

CITY OF NEW ORLEANS

ED QUATREVAUX, INSPECTOR GENERAL



August 17, 2010

Honorable Mitchell J. Landrieu, President
New Orleans Public Belt Railroad Commission
City Hall Room 9E06
1300 Perdido Street
New Orleans, La 70112

RE: OIG Case#2010-0003

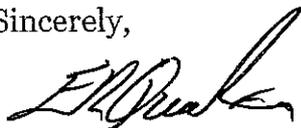
Dear Mayor Landrieu:

The Office of the Inspector General (OIG) initiated an investigation into allegations that the New Orleans Public Railroad Commission (“NOPBRRRC”) and its committees conducted some of its meetings in contravention of the State’s Open Meeting Laws. Specifically, it was alleged that NOPBRRRC’s executive session of April 29, 2010, was conducted without a vote of its members, and that only a vague reference to the purpose of the executive session was given. It was also alleged that a meeting of the Legal Committee was conducted on April 22, 2010, wherein discussion involved the selection of an attorney to represent the Commission for the riverfront park project. It was further alleged that the City’s policy for procurement of professional services contracts was not followed for this selection. Last, it was alleged that the various NOPBRRRC committees may not have prepared minutes of their meetings.

As a result of the investigation, we developed evidence that supports the allegations with respect to violations of the State’s Open Meeting laws. Specifically, the Commission conducted public meetings without proper notice; it failed to follow the legal requirements for entering into executive sessions; and it failed to produce written minutes for some public meetings. It was also discovered that three Commissioners failed to file financial disclosure forms timely. Based on the information developed, the OIG refers these violations of law to you as President of the Commission for corrective action. Additionally, the OIG has referred the apparent failure of the Commissioners to timely file their financial disclosure forms to the State Ethics Board.

The Report of Investigation (ROI) is enclosed for your information. The exhibits referenced in the ROI will be made available for review upon request. Please advise by September 28, 2010 what actions you plan to correct these violations of law.

Sincerely,

A handwritten signature in black ink, appearing to read "E. R. Quatrevaux". The signature is fluid and cursive, with a prominent initial "E" and a long, sweeping underline.

E. R. Quatrevaux
Inspector General

Attachments

EQ/fb

FINAL
REPORT OF INVESTIGATION
2010-0003

TITLE: Board of Commissioners – New Orleans Public Belt Railroad
SUBSTANTIATED.

LOCATION OF OCCURRENCE: 4822 Tchoupitoulas Street, New Orleans, LA

DATES OF OCCURRENCE: November 2009 through May 2010

INVESTIGATED BY: Assistant Chief Criminal Investigator Frederick Boyd

LOUISIANA STATE REVISED STATUTES VIOLATED: La. R.S. 42:5 (Meetings of Public Bodies to Open to Public); La. R.S. 42:6 (Executive Sessions); La. R.S. 42:7 (Notice of Meetings); La. R.S. 42:7.1 (Written Minutes); and La. R.S. 42:1124.2.1 (Financial Disclosure; Members of Boards and Commissions)

ACTION TAKEN: Referral made to the Mayor as President of the Commission of the New Orleans Public Belt Railroad; Referral to the Louisiana Board of Ethics

This report relates to allegations involving the conduct of certain meetings of the New Orleans Public Belt Railroad Commission (NOPBRRC) as it relates to the Open Meetings Laws of the State of Louisiana.

BASIS FOR INVESTIGATION

This investigation was initiated on May 4, 2010, after receiving information in a letter from an anonymous informant. The informant alleged that the NOPBRRC and its committees conducted some of their meetings in contravention of the State's Open Meeting Laws. Specifically, the informant alleged that NOPBRRC's executive session during an April 29, 2010, meeting was conducted without a vote of its members, and only a vague reference to the purpose of the meeting was given. The informant also alleged that a meeting of the Legal Committee was conducted on April 22, 2010, wherein discussion involved the selection of an attorney to represent the Commission for the riverfront park project. The informant further alleged that the City's policy for procurement of professional services' contracts was not followed for this selection. The informant also alleged that the various NOPBRRC committees may not prepare minutes of their meetings, as he/she has never seen them.

BACKGROUND

The New Orleans Public Belt Railroad is owned by the citizens of the City of New Orleans and operated through the Public Belt Railroad Commission.

Created by the Commission Council of the City of New Orleans in 1904, the New Orleans Public Belt Railroad is a political subdivision of the State of Louisiana in addition to being one of nine "unattached boards and commissions" of the City of New Orleans (as provided in Article V of the City's Home Rule Charter).

EXTENT AND RESULTS OF INVESTIGATION

A Special Meeting of the NOPBRRC was held on April 29, 2010. This meeting was properly noticed and an agenda was prepared. Although the agenda reflects item "10. Executive Session – Discussion of legal matters," there is no specificity of the matter to be discussed. A review of the minutes of that meeting also did not describe the legal matter to be discussed. Louisiana R.S. 42:7, requires that whether or not such matters will be discussed in an executive session, notice shall include a statement identifying the court, case number and the parties relative to any pending litigation to be considered at the meeting. Additionally, when a formal written demand has been made that is to be considered at the meeting, a statement identifying the parties involved and reasonably identifying the subject matter of any prospective litigation shall also be noted. Although the minutes for the meeting state that the motion to convene an executive session was made and seconded, there is no reflection of the actual vote of the body on that motion. Louisiana R.S. 42:6 requires an affirmative vote of two-thirds of its constituent members present to convene an executive session. The vote must be recorded in the minutes of the meeting.

G. Edward Merritt, Chairperson of the Legal Committee for the NOPBRRC, informed me on May 28, 2010, that the Legal Committee met on April 22, 2010 and May 27, 2010. He said that minutes had not been prepared for either of those meetings. On June 9, 2010, Merritt gave me minutes for the April and May meetings as well as an agenda for the May meeting. On June 10, he gave me the agenda for the April meeting, stating that he inadvertently omitted it from his email of June 9. Louisiana R.S. 42:5 requires all meetings of public bodies be open to the public; La. R.S. 42:7.1(A) requires that written minutes be kept of all open meetings; and La. R.S. 42:7.1(B) requires that the minutes be available within a reasonable time after the meeting. Each of the foregoing statutes was violated by the NOPBRRC's Legal Committee. Additionally, La. R.S. 42:7(A)(1)(b)(i) and (ii) require that all public bodies provide twenty-four hours notice before the meeting and the agenda be attached to the notice. The agenda for the April and May meetings were prepared after May 28, 2010.

The minutes of the April 22, 2010 Legal Committee meeting reflect that the Committee considered the suggestion of counsel for the NOPBRRC for the so-called "Downriver Project". The minutes reflect that after due discussion, there was a motion that was

unanimously approved to recommend Jon F. Leyens to represent the Commission, “when and if necessary” for this project. According to a letter dated July 16, 2010 from Walter Becker, Counsel to the Commission, the Committee considered fourteen other attorneys. According to the letter, Mr. Leyens was personally unknown to any member of the Committee. Although the content of the meeting minutes satisfies La. R.S. 42:7.1(A)(1)-(4), there is no recordation relating to the selection process, which could identify the documentation that was reviewed, and a summary of the deliberative comments by Committee members. Any process that is used to enable a public body to reach a decision of recommendation regarding the procurement of a professional services contract should be transparent and open to scrutiny, and would have been had due public notice been given for this meeting. Because there was no indication that this professional services contract would exceed \$15,000.00, it does not appear that City’s policy for procurement of those services had been violated.

The Executive Committee of the NOPBRRRC met on November 19, 2009 and April 29, 2010. When I requested the minutes of those meetings from Edward C. Bush, Committee Chairperson, he submitted the minutes of the November 19, 2009 Commission’s Special Meeting of the same date. Bush told me by email of May 28, 2010 that Executive Committee minutes are not prepared, but are incorporated in the minutes of the Commission meeting. Bush said that he was not aware that separate meeting minutes were required for the Executive Committee meetings. It was also learned that the Executive Committee does not prepare notices or agenda for their committee meetings. Louisiana R.S. 42:7 and Louisiana R.S. 42:7.1, respectively, require that notices should be given for all public meetings and written minutes shall be kept to record the proceedings.

Louisiana R.S. 42:1124.2.1 requires all Commissioners of the New Orleans Public Belt Railroad to annually file a “Tier 2.1 Financial Disclosure Form” by May 15 for service performed in the preceding calendar year. Commissioners Arnold B. Baker, Walter F. Chappell, III, and Roy N. Mack, Sr. were all required to file the disclosure form for 2009 by May 17, 2010, because they all performed service on the Board during 2009. There is no record of either individual ever filing that form.

CONCLUSIONS AND RECOMMENDATIONS

Based on the information developed, the allegation that the New Orleans Public Belt Railroad Commission conducted public meetings in contravention of the State of Louisiana Open Meeting laws is **“SUBSTANTIATED.”** Additionally, it was discovered that three of its commissioners did not file financial disclosure forms with the Louisiana State Board of Ethics. As a result of this investigation, the Office of Inspector General refers these violations for corrective action to the Mayor as President of New Orleans Public Belt Railroad. Additionally the Office of Inspector General will refer to the State’s Ethics Board the information concerning the three NOPBRRRC commissioners who did not timely file “Tier 2.1 Financial Disclosure Forms”.