



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

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One Commerce Plaza  
99 Washington Ave.  
Albany, New York 12231  
(518) 474-2518  
Fax (518) 474-1927  
<http://www.dos.ny.gov/coog/>

April 26, 1996

Ms. Lucille Held  
83 Pleasant Ridge Road  
Harrison, NY 10528

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 Ms. Held:

I have received your correspondence concerning local laws enacted in 1985 by the Town/Village of Harrison in 1985 applicable to the Town Board and the Village Board of Trustees respectively, and the relationship between those laws and the Open Meetings Law.

The local law pertaining to the Town Board, §65-1, states that:

"Although, by enacting §108. Subdivision 2b of the New York Public Officers Law, the Legislature and the Governor of the State of New York have authorized members of the Town Board of the Town of Harrison who are adherents of the same political party to conduct private meetings at which public business may be discussed, the Town Board has determined that the interests of the town are best served if deliberations on public business are done in a public forum where interested members of the community can participate in the discussion and hear the views expressed by the Supervisor and the Councilmen."

Virtually the same language was enacted to pertain to the Mayor and the Village Board of Trustees by means of Local Law §10-1. Further, the two local laws were enacted on the same date, and it is my understanding that the members of the Town Board and the Village Board of Trustees are one and the same.

In this regard, by way of background, since becoming effective in 1977, the Open Meetings Law contained an exemption pertaining to "political caucuses." When an exemption applies, the Open Meetings Law does not. In construing the scope of the exemption, several courts determined that closed political caucuses exempt from the coverage of the Open Meetings Law could validly be conducted only to discuss political party business; conversely, it was also found that a gathering of a majority of a legislative body held to discuss public business constituted a "meeting" subject to the Open Meetings Law, irrespective of the political party affiliation of those present, rather than a political caucus exempt from the Law [see e.g., *Sciolino v. Ryan*, 81 AD2d 475 (1981)]. In 1985, however, the State Legislature amended the Open Meetings Law. Pursuant to the amendment, §108(2) of the Open Meetings Law exempts "deliberations of political committees, conferences and caucuses" from the Law, and paragraph (b) of that provision states in relevant part that:

"for purposes of this section, the deliberations of political committees, conferences and caucuses means a private meeting of members of the senate or assembly of the state of New York or the legislative body of a county, city, town or village, who are members or adherents to the same political party..."

Due to the amendment, if used to an extreme, majority members of legislative bodies may conduct closed political caucuses to discuss the subjects of their choice, including matters of public business.

In reaction to the change in the Open Meetings Law, many local legislative bodies enacted local laws or adopted policies or rules to ensure that public business is discussed in public, regardless of the political party affiliation of their

members. Via the local laws enacted by the legislative bodies of the Town and the Village clearly in response to the change in the Open Meetings Law, I believe that the Town Board and the Village Board of Trustees, must discuss public business in public, again, irrespective of the political party membership or adherence of their members.

As the local laws relate to the Open Meetings Law, §110 of that statute provides that:

"1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.

2. Any 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.

3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article."

Therefore, a local law may permit greater public access than required by the Open Meetings Law, and that is so with respect to the local laws considered here, for they are "less restrictive with respect to public access" than the Open Meetings Law.

Similarly, with regard to the issue of public participation at meetings of public bodies, the Open Meetings Law clearly provides the public with the right "to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy" (see Open Meetings Law, §100). However, the Law is silent with respect to public participation. Consequently, if a public body does not want to answer questions or permit the public to speak or otherwise participate at its meetings, I do not believe that it would be obliged to do so. On the other hand, a public body may choose to answer questions and permit public participation, and many do so.

In this instance, the local laws include specific reference to the right of the public to speak at meetings, for both state that "interested members of the community can participate in the discussion...". When a public body permits the public to speak, as in the case of the two local laws, I believe that it should do so reasonably and in a manner that treats members of the public equally.

I hope that I have been of assistance.

Sincerely,

Robert J. Freeman  
Executive Director

RJF:pb

cc: Town Board/Village Board of Trustees

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