



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

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OML AO 5656

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Mr. Larry Rulison
Albany Times Union
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By electronic mail only

The Committee on Open Government is authorized to issue advisory opinions. The ensuing advisory opinion is based solely upon the information presented in your correspondence unless otherwise noted.

Dear Mr. Rulison:

In your correspondence dated September 16, 2022, you asked whether, in the opinion of the Committee on Open Government (“Committee”), the New York State Stretch Limo Passenger Safety Task Force (“Task Force”) is a public body as that term is defined in the Open Meetings Law (“OML”).

As you know, the OML applies to public bodies as defined therein, in § 102(2). A public body has long been defined 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.” Historically, for reasons outlined in published Committee opinions and reported court cases, both courts and the Committee have viewed an entity such as Task Force, which was created by [Chapter 3 of the Laws of 2020](#) (as now amended) and which appears to have advisory functions and other functions which may or may not be incidental to the provision of advice to another governmental body, as a public body subject to the requirements of the OML. See [previous advice](#) of the Committee, relying on previous judicial precedent. Accordingly, from its inception in early 2020 until December 2021, it would unequivocally have been our opinion, based on case law, that the Task Force was a public body covered by the OML.

However, in December 2021 in [Chapter 676 of the Laws of 2021](#), the legislature added to the definition of public body: the definition now includes “an entity created or appointed to perform a necessary function in the decision-making process” but provides that “[a] necessary function in the decision-making process shall not include the provision of recommendations or guidance which is purely advisory and which does not require further action by the state or agency or department thereof.” As noted above, it appears that the Task Force is a statutory advisory body whose advice is essential but not required to be acted upon. This raises a question of whether this recent change to the definition of “public body” newly excludes the Task Force from its previous status as clearly covered, in our opinion, by the law.

A review of the available [sponsor’s memorandum](#) supports a view that the legislature did not intend to exclude from the definition a body, like the Task Force, previously covered by the Law:

Nevertheless, there are a number of bodies created by executive order or created to perform functions in the governmental decision-making process, that are not subject to the Open Meetings Law. Due to this, these bodies conduct business behind closed doors and have excluded interested parties who have attempted to attend its sessions. In keeping with recent legislative initiatives aimed at greater transparency, these bodies should be open to public scrutiny. The work of our state's public bodies has a profound effect on the functioning of government and it is essential to our democratic process that members of the public are fully aware of and have the opportunity to observe the deliberations and decisions that go into the making of public policy. This legislation will ensure that those bodies which play a key role in the decision-making process are covered by the Open Meetings Law, even if they do not have the authority to make final and binding decisions.

However, this passage is not definitive and the fact that the legislature chose to redefine public body in this way, based on the plain language of the addition and the placement of this sentence within the OML, raises a serious question of intent. No court has yet interpreted whether this change in the law now excludes from coverage by the OML all advisory bodies, including bodies such as the Task Force which was created by statute and which both courts and the Committee have long believed to be covered by the law.

Of note here as well is the requirement in its enabling legislation that the Task Force hold a public hearing; this requirement may be determined by a court to be the performance of a governmental function that is not merely advisory, rendering the recent change in the definition of public body moot as to the Task Force. Moreover, a court might determine that the Task Force, which its enabling legislation mandates "shall be authorized to hold public hearings and meetings," is by those terms required to hold its meetings open to the public regardless of the applicability of the OML. We believe that these important factors and potential ambiguities require that either the legislature or the courts weigh in on these open questions in light of the recent change in the law. What we can say is that the Committee always supports the most transparent processes possible, and to the extent that the Task Force has historically held its meetings and hearings in an open manner until the meeting you reference, we would encourage it to continue to do so.

Very truly yours,

Shoshanah Bewlay

Shoshanah Bewlay
Executive Director