



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS

0mL-AO-1

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

ELMER BOGARDUS - Chairman  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

October 7, 1976

Dr. A. Lawrence Gagnon  
Superintendent of Schools  
Wantagh Union Free School District  
1865 Beech Street  
Wantagh, New York 11793

Dear Dr. Gagnon:

Thank you for your interest in complying with the Open Meetings Law.

Your question deals with whether "planning sessions" held by the Wantagh Board of Education are meetings that must be open to the public. "Meeting" is defined by the Open Meetings Law as "the formal convening of a public body for the purpose of officially transacting public business" [see enclosed, Open Meetings Law, §92(1)]. According to the letter of the Law, it appears that the planning sessions are not "meetings" and need not be subject to public view since, as stated in your letter, they are informal and final determinations are not made.

Nevertheless, if in effect the groundwork is laid for making final determinations at an open meeting and these determinations are merely formal votes on matters decided at a planning session, the spirit of the Law might be violated. Moreover, the legislative declaration of the Law [§90] states that it is essential that citizens be "able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy" (emphasis added). As you are aware, the Open Meetings Law does not become effective until January 1, 1977, and consequently, the impact and interpretation of the Law will not be known until it has been tested in the courts. It is possible that a court might find

Dr. A. Lawrence Gagnon  
October 7, 1976  
Page -2-

that public business is transacted at "planning sessions," that public bodies deliberate on the making of public policy during such sessions, and that, therefore, such sessions must be open to the public.

I regret that I cannot now provide more specific direction.

Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb  
Enc.



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS

OMK-AD-2

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

JOHN ABEL - Chairman  
ELMER BOGARDUS  
MARIO M. CUCMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

October 8, 1977

Mr. Robert D. Stone  
Counsel  
State Education Department  
Alfred E. Smith State Office Building  
Albany, New York 12234

Dear Mr. Stone:

Thank you for your interest in complying with the Open Meetings Law.

The issues raised in your letter pertain to discussions concerning handicapped children by boards of education and access to records identifiable to handicapped children. I concur with all of the opinions expressed in your letter.

Under the Family Educational Rights and Privacy Act, education records identifiable to students are exempted from public disclosure unless otherwise specified. Since the Open Meetings Law is not applicable with respect to matters "made confidential by federal or state law" [§98(3)], records identifiable to students cannot, in my view, be discussed during an open meeting. Moreover, even if there were no statutory exemption in this area, a school board could enter into executive session to discuss the medical history of a student [§95(f)], which, as stated in your letter, would have to be considered when making decisions regarding handicapped children.

I also agree that action taken by a board of education during an open meeting need not identify individual handicapped children and that minutes of executive sessions must reflect action taken by the board but need not identify individual students who are affected by or are the subjects of the determinations.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:js



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS *OML-AO-3*

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231

(518) 474-2518, 2791

COMMITTEE MEMBERS

ELIE ABEL - Chairman  
ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

October 8, 1976

Mr. Peter G. Striphas  
County Attorney  
Department of Law  
Orange County Government Center  
Goshen, New York 10924

Dear Mr. Striphas:

Thank you for your interest in complying with the Open Meetings Law. As you are aware, the Law does not become effective until January 1, 1977. Due to the vagueness of some of the Law's provisions, it is unlikely that clear and specific guidance will be given until the Law is judicially interpreted. Nevertheless, the Committee will shortly issue to all public bodies its interpretations of the Law, which can be used to provide direction during the initial stages of its implementation.

"Executive session" is defined by the Law in §92(3) as "that portion of a meeting not open to the general public." Therefore, an executive session is part of an open meeting and is not a separate meeting. As I view the Law, a public body may enter into executive session only to discuss the subjects specified in subdivisions (a) to (h) of §95. Once in an executive session, the body may vote on the subject or subjects discussed, except that a vote to appropriate public monies must be conducted in open session. It is anticipated that in some situations although there is discussion of an issue, that discussion may or may not result in a final determination by means of a vote.

You have also raised questions concerning "work sessions" during which no final action is taken. In this regard, "meeting" is defined narrowly as "the formal convening of a public body for the purpose of officially transacting public business" [§92(1)]. However, an ordinary dictionary definition of "transact" means "to conduct" and the legislative declaration provides that it is

Mr. Peter G. Striphas  
October 8, 1976  
Page -2-

essential that the public "listen to the deliberations... that go into the making of public policy" (§90). Consequently, in my opinion, "work sessions" during which official business is transacted should be open to the public.

I would like to note that one of your illustrations pertains to review of collective bargaining proposals. It is likely that discussions regarding these proposals may be held in executive session pursuant to §95(e).

Your final question deals with the status of advisory committees that cannot take final action. Under the definition of "public body" [§92(2)], I believe that these committees are subject to the Law. The definition of "public body" includes governing bodies that can take final action as well as other bodies that require a quorum to transact public business, consist of two or more members and perform a governmental function "for the state or for an agency or department thereof or for a public corporation..." (emphasis added). As such, in my view, the Legislature intended that governing bodies as well as advisory bodies be subject to the Law.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AO-4

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS  
JIM ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

October 12, 1976

Mr. Paul Feiner  
[REDACTED]

Dear Mr. Feiner:

Your questions deal generally with the status of executive sessions under the Open Meetings Law, a copy of which is enclosed.

First, the Law defines "meeting" as "the formal convening of a public body for the purpose of officially transacting public business." Although this definition is rather narrow, I believe that it must be read in conjunction with the legislative declaration which states that it is essential that citizens be "able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy" [§90].

Second, the Law defines "executive session" as that portion of a meeting not open to the general public. Consequently, it is clear that an executive session is part of an open meeting and is not a separate meeting. In my opinion, the Mayor's description of an executive session, a "friendly chat between the members on an informal basis," is not covered by the Law if it is as described--a friendly chat. But, if the "informal chat" is scheduled and the groundwork is laid for determinations to be made at an open meeting, such a practice, in my opinion, would be violative of the Law.

The Law does not apply to "deliberations of political committees, conferences and caucuses" [§98(2)]. In my view, the quoted provision implies that political party activity is not subject to the Law. If the members of the Board are elected without affiliation of a particular political party, it would appear that this exemption would not be applicable.

Mr. Paul Feiner  
October 12, 1976  
Page -2-

Finally, you have stated that the Mayor might call an executive session by calling a meeting of his cabinet, each member of which is a member of the Board of Trustees. It seems that the practice described would be based on a semantic rather than a real distinction between the "cabinet" and the "Board of Trustees." If the "cabinet" in effect acts as and performs the duties of the Board at its meetings, I believe that such meetings would fall within the coverage of the Law, regardless of what they are called.

With respect to minutes of executive session, such minutes must be prepared and made available to the public within one week of the executive session [§96(3)].

I hope that I have been of some assistance.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lhb  
Enc.



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AO-5

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

ELIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

October 29, 1976

Mr. John M. Sheridan  
Yates County Attorney  
140 Main Street  
Penn Yan, New York 14527

Dear Mr. Sheridan:

Thank you for your interest in complying with the Open Meetings Law.

The question raised is whether town or village zoning boards of appeals when acting upon applications for zoning variances are conducting quasi-judicial proceedings which are exempt from the provisions of the Open Meetings Law.

In my opinion, town and village boards of zoning appeals do, in some circumstances, conduct quasi-judicial proceedings. Nevertheless, these proceedings must be conducted in public view and meetings of these boards must be open except when an executive session is entered into in compliance with Section 95 of the Open Meetings Law.

Section 100(2) of the Open Meetings Law states that:

"[A]ny provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby."

In this regard, the Village Law, §7-712(1) and the Town Law, §267(1), provide that all meetings of zoning boards of appeals "shall be open to the public." As such, although the boards in question might in some instances



Mr. John M. Sheridan  
October 29, 1976  
Page -2-

act in a quasi-judicial capacity, their proceedings are nonetheless subject to the Open Meetings Law.

I am also aware of the opinion of the State Comptroller rendered in 1956 which advised that a board may deliberate privately after having held public hearings (1956 Ops. St. Compt. File #8180). However, the legislative declaration in the Open Meetings Law (§90) states that it is essential that the public "attend and listen to the deliberations and decisions that go into the making of public policy..." Therefore, deliberations of a board should be conducted during an open meeting, except when an executive session is called pursuant to §95.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AO-6

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

JOSE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

November 3, 1976

Mr. Peter D. Hulburt  
Williams, Sprague and Hulburt  
Attorneys and Counselors at Law  
21-25 West Main Street  
P.O. Box 105  
Cuba, New York 14727

Dear Mr. Hulburt:

Thank you for your interest in complying with the Open Meetings Law.

Having discussed the Open Meetings Law with board members of several rural school districts, I am aware of the potential problems concerning public notice raised in your letter. As you are aware, there are no straightforward standards set forth in §94 of the Law and as such I believe that the rule of reason will have to be used in giving effect to its provisions. In my opinion, a public body should provide notice to the member or members of the news media that are most likely to make contact with those who would be interested in attending a meeting of a particular public body. As described in your letter, if a newspaper of general distribution would likely make contact with school district residents, notice to that newspaper would be appropriate.

The Committee is currently in the process of reviewing an interpretive memorandum on the Law, as well as model rules regarding public notice. I anticipate that these materials will be sent to all public bodies in the state, including school boards, some time in early December. In the interim, enclosed for your perusal is a copy of a speech on the Law which may be useful to you until the memorandum and model rules are available.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb  
Enc.



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS *OML-A0-7*

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS  
LIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

November 15, 1976

Mr. Robert D. Stone  
Counsel and Deputy Commissioner  
for Legal Affairs  
State University of New York  
Education Department  
Albany, New York 12234

Dear Mr. Stone:

Thank you for keeping me informed regarding your interpretations of the Open Meetings Law.

As you are aware, several provisions of the Law are somewhat vague. Specifically, the definition of "meeting" is subject to conflicting interpretations. Although the Committee on Public Access to Records has authority to advise with respect to the Law, it has not yet issued an advisory opinion concerning interpretation of what constitutes a meeting. As such, the Committee has not resolved controversies that may arise concerning the status of "work sessions" held at times other than scheduled meetings during which a public body may discuss policy without making final determinations.

When the Committee renders an interpretation regarding this issue, I will notify you of the same.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS *OML-AU-8*

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS  
E. ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 1, 1976

Mrs. Jacqueline E. Miller  
Library Director and Secretary  
Yonkers Public Library  
70 South Broadway  
Yonkers, New York 10701

Dear Mrs. Miller:

Thank you for your interest in complying with the  
Open Meetings Law.

The question raised is whether the Board of Trustees  
of the Yonkers Public Library is a public body as defined  
by the Open Meetings Law. Although similar questions  
have been raised in the past, no clear answer can be pro-  
vided without additional information concerning the Board.  
There are, for example, library boards which are distinct  
corporate entities that have few of the trappings of  
governmental entities; in such cases, those boards would  
not be subject to the Law. In other cases, where library  
boards are effectively part of school districts, such  
boards would be governmental entities subject to the  
Open Meetings Law.

I will be happy to provide further assistance if  
you can provide additional information concerning the  
nature of the Board of Trustees of the Yonkers Public  
Library.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AD-9

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

LIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 1, 1976

Mr. G. C. Dodd  
Deputy Clerk  
Ulster County Legislature  
244 Fair Street  
Kingston, New York 12401

Dear Mr. Dodd:

Thank you for your interest in complying with the Open Meetings Law.

The question raised pertains to the status of committee meetings of the Ulster County Legislature. First, the definition of "meeting" is provided in §92(1) of the Open Meetings Law. As defined by the Law, "meeting" means the formal convening of a public body for the purpose of officially transacting public business. It is possible that the first type of meeting described in your letter would not constitute a meeting as defined by the Law, since it appears that such a meeting would not be held to officially transact public business. Second, pursuant to the definition of "public body", the other types of meetings described in your letter would be subject to the Open Meetings Law. "Public body" is defined as any entity for which a quorum is required to transact business which performs a governmental function for a public corporation, such as a county. In addition, the debate in the Assembly on the bill clearly indicates that the Legislature intended that meetings of committees, sub-committees and other sub-groups are subject to the Open Meetings Law.

You mentioned in your letter that under some circumstances no quorum may be required. It is noted that §41 of the General Construction Law, which defines "quorum," states:

Mr. G. C. Dodd  
December 1, 1976  
Page -2-

"whenever three or more public officers are given any power or authority, or three or more persons are charged with any public duty to be performed or exercised by them jointly or as a board or similar body, a majority of the whole number or such persons or officers, at a meeting duly held at a time fixed by law, or by any by-law duly adopted by such board or body, or at any duly adjourned meeting of such meeting, or at any meeting duly held upon reasonable notice to all of them, shall constitute a quorum..."

As such, although in some circumstances the by-laws of a public body may not require the presence of a quorum, the provision quoted above requires that a quorum be present in order to act as a body.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me. Also, as requested, enclosed are one hundred pocket brochures outlining the Freedom of Information Law.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb  
Enc.



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AO-10

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

LIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
**EXECUTIVE DIRECTOR**  
ROBERT J. FREEMAN

December 1, 1976

Mr. Delo A. Calvin  
Office of Zoning Administrator  
Town of Pleasant Valley  
Pleasant Valley, New York 12569

Dear Mr. Calvin:

Your letter addressed to Mr. Richard Boos has been transmitted to the Committee on Public Access to Records, which is responsible for advising with respect to the Open Meetings Law.

The questions raised pertain to the status of town zoning boards of appeals and planning boards under the Open Meetings Law.

In my opinion, boards of zoning appeals do, in some circumstances, conduct **quasi-judicial** proceedings. Nevertheless, these proceedings must be conducted in public view and meetings of these boards must be open except when an executive session is entered into in compliance with Section 95 of the Open Meetings Law.

Section 100(2) of the Open Meetings Law states that:

"[A]ny provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby."

In this regard, Town Law §267(1), provides that all meetings of zoning boards of appeals "shall be open to the public." As such, although a zoning board of appeals might in some instances act in a quasi-judicial capacity, its proceedings are nonetheless subject to the Open Meetings Law.

Mr. Delo A. Calvin  
December 1, 1976  
Page -2-

With respect to planning boards, according to my research, such boards perform primarily quasi-legislative or administrative functions. Nevertheless, there may be one instance in which a planning board may act in a quasi-judicial capacity, although the status of this duty is currently unclear. The special permit procedure recently enacted by the Legislature (Ch. 272, Laws of 1976) which adds a new section 274-a to the Town Law may be quasi-judicial. However, since the procedure does not appear to require due process of law, it is doubtful, in my opinion, that this additional power of a planning board would be classified as quasi-judicial.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb

cc: Mr. Richard Boos  
Division of Community Affairs





STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS OML-AD-11

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS  
LIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 2, 1977

Mr. Peter P. Mackinnon  
Attorney  
Humes, Andrews, Botzow and Wagner  
6 Birch Street  
P.O. Box 546  
Locust Valley, New York 11560

Dear Mr. Mackinnon:

Thank you for your comments regarding the Open Meetings Law.

In my opinion, the issue that you have raised is most crucial to the implementation and effect of the Law. Due to the definition of "meeting" [§92(1)], the status of work sessions or informational meetings is somewhat unclear. I believe that the status of such meetings can be determined only by judicial means.

It is possible that a meeting, as defined by the Law, is constituted only when a quorum of a public body formally meets with the intent of arriving at final determinations. Under this narrow interpretation of "meeting", work sessions and the like would not fall within the scope of the Law. However, §90 states that it is essential that the public be permitted to "attend and listen to the deliberations and decisions that go into the making of public policy." Consequently, it is also possible that a court could find that a meeting is duly constituted when a quorum of a public body gathers to discuss public business. If such a determination is reached, the sessions described in your letter would be subject to the Open Meetings Law.

As stated at the outset, I believe that resolution of the issue raised in your letter can be determined only by the courts.

Once again, I thank you for your comments.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS OML-AD-12

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

ELIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET

EXECUTIVE DIRECTOR

ROBERT J. FREEMAN

December 10, 1976

Mr. Frank E. De Setto  
Village Clerk-Treasurer  
Inc. Village of Hempstead  
99 Nichols Court  
Hempstead, New York 11551

Dear Mr. De Setto:

Thank you for your interest in complying with the Open Meetings Law.

The question raised in your letter concerns the status of sessions held by the Board of Trustees of the Village of Hempstead prior to regularly scheduled meetings during which the Board reviews the agenda and discusses policy but takes no final action. As you are aware, "meeting" is defined by the Law as the formal convening of a public body for the purpose of officially transacting public business [§92(1)]. According to your letter, the sessions are "informal" and there is no intent to make final action. Consequently, it appears that such sessions do not constitute "meetings" as defined by the Open Meetings Law. However, it is noted that the legislative declaration, §90, states that it is essential that the public be able to attend and listen to the deliberations that go into decision making. Based upon §90, if the Board deliberates toward its decisions during the "work sessions", it is possible that such deliberations should be open to the public.

Due to the apparent conflict in the Law between the definition of meeting and the legislative declaration, resolution of the issue can only be determined by judicial means. Nevertheless, in my opinion, it is possible to distinguish between sessions during which information is gathered and communicated and those sessions during which there is intent on the part of members of the Board to persuade other members to adopt a particular policy. In my view, when there is an attempt to persuade, such an attempt is reflective

Mr. Frank E. De Setto  
December 10, 1976  
Page -2-

of the deliberative process, which according to the legislative declaration should be open to the public. However, if the intent of the members of the Board is merely to exchange and disseminate information in preparation of the regularly scheduled meeting, the session would likely not be considered to fall within the scope of "meeting".

I regret that I cannot be of further assistance. If you would like to discuss the matter further, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:js



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS OML-AD-13

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

December 10, 1976

COMMITTEE MEMBERS

LIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET

EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

Mr. Henry J. Stanton  
Director, New York City Office  
Metropolitan Transportation Authority  
Department of Transportation  
Two World Center  
54th Floor  
New York, NY 10047

Dear Henry:

I thank you for your thoughtful letter concerning interpretation of the Open Meetings Law. Before I continue, I would like to point out that the Committee has decided not to adopt the interpretative memorandum on the Law that I proposed. Instead, the Committee has opted to obtain information concerning the implementation of the Law after it goes into effect. As such, the memorandum that I sent to you will not be disseminated.

With respect to the issue raised in your letter, it is possible that in reviewing the definition of "public body", the courts will differentiate between committees or sub-committees that operate within or as part of a governing body and advisory bodies. What I am trying to emphasize to those who must implement the Law such as yourself is that the Law should be interpreted in a reasonable manner, so that the public will be provided access to bodies that make policy. Application of the Law to advisory bodies will likely depend upon the nature and duties of those bodies and if any of the ingredients necessary for classification as a public body under the Open Meetings Law are missing, the Law would not be applicable. Nevertheless, the status of advisory bodies performing quasi-governmental functions remains unclear. As such, in my view, the application of the Law can be determined only by judicial means.

Once again, I thank you for your letter. If you would like to discuss the matter further, please feel free to call.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS OML-AO-14

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

LIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 21, 1976

Mr. Harold E. Weibezahl  
District Principal  
South Seneca Central School  
Administrative and Business Offices  
Ovid, New York 14521

Dear Mr. Weibezahl:

Thank you for your interest in complying with the Open Meetings Law.

The question raised in your letter pertains essentially to gatherings of a school board, such as "informational workshops," held prior to a regularly scheduled meeting of the Board as well as other sessions during which policy may be discussed but during which no final action is taken.

In my opinion, the issue that you have raised is crucial to the interpretation of the Open Meetings Law. At this juncture, one can only conjecture as to the interpretation that the courts might render with respect to the issue. On one hand, "meeting" is defined as the formal convening of a public body for the purpose of officially transacting public business. As such, it is possible that the courts will interpret the definition as extending only to those meetings that are formally convened during which there is an intent to take action. On the other hand, the legislative declaration, §90, states that it is essential that the public be able to attend and listen to the deliberations that lead to decision making. If, for example, a public body deliberates during an informational workshop, it is possible the court would find that such deliberations should be open to the public. Consequently, if the legislative declaration is read in conjunction with the definition of meeting, it is possible that deliberations conducted during the workshop would be meetings as defined by the Law. Nevertheless, until the courts determine the issue that you have raised, appropriate interpretation of the Open Meetings Law will remain open to question.

Mr. Harold E. Weibezahl  
December 21, 1976  
Page -2-

I regret that I cannot be of greater assistance.  
Should any further questions arise, please feel free to  
contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AD-15

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

WALTER ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 21, 1976

Ms. Carole Lieberman  
President  
League of Women Voters  
of New Castle  
Box 364  
Chappaqua, New York 10514

Dear Ms. Lieberman:

Thank you for your interest in the Open Meetings Law.

To date, model rules pertaining to the Open Meetings Law have not been issued. Due to the vagueness of the statute, as well as the varied kinds of public bodies that are subject to it, model rules will be issued after the Committee has obtained information concerning public bodies' experience under the Open Meetings Law. After obtaining this information, the Committee will be able to prepare reasonable model rules applicable to public bodies throughout the state. Nevertheless, enclosed for your perusal is a copy of a speech on the Open Meetings Law which generally describes its provisions and raises some of the problems that will arise under the new law.

I regret that I cannot be of greater assistance at this time. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb  
Enc.



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AD-16

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

ELIE ABEL - Chairman  
T. ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 21, 1976

Mr. David B. Gubits  
Jacobowitz and Gubits  
158 Orange Avenue  
Post Office Box 267  
Walden, New York 12586

Dear Mr. Gubits:

I apologize for the delay in responding to your letter. You have raised several questions concerning interpretations of the Open Meetings Law and I will attempt to answer them in order.

First, are informal meetings of board members during which no votes are taken considered "meetings" under the Law? In my opinion, this question is most crucial to the effect of the Open Meetings Law. On one hand, the Law [§92(1)] defines "meeting" narrowly. On the other hand, the legislative declaration [§90] states that the public should be able to attend and listen to deliberations and decisions that go into the making of public policy. As such, it is possible that the courts may interpret the Law to include only formally convened gatherings during which there is an intent to take final action or the courts could read the legislative declaration in conjunction with the definition of "meeting" and determine that informal meetings during which a public body deliberates also are subject to the definition of "meeting." At this juncture, one can only conjecture as to the manner in which the courts will interpret the scope of the definition of "meeting."

Second, how is public notice to be given to the public and news media? In my view, notice to the public can be given by means of posting in conspicuous locations. With respect to the news media, I suggest that a notice be sent by return receipt mail to news media that would be likely to make contact with those interested in attending the meeting.



Mr. David B. Gubits  
December 21, 1976  
Page -2-

Third, what "proofs" of public notice should be maintained by a public body? By means of return receipt mail, a public body would have adequate proof that notice has been given to the news media. In the alternative, a certification or affidavit could be made by the person giving notice stating that notice has been given, to whom notice has been given, and the date of the notice.

Fourth, must minutes be taken at executive sessions during which no action is taken? As I read the Law, §96(2) requires that minutes of executive sessions must be compiled only when a final determination is made. Nevertheless, even though minutes may not be required to be compiled if no final determinations are made, it is suggested that some record be kept simply stating that an executive session was held and that no final determinations were reached. It is also noted that although a public body may vote in an executive session concerning those subjects listed in Section 95 of the Law, there is no requirement that action be taken during executive session.

Fifth, should minutes of any meeting, including minutes of executive sessions, be available to the public before they are approved by a public body? The Open Meetings Law states that minutes of executive sessions must be made available within one week of the executive session. As such, minutes of executive sessions should be made available within one week of the executive session whether or not they have been approved by the public body. With respect to minutes of open meetings, the Freedom of Information Law [§88(1)(c)] states that minutes of governing bodies are available. Therefore, in my view, once a record exists in the form of minutes, it is accessible whether or not a board has approved it.

Sixth, when a public body votes to authorize its attorney to take action regarding proposed, pending or current litigation, must the vote be disclosed in the minutes of the executive session even though disclosure might prejudice the public body with respect to the litigation? In my opinion, the requirement concerning compilation of minutes of executive sessions does not require the degree of specificity to which you have alluded in

Mr. David B. Gubits  
December 21, 1977  
Page -3-

your letter. Section 96(2) merely states that minutes shall consist of a record or summary of a final determination. The details of the determination need not be stated with substantial specificity. As you are aware, Section 95 requires a public body to identify the general area that will be discussed in an executive session before entering into an executive session. Therefore, it is suggested that the minutes of an executive session be reflective only of the vote taken and the general area of discussion.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AO-17

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231

(518) 474-2518, 2791

COMMITTEE MEMBERS

ABEL - Chairman  
ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 21, 1976

Mr. Frank M. Bauer  
[REDACTED]

Dear Mr. Bauer:

Thank you for your thoughtful letter concerning the Open Meetings Law.

Your comments regarding interpretation of the Open Meetings Law are, in my opinion, crucial to the implementation of the statute. Although the definition of "meeting" includes only formal convenings, the legislative declaration in §90 of the Law states that it is essential that the public be able to attend and listen to deliberations leading to decision making. As such, at this juncture one can only conjecture as to the interpretation that the courts will give the Open Meetings Law. It is possible that the courts may view the definition narrowly and restrict the effect of the Law to formal convenings. On the other hand, it is also possible that the courts will look to the legislative declaration and determine that deliberations of public bodies held during "informal" sessions are within the definition of "meeting" and therefore should be open to the public. Consequently, I believe that the effect of the Open Meetings Law cannot be effectively gauged at this time.

As requested, your name has been placed on our mailing list. Once again, I thank you for your comments.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:1bb



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AO-18

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

LIE ABEL - Chairman  
ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 21, 1976

Mr. Paul Feiner  
[REDACTED]

Dear Mr. Feiner:

I apologize for the delay in responding to your letter.

The questions raised in your letter deal with application of both the Freedom of Information Law and the Open Meetings Law. I will attempt to deal with each question in order.

First, informal, regular meetings between a Mayor and a village manager, for example, or other employees, is not subject to the Open Meetings Law. The Law pertains only to public bodies as defined in §92(2). As such, a meeting between an executive official, such as the Mayor, and his employees would not constitute a meetings as defined by the Law.

Second, when the Open Meetings Law becomes effective in January, will village boards, for example, have to release minutes of executive sessions that were compiled before January 1, 1977? Section 88(1)(c) of the Freedom of Information Law provides access to minutes of governing bodies. Consequently, if minutes of executive sessions compiled prior to January 1 are in existence, they are available and have been available under the Freedom of Information Law since its enactment in 1974.

Third, can you, as the resident of one village, gain access to records of another village and attend its meetings? With respect to the Freedom of Information Law, as the Committee resolved shortly after the Law became effective, information made available under the Freedom of Information Law shall be made equally available to any person, without regard to status or interest. As such, your status as a resident of one village has no relevance with respect to your

Mr. Paul Feiner  
December 21, 1976  
Page -2-

rights of access to the records of another village. With regard to the Open Meetings Law, §93 of that statute states that every meeting of a public body shall be open to the general public. Therefore, you have the right to attend meetings of another village as well as those of your own village.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:lbb



STATE OF NEW YORK  
COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AO-19

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

E ABEL - Chairman  
ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH

EXECUTIVE DIRECTOR

ROBERT J. FREEMAN

December 30, 1976

Mrs. Joan Burkhardt

[Redacted address]

Dear Mrs. Burkhardt:

Thank you for your interest in the Open Meetings Law.

In brief, the Law defines "public body" broadly and includes bodies performing a governmental function for the state, an agency or department of the state, or for public corporations, which include municipalities such as cities, counties, towns and villages.

With respect to exemption for deliberations of political caucuses, in my opinion the term "political" refers to party caucuses during which determinations by public body cannot be made.

Enclosed for your perusal are copies of the Open Meetings Law and a speech on the subject which outlines its provisions and raises some of the questions that will arise when the Law takes effect.

I hope that I have been of some assistance. Should any question arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:js  
Enc.



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS

OML-AO-20

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231

(518) 474-2518, 2791

COMMITTEE MEMBERS

JOHN ABEL - Chairman  
ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 30, 1976

Mr. James F. Keefe  
Commissioner  
Town of Clay  
4483 Route 31  
Clay, New York 13041

Dear Mr. Keefe:

Thank you for your interest in complying with the Open Meetings Law.

The question raised in your letter pertains to the application of the Open Meetings Law to town zoning boards of appeals. With respect to your question, there appears to be an inner conflict in the statute. While Section 98 exempts the provisions of the Law from quasi-judicial proceedings, Section 100(2) provides that any general, special or local law less restrictive with respect to public access shall not be deemed superseded by the Open Meetings Law. In this regard, Section 267 of the Town Law specifically states that all meetings of zoning boards of appeals shall be open to the public. In my opinion, since the law was intended to broaden rather than restrict rights of access to meetings, meetings of zoning boards of appeals should remain open to the public. It is possible, however, that a court might find that deliberations of such boards while acting in their quasi-judicial capacities may be closed. However, at this juncture it would be inappropriate to conjecture as to the interpretation that a court might give when reading Sections 95, 98 and 100 in conjunction with one another.

I regret that I cannot be of greater assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:js



STATE OF NEW YORK

COMMITTEE ON PUBLIC ACCESS TO RECORDS

*OML-AO-21*

DEPARTMENT OF STATE, 162 WASHINGTON AVENUE, ALBANY, NEW YORK 12231  
(518) 474-2518, 2791

COMMITTEE MEMBERS

JOHN ABEL - Chairman  
ELMER BOGARDUS  
MARIO M. CUOMO  
PETER C. GOLDMARK, JR.  
JAMES C. O'SHEA  
GILBERT P. SMITH  
ROBERT W. SWEET  
EXECUTIVE DIRECTOR  
ROBERT J. FREEMAN

December 30, 1976

Mr. Robert I. Everingham  
Clerk/Record Access Officer  
Board of Cooperative Educational Services  
6820 Thompson Road  
Syracuse, New York 13211

Dear Mr. Everingham:

Thank you for your interest in complying with the Open Meetings Law.

The questions raised in your letter deal generally with minutes and the definition of "meeting". With respect to minutes, Section 96 of the Open Meetings Law states that the minutes of an open meetings need consist only of a record or summary of motions, proposals, resolutions and any other matter formally voted upon and that minutes of an executive session must consist of merely a record of summary of a final determination made during an executive session. Since the minutes must only be reflective of a summary of action taken, in my opinion, specific details of action taken during either an open meeting or an executive session need not be included in the minutes. If a member of the public wants additional information concerning the action taken by the board, that information can be requested under the Freedom of Information Law.

The status of study sessions, workshops or other discussions during which no action is taken is unclear. On one hand, "meeting" is defined narrowly as the formal convening of a public body for the purpose of officially transacting public business. On the other hand, the legislative declaration, Section 90, states that it is essential that the public be able to attend and listen to the deliberations leading to decision making. In my view, the courts may choose either to look to the narrow definition of "meeting" or it may adopt a broader application of the Law by reading the legislative declaration in conjunction with the definition. As such, at this juncture, it would be inappropriate to



Mr. Robert I. Everingham  
December 30, 1976  
Page -2-

conjecture as to the interpretation that the courts will give to the scope of the Open Meetings Law.

I hope that I have been of some assistance. Should any further questions arise, please feel free to contact me.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:js