



JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

March 8, 2012

✓ Mr. Robert Edwin Burns
4155 Essen Lane, Suite 228
Baton Rouge, LA 70809-2152

Ms. Sherrie M. Wilks
14223 Harry Savoy Road
St. Amant, LA 70774

Mr. Freddie Phillips
8055 Hanks Drive
Baton Rouge, LA 70812-4122

RE: Open Meetings Complaint

Dear Mr. Burns, Ms. Wilks and Mr. Phillips:

Our office has received your complaints alleging a violation of the Open Meetings Law by the Louisiana State Board of Examiners of Interior Designers ("Board of Interior Designers"). As the three of you submitted your complaints jointly, this letter is intended to respond to all three of your complaints.

Your complaints allege that the Board of Interior Designers failed to provide notice of a meeting held on November 17, 2011. As evidence of this failure to notice, you have included images from the Division of Administration's LaTrac website, captured on January 28, 2011, whereby there is no reference to a meeting on November 17, 2011. Please note that when we checked the LaTrac on March 6, 2012, we found both the agenda and the minutes for a meeting of the Board of Interior Designers held on November 17, 2011. Notably, we also reference the fact that there is no allegation that the Board of Interior Designers failed to properly notice its meeting as required by the Open Meetings Law at La. R.S. 42:19, but rather the allegation concerns a failure to provide information to the website maintained by the Division of Administration, as described by La. R.S. 49:1301 through La. R.S. 49:1306. Although many public bodies provide notice of their meetings through a website, the law does not require this, but rather requires that written public notice requires, at a minimum, a posting of the agenda at the principal office where the meeting is to be held. The Board of Interior Designers has confirmed that an agenda was posted at the office of the Board of Interior Designers as required by La. R.S. 42:19. While this office investigates allegations of violations of the Open Meetings Laws, and La. R.S. 49:1301 through

La. R.S. 49:1306 references the notice required under the Open Meetings Laws, we note that this law is not part of the Open Meetings Law. Therefore, we are not the appropriate entity to receive a complaint concerning compliance with these statutes. We recommend you direct any complaints concerning compliance with these statutory requirements to the Division of Administration or to Ms. Sarah Olcott Allen, the Director of Boards and Commissions for the Office of the Governor, who can be reached at 225-342-0919.

Your complaint also alleges that it was improper for the Board of Interior Designers to take up the matter of Ms. Edmonds' employment agreement at the meeting on November 17, 2011, noting that the agenda did not contain this item, however, also acknowledging that the Board of Interior Designers unanimously voted to add such item to the agenda. As you are aware, La. R.S. 42:19(A)(1)(b)(ii) allows for a public body to amend the agenda, providing:

Such notice shall include the agenda, date, time, and place of the meeting, provided that upon unanimous approval of the members present at a meeting of a public body, the public body may take up a matter not on the agenda. Any such matter shall be identified in the motion to take up the matter not on the agenda with reasonable specificity, including the purpose for the addition to the agenda, and entered into the minutes of the meeting. Prior to any vote on the motion to take up a matter not on the agenda by the public body, there shall be an opportunity for public comment on any such motion in accordance with R.S. 42:14 or 15. The public body shall not use its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of this Chapter.

You allege that the Board of Interior Designers used its authority to take up a matter not on the agenda as a subterfuge to defeat the purposes of the Open Meetings Law. However, it is the opinion of this office that there is insufficient evidence to sustain such an allegation. It is within the Board of Interior Designers authority to take up a matter not on the agenda, provided the proper procedure for doing so was followed. Making a determination of whether or not the public body used its authority to take up a matter not on the agenda is a fact-specific determination, and we acknowledge that reasonable minds could differ on this determination. However, without sufficient evidence of an intention to circumvent the laws, we do not believe it is appropriate for us to instigate enforcement proceedings. You have also included information alleging violations referencing the issue of whether or not security was employed for the meeting on November 17, 2011 and the failure to prepare an audio recording of such meeting. The Open Meetings Law does not require or prohibit a public body from having security personnel at its meetings, and does not require or prohibit a public body from making an audio recording of its meeting. The issue of whether or not security was or was not in attendance for the full length of the meeting, or whether an individual was paid for providing security, and the failure to make an audio recording of a meeting does not, in our opinion, provide sufficient evidence of an intent to hide the events which transpired on November 17, 2011.¹

Your complaint also alleges that the Louisiana Auctioneers' Licensing Board violated the Open Meetings Law on January 23, 2012 and the Board of Interior Designers violated the Open

¹ Further evidence of the attempt to provide the public with the events which occurred at the meeting on November 17, 2011 are the minutes of such meeting, which are currently available.

Meetings Law on January 26, 2012 for similar reasons. You allege that both Boards went into executive session for the purpose of discussing "potential litigation" without attaching additional information to the notice. You have also included a video of this meeting, where the attorney for the Board advised the Board that it was proper to go into executive session pursuant to La. R.S. 42:17(A)(2). We note that there is no evidence that it was improper to go into executive session for the reasons stated, but rather the your letters allege information was left out of the notice which should have been included pursuant to La. R.S. 42:19. As you know, the same attorney serves both of the Boards referenced, and we have discussed this issue with her. She has indicated that the reason for going into executive session was for providing the board with information which the legislature has deemed confidential under a separate statute. However, we notified her of the additional notice which must be included on the agenda when a board enters executive session pursuant to La. R.S. 42:17(A)(2), and she has assured us of compliance with the notice requirements in the future. It is the opinion of this office that even if the notice did not include the additional elements required under La. R.S. 42:19 pertaining to executive session to discuss litigation, as we have discussed this matter with the Boards' attorney who has assured this office that future executive sessions for La. R.S. 42:17(A)(2) will comply with the notice requirements under La. R.S. 42:19 and due to the fact that there is no evidence that the executive session itself was improper, there is insufficient cause for instituting enforcement proceedings.

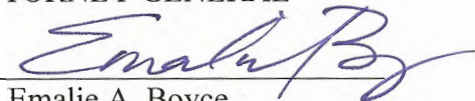
As an additional matter, we note your general concern with compliance with the Open Meetings Law by both of the Boards mentioned in these letters. As you have previously instituted proceedings against one of the Boards referenced in these letters and submitted several prior complaints with legal citations and summaries, you appear to be well educated on the Open Meetings Law. While we have attempted to resolve the issues as we deem appropriate, we note that these complaints are part of multiple complaints about the way the affairs of these Boards are conducted (as evidenced by the affidavits included with your complaint, which reference complaints brought to the attention of the Louisiana Legislative Auditor). This response deals solely with the Open Meetings Law complaint you have alleged, and as far as any further action relative to the information contained in the Legislative Auditor's report, it is not appropriate for our office to make any comment.

For the reasons referenced above, please allow this letter to serve as notice that this office is closing our file into this matter and we are not instituting enforcement proceedings. As you are aware, the Open Meetings Law permits you to institute proceedings on your own behalf, as provided for in La. R.S. 42:25(C). We wish you the best of luck in resolving these issues

With Best Regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

By:



Emalie A. Boyce
Assistant Attorney General

JDC/EAB

cc: Mr. Richard McGimsey, Director, Civil Division