

99-051

ADMINISTRATION OF GOVERNMENT GENERALLY: VIRGINIA FREEDOM OF INFORMATION ACT.

Members of state board representing quorum of board, who are not committee or acting on behalf of board, may confer informally regarding business of board.

The Honorable Walter A. Stosch
Member, Senate of Virginia
October 29, 1999

You ask whether the definition of "meeting" in § 2.1-341 of the *Code of Virginia*,¹ a portion of The Virginia Freedom of Information Act, includes a situation in which two members of a seven-member state board confer informally by telephone or by personal contact regarding the business of the board, when such members are not standing or established committees of the board nor do they have the authority to act on the board's behalf.

Section 2.1-341 provides that "'meetings' means the meetings, when sitting as a body or entity, or as an informal assemblage of (i) as many as three members, or (ii) a quorum, if less than three, of the constituent membership."² A 1981 opinion of the Attorney General concludes that this statute "permits two members of a public body to meet privately without violating [T]he Virginia Freedom of Information Act ..., except where such two members constitute a standing committee acting on behalf of the full membership of the public body."³ I concur in this conclusion, and therefore must also conclude that, under the facts presented, two members⁴ of a state board,⁵ who are neither a committee nor acting on behalf of the board, may confer informally regarding business of the board.⁶

¹"*Meeting*' or *'meetings'* means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.1-343.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body." Section 2.1-341.

²1981-1982 Op. Va. Att'y Gen. 436, 436.

³*Id.*

⁴Note that a quorum for a seven-member board is four members. See Merriam Webster's Collegiate Dictionary 960 (10th ed. 1996) (defining "quorum" as "the number (as a majority) of officers or members of a body that when duly assembled is legally competent to transact business").

⁵See § 2.1-341 (defining "public body" to include "any ... board ... of the Commonwealth").

⁶*Compare* 1980-1981 Op. Va. Att'y Gen. 384, 385 (holding that meeting of two members of two-member committee, which committee constitutes organization or agency in Commonwealth, necessarily constitutes quorum of two-member committee, thus falling within purview of § 2.1-341); *see also* § 2.1-343(G) (stating that nothing in Virginia Freedom of Information Act "shall be construed to prohibit the gathering or attendance of two or more members of a public body (i) at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business").