



**State of New York
Department of State
Committee on Open Government**

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OML AO 5640

By Electronic Mail Only

July 19, 2021

The staff of the Committee on Open Government is authorized to issue advisory opinions. The ensuing staff advisory opinion is based solely upon the information presented in your correspondence, except as otherwise indicated.

I am writing in response to your request for an advisory opinion regarding the application of the New York State Open Meetings Law (OML) to a Metropolitan Planning Organization (MPO), an entity established pursuant to federal law. Specifically, you ask whether an MPO, which is the policy board of an organization created and designated to carry out the metropolitan transportation planning process pursuant to § 134(d) of Title 23 of the United States Code (“Metropolitan transportation planning”), must conduct its meetings pursuant to the requirements of the OML.

The OML governs meetings of “public bodies” and defines the that term as:

any entity for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function *for the state or for an agency or department thereof*, or for a public corporation as defined in section sixty-six of the general construction law, or committee or subcommittee or other similar body of such public body.

OML § 102(2) (emphasis added). As noted above, an MPO is an entity created pursuant to and deriving its authority from the requirements of federal, not state, law. In recognition of the statutory definition of public body in the OML, the New York State Court of Appeals, in *ASPCA v. Board of Trustees of the State University of New York*, 79 N.Y.2d 927, 929 (1992), held with respect to another federally-created body called a Laboratory Animals Use Committee (LAUC) that “the Open Meetings Law excludes Federal bodies from its ambit. The LAUC’s constituency, powers and functions derive solely from Federal law and regulations. Thus, even if [the LAUC] could be characterized as a governmental entity, it is at most a Federal body that is not covered under the Open Meetings Law.”

Similar to the LAUC discussed in *ASPCA v. Board of Trustees*, MPOs are given effect by an instrumentality of government in New York and MPO members are selected by New York government officials. However, the existence both the LAUC and MPOs “derive[s] solely from Federal law and regulations.” Although New York State Transportation Law § 15-a addresses the *functions* of MPOs, in a 1999 opinion issued by the New York State Ethics Commission (a precursor to the Joint Commission on Public Ethics), the Commission noted in relevant part that “Transportation Law § 15-a, enacted in 1975, recognized MPOs as the ‘organization designated as such by the governor for the purpose of *complying*

with federal statutes. Transportation Law § 15-a *did not provide the statutory authority for the creation of MPOs but recognized their existence as continuing.* NYS Ethics Commission, Advisory Opinion No. 99-9 (May 7, 1999) (emphasis added).

For these reasons, it appears to us that MPOs would not constitute “public bodies” required to comply with the OML. For previously prepared advisory opinions regarding similar entities created pursuant to federal statutory or regulatory authority, see [OML AO 2603](#), [OML AO 2943](#), and [OML AO 3341](#).

I hope this information proves useful.

Sincerely,

/s/ Kristin O'Neill

Kristin O'Neill
Assistant Director