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May 18, 2009

REPORT OF THE COMMITTEE
ON RULES

The Committee on Rules met on May 18, 2009, with Chairman William White, presiding and Committee Member Alderman Dennis Sullivan also present and voting. Also present were Aldermen William Roche, Walter Pero and Rebekah Gewirtz, Administrative Assistant Jessie Baker, City Solicitor John Gannon and interested members of the public. The meeting was tape recorded.

187113: an Order That the City Solicitor advise this Board whether items submitted for the agenda of a Board meeting, or related communications, are confidential until the agenda is released, and advise on other matters related to public records and the open meeting law.

Mr. Gannon addressed the members and provided his opinion on the confidentiality of agenda items, public records issues and the open meeting law. According to M.G.L. c. 4, § 7, Clause Twenty Sixth (d), the Board of Aldermen may not withhold, as exempt public records, documents in its possession that have not been formally drafted as part of its agenda for its duly noticed public meetings. Mr. Gannon noted “that there are specific exemptions to the Public Records Law that may apply with respect to any particular document” and that those type discussions should be withheld from public view. Such matters might include, but are not limited to personal, financial or health information. Mr. Gannon stated that it would be up to the Board of Aldermen to decide if the address of a public safety official, who is receiving a citation, could be released, since the citation is ceremonial in nature, however it is recommended that such information not be released.

The committee discussed whether emails, etc., are considered public documents that must be retained. Mr. Gannon cited a 2003 case in which emails, whether from city or personal computers or phones, were ruled to be public documents. All city business, however circulated, is broadly considered to be public information, whether between alderman/alderman, constituent/aldermen, etc., and would need to be retained. John will forward the case information to Chairman White. Information regarding city business that is posted on an alderman’s website is also considered public information and must be retained. Mr. Gannon will research what the retention period is and provide the information to the committee. Text messages sent or received by a member of a governmental body during an official meeting of that body are considered public documents, according to Mr. Gannon, unless they fall under one of the previously referred to exemptions. Mr. Gannon also noted that under the open meeting law for municipal bodies, all participants must be present at the meeting in order to participate, i.e., participating via text messaging or telephone, for example, would not be allowed.

Chairman White asked if a quorum, or more, of the Board of Aldermen signing on to an order, resolution, etc., constituted a violation of the open meeting law. Mr. Gannon stated that the Middlesex County District Attorney's Office would consider that a serial polling of members to determine a public outcome, i.e., a deliberation taking place outside of a public meeting, where all deliberations should take place. Such a scenario would be problematic. Mr. Gannon will research the implications if the polling were to be done through the clerk rather than directly by an alderman. Alderman Sullivan inquired why the solicitation of co-sponsors would be a violation of the open meeting law since the item hasn't been discussed or voted on yet. Mr. Gannon will research the issue and provide the information to the committee.

Mr. Gannon distributed information on the Open Meeting Law and a court ruling involving the Boston City Council.

Alderman Pero informed the committee that Superintendent of Schools Pierantozzi has requested that the City Solicitor copy the School Committee on any information distributed by him at this meeting.

No papers were acted on.

Alderman William A. White, Jr., Chairman
Committee on Rules