

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Council Members

FROM: Scott D. Pickup, City Manager

SUBJECT: Enclosures - Council Packet

DATE: January 21, 2011

Enclosed with this memorandum are the following items:

- 1-8 Letter from the New York State Committee on Open Government dated January 18, 2011 regarding a request for an advisory opinion from a Rye citizen.
- 1-9 Legal Department Update from the Corporation Counsel dated January 21, 2011.
- 1-10 Meeting notice for the week of January 24, 2011 is available on the City website www.ryeny.gov under Calendar.



STATE OF NEW YORK
DEPARTMENT OF STATE
COMMITTEE ON OPEN GOVERNMENT

Committee Members

Carla Chiaro
Ruth Noemi Colón
Robert Hermann
Robert L. Megna
Robert J. Duffy
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January 18, 2011

Executive Director

Robert J. Freeman

Mr. Timothy Chittenden
2 Hammond Road
Rye, NY 10580

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the facts presented in your correspondence.

Dear Mr. Chittenden:

We are in receipt of your letter in which you requested an advisory opinion concerning the application of the Open Meetings Law to actions taken by the City Council of the City of Rye. You specifically asked whether it "is legal for the Rye City Council to go into Executive Session to discuss Attorney/Client matters."

In this regard, it is noted that there are two vehicles that may authorize a public body to discuss public business in private. One involves entry into an executive session. Section 102(3) of the Open Meetings Law defines the phrase "executive session" to mean a portion of an open meeting during which the public may be excluded, and the Law requires that a procedure be accomplished, during an open meeting, before a public body may enter into an executive session. Specifically, §105(1) states in relevant part that:

"Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only..."

As such, a motion to conduct an executive session must include reference to the subject or subjects to be discussed and the motion must be carried by majority vote of a public body's membership before such a session may validly be held. The ensuing provisions of §105(1) specify and limit the subjects that may appropriately be considered during an executive session. Therefore, a public body may not conduct an executive session to discuss the subject of its choice.

The other vehicle for excluding the public from a meeting involves "exemptions." Section 108 of the Open Meetings Law contains three exemptions. When an exemption applies, the Open Meetings Law does not, and the requirements that would operate with respect to executive sessions are not in effect. Stated differently, to discuss a matter exempted from the Open Meetings Law, a public body need not follow the procedure imposed by §105(1) that relates to entry into an executive session. Further, although executive sessions may be held only for particular purposes, there is no such limitation that relates to matters that are exempt from the coverage of the Open Meetings Law.

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Section 108(3) exempts matters made confidential by federal or state law. It has been advised that members of a public body may meet in private to seek legal advice from their attorney, and that when they do so, their communications fall within the scope of the attorney-client privilege. Because the communications are confidential, a gathering of that nature would be exempt from the coverage of the Open Meetings Law pursuant to §108(3).

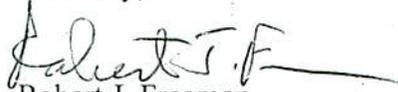
It appears that the reference to an executive session by the Council may technically have been inaccurate if, in fact, its intent was to seek legal advice from its attorney.

With respect to your question concerning agendas, there is no reference in the Open Meetings Law to agendas. Consequently, a public body, such as the Council, may choose to prepare or follow an agenda, even though there is no statutory obligation to do so.

Finally, as a general matter, a public body may vote during an executive session properly held, unless the vote is to appropriate public monies [see Open Meetings Law, §105(1)]. In our opinion, if an action represents an allocation or expenditure of funds that have previously been budgeted, the action would not involve an appropriation, and a vote could be taken during a properly held executive session. However, if a determination is made to expend monies that have not been budgeted, i.e., to appropriate new monies, a vote to do so must occur during an open meeting.

We hope that we have been of assistance.

Sincerely,



Robert J. Freeman
Executive Director

By: James B. Gross
Legal Intern

RJF: JBG

cc: City Council

**CITY OF RYE
MEMORANDUM**

TO: Honorable Mayor and Rye City Council
FROM: Kristen K. Wilson, Corporation Counsel
SUBJECT: Litigation Update
DATE: January 21, 2011

CLAIMS

A Notice of Claim has been filed by E.K. Liew of 53 Clinton Avenue. The notice states that a backup of a City sewer caused damage to Mr. Liew's residence. The claim has been forwarded to our insurance carrier.

A Notice of Claim has been filed by Elissa Cavataro of 246 Central Avenue. The notice states that Ms. Cavataro suffered injuries in a fall on the sidewalk in front of the Locust Avenue Firehouse. The claim has been forwarded to our insurance carrier.

LITIGATION

BEAVER SWAMP BROOK – (DEC Administrative proceeding)

No new developments.

SCHUBERT V. CITY OF RYE, ET AL.

No new developments.

R.B. CONWAY V. CITY OF RYE

No new developments.

DELLI PAOLI V. ZONING BOARD OF APPEALS

No new developments.

SHEW v. CITY OF RYE

No new developments.

MOLLOY v. PLANNING COMMISSION

No new developments.

PANETTA v. PLANNING COMMISSION

The City's Opposition papers were served on Monday.

HEAL the HARBOR v. CITY OF RYE

No new developments.

SCHUBERT v. PLANNING COMMISSION, et al

No new developments.

CITY COURT
People v. Lilliston

A Motion to Dismiss was served in this matter in connection with a traffic summons issued for failure to stop for a school bus.

Respectfully submitted,

Kristen K. Wilson

Kristen K. Wilson
Corporation Counsel

KKW/dfn