

Warning-Your E-mail Just Became a Meeting: Mauer v. Member, Board of Education, Regional School District No. 1 and The Dangers of Using The “Send”, “Reply” and (Especially) “Reply All” Buttons

Education Law Notes

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Often times, I will warn school board members against the use of e-mail to conduct board business. My primary concern is that such e-mails could be deemed to constitute an illegal un-noticed/non-public meeting, in violation of the Freedom of Information Act [“FOIA”]. A recent decision of the Freedom of Information Commission [“FOIC”] further highlights this danger, and essentially begs board members to take a conservative tack in using their computers.

In *John Mauer v. Gale Toensing, Member, Board of Education, Regional School District 1*, #FIC 2013-367 (April 23, 2014), a member of a regional school board sent an e-mail on June 6, 2013 to all of the other members of the board. The e-mail discussed the agendas for future meetings; this portion of the e-mail was not at issue, since a communication limited to meeting notices and agendas is specifically not considered to be a meeting under the FOIA. However, this e-mail also included a detailed discussion of this board member’s views that the board chairman was not properly elected and that the chairman (even if elected properly) had taken actions concerning certain litigation without proper authority. The e-mail from the board member requested the “courtesy of a written response.” The board chairman did respond by e-mail on June 9, 2013, informing the board member that her June 6th e-mail violated the FOIA. It appears that the June 9th reply e-mail was sent to the entire board of education.

A complaint was subsequently filed with the FOIC, alleging that this June 6th e-mail constituted an illegal un-noticed/non-public meeting of the school board. During the course of the hearing before the FOIC, it was established that the June 6th e-mail was not the first such e-mail sent by this board member to the remainder of the board, and that such communications occurred a “number of other times.” The FOIC found that there was no specific evidence of responses to any of these prior e-mails (with the exception of the June 9th response to the June 6th e-mail). In any event, the FOIC concluded that the June 6th e-mail was a communication to a quorum of the board discussing a matter over which the board has supervision, and the e-mail thus constituted a meeting that was neither noticed nor open to the public, in violation of the FOIA. The FOIC declined to order the construction of minutes of this illegal meeting, in light of the lack of a vote or any other action as a result of the e-mail. The FOIC also declined to issue civil penalties or order FOIA

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training, in light of the fact that the offending board member who sent the June 6th e-mail had since left the board and **no other** board member was found to have violated the law. However, the FOIC did order the (now former) board member to search her computer and to provide to both the person who brought the FOIC complaint and to the school board copies of all e-mails that she maintained between members of the board.

Practical tip/lesson learned? As I noted in my book on the FOIA, there has always been a danger in sending substantive e-mails discussing board business to a quorum of the board, and **any** response to such an e-mail could trigger a finding of an illegal meeting. *Understanding the Connecticut Freedom of Information Act and Access to Public Meetings and Records*, by Mark J. Sommaruga (4th Edition, 2013), at pp. 7-8. It may not matter whether a quorum actually responded to the e-mail, but rather whether there was **any** response. *Id.*, p. 8. In *Mauer*, a single response by one board member (albeit the board chairman) sufficed in triggering a finding by the FOIC of an illegal meeting. **PLEASE NOTE:** In *Maurer*, the June 9th reply e-mail was sent to the entire board. It is not clear whether the decision of the FOIC would have been different if that reply e-mail had been sent just to the one board member who sent the original e-mail (as opposed to the entire board). It is, however, better to be safe than sorry. Therefore, members of school boards and other public bodies should always bear in mind the following two dictates: first, do **not** send an e-mail to the entire membership (or quorum) of the board discussing board business; and second, if you receive such an e-mail, **do not reply** (and be afraid, be very afraid, of hitting the “reply all” button).

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