



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

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EMAIL OML-AO-5169

From: dos.sm.Coog.InetCoog
Sent: Monday, September 12, 2011 9:00 AM
To:
Subject: RE: question

Dear

As you are likely aware, the Open Meetings Law includes provisions that permit meetings of public bodies to be conducted by means of videoconferencing that enables members of a public body, as well as any others who may be present at a location in which a member is participating, to observe and hear the participants. Further, §104(4) of that statute states that:

"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."

Although there are no judicial decisions concerning the use of Skype, it is our view that if all of the conditions described in the Open Meetings Law are met, Skype serves as a method of videoconferencing that would be valid to comply with the Open Meetings Law.

I hope that I have been of assistance.

Robert J. Freeman
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OML-AO-05347

June 3, 2013

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:

This is in response to your request for information regarding the Open Meetings Law, video conferencing, and issues related to notice of such meetings in which videoconferencing is employed.

As you likely know, the Open Meetings Law permits members of public bodies to attend and participate in meetings via videoconferencing. For a member to attend in this manner, the statute requires first, that the public be provided "an opportunity to attend, listen and observe at any site at which a member participates" (§103[c]), and second, that notice of the locations of the meeting, including the location of the member who is attending via videoconference, shall be included in the public notice, pursuant to §104(4). That provision states that:

"If videoconferencing is used to conduct a meeting, 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."

Accordingly, should a member videoconference into a meeting from a remote location, the remote location must be open and accessible to the public. When a location is open to the public, the media cannot be prohibited from attending.

We have advised that it may be unreasonable and therefore contrary to law, for a public body to conduct a meeting in a restaurant, for example. 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...". Entering a restaurant ordinarily involves a purchase, and in our view, attendance at a meeting of a public body should not involve consideration of the ability to pay. 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 commonwealth 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, including the right to attend and listen at a remote location from which a member participates.

In response to questions regarding a requirement that those who attend a meeting provide identification, we note that there is no authority in any law that we know of that would permit a public body to prohibit a person from attending a meeting based on a failure to provide identification. Nor are we aware of a requirement that those who attend public meetings be introduced by name. For information regarding a requirement to identify oneself by name, please see the

opinion at the following link: <http://docs.dos.ny.gov/coog/otext/o3518.htm>

In response to questions regarding last minute changes to either the location or the time of a meeting, please see the opinion at the following link: <http://docs.dos.ny.gov/coog/otext/o4252.htm>

We hope that you find this helpful.

CSJ:mm

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OML-AO-05535

January 31, 2017

TO:

FROM: Robert J. Freeman

RE: AdvisoryOpinion, Videoconferencing

CC:

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, except as otherwise indicated.

As you are aware, I have received your letter and a variety of additional material concerning an issue that has become the subject of controversy and contention.

You indicated that you serve as Chair of the Suffolk County Planning Commission, which will be conducting its annual meeting on February 1, 2017. The issue involves the propriety of a member of the Commission to participate fully by means of videoconferencing while at Kennedy Airport. You acknowledged that "it is permissible for a commission member to participate and vote via videoconference." You added, however, that Valerie Smith, Assistant County Attorney, has suggested that the "the Jet Blue Terminal may not be a proper location...as it is not a 'true' public space." She referred to an opinion rendered by this office that pertained to a situation in which an entire public body met in a restaurant in which it was advised that a meeting in a restaurant was improper because those who enter a restaurant are expected and may be required to make a purchase.

In a separate email addressed to me, you wrote as follows:

"Dennis Brown, Suffolk County Attorney, called me and told me that they were directing me not to allow commissioner to participate from the Jet Blue Terminal and if I did so, it would be under peril. When I requested a written legal opinion to that effect I was advised that they would not give me one."

As chair of a municipal commission, I find it difficult to understand how your position could result in "peril." Further, my understanding is that the County Attorney is not a member of the Commission, that he does not have the authority to direct you or other members to allow or prohibit participation, and that his role in this instance involves offering legal advice, which is yours to accept, reject or modify.

With respect to the issue itself, in my view, participation by a member in the manner described would not be prohibited by or inconsistent with the Open Meetings Law (OML). That statute refers to videoconferencing in §102(1), which defines the term "meeting" to include "the use of videoconferencing for attendance and participation by the members of the public body," in §103(c), stating that "A public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any sit at which a member participates," and in §104(4), which states that if a meeting is to be held by means of videoconferencing, "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 addition, §41 of the General Construction Law entitled "Quorum and majority" states that a meeting may validly be held and a quorum validly convened by means of videoconferencing.

By way of historical background, the enactment of amendments to the OML concerning videoconferencing were preceded by discussions by the Committee on Open Government concerning possible methods of using technology to enhance the operation of that statute in October of 1993 and referenced in its 1994 annual report. At the time, one of the Committee members was serving as a member of a city council, and he sought to distinguish participation by telephonic conferencing from videoconferencing in a somewhat tongue in cheek manner. He said it might be great, for two reasons, to participate by phone from his living room. First, he wouldn't have to face his

constituents. And second, no one would see who's whispering in his ear. The second comment was critical, for the OML's statement of intent refers to the public's right to attend, listen to, and *observe* the performance of those who represent the public. The key, therefore, of the Committee's proposal, which eventually became law, concerned the public's right and opportunity to see its representatives in action during meetings.

For obvious reasons, meetings of a public body optimally should take place in locations at which there is little or no impediment to the members of a public body's attendance, or the public's ability to attend. In many instances, however, distance alone creates an impediment. Nevertheless, that impediment can effectively be eliminated when members of the public in one location, typically the usual location of a public body's meetings, can observe the member or members who participate from a remote location. Meetings have validly been held by means of videoconferencing with members at their second homes in Florida or Arizona, while on vacation in Europe, or when a member remains at his or her residence due to an injury.

From my perspective, there is a distinction between the situation in which all or a majority of the members of a public body seek to meet in a restaurant, and the case in which one member seeks to participate while in Florida, Arizona, Europe, his or her home, or perhaps at an airport. When the entirety of a public body meets in a restaurant, if a member of the public wants to attend, that person has no choice but to do so at that location. Again, in that circumstance, there is an expectation or an obligation to pay for food or service of some sort. That creates a barrier that is, in my view, inconsistent with the intent of the OML. The great majority of meetings are held in a government facility, i.e., a town hall or a county office building, and the reality is that most people interested in attending will do so at the public body's usual meeting location. That one or perhaps two members might be participating from remote locations is generally of little significance when members of the public can attend at the usual, primary location.

In the case of the Planning Commission, the calendar on the County's website indicates that its meetings, and those of its committees, are routinely held at a county facility in Hauppauge. Is there a reasonable likelihood that those interested in the business of the Suffolk County Planning Commission would prefer to attend with the member at the airport rather than at its usual location? In my opinion, it is less than likely that traveling to the airport and paying for parking, which appears to be the primary basis for objecting to a member's participation there, would be the preference of a member of the public. Most, if not all, certainly would prefer to attend in Hauppauge.

During one of our conversations, you informed me that a member of the Commission will likely attend the upcoming meeting via videoconferencing from a location on Shelter Island. To reach Shelter Island, the public must pay to take a ferry, and yet, I am unaware of any objection to that member's participation from the Island. From my perspective, it would be no more unreasonable for a member to participate from Kennedy Airport than it would be to do so from Shelter Island. So long as the public is permitted to attend at any location at which a member participates and can observe the members wherever they may be, I believe that the members may participate and be counted for purposes of attaining a quorum and for voting, and that a meeting may validly be held.

In an effort to resolve the matter, copies of this opinion will be sent to Mr. Brown and Ms. Smith.

I hope that I have been of assistance.

OML-AO-o5535
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OML AO 5575

March 6, 2018

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, except as otherwise indicated.

Dear:

This is in response to your request for an advisory opinion regarding the application of the Open Meetings Law (OML) by the Port Chester Village Board of Trustees.

You raise three questions regarding the use of a "Telephone Conference" for the purpose of attendance and participation in a meeting subject to the OML by a member of a public body. In our opinion, voting and action by a public body may be carried out only at a meeting during which a quorum has physically convened, or during a meeting held by videoconference. In our view, a member of a public body may not attend a meeting by telephone, be counted for quorum purposes, or cast a vote by telephone.

Section 102(1) of the Open Meetings Law defines the term "meeting" to mean "the official convening of a public body for the purpose of conducting public business, including the use of videoconferencing for attendance and participation by the members of the public body." Based upon an ordinary dictionary definition of "convene", that term means:

- "1. to summon before a tribunal;
2. to cause to assemble syn see 'SUMMON'" (Webster's Seventh New Collegiate Dictionary, Copyright 1965).

In view of that definition and others, we believe that a meeting, i.e., the "convening" of a public body, involves the physical coming together of at least a majority of the total membership of such a body, i.e., the Village Board of Trustees, or a convening that occurs through videoconferencing. We point out, too, that §103(c) of the Open Meetings Law states that "A public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any site at which a member participates." These provisions clearly indicate that there are only two ways in which a public body may validly conduct a meeting. Any other means of conducting a meeting, i.e., by telephone conference, by mail, or by e-mail, would be inconsistent with law.

There is no authority to take action outside of a meeting, nor is there any authority to attend a meeting by phone, to be counted for quorum purposes or to cast a vote by phone. In a judicial decision dealing with a vote taken by phone, the court found the vote to be a nullity (*Cheevers v. Town of Union*, Supreme Court, Broome County, September 3, 1998), and in the only decision rendered after the enactment of the legislation pertaining to videoconferencing, it was determined that a vote cast via use of a telephone was a nullity (*Town of Eastchester v. NYS Board of Real Property Services*, 23 AD2d 484 [2005].)

You also raise a number of questions regarding the use of videoconferencing. Your first question is whether the Board may preclude a member from participating in a videoconference. In our opinion, assuming the Village has the technical capability to conduct a meeting via videoconferencing, a blanket prohibition on the use of attendance and participation via that method would be inconsistent with the OML.

With regard to the remainder of your questions regarding the use of videoconferencing, I believe a distinction must be made between public bodies that are governing bodies of local municipalities, such as town boards and village boards, and public bodies that cover a larger geographic area. An example of the latter is the Committee on Open Government. The Committee has statewide jurisdiction and its members are physically located across the state. When the Committee meets, it does so from three locations: Albany, Buffalo, and New York City. The meetings are held at three different state office buildings and, in our view, each location must comply with the requirements set forth in the OML regarding meeting locations:

"Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped, as defined in subdivision five of section fifty of the public buildings law." (§103(b) of the OML)

"Public bodies shall make or cause to be made all reasonable efforts to ensure that meetings are held in an appropriate facility which can adequately accommodate members of the public who wish to attend such meetings." (§103(d) of the OML)

On the other hand, a public body such as the Port Chester Village Board of Trustees, has a primary meeting site located within the village (Village Hall). In our opinion, the primary meeting location where the meetings "are held" must comply with the requirements set forth above. While §103(c) of the OML states that "a public body that uses videoconferencing to conduct its meetings shall provide an opportunity to attend, listen and observe at any site at which a member participates," in my view, this does not require that each site at which a member participates must comply with §§103(b) and 103(d) of the OML.

You raise questions regarding notice of the meetings. Section 104 of the OML sets forth the requirements regarding notice of meetings of public bodies:

"§104. Public notice.

1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given or electronically transmitted 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 or electronically transmitted, 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.
5. If a meeting will be streamed live over the internet, the public notice for the meeting shall inform the public of the internet address of the website streaming such meeting.
6. 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."

There is nothing in the law that would require that signage be posted at each meeting location, but rather that the notice be "posted in one or more designated public locations." The public notice requirements state that the time of the meeting (which would include the videoconference) must be provided. As all meetings subject to the New York State Open Meetings Law would take place at either Eastern Standard Time or Eastern Daylight Time, depending on the time of year, that is the time that should be provided in the notice.

With regard to your question regarding "videoconferencing from places such as a hotel room or lobby or restaurant," please see enclosed copy of OML Advisory Opinion 5535.

You ask whether the Board can require that the member who is participating via videoconference "disclose who is present at the location of the videoconference." Such a requirement would necessitate that attendees identify themselves. Please see enclosed OML Advisory Opinion 5349 regarding the use of sign-in sheets.

In our opinion, a Board could require that members disclose the number of attendees that attend from the location at which a member participates and could require an acknowledgement and affidavit from the member that no one was present with the member during an executive session.

You ask whether the Board may restrict the number of members who can videoconference at any one time at a meeting. Again, this may depend on the Village's technological capabilities. In my view, if the Village has the ability to videoconference with more than one member at a time, it should permit the members to do so.

Your last question is whether the Board may "restrict the number of times a member can videoconference in any given time-period." Any restrictions on the right to attend and participate via videoconferencing must be reasonable. If for example, a Trustee plans to spend winter months in a warmer locale, in my view that Trustee should be permitted to participate via videoconference for those months. If, on the other hand, a Trustee has moved out of the area and plans to participate in every meeting for the remainder of his or her term via videoconferencing, a limitation may be determined to be reasonable.

I hope this information proves useful.

Sincerely,

Kristin O'Neill
Assistant Director

cc: Village Board of Trustees

Enclosures: OML AO 5535
OML AO 5349

OML-AO-o5575
5575

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