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Coates' Canons NC Local Government Law

Public Meetings After the Lifting of the State-Level State of Emergency

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In May of 2020, early in the pandemic, the legislature enacted a new law setting out provisions for remote meetings during a state-level state of emergency. See my [blog.post here](#), to see a review the statute, and my [blog.post here](#), to see a summary of the recent clarifying amendments to the new law – I'll call it the "SOE law." The Governor's state of emergency is still in effect, and so is the SOE law, but it's not too soon to think about the conduct of meetings after the state of emergency ends. For example, before the SOE law, there were no specific rules about board members participating remotely. The SOE law set out specific rules for remote participation, and the use of remote meetings has become a regular practice during the pandemic. Remote public access to meetings in many places has increased. But those SOE law rules expire when the state of emergency ends.

Once the state of emergency ends what will the rules be? They will be what they were before the adoption of the SOE law. For a summary of the law on remote participation before the SOE law see my bulletin and [blog.post](#) here. This blog post sets out the things that local government boards can continue to do after the SOE law expires and the things that boards can't continue do without obtaining legislative authority.

Here are things that I think boards *can* continue to do:

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- **Streaming meetings:** Many local government boards were streaming meetings before the pandemic. The open meetings law allows recording meetings and allows a recording to serve as minutes. *See GS 143-318.143(a), 143-318.10(c)*. The *requirement* under the SOE law to stream meetings if one or more members are participating remotely will no longer apply, but streaming, while not required, will still be permitted. Notice of the meeting should state that the meeting will be streamed and should set out how the public can access the meeting remotely, as required under *GS 143-318.13*.
- **Public Comments/Public Hearings:** Under existing statutes boards have the authority to allow people to provide comments remotely or in writing, before or after the hearing. I don't think boards can require that people put forward their comments remotely or in writing. Boards must return to allowing in-person comments during public comment periods, unless there is a reason that in-person comments are not possible.

Here are some things that I think that boards *won't* have authority to do when the SOE law is no longer in effect:

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- **Ban the public from attending meetings when the board is meeting in person:** Boards will have no authority to ban the public from attending meetings when the board is meeting in person. The SOE law didn't address this issue, but the statutory authority was found under local state of emergency powers exercised by cities and counties. Under local emergency declarations the unit has the power to restrict or prohibit "the movement of persons" within emergency areas, as well as the "operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate." *G.S. 166A-19.31(b)*. Cases have held that the public's right to attend meetings isn't absolute. Where there is a reasonable basis, a board may ban the public from a meeting. See [Trey Allen's discussion](#) about the limited authority to restrict in-person access to meetings. The pandemic provided such a reasonable basis, but with the end of the state of emergency, that basis will no longer apply. Members of the public must be permitted to attend meetings after the local state of emergency expires.
- **Remote participation:** The SOE law specifically allows remote board member participation in meetings and provides that elected city and county board members who are participating remotely count toward the establishment of a quorum and may vote and have their votes counted, as long as they are connected. Although the open meetings law recognizes electronic meetings as official meetings, before the SOE law there was no clear statutory authority for elected board members to participate remotely. In the [bulletin available here](#) I explained why a court might find that there is no authorization for local government boards to meet electronically. The city council and county commissioners voting and quorum statutes make reference to members having to be "present" and "physically present." That fact suggests that remote participation is not authorized. Further, there is the fact that the SOE law specifically provides that board members participating remote count toward a quorum and when voting. There would be no need for these provisions if these boards already had that authority under the existing law. **Taking all of this into consideration, it seems to me that after the SOE law expires, city and county governing boards will have no clear authority to participate in remote meetings at all.** For appointed and other boards there might still be an argument that they have authority for remote meetings under the electronic meetings provision in the open meetings law.
- **Quasi-judicial hearings:** The requirements in the SOE law will no longer apply to quasi-judicial hearings. The provisions in 160D-406 will apply for land development matters. See [Adam Lovelady's blog](#) summarizing the case law that would apply to other types of quasi-judicial hearings.
- **Last Minute Notice Changes:** The SOE law was amended to make it easier for one or more members to participate remotely and give notice that the meeting will be therefore streamed. This will no longer apply. Under the open meetings law, for electronic meetings, the notice must specify a location and means whereby member of the public may listen to the meeting. See, *GS 143-318.13*. It seems to me that if a board has authority to meet remotely (not a certainty for elected boards, as set out above), the board must provide the required information about the remote meeting in the notice, and not any later than that.

Have I left anything out? Feel free to post a comment!

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