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October 21, 2003

Janice C. Green, CMC
City Clerk
City of Dover City Hall
P.O. Box 475
Dover, Delaware 19903-0475

RE: **W. Michael Tupman Workshop of October 6, 2003, 11:30 A.M.**

Dear Janice:

I took some notes on this workshop, which was attended by the Mayor and all members of Council and was very productive. Mr. Tupman did an excellent job and since he handles all of this for the Department of Justice, I believe that we should be in his good graces by your having the foresight to schedule this workshop. Here are my notes on what he covered:

1. The City of Newark had to fill a committee position and the nominating committee did it by e-mail. This constituted a quorum and was a violation of the open meeting law.

2. The salary of a public employee is a public record and has to be divulged to the public if requested, but the employee's age, Social Security Number, etc., is protected. The same is not true for pensioners and the amount a retired employee receives on his pension should not be divulged.

The remainder of his remarks were aimed at three of the most controversial areas of the freedom of information act (FOIA), which he said were:

1. Amending the agenda;
2. Procedures to go into executive session;
3. What is permissible under executive sessions.

On amending the agenda, he pointed out that the agenda can be amended to include executive sessions for subjects that arise at the time of the public body's meeting. At Section 0004(e)(2), he pointed out three cases where something came up in executive session that was not scheduled for executive session, and the town could have solved the problem by simply amending the executive session at the time of the meeting to cover the new topic.

He also pointed out that the public body can refuse to hear any member of the public while the meeting is going on, but he cautioned that if you recognize one person to speak at a meeting, then you open yourself up to allowing everyone who wants to speak to also come forward. He suggested that if this is the case, you need to set ground rules before opening up any discussion to the public, i.e., three minute maximum, one person per group, etc.

Regarding executive sessions, he pointed out that many public bodies do not handle this appropriately, and that the Act requires that while the public body is still in open session the question to go into executive session is presented and voted upon. He said that many towns do not do this. Then in executive session, you must take sufficient note to justify the burden of showing that the executive session's purpose was lawful. Two sets of minutes should be taken, i.e., one that can be released to the public if necessary and those minutes that if released to the public would defeat the purpose of the executive session and can be kept confidential. He strongly advised against recording the executive session.

He then went over the most used categories for going into executive session and said that 10004(b)(4) regarding legal advice was the most misunderstood section. This includes only legal advice with respect to collective bargaining or pending or potential litigation and would not cover routine legal advice sought by the public body.

This basically covered everything that struck me as being new and I hope this pretty well documents his thoughts which we will certainly try to follow in the future.

Very truly yours,

NICHOLAS H. RODRIGUEZ

NHR:cef