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To: Stefan Ritter
Senior Assistant Attorney General
404-657-9932

From: Judy Schreiman
Legal Assistant

Date: April 27, 2012

Re: Alleged Open Meeting Act violation by Mayor Gravitt

Attached please find a courtesy copy of the response letter that was mailed to you yesterday.



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April 26, 2012

Mr. Stefan Ritter
Senior Assistant Attorney General
Georgia Department of Law
40 Capitol Square SW
Atlanta, GA 30334-1300

Re: Alleged Open Meeting Act violation by Mayor Gravitt

Dear Mr. Ritter,

As you are aware, our firm represents the City of Cumming, Georgia. Please accept this correspondence as the response on behalf of the City to your letters dated April 11, 2012 and April 20, 2012, regarding the City Council meeting which occurred on April 17, 2012. In conjunction therewith, at your earliest convenience please provide my office with a copy of the *Complaint* which you indicate your office received. We have not seen this *Complaint* and believe having it is material to our ability to adequately respond on behalf of our client.

Nevertheless, we will provide at least an initial response on behalf of the City of Cumming as you requested. I do agree with you that the new version of Georgia's Open Meetings laws appears to have just gone into effect prior to the meeting of the City of Cumming Governing Authority at issue. That brings us to what I believe is the most critical point for discussion regarding this matter: what is the effect of the General Assembly's revisions to the Open Meetings law as it pertains to recording a meeting?

As you correctly stated, for years Georgia law appears to have provided for the ability to record a meeting using a videotape recorder that captures joint "visual and sound" recordings. However, the new law amended that portion of the code by deleting certain language and now the issue is not so clear. The matter is best summarized by examining the text of the competing codes:



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The old version of the open meetings law: “The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual, sound, and visual and sound recording during open meetings shall be permitted.”

The new version of the open meetings law: “The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual and sound recording during open meetings shall be permitted.”

Previously the law drew a distinction between “visual” recordings, “sound” recordings, and “visual and sound recordings.” The new law has eliminated the three levels of distinction, and the question is what effect is to be given that change. It is well settled that the actions of the legislature in changing the subject language must be given meaning; we cannot just ignore it. *Transp. Ins. Co. v. El Chico Restaurants, Inc.*, 271 Ga. 774, 776, (1999); *Humthlett v. Reeves*, 211 Ga. 210, 219 (1954). To comply with that statutory mandate we pose the following: are visual recording (i.e. photographs) and sound recordings (i.e. tape recorders) still permitted but “visual and sound” (i.e. videotape) as the law previously stated is not permitted? Or, is it that the third type of documentation survived – the combined “visual and sound” recording – while the separate categories of recording did not. This is one of multiple topics which, while reviewing the revised open meetings laws, my firm determined that we would seek the Attorney General’s official opinion. It is only unfortunate that this issue arose on the same day that Governor Deal signed the law, and the Attorney General’s official opinion could not be secured earlier.

You reference in your letter that the Attorney General’s Office has the discretion to bring both civil and criminal actions for alleged violations of the Act. While I recognize that is the case, I would hope that the Attorney General would exercise that discretion to show restraint and not bring an enforcement action considering this issue is one on which (1) statutory construction rules have created a legitimate issue; (2) guidance is being requested, (3) said guidance is being requested on a law that is mere days old at this point, and (4) at the time of the alleged violation of the act, the law was mere hours old. Put differently, should the Office of the Attorney General determine that the City of Cumming did in fact violate the Open Meetings Act which was effective as of the same date that the meeting at issue took place, it would seem particularly onerous if not draconian to engage in discretionary enforcement activities when guidance from the Attorney General is being sincerely sought on this matter.

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In the meantime, while we are seeking the guidance of the Attorney General's office, the City of Cumming has determined to provide a location from which persons desiring to create joint "visual and sound" recordings of the governing authority (or any other public meeting at City Hall) may set up their recording devices. This location will provide an excellent place for people to view the meeting as it progresses but yet is out of the way of the public which attends the meeting so as to prevent any ingress/egress, fire safety or other safety concerns. Should you or anyone else with the office of the Attorney General wish to see the recording area, we would be honored to host you.

I thank you for your time and attention to this matter, and I look forward to receiving a copy of the *Complaint* from you as well as your response to this letter.

Sincerely,



Dana B. Miles
Cumming City Attorney

DBM/ms
cc City of Cumming