

Avoiding Transparency in Orange Beach

900 words

Rauf Bolden, Orange Beach

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Transparency is defined in many ways, but one thing is certain. You cannot make a drawing without shadows.

Minutes of the regular Orange Beach Finance Committee Meetings at City Hall are not made public, starving residents and employees of insight into the committee's decision making process, like raising deductibles on employee insurance, or increasing taxes on lodging. The minutes of committee and sub-committee meetings may be legally bound by the Alabama Open Meetings Act (OMA) – Act No. 2005-40: "All boards, bodies, and commissions of the executive and legislative departments of the state (and its political subdivisions) or municipalities, which expend or appropriate public funds [are legally bound]. Special Note: 'All standing, special, or advisory committees or subcommittees' of these bodies [municipal] are also bound to OMA regulations," according to A Manual for Alabama Public Officials, authored by former Attorney General, Luther Strange (https://www.alabamapress.org/wp-content/uploads/2016/08/AL_Open_Meetings_Act.pdf).

It is my wish that the minutes of all committee and sub-committee meetings in Orange Beach are posted on the city's web site, ensuring ultimate transparency whether or not the OMA applies. It is just respectful to let the voters and employees know where the debate is going, essentially before the committee's final decision is rendered, allowing people a chance to lobby for changes.

"Attorney General (AG) Opinion No. 2002-163 states that the minutes of public agencies [committees and sub-committees] are public records," according to Marie Newman of the Alabama Attorney General's Office in an email. The question now is whether the Orange Beach Finance Committee is required to post minutes of their meetings.

"The Alabama Sunshine Law requires that meetings of certain named boards and any body, board, or commission charged with the duty of disbursing public funds, or to which is delegated legislative or judicial functions, be open to the public," according to AG opinion No. 2002-163.

At first blush the Orange Beach Finance Committee may not have been naughty in not providing minutes to the public, but this point is arguable. "The official minutes of an agency's meeting are prima facie evidence of the facts stated therein. As a general rule, the records of the meeting are open to public inspection (73 C.J.S. 22). Generally, administrative bodies [committees] should take minutes of meetings which accurately reflect all proceedings before them." according to AG opinion No. 2002-163.

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How do we get copies of these minutes?

I submitted a Public Records Request for the Finance Committee's minutes on January 30, 2019. "The Finance Committee operates strictly in an advisory capacity for the Mayor. It is not an official Council Committee, so no minutes are required or maintained," according to the City Clerk's office at the City of Orange Beach in an email.

I may be very wrong in my request for transparency, but another interpretation exists, "Special Note: ... advisory committees or subcommittees' of these bodies [municipal] are also bound to OMA regulations," according to A Manual for Alabama Public Officials, authored by former Attorney General, Luther Strange (https://www.alabamapress.org/wp-content/uploads/2016/08/AL_Open_Meetings_Act.pdf).

The only other way to get these records is by going to law (civil complaint), according to A Manual for Alabama Public Officials, authored by former Attorney General, Luther Strange (https://www.alabamapress.org/wp-content/uploads/2016/08/AL_Open_Meetings_Act.pdf).

This is not recommended. Legal proceedings take years. I can cite one case where the City of Orange Beach (defendant) was exonerated after paying the plaintiff \$47,500, because the plaintiff was just tired of fighting, and wanted to move on. The city carries insurance against lawsuits, lawyering up on any civil action against them. The average citizen may win the battle, but it will certainly not be a bloodless or emotionless victory. Fighting for what you believe in wears you down.

The key issue is the will of the Finance Committee's Chair, providing transparency, letting the records tell the story of what is going on behind closed doors. Learning that finance meeting records should have been posted will be remedied with a forgivable "Oops", or a "my bad". Nothing more.

Some perceive our request as invalid, arguing the finance meetings are only consultative with the executive, and not constrained by the OMA. This may be a mistake on their part, because committee members are legally shielded when complying with the Open Meetings Act (OMA), "In addition to existing immunities, members of a government body (committee or sub-committee) who participate in an OMA-conforming open meeting are absolutely immune from liability for any statement made during the meeting that relates to an action pending before the body," according to A Manual for Alabama Public Officials, authored by former Attorney General, Luther Strange (https://www.alabamapress.org/wp-content/uploads/2016/08/AL_Open_Meetings_Act.pdf).

It looks as though our hands are tied if the Finance Committee does not want to share its meeting records, staying isolated, playing by themselves in the corner, making drawings in the shadows, and avoiding transparency.

ENDS.

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