

CORHONDA CORLEY, EUGENE : 19TH JUDICIAL DISTRICT COURT
COLLINS and ANITA AUGUSTUS
VS. : PARISH OF EAST BATON ROUGE
EAST BATON ROUGE PARISH :
SCHOOL BOARD AND : STATE OF LOUISIANA
MICHAEL GAUDET

PETITION FOR TEMPORARY RESTRAINING ORDER, WRIT OF MANDAMUS, FOR
INJUNCTIVE AND DECLARATORY RELIEF, AND TO VOID ACTION AND FOR
DAMAGES

NOW INTO COURT, through undersigned counsel, comes Corhonda Corley, Eugene Collins, and Anita Augustus, petitioners herein, who respectfully represent as follows:

1.

Made defendants herein are:

(a) The East Baton Rouge Parish School Board, a political subdivision of the State of Louisiana, and

(b) Michael Gaudet, in his official capacity as a member of and President of the East Baton Rouge Parish School Board, who is a person of the full age of majority residing in East Baton Rouge Parish.

2.

This is a proceeding brought by Petitioner pursuant to La. R.S. 42:11 (the “Open Meetings Law”) and venue is proper in East Baton Rouge Parish as all parties are located in East Baton Rouge Parish and the action which gave rise to this lawsuit occurred in East Baton Rouge Parish.

3.

Petitioners are natural persons over the age of eighteen (18) and residents and citizens of East Baton Rouge Parish, Louisiana. Petitioners are proper parties to bring this action as petitioners were denied the right of public comment conferred upon petitioners by the Open Meetings Law and will be denied the right of public comment for future meetings scheduled by the school board as the Board holds “Small Group Superintendent Candidate Workshops” which are limited to private meetings among selected guests in an attempt to deny public comment as the board interviews the two finalists for Superintendent of East Baton Rouge Parish Schools. La. R.S. 42:25 gives petitioners the right to bring this action, which states in part:

Enforcement

C. Any person who has been denied any right conferred by the provisions of this Chapter or who has reason to believe that the provisions of this Chapter have been violated may institute enforcement proceedings.

4.

On April 21, 2020, Petitioners were denied a 3-minute public comment at the board meeting held to discuss the selection of the Superintendent of Schools for East Baton Rouge Parish as the Board did not allow public comment. The Board instead limited comment to 1,000 characters typed into an online platform. The Board also did not give proper 24-hour notice of the hearing as required by the Open Meetings Law.

5.

On May 21, 2020, Petitioners were denied a 3-minute public comment at the board meeting held to select the finalists for Superintendent of Schools for East Baton Rouge Parish as the Board did not allow public comment. The Board instead limited comment to 1,000 characters typed into an online platform.

6.

Defendant Michael Gaudet, President of the East Baton Rouge Parish School Board, chaired both the April 21, 2020 and May 21, 2020 meetings and did not allow for public comment at the meeting of the Board.

7.

The Board, thereafter, posted agendas online announcing there would be four separate "Small Group Superintendent Candidate Workshops" which would be attended by "some or all of the Board members" of the East Baton Rouge Parish School Board as evidenced by Exhibit "A" which is made part of this suit as if fully copied herein. This would constitute a quorum as understood by the Open Meetings Law and subject these meetings to the notice and public comment requirements of the Open Meetings Law. No opportunity for public comment has been given for these meetings. Instead, only a small group of invited individuals hand-picked by members of the Board are being allowed to attend as evidenced by the invitation sent out through private text message Google meetings which is attached and made part of this suit as if fully copied herein as Exhibit "B." This is a clear violation of La. R.S. 42:14, which states in part:

Meetings of public bodies to be open to the public

A. Every meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, 17, or 18.

La. R.S. 42:13(A)(2) defines meeting as:

(2) "Meeting" means the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power.

Petitioners are therefore entitled to a temporary restraining order preventing defendants from holding meetings in violation of this section until time a hearing can be held as should the meetings go forward, the entire selection process for the next Superintendent of East Baton Rouge Parish Schools will be in violation of the Open Meetings Law and subject to voidability.

8.

La. R.S. 42:12 states:

Public policy for open meetings; liberal construction

A. 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.

La. R.S. 42:15 states:

School board meetings; public comment

A. Notwithstanding any other law to the contrary, each school board subject to the provisions of this Chapter, except as provided in Subsection B of this Section, shall allow public comment at any meeting of the school board prior to taking any vote. The comment period shall be for each agenda item and shall precede each agenda item.

9.

Defendants Michael Gaudet and the East Baton Rouge Parish School Board violated Petitioners' right to give public comment at the school board meeting pursuant to La. R.S. 42:15. Given the liberal construction of the Open Meetings Law pursuant to La. R.S. 42:12, limiting the public comment period on the selection of the Superintendent of East Baton Rouge Parish Schools, is a violation of the Open Meetings Law public comment requirement.

10.

Petitioner Eugene Collins made a public records request on May 21, 2020 to the Board requesting, among other items, text messages and electronic mail by and among the members of the Board in order to review their communications to ensure "polling" wasn't taking place by

and among the members of the Board. Another suit has been filed in the 19th Judicial District Court bearing docket number _____ requesting a Writ of Mandamus directed at the Board to produce the text messages. To date, the messages have not been produced and this will further injure petitioners as La. R.S. 42:14 states:

B. Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of this Chapter.

Because the Board has refused to comply with the public records request submitted by Eugene Collins, this is a further injury to petitioners as should the messages show secret balloting among the members of the Board, it would subject the entire process of the selection of Superintendent of East Baton Rouge Parish Schools as voidable. The process of “polling” is further discussed in Attorney General Opinion 20-0006, which is attached and made part of this suit as Exhibit “C.”

11.

Petitioners are entitled to an order from this court voiding the actions of April 21, 2020 and May 21, 2020 as it relates to the selection of the Superintendent of East Baton Rouge Parish Schools pursuant to La. R.S. 42:24 which states:

Voidability

Any action taken in violation of this Chapter shall be voidable by a court of competent jurisdiction. A suit to void any action must be commenced within sixty days of the action.

12.

Petitioners are entitled to a writ of mandamus from this court pursuant to La. R.S. 42:26(A)(1) ordering Michael Gaudet and the East Baton Rouge Parish School Board to hold another vote for the selection of Superintendent of East Baton Rouge Parish Schools.

13.

Petitioners are entitled to an injunction from this court pursuant to La. R.S. 42:26(A)(2) enjoining Michael Gaudet and the East Baton Rouge Parish School Board from violating petitioners’ right to give public comment and to enjoin the defendants from limiting the public comment on the selection of the Superintendent of East Baton Rouge Parish Schools.

14.

Petitioners are entitled to an order from this court for declaratory relief that their rights under La. R.S. 42:15 were violated by Michael Gaudet and the East Baton Rouge Parish School Board.

15.

Petitioners are entitled to an order for attorneys' fees and all of the costs and expenses of litigation which petitioners have incurred and will incur in connection with this proceeding from defendants, pursuant to and in accordance with the provisions of La. R.S. 42:26(C).

16.

Petitioners are entitled to an award of civil penalties to be ordered against Michael Gaudet pursuant to La. R.S. 42:26(A)(5) which states:

Remedies; jurisdiction; authority; attorney fees

A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief:

(5) Judgment awarding civil penalties as provided in R.S. 42:28.

La. R.S. 42:28 states:

Civil penalties

Any member of a public body who knowingly and willfully participates in a meeting conducted in violation of this Chapter, shall be subject to a civil penalty not to exceed one hundred dollars per violation. The member shall be personally liable for the payment of such penalty.

17.

Petitioners are entitled to have this proceeding to enforce the provisions of the Louisiana Open Meetings Law (La. R.S. 42:11 et seq.) against defendants tried by preference and in a summary manner, pursuant to and in accordance with the provisions of La. R.S. 42:27.

18.

Pursuant to La. Code of Civil Procedure Article 3601, et seq., petitioners request and are entitled to the issuance of a temporary restraining order enjoining the defendants from holding "Small Group Superintendent Candidate Workshops" without public comment for selection of the Superintendent of East Baton Rouge Parish Schools.

WHEREFORE, Corhonda Corley, Eugene Washington, and Anita Augustus, petitioners in the above-referenced proceeding, pray, that a Rule Nisi issue herein directed at Michael Gaudet and the East Baton Rouge Parish School Board to show cause:

1. why a writ of mandamus from this court pursuant to La. R.S. 42:26(A)(1) ordering Michael Gaudet and the East Baton Rouge Parish School Board to hold another vote for the selection of the Superintendent of East Baton Rouge Parish Schools, should not be issued,
2. why an injunction from this court pursuant to La. R.S. 42:26(A)(2) enjoining Michael Gaudet and the East Baton Rouge Parish School Board from violating petitioners' right to

give public comment and to enjoin the defendants from limiting the public comment on the vote for selection of the Superintendent of East Baton Rouge Parish Schools, should not be issued,

3. why to an order from this court for declaratory relief that petitioners' rights under La. R.S. 42:15 were violated by Michael Gaudet and the East Baton Rouge Parish School Board should not be issued,
4. why an order from this court awarding civil penalties to petitioners and against Michael Gaudet not be issued,
5. why an order for attorneys' fees and all of the costs and expenses of litigation which petitioners have incurred should not be awarded, and
6. why a temporary restraining order enjoining Michael Gaudet and the East Baton Rouge Parish School Board should not be made into a permanent injunction, preventing the "Small Group Superintendent Candidate Workshops" among the members of the school board and finalists for Superintendent of East Baton Rouge Parish Schools.
7. why the process of selecting the Superintendent of East Baton Rouge Parish Schools should not be voided because of informal polling and balloting among members of the Board through text messages, electronic mails, and other forms of communication.

Petitioners further pray for full general and equitable relief and for all orders and decrees which are necessary or proper in the premises.

Respectfully submitted by,



Donald Carl Hodge, Jr.
Bar Roll Number 29251
4148 Palm Street
Baton Rouge, LA 70808
(337) 794-8873 (voice)
(888) 297-7959 (facsimile)
donaldhodge@gmail.com

CORHONDA CORLEY, EUGENE : 19TH JUDICIAL DISTRICT COURT
COLLINS and ANITA AUGUSTUS
VS. : PARISH OF EAST BATON ROUGE
EAST BATON ROUGE PARISH :
SCHOOL BOARD AND : STATE OF LOUISIANA
MICHAEL GAUDET

ORDER

Considering the foregoing pleadings and affidavits, it is ordered that a temporary restraining order be issued against the East Baton Rouge Parish School Board and Michael Gaudet restraining defendants from holding “Small Group Superintendent Candidate Workshops” with finalists for Superintendent of East Baton Rouge Parish Schools until time the court can hold a hearing on the request for a preliminary injunction.

It is further ordered that defendants Michael Gaudet and the East Baton Rouge Parish School Board show cause if they can on _____ day of June, 2020, at _____ .m. at the 19th Judicial District Courthouse, Room _____ why:

1. a writ of mandamus from this court pursuant to La. R.S. 42:26(A)(1) ordering Michael Gaudet and the East Baton Rouge Parish School Board to hold another vote for the selectin of Superintendent of East Baton Rouge Parish Schools, should not be issued,
2. an injunction from this court pursuant to La. R.S. 42:26(A)(2) enjoining Michael Gaudet and the East Baton Rouge Parish School Board from violating petitioners’ right to give public comment and to enjoin the defendants from limiting the public comment on the vote for selection of the Superintendent of East Baton Rouge Parish Schools, should not be issued,
3. an order from this court for declaratory relief that petitioners’ rights under La. R.S. 42:15 were violated by Michael Gaudet and the East Baton Rouge Parish School Board should not be issued,
4. an order from this court awarding civil penalties to petitioners and against Michael Gaudet not be issued,
5. an order for attorneys’ fees and all of the costs and expenses of litigation which petitioners have incurred should not be awarded, and
6. a temporary restraining order enjoining Michael Gaudet and the East Baton Rouge Parish School Board should not be made into a preliminary injunction, preventing the “Small

Group Superintendent Candidate Workshops” among the members of the school board and finalists for Superintendent of East Baton Rouge Parish Schools.

7. why the process of selecting the Superintendent of East Baton Rouge Parish Schools should not be voided because of informal polling and balloting among members of the Board through text messages, electronic mails, and other forms of communication.

Read and signed this _____ day of June, 2020 at Baton Rouge, Louisiana.

DISTRICT COURT JUDGE

PLEASE SERVE:

MICHAEL GAUDET
6545 Millstone Ave.
Baton Rouge, LA 70808-5113

EAST BATON ROUGE PARISH SCHOOL BOARD
through its President, Michael Gaudet
6545 Millstone Ave.
Baton Rouge, LA 70808-5113

CORHONDA CORLEY and
EUGENE COLLINS

: 19TH JUDICIAL DISTRICT COURT

VS.

: PARISH OF EAST BATON ROUGE

EAST BATON ROUGE PARISH
SCHOOL BOARD AND
MICHAEL GAUDET

: STATE OF LOUISISNA

STATE OF LOUISISNA
PARISH OF EAST BATON ROUGE

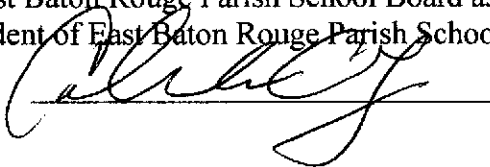
AFFIDAVIT

BEFORE ME, the undersigned Notary Public, personally came and appeared:

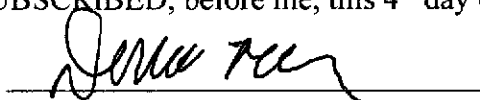
Carhonda Corley

who, after being duly sworn, did depose and say:

1. She is the petitioner in the above-titled case and has read the allegations made in the petition and to the best of her knowledge and belief the allegations are true.
2. She was denied the right of public comment at both the April 21, 2020 and May 21, 2020 meeting of the East Baton Rouge Parish School Board as it relates to the selection of Superintendent of East Baton Rouge Parish Schools.



SWORN TO AND SUBSCRIBED, before me, this 4th day of June 2020.



NOTARY PUBLIC

Donald C. Hodge, Jr.

Notary Public

#79545

CORHONDA CORLEY and
EUGENE COLLINS

:

19TH JUDICIAL DISTRICT COURT

VS.

:

PARISH OF EAST BATON ROUGE

EAST BATON ROUGE PARISH
SCHOOL BOARD AND
MICHAEL GAUDET

:

STATE OF LOUISISNA

STATE OF LOUISISNA
PARISH OF EAST BATON ROUGE

AFFIDAVIT

BEFORE ME, the undersigned Notary Public, personally came and appeared:

Eugene Collins

who, after being duly sworn, did depose and say:

1. He is the petitioner in the above-titled case and has read the allegations made in the petition and to the best of his knowledge and belief the allegations are true.
2. He was denied the right of public comment at both the April 21, 2020 and May 21, 2020 meeting of the East Baton Rouge Parish School Board as it relates to the selection of Superintendent of East Baton Rouge Parish Schools.



SWORN TO AND SUBSCRIBED, before me, this 4th day of June 2020.


NOTARY PUBLIC

Donald C. Hodge, Jr.

Notary Public

#79545

"A"



Event

Name 1. Small Group Superintendent Candidate Workshop to be held at the LA Tech Park from 9:30 a.m.-11:00 a.m.

Date & Time Wednesday, June 10, 2020
9:30am - 11:00am

Content

Small Group Superintendent Candidate Workshops to be held on June 10, 2020, at the Louisiana Technology Park (7117 Florida Blvd.) from 9:30 a.m.-11:00 a.m. Some or all Board Members may attend.



Event

Name 2. Small Group Superintendent Candidate Workshop to be held at the LA Tech Park from 2:00 p.m.-3:30 p.m.

Date & Time Wednesday, June 10, 2020
2:00pm - 3:30pm

Content

Small Group Superintendent Candidate Workshops to be held on June 10, 2020 at the Louisiana Technology Park (7117 Florida Blvd.) from 2:00 p.m.-3:30 p.m. Some or all Board Members may attend.



Event

Name 3. Small Group Superintendent Candidate Workshop to be held at the LA Tech Park from 9:00 a.m.-10:30 a.m.

Date & Time Thursday, June 11, 2020
9:00am - 10:30am

Content

Small Group Superintendent Candidate Workshops to be held on June 11, 2020 at the Louisiana Technology Park (7117 Florida Blvd.) from 9:00 a.m.-10:30 a.m. Some or all Board Members may attend.



Event

Name 4. Small Group Superintendent Candidate Workshop to be held at the LA Tech Park from 1:30 p.m.-3:00 p.m.

Date & Time Thursday, June 11, 2020
1:30pm - 3:00pm

Content

Small Group Superintendent Candidate Workshops to be held on June 11, 2020 at the Louisiana Technology Park (7117 Florida Blvd.) from 1:30 p.m.-3:00 p.m. Some or all Board Members may attend.

"B"

EBR Superintendent Search Small Group Conversations with Leslie Brown

Wednesday, Jun 10 · 2–3:30 PM

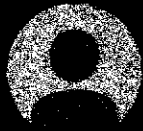
 LA Technology Park: Suite 305

 10 minutes before

 19 guests

 Maria Harmon

 Board Members



Eugene Weatherspoon



Gwynn L. Shamlin Jr.



James Guerra



Lewis Richerson

Going?

Yes

No

Maybe

Cancel

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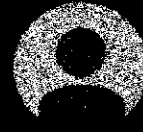
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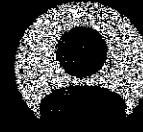
Maria Harmon



Board Members



Eugene Weatherspoon



Gwynn L. Shamlin Jr.



James Guerra



Lewis Richerson



Preston.Castille@TaylorPorter.com



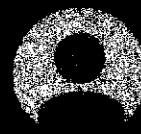
drjmims@gmail.com



gardereinitiative@gmail.com



georgeb@cauw.org



gmack@bigbuddyprogram.org

Going?

Yes

No

Maybe

Cancel

Verizon LTE

8:06 PM

22%



EBR Superintendent Se...



4:30



gardereinitiative@gmail.com



georgeb@cauw.org



gmack@bigbuddyprogram.org



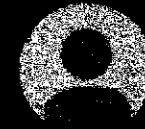
info@boomilton.com



jadadesireelewis@gmail.com



janet.duhy@taylorporter.com



judym@cauw.org



ksmith@edtrust.org



nathan@prestigiouspaintjob.com



ronnie.morris@la.gov



tonya_ylabr@yahoo.com

Going?

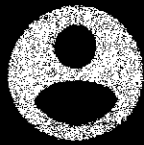
Yes

No

Maybe

Not

EBR Superintendent Se...



tonya_ylabr@yahoo.com

Thank you for agreeing to participate in small group conversations with each applicant. It's very important work for our community. The meetings will be held at the Louisiana Technology Park at 7117 Florida Blvd. We will be doing temperature checks, and we ask that you wear a mask.

Please take some time to review the materials for Mrs. Brown and Dr. Towns here: <https://ebschools.org/superintendent-search/>

Directions:

Turn into parking lot between Regions Bank and CVS. Make a left behind Regions Bank and cross the parking lot. The Technology Park logo is above the door which is between two white columns. The receptionist is inside the door. The receptionist will give further directions.

Phone:
225-218-1100



maria@stepuplouisiana.org

Going?

Yes

No

Maybe

Not

Verizon LTE

8:06 PM

21%



EBR Superintendent Search Small Group Conversations with Dr. Nakia Towns

Thursday, Jun 11 · 9-10:30 AM



LA Technology Park: Room-Tech Park U



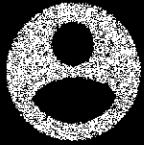
10 minutes before



17 guests



Maria Harmon



Board Members



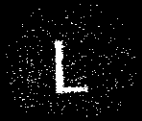
Eugene Weatherspoon



Gwynn L. Shamlin Jr.



James Guerra



Lewis Richerson

Going?

Yes

No

Maybe

Cancel

Verizon LTE

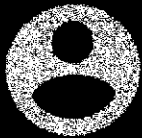
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22%

EBR Superintendent Se...



gardereinitiative@gmail.com



georgeb@cauw.org



gmack@bigbuddyprogram.org



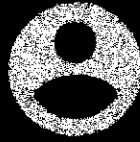
info@boomilton.com



ksmith@edtrust.org



nathan@prestigiouspaintjob.com



ronnie.morris@la.gov



tonya_ylabr@yahoo.com

Thank you for agreeing to participate in small group conversations with each applicant. It's very important work for our community. The meetings will be held at the Louisiana Technology Park at 7117 Florida Blvd. We will be doing temperature checks, and we ask that you wear a mask.

Please take some time to review the materials for Mrs. Brown and Dr. Towns here: <https://ebschools.org/superintendent-search/>

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"C"



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

May 8, 2020
OPINION 20-0006

Mayor Terry Gardner
City of Minden
P.O. Box 580
Minden, LA 71058

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

La. R.S. 14:134 and 42:11, *et seq.*

The convening of a quorum of a public body outside of a public meeting to discuss matters over which they have control is a violation of the Open Meetings Law. Continued failure or refusal to attend meetings in full may constitute malfeasance in office. Recalls La. Atty. Gen. Op. 75-595.

Dear Mayor Gardner:

You have requested an opinion of the Attorney General's office regarding the provisions of the Louisiana Open Meetings Law, La. R.S. 42:11, *et seq.* Pursuant to your conversation with our office on January 9, 2020, we have consolidated your opinion request to address the following issues:

- (1) Are discussions and pre-planning between a majority of the membership of a public body that take place outside of a public meeting, regarding business over which they have control, a violation of the Open Meetings Law;
- (2) What actions would constitute a walking or rolling quorum;
- (3) If a quorum is established at the beginning of a meeting, and a majority of the members subsequently leave, can the remaining members continue with the meeting; and
- (4) What relief is available to prevent council members from intentionally walking out of a meeting to avoid voting on issues or so that a quorum is not present to conduct business?

Your questions center on deliberations and discussions between members of the Minden City Council that take place outside of a public meeting. Your request describes several occasions, where you believe some council members met outside the view of the public to discuss business that comes before the Council and pre-planned a walk out to avoid voting on such issues or to defeat a quorum.

The provisions of Open Meetings Law are predicated on the fact that 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. La. R.S. 42:12. Further, it is a constitutional right that no person shall be denied the right to observe the deliberations of public bodies. La. Const. art. XII, § 3. In order to achieve these goals, the Open Meetings Law shall be construed liberally. La. R.S.

42:12. That is, whenever there is an uncertain situation in question, the application of the Open Meetings Laws should bend in favor of the granting access to the public.

To address the first two questions regarding a walking or rolling quorum, we must first define the working terminology. The terms "meeting" and "quorum" are defined by the Open Meetings Law in La. R.S. 42:13(A)(2) and (4) as follows:

(2) "Meeting" means the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power. It shall also mean the convening of a quorum of a public body by the public body or by another public official to receive information regarding a matter over which the public body has supervision, control, jurisdiction, or advisory power,

(4) "Quorum" means a simple majority of the total membership of a public body. R.S. 42:13(A)(2) and (4).

Every meeting of any public body shall be open to the public unless closed for a lawful, properly noticed executive session. La. R.S. 42:14(A). Any discussions between a quorum of the membership on a matter over which the public body has supervision, control, jurisdiction or advisory power must comply with the Open Meetings Law. Such a discussion of a quorum outside of a properly noticed meeting is a violation of the Open Meetings Law. Further, any means used to circumvent the intent of the Open Meetings Law, such as proxy voting procedure, secret balloting, and informal polling, are prohibited. La. R.S. 42:14(B). One common way in which public bodies attempt to skirt these laws is through a "walking" or "rolling" quorum, which is in itself a violation of the Open Meetings Law. A "walking" or "rolling" quorum is a procedural device used to have conversations with a quorum of the public body through multiple smaller conversations of less than a quorum. Our office has concluded that a "walking" or "rolling" quorum is unlawful because while no conversation has occurred with an actual quorum physically present at a single location, a quorum effectively participates in a discussion of an issue. Such action is impermissible because it enables a public body to determine how a majority of the public body would vote on an issue while depriving the public of the benefit of observing such a discussion and being able to offer public comments. La. Atty. Gen. Op. Nos. 12-0177 and 90-349.

At least one court has stated that one council member informing another council member how he or she intends to vote on a matter at a future meeting and encouraging the fellow council member to vote in a similar manner is not without more a violation of the Open Meeting Law.¹ However, when a member of the council communicates separately outside of a public meeting with at least a quorum of council members to discuss an issue or plan a response, i.e. a walkout to defeat a quorum, these

¹ *Mabry v. Union Par. Sch. Bd.*, 42,856 (La. App. 2 Cir. 1/16/08), 974 So. 2d 787, 789-90.

conversations may constitute a "walking" quorum, the prohibited means of circumventing the Open Meetings Law discussed above.

It is important to note that a walking quorum could be achieved in the situation described above, if, after two members have a discussion that rises to the level of polling and decision making, the two council members then communicated with other council members and relayed the information or decisions. For example, in a public body that has five members - if council members A and B have a conversation, A cannot then go tell C and D, while B goes to tell E. In such a public body, a conversation of only three members would constitute a quorum and must comply with the Open Meetings Law. Regardless if each of those discussions happens one on one, the effect is that a quorum of members of the council essentially participated in the discussion. A "walking quorum" would be effectively established and a discussion of the matter had outside of the purview of the public; and thus such a scenario would amount to a violation of the Open Meetings Law.

Quorums can be achieved through electronic means as well. A group text message, email chain, or similar electronic communications of a quorum of the public body are no less violative of the Open Meetings Law than if those discussions were held in a back room. The effect is the same -- discussions and deliberations of a public body occurred out of the view of the public. Any electronic communications between less than a quorum should be approached with caution by each individual board member, as e-mails or text messages could be forwarded and result in polling or a "walking quorum." It is the advice of this office that before sending an email or other electronic message, that the sender consider the intent of the message. Communications to relay information, such as the time and place of the meetings are permissible. However, if the intent of the messages is to elicit a response, to engage in a discussion, or poll how the members of the public body are going to vote on an item, then the communications could constitute a violation of the Open Meetings Law.

The point at which communications of less than a quorum which occur outside of a public meeting rises to the level of a violation of the Open Meetings Law is a fact intensive inquiry. Considerations include the specific content of the communication, the degree of participation among the council members, how many council members actively participated, whether those communications were subsequently relayed to other members, etc. Members should be mindful of these factors when deciding whether to engage in any in-person or electronic communications with other members outside of a public meeting. For your reference, we recommend for your review, La. Atty. Gen. Op. No. 14-0140. You can locate the opinions of the Louisiana Attorney General on the Louisiana Department of Justice website, www.ag.louisiana.gov/Opinions, or may obtain a copy by calling our opinion coordinator at (225) 326-6000.

We will now address your third question - if a quorum is established at the beginning of a meeting and a majority of the members leave prior to adjournment, can the remaining members continue with the meeting? The simple answer is found in the definitions

provided in La. R.S. 42:13. Louisiana Revised Statute 42:13(2) defines a meeting as "the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power." The convening of a quorum is a foundational element of having a meeting. Thus, absent a quorum, a meeting can no longer take place. It is important to note that any action taken at a "meeting" following the loss of a quorum would be null and without the force of law. Due to La. Atty. Gen. Op. No. 75-595 coming to the inaccurate conclusion on this issue, we hereby recall that opinion.

Finally, you ask what relief is available to stop council members from walking out of a meeting to avoid voting on issues or so that a quorum is not present to conduct business. Louisiana Revised Statute 14:134 defines malfeasance in office as follows:

(A) Malfeasance in office is committed when any public officer or public employee shall:

(1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or

(B) Any duty lawfully required of a public officer or public employee when delegated by him to a public officer or public employee shall be deemed to be a lawful duty of such public officer or employee. The delegation of such lawful duty shall not relieve the public officer or employee of his lawful duty.

(C) (1) Whoever commits the crime of malfeasance in office shall be imprisoned for not more than five years with or without hard labor or shall be fined not more than five thousand dollars, or both.

Louisiana Constitution Article 10, § 24(A) provides, "[a] state or district official, whether elected or appointed, shall be liable to impeachment for commission or conviction, during his term of office of a felony or for malfeasance or gross misconduct while in such office."

The crime of malfeasance in office is intended to protect the public by deterring elected officials and governmental employees alike from the abuse of public office and duties. *State v. McGuffie*, 42,069 (La.App. 2 Cir. 8/1/07, 11-12), 962 So.2d 1111, 1118, writ denied, 2007-2033 (La. 2/22/08), 976 So.2d 1283. The Louisiana Supreme Court held in *State v. Perez*, 464 So2d 737 (La. 1985), that:

[b]efore a public officer or employee can be charged with malfeasance in office under LSA-R.S. 14:134, there must be a statute or provision of law which delineates an affirmative duty upon the officer or employee... The duty must be expressly imposed by law upon the officer or employee because he is entitled to know exactly what conduct is expected of him in his official capacity and what conduct will subject him to criminal charges.


We note, Minden Code of Ordinances §2-34 states "[e]ach alderman present shall be required to vote on all questions unless excused by the council, but shall not vote for himself on a question involving his individual interest unless he prepares and files a statement as permitted by La. R.S. 42:1120."

In La. Atty. Gen. Op. 02-63, our office concluded that while no statute was found that penalized a school board member for failure to attend meetings, "[i]t is our opinion that the continued failure or refusal to attend meetings of the School Board, without any excuse other than that of purely business reasons, would doubtless constitute malfeasance in office, and the courts would doubtless construe such malfeasance as misconduct in office." La. Atty. Gen. Op. 02-63 (citing Attorney General Opinion of 1960-62, page 311). With regards to the charge of malfeasance in office, the decision to bring charges rests with the District Attorney. The District Attorney has broad discretion in both the institution and handling of criminal prosecutions. La. Atty. Gen. Op. No. 00-51 and *State v. Kibodeaux*, 435 So.2d 1128 (La.App. 1 Cir. 1983). Whether failure to attend meetings amounts to malfeasance is a factual question within the discretion of the district attorney.

We hope that this opinion has adequately addresses 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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