

COMMITTEE ON OPEN GOVERNMENT

STATE OF NEW YORK
DEPARTMENT OF STATE
ONE COMMERCE PLAZA
99 WASHINGTON AVENUE
ALBANY, NY 12231-0001
TELEPHONE: (518) 474-2518
FAX: (518) 474-1927
WWW.DOS.NY.GOV/COOG/

COMMITTEE MEMBERS

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FRANKLIN H. STONE

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SHOSHANAH BEWLAY

Via Electronic Mail Only

March 5, 2021

Tim Becker
tim@mohawkvalleycompass.com

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 Mr. Becker:

I am writing in response to your request for an advisory opinion regarding the application of the Open Meetings Law (OML) to a meeting of the City of Amsterdam Common Council.

In general, you raise concerns regarding the Council's procedure for entering into executive session. Specifically, your request for an opinion poses three questions:

- 1) Was the executive session held on October 20, 2020 lawfully and/or properly convened?
- 2) Did the official minutes of the same meeting lawfully and/or properly record the motion to convene the executive session?
- 3) In regards to the responses of the corporation counsel and city clerk, does discussion of the subject of an upcoming executive session during a preceding committee meeting, or discussion of the subject after the session have any bearing on the lawfulness or propriety of the actual motion to convene the meeting, or justify modifying the minutes to include words which were not actually spoken as part of the motion?

First, it is important to note that the Committee on Open Government is authorized to provide advice and opinions regarding the Freedom of Information Law and OML. Neither the Committee, nor its staff, is authorized to make determinations of "lawfulness." Only the courts, through the initiation of a Civil Practice Law and Rules Article 78 proceeding, have the authority to determine whether a violation of law has occurred.

As you are aware, the Committee has prepared a number of advisory opinions relating to the sufficiency of a motion to enter executive session (see [here](#) under key phrase "Executive Session, Sufficiency of Motion"). The Committee encourages board members to include in its motions enough information about the intended topic(s) of discussion for executive session to allow both the public and fellow board members to be confident that the discussions are within the parameters of the law. However, the motion need not include so much information that it would defeat the purpose of having the discussion behind closed doors.

Based on my review of the meeting recording, it appears that while the actual motion was brief and only included a reference to the applicable section of the statute, the Council did make clear on more than one occasion, both before and after the executive session, that the intent of the executive session was to conduct auditor interviews. In my opinion, given the full context of the meeting, the Council complied with

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the spirit of the advice of the Committee, as well as applicable court decisions, in that both the Council and the public were provided sufficient information to be ensured that the executive session was being held for a proper purpose.

Section 106 of the OML requires that “[m]inutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.” The purpose of these minutes is to provide the City and the public with an accurate record of actions taken at the meeting. While I agree that it does not appear that the Council included any reference to auditor interviews in the actual motion to enter executive session, the Council did make clear at other times during the meeting it that was the stated goal of the session to conduct those interviews. In my opinion, it was reasonable for the Clerk to include a reference to the interviews in the minutes in order to provide a more detailed record of what was discussed.

I hope this information proves useful.

Sincerely,

Kristin O’Neill
Assistant Director

cc: Anthony Casale, Esq.