

New Jersey towns cautioned against using e-mail to sidestep public meeting laws
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WASHINGTON - It was an oversight that a builder's \$113,000 bill missed getting on a council meeting agenda, borough officials said. When it came due, the borough manager needed quick approval to pay it before the council's October meeting.

But getting that approval by e-mail, one official said at the October meeting, was not the way to do it.

"We broke the law," said Washington Borough Deputy Mayor David Higgins. Higgins encouraged a vote that no future actions be taken via e-mail.

"I think something needs to be put in place to keep this from happening again," he said. The motion passed unanimously.

The role of e-mail in New Jersey's public meeting laws is still being debated in court, leading most experts to recommend discretion in their use.

In an article on the New Jersey League of Municipalities Web site, "The Perils of E-mail," league staff Attorney Deborah Kole cautioned municipal leaders against getting too casual with their e-mail habits. Even language must be taken into consideration, she said.

E-mails "can be used so informally that people think of them like talking, but they are official documents," Kole said.

The New Jersey Open Public Records Act defines a government record as documents or recordings either printed or stored electronically by government agencies during the course of official business.

State meeting laws do not include specific language referring to e-mails, though it is generally agreed the same rules apply.

"I advise that (governing bodies) should not have a quorum of their members e-mailing each other back and forth on official business. That can be construed as a meeting," Kole said.

E-mail is determined to be a public record if it has public content, even at an official's private e-mail address, Kole said. They also fall under records retention rules so officials cannot delete e-mails containing public content.

One open government advocate said the two biggest problems with e-mail correspondence among officials are the use of e-mail for improper purposes and the use of personal e-mail accounts, which he

said hampers document retention.

"There are some tools to address these problems, but unfortunately there's no enforcement," said John Paff, chairman of the New Jersey Libertarian Party's Open Government Advocacy Project.

Legal punishments for open records or meeting violations include individual penalties and the negation of a government action if it is deemed to be taken inappropriately.

Meeting violations are handled by county prosecutors' offices but must be brought to authorities' attention by residents, Kole said.

"It's the public that's affected by any violation," she said.

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