

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Thursday, March 9, 2017 9:17 AM
To: 'Freeman, Robert J (DOS)'
Subject: Your April 11, 1985 advisory opinion #OML-AO-1158 -- & other records pertaining to the 1985 amendment to the Open Meetings Law: Public Officers Law §108.2(b)

Dear Bob,

I am preparing my request to you for an advisory opinion as to the constitutionality of Public Officers Law §108.2(b) – the 1985 amendment to the Open Meetings Law.

Can you send me your April 11, 1985 advisory opinion #OML-AO-1158, whose # I got from footnote 26 of the NYS Commission on Public Integrity's December 21, 1987 report entitled Open Meetings Law, collected with its other reports in its book Government Ethics Reform for the 1990's.

Also, can you send me any records you have regarding the resulting Senate and Assembly bills -- S-6284/A-7804 – which became the 1985 amendment to the Open Meetings Law. According to footnote 27, they were “introduced in both houses on May 23, 1985;...passed by both houses on May 30, 1985, and signed into law on May 31, 1985”.

And do you have the “message of necessity” to which former Senator Nancy Larraine Hoffmann referred when she testified on February 6, 2009 before the Senate Temporary Committee on Rules and Administration Reform at its public hearing in Syracuse? How about her referred-to bills S.3509? The video of the hearing, at which Senator Hoffmann was the first witness testifying, is here: https://www.youtube.com/watch?feature=player_embedded&v=qkxd5QIJz4I. My transcription of what she said, at 11 min-19 seconds, is below:

“So the very first bill that I introduced was, the number was S.3509 and I think it kept the same number for a number of years and it said open the closed-door party caucuses whenever public business is being discussed.

Now the reason that it was important to introduce that was because there had been a lawsuit brought by, I believe it was the New York Post and supported by the New York State Publishers Association, demanding access to the majority conference rooms under the premise that whenever public business was being discussed they should be allowed in.

Not only did the legislature not want to see this changed, when the matter came up for discussion in, of course, the closed-door party conferences, in 1985, we were told in the Democratic conference by the minority leader that this was just a minor technical correction to the law that would forever prevent our conference rooms from being invaded by the press, because, as Senator Orenstein, the minority leader, said at that time: of course, we don't want people listening to our discussions, whether we are in the majority or the minority, this is just the way we do things. And then he went so far as to say, the governor is prepared to sign it, it will come up with a message of necessity, meaning there would be no public notification before it arrived and, very importantly, he said, there doesn't need to be any discussion.

So, as a freshman member of the Senate I sat in the Senate chamber when the bill came up and it was read in short title, which means there were only a couple of words and it would be indistinguishable to anybody who didn't know what it was from any routine piece of business and the gavel was about to come down when I found myself on my feet. And I stood on the floor, in full view of Senator Warren Anderson, the majority leader at that time, and I protested that we should not be sanctioning the concept of closed-door party conferences, in fact, we should be doing just the opposite and they should always be open whenever public business was being discussed. Party business is one thing, as long as people are willing to say, we are looking out for our political interest, right now the door can be closed.

But having made that statement, voting that way – and I'm proud to say that I was supported by a couple of members of my conference and even one member of the majority conference supported me at that time – the bill had passed unanimously in the Assembly and there were only the little handful, I believe, six dissenting votes, in the Senate. That made me, if I wasn't already, a marked woman and there was really no other reason to hide my disdain for the process..."

Thank you.

Elena
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