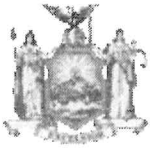


Ken Watter 5/9/24 Human Resources
Public Comment

Open Meeting's opinions from the Committee on Open Government
web site as of May 9, 2024 on time of having a meeting.

Date	opinion
1996	2648a
2001	3363
2004	3826
2008	4615
2011	5062
2012	5328
2015	5445



**State of New York
Department of State
Committee on Open Government**

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August 23, 1996

James H. Gillespie
Trustee
P.O. Box 232
Washingtonville, NY 10992

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 Trustee Gillespie:

I have received your letter of August 15 and the materials attached to it.

According to the correspondence, at least three members of the Village of Washingtonville Board of Trustees meet every Monday and Friday at a local bagel shop at 7 a.m. to discuss various aspects of Village business. The meetings are "informational" only; no action is taken. Notice has been given the public and it is clear that the public is invited to attend. Nevertheless, it is your view that the meetings are "not needed" and "unconstitutional."

From my perspective, there is no issue concerning the constitutionality of the meetings. I believe, however, that questions may be raised concerning the location and time of the meetings. In this regard, I offer the following comments.

First, although the Open Meetings Law does not specify where meetings must be held, §103(a) of the Law states in part that "Every meeting of a public body shall be open to the general public..." Further, the intent of the Open Meetings Law is clearly stated in §100 as follows:

"It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and 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. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it."

As such, the Open Meetings Law confers a right upon the public to attend and listen to the deliberations of public bodies and to observe the performance of public officials who serve on such bodies.

In my opinion, every provision of law, including the Open Meetings Law, should be implemented in a manner that gives reasonable effect to its intent. If a meeting is held at a site involving a requirement that those in attendance pay for some sort of service or must order food, for example, some people who might otherwise attend might be unable or dissuaded from attending. If that is so in this instance, it would appear that the choice of location of the meetings in question would be inconsistent with the thrust of the Open Meetings Law.

Second, the same kind of consideration would be applicable with respect to the time of the meetings and whether, in view of the intent of the Open Meetings Law, it is reasonable to schedule meetings at 7 a.m. In a recent decision that dealt in part with meetings of a board of education held at 7:30 a.m., it was stated that:

"It is...apparent to this Court that the scheduling of a board meeting at 7:30 a.m. -- even assuming arguendo that such meetings were properly noticed and promptly conducted -- does not facilitate attendance by members of the public, whether employed within or without the home, particularly those with school age or younger children, and all but insures that teachers and teacher associates at the school are unable to both attend and still comply with the requirement that they be in their classrooms by 8:40 a.m." (Matter of Goetchius v. Board of Education, Supreme Court, Westchester County, New York Law Journal, August 8, 1996).

While the Court focused on the matter as it related to a Board of Education, I believe that similar factors would be present with respect to the ability of Village residents to attend meetings at 7 a.m. Many may be unable to attend because they too have small children, because of work schedules, commuting, and other matters that might effectively preclude them from attending meetings held so early in the morning. In short, particularly in view of the decision cited above, the reasonableness of conducting meetings at 7 a.m. is in my view questionable. ♣ I hope that I have been of assistance.

Sincerely,

Robert J. Freeman
Executive Director

RJF:jm

cc: Hon. Tom DeVinko

OML-AO-02648a
2648



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September 6, 2001

OML-AO-3363

Dear

I have received your letter of August 8 in which you referred to an issue raised in previous correspondence. Specifically, you have sought "another advisory opinion" concerning the propriety of meetings held at 8 a.m. by the Elma Town Board.

Having reviewed my response to you of June 26, I do not believe that I can offer an opinion that is substantially different from that response. From my perspective, however, even though the decision that was cited involved a board of education, it serves as useful precedent regarding meetings of all governmental bodies subject to the Open Meetings Law. In short, while that statute does not indicate precisely when meetings must or must not be held, it is reiterated that every law must in my opinion be implemented in a manner that gives reasonable effect to its intent.

In the case involving the board of education, I believe that the court found that, in consideration of the facts presented, meetings held early in the morning would effectively preclude many of those interested in attending from doing so, and that, consequently, it was unreasonable to hold meetings at that time. If the factual circumstances in the Town of Elma involve the same result, that those interested in attending do not have a reasonable opportunity to do so, I believe that a court would find that it is unreasonable to hold meetings early in the morning as has been the case. On the other hand, if, due to the nature of the community, those residents of the Town of Elma interested in attending do have a reasonable opportunity to attend the meetings in question, a court would, in my view, likely hold that the scheduling of those meetings is not unreasonable or inconsistent with the intent of the Open Meetings Law.

Since you referred to reporters for a local newspaper, perhaps you might contact the newspaper to suggest that it conduct a survey of its readers in an attempt to gauge the community's views concerning the reasonableness of holding meetings at 8 a.m. If that could be accomplished, you and the Town Board could ascertain the general sentiments of the Town's residents.

I hope that I have been of assistance.

Sincerely,

Robert J. Freeman
Executive Director

RJF:tt

cc: Town Board
Rosemary Bapst, Town Attorney

OML-AO-o3363
3363



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OML-AO-3828

June 22, 2004

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

I have received your letter concerning meetings of School Leadership Teams ("SLT's") and school based management teams operating in New York City.

By way of background, in 2003 you questioned the status of the entities in question under the Open Meetings Law, and I prepared an advisory opinion in response. An element of the opinion suggested that the time of the meetings of your interest, 7:20 a.m., conflicted with the judicial construction of the Open Meetings Law. Based upon that advice, you initiated a grievance with the New York City Board of Education and received the following response from the Office of Counsel:

"The Open Meetings Law states that 'public business be performed in an open and public manner.' Section 2590-h15(b-1)(ii) of the Education Law has been amended to require that the school leadership teams hold their monthly meetings at a time that is convenient for the parent representatives. Thus, if the parents on the SLT have agreed that their meeting will be held at 7:30 a.m this is consistent with law. If other people wish to attend it is their obligation to make themselves available at the time the team has chosen to meet."

From my perspective, while participation by parent members of school based management teams is clearly a consideration, the ability of others to attend is also relevant.

As indicated in the opinion addressed to you on December 29, 2003, the entities at issue are, in my view, "public bodies" required to comply with the Open Meetings Law. They are creations of law, and it is my understanding that they are the New York City entities that carry out the shared decision making functions required to be accomplished pursuant to §100.11 of the regulations promulgated by the NYS Commissioner of Education.

The provision cited by the Office of Counsel does not, in my opinion, affect the obligation of an SLT or a school based management team to comply with the Open Meetings Law. Section 2590-h(15)(b)(ii) requires that school board management teams shall:

"hold at least one meeting per month during the school year. Each monthly meeting shall be held at a time that is convenient for the parent representatives."

As the foregoing relates to the Open Meetings Law, I believe every statute, including the Open Meetings Law, must be implemented in a manner that gives reasonable effect to its intent. In the only decision that dealt with meetings held as early as those held by the body of your interest, the court found that the entity at issue failed to comply with the Open Meetings Law. To reiterate a point offered in last year's opinion, the intent of the Open Meetings Law is clearly stated in §100 as follows:

"It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and 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. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it."

In short, the Open Meetings Law confers a right upon the public to attend and listen to the deliberations of public bodies and to observe the performance of public officials who serve on such bodies.

Further, in the decision to which reference was made involving meetings held at 7:30 a.m., it was stated that:

"It is...apparent to this Court that the scheduling of a board meeting at 7:30 a.m. -- even assuming arguendo that such meetings were properly noticed and promptly conducted -- does not facilitate attendance by members of the public, whether employed within or without the home, particularly those with school-age or younger children..." (Matter of Goetchius v. Board of Education, Supreme Court, Westchester County, New York Law Journal, August 8, 1996).

While meetings held at 7:20 a.m. may be convenient for parent members of an SLT or school based management team, many others interested in attending may be unable to do so because they have small children, because of work schedules, commuting, and other matters that might effectively preclude them from attending meetings held so early in the morning. In consideration of those persons and the holding by the court, I continue to believe that it would be unreasonable and inconsistent with law for an SLT or school based management team to conduct meetings at or near 7:20 a.m.

I hope that I have been of assistance.

Sincerely,

Robert J. Freeman
Executive Director
RJF:jm

cc: Susan W. Holtzman
OML-AO-03828
3828



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OML-AO-4615

April 28, 2008

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 request for an advisory opinion concerning application of the Open Meetings Law to meeting of the West Seneca Town Board. You indicated that meetings of the Zoning Board of Appeals and the Planning Board typically start at 7 or 7:30 pm, but that "the annual organization[al] meetings have been held at 5:00 pm most recently and under previous administrations the organizational meeting was held at 1:00 pm." You expressed the belief that conducting organizational meetings at 5 pm or 1 pm is unreasonable, based on Goetchius v. Board of Education Supreme Court, Westchester County, New York Law Journal, August 8, 1996, and our advisory opinion no. 2648a. In this regard, we offer the following comments.

In our view, although questions may be raised concerning the time of the organizational meeting, holding an annual organizational meeting at a different time than regular monthly meetings is not necessarily unreasonable.

First although the Open Meetings Law does not specify what time meetings must be held, §103(a) of the Law states in part that "Every meeting of a public body shall be open to the general public..." Further, the intent of the Open Meetings Law is clearly stated in §100 as follows:

"It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of an 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. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it."

As such, the Open Meetings Law confers a right upon the public to attend and listen to the deliberations of public bodies and to observe the performance of public officials who serve on such bodies.

In our opinion, every provision of law, including the Open Meetings Law, should be implemented in a manner that gives reasonable effect to its intent. In the Goetchius decision that you referenced, the court dealt in part with meetings of a board of education held at 7:30 a.m., and stated that:

"It is...apparent to this Court that the scheduling of a board meeting at 7:30 a.m. -- even assuming arguendo that such meetings were properly noticed and promptly conducted -- does not facilitate attendance by members of the public, whether employed within or without the home, particularly those with school age or younger children, and all but insures that teachers and teacher associates at the school are unable to both attend and still comply with the requirement that they be in their classrooms by 8:40 a.m." (Matter of Goetchius v. Board of Education, Supreme Court, Westchester County, New York Law Journal, August 8, 1996).

While the Court focused on the matter as it related to a Board of Education, we believe that similar factors would be present with respect to the ability of Town residents to attend meetings. Many may be unable to attend because they too have small children, because of work schedules, commuting, and other matters that might effectively preclude

them from attending meetings held so early in the morning. In short, particularly in view of the decision cited above, the reasonableness of conducting meetings at 7:30 a.m. is in our view questionable.

The question that you raise is different: whether it is reasonable to schedule a meeting during regular business hours, or immediately thereafter. We know of no judicial decisions that address the issue. In our view, because organizational meetings are typically held only once a year, and many public bodies conduct organizational meetings on January 1, which is a public holiday, it does not necessarily follow that holding the organizational meeting at 5 pm or 1 pm would discourage or hinder attendance. Further, in our opinion, holding a meeting during regular business hours would not be unreasonable.

On behalf of the Committee on Open Government we hope that this is helpful to you.

Sincerely,

Camille S. Jobin-Davis
Assistant Director

CSJ:tt

OML-AO-04615
4615



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FOIL-AO-5062

E-MAIL

From: dos.sm.Coog.InetCoog
Sent: Friday, March 11, 2011 10:10 AM
Subject: RE: Open Meetings Law

Although the Open Meetings Law does not specify when meetings of public bodies may be held, it has been advised in numerous contexts that every law, including that statute, should be implemented in a manner that gives reasonable effect to its intent.

In my view, the intent of the Open Meetings Law involves the reasonable ability of members of the public, those interested in attending meetings of public bodies, to do so. From my perspective, in consideration of a variety of factors, conducting a meeting at 8:30 on a Sunday morning would be unreasonable, for many who might be interested in attending may not have a reasonable opportunity or capacity to do so. This is not to suggest that meetings cannot be held on weekends or holidays, for a meeting might validly be held during the afternoon, at a more convenient time. Rather, absent an emergency or special circumstance, it is suggested that it would be unreasonable to schedule a meeting early on a Sunday morning.

Please feel free to share this opinion with the Board of Trustees.

I hope that I have been of assistance.

Robert J. Freeman
Executive Director
Committee on Open Government
Department of State
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OML-AO-o5062
5062



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By EMAIL

OML-AO-5328

From: Jobin-Davis, Camille (DOS)
Sent: Tuesday, November 13, 2012 10:01 AM
To:
Subject: RE: Request for opinion

Dear ,

By now, I hope that things in New Rochelle are getting back to something that approximates normalcy. The severity of the Hurricane and then the snowstorm soon thereafter took many of us by surprise, and I hope that you and your loved ones are well.

In response to your question, I've not seen any case law that is directly on point, and although it may be unfair, there isn't anything that I know of that would prevent them from meeting. There are times, in emergencies, when boards have to meet quickly, or have to address issues. We have advised that holidays and weekends are not necessarily contrary to law either – even when many would choose not to attend.

Camille

Camille S. Jobin-Davis, Esq.
Assistant Director
NYS Committee on Open Government
Department of State
99 Washington Ave, Suite 650
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Tel: 518-474-2518
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camille.jobin-davis@dos.ny.gov
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OML-AO-o5328
5328



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OML-AO-5445

February 24, 2015

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:

I have received your letter and hope that you will accept my apologies for the delay in response. You have requested an advisory opinion concerning a meeting of the City Council of the City of Mount Vernon.

According to your letter, "on or about December 29", an "email notice of a special City Council meeting" was given regarding a meeting to be held at noon the next day "to vote on whether to override the New York State Municipal Tax Cap." You added that the meeting "carrie[d] with it an immense amount of importance to the stakeholders in the City of Mount Vernon."

You wrote that the City "does not post its meeting notice in a designated conspicuous place to which the public has access", and because notice was given less than 72 hours in advance, you contend that "most of the stakeholders of Mount Vernon are not available at 12:00 noon". That being so, you questioned whether scheduling and conducting a meeting at that time would "constitute a deprivation of the public's right to 'retain control of their public servants'" and preclude the public from being "fully aware of" and able to "observe the performance of public officials."

Those questions reflect elements of the statement of intent that appears in section 100 of the Open Meetings Law. While the intent of the law is significant, critical are the specific language of the law, its judicial interpretation, and reasonableness.

With regard to the language of the law, §104 of the Open Meetings Law pertains to notice of meetings and requires that:

- "1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.
2. Public notice of the time and place of every other meeting shall be given to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.
3. The public notice provided for by this section shall not be construed to require publication as a legal notice.
4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations."

Additionally, in 2009, a new subdivision (5) states that:

"5. When a public body has the ability to do so, notice of the time and place of a meeting given in accordance with subdivision one or two of this section, shall also be conspicuously posted on the public body's internet website." Section 104 now imposes a three-fold requirement: first, that notice must be posted in one or more conspicuous, public locations; second, that notice must be given to the news media; and third, that notice must be conspicuously posted on the body's website, when there is an ability to do so. The requirement that notice of a meeting be "posted" in one or more "designated" locations, in our opinion, mandates that a public body, by resolution or through the adoption of policy or a directive, select one or more specific locations where notice of meetings will consistently and regularly be posted. If, for instance, a bulletin board located at the entrance of a City Hall has been designated as a location for posting notices of meetings, the public has the ability to know where to ascertain whether and when meetings of a the City Council will be held. Similarly, every public body with the ability to do so must post notice of the time and place of every meeting online.

There is nothing in the Open Meetings Law that refers specifically to "emergency" or "special" meetings. However, the

Judicial interpretation of the Open Meetings Law suggests that the propriety of scheduling a meeting less than a week in advance is dependent upon the actual need to do so. As stated in *Previdi v. Hirsch*: "Whether abbreviated notice is 'practicable' or 'reasonable' in a given case depends on the necessity for same. Here, respondents virtually concede a lack of urgency: They deny petitioner's characterization of the session as an 'emergency' and maintain nothing of substance was transacted at the meeting except to discuss the status of litigation and to authorize, pro forma, their insurance carrier's involvement in negotiations. It is manifest then that the executive session could easily have been scheduled for another date with only minimum delay. In that event respondents could even have provided the more extensive notice required by POL §104(1). Only respondents' choice in scheduling prevented this result.

"Moreover, given the short notice provided by respondents, it should have been apparent that the posting of a single notice in the School District offices would hardly serve to apprise the public that an executive session was being called....

"In *White v. Battaglia*, 79 A.D. 2d 880, 881, 434 N.Y.S.2d 637, lv. to app. den. 53 N.Y.2d 603, 439 N.Y.S.2d 1027, 421 N.E.2d 854, the Court condemned an almost identical method of notice as one at bar: "Fay Powell, then president of the board, began contacting board members at 4:00 p.m. on June 27 to ask them to attend a meeting at 7:30 that evening at the central office, which was not the usual meeting date or place. The only notice given to the public was one typewritten announcement posted on the central office bulletin board....Special Term could find on this record that appellants violated the...Public Officers Law...in that notice was not given 'to the extent practicable, to the news media' nor was it 'conspicuously posted in one or more designated public locations' at a reasonable time 'prior thereto' (emphasis added)" [524 NYS 2d 643, 645 (1988)].

Based upon the foregoing, absent an emergency or urgency, the Court in *Previdi* suggested that it would be unreasonable to conduct meetings on short notice, unless there is some necessity to do so. If there was no urgency associated with the issue considered during the meeting to which you referred, in my view, it should not have been held on such short notice. More importantly, even if there is an emergency that necessitates scheduling and conducting meetings quickly, the Open Meetings Law requires that notice be given. It is not difficult to accomplish compliance with §104; notice of the time and place of a meeting can be given to the news media by email, fax or phone; notice can quickly be posted in one or more conspicuous public locations; and when it is feasible for an entity to do so, notice can be posted on the entity's website without delay.

I am unaware of whether there was a deadline for taking action relative to an override of the tax cap. If there was no necessity of meeting within less than 72 hours, based on the judicial precedent cited above, the meeting at issue would appear to have been held in a manner inconsistent with the Open Meetings Law.

Lastly, with regard to the time of the meeting, noon, I would conjecture that a court would find that a meeting scheduled at that time, during what most would characterize as regular business hours, would be reasonable. It has been advised that a meeting scheduled early in the morning, i.e., 7 a.m., or late at night, i.e., starting at 11 p.m., would be unreasonable, for most interested in attending would not have reasonable ability to do so. Although many "stakeholders" undoubtedly work at noon on regular business days, meetings of public bodies are routinely held during regular business hours. In my view, there is no time that would accommodate all of those interested in attending meetings. Some have argued that evening meetings interfere with school events, games or other activities. In short, while it is clear that meetings held at extremely early or late times would be unreasonable, again, it is doubtful in my opinion that a court would determine that noon is an unreasonable time to conduct a meeting.

I hope that I have been of assistance. In an effort to enhance knowledge of and compliance with the Open Meetings Law, a copy of this opinion will be sent to the City Council.

Sincerely,

Robert J. Freeman

Executive Director

RJF: paf

cc:

OML-AO-005445
05445



STATE OF NEW YORK
DEPARTMENT OF STATE
COMMITTEE ON OPEN GOVERNMENT

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Robert J. Duffy
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Clifford Richner
David A. Schulz
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Executive Director

Robert J. Freeman

OML-AO-05280

May 4, 2012

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 request for an advisory opinion regarding application of the Open Meetings Law to recent proceedings of the Board of the Clarkstown Central School District. It is our understanding that clarification is required regarding board action necessary to set a meeting date, notice required for a public meeting and any related executive sessions.

In this regard, we note that choosing a date for a public body to gather does not necessarily require board action. Further, holding a meeting on January 4, in close proximity to a school vacation and/or on the same night as a meeting of an equally important board or community organization, does not conflict with any known provisions of law.

Although the Open Meetings Law does not specify the time that meetings must be held, §103(a) of the Law states in part that "Every meeting of a public body shall be open to the general public..." Further, the intent of the Open Meetings Law is clearly stated in §100 as follows:

"It is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be

HR per 5

fully aware of an 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. The people must be able to remain informed if they are to retain control over those who are their public servants. It is the only climate under which the commonweal will prosper and enable the governmental process to operate for the benefit of those who created it."

As such, the Open Meetings Law confers a right upon the public to attend and listen to the deliberations of public bodies and to observe the performance of public officials who serve on such bodies.

In our opinion, every provision of law, including the Open Meetings Law, should be implemented in a manner that gives reasonable effect to its intent. There is one case of which we are aware in which the court held that a 7:30 a.m. meeting was inappropriate. According to the court in Goetchius v. Board of Education:

"It is...apparent to this Court that the scheduling of a board meeting at 7:30 a.m. -- even assuming arguendo that such meetings were properly noticed and promptly conducted -- does not facilitate attendance by members of the public, whether employed within or without the home, particularly those with school age or younger children, and all but insures that teachers and teacher associates at the school are unable to both attend and still comply with the requirement that they be in their classrooms by 8:40 a.m." (Matter of Goetchius v. Board of Education, Supreme Court, Westchester County, New York Law Journal, August 8, 1996).

The court focused on whether members of the public would have the ability to attend, considering whether they had small children, work schedules, commuting times, and other matters that might effectively preclude them from attending meetings held so early in the morning. In short, particularly in view of the decision cited above, the reasonableness of conducting meetings at 7:30 a.m. is in our view questionable.

Your question, however, involves different facts, specifically, whether it is reasonable to schedule a meeting in the early evening, on the same night as another meeting in the community, and close in time to the December school holiday. We know of no judicial decisions that address the issue. In light of the fact that a majority of the board members voted to hold the meeting on such date, even when faced with the objections you raised, and our experience with the difficulty in scheduling meetings that are convenient for all, we believe it to be reasonable.

With respect to your note that "the board is requesting RSVP's", this will confirm that members of the public are not required to indicate their intent to attend a meeting prior to a meeting. We can only surmise that members of the board were asked to indicate their ability to

attend the January 4 meeting. In either event, it does not appear that the Board required such information from members of the public or members of the school board.

With respect to notice requirements set forth in the Open Meetings Law and applicable to meetings of every school board in New York, §104 pertains to notice and states that:

- “1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the news media and shall be conspicuously posted in one or more designated public locations at least seventy-two hours before such meeting.
2. Public notice of the time and place of every other meeting shall be given to the extent practicable, to the news media and shall be conspicuously posted in one or more designated public locations at a reasonable time prior thereto.
3. The public notice provided for by this section shall not be construed to require publication as a legal notice.
4. If videoconferencing is used to conduct a meeting, the public notice for the meeting shall inform the public that videoconferencing will be used, identify the locations for the meeting, and state that the public has the right to attend the meeting at any of the locations.”

In May of 2009, the Legislature added subdivision (5), set forth as follows:

- “5. When a public body has the ability to do so, notice of the time and place of a meeting given in accordance with subdivision one or two of this section, shall also be conspicuously posted on the public body’s internet website.”

Section 104 now imposes a three-fold requirement: one, that notice must be posted in one or more conspicuous, public locations; two, that notice must be given to the news media; and three, that notice must be conspicuously posted on the body’s website, when there is an ability to do so. The requirement that notice of a meeting be “posted” in one or more “designated” locations, in our opinion, mandates that a public body, by resolution or through the adoption of policy or a directive, select one or more specific locations where notice of meetings will consistently and regularly be posted. If, for instance, a bulletin board located at the entrance of a school board has been designated as a location for posting notices of meetings, the public has the ability to know where to ascertain whether and when meetings of the school board will be held. Similarly, every public body with the ability to do so should post notice of the time and place of every meeting online.

As you correctly noted, it is emphasized that a public body cannot conduct an executive session prior to a meeting. Every meeting must be convened as an open meeting, for §102(3) of

the Open Meetings Law defines the phrase "executive session" to mean a portion of an open meeting during which the public may be excluded. That being so, it is clear that an executive session is not separate and distinct from an open meeting, but rather that it is a part of an open meeting. Moreover, the Open Meetings Law requires that a procedure be accomplished, during an open meeting, before a public body may enter into an executive session. Specifically, §105(1) states in relevant part that:

"Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only..."

Based on the foregoing, a motion to conduct an executive session must include reference to the subject or subjects to be discussed and it must be carried by majority vote of a public body's membership before such a session may validly be held. The ensuing provisions of §105(1) specify and limit the subjects that may appropriately be considered during an executive session. Therefore, a public body may not conduct an executive session to discuss the subject of its choice.

We hope that this is helpful.

CSJ:sb
cc: Doug Katz, President, Clarkstown Central School District