

ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT.

Act prohibits local governing body from conducting meeting through any communication means where members are not physically assembled; does not prohibit all forms of communication among members when body is not physically assembled or sitting. Transmitting messages by electronic mail does not constitute conducting meeting through electronic means. Act does not prohibit local governing body members from sending electronic mail communications to other members. Official actions of governing body must be conducted at meeting where membership is physically present.

The Honorable Phillip Hamilton

Member, House of Delegates

January 6, 1999

You ask whether § 2.1-343.1(A), a portion of The Virginia Freedom of Information Act, §§ 2.1-340 through 2.1-346.1 of the *Code of Virginia*, prohibits an elected member of a local governing body from sending electronic mail communications to three or more other members of the governing body.

Section 2.1-343.1(A) provides:

It is a violation of [The Virginia Freedom of Information Act] for any political subdivision or any governing body, authority, board, bureau, commission, district or agency of local government to conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled.^[1]

The remainder of § 2.1-343.1 establishes the requirements under which public bodies other than the local government bodies named in § 2.1-343.1(A) may hold meetings through telephonic or video means. The term "meeting(s)" is defined in § 2.1-341 to include "sitting physically ... as a body or entity, or as an informal assemblage of ... as many as three members" of a governing body.

Section 2.1-343.1(A) clearly prohibits a local governing body from "conduct[ing] a meeting" through any "communication means" other than the physical assembly of its members. It does not, however, prohibit all forms of communication among the members of a local governing body when that body is not physically assembled or sitting. In fact, § 2.1-343.2 expressly provides that, while the transaction of public business must be authorized by votes taken at public meetings, this requirement is not to be construed "to prohibit separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business."

Electronic mail is commonly understood to be the electronic transmission of keyboard-entered correspondence over communication networks.² An electronic mail system enables the sender to compose and transmit a message to a recipient's electronic mailbox, where the message is stored until the recipient retrieves it.³ The message may be sent to several recipients at the same time.⁴

Transmitting messages through an electronic mail system is essentially a form of written communication⁵ and, in my opinion, does not constitute "conduct[ing] a meeting ... through ... electronic ... means" as contemplated by § 2.1-343.1(A).⁶ Accordingly, it is my opinion that § 2.1-343.1(A) does not bar members of a local governing body from sending electronic mail communications to other members of the governing body.⁷ All official actions of the governing body must, however, take place at a meeting where the membership is physically present.

¹Section 2.1-343.1(A) further provides that "[n]othing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation."

²*PC Webopaedia Definition and Links* (last modified Apr. 24, 1997)
<http://www.pcwebopaedia.com/e_mail.htm>.

³*Id.*

⁴*Id.*

⁵For purposes of this opinion, I consider only the basic type of electronic mail system commonly in use today and as described in the opinion. Thus, I do not consider whether systems exist that contain features making them similar to communications by audio or video means or whether the use of such systems would result in the same conclusion.

⁶See 1983-1984 Op. Va. Att'y Gen. 440, 441 n.3 (enactment of prohibition against meetings through telephonic, video, electronic or other communication means may be viewed as legislative response to decision in *Roanoke City School Board v. Times-World Corp.*, 226 Va. 185, 307 S.E.2d 256 (1983), in which Supreme Court of Virginia held that local school board may discuss matters proper for closed meeting by telephone conference call because telephone calls do not constitute meetings).

⁷This is not to say that, in a particular factual setting, communicating through electronic mail could not violate some other provision of The Virginia Freedom of Information Act or conflict with the policy of the Act.