

LEGAL MEMO

TO: Shaun McGrath, DEQ Director

FROM: Jessica Wilkerson, Staff Attorney, Waste Management and Remediation Division, Department of Environmental Quality

RE: Options for Making Recommendations to DEQ For Reimbursement Requests Between Meetings

DATE: September 29, 2020

BACKGROUND:

During the recent LASOC Meeting, held on September 24, 2020 at 2:00 pm via GoToMeeting, you requested a legal opinion on whether it would be possible to take action to make recommendations to DEQ regarding reimbursements for sampling, waste removal, and other private-property based actions. To answer the question of whether interim action is possible, we need to consult both the bylaws and statutory public meeting requirements. The relevant provisions of both are as follows.

RELEVANT BYLAWS AND LAWS:

LASOC Bylaws:

Section II.B.5 reads "LASOC will always remain accountable to the public."

Section II.B.6 reads "In accordance with DEQ public information practices, LASOC meetings will be open to the public, and LASOC meetings will be held in public locations with call in access to encourage maximum public and LASOC participation."

Section II.B.10 reads "LASOC will send all recommendations to DEQ for a response."

Section III.B gives LASOC the option of creating a subcommittee for "matters to include, but limited to, research, briefings, documentation development, background information prior to a LASOC recommendation determination, and fiscal planning."

Section IV.F deals with the requirements for recommendations to DEQ and requires that requirements must be included on the agenda along with supporting background documentation, discussed at LASOC meetings, and introduced as motions for LASOC approval. Section VII.D requires that meeting notices be published to the public at least 10 days in advance of the meeting and that the Agenda needs to be published at least 5 days prior to the meeting.

Section VII.I requires that the public be given the opportunity to comment.

Montana Code Annotated

Sec. 2-3-202. Meeting Defined. "As used in this part, 'meeting' means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, jurisdiction, or advisory power."

Subsec. 2-3-203(1). Meeting of Public Agencies and Certain Associations of Public Agencies to be Open to Public - Exceptions "All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public."

Subsec. 2-3-203(2). "All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public."

Subsec. 2-3-203(6). "Any committee or subcommittee appointed by a public body or an association described in subsection 2 for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section."

OPTIONS FOR MORE REGULAR RECOMMENDATIONS:

Based on the above, I believe that action regarding recommendations would be considered a meeting. As a result, I see two possible options for LASOC to consider that would allow such business to be done between meetings with public access. They are as follows:

1. Determine a process for considering reimbursement requests between meetings that would be available to the public with details to be settled by the committee:
 - a. Once a month, ARP could put together a summary of reimbursement requests received that month, if any, and email the summary to the members of LASOC for review. This could consist of the Table Virginia Kocieda of ARP has already created and the answers to some of the other questions DEQ may require.
 - b. The members of LASOC could review and submit comments Lincoln County's facilitator or to a member of ARP. The recipient could then compile the comments and send them out to the committee members for review.
 - c. The committee members could then have a set amount of time to submit additional comments based on those of the other members.
 - d. The recipient of the original comments could then compile the summary of requests and all comments received and post them on LASOC's website for public review.
 - e. The public would have the opportunity to provide any more information or comments via email address for a set and published amount of time.
 - f. A motion regarding recommendations to DEQ could then be placed before the committee via email and placed on the LASOC website and then votes could be recorded on the LASOC website. All votes must meet the quorum requirements.
 - g. For ease of organizing, a regularly scheduled recurring meeting (ie. The 3rd Tuesday of every month) could be set so long as the dates of the meetings were published at least 10 days in advance and agendas posted at least 5 days in advance; Or

2. Create a subcommittee:
 - a. Pursuant to Section III.B of the Bylaws, LASOC has the ability to create a subcommittee for interim work. The subcommittee could essentially carry out many of the duties shown above and then write a report to the Chair with its recommendations regarding the reimbursement requests and a proposed motion.
 - b. The Committee or its representatives could then place that information on the LASOC website and wait a set amount of time to call a vote. The results of the vote could be memorialized on the website so long as Quorum is reached with the number of votes.

Based on the fact that "meetings" are defined as including communication via electronic means, I believe that open discussion via electronic mail that is memorialized for the public and allows for public notice and involvement would comply with Section IV.F of the bylaws and state public meeting requirements. In order for the public to be properly informed of either of the procedures discussed above, the procedure would need to be discussed and voted upon in a regularly scheduled and noticed LASOC meeting, which would then be memorialized in the recording and minutes placed on the LASOC website.