

COMMITTEE ON OPEN GOVERNMENT

STATE OF NEW YORK DEPARTMENT OF STATE

ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
TELEPHONE: (518) 474-2518
FAX: (518) 474-1927
WWW.OPENGOVERNMENT.NY.GOV

COMMITTEE MEMBERS

PETER D. GRIMM
HADLEY HARRIGAN
JEANETTE M. MOY
ROBERT F. MUJICA, JR.
ROBERT J. RODRIGUEZ
DAVID A. SCHULZ
FRANKLIN H. STONE
STEPHEN B. WATERS

EXECUTIVE DIRECTOR

SHOSHANAH BEWLAY

OML AO 5654

May 3, 2022

Mr. Donald Haman
950 Newport Rd.
Utica, NY 13502

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

Dear Mr. Haman:

The Committee on Open Government (“Committee”) received your April 27, 2022, request for an advisory opinion regarding whether the Town of Schuylers has complied with several provisions of the Open Meetings Law (“OML”). You raise several concerns, which we address in turn below.

Informational Meetings

Any meeting attended by a quorum (majority) of a public body where the members discuss public business is a “meeting” subject to the OML. See OML §§ 102(1), (2). While the plain language of Section 102(2) defines a “meeting” as “the official convening of a public body for the purpose of conducting public business,” courts have long held that any gathering of a quorum of a public body, such as a town board, for the purpose of conducting public business constitutes a “meeting” subject to the Open Meetings Law, even if there is no intent to vote or take action, and irrespective of the characterization of the gathering. See *Orange County Publications v. Council of the City of Newburgh*, 60 A.D.2d 409, 415-16 (2d Dep’t 1978), *aff’d*, 45 N.Y.2d 947 (1978).

The April 2, 2022, note of Town Councilman Eric Kane indicates that the full board attended the “informational meeting” and that the members discussed a matter of public business: the municipal water project. In my opinion, that gathering was a “meeting” subject to the requirements of the OML. Councilman Kane’s note also indicates that another meeting would be held on April 8th for the purpose of making a decision on the matter. In my opinion, that decisional meeting would also be subject to the requirements of the OML.

Notice

The OML requires that public bodies provide notice of *all* open meetings. For meetings scheduled at least one week in advance, notice containing the time and place of the meeting must be posted at least 72-hours before the meeting. See OML § 104(1). For meetings scheduled less than one week in advance, notice must be posted “at a reasonable time prior thereto.” *Id.* § 104(2). The notice must be “conspicuously posted in one or more designated public locations” and sent to the news media within the appropriate timeframes. *Id.* §§ 104(1), (2). In addition, public bodies with the ability to post the notice to its webpage must do so. *Id.* § 104(6).

Because “informational meetings” where a quorum of a public body discuss public business are meetings subject the OML, it is our opinion that the Town Board was required to provide notice consistent with the referenced provisions for the April 2nd and April 8th or 9th meetings. In my opinion, failure to do so is inconsistent with the requirements of the OML.

Additionally, you inquire about the Board decision to “waive the 48 hour requirement.” This statement, together with your inability to locate any notice of the April 2nd and April 8th or 9th meetings, lead you to believe that the “waiver” pertained to the notice requirements for the meetings. As explained above, the OML requires 72-hour notice to the public of a meeting scheduled at least one week in advance and reasonable notice to the public of a meeting scheduled less than a week in advance. The OML does not contain any provisions regarding a “48-hour notice requirement” and does not contain any provision permitting waiver of notice requirements in general. Based on my interpretation of the OML language, public notice as described in the statute is always required and cannot be waived.

I suspect that the 48-hour waiver language pertains to requirements set by a state statute separate from the OML. In relevant part, Town Law § 62(2) provides that “[t]he supervisor of any town may, and upon written request of two members of the board shall within ten days, call a special meeting of the town board by giving at least two days’ notice in writing to members of the board of the time when and the place where the meeting is to be held.” The Committee is authorized to provide advice, guidance, and opinions regarding the Freedom of Information Law (FOIL) and the OML. We are not authorized to provide advice regarding other areas of law. However, I will note that like the OML, Town Law § 62 does not contain a clause permitting the Board to waive its requirements. Enclosed is a copy of a previously prepared advisory opinion, OML AO 4737, on the topic.

Minutes

Section 106(1) of the OML states that “[m]inutes 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.” Section 106(3) requires that the minutes of an open meeting be available to the public within two weeks of the meeting and that minutes of executive session be available within one week of the meeting. Public bodies which maintain a “regularly and routinely updated website and utilizes a high speed internet connection” must also either post the meeting minutes or an unabridged recording or transcript of the meeting to its webpage within the prescribed timeframes. OML § 106(3).

I have reviewed the Town of Schuyler webpage. For the year of 2022, the Town Board section of the webpage contains minutes and audio recordings of the March 9th and April 13th Town Board meetings. I also reviewed the information posted to the webpage for the Planning Board and Zoning Board of Appeals. I was unable to locate any information pertaining to meetings held on April 2nd and April 8th or 9th. Consistent with my opinion that the April 2nd meeting and any subsequent decisional meeting were “meetings” under the OML, I believe that minutes must be made available to anyone requesting them and either the meeting minutes or an unbridged recording or transcript must be posted to the Town webpage.

Enforcement

Enforcement of the provisions of the OML is through initiation of a Civil Practice Law and Rules Article 78 proceeding in state Supreme Court. OML § 107. An Article 78 proceeding must be initiated within

Donald Haman
May 3, 2022
Page 3 of 3

four months of whatever Board action you believe does not comply with the requirements of the OML. However, in an effort to resolve any misunderstanding regarding the requirements of the OML short of filing an action in court, a copy of this opinion will be sent to the Town Board.

Thank you for your inquiry.

Sincerely,

s/ Christen L. Smith

Christen L. Smith
Senior Attorney

cc: Schuyler Town Board