STATE OF NEW YORK
DEPARTMENT OF STATE
COMMITTEE ON OPEN GOVERNMENT

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Dominick Tocci

Executive Director

Robert J. Freeman

41 State Street, Albany, New York 12231
(518) 474-2518
Fax (518) 474-1927
Website Address:http://www.dos.state.ny.us/coog/coogwww.html

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Mr. William Huston
342 Park Avenue
Binghamton, NY 13903

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. Huston:

As you are aware, I have received your letter in which you asked whether WSKG, a public radio station in Binghamton, is subject to the Open Meetings and Freedom of Information Laws. You wrote that the entity that operates WSKG is a not-for-profit corporation that was chartered by the Board of Regents.

Both of those statutes ordinarily apply to governmental entities, and in my view, WSKG is subject to neither. In this regard, I offer the following comments.

First, I note that all educational and similar institutions in New York are chartered by the Board of Regents, including private schools, colleges and universities. The grant of a charter would not signify that an entity is governmental in nature. Further, having performed research concerning WSKG and public radio stations generally, although licensed by the government, they are not operated or largely funded by the government. It is my understanding that the operating costs are funded primarily through payment of membership fees, contributions and underwriting by corporate organizations.

Second, the Open Meetings Law is applicable to meetings of public bodies. Section 102(2) of that law defines the phrase "public body" 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."

Based upon my understanding of the organization, it would not constitute a public body, for it does not perform a governmental function for the state or any particular group of municipalities or other governmental entities.

The Freedom of Information Law pertains to agency records, and §86(3) of that statute defines the term "agency" to mean:

> "any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the state or any one or more municipalities thereof, except the judiciary or the state legislature."

Again, since WSKG is not a "governmental entity", it is not in my opinion an "agency", and rights conferred by the Freedom of Information Law would not extend to the WSKG.

Lastly, you referred to "business matters from and to politicians." If, for example, there are written communications between WSKG and state, county or other municipal officials, and if copies of those communications are maintained by state or municipal agencies, those communications would constitute agency records. In that circumstance, while WSKG would not be required to give effect to a request made under the Freedom of Information Law, that statute would apply to records maintained by those agencies and would be subject to rights of access.

I hope that I have been of assistance.

Sincerely,

Robert J. Freeman
Executive Director

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