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Jeff Miles, P.E.
LHTAC Administrator
3330 Grace St.
Boise, ID 83703

Via email to jmiles@lhtac.org

Re: Public Meetings in the era of COVID-19

Mr. Miles:

This is a follow-up to our telephone conference of March 18, 2020. The issue relates to public meetings conducted by cities, counties or highway districts where one or more of the elected officials is uncomfortable appearing in person. It is my understanding the Governor is considering an emergency declaration which may alter the analysis. However, based upon the Open Meetings Act, Idaho public agencies:

- Must conduct meetings which are open to the public
- Elected officials may attend by telephone or video so long as they can be heard
- Reasonable conditions may be imposed such as wearing of masks and six foot spacing

The Idaho Open Meetings Law requires that public policy be formulated in open meetings where the public has an opportunity to attend and observe the proceedings. A fairly recent amendment to the Idaho Open Meetings Law allows meetings to be conducted using telecommunications devices. That statute provides:

All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under

section 74-204, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

Idaho Code Section 74-203(5).

Elected officials are permitted to participate by telephone or video from an external location so long as everyone, including elected officials and members of the public can hear each other.

It is my understanding that there are various technologies which may be available to accomplish this goal. One option is to set up a conference call phone number for one or more off-site elected officials to call into. At least one elected official or director or chief administrative officer must be physically present at the meeting time and location. There must be a landline or cell phone at the physical location of the meeting that can be put on speaker so that those present at the meeting can listen in to everything being said by those who call into the conference call number.

A second, but less desirable alternative is to have a cell phone at the meeting for each of the off-site elected officials to call into. Each of these cell phones could be put on speaker so that all elected officials and the public can hear what is being said by everyone else.

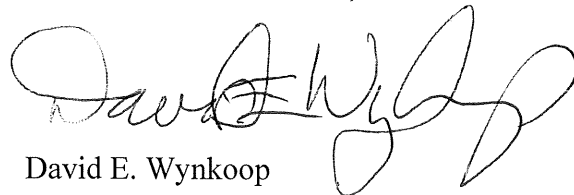
A third alternative, which is also less desirable is to cancel the meeting for lack of a quorum. For example, on a three-person board, if two of the elected officials are unavailable to meet in person or to participate using a telecommunications device, there may be no choice but to cancel the meeting for lack of a quorum.

There may be other alternatives that creative minds may come up with which comply with the statutory requirements. One possibility is to request that all attendees bring and wear a mask. Another possibility is to post signage requesting that attendees maintain a six-foot separation from other attendees.

Please feel free to contact me if you have further questions.

Sincerely,

SHERER & WYNKOOP, LLP

A handwritten signature in black ink, appearing to read "David E. Wynkoop", written in a cursive style.

David E. Wynkoop