

To: Supervisor Patrick Tyksinski, Attorney Herb Cully, Town Clerk Gail Wolanin Young & Observer Dispatch

Gail,

Please forward my email below to the town councilmen. Thank you.

Gentleman:

The rules for the Public Comment portion of the town board meetings as outlined by Supervisor Tyksinski at the start of the May 10, 2017 town board meeting are in violation of the Open Meetings Law and Town Law §63.

I have attached two opinions of Robert Freeman:

1. From Robert Freeman Opinion OML-AO-o3518 (ATCH A)

"With respect to the possibility of distinguishing among those who may speak, since the Open Meetings Law provides the general public with the right to attend meetings, it has been advised that if a public body permits members of the public to speak, it must permit any person to do so, irrespective of the residence of the speaker. It follows in my view, that a person cannot be required to specify his or her residence as a condition that must be met before he or she may speak. Further, in many instances, individuals, due to concerns associated with safety, security and privacy, have valid reasons for choosing not to provide their residence addresses."

2. From Robert Freeman Opinion OML-AO-o2585 (attached)

"...I do not believe that the Supervisor, acting unilaterally, had the authority to establish or change a rule. Here I direct your attention to §63 of the Town Law. While that statute provides that the supervisor "shall preside at meetings of the town board", it also states that "Every act, motion or resolution shall require for its adoption the affirmative vote of a majority of the members of the town board", and that "The board may determine the rules of its procedure." Therefore, based on §63, I believe that the Town Board as a body, not the Supervisor acting alone, would be empowered to establish rules regarding public participation."

3. Lastly, may I once again point you to **Robert Freeman Opinion** OML-AO-o3518 (attached)

"In brief, it has been advised that the Open Meetings Law is silent with respect to the ability of those in attendance to speak or otherwise participate. Therefore, a public body, such as a village board of trustees, is not obliged to permit the public to speak at its meetings. Many public bodies, however, authorize public participation, and in that event, it has been advised that they do so by means of reasonable rules that treat members of the public equally."

In the past, the "three-minute rule", which again was never adopted by the majority of the town board members, has not always been applied equally; some have been given great latitude as to when their 3 minutes are up.

It might be prudent to again address the rules for public comment making changes as needed to comply with the Open Meetings Law with the addition of a board resolution that is adopted by a majority vote of the full town board.

Respectfully,

Cathy Lawrence

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ATCH A



**State of New York
Department of State
Committee on Open Government**

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From: Robert Freeman
To:
Date: 8/30/02 11:02AM
Subject: Indicating name and address at meeting

Dear

I have received your letter in which you expressed objection to a requirement that those who choose speak at meetings of a village board of trustees must identify themselves by name and address. In this regard, I do not recall having prepared a written opinion dealing directly with the matter. However, others deal with related issues. It is suggested that you might review opinions on our website in the opinions rendered under the Open Meetings Law. You can click on to "P" and scroll down to "Public Participation"; advisory opinion #3295 is closest to the issue that you raised.

In brief, it has been advised that the Open Meetings Law is silent with respect to the ability of those in attendance to speak or otherwise participate. Therefore, a public body, such as a village board of trustees, is not obliged to permit the public to speak at its meetings. Many public bodies, however, authorize public participation, and in that event, it has been advised that they do so by means of reasonable rules that treat members of the public equally.

With respect to the possibility of distinguishing among those who may speak, since the Open Meetings Law provides the general public with the right to attend meetings, it has been advised that if a public body permits members of the public to speak, it must permit any person to do so, irrespective of the residence of the speaker. It follows in my view, that a person cannot be required to specify his or her residence as a condition that must be met before he or she may speak. Further, in many instances, individuals, due to concerns associated with safety, security and privacy, have valid reasons for choosing not to provide their residence addresses.

A similar contention may be offered in my opinion regarding the disclosure of the speaker's name. Again, if any person may attend a meeting and a public body cannot prohibit a person from attending due to his or her status or interest, the names of those who attend are irrelevant to the right to attend. That being, so I do not believe that a person should be required to give his or her name as a condition precedent to speaking. There may be a variety of reasons for wanting to avoid identifying oneself. For instance, if a parent of a student wants to describe a problem before a board of education, providing a name would likely identify the student. If a member of the public seeks to bring forward a complaint or allegation to a village board, identifying himself or herself could result in personal hardship.

In short, I do not believe that a person can be compelled to identify himself or herself in order to speak in the same manner as others at meetings.

I hope that I have been of assistance.

Robert J. Freeman
Executive Director
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ATCH B



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March 15, 1996

Mr. Terry W. Kuehn
7117 Mavis Drive
Wheatfield, NY 14120

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence.

Dear Mr. Kuehn:

I have received your recent correspondence, which reached this office on March 3. You have sought my views concerning two incidents that you believe "may be violations of the Open Meetings Law."

The first pertains to a meeting held by the Wheatfield Town Board on February 12. You wrote that, prior to the meeting, the Supervisor indicated that the meeting of that evening would serve as "an opportunity for town residents to express their views on the continuation of the sewerage of [y]our town." However, when you attempted to share your knowledge with those in attendance, the Supervisor "established rules that did not allow input from anyone other than taxpayers who had not yet received sewers."

In this regard, although the Open Meetings Law is only indirectly related to the matter, I offer the following comments.

First, while the Open Meetings Law clearly provides any member of the public with the right to attend meetings of public bodies (i.e., town boards), that statute is silent with respect to the ability of the public to speak or otherwise participate. Therefore, if a public body does not want to permit the public to speak, it is not obliged to confer such a privilege. However, public bodies may choose to permit public participation and many do so.

Second, when a public body chooses to authorize public participation, it has been advised that it should do so in accordance with reasonable rules that treat members of the public equally. From my perspective, a rule that allows certain members of the public to speak while prohibiting others from speaking at all would be unreasonable and subject to invalidation.

And third, I do not believe that the Supervisor, acting unilaterally, had the authority to establish or change a rule. Here I direct your attention to §63 of the Town Law. While that statute provides that the supervisor "shall preside at meetings of the town board", it also states that "Every act, motion or resolution shall require for its adoption the affirmative vote of a majority of the members of the town board", and that "The board may determine the rules of its procedure." Therefore, based on §63, I believe that the Town Board as a body, not the Supervisor acting alone, would be empowered to establish rules regarding public participation.

The second incident pertains to a "special or unscheduled meeting." While the meeting in question "was advertised more than seventy-two hours prior to the actual meeting in one local publication, you "question its legality given the fact that the Town has clearly established three separate local news publications as their official publication."

The focal point of the matter involves the extent to which the Town Board complied with §104 of the Open Meetings Law. That provision requires that notice of the time and place of every meeting of a public body be given to the news

media and posted. Specifically, §104 states that:

- "1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before each meeting.
2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.
3. The public notice provided for by this section shall not be construed to require publication as a legal notice."

Based upon the foregoing, it is clear that notice must be posted and given to the news media prior to every meeting. However, §104 does not specify which news media organizations must be given notice. In many instances, there are may be several news media organizations, i.e., newspapers, radio and television stations, that operate in the vicinity of a public body. So long as notice of a meeting is given to at least one news media organization prior to a meeting, I believe that a public body would be acting in compliance with the requirement that notice be given to the news media.

In my opinion, every law, including the Open Meetings Law, should be implemented in a manner that gives reasonable effect to the intent of the law. It would be unreasonable in my view for the Town Board to transmit notice to the Washington Post or a New York City radio or television station, for those outlets would not likely reach residents of the Town, nor would they assign a reporter to attend a meeting of the Board. If notice is posted and given to a newspaper that has a significant circulation in the Town or to a radio station situated in or near the Town, I believe that the Board would be in compliance with the Open Meetings Law. In short, there is nothing in the Open Meetings Law that would require that notice of meetings be given to a particular newspaper. If a newspaper has a significant circulation in a municipality, it would appear to be reasonable to provide notice to that newspaper.

In addition to giving notice to the news media, it is emphasized that the Open Meetings Law requires that notice be "conspicuously posted in one or more designated public locations." Consequently, I believe that a public body must designate, presumably by resolution, the location or locations where it will routinely post notice of meetings. To meet the requirement that notice be "conspicuously posted", notice must in my view be placed at a location that is visible to the public.

I hope that I have been of some assistance.

Sincerely,

Robert J. Freeman
Executive Director

RJF:jm

cc: Town Board

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