



JESSICA R. COOPER
Prosecutor

Paul T. Walton
Chief Assistant Prosecutor

June 3, 2016

City Council Members
The City of the Village of Clarkston
375 Depot Road
Clarkston, MI 48346

Re: Open Meeting Act Violation
The Closed Session of March 9, 2015

Dear City Council Members,

Please be advised that the investigation of a complaint of an alleged Open Meetings Act (OMA) violation concerning a closed session held at the March 9, 2015 meeting was presented to the Oakland County Prosecutor's Office by the Oakland County Sheriff Office. The case has been reviewed and the decision has been made that there will be no further action on this matter by this office. **However, the holding of a closed session at that meeting appears to be a violation of the OMA and therefore I am bringing the matter to your attention.**

As I am sure you are now aware, closed sessions are only allowed for very limited purposes under the OMA. The subject matter that is legally appropriate for a closed session is restricted to the limited purposes set forth in MCL 15.268. **The purpose stated as the reason for holding the closed session on March 9, 2015 does not appear to fall within the statute.**

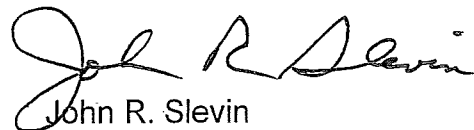
There also may have been a violation in the Council's vote for a closed session. MCL 15.267 require a "2/3 roll call vote of members elected or appointed and serving". With a seven-member council, five council members would have to vote in favor of the closed session to comply with the statute. There may have been some confusion on this issue because one council member excused herself from the vote because of a conflict of interest. **A literal, conservative reading of the OMA requires a 2/3 vote of the council members serving, not 2/3 of the council members present or voting at the meeting. The record shows that only four council members voted in favor of the closed session which falls short of the necessary 2/3 vote requirement.**

It is noted that a civil suit arose out of the City Council's decision to go into a closed session at the March 9, 2015 meeting. That suit was resolved in a consent judgment wherein it was acknowledged that a violation of the OMA occurred.

It does not appear that the violation of the OMA was intentional, but was the result of some confusion about the law. For this reason, no further action will be taken by this office on this matter. However, the City Council members should be aware of these OMA issues so as to avoid future actions that may lead to complaints by citizens. This awareness may have already been accomplished by the resolution of the civil suit, but the City Council should also be mindful that there are possible criminal sanctions provided in the law if violations are found to be intentional.

If you have any questions about the matters set forth in this letter, please contact the Prosecuting Attorney or the Chief Assistant Prosecutor.

Respectfully,

A handwritten signature in black ink that reads "John R. Slevin". The signature is written in a cursive style with a large initial "J" and "S".

John R. Slevin
Chief, Warrants Division