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State of Louisiana

DEPARTMENT OF JUSTICE

Rel. 10/18/85

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NEW ORLEANS 70112-2096

October 25, 1985

OPINION NO. 85-789

90-B-4 - PUBLIC MEETINGS - State and Local Governing Bodies. Comprehensive Discussion of the provisions pertaining to executive session found in La.R.S. 42:6 and (Open Meetings Law) Title 42.

Dr. Rose Loving
President
Orleans Parish School Board
4100 Touro Street
New Orleans, Louisiana 70122

Dear Dr. Loving:

We are providing this opinion in order to clarify some questions that have been raised on the conduct of meetings by the Orleans Parish School Board. As you know the enforcement provisions of the Open Meetings Law, La.R.S. 42:10, mandate this office to institute proceedings unless written reasons are given as to why suit should not be filed.

After meeting with the attorney for the Orleans Parish School Board, it was agreed that this opinion would serve as a guideline for the future conduct of meetings of the Orleans Parish School Board.

Specifically, a detailed analysis of the official minutes provided by your office discloses what we consider to be a failure to comply with the letter of the provisions pertaining to executive sessions found in La.R.S. 42:6 which states as follows:

A public body may hold executive sessions upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to R.S. 42:7, of two-thirds of its constituent members present. An executive session shall be limited to matters allowed to be exempted from discussion at open meetings by R.S. 42:6.1; however, no final or binding action shall be taken during an executive session. The vote of each member on the question of holding such an executive session and the reason for holding such an executive session shall be recorded and entered into the minutes of the meeting. Nothing in this Section or R.S. 42:6.1 shall be construed to require

that any meeting be closed to the public,
nor shall any executive session be used
as a subterfuge to defeat the purposes
of R.S. 42:4.1 through R.S. 42:8.

Section 6.1 lists the exceptions which are as follows:

A. A public body may hold an executive session pursuant to R.S. 42:6 for one or more of the following reasons:

1) Discussion of the character, professional competence, or physical or mental health of a person, provided that such person may require that such discussion be held at an open meeting, and provided that nothing in this Subsection shall permit an executive session for discussion of the appointment of a person to a public body.

2) Strategy sessions or negotiations with respect to collective bargaining, prospective litigation after formal written demand, or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public body.

3) Discussion regarding the report, development, or course of action regarding security personnel, plans, or devices.

4) Investigative proceedings regarding allegations of misconduct.

5) Cases of extraordinary emergency, which shall be limited to natural disaster, threat of epidemic, civil disturbances, suppression of insurrections, the repelling of invasions, or other matters of similar magnitude.

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7) Discussions between a city or parish school board and individual students or the parents or tutors of such students, or both, who are within the jurisdiction of the respective school system, regarding problems of such students or their parents or tutors; provided however that any such parent, tutor, or student may require that such discussions be held in an open meeting.

8) Or any other matters now provided for or as may be provided for by the legislature.

Our analysis of the official minutes and notices also discloses what we consider to be a failure to comply with the letter of the provisions found in La.R.S. 42:7(A) which states as follows:

A. (1) All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of their regular meetings, if established by law, resolution, or ordinance, at the beginning of each calendar year. Such notice shall include the dates, times, and places of such meetings. All public bodies, except the legislature and its committees and subcommittees, shall give written public notice of any regular, special, or rescheduled meeting no later than twenty-four hours before the meeting. Such notice shall include the agenda, date, time, and place of the meeting, provided that upon approval of two-thirds of the members present at a meeting of a public body, the public body may take up a matter not on the agenda. In cases of extraordinary emergency, such notice shall not be required; however, the public body shall give such notice of the meeting as it deems appropriate and circumstances permit.

(2) Written public notice given by all public bodies, except the legislature and its committees and subcommittees, shall include, but need not be limited to:

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(a) Posting a copy of the notice at the principal office of the public body holding the meeting, or if no such office exists, at the building in which the meeting is to be held; or by publication of the notice in an official journal of the public body no less than twenty-four hours before the meeting.

(b) Mailing a copy of the notice to any member of the news media who requests notice of such meetings; any such member of the news media shall be given notice of all meetings in the same manner as is given to members of the public body.

The following instances outline apparent violations with regard to the Board's executive sessions, notices, minutes and voting as required under the Open Meetings Law.

1. On August 21, 1985, the Board posted a notice at 2:35 p.m. for a special meeting to be held at 9:30 a.m. on August 22, 1985. This violated the twenty-four hour notice requirement of R.S. 42:7(A)(1). The notice described the agenda for the meeting as follows:

THE BOARD WILL RECESS INTO EXECUTIVE SESSION
TO DISCUSS NEGOTIATIONS, PERSONNEL AND/OR
LITIGATION.
THE BOARD WILL CONSIDER ANY EMERGENCY MATTERS
WHICH MAY BE PRESENTED BY THE SUPERINTENDENT
AND/OR BOARD MEMBERS.

At the August 22 meeting the Board considered Principalships; Classroom Renovations for Severe Profound Class - Henderson (Proposal 4983); Pianos-Reed (Proposal 5009); Science Equipment/-Supplies (Proposal 5010); Furniture for Fannie C. Williams (Proposal 5013); Portable Partitions - Ferncrest (Proposal Emergency); Amendment to Capital Budget: Fisk-Howard School; Replacement Chiller -Fisk Howard (Proposal Emergency); Lafon Site.

The Board then recessed into executive session to consider negotiations, personnel and/or litigation. When the meeting reconvened, the budget document was received with little or no discussion. The minutes do not reflect that any vote was taken

to take up this matter. This violated the requirement of R.S. 42:7(A)(1) that two-thirds of the Board members present must approve the taking up of a matter not on the agenda. In addition, as the twenty-four hour notice requirement was violated, the executive session was a violation of R.S. 42:6.

2. On August 28, 1985 the Board posted a notice at 2:40 p.m. for a meeting to be held at 5:00 p.m. that day. Again the twenty-four hour notice requirement of R.S. 42:7(A)(1) was violated. The notice stated:

THE PURPOSE OF THE SPECIAL MEETING IS FOR
THE BOARD TO RECESS INTO EXECUTIVE SESSION
TO DISCUSS NEGOTIATIONS/PERSONNEL AND LITI-
GATION.

At the meeting the Board went into executive session to consider negotiations, personnel and litigation, and the minutes do not reflect any other business conducted. La.R.S. 42:6 allows a public body to hold an executive session "at an open meeting for which notice has been given pursuant to R.S. 42:7..." As the notice requirement was not complied with, the executive session of August 28 violated R.S. 42:6.

3. On September 5, 1985 the Board reconvened the special meeting recessed from September 4, 1985. The minutes of the September 5, 1985 meeting state, "Mr. Koppel had participated in the executive session." However, no executive session is reported in the September 4 or 5 minutes. Apparently, the Board entered executive session on either September 4, 1985 or September 5, 1985 without recording a vote to enter executive session.

4. On September 5, 1985, the Board posted a notice for the regular meeting on September 9, 1985 stating:

THE BOARD WILL CONVENE AT 6:30 P.M. AND
RECESS IMMEDIATELY INTO EXECUTIVE SESSION
TO CONSIDER NEGOTIATION/PERSONNEL AND LITIGA-
TION.

The September 9, 1985 meeting was convened at 6:05 p.m., contrary to the notice. The Board recessed twice into executive session to consider personnel, negotiations and litigation.

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5. On September 6, 1985 the Board posted a notice for a special meeting on September 10, 1985 stating:

THE PURPOSE OF THE SPECIAL MEETING IS TO RECEIVE SEALED BIDS FOR THE PURCHASE OF SEVENTY-FIVE MILLION DOLLARS (\$75,000,000) OF ORLEANS PARISH PUBLIC SCHOOL SALES AND USE TAX BONDS, SERIES 1985, AND TO TAKE APPROPRIATE ACTION ON MATTERS PERTAINING THERETO.

At the September 10, 1985 meeting the School Board also considered appointments of Assistant Principals, which was not included in the notice of the meeting as required by R.S. 42:7(A)(1). The minutes do not reflect that two-thirds of the members present approved the matter to be taken up, as is required by R.S. 42:7(A)(1).

The meeting then was recessed into executive session to discuss personnel, negotiations and/or litigation.

6. On September 16, 1985 the Board convened a regular meeting. The meeting recessed into executive session to consider negotiations, personnel and litigation, without further description of the matters to be discussed.

7. On September 17, 1985, the Board reconvened the regular meeting of September 16, 1985. The meeting recessed into executive session to discuss personnel, negotiations and litigation.

8. On September 25, 1985, the Board posted a notice for a special meeting on September 30, 1985 stating:

THE BOARD WILL RECESS INTO EXECUTIVE SESSION TO CONSIDER PERSONNEL/NEGOTIATIONS AND LITIGATION.
THE BOARD WILL ALSO CONSIDER ANY EMERGENCY ITEMS THAT MAY BE PRESENTED BY THE SUPERINTENDENT AND/OR BOARD MEMBERS.

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On September 30, 1985 the Board convened a special meeting to consider personnel, negotiations and litigation. The Board discussed Authorization to submit revised CIA, Chapter 2, Application to State Department of Education for approval; Administrative Appointments; Cafeteria Tables and Chairs-Reed (Proposal 5008); Approval to Purchase Computer Equipment for the Department of Finance and Budget; Participatory Incentive Capital Projects; Allocation of Funds for Overtime; Administrative Review of the Budget Process; Management Response to the Final Management Letter; Summary of Amendments to the Adopted Budget; Detailed Breakdown of Carryover Funds. The matters discussed at the September 30, 1985 meeting were not noticed and the minutes do not reflect that the matters were approved by a two-third vote to be taken up as required by R.S. 42:7(A)(1).

The meeting of September 30, 1985 recessed into executive session to consider personnel, negotiations and litigation. Upon reconvening the Board discussed the proposed February 1, 1986 ad valorem tax millage election and the Board's advertisement and information campaign. The ad valorem tax millage election issue was not noticed on the agenda, and the minutes do not reflect that the matter was approved by a two-thirds vote to be taken up as required by R.S. 42:7.

Further, the ad valorem tax millage election issue was apparently discussed in the executive session.

9. On October 5, 1985, the entire Board met at the Windsor Court Hotel, New Orleans, Louisiana at 8:00 a.m. in Room 418. There was no public notice to this meeting as required by R.S. 42:7. No special meeting was convened as required by R.S. 42:5 and R.S. 42:6. Also in attendance at the meeting was a representative of Ventures for Excellence, a firm which had been contracted to help in the search for a new Superintendent of Schools. La.R.S. 42:6.1 states that "nothing in this Subsection [R.S.42:6.1] shall permit an executive session for discussion of the appointment of a person to a public body." Concerning the selection of a new superintendent, we refer you to Opinion Number 80-608 (copy attached).

Furthermore, a "Meeting" means the convening of a quorum of a public body to deliberate or act on a matter over which the public body as an entity has supervision, control, jurisdiction, or advisory power. La.R.S. 42:4.2(A)(1).

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Discussion at the meeting also extended to matters of the appropriation of money for an advertising campaign and the content of election material and pamphlets. The entire meeting was improper.

When entering executive session, it is insufficient to state that it is for the purpose of considering "personnel, negotiations and/or litigation." R.S. 42:6 states that the executive session shall not be used as a subterfuge to defeat the purpose of the Open Meetings Law. Each time, since August 22, 1985, that the Board has recessed into executive session, the reason stated was "personnel, negotiations and/or litigation."

To be in compliance with the statute, the Board must take a vote (two-thirds) to enter executive session and specific reasons must be recorded in the minutes. Only those matters recorded in the minutes may be discussed in that executive session.

If matters of discipline or other private personnel issues are to be discussed, they must be stated in the minutes as "Personnel matters concerning an individual high school teacher's dismissal." No names are required if to disclose the names would be a violation of the employee's rights or would be unnecessarily embarrassing. Specific reference can be made to the level of employee and subject matter without naming the individual.

If matters of contract negotiations are to be discussed, they must be stated in the minutes as "Negotiation of UTNO Teacher's Contract Reopener for fiscal year 1985-86." Only if the negotiations would be seriously jeopardized should the type of negotiations be kept secret. This should be done only after advice from counsel and only in the most extreme circumstances.

If matters of litigation are to be discussed, they must be stated in the minutes as "John Q. Public v. Orleans Parish School Board, No. 85-00001, Civil District Court -- Trial preparation." Litigation must be named by title, number, court, and stage of litigation. Nothing in this opinion should be construed to require the disclosure of information which would jeopardize the litigation. If the listing of such information would jeopardize the litigation, then it may be omitted. This should only be done on the advice of counsel.

Merely stating that executive session is to consider "personnel, negotiations and/or litigation" is a subterfuge to the Open Meetings Law. It is in the public interest to know what matters are to be discussed in executive session.

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The September 5, 1985 meeting also failed to record a vote to enter executive session. This violated R.S. 42:7.1(A)(3). Executive session can only be called from a noticed public meeting, must be voted by a two-thirds vote and that vote must be recorded in the minutes of the meeting.

All special meetings must be convened following twenty-four hour notice. The meeting noticed on August 28, 1985 at 2:40 p.m. for a 5:00 p.m. meeting that day is a violation of R.S. 42:7.

The notice given must state an agenda. This agenda must also state with specificity what matters are to be discussed. Merely to state that "The Board will consider any emergency matters which may be presented by the Superintendent and/or board members," is vague and, thus, not proper notice. The notice must be specific as to what matters will be discussed.

The special meeting should not be treated as a regular meeting. This clearly means that special meetings should not be regularly used to conduct the routine business of the Board. Matters not on the agenda should only be taken up if there is a pressing need to perform that business. Merely because a special meeting has been convened does not mean the Board should take up any old or new business as is done at a regular meeting. Rather, the special meeting should be utilized for its limited purpose, not to conduct the regular business of the Board on a regular basis. Although the statute allows any matter not on the agenda to be taken up after a two-thirds vote, the intent of this section is to provide proper public notice of the planned actions of the school board. Therefore, when the Board reconvened on August 22, 1985 and received the budget document, this violated the intent of the law.

Also, when a matter not on the agenda is to be taken up, a two-thirds vote is required. The vote to take up the matter, like all votes, must be recorded in the minutes.

Although the Board can call a meeting without twenty-four hour notice "in case of extraordinary emergency," this type of emergency is limited to natural disasters and other catastrophic occurrences. This definition of extraordinary emergency is found in R.S. 42:6.1(5). Although not specified in 42:6.1(5), the classic definitions of extraordinary emergency include a work stoppage or strike. Reading the provisions of the Open Meetings

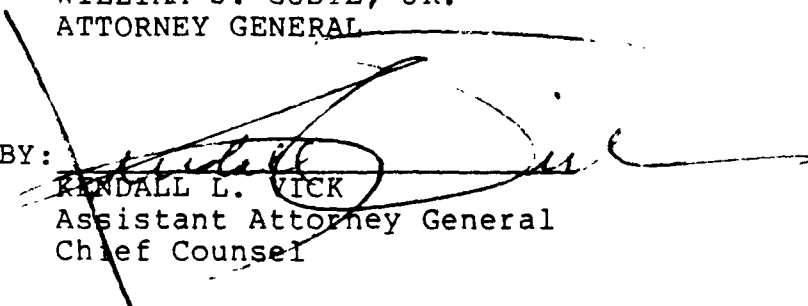
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Although the Board has been under a great burden with the teachers' contract negotiations and search for a new Superintendent, the Board must not lose sight of its duty to perform business in an open and public manner. The citizens of Louisiana must be advised of and aware of the performance of the Board and the deliberations and decisions that go into the making of public policy. In the absence of full compliance with these laws, the Board's actions are voidable. La.R.S. 42:9.

Very truly yours,

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

BY:


RANDALL L. VICK
Assistant Attorney General
Chief Counsel

KLV/jhv