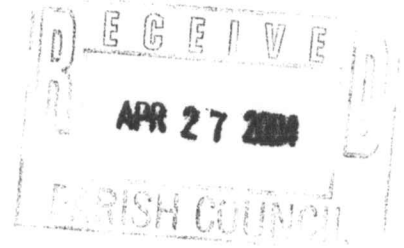




CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

April 26, 2004
OPINION 04-0128



Ms. Barbara Jacob-Tucker
Parish of St. Charles
P. O. Box 302
Hahnville, LA 70057

Dear Ms. Jacob-Tucker:

We are in receipt of your recent correspondence requesting we address the legality of the following related facts vis-à-vis the Open Meetings Law, R.S. 42:4.1, et seq.:

Certain committees formed by the St. Charles Parish Council are convened without quorum for discussion and informational purposes only. These meetings are televised and no formal action is taken.

Your specific question is: Should these meetings continue after roll call is taken where no quorum exists?

It is the opinion of this office that a non-quorum of a committee of the St. Charles Parish Council can meet to discuss public business of the council where no action is taken and no vote is taken. There is a limitation in our response: the meeting must not be an attempt to evade the notice requirements of the open meetings law. This office has recognized as violative of the open meetings law a "walking quorum" and stated in Attorney General Opinion 90-349:

For a "meeting" of a committee of a public body to trigger the requirements of the public meeting law, there must be (1) a quorum present (simple majority), (2) to deliberate or (3) act or (4) receive information (5) on a matter (6) over which the public body has supervision, control, jurisdiction or advisory power.

If there is no quorum present for the discussion of public business, the committee meeting is not subject to R.S. 42:5, 7, 7.1.

However, your clients should be cautioned to avoid the use of the sanction of this opinion to engage in the so-called "walking quorum." In this artifice, different committee members leave the meeting and different members enter the meeting so that while an actual quorum is never physically present

an actual quorum during the course of the meeting participates in the discussion.

Attached is a copy of Attorney General Opinion 90-349 for your further review.

Thus, a non-quorum committee may meet with the restrictions stated above. Finally, R.S. 42:8 authorizes these proceedings to be televised as the statute provides:

§8. Sonic and video recordings; live broadcast

A. All or any part of the proceedings in a public meeting may be video or tape recorded, filmed, or broadcast live.

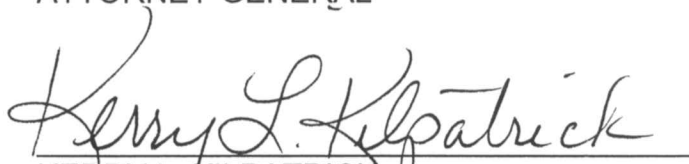
B. A public body shall establish standards for the use of lighting, recording or broadcasting equipment to insure proper decorum in a public meeting.

We hope the foregoing is helpful to you. Should you have other questions in which we may provide assistance, please contact this office.

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

BY:


KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

KLK:ams



WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

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JULY 26 1990

OPINION NUMBER 90-349

Honorable Duncan S. Kemp, III
District Attorney
21st Judicial District
P. O. Drawer 639
Amite, Louisiana 70422-0639

90-B-4 - PUBLIC MEETINGS-State & Local
Governing Bodies
LSA-R.S. 42:4.1 et seq.

Non-quorum of Parish Council Committee can
meet to discuss public business, but
"walking quorum" is unlawful and subject to
injunction.

Dear Duncan:

You have requested an opinion as to whether a non-quorum of a committee of the Tangipahoa Parish Council can meet to discuss public business of the Council if no action is taken and no vote is taken.

The answer is affirmative, with an important reservation--the purpose of such a procedure must not be unlawful. It must not be a subterfuge to evade the requirements of the public meeting law. LSA-R.S. 42:4.1 et seq.

For a "meeting" of a committee of a public body to trigger the requirements of the public meeting law, there must be (1) a quorum present (simple majority), (2) to deliberate or (3) act or (4) receive information (5) on a matter (6) over which the public body has supervision, control, jurisdiction or advisory power.

If there is no quorum present for the discussion of public business, the committee meeting is not subject to R.S. 42:5, 7, 7.1.

However, your clients should be cautioned to avoid the use of the sanction of this opinion to engage in the so-called "walking quorum." In this artifice, different committee members leave the meeting and different members enter the meeting so that while an actual quorum is never physically present an actual quorum during the course of the meeting participates in the discussion.

While the Tangipahoa Parish Council is clearly in good faith in this opinion request, please advise them that the abuse of the practice of a "walking quorum" is subject to the injunctive remedy of R.S. 42:11A(2).

It is axiomatic to the law of equity, and recognized by the jurisprudence of Louisiana, that lawful means cannot be used to achieve an unlawful purpose:

"Irrespective of the terms of a statute . . . courts must determine its purpose as well as its substance and effect . . . Acts generally lawful may become unlawful when done to accomplish an unlawful end." Western Union Telegraph Co. v. Foster, 247 U.S. 105, 115, 38 S.Ct. 438, 62 L.Ed. 1006 (1917)(Holmes, J.); cited in Poindexter v. Louisiana Financial Assistance Commission, (E.D. La. 1967), affirmed 389 U.S. 571, 88 S.Ct. 693, 19 L.Ed.2d 780 (1968).

Trusting this to be of sufficient information, I am

Sincerely,

WILLIAM J. GUSTE, JR.
Attorney General

BY:


CHARLES J. YEAGER

Assistant Attorney General