

## **ELCA Congregations and “Open Meeting” Laws**

**By Don Stevens**

Arizona has an “open meeting” law that applies to “public bodies” and elected or appointed officials. See Arizona Revised Statutes §38-431.01. It is the public policy of Arizona that meetings of public bodies be open to the public 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. The law states that any member of the public who wants to must be permitted to attend and listen to the deliberations and proceedings. Open meeting laws do not create any right of the public to become a direct part of the decision-making process.

A “public body” that is required to hold “open meetings” is defined by law as the legislature, all boards and commissions or any political subdivision (counties, cities, etc.), all multi-member governing bodies of departments, agencies, institutions, and instrumentalities of the state or political subdivisions, including all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision. See Arizona Revised Statutes §38-431(6).

Even a “public body” that is otherwise subject to the open meeting law may go into executive session (and exclude public attendance) for the limited consideration of one of seven reasons: 1) personnel discussions, 2) confidential records, 3) legal advice, 4) litigation, contract negotiations, and settlement discussions, 5) employee salary discussions, 6) discussion regarding international, interstate, and tribal negotiations, and 7) discussion regarding the purchase, sale, or lease of real property. See A.R.S. § 38-431.03.

Under Arizona law, homeowners associations also have “open meeting” requirements because each owner has a vested interest in the property, and has direct and indirect liability for the debts and obligations of the association and its financial viability. Like the above exceptions, however, the association board may close a portion of the meeting if the closed portion is limited to one or more of the following: 1) legal advice from an attorney for the board or the association; 2) pending or contemplated litigation; 3) personal, health or financial information about an individual member of the association, an individual employee of the association or an individual employee of a contractor for the association; 4) matters relating to the job performance, compensation, health records or specific complaints against an individual employee of the association or an individual employee of a contractor of the association who works under the direction of the association; 5) discussion of a member's appeal of any violation cited or penalty imposed by the association except on request of the affected member that the meeting be held in an open session. See Arizona Revised Statutes § 33-1804.

Unlike public bodies and homeowner associations, there is no Arizona law that requires open meetings be held for all matters concerning a private non-profit corporation, such as a church or other religious corporations, because they are not within the legal definition of a “public body”. The Model Constitution for Congregations of the ELCA does not have any required provisions for “open meetings”. As part of its authority to govern itself, however, a church corporation may establish its own criteria for requiring open meetings by including such provisions in the governing documents such as the constitution or bylaws.

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As noted above, even public bodies may legally go into executive session for specified reasons. If a congregation wishes to establish “open meeting” criteria in its bylaws, careful consideration should also be given to the need for some or all of the exceptions described above in order to protect the privacy of persons and the confidential nature of many issues. A congregation council should be allowed to go into executive session and exclude the public and members of the congregation from meetings in order to discuss specific items like 1) personnel matters, 2) confidential records, 3) legal advice, 4) litigation, contract negotiations, and settlement discussions, 5) employee salary issues, 6) preliminary discussions regarding the purchase, sale, or lease of real property, or 7) gifts and bequests that may be received in the future from disclosed or anonymous donors. Executive session is a privilege granted so that the corporation can carry out its business while protecting private and confidential information.

Congregation members may believe that open meeting laws should apply to church meetings, especially congregation council meetings on sensitive issues like personnel matters including pastoral and staff salaries. A Lutheran church corporation is unique in defining the role and responsibility of members of a congregation. The Model Constitution for Congregations, §8.04 provides:

- It shall be the privilege and duty of members of this congregation to:
- a. Make regular use of the means of grace, both Word and sacraments;
  - b. Live a Christian life in accordance with the Word of God and the teachings of the Lutheran church; and
  - c. Support the work of this congregation, the synod, and the churchwide organization of the Evangelical Lutheran Church in America through contributions of their time, abilities, and financial support as biblical stewards.

The powers of the congregation are defined in §§C5.03 (a-j) of the Model Constitution. The powers of the congregation council are found in §§C12.04 (a-j) and §§C12.05 (a-f) of the Model Constitution. The congregation as a whole approves the proposed annual budget (See§C5.03(e)) but the congregation council is responsible for and the management of the congregation’s business and fiscal affairs. (See §§C12.05 (a, d, and e). A careful reading of these documents demonstrates that the congregation council deals with many issues that require privacy protection and confidentiality. As noted in §8.04, an individual member does not have any direct management or oversight responsibility for the corporation and is generally limited to supporting the work of the congregation, and by voting to adopt or reject any budget proposed by the congregation council. General gifts and donations to the program or building budgets of the congregation do not authorize the donor to specify how those funds should be spent.

In summary, an ELCA congregation in Arizona is not subject Arizona’s open meeting laws. While transparency in financial matters is certainly important, the congregation council should have the discretion and authority to go into executive session when necessary to protect the privacy and confidentiality of information provided to the council in order to properly carry out its responsibilities in certain limited areas.