

Planning Board site visit does not constitute meeting subject to OML so long as its purpose is not for anything other than to 'observe and acquire information'

Riverkeeper v. The Planning Board of the Town of Somers (Supreme Court, Westchester County, June 14, 2002)



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E-MAIL

TO:

FROM: Camille S. Jobin-Davis, Assistant 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

We are in receipt of your January 13, 2006 e-mail request for clarification of a recent advisory opinion written to you, and a corollary e-mail from Angela Daley, also a member of the Sullivan West School District Board of Education. We note your contrasting viewpoints on the intent and actions of Board of Education members who gathered at a recent "parent meeting" and offer these additional comments in an effort to clarify our advisory opinion addressed to you.

As you know, this office has neither the resources nor the authority to conduct a fact-finding investigation. As indicated in the underlined text at the top of the first page of every opinion, each opinion is only as valuable as the strength of the facts presented to the Committee, and our authority involves issuing advisory opinions based on the facts presented.

Attached to your original request was an e-mail from Board member Daley referencing the parent meeting in which she stated: "it would be great if some board members could attend the meetings." She then stated, "It is a good opportunity to hear the concerns and interest of our constituents prior to budget planning time." You were not present at the meeting, however, Board member Novak, who was present, related her belief that Board member contributions were made in their capacities as parents.

You have pointed out language from other opinions issued by the Committee on Open Government in which we delineated the differences between formal and "informal" meetings. Based on the facts as you and Ms. Novak and Ms. Daley have presented them in this case, it does not appear that the intent or the actions of the Board members rose to the level of a meeting as defined by the Open Meetings Law.

In a decision involving Planning Board members conducting a site visit, *Riverkeeper v. The Planning Board of the Town of Somers* (Supreme Court, Westchester County, June 14, 2002), it was concluded that a site visit by a Planning Board does not constitute a meeting subject to the Open Meetings Law so long as its purpose is not "for anything other than to 'observe and acquire information.'" The court in that decision cited and apparently relied on advisory opinion rendered by this office in which it was suggested that:

"...site visits or tours by public bodies should be conducted solely for the purpose of observation and acquiring information, and...any discussions or deliberations regarding such observations should occur in public during meetings conducted in accordance with the Open Meetings Law."

If Board members attended as parents and did not function or situate themselves as a body, the gathering at issue, in our view, would not have constituted a "meeting." We point out, however, that it has been held that "briefing sessions" conducted with a majority of a public body present have been found to be "meetings" falling within the coverage of the Open Meetings Law [see *Goodson Todson Enterprises v. City of Kingston*, 53 Ad2d 103 (1990); *Binghamton Press v. Board of Education*, 67 AD2d 797 (1979)]. In short, without additional information regarding the event, we cannot offer an unequivocal response. We hope, however, that the preceding remarks are of value to you.

Sincerely,

Camille S. Jobin-Davis
Assistant Director

CSJ:tt

cc: Board of Education

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Open Meetings Law (OML) Frequently Asked Questions

Who is covered by the Open Meetings Law?

The Open Meetings Law applies to "public bodies." That term is defined to include entities consisting of two or more people that conduct public business and perform a governmental function for New York State, for an agency of the state, or for public corporations, such as cities, counties, towns, villages and school districts. Committees and subcommittees of these entities are also included within the definition. Consequently, city councils, town boards, village boards of trustees, school boards, commissions, legislative bodies, and committees and subcommittees consisting of members of those groups all fall within the framework of the Law. See advisory opinions under "P" for "Public Body" in the [OML Advisory Opinion Index](#).

What is a meeting?

The term "meeting" is defined as "the official convening of a public body for the purpose of conducting public business." As such, when a quorum (a majority of the membership of a public body) gathers for the purpose of discussing public business, the meeting must be convened open to the public, whether or not there is an intent to take action and regardless of the manner in which the gathering may be characterized. See advisory opinions under "M" for "Meeting" and "Q" for "Quorum" in the [OML Advisory Opinion Index](#).

How do I know if a meeting is going to be held?

The Law requires that notice of the time and place of all meetings be given prior to every meeting. If a meeting is scheduled at least a week in advance, notice must be given to the public and the news media not less than 72 hours prior to the meeting. When a meeting is scheduled less than a week in advance, notice must be given to the public and the news media "to the extent practicable" at a reasonable time prior to the meeting. Notice to the public must be accomplished by posting in one or more designated public locations, and posting online. Notice must be given to the news media; there is no requirement that notice be published in the newspaper. See advisory opinions under "N" for "Notice" in the [OML Advisory Opinion Index](#).

What is an "executive session"?

The Law provides for closed or "executive" sessions under certain circumstances prescribed in the Law. It is noted that an executive session is not separate from an open meeting but rather is a portion of an open meeting during which the public may be excluded. The Law requires that a public body take several steps to close the meeting. First, a motion must be made during an open meeting to enter into executive session; second, the motion must identify the general area or areas of the subject or subjects to be considered; and third, the motion must be carried by a majority vote of the total membership of a

public body. See advisory opinions under "E" for "Executive Session" in the [OML Advisory Opinion Index](#).

Can a public body close a public meeting for "personnel matters"?

Citing "personnel matters" is not a sufficient ground for going into an executive session. The motion to go into executive session should be more specific. For example, a motion could be made to enter into executive session to discuss "the employment history of a particular person." The person would not have to be identified. See advisory opinions under "P" for "Personnel" in the [OML Advisory Opinion Index](#).

What can a public body discuss in executive session?

Pursuant to the proper motion, a public body may discuss only issues listed in [§105\(1\) of the Open Meetings Law](#). A public body cannot vote to appropriate public monies during a closed session. Although most public bodies (except school boards) may vote during a properly convened executive session, any vote to expend public monies must be taken in public. See advisory opinions under "E" for "Executive Session" in the [OML Advisory Opinion Index](#).

Who can attend an executive session?

An executive session can be attended by members of the public body and any other persons authorized by the public body. [OML §105\(1\)](#).

Can I speak at a meeting?

The Law is silent with respect to public participation. While it has been advised that a public body does not have to allow the public to speak, many choose to permit public participation. In those instances, it has been advised that a public body must treat all persons in a like manner. For instance, the public body can adopt reasonable rules to ensure fairness; i.e., allowing those who want to speak a specific period of time to express their views. See advisory opinions under "P" for "Public Participation" in the [OML Advisory Opinion Index](#).

I requested minutes of a town board meeting and was told that I could not have them until they were approved. Is this right?

No. The Law states that minutes of open meetings must be made available within two weeks of the meeting; minutes of executive sessions must be made available within one week of the executive session. It has been suggested that if the minutes have not been approved, they may be marked "draft," "unapproved," or "non-final" when they are disclosed. See advisory opinions under "M" for "Minutes, Unapproved" in the [OML Advisory Opinion Index](#).

How can I learn more specific information about open meetings?

Through the [OML Advisory Opinion Index](#). Committee staff prepares written advisory opinions in response to particular sets of facts and circumstances. Many are available online, through two separate indexes (FOIL and Open Meetings Law), organized by key phrase. The higher the number, the more recent is the opinion.

For example, if you would like to know more about whether a board is required to post notice of its meetings online, you would review opinions under “N” for “Notice” in the OML Advisory Opinion Index. If you are unable to find an opinion through the key phrase index, use the Google search box above the alphabet grid to locate opinions with particular words or phrases.

These opinions represent the view of the Committee on Open Government at the time that they were rendered. They may not longer represent those views if, for example, there have been subsequent court decisions or statutory amendments that bear on the issues discussed in the opinions.

Advisory opinions that are not available online, primarily those prepared prior to 1993, are maintained by the Committee on Open Government and a various law libraries throughout the state. Copies of these opinions are available by contacting the Committee.

