

# Notes from Meeting with Roger Allen, Assistant City Attorney

119 E Olin Ave, Tom Heikkinen's Office

4/23/2009, 3:00 p.m.

At the Board meeting on March 24, 2009, the issue of negative quorum was discussed and it was recommended that Tom Heikkinen contact Roger Allen in the City Attorney's Office for advice on this issue. The following are the notes from what Roger Allen advised in a meeting with Tom Heikkinen on April 23, 2009.

## Negative Quorum

The issue with negative quorum is that it is determined in hindsight. One never knows if a negative quorum existed until an actual vote is taken on an item.

A negative quorum may exist whenever enough members of the body are present such that they could later affect, either negatively or positively, the business of the body.

In a 7 member committee, the quorum for action is 4 and the smallest possible negative quorum is 2. This is because if there were only 4 members voting on an item, 2 could block action. This could happen when only 4 members attend a meeting, or when members abstain so that there are only 4 votes on an item. In a 4-vote situation, if 2 members voted together to block action and they had discussed the business to come before the Board outside of a publicly noticed meeting, those members violated the Open Meetings Law.

To avoid violating the law, 2 or more members of the Board should refrain from discussing committee business outside of a publicly noticed meeting.

## Some important requirements for an open meeting:

Must provide at least 24 hours notice.

- Notice is a published agenda physically posted on the City Clerk's Office bulletin board.
- The agenda must include the time, date, place, and specific subject matter(s) to be discussed. The agenda items should include enough detail that an average person could identify the specific topics to be discussed. The more controversial an item is, the more detail is required.
- Only items on the agenda can be discussed at an open meeting. Items that a citizen introduces during public comment may be explored by asking questions of the citizen, but no action may be taken on those comments.

Must be held in a public place

The public place must have sufficient handicap parking, be accessible, and be able to accommodate a reasonable anticipation of the crowd. Businesses are not recommended because they may not meet these requirements. Meetings can also inconvenience a

business if parking spaces and tables are occupied for long periods of time and those participating in the meeting buy very little (or nothing at all).

### **Recommendations for meetings:**

Meetings for the specific purpose of gathering public input could be held in library conference rooms all over the city. This makes the meetings more accessible to more of the public and would avoid an appearance of partiality to a particular area or neighborhood.

### **Communications that don't violate open meetings law**

- Pen and paper letters. These are open records, and the law distinguishes between a paper letter and an e-mail, phone call, or face-to-face conversation.
- Non-committee related conversations.

### **Subcommittees**

- Subcommittees should be formally created by the Board to avoid the issue of de facto subcommittees.
- Subcommittee members who are not Board members must be explicitly approved by the Mayor and Common Council.

### **Setting Agendas for Board Meetings**

In most other committees, board members send agenda submissions to a staff person. The staff person then compiles those submissions into a draft agenda for the chair's review and approval. This avoids the issue of quorum for meetings and e-mails.