

MEMORANDUM

TO: Richard Bahle, Suttons Bay Township Supervisor

FROM: Timothy Figura

DATE: 2/9/21

RE: Open Meetings Act and Email among Public Bodies

More and more, members of boards and commissions are using email to communicate with each other. Email is a useful and economic means of communication between board and/or commission members. There is a serious problem, however, when board or commission members communicate with each other in this fashion, as such communication may amount to “the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.” That would place the participants in violation of the Open meetings Act, which could result in nullifying the decision made and subject the participants to misdemeanor charges carrying a penalty of up to \$500 for a single meeting.

The best use of email for members of boards and commissions is to send information to the members. The type of information that a board member would typically receive in a meeting packet is okay to send to all members via email, as well as any other information (such as communications from third parties, internal reports, etc.) that would typically be provided to a member prior to a meeting. Once received, however, do not attempt to “discuss” these materials with other members by email.

One simple rule to follow is to **never** hit the “Reply to All” button when responding to an email received from another board or commission member. As soon as you do that, you may be involving all other board members in a discussion of the matter at hand and, in all likelihood,

violating the Open Meetings Act. If you feel you need to reply to the sender of the email, reply to that sender only.

Likewise, you should refrain from using email communication to advocate for a particular position, action, or vote. These matters are best reserved for public meetings and sending them via group email is an invitation for violations of the OMA.

It is recommended that when you send an email message to one or more other members of a board or commission on which you sit that you include the following warning at the beginning or end of that message:

“Caution! If you reply to this email, please reply only to the sender and do not reply to one or more of the recipients if those recipients are also members of the board or commission on which you sit. Doing so could result in an online discussion that may constitute a meeting under the Michigan Open Meetings Act.”

You should also be aware that, even if you use your own personal computer for sending emails to other county officials or other personnel dealing with matters of public policy or other county business, those email messages and any response you receive to such messages may be subject to public disclosure under the Michigan Freedom of Information Act and/or may have to be produced in response to a discovery request in litigation.