Planning and Zoning Board Training

Charlotte McDermott, Mesa Assistant City Attorney

Open Meeting Law

Open Meeting Law —A.R.S. § 38-431 *et. seq.*

Arizona law states:

All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All legal action of public bodies shall occur during a public meeting. A.R.S. § 38-431. 01(A)

Arizona is the Sunshine State—what does this mean?

Open Meeting Law—A.R.S. § 38-431 *et. seq.*

Public Bodies Must Comply with the Open Meeting Law

"Public body" includes:

- City Council
- **Boards and commissions of the City**
- All corporations and other instrumentalities whose boards of directors are appointed or elected by the City Council (*i.e.,* Municipal Property Corp.)
- All quasi-judicial bodies of the City (*i.e.,* Board of Adjustment)
- **Standing, special or advisory committees or subcommittees of the City** (*i.e.,* Council subcommittees)

Public Bodies Do Not Include

- Staff meetings
- Staff appointed committees that advise staff

What is a meeting?

- A meeting occurs ANY TIME a **quorum** of the public body discusses, proposes, or takes legal action
- Can be a traditional meeting or an electronic meeting

What about social events?

- Attorney General recommends that you post the event if a quorum will be present
- Identify time, date, location, and purpose
- State that no legal action will be taken

Serial Meetings or Splintering the Quorum

- It is not necessary for a public body to communicate simultaneously for a meeting to occur. A **series** of gatherings of less than a quorum **MAY** constitute a meeting if City business is discussed.

- **Example:** If a board member talks to two other board members about City business and then one of those board members talks to another board member.
  - A discussion with a quorum has occurred

Sending Emails

- E-mails can easily create a meeting.
- When you use e-mail to discuss City business, care must be taken not to violate the open meeting law.
- An e-mail to a quorum of the public body proposing legal action is a meeting.
- Be careful forwarding or responding to e-mails involving a majority of the Board.
  - **DO NOT REPLY ALL!**

What about social media?

- Emerging area of the law
- Open meeting law has not been modified to specifically address social media
- Attorney General opinion is helpful in analyzing social media (Ariz. Att'y Gen. Op I07-013)

What about social media?

- A board member can express an opinion or discuss an issue with the public at a venue other than a meeting, through the media, other public broadcast communications or technological means if:
  - The opinion or discussion is not principally directed at or directly given to another member of the public body.
  - There is no concerted plan to engage in collective deliberation to take legal action.

Communication with Staff

- Board members may communicate with staff
- Staff can provide board members with factual information outside a public meeting
- Staff cannot be used to side-step open meeting law

What must occur to have a meeting?

- **Agenda** must be posted **24** hours in advance
- **Back up material** must be available 24 hours in advance
- Agenda must include:
  - Date, time, and place
  - Description of matters to be discussed or decided
- Must “reasonably” inform public of issues to be discussed

Discussions—Agenda Items Only

- Board may not discuss or take legal action unless item is listed on the agenda
- All discussions must be “reasonably” related to an agenda item

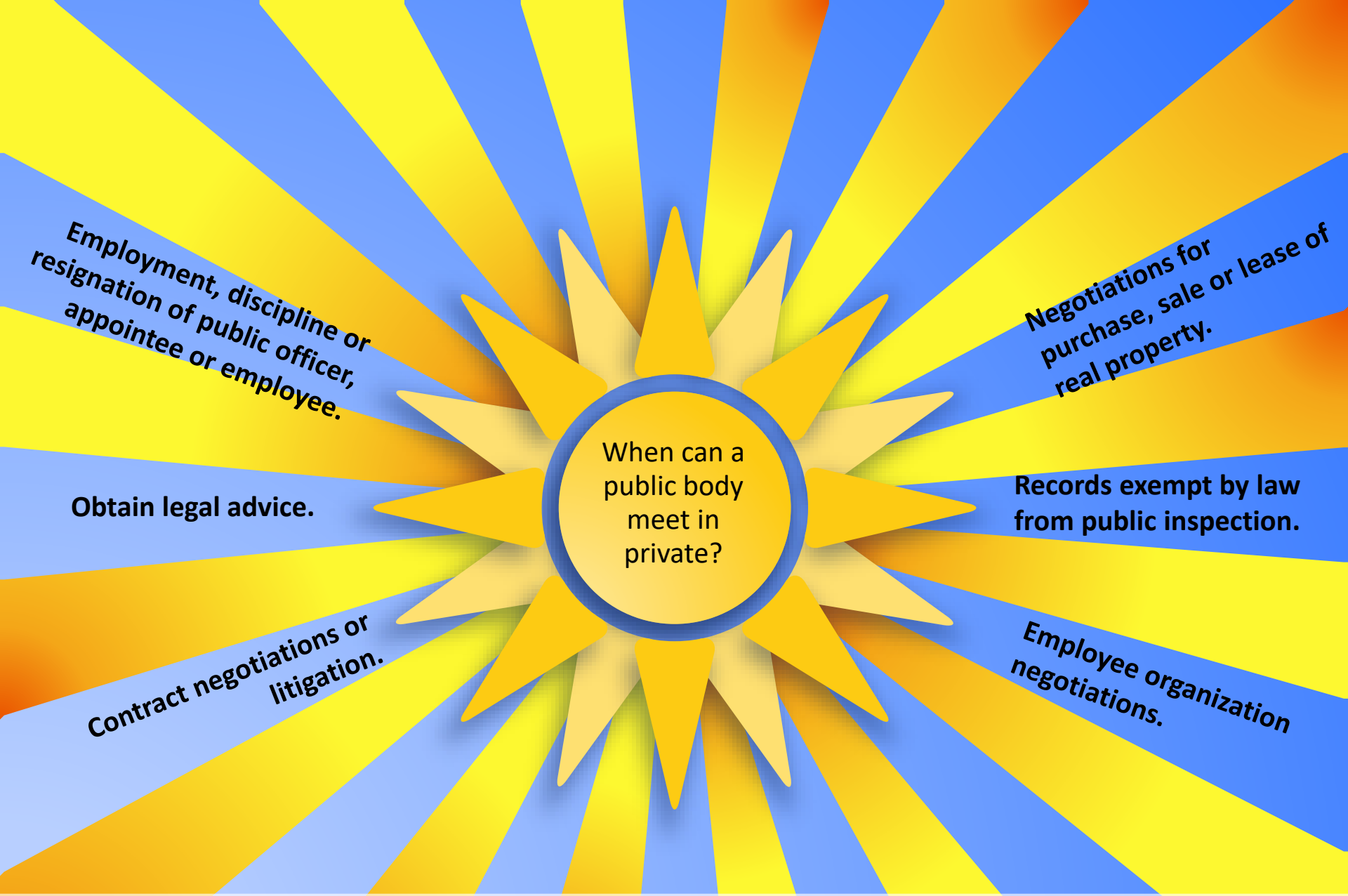
Open Meeting Law—Public Access Only

- Open meeting law gives the public the right to attend the meeting and listen to deliberations
- Open meeting law does not give the public the right to speak at a meeting
  - Exception: zoning ordinances–a public hearing is required at planning commission A.R.S. 9-462.04(A)

Items from Citizens Present

An agenda MAY include opportunity for citizens to address the Board on an issue not on the agenda -- “Items from Citizens Present”

- No discussion unless item is on the agenda
- Members of the public body may respond to criticism, ask staff to review a matter, or request a future agenda item



Executive Sessions – A.R.S. § 38-431.03

Executive Sessions – A.R.S. § 38-431.03

- Must be properly posted and agendized
- Majority of Board must vote to convene into executive session
- Only members of the public body and those individuals whose presence is reasonably necessary for the public body to carry out its duty are permitted to attend the executive session
- Discussion only
  - No legal action may be taken in executive session
- Must keep minutes of e-session (minutes are confidential)

Minutes are the Official Record of Meetings

Minutes must include:

- Date, time and place
- Members present or absent
- Description of matters discussed
- Description of legal action proposed, discussed, or taken
- Name of board member who made the motion
- Names of persons making statements or presenting to the public body
- Vote results
- Draft minutes must be available within 3 working days

What happens if we violate the open meeting law?

Actions taken are null and void.

The Attorney General may investigate.

A public official may be removed from office.

$500/day civil penalty.

Costs for enforcement may be assessed.

Public monies can not be used for legal counsel.

Open Meeting Law Violations – A.R.S. § 38-431.07

Conflict of Interest

Conflict of Interest Law

Any public officer who has, or whose relative has, a substantial interest in an issue before the board (or subcommittee) shall declare a conflict and refrain from participating in any manner in the decision. **A.R.S. § 38-503 *et. seq.***

Conflict of Interest Law

- Ethics Handbook for Elected Officials & Advisory Board Members
  - Avoid any appearance of impropriety
- Mesa City Charter Section 901
  - Any City officer, board or commission member, or employee who has a substantial interest, direct or indirect, by reason of ownership of tangible or intangible property, supplies, or services to the City shall make know that interest and shall refrain from voting upon or otherwise participating in making such sales or contracts.

Who does it apply to?

- You
- Your spouse, children, parents, in-laws, grandchildren, grandparents, step-children, step-parents, brothers and sisters (whole or half) or brothers and sisters of your spouse

How do you know if you have a conflict of interest?

- Substantial interest – any financial or ownership interest in the issue to be decide
- Is the substantial interest remote?

Some of the more common remote Interests
A.R.S. § 38-502(10)

- Non-salaried officer of a non-profit corporation
- Attorney of a contracting party
- Landlord/tenant of contracting person
- Insignificant stock ownership—lest than 3%
- Relatives of school board members
- Reimbursement of expenses
- Benefit is no greater than benefit received by others
- Interests of other public agencies

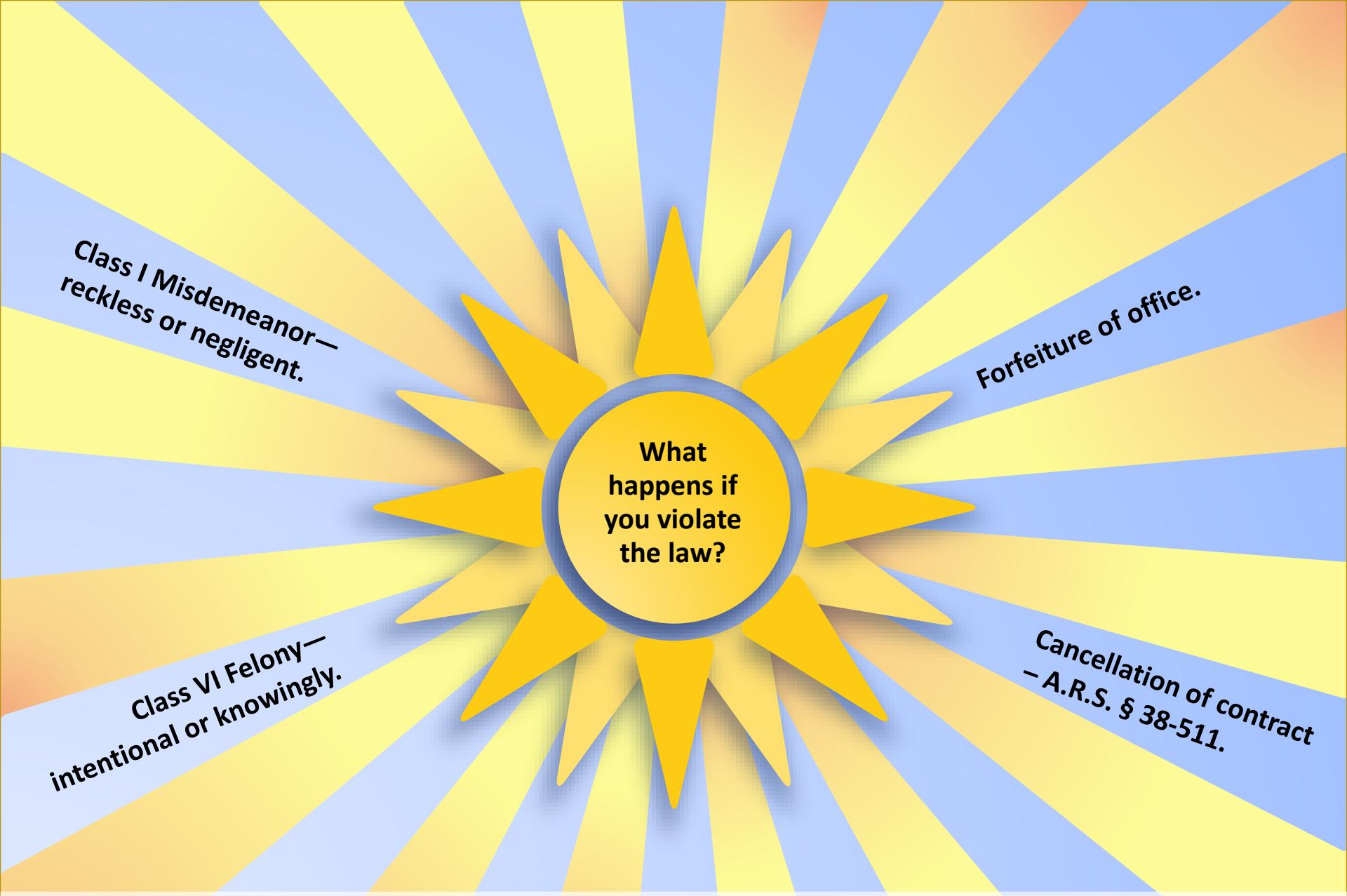
What do you do if you have a conflict of interest?

Fill out a disclosure form.

Make conflict known.

No discussion or action before, during, or after the vote.

Avoid any appearance of influence.



Conflict of Interest Law Violations – A.R.S. § 38-510

QUESTIONS?

Mesa City Attorney (480) 644-2343