

Timothy Becker  
155 Stewart Street  
Amsterdam, NY 12010  
March 1, 2021

NYS Committee on Open Government  
Department of State  
One Commerce Plaza  
99 Washington Avenue, Suite 650  
Albany, NY 12231

To whom it may concern:

I would like to request an advisory opinion from the New York State Committee on Open Government on an issue regarding a motion to convene an executive session during a public meeting of the Amsterdam Common Council on October 20, 2020 and the subsequent recording of the motion in the official minutes.

This is a transcription of the dialogue pertaining to the convening of an executive session at the beginning of the regular meeting on October 20, 2020 at 6:00pm which I attended.

**Mayor Michael Cinquanti:** At this time we have a request to go into executive session

**Corporation Counsel Anthony Casale:** [Partially inaudible] public officer's law section 105-1f.

**Alderman Pat Russo:** I'll make a motion to go into executive session.

[The council members then voted unanimously in favor of the motion.]

**Me:** Could you state for the record the exact reason for the executive session?

**Corporation Counsel Anthony Casale:** Public officer's law section 105-1f

[All members of the public and press then exited the meeting room]

After the session was over, I challenged the validity of the motion, and I discussed it with Casale and Alderman Jim Martuscello during the public comments portion of the meeting. Casale said he disagreed with my view and pointed out that the reason for the session, to hear proposals from two accounting firms competing for a city contract, was discussed in a preceding committee meeting (held from 5:30pm to 6:00pm). During the exchange, Martuscello also said that the reason for the meeting was to interview two accounting firms.

I have attached an email correspondence with the corporation counsel that happened the next day about the issue. It's not disputed that the reason for executive session was mentioned in a preceding committee meeting and during the public comments portion of the meeting after the session was over.

Furthermore, on October 27, 2020, I requested a copy of the minutes from the meeting from City Clerk Stefanie Lenkowitz who promptly sent them to me via email. According to the official minutes, the motion was recorded as:

#### EXECUTIVE SESSION

Alderman Russo made a motion to enter Executive Session at 6:01PM regarding Public Officers Law 105.1F to conduct interviews with Auditors. Alderman Martuscello made a motion to exit Executive Session at 6:40pm.

I asked Lenkowitz why the motion was not recorded in the minutes the way it actually happened. I have attached a copy of that email conversation below.

Even after bringing the discrepancy to the attention of the mayor and council, the minutes were approved unchanged by resolution at the next regular council meeting, and the resolution was signed by the mayor.

My questions are:

- 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?

While the corporation counsel has stressed that the city has been “transparent” with the purpose of the executive session, I am not challenging whether the actual reason, as finally determined through additional conversation, was valid or not. It concerns me as a matter of principle that the intent of the open meeting law was not followed procedurally here and that it’s important that this does not set a precedent. It’s difficult for me to tell whether the corporation counsel and elected officials realize their errors and are simply being defensive, or if they actually think there is no issue. A clear opinion from the committee would be helpful in informing both the city government, the press, and public. Thank you for your time!

Sincerely,  
Timothy Becker  
155 Stewart Street  
Amsterdam, NY 12010  
(518) 248-4134  
tim@anthemwebsites.com

### **Attachments:**

1. Links to video of committee meeting and regular meeting on October 20, 2020 (in two parts)

#### **Part 1:**

<https://fb.watch/3ZgS1qT9dy/>

Committee of the Whole (COW) Meeting is at the beginning

Regular meeting starts at 21:44

Motion to go into executive session is at 22:33.

Meeting reconvenes at 1:04:15

#### **Part 2:**

<https://fb.watch/3Zg-Pqyne0/>

My discussion with corporation counsel during public comments at 1:31

2. Email response from Corporation Counsel Antony Casale

3. Official minutes of the October 20, 2020 meeting from the city clerk’s office (separate pdf attachment to this email)

4. Email response from City Clerk Stefanie Lenkowitz in regards to question about inaccuracy in the minutes

**Attachment 2:** Email response from Corporation Counsel Antony Casale

Note: I dispute the sentence that Casale wrote below - "indicated to me that you did not hear it" – this is not an accurate characterization

**From:** Anthony Casale <casalelawfirm@gmail.com>

**Sent:** 10/21/20 4:48 PM

**To:** tim@anthemwebsites.com

**Cc:** "mcinquanti@amsterdamny.gov" <mcinquanti@amsterdamny.gov>, Patrick Russo <prusso@amsterdamny.gov>, James Martuscello <meema@nycap.rr.com>, Irene Collins <icollins@amsterdamny.gov>, David Gomula <DGomula@amsterdamny.gov>, Stephen Gomula <SGomula@amsterdamny.gov>

**Subject:** Re: Executive session issue

Mr. Becker,

The subject matter was discussed last night. It was contained within the first 2 minutes of your broadcast from the COW. It was discussed again in a dialogue between Mayor Cinquanti and Chet(sp?) about whether or not the accountants would be speaking in executive session and whether or not he could observe that portion of the meeting. You were there. You and I spoke after the Common Council meeting and you indicated to me that you did not hear it and that it was "chatter". I must respectfully disagree with you.

Following our dialogue after the meeting, I made a point to watch the meeting again on your social media page when I arrived home last night. I am sure you watched it as well. I can only say that I am perplexed by your position at the current time. The City was completely transparent in its actions. I do not see an issue here.

I wish you only the best and applaud your reporting on the City of Amsterdam (from what I have read). Be well and do whatever you believe you need to do. Best regards, Tony

Very truly yours,

Anthony Casale  
Casale Law Firm, PLLC  
29 West Fulton Street  
P.O. Box 626  
Gloversville, New York 12078  
[\(518\) 725-5800](tel:5187255800)

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On Wed, Oct 21, 2020 at 4:31 PM Tim Becker/Anthem Websites <[tim@anthemwebsites.com](mailto:tim@anthemwebsites.com)> wrote:  
Common council members, mayor, corporation counsel:

After consulting NY State's Committee on Open Government website, which lists many previous court cases that interpret and clarify the NY State Open Meeting laws, I am absolutely sure I was right to voice my concern that the council was not in compliance with the law when it convened it's executive session on October 20, 2020

In short, courts have consistently ruled that simply reciting a section of the law as the subject of an executive session is not sufficient. Therefore it is only logical to conclude that merely stating the numbers/letters of the section/chapter/paragraph of the law, as the corporation counsel did, is even less sufficient.

Furthermore, there is no justification for the stance mentioned by the corporation counsel that what you discussed at the preceding committee meeting had any bearing on the required motion during the regular meeting to convene an executive session.

I've included excerpts and links to the court cases referenced by the committee website, and I believe it's very clear-cut. I hope you all take some time to look at it.

Although I realize that the council relies on advice from the corporation counsel, it is ultimately up to the mayor and council to make sure that meetings are conducted in compliance with the NY State Open Meeting Law. The corporation counsel can advise and suggest a motion, but it is up to a council member to make the actual motion to be voted on.

I would implore all of you, to make sure that the next time an executive session is required, a council member makes a motion containing a reasonably specific subject for the session.

I will be writing about this at some point this week. I already have the corporation counsel's rebuttal on record. If anyone else would like to add their comment, feel free to message or call. Thank you.

In a case decided by Schoharie County Supreme Court,

"...any motion to go into executive session must "[identify] the general area" to be considered. It is insufficient to merely regurgitate the statutory language; to wit, "discussions regarding proposed, pending or current litigation." This boilerplate recitation does not comply with the intent of the statute."

<https://www.leagle.com/decision/1981414111misc2d3031361>

This court case was later cited and reiterated by a NY State Appellate Division court opinion

"...the public body must identify the subject matter to be discussed (See, Public Officers Law § 105 [1]), and it is apparent that this must be accomplished with some degree of particularity, i.e., merely reciting the statutory language is insufficient."

<https://docs.dos.ny.gov/coog/otext/o4292.htm>

Tim Becker  
Mohawk Valley Compass  
518 248 4134

**Attachment 3: Official minutes of the meeting (separate pdf attachment)**

**Attachment 4: Email response from City Clerk Stefanie Lenkowicz in regards to question about inaccuracy in the minutes**

**From:** Stefanie Lenkowicz <slenkowicz@amsterdamny.gov>  
**Sent:** 10/27/20 12:06 PM

**To:** "tim@anthemwebsites.com" <tim@anthemwebsites.com>

**Subject:** RE: Request for minutes

Hi Tim, At the very beginning of the meeting this was discussed when letting the public know that the meeting would be after the Executive Session. I believe it was Chet who was inquiring because he was unclear whether or not this meant that he would be able to speak at that meeting.

Also, Alderman Martuscello and the Mayor also both directly stated that there were auditors present and they were here for interviews.

At the time of calling for the Executive Session Corporation Counsel only citing 105.1F Public Officers Law, but the Auditor Interview was mentioned both before and after the session.

Does this help?

Thanks,

Stefanie



**Stefanie Lenkowicz- City Clerk**

City of Amsterdam  
61 Church Street  
Amsterdam, NY 12010  
Tel: (518) 841-4305  
Fax: (518) 842-6802  
<http://www.amsterdamny.gov>

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Thank you for your cooperation.

**From:** Tim Becker/Anthem Websites <tim@anthemwebsites.com>

**Sent:** Tuesday, October 27, 2020 11:39 AM

**To:** Stefanie Lenkowicz <slenkowicz@amsterdamny.gov>

**Subject:** RE: Request for minutes

Thanks. Now I have to ask - under "executive session" how did the text "to conduct interviews with Auditors" get added? Because I didn't hear those words spoken during the regular meeting.

You can give me a call if needed.

Tim Becker  
Mohawk Valley Compass  
518 248 4134

**From:** Stefanie Lenkowicz <[slenkowicz@amsterdamny.gov](mailto:slenkowicz@amsterdamny.gov)>  
**Sent:** 10/27/20 11:32 AM  
**To:** "tim@anthemwebsites.com" <[tim@anthemwebsites.com](mailto:tim@anthemwebsites.com)>  
**Subject:** RE: Request for minutes

Hi Tim, here are the minutes from 10/20/2020.



## **Stefanie Lenkowicz- City Clerk**

City of Amsterdam  
61 Church Street  
Amsterdam, NY 12010  
Tel: (518) 841-4305  
Fax: (518) 842-6802

<http://www.amsterdamny.gov>

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Thank you for your cooperation.

**From:** Tim Becker/Anthem Websites <[tim@anthemwebsites.com](mailto:tim@anthemwebsites.com)>  
**Sent:** Tuesday, October 27, 2020 11:27 AM  
**To:** Stefanie Lenkowicz <[slenkowicz@amsterdamny.gov](mailto:slenkowicz@amsterdamny.gov)>  
**Subject:** Request for minutes

Hello, I'd like to have an official version of the minutes of the last regular common council meeting on October 20. In particular, I'm looking for exactly how the motion to go into executive session was recorded in the minutes, I don't necessarily need minutes of the entire meeting. If you can send a document, that would be preferable, or if I have to pay for a hard copy, I can do that too, just let me know. Thank you!

Tim Becker  
Mohawk Valley Compass  
518 248 4134