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OPINION 25-0025

Honorable Les Farnum
Representative – District 33
P.O. Box 558
Sulphur, Louisiana 70664

90-B4 PUBLIC MEETINGS – State & Local Governing Bodies

La. R.S. 42:11, *et seq.* La. R.S. 30:2361, *et seq.*

Local Emergency Planning Committees are public bodies
subject to the Open Meetings Law.

Dear Representative Farnum:

You have requested an opinion concerning whether Local Emergency Planning Committees, which were established by the federal Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11001, *et seq.*, are required to conduct their meetings in accordance with Louisiana's Open Meetings Law, La. R.S. 42:11, *et seq.*

Question: Are Local Emergency Planning Committees (LEPCs) required to conduct their meetings in accordance with the Open Meetings Law, or are they considered private citizens' advisory groups or committees and therefore exempt from that law's requirements?

Conclusion: LEPCs are subject to the Open Meetings Law because they meet the statutory definition of public bodies, and they do not fall under the category of private citizens' advisory committees.

Background

The EPCRA's purpose is to help communities plan for chemical and hazardous material emergencies.¹ This federal law requires the governor of each state to appoint a State Emergency Response Commission (SERC).² In turn, the SERC is required to designate emergency planning districts, as well as appoint a LEPC for each district.³

At a minimum, LEPCs must be composed of elected state and local officials; police, fire, civil defense, and public health professionals; environment, transportation, and hospital officials; representatives of facilities subject to the EPCRA; representatives from

¹ <https://www.epa.gov/epcra>

² 42 U.S.C. 11001.

³ 42 U.S.C. 11001.

community groups and the media.⁴ LEPCs are required to develop an emergency response plan with stakeholder participation, review the plan at least annually, and provide information about chemicals in the community to citizens.⁵ In addition, each LEPC is required to appoint a chairperson and establish rules by which the LEPC shall function. These rules must include provisions for public notification of LEPC activities, public meetings to discuss the emergency plan, public comments, response to such comments by the LEPC, and distribution of the emergency plan.

To implement the EPCRA's requirements, the Louisiana Legislature passed the Hazardous Materials Information Development, Preparedness, and Response Act (Right-to-Know Law), La. R.S. 30:2361, *et seq.* In Section 2362 of the Right-to-Know Law, entitled "Declaration of policy and purpose," the Legislature stated, in pertinent part:

The legislature hereby adopts as a policy that the citizens of this state have the right and responsibility to know about and protect themselves from the risks and effects of hazardous materials in their environment. Inherent in the public's right to know is the public's need to know that state and local agencies have the information to both respond to their inquiries and to protect them...

La. R.S. 30:2362(A).

In addition, the Right-to-Know Law specifically provides that, "[a]ll *proceedings conducted under this Chapter* and all rules and regulations adopted pursuant to this Chapter shall be conducted or adopted in accordance with the Administrative Procedure Act and *the Open Meetings Law*." La. R.S. 30:2378 (emphasis added). You question whether this provision requires LEPCs to conduct their meetings in accordance with the Open Meetings Law because the Right-to-Know Law primarily dictates the SERC's duties and responsibilities and provides little to no detail concerning LEPCs. As you note, however, the argument exists that LEPC meetings are conducted "under this Chapter [the Right-to-Know Law]" because the creation of LEPCs and their activities are subject to the Chapter.

Regardless, pursuant to the Open Meetings Law, meetings of "public bodies" are to be open to the public unless closed pursuant to legislatively determined exceptions. La. R.S. 42:14. The Legislature provided the public policy for open meetings, as follows:

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 [the Open Meetings Law] shall be construed liberally.

⁴ 42 U.S.C. 11001(c).

⁵ <https://www.epa.gov/epcra/local-emergency-planning-committees>

La. R.S. 42:12.⁶

For purposes of the Open Meetings Law, a “public body” is defined as:

[V]illage, 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.

La. R.S. 42:13(A)(3) (emphasis added). LEPCs meet this definition in two ways. First, the phrase “committee or subcommittee of any of these bodies” refers to a committee formed by a public body itself. *Louisiana High Sch. Athletics Ass’n, Inc. v. State*, 12-1471 (La. 1/29/13), 107 So.3d 583, 606. Here, LEPCs are committees appointed by the SERC, which is a state commission (i.e., a public body). Thus, it is the opinion of this office that LEPCs are committees formed by a public body and, therefore, are public bodies under La. R.S. 42:13(A)(3).

Second, independent of LEPCs’ connection to the SERC, it is the opinion of this office that LEPCs meet the definition of “public body” because they possess policy making, advisory, and administrative functions. Specifically, LEPCs are required to prepare an emergency plan and review the plan at least once a year. 42 U.S.C. 11003(a). LEPCs are also required to evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, as well as make recommendations with respect to the additional resources required and the means for providing the additional resources. 42 U.S.C. 11003(b).

In addition, each emergency plan prepared by LEPCs must include, but is not limited to, each of the following:

(1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section 11002(a) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.

⁶ See also La. Const. art. XII, § 3 (“No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law.”).

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

(3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.

(4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section 11004 of this title).

(5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.

(6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.

(7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

42 U.S.C. 11003(c). These duties establish that LEPCs are special commissions that possess policy-making, advisory, and administrative functions, which meets the definition of "public body" in the Open Meetings Law. See La. R.S. 42:13(A)(3).

As you note in your request, the Open Meetings Law contains an exemption for private citizens' advisory committees. This exemption is set forth in La. R.S. 42:17(D), which states, in pertinent part:

The provisions of R.S. 42:19 and R.S. 42:20 shall not apply to any meeting of a private citizens' advisory group or a private citizens' advisory committee established by a public body, when the members of such group or committee do not receive any compensation and serve only in an advisory capacity

Your request also refers to La. Atty. Gen. Op. No. 19-0145, in which this office opined that this exemption applied to group of mostly private citizens who served in an advisory

capacity to the Ethics Review Board.⁷ Specifically, the Ethics Review Board appointed one board member as a “project leader,” who then asked members of the community to join an “awards working group” to discuss potential nominees for the annual ethics awards. After the “awards working group” had discussed the potential nominees, the project leader would provide the group’s recommendation to the Ethics Review Board, which retained sole authority to select the award recipient. In short, the members of the “awards working group” were uncompensated private citizens who merely assisted the Ethics Review Board in making award recipient recommendations.

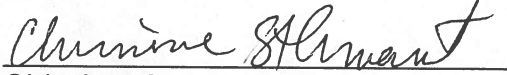
In contrast, LEPC members do not serve in a strictly advisory capacity. As noted, LEPCs have policy making and administrative functions, in addition to their advisory roles. Furthermore, LEPCs are a committee provided for by law in their own right with their own mandated duties. Therefore, it is the opinion of this office that LEPCs are not private citizens’ advisory committees.

In conclusion, it is the opinion of this office that LEPCs are public bodies subject to the Open Meetings Law and are not exempt from any of its requirements, as they do not constitute private citizens’ advisory committees.

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,

LIZ MURRILL
ATTORNEY GENERAL

BY: 
Chimène St. Amant
Assistant Attorney General

LM: CS

⁷ This opinion also noted, “it is the advice of this office that such a working group be formally established as a committee by the public body.” La. Atty. Gen. Op. No. 19-0145.