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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

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COUNTIES:

OPEN MEETINGS ACT:

PUBLIC BODY:

Application of open meetings act to county board of commissioners standing committee

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A meeting of a standing committee of a county board of commissioners, composed of less than a quorum of the full board, is subject to the Open Meetings Act when the committee is effectively authorized to determine whether items of county business will or will not be referred for action by the full board.

Opinion No. 7000

December 1, 1998

Mr. John L. Livesay  
Branch County Prosecuting Attorney  
Branch County Courthouse  
Coldwater, MI 49036

You have asked whether a meeting of a standing committee of a county board of commissioners, composed of less than a quorum of the full board, is subject to the Open Meetings Act, 1976 PA 267, MCL 15.261 *et seq*; MSA 4.1800(11) *et seq*, when the committee is effectively authorized to determine whether items of county business will or will not be referred for action by the full board.

Information supplied with your request indicates that a county board of commissioners, through adoption of a rule, established four standing committees,<sup>1</sup> each consisting of less than a quorum of the full board of commissioners. You describe the operation of these committees as follows:

If an issue is brought to a committee by a department head, elected official, or judge and the committee determines that supportive action should be taken, the committee will make a recommendation to the full board at the next board meeting. It is usually couched in terms similar to the following: "The committee recommends and I so move that . . ." Such recommendations are reflected in the committee minutes. If the committee does not approve of what action may be desired by the particular department (for example), that fact may be reflected in the committee minutes that a discussion was had, and the matter would go no further. There would be no unfavorable recommendation to the full board and no action taken by the full board. A review of commissioner committee minutes illustrates that routinely matters are discussed at committee meetings that end with the committee making a decision that no action will be taken. Though the fact that the matter was discussed may appear in the committee minutes, no discussion or action will be subsequently taken by the full board. The committee minutes will not reflect that an unfavorable recommendation was made to the full board. The matter will simply

die in committee.

It can probably fairly be said that the only time any matter goes to the full board for discussion and/or final decision is if the committee is "recommending" that some positive action be taken by the board. A negative action or decision to take no action would be made by the committee. . . . The full board would have no discussion on the matter and would take no vote and make no decision on the issue.

The Open Meetings Act (OMA) requires, subject to limited exceptions, that a meeting of a public body must be open to the public and is subject to specified notice and record-keeping requirements. Section 3(1); OAG, 1981-1982, No 6053, p 616 (April 13, 1982). Section 2(a) of the OMA defines the term "public body" as:

[A]ny state or local legislative or governing body, including a board, commission, *committee*, subcommittee, authority, or council, which is *empowered by* state constitution, statute, charter, ordinance, resolution or *rule to exercise governmental or proprietary authority or perform a governmental or proprietary function*, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

(Emphasis added.)

OAG, 1977-1978, No 5183, p 21, 40 (March 8, 1977), reviewed this definition, together with the legislative history of the OMA, and concluded that the Act does not apply to committees and subcommittees composed of less than a quorum of the full public body if they "are merely advisory or only capable of making 'recommendations concerning the exercise of governmental authority.'" Where a committee or subcommittee, however, is empowered to act on matters in such a fashion as to deprive the full body of the opportunity to vote on the matter, the committee's decision "is an exercise of governmental authority which effectuates public policy," and the committee proceedings are therefore subject to the OMA. OAG, 1977-1978, No 5222, p 216, 217-218 (September 1, 1977).

This latter point is underscored by the recent decision of the Michigan Court of Appeals in *Schmiedicke v Clare School Bd*, 228 Mich App 259, 261; 577 NW2d 706 (1998). In that case, a local school board established a Personnel and Policy Committee (PPC) and delegated to that committee "the task of reviewing whether the school district should retain its current method for evaluating school administrators and whether the length of administrator contracts should be changed." The committee thereafter met in private and ultimately recommended no change in the school district's existing policies. After receiving the committee's report, the full school board took no action, effectively adopting the committee's recommendation. The court concluded that, under these facts, the committee was subject to the OMA and had violated that Act by meeting in private. The court reached this conclusion despite the fact that the school board had apparently not intended to delegate actual decision-making authority to the committee:

Testimony at trial, although equivocal, indicated that defendant school board did not intend to delegate final decision-making authority to the PPC. However, there was testimony by a school board member that, because the PPC recommended no change with respect to either policy presented to it for review, defendant school board believed that it did not have to take any action on the PPC's recommendation. In other words, by failing to vote, defendant school board "affirmed" the PPC's recommendation to leave intact the current methods for evaluating administrators and the length of administrator's contracts. Thus, at the April 18, 1994, meeting, defendant school board renewed each administrator's contract for two terms in accordance with its current policy.

The primary purpose of the OMA is to ensure that public entities conduct all their decision-making activities in open meetings and not simply hold open meetings where they rubber-stamp decisions that were previously made behind closed doors. See *Booth Newspapers, [Inc v Univ of Michigan Bd of Regents]*, 444 Mich 211, 222; 507 NW2d 422 [1933]; *Wexford Co Prosecutor v Pranger*, 83 Mich App 197, 204; 268 NW2d 344 (1978). Here, defendant school board's referral to the PPC for a recommendation was a delegation of authority to perform a governmental function. The focus of the inquiry is the authority *delegated* to the PPC, not the authority it *exercised*. The PPC failed to openly deliberate on the governmental function that the defendant school board had delegated to it. Subsequently, the defendant school board adopted the PPC's recommendation. The defendant school board's adoption of the recommendation effectively foreclosed any involvement by members of the

public and essentially meant that the decision made by the PPC at a closed meeting was a fait accompli. *Booth Newspapers, supra* at 229. Consequently, the PPC made closed-session deliberations and decisions in violation of the OMA.

228 Mich App 263-264.

These authorities are directly applicable to your question. According to the facts provided with your inquiry, matters referred to the referenced standing committees reach the full board of commissioners only if the committee makes a positive recommendation to the board; if the committee makes an unfavorable recommendation, the matter never reaches the board. Thus, each of these standing committees effectively exercises the authority to preclude various matters from reaching the full board for deliberation and decision. Under these circumstances, the committees are not merely advisory but instead are exercising governmental authority which effectuates public policy and are, therefore, subject to the requirements of the OMA. OAG, 1977-1978, No 5222, *supra*, at 218.

It is my opinion, therefore, that a meeting of a standing committee of a county board of commissioners, composed of less than a quorum of the full board, is subject to the Open Meetings Act when the committee is effectively authorized to determine whether items of county business will or will not be referred for action by the full board.

FRANK J. KELLEY  
Attorney General

<sup>1</sup> The standing committees and their duties include the following: The Ways and Means Committee (prepares a county budget and protects the interests of county citizens in all matters pertaining to finance); Personnel Committee (authorized to "approve or disapprove all bills to be paid by the county"); Courts and Public Safety Committee (acts as a liaison between the executive, judicial and legislative offices in the county); and the House Committee (advises and assists various offices in the development of policy).

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