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DEPARTMENT OF JUSTICE

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BATON ROUGE

70804-9005

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OPINION 14-0065

Mr. Tommy Martinez
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Gonzales, LA 70707

90 – B – 4 – PUBLIC MEETINGS – State & Local Governing Bodies

La. Const. Art. XII, §3
La. R.S. 42:12 *et seq.*

A member who polls a majority of the members of a public body on a matter which may later be considered by the public body as a whole may violate the Open Meetings Law if the poll is used to circumvent the purpose and intent of the Open Meetings Law.

Dear Mr. Martinez:

Our office received your request for an opinion relating to polling and Louisiana's Open Meetings Laws, La. R.S. 42:12 *et seq.* Your request makes references to an e-mail in which a member of the Ascension Parish Council ("Council") complained to a fellow councilmember because the Council did not vote on the appointment of an individual to the Board of Adjustments at a meeting. The unhappy councilmember represented in this e-mail that he took a poll the week before the meeting, contacting a few members, and then a few more right before going on camera, and that his poll showed five members were prepared to support the individual he wanted to be considered by the Council for appointment.

In light of the councilmember's assertion that he had conducted a poll, you have asked whether such action presents a problem under the Open Meetings Law.

The right to observe the deliberations of public bodies, except in cases established by law, is guaranteed by La. Const. art. XII, §3. The Open Meetings Law describes and defines this constitutional right. La. R.S. 42:12(A) provides the public policy behind requiring open meetings and instructs liberal construction of this body of law:

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 R.S. 42:12 through 28 shall be construed liberally.

With respect to polling, La. R.S. 42:13(B) provides:

The provisions of R.S. 42:12 through 42:27 shall not apply to chance meetings or social gatherings of members of a public body at which there

is no vote or other action taken, *including formal or informal polling* of members.

(Emphasis added).

The above provision instructs that the Open Meetings Law does not apply to chance meetings or social gatherings where there is no vote or other action taken and where no polling is performed of its members. In other words, the Open Meetings Law may apply to a chance meeting or social gathering of a quorum of a public body if a poll is taken.

Black's Law Dictionary contains multiple definitions of "poll;" some relevant ones are as follows:

A sampling of opinions on a given topic, conducted randomly or obtained from a specified group.

The result of the counting of votes.

To ask how each member of (a group) individually voted.

To question (people) so as to elicit votes, opinions, or preferences.

Black's Law Dictionary 1197 (8th ed. 2004).¹

It is not appropriate for members of a public body to engage in a practice which permits a public body to know how a majority of the public body would vote on an issue without the public having the benefit of observing such a discussion. La. Atty. Gen. Op. No. 12-0177. The purpose of the Open Meetings Law, as described by La. R.S. 42:12, is to ensure that public business is performed in an open and public manner and 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.

Our office previously stated in La. Atty. Gen. Op. No. 85-789:

Straw votes or poll votes are prohibited by R.S. 42:5(B) as the purpose is to circumvent the intent of the Open Meetings Law. Since this section is to be construed liberally, anytime there is a ratification of a poll vote . . . the Board should be careful to make sure that public comment is heard and that the vote taken in public is not a sham to ratify a previous secret vote.²

¹ The first two definitions are from "poll" as a noun and the second two are from "poll" as a verb. See also the definition of "straw poll," "[a] nonbinding vote, taken as a way of informally gauging support or opposition but usu. without a formal motion or debate." Black's Law Dictionary 1461 (8th ed. 2004).

² Note that La. R.S. 42:5(B) is now La. R.S. 42:14(B) since the statute's redesignation in 2010.

The facts you have provided indicate that the councilmember polled members separately, which could raise concerns of a "walking quorum," which we described in La. Atty. Gen. Op. No. 12-0177 as:

a device used to circumvent the Open Meetings Law so as to allow a quorum of a public body to discuss an issue through the use of multiple discussions of less than a quorum. Thus, the effect of such action permits a public body to know how a majority of the public body would vote on an issue without the public having the benefit of observing such a discussion. This practice is not permissible by the Open Meetings Law.

It is the opinion of this office that, taking into consideration the instruction to liberally construe the open meetings statutes, it is not permissible under the Open Meetings Law to poll a quorum of the public body to determine the majority's position on an issue. The public should not be deprived of the opportunity to observe the deliberations of a public body in deciding upon a course of action. In the facts you have provided, the issue was not actually voted on by the public body. A member who polls a majority of the members of a public body on a matter which may later be considered by the public body as a whole may violate the Open Meetings Law if the poll is used to circumvent the purpose and intent of the Open Meetings Law. Knowing how a majority of the public body will vote on a matter prior to the actual vote at a properly noticed public meeting can mean that a measure passes with little debate or that a measure is never brought up for debate. Should the Council decide at a future meeting to consider appointment of the same individual to the Board of Adjustments, as advised in La. Atty. Gen. Op. No. 85-789, the Council should ensure that public comment is heard and that the vote in public is not a sham to ratify a previous secret vote.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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BY


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JDC: EAB