

S.B. 1297 (2013): Online Message Board Discussions – Does Facebook Qualify?

Communications between a quorum of a city council about public business, no matter the forum or the time, can be a “meeting” to which the Open Meetings Act applies. If the Act applies to a discussion, an agenda must be posted 72 hours in advance, and the public must be able to attend. It is essentially impossible for a Facebook post or discussion to meet those requirements. As such, city councilmembers should avoid commenting on a Facebook post related to city business if the discussion will ultimately involve a quorum. (Note: Less than a quorum can also violate the Act by having secret deliberations to circumvent the Act’s requirements. Thus, city officials should always use caution with social media.).

Recent legislation has attempted to allow some discussion using the Internet. Senate Bill. 1297, a bill that passed during the Eighty-Third Legislative Session, adds a provision to the Texas Open Meetings Act that is effective September 1, 2013. This provision provides that communication between councilmembers about public business or public policy over which the council has supervision or control *does not* constitute a meeting if certain conditions are met. TEX. GOV’T CODE § 551.006. The communication must be: (1) in writing, (2) posted to an online message board that is viewable and searchable by the public, and (3) displayed in real time and displayed on the message board for no less than 30 days after the communication is first posted. *Id.* A city is prohibited from having more than one online message board used for these purposes. *Id.*

Additionally, the online message board must be prominently displayed on the city’s primary website and no more than one click away from the city’s website. *Id.* The message board may only be used by city councilmembers or city employees that have received authorization from the council. *Id.* If a city employee posts on the message board, the employee must include his or her name and title with the communication. *Id.* The council may not vote or take action by posting on the city’s online message board, and if the city removes a posted message, the city must retain the posting for six years. *Id.*

Facebook *may* satisfy the requirements of S.B. 1297. If the city intends to use Facebook as the city’s sole online message board, the city must ensure that the Facebook page is “public” and viewable by the public. Additionally, a disclaimer underneath the link from the city’s main page and on the Facebook page should be displayed with language stating that the page is in compliance with S.B. 1297 and only members of the city council or staff members authorized by the council may post on the board. Because a violation of the Open Meetings Act can lead to fines and jail time, *each city should consult with its city attorney prior to implementing a message board.*

The League’s legal analysis of the elements required by S.B. 1297 shows that Facebook *should* meet those elements. A section-by-section analysis of the Government Code provision added by the bill follows, with comments in **bold**:

Sec. 551.06. WRITTEN ELECTRONIC COMMUNICATIONS ACCESSIBLE TO PUBLIC.

(a) A communication or exchange of information between members of a governmental body about public business or public policy over which the governmental body has supervision or control does not constitute a meeting or deliberation for purposes of this chapter if:

- (1) the communication is in writing; **All postings of Facebook are in writing.**
- (2) the writing is posted to an online message board or similar Internet application that is viewable and searchable by the public; and

Facebook allows any person to view and search all postings. To ensure that the page is viewable to the public, follow the instructions below:

- 1. Log into your account and go to your page**
- 2. From the top of the page, click Edit Page**
- 3. Select Edit Settings**
- 4. Make sure nothing is entered in the Country Restrictions section and select Anyone (13+) for Age Restrictions**
- 5. Click Save Changes**

- (3) the communication is displayed in real time and displayed on the online message board or similar Internet application for no less than 30 days after the communication is first posted.

Postings to Facebook are viewable to the public as soon as they are published and include the time posted. The date of the posting is never deleted (unless the posting itself is deleted).

(b) A governmental body may have no more than one online message board or similar Internet application to be used for the purposes described in Subsection (a). The online message board or similar Internet application must be owned or controlled by the governmental body, prominently displayed on the governmental body's primary Internet web page, and no more than one click away from the governmental body's primary Internet web page.

A Facebook page is solely controlled by the selected administrator (the creator of the page), which allows a city to meet the qualification of 'controlled by the governmental body.' A city must post a link to its Facebook page on the homepage of its website, and should clearly note that the link goes to a message board that is in compliance with S.B. 1297.

(c) The online message board or similar Internet application described in Subsection (a) may only be used by members of the governmental body or staff members of the governmental body who have received specific authorization from a member of the governmental body. In the event that a staff member posts a communication to the online message board or similar Internet application, the name and title of the staff member must be posted along with the communication.

Facebook only allows approved administrators to edit or post messages onto the Facebook page. A city may provide that only city council or council-approved staff members may

access the Facebook account. When an approved staff member posts, the employee must include his or her name and title within the communication.

(d) If a governmental body removes from the online message board or similar Internet application a communication that has been posted for at least 30 days, the governmental body shall maintain the posting for a period of six years. This communication is public information and must be disclosed in accordance with Chapter 552.

If a city deletes a communication post from its Facebook page, it must ensure that the post is maintained in some format for at least a period of six years.

(e) The governmental body may not vote or take any action that is required to be taken at a meeting under this chapter of the governmental body by posting a communication to the online message board or similar Internet application. In no event shall a communication or posting to the online message board or similar Internet application be construed to be an action of the governmental body.

No vote may be taken on the Facebook page. The purpose of the bill is to allow general discussion outside of an open meeting, not to formally conduct a city council meeting.