

Memorandum to Municipal Clients

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Notices for District Meetings

Another change regarding notices concerns the posting of meetings of a district public body, such as a regional school committee or a water district governing board. The emergency regulations had provided that proper notice include physical posting at each municipal member's City or Town Hall. While such posting will still meet the statutory requirement, the final regulations, 940 CMR 29.03(3)(b), provide that posting meeting notices on the district's official website will, in itself, provide valid alternative posting.

Open Meeting Law Complaints

Another important change to the regulations clarifies the complaint process. Under the Law, a resident or other individual claiming that a public body violated the Open Meeting Law is required to make a complaint in writing and file it initially with the public body itself, rather than with the Attorney General. The public body must then respond in writing to the complainant and the Division of Open Government within 14 days. Under the applicable final regulation, 940 CMR 29.05(1), all complainants shall use the complaint form developed by the Division of Open Government, available on the Attorney General's website. The provisions of ~~940 CMR 29.05(2)~~ state that municipal clerks should provide any person requesting a form with a printed copy of the official complaint form or, if a paper copy is unavailable, direct the person to the Attorney General's website.

The Law and the regulations provide that the public body's response should describe any "remedial action" taken. If the board believes that it fully complied with the Law and that the complaint is groundless, a response is still required but, in our opinion, the response may simply describe the relevant facts and provide a statement that there was no violation of the Law.

Meetings of "Quasi-Judicial" Boards

The revised Open Meeting Law includes new exemptions from the definition of "meeting," creating certain situations where the presence of a quorum of a public body is not subject to the Law's provisions. One of these exemptions is for "a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it." G.L. c.30A, §18. This suggested that a board conducting a "quasi-judicial" proceeding (a hearing on a license application, for example) could meet after the hearing to deliberate and reach a decision without it being considered a "meeting," with no notice, minutes or public accessibility required. Since this exemption runs counter to the very purpose of the Open Meeting Law as a whole, we cautioned our clients not to use this exemption until the Attorney General determined how to interpret this exemption. The Division of Open Government has now done so, and this may be found at the "Open Meetings FAQ" section of the Attorney General's website. The Division has determined that the use of the term "adjudicatory proceeding" should be restricted to proceedings of state public bodies, which were already governed by the open meeting