

Government Law Alert

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New Open Meeting Law Regulation Goes into Effect on September 14, 2012

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The Massachusetts Attorney General has finalized a new regulation that will make it easier for the Attorney General to impose monetary penalties against public body members who violate the Open Meeting Law.¹ Specifically, the new regulation broadens the scope of conduct that will be considered evidence of an “intentional violation” of the Law. The final regulation was filed with the Secretary of the Commonwealth on August 21, 2012 and will be published in the State Register on September 14, 2012.

Under the new regulation, evidence of an “intentional violation” of the Open Meeting Law shall include a showing that a public body or public body member “(a) acted with specific intent to violate the law; (b) acted with deliberate ignorance of the law’s requirements; or (c) was previously informed by receipt of a decision from a court of competent jurisdiction or advised by the Attorney General ... that the conduct violates [the Open Meeting Law].”² This new regulation expands the scope of violations that will be considered “intentional,” as the previous regulation did not include provisions for “specific intent” or “deliberate ignorance” on the part of public body members.³ Under the new regulation, public body members who deliberately ignore their obligations under the Open Meeting Law will be treated as if they had specifically set out to violate the Law.

The new regulation’s broad definition of “intentional violation” is of critical importance for public body members because the Attorney General may only impose monetary penalties under the Open Meeting Law for intentional violations of the Law.⁴ Since the new regulation expands the scope of violations that will be considered “intentional,” the new regulation increases the likelihood that monetary penalties will be imposed against public body members. In fact, the new regulation makes it clear that such monetary penalties may be imposed against public body members even if those members did not know that their conduct would violate the Open Meeting Law. Such ignorance will be considered irrelevant if the public body member deliberately remained uninformed about the requirements of the Law. Because of the heightened obligation to fully understand the requirements of the Open Meeting Law, all public body members are encouraged to seek legal advice on the Open Meeting Law before the new regulation goes into effect on September 14, 2012. Seeking such legal advice may avail public board members of a valuable defense against the imposition of monetary penalties.⁵

Mintz Levin has been working with clients to analyze current practices and ensure compliance with the Open Meeting Law. We can help conduct trainings and develop or review policies.

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Endnotes

¹ G.L. ch. 30A §§ 18-25.

² The full text of the new regulation is available at The Official Website of the Attorney General of Massachusetts: <http://www.mass.gov/ago/news-and-updates/press-releases/2012/2012-08-22-oml-regulations.html>.

³ 940 CMR 29.02

⁴ 940 CMR 29.07(3)(d)

⁵ G.L. c. 30A, § 23(g) provides that “[i]t shall be a defense to the imposition of a penalty that the public body, after full disclosure, acted in good faith compliance with the advice of the public body’s legal counsel.”

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