

Complaint – Intentional violation Open Meetings Act, Act 267 of 1976 (OMA)

MCL 15.265(1) a meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

On August 2, 2007 at approximately 5:30p the Planning Commission of the City of Mt. Pleasant, MI convened a special meeting for the purpose of determining zoning ordinance text change recommendations.

Immediately prior to its decision to elevate the gathering of the secretary and 7 commission members to the status of a meeting subject to the OMA, the secretary and commission members were advised of the statutory requirement for notice of special meetings as stated in OAG 5724 (June 20, 1980) and informed notice for the pending meeting had not been accessible to the public for the minimum 18 hours, 11:30p August 1st through 5:30p August 2nd, before the meeting.

The secretary affirmed notice for the special meeting was not accessible to the public for the minimum 18 hours, 11:30p August 1st through 5:30p August 2nd, before the meeting.

The secretary and commission members proceeded into a special meeting and made determination of zoning ordinance text change recommendations.

On August 6, 2007 a complaint was filed with Office of the Prosecuting Attorney, Larry J. Burdick Prosecuting Attorney County of Isabella regarding the intentional violation of OMA provision MCL 15.265(1) described above. The following claims were stated as foundation for the complaint:

- 1) The Commission is a "public body" subject to the act. – MCL 15.262(a)
- 2) Determination of zoning ordinance text change recommendations formulates public policy on which the Commission is required to vote and constitutes a "decision" pursuant to the act. – MCL 15.262(d)
- 3) The 08/02/07 5:30p gathering of 7 members, a quorum of the Commission, for the purpose of discussing and determining zoning ordinance text change recommendations constitutes a "meeting" pursuant to the act. – MCL 15.262(b)
- 4) The act requires public notice of a special meeting be posted at least 18 hours before the meeting. – MCL 15.265(4)
- 5) The minimum 18-hour notice requirement is not fulfilled if the public is denied access to the notice for any part of the 18 hours. – Michigan Attorney General Opinion No. 5724
- 6) The attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance. – MCL 15.271(1)

- 7) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00. – MCL 15.272(1)
- 8) Members of the Mt. Pleasant Planning Commission and the Secretary of the Planning Commission are “public officials” subject to the act.
- 9) The Commission customarily posts meeting notices inside its principle office located at 401 N. Main St. Mt. Pleasant, MI., and on the City’s website under headings of “Meetings” and “Public Hearings and Notices”, and on cable television channel 26 “Meetings Schedule”.
- 10) The Commission did not post notice of the 08/02/07 5:30p special meeting on the City’s website, on cable television channel 26, or elsewhere outside its principle office.
- 11) Notice of the 08/02/07 5:30p special meeting was not accessible to the public for an 18-hour period prior to the meeting.
- 12) The Commission was informed and acknowledged public notice for the special meeting 08/02/07 5:30p had not been posted in a manner that fulfilled OMA requirements prior to commencement of deliberations.

In correspondence dated August 17, 2007 the prosecuting attorney concluded, “there was not violation of the OMA ...”. In reaching his conclusion Mr. Burdick does not dispute the claims stated above. Instead, he selectively ignores that which is stated on the face of OAG 5724 and its statutory context stating -

“It is my opinion, that the statute, as interpreted by the above *Opinion* [OAG 5724], does not require that notices of special meetings be accessible to the public, during the 18 hour period *immediately preceding* the meeting itself, but rather, that the public must have access to the notice at least a full 18 hours before the meeting is conducted.”

Mr. Burdick illustrates application of the special meetings notice requirement with an example in which posting notice accessible to the public for 18 hours a month in advance of the meeting fulfills the requirement. In context of the OMA, this does not appear to be consistent with the general rule of construction that a statute should be construed so as to give effect to its legislative purpose and obviate absurd results.

Additionally, Mr. Burdick states he was advised that notice of the meeting was posted at City Hall, in a place accessible to the public, on July 30th; and suggests, by reference to *Arnold Transit v City of Mackinaw* 99 Mich App 266, 274 (1980), that a special meeting notice posted in this manner reflects substantial compliance providing realistic fulfillment of the purpose for which the mandate was included in the statute.

City Hall hours of public accessibility are posted, accessible from outside the building at the main entrance, as 8:00a to 4:30p Monday through Friday. Accepting

that notice for the meeting was continuously posted inside the building in a place accessible to the public beginning 8:00a on July 30th, notice was accessible to the public for 8.5 hours on each of the four days July 30th through August 2nd.

Request for Relief

Provide clarification as to the manner in which a public body is required to post notice of a special meeting –

- A) Continuously accessible to the public for at least the 18 hours preceding the meeting, consistent with OAG 5724
- B) Periodically accessible to the public for periods that accumulate to 18 hours at any time preceding the meeting, consistent with Prosecuting Attorney Burdick's opinion dated 08/17/07
- C) All of the above