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DEPARTMENT OF JUSTICE
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OPINION 11-0275

90 - B - 4 – PUBLIC MEETINGS – State & Local Governing
Bodies

La. R.S. 33:405

La. R.S. 42:11 et seq.
La. R.S. 42:19

Honorable Wilson R. Longanecker, Jr.
Mayor, Town of Sorrento
44254 Mathilda Street
Sorrento, LA 70778

Agenda items on a meeting notice of a public body must be reasonably clear so as to advise the public in general terms of the subjects which will be discussed. A council member serving as mayor pro tempore does not lose his or her ability to vote, and may cast votes for or against items on the agenda. Further, the mayor pro tempore may make or second a motion on the agenda. A quorum exists in a municipality of five council members when three members are in attendance, with one serving as the mayor pro tempore. Finally, two-thirds of a five member council is four members.

Dear Mayor Longanecker:

Our office received a request for an opinion concerning several issues which arose out of a special meeting held on November 25, 2011 by the Sorrento Town Council. You have included with your request a copy of the agenda and minutes for the meeting held on such date. There were three items on the posted agenda: (1) Pledge of Allegiance; (2) Budget; and (3) Lease of Baseball Park. The minutes reflect that four items were voted on at the meeting: (1) a motion to authorize the town attorney to obtain certain information submitted to an insurance company's questions concerning damages to houses on the town sewer from the Mayor and two other individuals; (2) a motion to speak to an individual about the possibility of making payments rather than one lump sum for an invoice submitted for sewer repairs on a particular street; (3) a motion to amend the agenda item to change the description from "Lease of Baseball Park" to "Recreation"; and (4) a motion to amend the agenda to add the topic of "pay of council for special meetings" and reflect that the council will not be paid for the meeting.¹ All motions carried with a unanimous vote of the four council members present. One council member was absent, and you, the Mayor, were absent. Thus, one of the council members was serving as Mayor Pro Tempore.

In light of the above, you have asked our office for an opinion concerning:

- (1) Whether the first two motions reflected in the minutes were a violation of the open meetings law;
- (2) Whether the mayor pro tempore may cast a vote for or against items on the agenda;

¹ Please note that this is a summary of the motions and such motions are not reproduced verbatim.

- (3) Whether the mayor pro tempore may make a motion, or second a motion for any item on the agenda;
- (4) Whether a quorum exists in a municipality of five council members when there are two council members in attendance and the mayor pro tempore; and
- (5) If there are five council members, what number constitutes two-thirds?

The Town of Sorrento is a Lawrason Act municipality, subject to the provisions of La. R.S. 33:361 *et seq.* Special meetings are addressed in La. R.S. 33:405(C), which provides:

Special meetings of the mayor and board of aldermen may be called by the mayor or a majority of the members of the board. The board shall establish by ordinance how notice of special meetings shall be provided to members of the board and the mayor. The notice for a special meeting shall specify the business to be considered at the special meeting. Public notice shall be given as provided in R.S. 42:19. Notwithstanding any other law to the contrary and pursuant to Act No. 131 of the 2008 Regular Session of the Legislature, an item which is not on the meeting agenda may be considered by the mayor and the board of alderman only after a unanimous vote of consent by the board and only after announcing the purpose of the item and allowing anyone in the audience to speak on the item.

The above-cited statute reiterates certain requirements for amending the agenda contained within the Open Meetings Law, La. R.S. 42:11 *et seq.*² Your opinion request voices concerns regarding the motions passed, as described by the minutes of the special meeting held on November 25, 2011, and whether the agenda accurately reflected the matters which were decided at such meeting.

La. R.S. 42:19(A)(1)(b)(i) requires that public bodies give written public notice of meetings at least twenty-four hours before a meeting is held, and subsection (ii) provides the following:

Such notice shall include the agenda, date, time, and place of the meeting, provided that upon unanimous approval of the members present at a meeting of a public body, the public body may take up a matter not on the agenda. Any such matter shall be identified in the motion to take up the matter not on the agenda with reasonable specificity, including the purpose for the addition to the agenda, and entered into the minutes of the meeting. Prior to any vote on the motion to take up a matter not on the agenda by the public body, there shall be an opportunity for public comment on any such motion in accordance with R.S. 42:14 or 15. The

² See La. R.S. 42:19(A)(1)(b)(ii), reproduced below.

public body shall not use its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of R.S. 42:11 through 23.

The Open Meetings Laws must be liberally construed to assure that public business is performed in an open and public manner and that citizens are aware of the performance of public officials, including the deliberations and decisions that go into the making of public policy.³ Part of the public right of access is notice, twenty-four hours before the meeting, of the subject matter upon which a governing body will deliberate and vote.⁴ The public has the right to know what is being considered, and is entitled to direct participation in deliberations.⁵

With respect to the specificity required of an agenda item, as the above-cited jurisprudence makes clear, the public purpose served by the notice requirement is to give the public access to know the items being considered by a public body at a particular meeting. Previous opinions issued by this office have instructed that an agenda must be "reasonably clear" so as to advise the public in "general terms" of each subject to be discussed. See La. Atty. Gen. Op. Nos. 07-0181, 93-230, 80-128, 87-649.

Thus, the issue is whether the agenda item "Budget" is reasonably clear so as to advise the public in general terms of the various subjects which were discussed. Specifically, you are concerned about the first two motions which were passed, one which authorized the town attorney to obtain certain information relative to damages to houses on the town sewer, and the other reflected the desire to make payments on an invoice for sewer repairs in multiple payments rather than one lump sum payment. As described above, the agenda must be reasonably clear so as to advise the public, in general terms, of the subjects which will be discussed. Although, arguably, depending upon additional facts, discussion of these items could affect the budget, it could also be argued that "Budget" as an agenda item does not provide the public with the notice that these two items related to the town sewer were going to be discussed. Perhaps a better description might have been "Sewer damage," as this would have allowed the public sufficient notice in general terms that the damage and costs owed for repairs to the town sewer would be discussed. However, we do note that the meeting was held on November 25, 2011, and consistent with La. R.S. 42:24, any suit brought to void an action taken in violation of the Open Meetings Law must be commenced within sixty days of the action.

Your next questions address the authority of the council member who serves as mayor pro tempore. La. R.S. 33:405(A)(3) provides, in pertinent part, that:

³ La. R.S. 42:4.1; *Hayes v. Jackson Parish School Board*, 603 So.2d 274 (La. 2 Cir. 8/10/92).

⁴ *Hayes*, 603 So.2d at 275, Citing La. R.S. 42:7(A)(1)(b); *Wagner v. Beauregard Parish Police Jury*, 525 So.2d 166 (La.App. 3 Cir. 1988).

⁵ *Hayes*, 603 So.2d at 275, Citing *Delta Development Co. v. Plaquemines Parish Comm. Council*, 451 So.2d 134 (La.App. 4 Cir. 1984). See also La. Const. Art. XII, §3.

The board of aldermen shall select one of the aldermen to be mayor pro tempore, who shall preside at all meetings in the absence of the mayor, have the same power, and perform all duties of the mayor in the absence or disability of the mayor, except the veto power of the mayor.

Our office has previously taken the position that the mayor pro tempore retains his power to vote as a councilman. La. Atty. Gen. Op. Nos. 01-36, 93-669, 93-368A. As our office explained in La. Atty. Gen. Op. No. 93-368A:

In the absence of a specific prohibitions [*sic*] that would prevent the mayor pro tempore from exercising his power to vote as a councilman he must be deemed to have retained that power. Otherwise, where a councilman is selected from a subdistrict within the municipality his constituency would be without representation which presents equal protection--one-person-one-vote complications. Furthermore, a crafty mayor might purposefully absent himself from any meetings at which the council was to consider overriding the mayor's veto of a council action, thereby increasing the already difficult burden of obtaining a two-thirds vote of the membership of the council that is legally required for an override. Finally, we believe that should the Legislature have intended, in adopting the Lawrason Act, or in New Iberia's special legislative charger [*sic*], to prevent the mayor pro tempore from exercising his power to vote as a councilman while presiding over the council as mayor pro tempore, that body would have adopted such expressed prohibitions.

In light of the above, consistent with previous opinions of this office, the mayor pro tempore may cast a vote for or against items on the agenda. Further, if the mayor pro tempore retains the power to vote as a council member, it follows that the mayor pro tempore would also retain the power to make or second a motion on the agenda.

You also ask whether a quorum exists in a municipality of five council members when there are two council members in attendance and the mayor pro tempore. In La. Atty. Gen. Op. No. 04-0359, our office was specifically asked whether three aldermen, including an alderman acting as mayor pro tempore, would constitute a quorum of that council. Our office stated that in that scenario, quite similar to the scenario you have presented, a quorum is met.

Finally, you have asked what number of council members constitutes two-thirds of the council when there are five total members. Two-thirds of five is 3.33. Therefore, two-thirds of a five member Council would be four members.

In conclusion, agenda items on a meeting notice of a public body must be reasonably clear so as to advise the public in general terms of the subjects which will be discussed. A council member serving as mayor pro tempore does not lose his or her ability to vote, and may cast votes for or against items on the agenda. Further, the mayor pro tempore

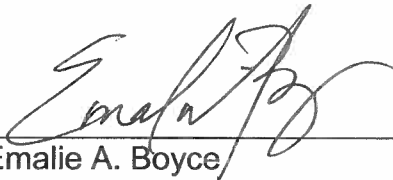
may make or second a motion on the agenda. A quorum exists in a municipality of five council members when three members are in attendance, with one serving as the mayor pro tempore. Finally, two-thirds of a five member council is four members.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:



Emalie A. Boyce
Assistant Attorney General

JDC: EAB