



State of New York
Department of State
Committee on Open Government

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Dear

Thank you for allowing me the opportunity to address the members of the Board of Trustees of the Guilderland Public Library. I hope that the information I provided was helpful.

Mr. Ganz asked an interesting question during the course of our discussion, and I would like to take this opportunity to respond more fully. He asked if I was aware of any judicial decisions in which a court found that a subcommittee made up solely of members of a public body was subject to the Open Meetings Law, and in which the court recognized that the subcommittee had no authority other than to advise the public body.

My research reveals that committees of public bodies made up solely of members of the public body are always advisory in nature. Cases that require committees of this type to comply with the Open Meetings Law include Lewis v. O'Connor, Supreme Court, Lewis County, January 21, 1997 (standing committees of the county hospital, made up entirely of members of the hospital's board of managers, with no power to take final action nor bind the board of managers, are public bodies subject to the OML): "To keep their deliberations and decisions secret from the public would be violative of the letter and spirit of the legislative declaration as stated in the Public Officers Law." Lewis, pp 4-5.; Bogulski v. Erie County Medical Center, Supreme Court, Erie County, January 13, 1998 (subcommittee of county hospital's board of managers required to comply with OML); Glens Falls Newspapers, Inc. v. Solid Waste and Recycling Committee of the Warren County Board of Supervisors, 601 NYS2d 29 (3d Dept 1993) (committee of the county board of supervisors required to comply with OML).

In support of this opinion and by way of background, when the Open Meetings Law went into effect in 1977, questions consistently arose with respect to the status of committees, subcommittees and similar bodies that had no capacity to take final action, but rather merely the authority to advise. Those questions arose due to the definition of "public body" as it appeared in the Open Meetings Law as it was originally enacted. Perhaps the leading case on the subject also involved a situation in which a governing body, a school board, designated committees consisting of less than a majority of the total membership of the board. In Daily Gazette Co., Inc. v. North Colonie Board of Education [67 AD2d 803 (1978)], it was held that those advisory committees, which had no capacity to take final action, fell outside the scope of the definition of "public body".

Nevertheless, prior to its passage, the bill that became the Open Meetings Law was debated on the floor of the Assembly. During that debate, questions were raised regarding the status of "committees, subcommittees and other subgroups." In response to those questions, the sponsor stated that it was his intent that such entities be included within the scope of the definition of "public body" (see Transcript of Assembly proceedings, May 20, 1976, pp. 6268-6270).

Due to the determination rendered in Daily Gazette, supra, which was in apparent conflict with the stated intent of the sponsor of the legislation, a series of amendments to the Open Meetings Law was enacted

in 1979 and became effective on October 1 of that year. Among the changes was a redefinition of the term "public body". "Public body" is now defined in §102(2) to include:

"...any entity for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body."

Although the original definition made reference to entities that "transact" public business, the current definition makes reference to entities that "conduct" public business. Moreover, the definition makes specific reference to "committees, subcommittees and similar bodies" of a public body.

In view of the amendments to the definition of "public body", we believe that any entity consisting of two or more members of a public body, such as a committee, a subcommittee or "similar body" consisting of 3 members of the Board of Trustees, would fall within the requirements of the Open Meetings Law when such an entity discusses or conducts public business collectively as a body [see Syracuse United Neighbors v. City of Syracuse, 80 AD2d 984, 437 NYS2d 466, (4th Dept. 1981), appeal dismissed 55 NY2d 995, 449 NYS2d 201 (1982)].

Additionally, with respect to the general intent of the Open Meetings Law, the first sentence of its legislative declaration, §100, states that:

"It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listening to the deliberations and decisions that go into the making of public policy."

In an early decision that focused largely on the intent of the Open Meetings Law that was unanimously affirmed by the Court of Appeals, it was asserted that:

"We believe that the Legislature intended to include more than the mere formal act of voting or the formal execution of an official document. Every step of the decision-making process, including the decision itself, is a necessary preliminary to formal action. Formal acts have always been matters of public record and the public has always been made aware of how its officials have voted on an issue. There would be no need for this law if this was all the Legislature intended. Obviously, every thought, as well as every affirmative act of a public official as it relates to and is within the scope of one's official duties is a matter of public concern. It is the entire decision-making process that the Legislature intended to affect by the enactment of this statute" [Orange County Publications v. Council of the City of Newburgh, 60 AD2d 409, 415, affirmed 45 NY2d 947 (1978)].

In our opinion, it is clear that standing committees of the Board consisting up solely of members of the Board are "public bodies" required to comply with the Open Meetings Law. Again, the amendments to the definition of "public body" suggest a clear intention on the part of the State Legislature to ensure that entities consisting of two or more members of a governing body (committees, subcommittees or similar bodies) are themselves public bodies falling with the coverage of the Law.

I hope that this is helpful to you. Please let me know if you have any questions, and again, it was a pleasure to meet you.

Sincerely,

Camille S. Jobin-Davis
Assistant Director

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