

## City Attorneys Saw Meetings Violations, Memos Show

- Written By: [MATTHEW CARDINALE](#)
- 8-9-2011

(APN) ATLANTA -- City attorneys for the City of Atlanta advised Council Members in a series of internal memos that the Council had violated the Georgia Open Meetings Act, and advised Council Members to change

their practices, Atlanta Progressive News has learned.

APN obtained four members prepared for Council Members by City attorneys from a source who was granted confidentiality because they were not authorized to release the information.

APN's Editor--the present writer--is presently in litigation with the City regarding their practice of holding seven closed-door Committee Briefings every two weeks.

As previously reported by APN, the Georgia Attorney General's office has warned the City that they will file an action against the City similar to the one filed by the present writer, unless the City enters into a consent decree to admit wrongdoing and promise no future violations. The City Attorneys are currently preparing a draft of what they would be willing to offer in a consent decree.

The first memo, dated April 04, 2011, was prepared by City Attorney Kristen Denius in response to Councilwoman Felicia Moore (District 9).

In this memo, Denius responds to an article by Atlanta Progressive News which revealed that sometimes the Committee Briefings had quorums, but the public was not notified that they could be allowed in.

The City's practice was to advise the public that the meetings may or may not be open, depending upon whether

a quorum was reached. APN argued that this was problematic because insufficient notice, if any notice at all,

was being provided to the public. Apparently, the City's own attorneys agreed with APN on this issue.

[The Committee Briefings lawsuit, filed in May 2011, alleges that there are violations both when there are quorums and when there are not quorums.]

"The first issue raised by the article in the Atlanta Progressive News is the matter of committee briefings

and our compliance with the requirements of the Georgia Open Meetings Act. As the Law Department has recently

advised, in response to your own concerns, a quorum of members of a Council committee must not be allowed

during any committee briefing or other similar gathering of Council Members," Denius wrote.

"Once a quorum of the Council as a whole or of any of its established committees is created, the Open Meetings

Act defines such a gathering as a 'meeting' and the statutory requirements for public access and the taking of

minutes presumptively apply," Denius wrote.

"Tied into this issue are Mr. Cardinale's statements regarding public notice. Under the Open Meetings Act, sufficient prior notice must be given to the public to allow them the opportunity to attend public meetings.

When a quorum is allowed during a committee briefing, and the public is spontaneously allowed into such a briefing the requirement for notice of a public meeting cannot be met," Denius wrote.

"This inability to meet the notice requirements of the Open Meetings Act is the primary reason that a quorum

cannot be allowed to exist during a committee briefing," Denius wrote.

Then, Denius goes on to also warn Council Members not to discuss the substance of issues on the agenda of the

Council Committees at the Committee Briefings, basically agreeing with the concerns raised by APN on another

issue.

"Mr. Cardinale is clearly insinuating that committee briefings are some sort of evasion of the Open Meetings Act

and he implies that matters of public concern are being discussed during briefings instead of being properly discussed during the regular committee meetings," Denius wrote.

[Of course, it is not just an insinuation. Council Members have made public statements confirming the substantive

discussions; Council President Cesar Mitchell defended them in an email; and the City Attorneys admit it in one of the other memos.]

"In order to fully comply with the language and intent of the Open Meetings Act, the discussion during committee briefings should be limited to purely administrative concerns related to the functioning of the upcoming committee meeting (ie., whether modifications need to be made to the agenda, whether substitute legislation will be presented, whether the appropriate staff will be available to speak to particular legislation, whether legislation will continue to be held or whether it will be moved forward, etc.)," Denius wrote.

"Committee briefings should not be used as a forum in which to obtain more detailed information about a topic to be considered on the agenda. Such acquisition of information on a matter of public concern should either be done by Council Members on a one-on-one basis, by the entire committee during the public committee meeting, or during a specially scheduled work session which is properly noticed and open to the public," Denius wrote.

One source told APN that since Denius provided the April 2011 memo, that there have already been some changes to the

Committee Briefings, although Committee Chairs differ in the extent to which they follow the advice.

Councilwoman Archibong, who Chairs the City Utilities Committee, prohibits executive branch officials from discussing the substance of policy issues in briefings completely, and advises such officials to make their remarks

on camera at the Committee Meeting. This is already changing the culture of the Committee Briefings and executive

branch officials are learning that if they conduct their business transparently, that the world does not fall apart.

Now, as previously reported by Atlanta Progressive News, there is case law--Jersawitz v. Fortson--which states that

a quorum should be broadly construed. In this case, APN is arguing that Council Members--whether they are on the respective Committee or not--and their staff members, executive branch officials, and other guests should count towards the quorum.

Even with their more narrow notion of a quorum, the City Attorneys warned, "It is the suggestion of the Law Department

that, in the event that a quorum is reached during a Briefing, the Committee chairperson should immediately halt

the Briefing and direct that enough Council members leave the room so that a quorum is no longer present.

Any discussions

that occur during a Briefing in which a quorum is present are in violation of the Georgia Open Meetings Act."

However, APN does not see use a revolving door strategy as an acceptable solution either; all individuals present at

any time during the Briefings--except, perhaps with the exception of the Committee staff--should count towards the quorum.

Due to the Council's apparent ongoing inability to avoid having quorums, especially under a more broad definition of a

quorum as prescribed by Jersawitz v. Fortson; and the varying willingness of Council Chairs to restrict discussion to

procedural matters, Atlanta Progressive News maintains its position that the only way for the Council to comply with

the Act is to open up the Committee Briefings.

Also, in the memos, the City Attorneys write that the Committee Chairs Briefing which occurs the morning before each

Full Council meeting, also falls under the Act's definition of a meeting, and is thus required to be noticed, open,

have an agenda, and have minutes.

APN has noticed that in recent weeks, the City started including the Committee Chairs Briefing in its notice of public meetings; however, the location of the meeting is not advertised and the meeting is held in Ceasar Mitchell's office, raising questions about whether the public is truly being afforded access to those meetings.

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(END / 2011)