



ETHICS & COMPLIANCE COMMISSION JEFFERSON PARISH

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**RE: Jefferson Parish Ethics & Compliance Commission
Advisory Opinion 2024-001**

**JEFFERSON PARISH ETHICS & COMPLIANCE COMMISSION
ADVISORY OPINION 2024-001**

Dear President Lee-Sheng, Members of the Jefferson Parish Council and Parish Attorney Hurley:

Pursuant to Jefferson Parish Charter §410(A) and Jefferson Parish Code of Ordinances 2-538(B), the Jefferson Parish Ethics and Compliance Commission offers the following Advisory Opinion with regard to voting procedures during council meetings.

BACKGROUND FACTS

It has been observed repeatedly during Parish Council Meetings that Members of the Council, absent exceptional circumstances of notable interest to individual Council member rarely, if ever, signify a vote by voice on the matters brought before it. Indeed, the typical procedures are as follows:

- The Council Chair announces a resolution or ordinance, often waiving the reading of the resolution or ordinance without a vote or comment;
- The Council Chair defers to the Council member who submitted the proposed resolution or ordinance to voice his or her support or opposition to the matter;
- The Council Chair announces that the proposed action is seconded, most often by the Chair, without requesting a second from any other member of the Council;
- The Council Chair will ask if there is opposition to the matter but, then announces, “hearing no objection, the matter passes.”

There is no actual voice vote by Council members to these proposed resolutions and/or ordinances, unless an express dissent or opposition to a proposed resolution is made by a Council member.

It has been further observed that, at the time the Parish Council moves into Executive Session, the Chair calls upon a member of the Council to move for Executive Session, and again states, “hearing no objection, we will proceed to Executive Session.”

OPEN MEETINGS LAWS

Louisiana legislature adopted a “Sunshine Law” or “Open Meetings Law” in order to create transparency in government and to ensure that all public decisions are made in an open setting. Indeed, La. Rev. Stat. Ann. §42:12 provides:

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 of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally.

“Public body” as defined in the Open Meetings Laws includes the following:

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"Public body" means village, town, and city governing authorities; parish governing authorities; school boards and boards of levee and port commissioners; boards of publicly operated utilities; planning, zoning, and airport commissions; and any other state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.¹

Thus, the Jefferson Parish Council is subject to the Open Meetings Law.²

In accordance with the Open Meetings Laws, La. Rev. Stat, Ann. §42:14(C) provides:

All votes made by members of a public body shall be *viva voce* and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

The term, "*viva voce*" has been defined as a "live voice." In an Opinion issued by the Attorney General on April 18, 2011, the Attorney General specifically indicated that,

[T]he "*viva voce*" language in La. R.S. 42:14 requires a vote with a "live voice," and that the person voting must be physically present.³ Thus, under the plain language of La. R.S. 42:14(C), all voices made by a member of a public body must be made orally or by mouth.

Further in Attorney General Opinion 19-0020 issued on April 29, 2019, the Attorney General indicated that "*viva voce*" is defined "as word of mouth; orally."⁴ Thus, silence or a failure to respond does not qualify as a vote.

In addition, the manner in which resolutions and ordinances are presented raises questions regarding the full transparency required by the Open Meetings Laws. In that regard, La. Const. art. XII, §3, provides that, "No person shall be denied the right to observe the deliberations of public bodies."⁵ In order to achieve this goal of transparency, the Open Meetings Law is to be liberally construed.⁶ One manner in which public bodies may circumvent these laws, however, is through the use of "walking" or "rolling" quorums.⁷ This type of quorum is a device used to have

¹ La. Rev. Stat. Ann. §42:13(A)(3).

² *Ehsani-Landry v. Jefferson. Par.*, 17-468 (5th Cir. 3/14/ 2018), 240 So.3d 322.

³ La. Atty. Gen. Op. 11-0070 citing La. Atty Gen. Op. Nos. 07-0040 and 99-385. See also La. Atty Gen. Op. Nos. 13-0075, 07-56, and 99-385.

⁴ Citing Black's Law Dictionary, (10th ed. 2014).

⁵ La. Const. art. XII, §3.

⁶ La. Rev. Stat. ann. §42:12.

⁷ La. Atty. Gen. Op. 19-0128 (7/20/20).

conversations with fewer members than the whole of a public body though multiple conversations.⁸ While the informal exchange of ideas and opinions before a meeting may be laudable and create efficiency during the meeting, multiple discussions between council members, especially when those multiple informal discussions lead to a consensus by greater than a majority of council members, are prohibited.

While this Advisory Opinion does not imply that a violation of the Open Meetings Law has arisen when business of the Jefferson Parish Council is conducted in this manner, we caution that proceeding in this manner does create heightened scrutiny of Council actions regarding matters prior to a resolution or ordinance being brought before the Council, and may subject resolutions or ordinances adopted in such a manner to challenge.

Louisiana law does not allow for a vote by either a show of hands, or by silence, and neither represent an actual vote. Moreover, a requirement for voting by voice becomes significant when it must be determined where an individual council member voted on a particular matter brought before the Council. To fail to provide an actual vote by live voice therefore fails to provide the required transparency of actions that the Open Meetings Laws were designed to effectuate. Further, it fails to allow for a determination as to whether a Council member actually voted in favor of a matter brought before the Council. Similarly, all motions and seconds actually voted on by Council members should also be made vocally in order to provide further transparency and avoid the appearance of walking or rolling quorums.⁹

Finally, a vote to move into an Executive Session is governed by La. R.S. §42:16, which provides in pertinent part:

A public body may hold executive sessions upon an affirmative vote, taken at an open meeting for which notice has been given pursuant to R.S. 42:19, of two-thirds of its constituent members present. An executive session shall be limited to matters allowed to be exempted from discussion at open meetings by R.S. 42:17; however, no final or binding action shall be taken during an executive session. The vote of each member on the question of holding such an executive session and the reason for holding such an executive session shall be recorded and entered into the minutes of the meeting.

At no time does the Jefferson Parish Council Chair call for a vote of all Council members present, nor is each vote of the Council members present recorded and entered into the minutes. Thus, the manner in which the Council moves into Executive Session does not comply with the clear requirements of the Open Meetings Law, and more particularly, La. R.S. § 42:16.

⁸ *Id.*

⁹ See La. Atty. Gen. Op. 19-0128.

Compliance with the Open Meetings Law requires that the Council Chair identify an agenda item and call for a vote in a similar, but not necessarily identical, manner as the following:

- Call for a Council Member to move, “I move;”
- Call for a Council Member to Second, or in the option of the Council Chair, have voiced “I second;”
- Call by Council Chair “All in favor say ‘aye’;” and
- Call by Council Chair “All opposed say ‘nay’.”

After review of this Advisory Opinion, we ask the Council to consider a revision to its procedures for taking legislative action at council meetings.

Sincerely,



WARREN R. BOURGEOIS, III
VICE CHAIRMAN

CC: Howard Maestri, Chairman
Cherié Kay LaRocca, Ph.D.
Mr. Christopher Clement