

**FOIA COMPLIANCE
FOR ADMINISTRATIVE PROFESSIONALS**

**KEEPING YOUR BOARD
ABOVE-BOARD**

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ESCSBA

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**KEEPING YOUR BOARD
ABOVE-BOARD**

According to word detective.com –

“Above board” first appeared in print, as far as is known, in the late 16th century, and the phrase originated in the world of gambling, in particular card games. To play “above board” was to keep your cards above the level of the playing table (as opposed to down in your lap) so as to avoid any suspicion of cheating.

<http://www.word-detective.com> > 2009/10 > above-board

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The SC Freedom of Information Act (FOIA) is a statute whose function is essentially to keep public bodies playing above-board.

S.C. Code Ann. § 30-4-15 Findings and Purpose

The South Carolina General Assembly determined that public business should be carried out in an open and public manner so that citizens are aware of the performance of public officials and the decisions that are reached in public activity.

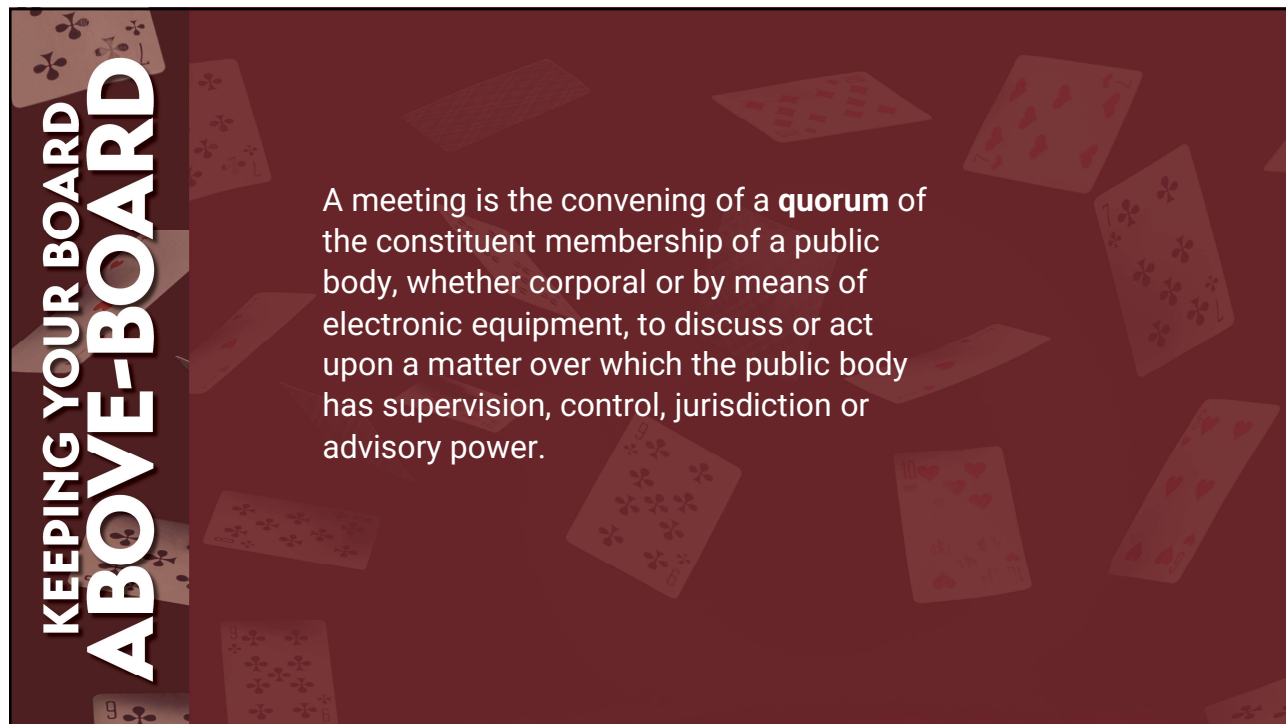
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Where is this business carried out?
In meetings . . .



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A meeting is the convening of a **quorum** of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

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Meeting Components:


- Meetings are duly noticed.
- Meetings have a quorum.
- Meetings are attended in-person or through electronic participation.
- Meetings are open and/or closed.
- Meetings are structured.
- Meetings have minutes.

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Meetings are duly noticed when . . .

- The schedule for **regular meetings** is posted at the beginning of the school year. It includes the dates, times and locations for those meetings. The agenda for the meetings is posted 24 hours prior.
- **Called or special meetings** are posted as early as practicable but not later than 24 hours prior and include the agenda.
- Reasonable effort to give notice is made for an **emergency meeting**.
- Public notice for any called, special or rescheduled meeting is posted on a bulletin board in a publicly assessable place at the office or meeting location AND on the district's website.
- Local media is notified



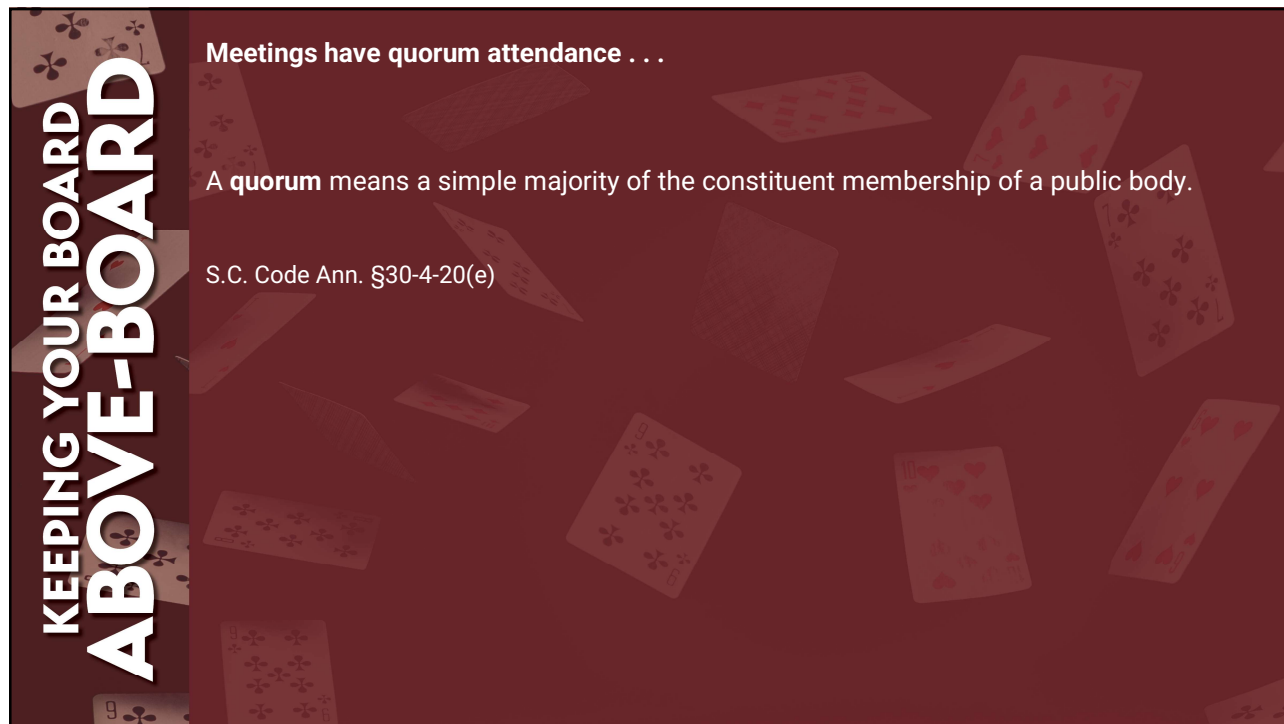
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Amending the agenda . . .

- An amended agenda requires an additional 24 hours notice and must be posted in the same manner as the original posting.
- Amendments to the agenda at the meeting require 2/3 votes for items upon which action can be taken.
- Amendments to the agenda at the meeting for final action items OR items where there has not been and will not be an opportunity for public comment with prior public notice require 2/3 vote AND voting by the board that emergency or exigent circumstances exist if the item is not added to the agenda.
- An agenda for a special called meeting may NOT be amended at that meeting to include an action item that was not on the original agenda.

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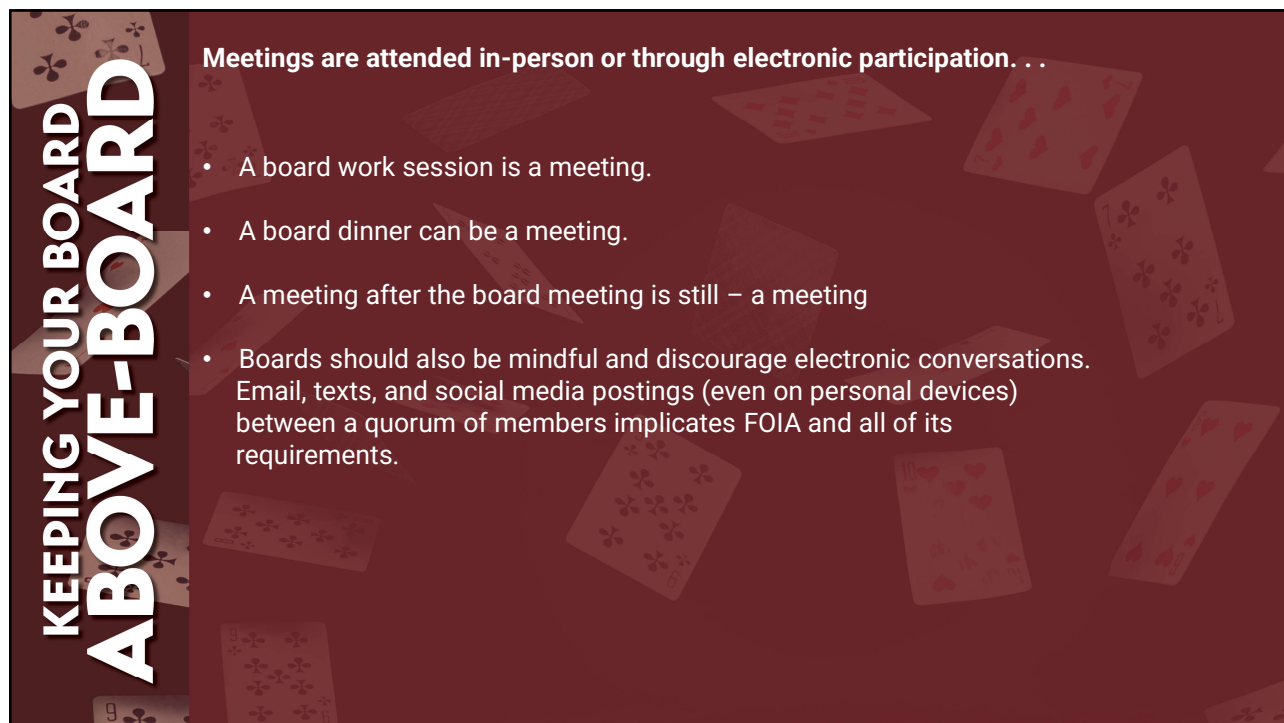
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Meetings have quorum attendance . . .

A **quorum** means a simple majority of the constituent membership of a public body.

S.C. Code Ann. §30-4-20(e)

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Meetings are attended in-person or through electronic participation. . .

- A board work session is a meeting.
- A board dinner can be a meeting.
- A meeting after the board meeting is still – a meeting
- Boards should also be mindful and discourage electronic conversations. Email, texts, and social media postings (even on personal devices) between a quorum of members implicates FOIA and all of its requirements.

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Meetings are open and/or closed. . .

Every meeting of all public bodies shall be open to the public unless closed pursuant to Section 30-4-70.

The board must vote in open session to enter executive (closed) session.

The motion to enter executive session must specifically state the reason(s) for doing so.



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Closed meetings . . .

A public body may hold a meeting closed to the public for one or more of the following statutory reasons:

- Personnel or student matters (employees can demand an open hearing)
- Legal advice related to pending, threatened, or potential claim; settlement of a claim; or the position of the district in other adversary situations
- Contract negotiations
- Proposed sale or purchase of property
- Development of security personnel or devices
- Investigative procedures related to allegations of criminal misconduct
- Certain industrial development matters

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Donohue v. City of North Augusta, 412 S.C. 526, 773 S.E.2d 140 (S.C. 2015).

For personnel matters:

- ❖ Personnel recommendations for terminations
- ❖ Personnel recommendations for hires
- ❖ Personnel recommendations for transfers
- ❖ Teacher/personnel appeals
- ❖ Teacher/personnel discipline matters
- ❖ Teacher/personnel hearings
- ❖ Superintendent evaluation/contract

For student matters:

- ❖ Student discipline
- ❖ Student transfers
- ❖ Student attendance matters
- ❖ Student hearings
- ❖ Student appeals

For contractual matters:

- ❖ Contracts for sale or lease of property
- ❖ Contract negotiations for architects, auditors, etc.

****Names of individuals or entities should not be listed.***

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Closed meetings . . .

- The board cannot poll members in executive session.
- The board can take NO votes in executive session.
- The board will vote on any matter discussed during executive session **AFTER** the board returns to open session.
- The board can only take action on an item discussed in executive session if the meeting agenda provided notice to the public that an action was contemplated.

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Meetings are structured . . .



A well thought out agenda will provide the roadmap for the meeting. Consent agenda are frequently used for this purpose. They include procedural decisions for matters that are not controversial and require minimal discussion.

Examples: approval of the agenda, approval of minutes, committee reports, administration or staff reports

Any supporting documents for items listed in the consent agenda should be given to board members prior to the meeting.

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Meetings have minutes. . .


Minutes should reflect action by the board, not commentary or conversation.

Minutes are legally binding once approved by the board.

Approval confirms accurate reflection.

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Minutes Checklist

Minutes shall include:

- Date of the meeting
- Time of the meeting
- Place of the meeting
- Acknowledgment of media notification
- Members present
- Matters proposed, discussed, or decided
- Votes taken along with the outcome
- Information as requested by board members
- Attachments

- ❖ Minutes shall be posted on the website within 10 days of the next board meeting
- ❖ Minutes, along with the agenda, shall be retained permanently

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Committee meetings are subject to FOIA requirements

- They must be noticed with an agenda.
- A quorum (of the committee) must be present.
- Amending the agenda requires the same process including a finding of emergency or exigent circumstances when applicable.
- Minutes must be maintained.
- A valid reason for entering executive session is required.

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Well . . .

- The meeting notice was properly posted not later than 24 hours before.
- The notice included a well thought out agenda.
- The board met and had quorum attendance.
- The board successfully entered open and closed sessions.
- The meeting was properly conducted with votes taken on action items.
- All agenda items were covered.
- The board secretary (or other approved person) took excellent minutes.
- The draft minutes were signed off on and finalized through the appropriate process.
- The board receives a FOIA request.

Now what?

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Minutes of meetings of public bodies . . .

- Shall be available within a reasonable time after the meeting
- Shall be available for review during regular hours
- Copies of minutes for preceding six months are immediately available (no written request is required if appearing in person)

Do not withhold minutes because they are still in draft form. If the minutes have not been finalized and/or approved (usually at the next meeting), make sure to identify them as "draft" when producing.



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FOIA permits the public and the press to obtain copies of “public records” . . .

- A person has the right to inspect, copy or receive an electronic transmission of any public record of a public body except those exempt by Section 30-4-40 or other state and federal laws.
- Public record includes all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials (regardless of physical form or characteristics) prepared, owned, used, in the possession of or retained by a public body.
- District must make an initial response to the request within 10 business days unless the requested record is more than 24 months old, in which case 20 business days.
- Records responsive to the request must be provided within 30 days. (There can be a **mutual** agreement for longer.)
- District must post a fee schedule for FOIA requests.
- District can request a court hearing to challenge a FOIA request that it believes to be “overbroad, unduly burdensome, vague, repetitive, or otherwise improper”.

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Best practices for a proper FOIA response . . .

- Note the date the request is received.
- Calculate how many business days are between the received date and the end of the ten day response time.
- Confirm whether the responsive information is online. If so, let the requestor know that.
- Confirm whether the request is for copies of information, to inspect documents, or to receive them electronically.
- Confirm whether there will be costs other than those for simple copying. (The District may charge a fee not to exceed the actual cost for search, retrieval, redaction and copying. Costs can be waived if the information is in the “public interest” to release.)

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Best practices for a proper FOIA response cont . . .

- Notify the requestor, in writing, that the request has been received with a reasonable timetable for your response not to exceed 30 days (unless agreed)
- Include information about costs and any deposit requirements.
- Follow up any phone conversations with writing.
- Do NOT wait until the last minute.

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Do you have questions?



Well, I might have some answers . . .

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THANK YOU !

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