
From: Tefft, Teshanna (DOS) [mailto:Teshanna.Tefft@dos.state.ny.us]
Sent: Tuesday, August 21, 2007 12:53 PM
To: ewiatrjr@roadrunner.com
Cc: gyoung@town.new-hartford.ny.us
Subject: Advisory Opinion

August 21, 2007

E-MAIL

TO: Edmund J. Wiatr, Jr.
FROM: Robert J. Freeman, Executive Director

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

Dear Mr. Wiatr:

As you are aware, I have received your letter relating to the implementation of the Open Meetings Law by the Town of New Hartford. Please accept my apologies for the delay in response.

You asked that this office investigate@ the activities of the Town and the Town Clerk. In this regard, the Committee on Open Government and its staff are authorized by law to provide advice and opinions concerning the Open Meetings and Freedom of Information Laws. We have neither the authority nor the resources to conduct investigations or to compel entities of government to comply with law. Nevertheless, I offer the following comments concerning the issues that you raised.

You referred initially to an alleged failure on the part of the Town to make copies of minutes of Town Board meetings available in a timely manner. I direct you to '106 of the Open Meetings Law pertains to minutes of meetings and states that:

- "1. Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.
2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary need not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with the provisions of the freedom of information law within two weeks from the date of such meetings except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session."

In view of the foregoing, it is clear in my opinion that minutes of open meetings must be prepared and made available "within two weeks of the date of such meeting."

I point out that there is nothing in the Open Meetings Law or any other statute of which I am aware that requires that minutes be approved. Nevertheless, as a matter of practice or policy, many public bodies approve minutes of their meetings. In the event that minutes have not been approved, to comply with the Open Meetings Law, it has consistently been advised that minutes be prepared and made available within two weeks, and that if the minutes have not been approved, they may be marked "unapproved", "draft" or "preliminary", for example. By so doing within the requisite time limitations, the public can generally know what transpired at a meeting; concurrently, the public is effectively notified that the minutes are subject to change. If minutes have been prepared within less than two weeks, again, I believe that those unapproved minutes would be available as soon as they exist, and that they may be marked in the manner described above.

Next, you wrote that the Town Board is Abusing the Executive Meetings when discussing matters that are simply not covered by the term Executive Meetings.@ It assumed that you are referring to executive sessions, portions of open meetings during which the public may be excluded. Without an indication of the nature of the alleged abuse, I cannot offer specific guidance or commentary. However, as you may be aware, a public body, such as a town board, cannot conduct an executive session to discuss the subject of its choice. Rather, paragraphs (a) through (h) of '105(1) of the Open Meetings Law specify and limit the subjects that may properly be discussed during an executive session.

Lastly, you wrote that ATown Officials...refuse to print the substance of any Executive Meeting...@ As a general rule, a public body may take action during a properly convened executive session [see Open Meetings Law, '105(1)]. If action is taken during an executive session, minutes reflective of the action, the date and the vote must generally be recorded in minutes pursuant to '106(2) of the Law. If no action is taken, however, there is no requirement that minutes of the executive session be prepared.

I point out, too, that minutes of executive sessions need not include information that may be withheld under the Freedom of Information Law. From my perspective, when a public body makes a final determination during an executive session, that determination will, in most instances, be public. For example, although a discussion to hire or fire a particular employee could clearly be discussed during an executive session [see Open Meetings Law, '105(1)(f), a determination to hire or fire that person would be recorded in minutes and would be available to the public under the Freedom of Information Law. On other hand, if a public body votes to initiate a disciplinary proceeding against a public employee, minutes reflective of its action would not have include reference to or identify the person, for the Freedom of Information Law authorizes an agency to withhold records to the extent that disclosure would result in an unwarranted personal privacy such as unsubstantiated charges or allegations [see Freedom of Information Law, '87(2)(b)].

Copies of this opinion will be sent to the Town Board and the Town Clerk.

I hope that I have been of assistance.

RJF:tt

cc: Town Board
Hon. Gail Young, Town Clerk

Robert J. Freeman
Executive Director
Committee on Open Government
NYS Department of State
41 State Street
Albany, NY 12231
(518) 474-2518
(518) 474-1927 - fax
www.dos.state.ny.us/coog/coogwww.html