

Approved October 25, 2010

Open Meeting Law Advisory Commission  
Meeting Minutes  
September 10, 2010

Convened at: 10:10am

Members present: Peter Hechenbleikner, Loretta Lillios, Robert Ambrogi, Rep. Steven Walsh

Members absent: Sen. Brian Joyce

Staff present: Britte McBride, Director, Division of Open Government, Attorney General's Office; Jonathan Sclarsic, Assistant Attorney General, Attorney General's Office

Meeting opened by Britte McBride, Director of Division of Open Government

Introductions of members and staff present

Report by Britte McBride

Attorney General Office took over enforcement for all public bodies on July 1, 2010. The AGO is in the process of finalizing regulations for Oct. 1, 2010. The Division of Open Government has published an Open Meeting Law Guide. The Division has also engaged in over 10 trainings, with more scheduled, including several municipal organizations. At the trainings, the Division gives an overview of the law, explaining specific provisions where individuals have contacted office with questions.

The Division provided a legislative briefing on August 4<sup>th</sup> for legislators and staff at the State House. The training provided an overview of the law, and explained that the Division is available as resource for legislators and their constituents.

The Attorney General's website has been updated to include resources on the OML. The Division will continue to update the website and provide more resources.

About 75% of the work of the Division is answering questions from members of public bodies and public officials about the OML.

Over the course of next several months the Division will be issuing requests for comments on particular provisions of the statute where the AG has authority to promulgate regulations. Example is Remote participation; a request for public comment was issued on Aug. 31<sup>st</sup>.

Questions:

Robert Ambrogi – How have you been handling the transfer of OML cases from the District Attorneys?

Britte McBride – The Attorney General’s Office has reached out to the DAs to get a sense of what cases were before them. There was a transition period in the month of June; and some cases may still be with the DAs which were filed before July 1. McBride offered to check in with the DAs.

### Electing a Chair

Britte McBride requests motion for nominations for chair.

At the request of Mr. Hechenbleikner, Britte McBride explained the role of the chair: Provide advice to the Division on regulations, help get word out about OML, set meeting schedules and agenda

A suggestion was made by Mr. Ambrogi to agree that the initial chairperson would serve until the end of the 2010. **Agreed to by consensus of the Commission.**

Loretta Lillios said she is willing to take on the initial role, that she has long term working knowledge of the statute, and would be willing to facilitate communication.

**Motion by Rep. Walsh nominating Loretta Lillios, Second by Peter Hechenbleikner, unanimous voice vote approving election of Loretta Lillios as Chair of the Commission for a term expiring 12-31-10.**

Agreement to wait on electing a secretary for a future meeting.

### Summary of Comments received on Emergency Regulations

Britte McBride presented

The Division held four public hearings, with a public comment period held until Aug. 18<sup>th</sup>. There were 45 individuals and organizations who presented comments and 24 individuals provided testimony. The Division has reviewed the comments and has been taking those comments into consideration. Many comments received were related to the OML but not the emergency regulations, and those comments will be considered for future subjects, such as remote participation.

McBride handed out Summary of the Comments

Question by Mr. Hechenbleikner: Is there consideration by the Attorney General for legislative fixes to the current OML statute?

Ms. McBride: AG is concerned with regulations. It is up to the Legislature to make fixes. While the Division could contemplate amendments, it is ultimately not something the AG has control over.

Mr. Ambrogi: Will you be considering advisory opinions?

McBride: Yes, some questions may be addressed by advisory opinion. The definition of public body, for example. There is a lot of material the Division is considering for providing advisory opinions

Mr. Hechenbleikner: Can communities rely on advisory opinions as if they are law?

Ms. McBride: The OML statute authorizes the AG to interpret and enforce the law, so an advisory opinion would be viewed as the AG's interpretation of the law.

Rep. Walsh: Several towns don't have a clerk's office and there is concern the town won't be in compliance with the requirements of the OML.

Ms. McBride: A major goal for division is to try and help people comply to the best of their abilities. We talk daily with communities.

Ms. Lillios: Are the priorities for the Division to focus on the items set out in this summary of public comments, and to see to what extent there is consensus?

Ms. McBride: In terms of priorities, after the regulations, remote participation is the next issue. It is an issue that the DAs did not all agree on, and the Division is looking to lend some consistency.

Mr. Hechenbleikner: Surprise that there is a question over the definition of public bodies.

Ms. McBride: The Division is looking at a number of factors to determine whether an entity is a public body, including formality.

Ms. Lillios: Can the Division share with Commission the comments on remote participation and provide summary of comments? It would be helpful to know who the Division is hearing from.

Ms. McBride: Yes.

Mr. Ambrogi: Would it be possible to put written comments on the Division's website?

Ms. McBride: The Division is considering this.

Mr. Hechenbleikner: How do you publicize the request for public comments?

Ms. McBride: The Division contacts stakeholders and those who have previously contacted us with questions or commented on this issue. The Division sent an initial email, and encourage circulation, for example to municipal clerks, state agencies, the Mass. Municipal Association, and Mass. Newspaper Publishers Association.

Ms. McBride: We would love feedback on the OML website. If you hearing comments on how the website could be improved, we would welcome those comments.

Mr. Ambrogi: What is the role of this Commission; would there be deliberation and a recommendation to AG?

Ms. McBride: Yes, and even where there is not a consensus opinion, all perspectives would be helpful, even majority and minority opinions.

Ms. Lillios: Envision the Commission reviewing comments before the next meeting, and it would be good to have a summary of where the different DAs offices stood on this issue.

### Goals of The Commission

Mr. Ambrogio: What role might the Commission play in advancing legislation?

Rep. Walsh : That is why we are here. There are 30 or 40 pieces of legislation filed this year on the OML. If this group finds consensus before January, there would be interest in filing legislation, but there will be credibility if this group comes up with key items; also if the AG would like legislative fixes.

### Scheduling Next Meeting

**Friday Oct. 22<sup>nd</sup> at 10am agreed for next meeting.**

Ms. Lillios will circulate a proposed agenda, then send to Division for posting.

Mr. Hechenbleikner: Can members of the Commission delegate someone to stand in for them?

Ms. McBride: Wording of the statute does not allow legislators to designate, but members of the public may come and not vote.

Mr. Hechenbleikner: Can representatives of a Commission member participate in discussion, or only observe?

Ms. Lillios: A representative of a commission member should be recognized if a commission member is not there.

Mr. Ambrogio: Agreed, as long as voting restrictions.

### Topics not reasonably anticipated

Jeff Spears: Can public bodies use “Open session for topics not reasonably anticipated 48 hours in advance of the meeting” as an agenda item?

Ms. McBride: Yes

Mr. Baker: Are there attorneys designated to answer questions on the OML?

Ms. McBride: Our Division answers those questions.

### **Motion to Adjourn**

**Moved by Ms. Lillios seconded by Mr. Hechenbleikner**

### List of Documents And Exhibits Used by Commission

Meeting Notice

Summary of Comments on Emergency Regulations

Request for Comments on Remote Participation