June 26, 2007
OPINION 07-0181

90-B-A OPEN MEETINGS – AGENDA

R.S. 46:1053(C)(3), R.S. 42:7(ii), R.S. 42:4.1; R.S. 42:9

Agenda for police jury meeting must be reasonably clear so that the general public could ascertain that the removal and reappointment of a hospital service district board member would be considered. Actions by the police jury taken in absence of this requirement are voidable by a court of competent jurisdiction within sixty days of the action.

Mr. L. Douglas Lawrence
Counselor
Morehouse Parish Hospital
Service District No. 1
P. O. Box 1485
Bastrop, LA 71221

Dear Mr. Lawrence:

You ask this office to review the actions of the Morehouse Parish Police Jury at a public meeting held May 16, 2007. Of concern is the validity of the police jury's action to remove Mr. James R. "Randy" Bowen as a member of the Morehouse Parish Hospital Service District No. 1 Board of Commissioners.

At the outset, note the police jury is a public body which is subject to the Louisiana Open Meetings Law and all notice provisions contained therein. LSA-R.S. 42:4.2(A)(2). The Open Meetings Law must be liberally construed in favor of assuring that public business is performed in an open and public manner and that citizens are advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. The law further provides that any action taken in violation of the provisions of the Open Meetings Law is voidable by a court of competent jurisdiction by a suit to void any such action filed within sixty days of the action. LSA-R.S. 42:9; Hayes v. Jackson Parish School Board, 603 So.2d 274 (La. App. 2nd Cir. 1992).

Note that R.S. 42:4.1 sets forth the public policy underlying the Open Meetings Law and states:

> It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.

The notice requirements which must be published prior to the meeting are set forth in R.S. 42:7, stating, in pertinent part:

> § 7. Notice of meetings
>
> A. (1)(a) 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.
>
> *****
>
> (ii) 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.

The statutes do not define what constitutes a "sufficient" agenda. This office stated in Opinions 80-128 and 87-649 that "we are of the opinion that an agenda must be reasonably clear so as to advise the public in general terms each subject to be discussed".

Further, the public meetings law permits public bodies to take up non-emergency items that are not on the agenda provided two-thirds of the members present agree to amend the agenda at the public meeting.

We are mindful that the frequent use of the agenda amendment procedure should be avoided because such could become a subterfuge for avoiding advance public notice of the actual agenda. See Opinion 93-230, copy attached. Regarding the use of the agenda amendment, this office has stated:

> The two thirds vote requirement was designed to facilitate the legislative process in that an issue may legitimately arise, when, at the time notice of the agenda was given, discussion of the issue was not contemplated. In those instances where the issue is not on the agenda, and the best interests of the public are served if the issue is to be discussed, then the legislative requirement of a two-thirds vote becomes necessary. It was designed to be an effective economic means to be used in the policy-making process in good faith. See Opinion 79-1492, copy attached.

In the current matter, there was no mention on the agenda that the police jury would consider the removal of Mr. Bowen at the meeting. Rather, *at the meeting* a unanimous motion was adopted by the police jury to place a police juror "on the agenda to speak about a hospital board member" which evolved into an actual vote for Mr. Bowen's removal.

Here, the technical requirements of the law may have been met because of the unanimous vote of the police jury to place on the agenda a discussion about Mr. Bowen. However, there remains the question of whether or not the motion itself reflected sufficient notice to place as an item on the agenda the removal of Mr. Bowen. Further, a finding that the removal of Mr. Bowen was contemplated at the time the notice of the agenda was given would, of course, invalidate the police jury's action.

These questions present factual determinations which are within the authority of the judiciary and not this office. Mr. Bowen's recourse is provided by statute in R.S. 42:11:

> 11. Remedies; jurisdiction; authority; attorney fees
>
> A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief: (1) A writ of mandamus. (2) Injunctive relief. (3) Declaratory judgment. (4) Judgment rendering the action void as provided in R.S. 42:9. (5) Judgment awarding civil penalties as provided in R.S. 42:13.
>
> B. In any enforcement proceeding the court has jurisdiction and authority to issue all necessary orders to require compliance with, or to prevent noncompliance with, or to declare the rights of parties under the provisions of R.S. 42:4.1 through R.S. 42:12. Any noncompliance with the orders of the court may be punished as contempt of court.

Those actions taken by the police jury which are in violation of the open meetings law are voidable by a court. R.S. 42:9 states:

> § 9. Voidability
>
> Any action taken in violation of R.S. 42:4.1 through R.S. 42:8 shall be voidable by a court of competent jurisdiction. A suit to void any action must be commenced within sixty days of the action.

It is imperative that any such action is commenced within sixty days of the action of the police jury. An action taken after the sixty days is considered moot.

Regarding the new appointment, we note that the agenda made no mention of the appointment of a new commission member; neither do the minutes reflect a two-thirds vote to amend the agenda. Thus, it is the opinion of this office that the police jury's vote to appoint a new member to the commission is voidable.

Your remaining questions concern whether or not Mr. Bowen was removed *for cause.* The power to create a hospital service district, to appoint the commissioners, and to remove the commissioners for cause is granted the police jury under R.S. 46:1061, et. seq. R.S. 46:1053(C)(3) states:

> (3) Any member of the commission may be removed from office for cause and his appointment rescinded by two-thirds vote of the elected membership of the parish governing authority which appointed him.

What constitutes “cause for removal” of a hospital service district commissioner in R.S. 46:1053(C)(3) is not statutorily defined. Further, there is no jurisprudence which defines what “cause” means for removal pursuant to R.S. 46:1053(C)(3).

However, this office has attempted to define those instances constituting cause for removal in Opinions 78-1196 and 80-1594A, which we attach for your review. Both opinions stand for the proposition that removal of a commissioner “for cause” under R.S. 46:1053(C)(3) includes the conviction of a felony while in office, malfeasance, and gross misconduct while in office.

Here, by a vote of six to one of the police jurors, Mr. Bowen, who served as president of the hospital district board, was removed. The “cause” identified preceding the vote on his removal was identified as “the hospital is in financial straits and the chairman [i.e., Mr. Bowen] is not doing his job.”

Again, whether or not Mr. Bowen’s actions (or inaction) reflect such incompetence or neglect of his duties as a board member which would warrant his removal is a factual determination which this office cannot make. Those factual conclusions are within the authority of the courts.

Finally, the “pre-removal notice” and “opportunity to be heard” requirements are generally applicable only to civil service personnel. Our research reflects a commission member is not covered by civil service laws and thus these rights do not attach to him. See Opinion 80-1594A.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY: ______________________________
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:arg

SYLLABUS

OPINION 07-0181

90-B-4 OPEN MEETINGS – AGENDA

Agenda for police jury meeting must be reasonably clear so that the general public could ascertain that the removal and reappointment of a hospital service district board member would be considered. Actions by the police jury taken in absence of this requirement are voidable by a court competent jurisdiction within sixty days of the action.

Mr. L. Lawrence Douglas
Counsel
Morehouse Parish Hospital Service District No. 1
Post Office Box 1485
Bastrop, LA 71221

Date Received:

Date Released: June 26, 2007

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL