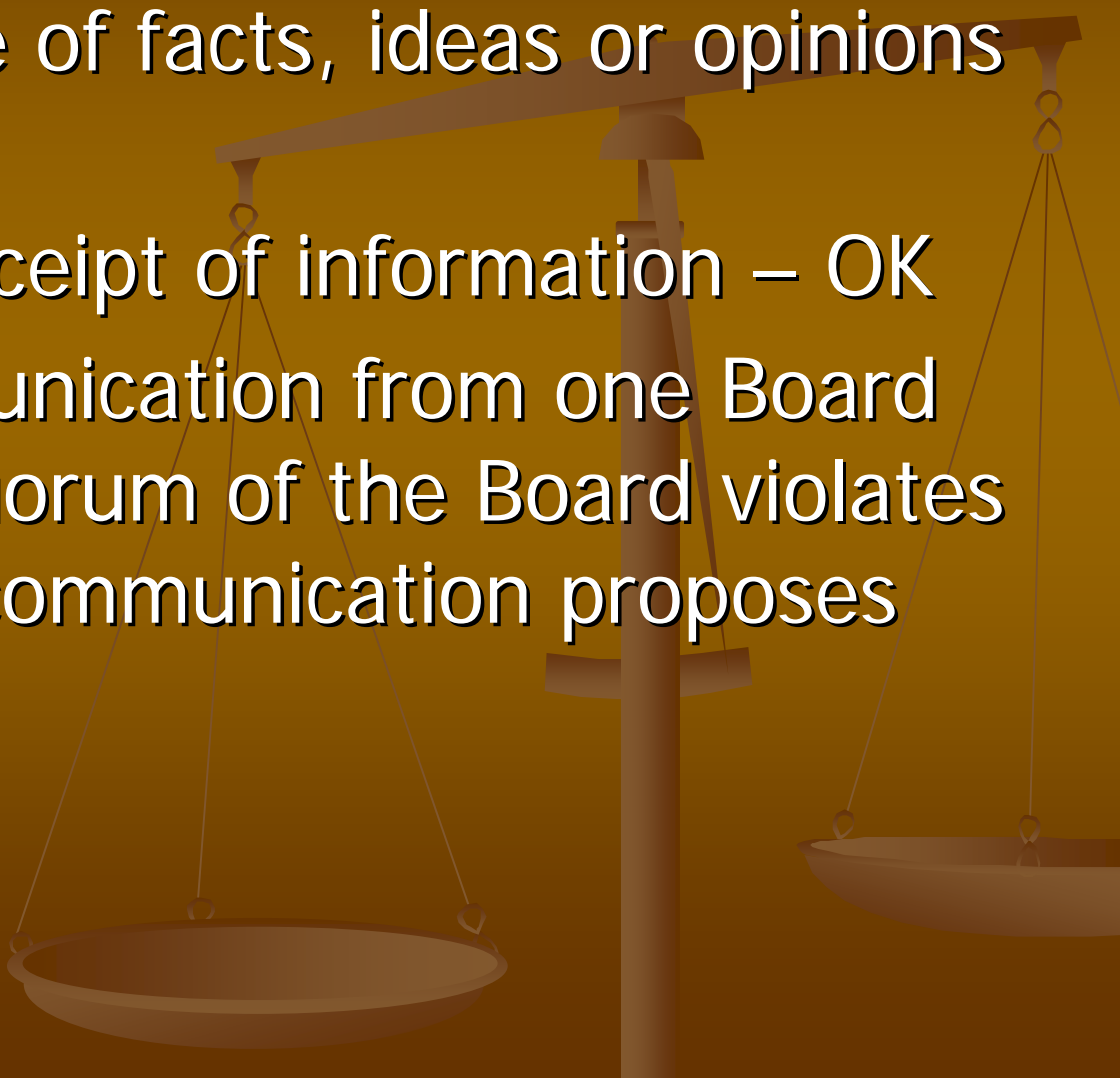


What is a meeting?

A meeting is defined as

- the gathering, in person or
- through technological devices,
- of a quorum of members of a public body
- at which they:
 - discuss legal action (including exchanging facts OR opinions);
 - propose or take legal action (even if only involves a one way communication); or
 - deliberate with respect to such action.
- Includes serial communications (so beware of email).



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- Active exchange of facts, ideas or opinions – not OK.
 - Mere passive receipt of information – OK
 - One way communication from one Board member to a quorum of the Board violates the OML if the communication proposes “legal action.”

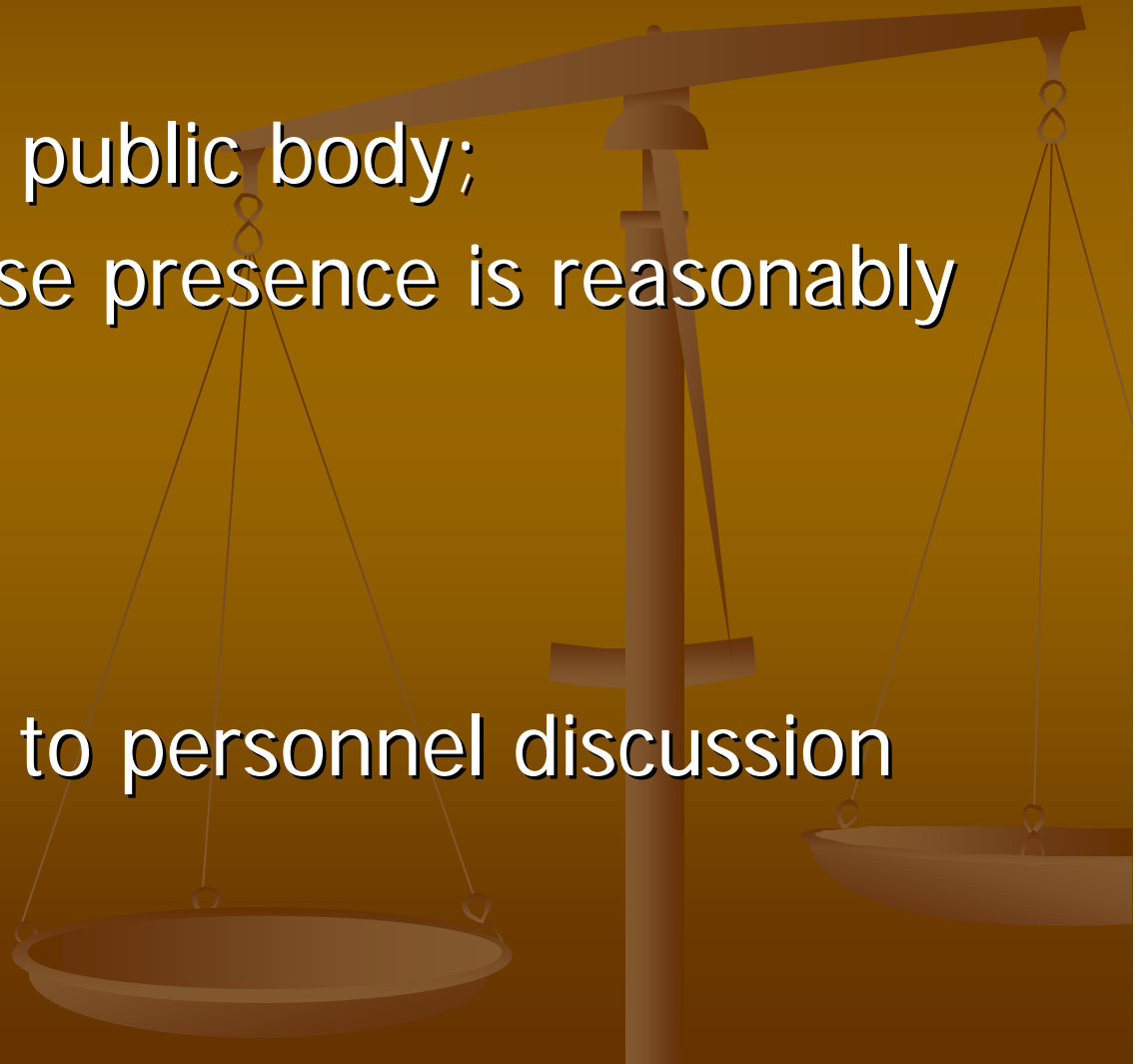
AG Op. 105-004 – Email Communications

- “When members of the public body are parties to an exchange of e-mail communications that involve discussions, deliberations or taking legal action by a quorum of the public body concerning a matter that may foreseeably come before the public body for action, the communications constitute a meeting through technological devices under the OML.”

Executive Sessions

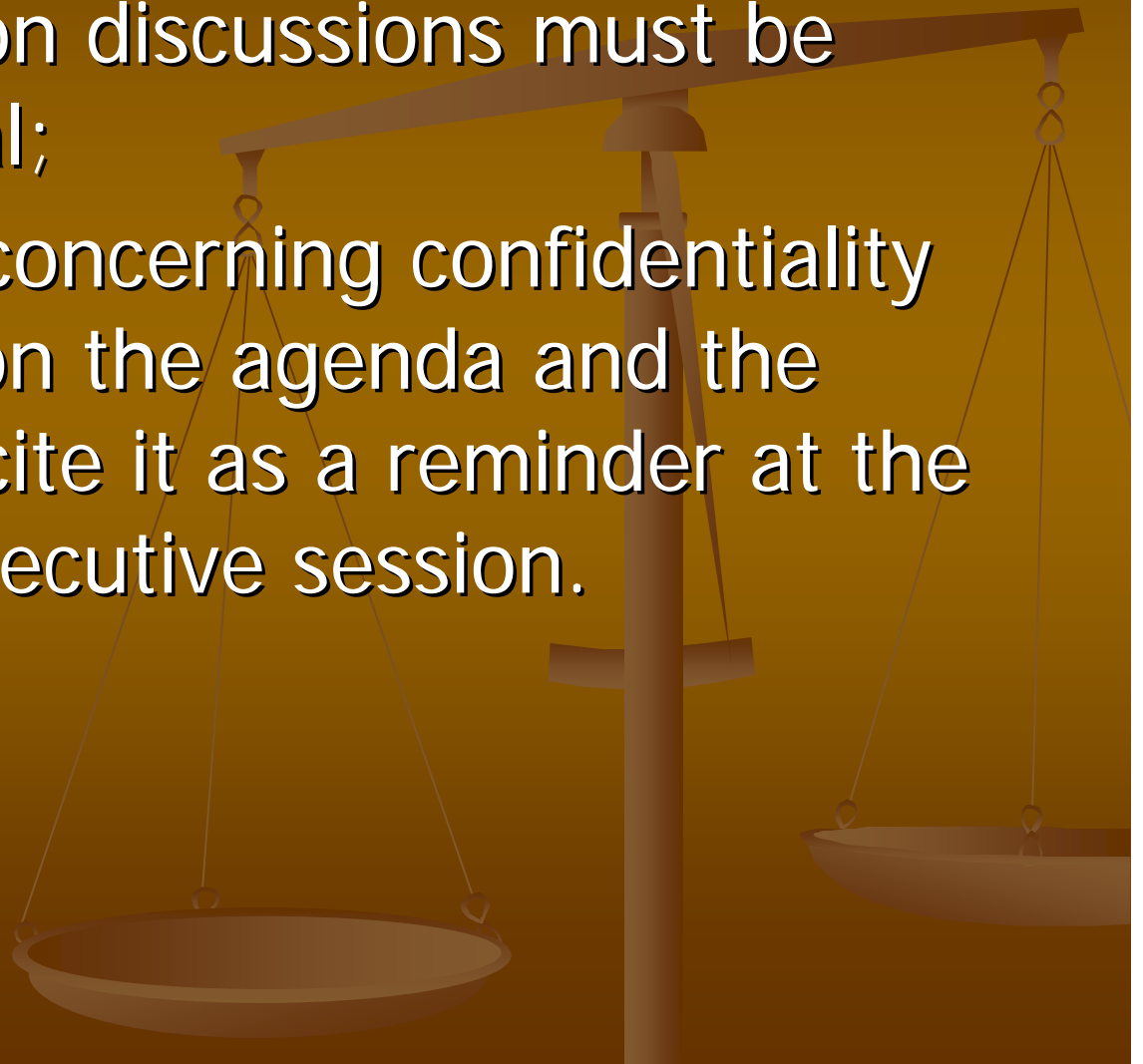
Who may attend?

- Members of the public body;
- Individuals whose presence is reasonably necessary;
- The clerk
- Auditor General
- Persons subject to personnel discussion

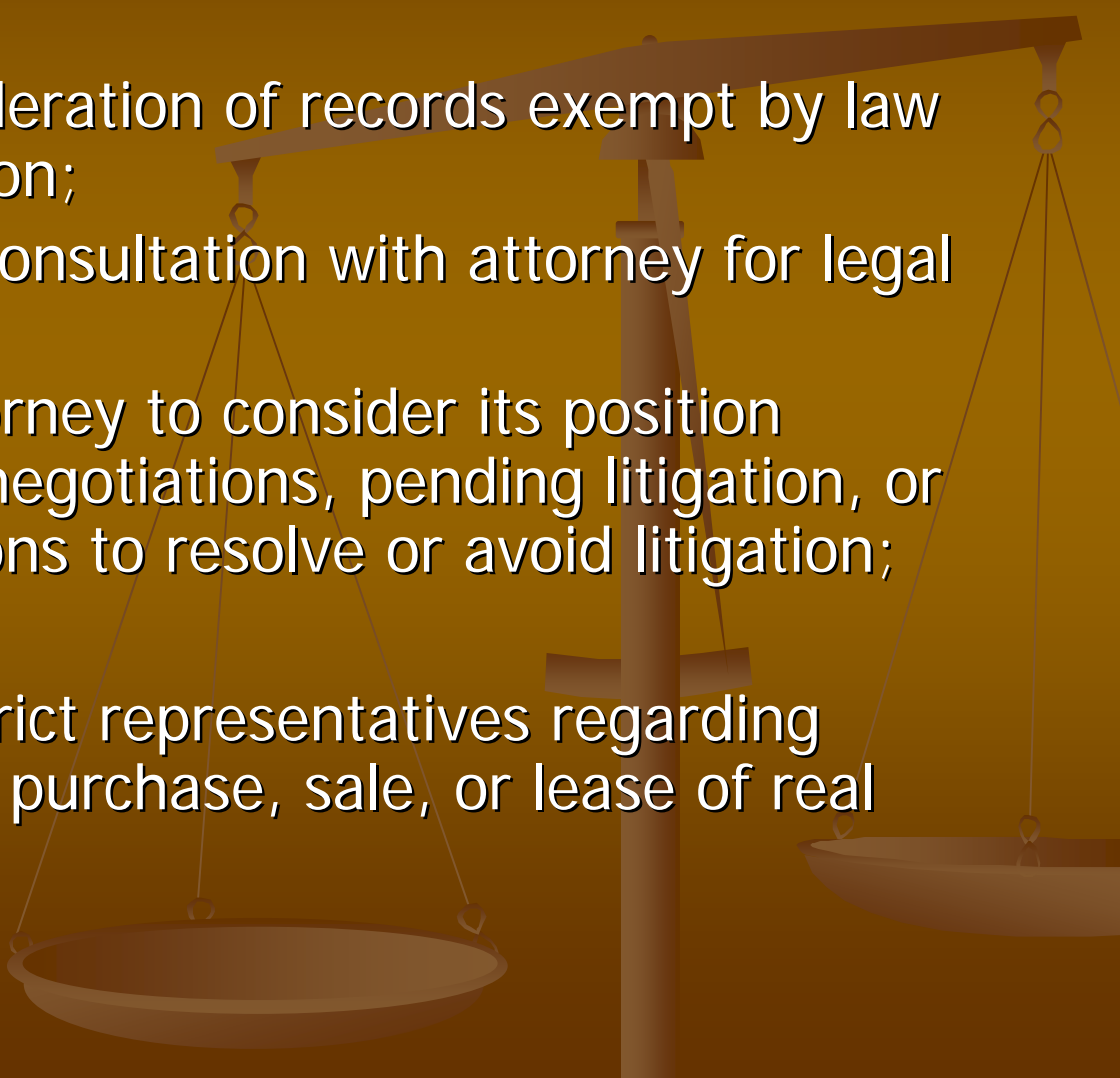


Executive Sessions

- Executive session discussions must be kept confidential;
- An admonition concerning confidentiality should appear on the agenda and the Chair should recite it as a reminder at the outset of the executive session.



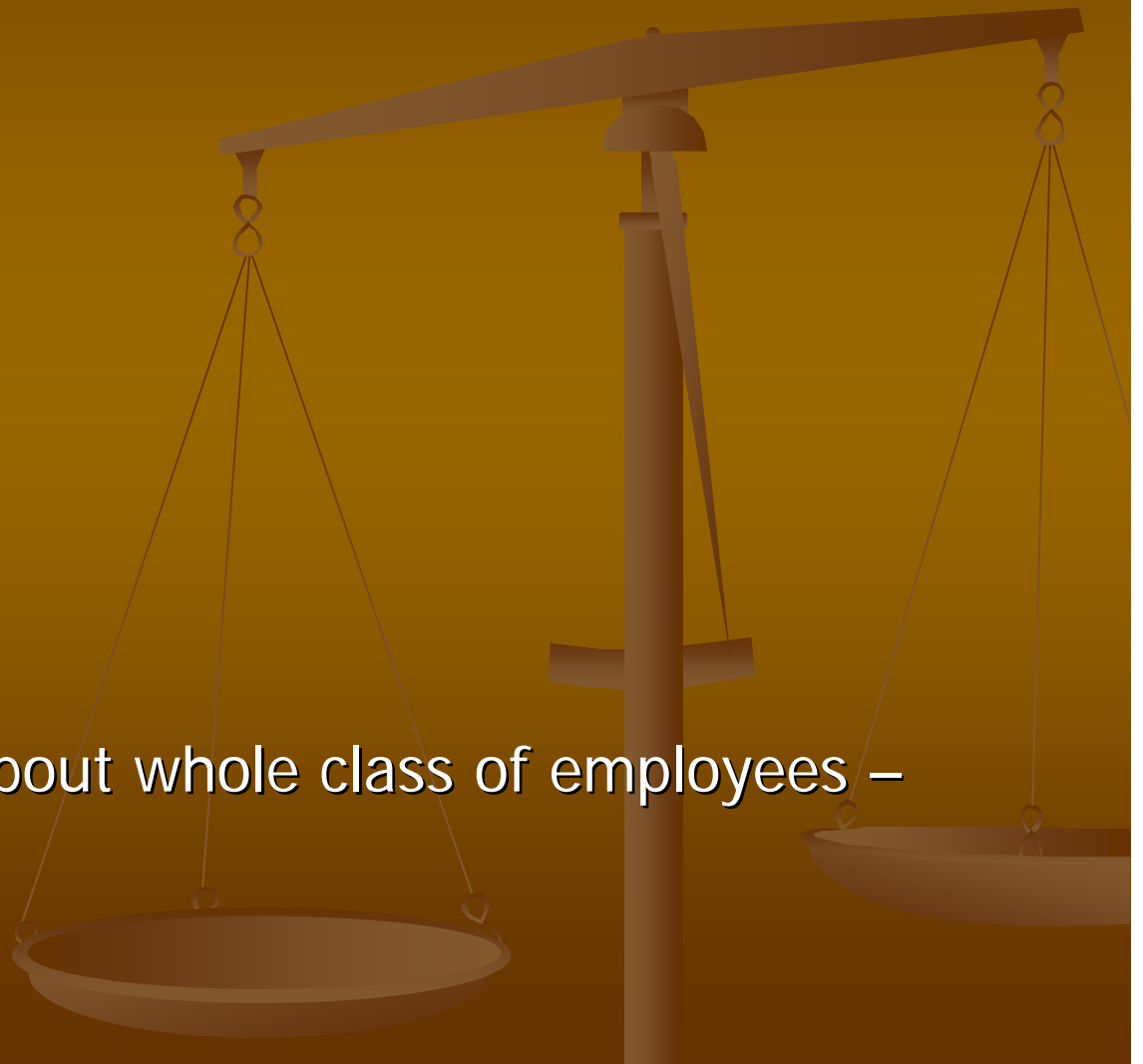
Executive Sessions

- Personnel matters;
 - Discussion or consideration of records exempt by law from public inspection;
 - Discussion with or consultation with attorney for legal advice;
 - Discussion with attorney to consider its position regarding contract negotiations, pending litigation, or settlement discussions to resolve or avoid litigation;
 - Meet and confer;
 - Discussion with district representatives regarding negotiations for the purchase, sale, or lease of real property.
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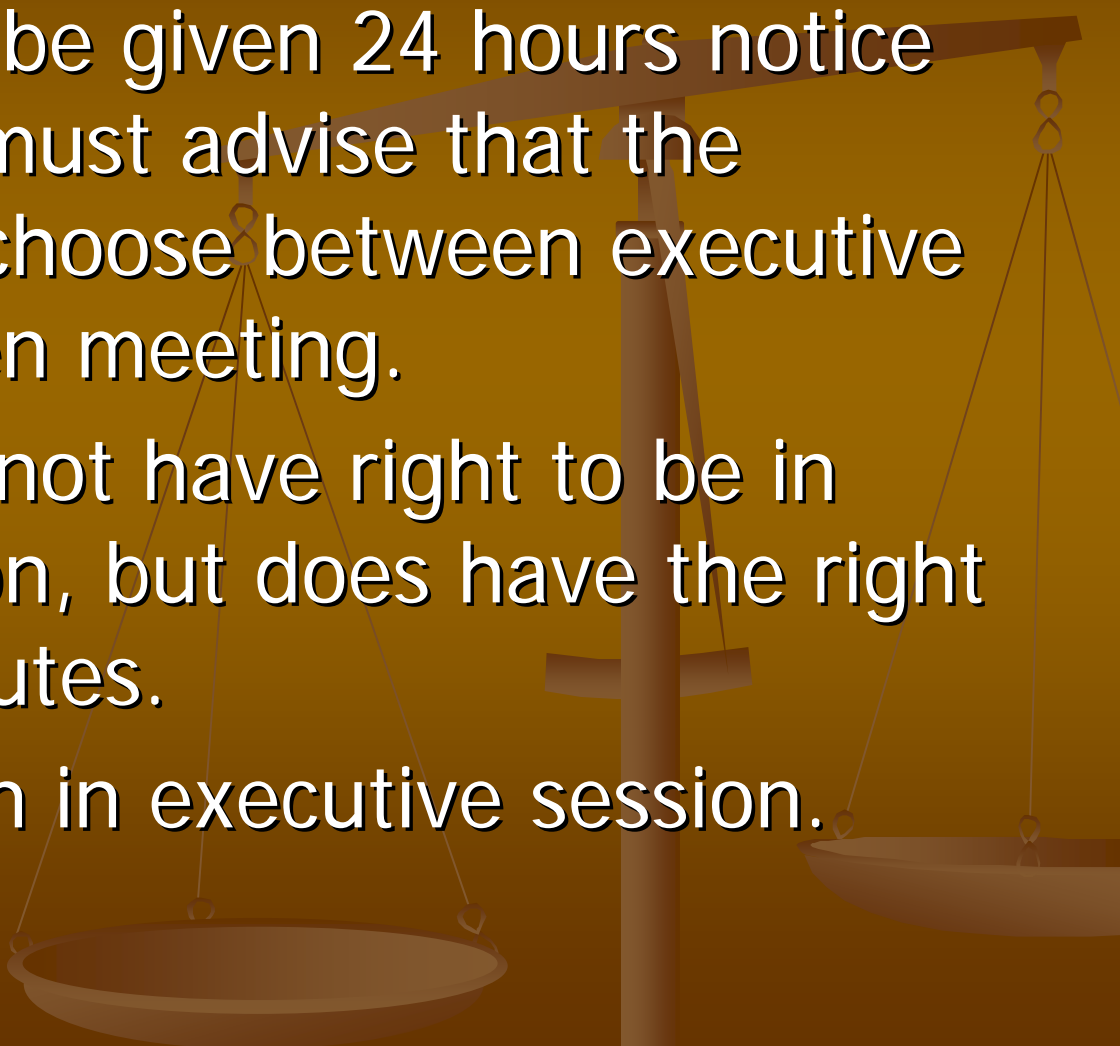
Executive Sessions to Discuss Personnel Matters

- Employment
- Assignment
- Appointment
- Demotion
- Dismissal
- Salaries
- Discipline
- Resignation

Not for discussions about whole class of employees – just individuals.



Executive Sessions to Discuss Personnel Matters

- Employee must be given 24 hours notice in writing, and must advise that the employee may choose between executive session and open meeting.
 - Employee does not have right to be in executive session, but does have the right to view the minutes.
 - Can't take action in executive session.
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Executive Sessions to Receive Legal Advice

- Must be advice – not simply facts



Sanctions

- ARS 38-431.07(A)
- Civil penalty of up to \$500 per violation;
- Equitable relief;
- Attorneys' fees;
- If intentional – removal from office and all costs and attorneys' fees.

