



Deval L. Patrick, Governor
Timothy P. Murray, Lt. Governor
Richard A. Davey, Secretary & CEO



MEMORANDUM

To: David Mohler, Director of Planning

From: Monica Conyngham, Senior Counsel 

Date: October 7, 2011

Re: MPO Electorate Opinion

You have asked for guidance regarding the applicability of the Massachusetts Open Meeting Law, G.L. c. 30A, § § 18 - 25, to the annual election process conducted to fill seats on the policy boards of Metropolitan Planning Organizations (“MPOs”). After consultation with the Open Government unit of the Attorney General’s office, I can advise you that the Open Meeting Law does not apply to the election process, for the following reasons.

The MPOs are established, pursuant to federal law (23 USC § 134), by agreement of the Governor and municipalities within the established planning area. The purpose of the MPOs is to, *inter alia*, develop long-range transportation plans and transportation improvement programs. 23 USC § 134(c) (1). The statute does not prescribe the specific make-up of the MPO boards or the means of electing its members.

In Massachusetts, MPO policy boards are representative entities.¹ You have informed me that MPOs elect new members of the board through votes of elected officials in each city or town within the MPO area (the “electorate”). The electorate does not serve in any capacity other than to elect members on an annual basis. The MPO policy decisions are deliberated and made by the elected and permanent members, not the electorate. For some MPOs, the electorate includes a large number (100+) of people. There are concerns that treating the electorate as if it were a public body under the Open Meeting Law (and thus requiring a quorum and in-person deliberation) would discourage participation in the election process, particularly by small towns with limited resources.

The Open Meeting law defines a “public body” as “a multiple-member board, commission, committee or subcommittee within the executive or legislative branch or within any county, district, city, region or town, however created, elected, appointed or otherwise constituted, established to serve a public purpose.” Setting aside whether the MPO policy board itself meets this definition as a federally established entity, it is my opinion that the electorate does not qualify as a “board, commission, committee or

¹ Certain federal and state agencies are permanent (non-elected) members of MPOs as well.

subcommittee” of the MPO. Rather, the electorate serves solely in the role of electing the members of the board.

As mentioned above, I have discussed this set of facts with the Attorney General’s office and received verbal confirmation of my analysis². Therefore, rules contained in the Open Meeting Law requiring in-person attendance and quorums are not applicable, and the MPOs may conduct elections by written ballot, including absentee balloting and balloting through authorized designees.

As you and I have discussed, concepts of transparency in the Open Meeting Law qualify as good guides for conducting public business in any event. Therefore, I would recommend against conducting balloting in secret and against allowing absentee ballots to be cast prior to public discussions and presentations of candidate qualifications.

Please let me know if you need any further information.

² Telephone conversation of October 6, 2011 with AAG Amy Nable.