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March 18, 2019

VIA EMAIL

TO: Leonie Haimson (leoniehaimson@gmail.com)

FROM: Robert J. Freeman, Executive Director *RJF*

RE: Advisory Opinion

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence, except as otherwise indicated.

I have received your letter in which you asked whether the “school siting taskforce, created by NYC Local Law 168”, is subject to the Open Meetings Law (OML). Because the Task Force is a creation of law, has a specific membership and must carry out a specific function, in my view, it constitutes a “public body” required to comply with the OML. In this regard, I offer the following comments.

Section 4-412(a) of the NYC Administrative Code states that the Task Force must “review relevant city real estate transactions to identify opportunities for potential school sites”, as well as city owned property and vacant land “to evaluate potential opportunities for new school construction or leasing for school use.” Subdivision (b) of §4-412 indicates that the Task Force consists of seven members or their designees. Six of the seven are New York City officials; the seventh is the president or chief executive officer of a local development corporation or other not-for-profit corporation, a majority of whose members are appointed by the Mayor. Subdivision (d) requires that the Task Force “shall” consult with entities having jurisdiction over environmental and planning concerns and “may” consult with interested members of the public. Lastly, subdivision (e) requires the submission of a report of its review by July 31, 2019, to the Mayor, Speaker of the City Council, Chancellor of the City School District and President and Chief Executive Officer of the School Construction Authority.

In this regard, the Open Meetings Law is applicable to meetings of public bodies, and §102(2) of that statute defines the phrase “public body” to mean:

“...any entity for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in



section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body."

Judicial decisions indicate generally that advisory bodies having no power to take final action, other than committees consisting solely of members of public bodies, fall outside the scope of the Open Meetings Law. As stated in those decisions: "it has long been held that the mere giving of advice, even about governmental matters is not itself a governmental function" [Goodson-Todman Enterprises, Ltd. v. Town Board of Milan, 542 NYS 2d 373, 374, 151 AD 2d 642 (1989); Poughkeepsie Newspapers v. Mayor's Intergovernmental Task Force, 145 AD 2d 65, 67 (1989); see also New York Public Interest Research Group v. Governor's Advisory Commission, 507 NYS 2d 798, aff'd with no opinion, 135 AD 2d 1149, motion for leave to appeal denied, 71 NY 2d 964 (1988)].

In the decisions cited above, none of the entities were designated *by law* to carry out a particular duty and all had purely advisory functions. More analogous to the Task Force is the decision rendered in MFY Legal Services v. Toia [402 NYS 2d 510 (1977)]. That case involved an advisory body, also created by law, the Medical Advisory Committee, to advise the then Commission of Social Services, and it was found to constitute a "public body" subject to the Open Meetings Law. In its determination, the court concluded that "the giving of advice by the Committee either on their own volition or at the request of the Commission is a necessary governmental function for the proper actions of the Social Services Department" (*id.*, 511-512).

Also significant is a decision rendered by the Court of Appeals, the state's highest court, in which it was found that:

"In determining whether an entity is a public body, various criteria and benchmarks are material. They include the authority under which the entity was created, the power distribution or sharing model under which it exists, the nature of its role, the power it possesses and under which it purports to act, and a realistic appraisal of its functional relationship to affected parties and constituencies...

"It may be that an entity exercising only an advisory function would not qualify as a public body within the purview of the Open Meetings Law...More pertinently here, however, a formally chartered entity with officially delegated duties and organizational attributes of a substantive nature, as this Association, Inc. enjoys, should be deemed a public body that is performing a governmental function (*compare, Matter of Syracuse United Neighbors v. City of Syracuse*, 80 AD2d 984, 985, *appeal dismissed* 55 NY2d 995)" [Smith v. CUNY, 92 NY2d 707; 713-714 (1999)].

In sum, because the Task Force is a creation of law, is required by law to focus on critical governmental tasks and is required to carry out a governmental function, based on the direction in judicial decisions, I believe that it constitutes a "public body" required to comply with the Open Meetings Law.

I hope that I have been of assistance.