

Control Number: 43146



Item Number: 1

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.

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2014 SEP 16 AM 9:48
FOLLOW UP WITH TCEQ
FILING CLERK

CAROL D. GILLESPIE
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3921 Bobbin Lane
Addison, TX 75001
214 536-1784

August 20, 2014

Fred Bednarski
Lisa Fuentes
Texas Commission on Environmental Quality
MC 153
P.O. Box 13807
Austin, TX 78711-3087

RECEIVED
AUG 25 2014

RE: Avalon Water Supply and Sewer Services Corporation

UTILITIES & DISTRICTS
SECTION

Dear Mr. Bednarski and Ms. Fuentes:

On July 14, 2014 I filed an additional complaint against Avalon Water Supply and Sewer Services Corporation with TCEQ. My concern is the manner in which the monthly meetings continue to be held and the actions of the Board members. These issues were to be resolved by training conducted by TRWA and provided by TCEQ earlier this year. However, the meetings continue to violate the bylaws and the Texas Open Meetings Act (TOMA).

Representatives from TCEQ have told me that I need to prove that Avalon Water Supply and Sewer Services Corporation is in violation of their own bylaws for TCEQ to have jurisdiction and to prove that they are not operating as a non-profit, member-owned, and member-controlled corporation. Here are the facts:

- 1) First of all, AWS&SSC was formed under Chapter 67 of the Texas Water Code.
- 2) Texas Government Code Open Meetings 551.001 (3) includes definitions of governmental bodies that must follow the Texas Open Meetings Act. Definition (K) is a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code. According to this, AWS&SSC must comply with TOMA.
- 3) In fact, AWS&SSC's bylaws Article V, Section 4 states, "The Board of Directors shall ensure that all meetings comply with the requirements of the Open Meetings Act, Article 6252-17, Tex. Rev. Div. Stat., including any subsequent amends thereto."
- 4) Therefore, if AWS&SSC is in fact violating their own bylaws by not following the Texas Open Meetings Act, then TCEQ does have jurisdiction.

For over two years I have attended meeting after meeting where AWS&SSC did not follow the Texas Open Meetings Act. I have filed several complaints with the Ellis County District Attorney and others have filed complaints, too. The Ellis County District Attorney chose not to prosecute. So, as part of my complaint, I am now asking TCEQ to investigate AWS&SSC for not following their own bylaws, and therefore, not being a non-profit, member-owned, and member-controlled corporation.

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Obviously, I do not wish to go back 2 ½ years and re-document all of the violations of the Texas Open Meetings Act unless it is absolutely necessary. However, I will list the major violations that I have alleged in the past, and will provide documentation supporting my claims if asked:

- 1) Closed sessions were held during the majority of meetings during 2012. TOMA is very specific on what an entity can go into closed session for. AWS&SSC moved topics to closed session at almost every meeting in 2012 that were not valid reasons for going into closed session, according to TOMA.
- 2) Discussing items not on agenda.
- 3) Voting on items not on agenda.
- 4) Less than 72 hours posted notice for a meeting.
- 5) Allowing people to stay in closed session that should not have been allowed. At one meeting it seemed to be easier for the Board to ask a reporter, my sister, and I to leave for closed session since they were allowing everyone else present (many non-Board members) to remain.
- 6) Voting in closed session, not in open session.
- 7) No recording or minutes taken during closed session.
- 8) Secret ballot. Board has passed resolutions around the table for signatures at least twice in the past few months as a way of voting. In one instance the resolution was never read aloud, and in the second I had to request that it be read aloud. This is clearly a secret ballot.
- 9) Two directors signed a resolution that were not present at the meeting where it was presented. According to TOMA, a Board member must be present to vote.
- 10) There was another incident when a Board member went by the office and approved minutes, but did not attend the meeting.

My complaint dated July 14th details recent specific TOMA violations:

- 1) On May 8th the Board added an item to an existing agenda for that same evening, stating it was an emergency. The item referenced a purchase of land. Purchasing land is not an emergency, according to TOMA.
- 2) Calling a Special Meeting for May 15th to sign a corporate resolution to purchase land. The resolution was actually dated May 8th and was passed around for Directors' signatures. It was not read aloud until I requested. Two directors "signed" the document but were not present at the meeting. This is a TOMA violation. Directors must be present to vote.
- 3) On the July 10, 2014 agenda there is an item, "Assignment of responsibilities of personnel." The Board voted to make one of the Directors (Gary Low) the General Manager. Visitors and members tried to explain to them that they could not vote to make Mr. Low the General Manager because it was not worded on the agenda to vote to make anyone GM. The President replied that they were trying to include broad-based topics so they could do what they needed to do. I believe this is a Texas Open Meetings Act violation.

AWS&SSC held their most recent monthly meeting on August 14, 2014. At this time, I would like to offer additional information regarding my complaint that AWS&SSC is not operating as a non-profit, member-owned, and member-controlled entity:

- 1) There were approximately 11 visitors/members present. There were no copies of the agenda available at the meeting.

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UTILITIES & DISTRICTS
SECTION

- 2) The agenda and format of the meeting has changed to using a *consent agenda* beginning with the August 14, 2014 meeting. This change was neither discussed by the Board nor voted on by the Board at any public meeting. It was never mentioned in the previous meeting on July 10, 2014. The members of Avalon Water Supply and Sewer Services Corporation were never given an opportunity to voice their opinion on this drastic change away from transparency. I am not objecting to a consent agenda per se, I am objecting to *how AWS&SSC is using it*. I do not believe that anything as important as financials should be under the consent agenda.
- 3) And, under a true consent agenda, Directors should receive documents prior to the meeting to approve at the meeting without discussion. The President's Report, the General Manager's Report, and the Operations Manager's reports were all verbal. And the Directors were allowed to ask questions and discuss. This is not how a consent agenda works.
- 4) Plus, the Directors all should have agreed (voted) on the change and understand how the consent agenda works prior to the August 14, 2014 meeting. This means that the Directors must be making decisions outside of the meetings and/or meeting outside of posted meetings. If so, this is a violation of the Texas Open Meetings Act.
- 5) At the August 14, 2014 meeting the President of the Board announced that there will be, "no written minutes from this point forward." He stated that instead the meetings will be recorded. Later it was stated that members will be able to purchase copies of the audio on CD. However, the bylaws of AWS&SSC specifically state, "The Secretary-Treasurer shall keep regular books and shall keep minutes of all meetings of Members and Directors."
- 6) It was stated later in the meeting that the Board is moving towards an electronic format, but "is not there yet." So, when will the July 2014 minutes be available? If the Board is not ready to provide electronic copies, then paper copies still should be available.
- 7) It is my belief that AWS&SSC is trying to keep members from having the minutes, since members have used the minutes to complain to the Ellis County District Attorney and TCEQ.
- 8) It is listed on the agenda to approve "Minutes of June 10, 2014." There was no meeting on June 10th. The regular monthly meeting of AWS&SSC was on July 10, 2014. If there are no longer minutes, how can the Board approve? If there are minutes from the July 2014, why were the not read aloud (or copies distributed) at the August 2014 meeting?
- 9) There was no financial report given during the meeting. The only information given was by General Manager who stated, "Number 2 well is paid in full.....\$44,000.....We managed to do this without borrowing against clear CDs that we had." Then a person who works in the office gave a short statement without mentioning any financial amounts. At no time did the Board state how much money is in the bank. In fact, the only dollar amount mentioned was the \$44,000 in well repairs.
- 10) The Board Directors had copies of the monthly financial statement and appeared to be reading it during the meeting. However, no copies were given to members/visitors at this time and the report was not read aloud.
- 11) The Board placed the financial report under the Consent portion of the agenda. However, consent agendas are to be used only for non-controversial items. AWS&SSC only has \$17,256.22 in the bank at this time. This dire financial situation should be a major topic on the agenda.
- 12) On the financial reports, there is a deposit for \$10,000 made at the end of July. This is for an even amount. The deposits are never for even amounts and are never that large. The highest monthly deposit that AWS&SSC is approximately \$33,000. With this \$10,000 deposit, the total deposits for July are over \$41,000.

- 13) Since the GM stated that they did not borrow from "any clear CDs," I do not know where the money came from. I was given the report at the close of the meeting and was unable to ask about the mysterious deposit. Is it possible that the Board renegotiated the \$35,000 loan that originated in December 2013? As I stated earlier, I believe that the approximately \$38,000 CD containing members' deposits was used as collateral. Payments have been made totaling \$7564 on the loan. Is it possible that the bank allowed them to renegotiate and obtain an additional \$10,000? Wherever this money came from, it should have been mentioned in the meeting.
- 14) If the Board borrowed additional funds or renegotiated their existing loan, the decision should have been made in a meeting. If they did this outside of a meeting, it could be a violation of the Texas Open Meetings Act.
- 15) There is still no audit for the year ending December 31, 2013. It is now August 2014. During the meeting it was also mentioned that they had filed for an extension. Since I was unable to ask (having used my 3 minute limit on speaking to address the consent agenda), I have to assume the 2013 income tax return has not been filed.
- 16) It also came up during the meeting that the Board removed someone's meter without notice and they were not behind in payments. The reason given was that documentation was missing from their file. I really don't know the particulars, but it does concern me because it seems to be in violation of the tariff.
- 17) During this discussion, the President told the member complaining that his three minutes were up. However, members have been told if we needed to speak more than 3 minutes that we could sign up to be placed on the agenda. This member was on the agenda to discuss this matter. Clearly, the Board did not want to discuss. This was not during Open Forum. The Board needs to follow the rules that they set for the members.
- 18) On the agenda for the August 14, 2014 meeting was an item, "Recess into executive session to discuss pay rates for employees after a year of employment." According to TOMA, is this not allowed. The Attorney General Opinion H-496 concluded that closed sessions can only be used to discuss individual employees rather than groups. The Board could only have gone into a closed session to discuss an individual's pay raise because more than likely that would include a discussion of the individual's work performance and would need to be held in private.
- 19) When the Board came out of closed session, they voted to accept the proposal pay rate. They didn't tell us what the pay rate was. We were never told what the proposal pay rate was. They might as well not voted in open session.
- 20) The Board President stated during Open Forum that in the 2 years that he has been President (since April 2012) members have never asked questions about the financials and he saw no reason to continue to distribute them. I have attended all but three of the 30 monthly meetings since then. I have only received a copy of the financial report at 11 of those meetings – August 2012, September 2013, October 2013, November 2013, December 2013, January 2014, February 2014, March 2014, May 2014, July 2014, and now August 2014. Almost every time I have had to ask for a copy, and several times were denied a copy. Many times I did not receive a copy until the meeting was over, making it difficult to ask any questions. Plus, since the Sheriff was called to have me arrested for speaking out on why the Board was going into closed session in June 2012 and who was attending the closed session, I am hesitant to speak during the meetings. If the Board ever admits that they were wrong to call 9-1-1 about that and apologize to me at a public meeting, only then will I feel comfortable addressing the Board at a meeting.

- 21) On the August 14, 2014 agenda, AWS&SSC included the following wording in regards to the financial report, "Copies will be available in paper format during normal office hour no earlier than two working days after the meeting. A written request and Charges for copies will apply, in accordance to Texas Government Code, Chapter 552." During the meeting the Board argued that they never stated that we did had to file an open records request or pay to obtain copies of the financial report. Well, that's what the statement says. They did give me a copy of the financials at the end of the meeting, but it was too late to ask any questions.
- 22) During the meeting the Operations Manager mentioned moving a building to Avalon that was going to be donated to AWS&SSC. The estimate given for moving and renovating this building that in his words, "is in bad shape," is \$6500. It was also stated that they needed this so everyone can have their own office. It's only my opinion, but I do not believe that a water supply corporation with only \$17,000 in the bank (and has apparently borrow that) should be concerned about office space for an office that is only open a limited amount of hours per day. Any money that the wsc has should be going to repair the aging infrastructure and save for emergencies.
- 23) The Board apparently voted to give raises. Actually, I'm not sure what they voted on. It was not really explained. But again, it's my opinion, that the Board should not be giving raises when they have little money on hand.
- 24) The bylaws state that the next meeting should be scheduled at the previous meeting. This is not being done.

I am enclosing a copy of the meeting that I recorded with a hand-held recorder. I apologize for the shakiness of the video. It was my first time to use the camera, and I was unfamiliar with all the settings. But hopefully, you can view enough to see for yourself how the meeting was conducted.

Please call or email with any questions.

Sincerely,



Carol D. Gillespie

**SECTION A.
RESOLUTIONS**

THE BOARD OF DIRECTORS OF AVALON WATER AND SEWER SERVICE CORPORATION ESTABLISHES THAT :

1. This Tariff of the Avalon Water and Sewer Service Corporation, serving in Ellis County consisting of Sections A. through H. and forms inclusive, is adopted and enacted as the current regulations and policies effective as of May 8, 2003.
2. Only those preexisting written contracts or agreements executed by the present or previous Board of Directors shall remain in effect, unless the contract or agreement requires compliance with changes of the tariff from time to time.
3. The adoption (or revisions) of this tariff does not prohibit or limit the Corporation from enforcing previous penalties or assessments from before the current effective date.
4. An official copy of this and all policies or records shall be available during regular office hours of the Corporation. The Secretary of the Corporation shall maintain the original copy as approved and all previous copies for exhibit.
5. Rules and regulations of state or federal agencies having jurisdiction shall supersede any terms of this policy. If any section, paragraph, sentence, clause, phrase, word, or words of this policy are declared unconstitutional or invalid for any purpose, the remainder of this policy shall not be affected.
6. This tariff has been adopted (revised) in compliance in Open Meeting in compliance with the Open Meeting Act, Chapter 551 of the Texas Government Code.

PASSED and APPROVED this 8th day of May 2003.

H. L. Southard, President
Avalon Water and Sewer Service Corporation

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UTILITIES & DISTRICTS
SECTION

ATTEST:

Irene Kelly/Anthony, Secretary
Avalon Water and Sewer Service Corporation

SECTION B.

STATEMENTS

1. **Organization.** The Avalon Water and Sewer Service Corporation is a member-owned, non-profit corporation incorporated pursuant to the Texas Water Code Chapter 67, Nonprofit Water Supply or Sewer Service Corporations and as supplemented by the Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann., Article 1396-1.01, et seq. (West 1980, Vernon Supp. 1996 as amended) for the purpose of furnishing potable water and or sewer utility service. Corporation operating policies, rates, and regulations are adopted by the Board of Directors elected by the Members of the Corporation.
2. **Non-Discrimination Policy.** Membership in the Corporation and service is provided to all Applicants who comply with the provisions of this Tariff regardless of race, creed, color, national origin, sex, disability, or marital status.
3. **Policy and Rule Application.** These policies, rules, and regulations apply to the water and or sewer services provided by the Avalon Water and Sewer Service Corporation, also referred to as Corporation, (AWSSC) , or (AWSSC). Failure on the part of the Member, Consumer, or Applicant to observe these policies, rules and regulations gives the Corporation the authority to deny or discontinue service according to the terms of this Tariff as amended from time to time by the Board of Directors of the Corporation.
4. **Corporation Bylaws.** The Corporation Members have adopted bylaws (see Article 1396-2.09) which establish the make-up of the Board of Directors and other important regulations of the Corporation. The bylaws are on file at the Corporation's office.
5. **Fire Protection Responsibility.** The Corporation does not provide nor imply that fire protection is available on any of the distribution system. All hydrants or flush valves are for the operation and maintenance of the system and may be used for refill only by authorized fire departments. The Corporation reserves the right to remove any hydrant, due to improper use or detriment to the system as determined by the Corporation, at any time without notice, refund, or compensation to the contributors unless such hydrants are installed pursuant to the terms of a Non-Standard Service Contract as provided for in Section F, in which event the terms and conditions of the Contract shall apply.
6. **Damage Liability.** The Avalon Water and Sewer Service Corporation is not liable for damages caused by service interruptions, events beyond its control, and for normal system failures. The limits of liability of the Avalon Water and Sewer Service Corporation is the extent of the cost of service provided. By acceptance of Membership, Member consents to waiver of such liability.
7. **Information Disclosure.** The records of the Corporation shall be kept in the Corporation office in Itasca, Texas. All information collected, assembled, or maintained by or for the Corporation shall be disclosed to the public in accordance with the Texas Public Information Act. An individual customer may request in writing that their name, address, telephone number, or social security number be kept confidential. Such confidentiality does not prohibit the utility from disclosing this information to an official or employee of the state or a political subdivision of the state acting in an official capacity or

an employee of the Corporation acting in connection with the employee's duties. Further, such confidentiality does not prohibit the Corporation from disclosing the name and address of each member on a list to be made available to the Corporation's voting members, or their agents or attorneys, in connection with a meeting of the Corporation's members. The Corporation shall give its applicants and customers notice of rights to confidentiality under this policy and all prevailing associated fees for such request.

8. **Grievance Procedures.** Any Member of the Corporation or individual demonstrating an interest under the policies of this Tariff in becoming a Member of the Corporation shall have an opportunity to voice concerns or grievances to the Corporation by the following means and procedures:
 - a. By presentation of concerns to the Corporation's manager or authorized staff member. If not resolved to the satisfaction of the aggrieved party then,
 - b. By presenting a letter to the Board of Directors stating the individual's grievance or concern and the desired result.
 - c. The Board of Directors shall respond to the complaint by communicating the Board's decision in writing.
 - d. Any charges or fees contested as a part of the complaint in review by the Corporation under this policy shall be suspended until a satisfactory review and final decision has been made by the Board of Directors.
9. **Customer Service Inspections.** The Corporation requires that a customer service inspection certification be completed prior to providing continuous water service to new construction and for all new members as part of the activation of standard and some non-standard service. Customer service inspections are also required on any existing service when the corporation has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction or addition to the members' water distribution facilities. This inspection is limited to the identification and prevention of cross connections, potential contaminant hazards and illegal lead materials. (30 TAC 290.46(i-j))
10. **Submetering Responsibility.** Submetering and Non-Submetering by Master Metered Accounts may be allowed in the Corporation's water distribution or sewer collection system provided the Master Metered Account customer complies with the Texas Commission on Environmental Quality Chapter 291 Subchapter H rules pertaining to Submetering. The Corporation has no jurisdiction over or responsibility to the tenants. Tenants receiving water under a Master Metered Account are not considered customers of the Corporation. Any interruption or impairment of water service to the tenants is the responsibility of the Master Metered Account Customer. Any complaints regarding submetering should be directed to the Texas Commission on Environmental Quality.

GOVERNMENT CODE

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

CHAPTER 551. OPEN MEETINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. In this chapter:

(1) "Closed meeting" means a meeting to which the public does not have access.

(2) "Deliberation" means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.

(3) "Governmental body" means:

(A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

(D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(E) a school district board of trustees;

(F) a county board of school trustees;

(G) a county board of education;

(H) the governing board of a special district created by law;

Section 2308.253; (I) a local workforce development board created under

(J) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(K) a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code.

(4) "Meeting" means:

(A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

The term includes a session of a governmental body.

(5) "Open" means open to the public.

(6) "Quorum" means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.

special Membership meeting, at which time the general Membership shall elect a successor for the balance of the term. If the removal of a Director pursuant to this Section 2 occurs at an annual Membership meeting, then the successor shall be elected by majority vote of the Membership in attendance at the meeting.

Section 3. The Board of Directors shall provide access for the public, new service applicants, or Members to the regular monthly meetings of the Board of Directors by setting aside a time for hearing of suggestions, proposals, or grievances. The Board of Directors shall establish reasonable rules for access to such meetings.

Section 4. The Board of Directors shall ensure that all meetings comply with the requirements of the Open Meetings Act, Article 6252-17, Tex. Rev. Div. Stat., including any subsequent amendment thereto. In the event of any conflict between the provisions of these Bylaws and the requirements of the Open Meetings Act, the provisions of the Open Meetings Act shall prevail.

Section 5. In conducting their duties as members of the Board, each Director (1) shall be entitled to rely, in good faith and with ordinary care, on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or the Corporation's affairs, that have been prepared or presented by one or more officers or employees of the Corporation; or by legal counsel, public accountants, or other persons retained by the Corporation for the

Agenda

Officers

Steve Winters, President
Jacob Carter, Vice-President
Robin Donaldson, Secretary/Treasurer

Directors

Darlene Wimbish
Manuel Rodriguez
Ricky Johnston
Gary Low

Notice of Monthly Meeting for August 2014

The regular meeting of Avalon Water Supply And Sewer Service Corp. will be held at the First Baptist Church, 205 Giles St., Avalon, Texas on Thursday August 14, 2014 at 7:00 PM.

1. Call meeting to order.

- A. verify presence of quorum
- B. declare notices legally posted according to TOMA

2. Consent Agenda: All matters listed within this section are considered to be routine by the Board of Directors and will be amended/approved by one motion. Approval of the Consent Agenda authorizes the General Manager to execute all matters necessary to implement or make suggested changes to each item. There may be separate discussion of these items and any item may be removed from the Consent Agenda for separate discussion and consideration by any member of the Board.

- A. General Manager's report *
- B. General Manager's report *
- C. President's report *
- D. Minutes of Regular Meeting of June 10, 2014 *
- E. Financials Report **

3. Action Agenda: The Board reserves the right in all matters listed under this section to take action by motion and vote. Said action including but not limited to: Discuss, amend, table, or approve or reject as is determined appropriate by the majority of the quorum.

- A. Presentation of proposals to fill the vacant seat on the Drainage Committee
- B. JERRY STONE to install water and sewer on the property located at 109 Old Blooming Grove Road.
- C. Submit into executive session to discuss pay rates for employees after a year of employment.

4. Session from executive session.

5. Open Public Hearing: Limited to three minutes per speaker. No action and only limited discussion on matters on the agenda from the board members are allowed.

6. Adjournment.

This document is a public record and is subject to the provisions of the Texas Public Information Act. Any person may request and receive a copy of this document, subject to the payment of a fee. The fee for this document is \$10.00 per page. The fee for this document is \$10.00 per page. The fee for this document is \$10.00 per page.

CAROL D. GILLESPIE
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3921 Bobbin Lane
Addison, TX 75001
214 536-1784

August 14, 2014

Avalon Water Supply and Sewer Service Corp.
PO Box 70
Avalon, TX 76623

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AUG 25 2014

**UTILITIES & DISTRICTS
SECTION**

Dear Board of Directors:

According to the Tariff of Avalon Water Supply, any member of Avalon Water Supply may present "a letter to the Board of Directors stating the individual's grievance or concern and the desired result. The Board of Directors shall respond to the complaint by communicating the Board's decision in writing."

Tonight's agenda and subsequent meeting clearly indicates a drastic move away from transparency as do previous actions taken eliminating "Visitor Comments and Concerns" from the agenda and the 3 minute time limit.

According to Roberts Rules of Order, a consent agenda should only be only used for non-controversial items and no discussion or questions are allowed. Five of tonight's eight items on the agenda have been combined under the consent agenda. However, the Board never approved a motion to adopt the consent agenda format for Board meetings. The Board should have also adopted a policy of what may or may not be included in the consent portion of the agenda. Are all Board members familiar on how a consent agenda works?

Other Water Supply Corporations put invoices to be paid under the consent agenda, but a full financial report is still listed as a stand-alone item. Now members must file an open records request and must PAY for the financial report? There has been no annual audit completed for the year ending December 31, 2013. It's mid-August 2014! Directors, Avalon Water Supply is OWNED by the members, not the Directors and are entitled to copies of minutes and financials without having to file a Public Information Request. Several previous PIR's to AWS have yet to be fulfilled and the District Attorney has told me that he will prosecute anyone refusing to follow the law regarding the Public Information Act (Government Code 552).

A July 2013 complaint to TCEQ regarding the annual meeting and the failure to complete the 2012 audit resulted in AWS being investigated and mandatory training of the corporation with the assurance that failure to follow the law and the bylaws would no longer be tolerated. Training was conducted by TRWA and provided by TCEQ. It was communicated that reports and minutes were to be read aloud or copies provided to members.

Mr. Waishes, in previous meetings you have stated that you would like more members to attend meetings and be involved. There is little need when everything is available to Directors only. Just looking at tonight's agenda will discourage anyone from attending.

Directors, it's up to you. Continue on this path of secrecy that is only going to hurt the corporation and community or adopt procedures promoting transparency. You can start by offering every member present tonight a copy of the minutes and the financial report from tonight's meeting. It would be a tremendous display of good faith for the Directors to share their copies with members.

Sincerely,


Carol D. Gillespie

cc: Fred Bednarski, TCEQ

Lisa Fuentes, TCEQ

Chapter 2 - The Order of a Business Meeting

A business meeting provides members with the opportunity to propose ideas and to participate in forming the plans and actions of the organization. To do this in an orderly and efficient fashion, the business of the meeting is conducted according to the first principle of parliamentary procedure, which states that business is taken up one item at a time. The plan or the established order in which the items of business are taken up is called an agenda. This is a Latin word meaning "things to be done." Common parliamentary law over the years has arrived at an accepted order for a business meeting. Sometimes, however, an organization may wish to follow a different order of business. In that case, the organization must write the order of business in its own rules of order, which should be with, but not part of, the bylaws.

This chapter introduces the accepted order of business and explains how to plan and adopt an agenda, as well as determine when special kinds of agendas are needed. It gives an overview of each aspect of the agenda, from determining a quorum and receiving reports from officers and committees to hearing new business and adjourning the meeting.

PLANNING AND USING AGENDAS

In any kind of meeting, the person leading the meeting should preside from an agenda - an outline of items, listed in order of importance, that are to be accomplished at the meeting. Having an agenda keeps the meeting on track and saves time.

The basic structure of an agenda comes from the order of business as established either by the parliamentary authority or by the rules of the organization.

Accepted Order of Business

This section outlines the commonly used order of the agenda. Before any business can be transacted at a meeting, the president must determine that a quorum (the required minimum number of members needed to have a meeting) is present. The president then calls the meeting to order. He or she proceeds with the organization's established order of business. If an organization has no established order of business, the following is the customary order of business for organizations that have regular meetings within a quarterly time period.

1. **The minutes of the previous meeting are read and approved.** Often members want to dispense with the reading of the minutes because they do not feel that the minutes are important to hear. However, keep in mind that the minutes are a legal document for the organization. By approving the minutes, the members agree that this is what happened at the meeting. When a legal action has been brought against the organization, courts use minutes for evidence. Therefore, it is important that the assembly (or a committee named for the purpose of approving the minutes) approves the minutes. There is no time limit on minute corrections.

The minutes also serve to inform members who were absent from the previous meeting of what happened at the meeting. The minutes provide an opportunity to correct oversights. For example, there may be motions that carry over business to the present meeting that are in the minutes but not on the agenda. Members who are alert while the minutes are being read can ask that these motions be added to the agenda of the present meeting. Another important point is that the motion lay on the table, which allows members to temporarily set aside a motion in order to take up more urgent business, is recorded in the minutes but not put on the agenda. It is a parliamentary rule that, because the members vote to lay the motion on the table, only the members can make a motion to take it from the table. By listening carefully when the minutes are read, members take note of this and know the right course of action to take.

2. **The reports of officers, boards, and standing committees (those listed in the bylaws) are read and discussed.** The officers and standing committees do not need to give a report at every meeting. Place a report on the agenda only when there is something to report to the membership.
3. **The reports of special committees (if there are any) are heard.** Special committees are created for a particular purpose and are not listed in the bylaws. They cease to exist when they have completed their work and made their final report.
4. **Any special orders are presented.** These are motions postponed to the meeting and by a two-thirds vote made a special order so that they come up before unfinished business (see Chapter 6). Or, a special order can be special business that comes up once a year, such as nominations and elections.
5. **Unfinished business and general orders are discussed.** *Unfinished business* is a motion that was under discussion at the time that the previous meeting adjourned. A *general order* is a motion that was postponed to the current meeting but not made a special order. (These terms apply only in meetings of groups that meet quarterly or more often.)
6. **The members proceed to new business.** New business proposes an issue that is new to this meeting. It may be something not discussed before or something that was defeated at a past meeting (or even at the last meeting).
7. **When the agenda items are finished and the assembly has no further business to propose, it's time to adjourn.**

Creating a Specific Agenda

After the general outline of an agenda is prepared, the person preparing the agenda fills in the details. Depending on the needs of the organization, this person can add items to the agenda, and he or she can use special types of agendas. The following discussion explains how to prepare an agenda in a logical manner as well as how to add optional agenda items and adopt, mail, and streamline an agenda.

When preparing the agenda, review the minutes and agenda of the previous meeting, looking for things that weren't accomplished; consult the bylaws or other rules of the organization for business that is to be done at specific meetings, like nominations and elections; and check with the officers, committee chairmen, and members to see if they have business to add to the agenda.

Consulting previous meeting minutes

The most important resource for filling in agenda details is the minutes of the previous meeting. From these minutes, the agenda planner should glean any unfinished agenda items.

In agenda planning, look first for any special orders. These may be special orders that were made for the previous meeting but not disposed of before adjournment. They may be motions that were postponed and made special orders for the current meeting. Special orders are of some priority or importance. The category of special orders was created so that members can complete more important tasks before they take up any other business. Items considered special orders, and therefore of high priority, include nominations, elections of officers, and the voting of new members into membership.

After special orders comes unfinished business and general orders. (The term *old business* can be confusing and should not be used.) The first topic taken up under this category is *unfinished business*, which is any motion that was pending at the last meeting when the meeting adjourned. *Pending* means that the motion wasn't voted on but was being discussed when the meeting was adjourned.

Next is any item that was on the agenda of the previous meeting under unfinished business that the members did not have time to take up before adjournment.

Third are motions that were postponed to the previous meeting but the members didn't have time to discuss.

Fourth are general orders, which are motions that were postponed to the present meeting. The members take these up in the order in which they were made at the previous meeting.

Asking members for agenda items

In addition to the minutes, the person preparing the agenda has a number of resources to consult, namely the members themselves. Consulting the board members or other officers ahead of time about the agenda items can save time. For example, when filling in the specifics under "reports of officers, boards, and committees," the president or whoever prepares the agenda should ask the appropriate people whether they have anything to report. Only those who have reports to give are put on the agenda. Doing this saves time during the meeting because the president calls on only those who have a report to give.

Under "new business," the person preparing the agenda should ask the board members or other officers if they have something that they want to put on the agenda before the meeting. Some organizations have a rule requiring that members submit any new business items to the secretary in writing before the items are included in the agenda. However, in most organizations, when there is no new business on the agenda, the chair asks the members, "Is there any new business?" Members always have the right to present ideas to the assembly, and "new business" is the place to do it.

Other possibilities for agenda topics

Most organizations incorporate some optional agenda items into their meetings. Examples of optional items are opening ceremonies, roll call, programs, announcements, and "for the good of the order."

Opening ceremonies may be a pledge to the flag, a prayer or invocation, or any ritual that is unique to the organization and has nothing to do with business. This always comes immediately after the meeting is called to order. If there is a roll call of members to record attendance or establish a quorum, it follows the opening ceremonies. The minutes are then read. Programs may include a special speaker or entertainment, and they usually follow new business. Announcements come right before adjournment.

Some organizations take time right before adjournment for the "good of the order." This segment allows members to give suggestions for improvement or to give compliments concerning the work of the organization. Usually business is not brought up during this portion of the meeting. Any ideas for new business that come from this segment are brought up at another meeting. However, if something urgent is brought to the attention of the members, a member can present it as a main motion during this segment. Until someone moves to adjourn the meeting, members can bring forward business.

Adopting the Agenda

Although members may adopt the agenda at the beginning of the meeting, the agenda shouldn't tie the hands of the assembly, prevent members from bringing up business, or enable a small group to railroad through their pet projects. Agendas should have flexibility to provide for unseen things that may come up in a meeting. Some organizations want to adopt an agenda believing that they can add no further items as the meeting progresses, which is not true. If an agenda is adopted, changing it takes a two-thirds vote.

An organization can adopt an agenda only if its governing documents don't include rules of order dictating the order of a business meeting. (Rules of order unique to a particular organization are usually included with, but not part of, the bylaws.)

In some types of meetings - those that occur less than quarterly, conventions, or other sessions that may last for several days - adopting the agenda is most important. Because these meetings take place infrequently, adopting an agenda ensures that participants will accomplish the tasks on the agenda without

getting sidetracked by other issues. A majority vote adopts an agenda. After it's adopted, only a two-thirds vote or general consent may change the agenda.

Mailing an Agenda to the Members

Some organizations mail the agenda to their members before the meeting. The purpose is to provide members with information so that they can prepare for the meeting. However, the agenda can still be changed before the meeting. In other words, the agenda is not binding on anyone. Items can be added before the meeting, as well as during the meeting by a motion, a second, and a two-thirds vote. Remember that an agenda is just a suggested outline or structure for the meeting. Things can change between the time the agenda is mailed to the membership and the time that the meeting takes place.

Consent and Priority Agendas

The consent agenda (or in some cases, the consent calendar) allows members to vote on a group of items en bloc (as a group) without discussion. This is a good way to dispose of business that is noncontroversial. Approving the minutes, paying the bills, and approving customary donations are examples of noncontroversial business. For an organization to use a consent agenda, it needs to adopt a special rule of order.

The presentation of the consent agenda is established by a special rule of order and should be taken up before committee reports. If the consent agenda includes the approval of the minutes, then it should be taken up before any business is transacted. Every member should have a printed copy of the consent agenda when the presiding officer presents it. When presenting it, the chair asks if any member wants to extract an item from the consent agenda.

To extract an item, a member need only rise and request, for example, that item 3 be removed from the consent agenda. This means that the member wants to discuss and vote on this issue separately. The request does not need a second and is not discussed, and no vote is taken to remove it from the consent agenda.

After the members finish extracting items from the consent agenda, the presiding officer presents the modified consent agenda to the assembly once again and takes the vote by general consent. (See Chapter 5 on voting.)

The president could say it this way:

President: Are there items that the members want to remove from the consent agenda? *[Pause; if no one rises, continue.]* If there is no objection, the consent agenda will be adopted. *[Pause; wait to see if anyone objects.]* Hearing no objection, the following items, as published on your consent agenda, are adopted.

The extracted items are added to the regular agenda under the proper categories for bringing up such items.

The consent agenda is useful for streamlining action on a group of items. Also useful, though in a different way, is the *priority agenda*. This type of agenda is a list of tasks to be accomplished, discussed, and voted on in the order of importance. In committee meetings and in groups or work teams that have informal meetings, a priority agenda is a good way to organize the meeting. This concept is also helpful in listing items under new business. The most important or timely topics are placed at the top of the agenda to ensure that they're done before the meeting ends.

QUORUM

As discussed earlier in the chapter, before an organization can legally transact any business at a meeting, a quorum must be present. Quorum is a Latin word meaning "of them," as in "do we have enough of them - the members?"

A consent agenda is a meeting practice which packages routine committee reports, Board meeting minutes, and other non-controversial items not requiring discussion or independent action as one agenda item. This can save precious meeting time by allowing the Board to approve this 'package' of items together in one motion.

Reports and information can be grouped together under a consent agenda only if all Board Directors agree. If only one Director selects a specific item for discussion, it must be removed and placed on the regular Board meeting agenda. Depending upon the organization, a few minutes up to a half hour can be freed up for more substantial discussion on those items requiring strategic thought, decision making or action.

What types of items can be found on the consent agenda?

Typical consent agenda items are routine and should not require any Board discussion. Typically the following things are considered for grouping in consent agenda.

- ★ Board and committee meeting minutes
- ★ Committee and staff reports
- ★ Updates or background reports provided for information only
- ★ Correspondence requiring no action
- ★ Staff appointment requiring Board confirmation
- ★ Final approval of proposals or reports that Directors have been dealing with for some time and are familiar with the implications
- ★ Routine contracts that fall within policies and guidelines.
- ★ Confirmation of documents or items that need no discussion but are required by the bylaws

How does a Board begin using a consent agenda?

The first step in using a consent agenda is to have the Board approve a motion to adopt the consent agenda format for Board meetings. The Board should also craft and approve a policy of what may or may not be included in the consent portion of the agenda.

It is important to make sure that all Directors know what items belong on the consent portion of the agenda, and how to move items to and from this overall consent area.

What is the process for using a consent agenda?

A consent agenda can only work if the reports and items are known in advance and distributed with the agenda package allowing sufficient time to be read by all Directors prior to the meeting. A typical process for developing and using a consent agenda is as follows:

- ★ The President or Chairperson of the Board decides what items will be place into the consent portion of the agenda.
- ★ The full agenda, including consent items are disseminated prior to the Board meeting along with any documentation or back up information so that Board Directors can do their due diligence before voting.
- ★ As the first item of business, the President/Chairperson asks Directors if any one wishes to remove any item under the consent portion of the agenda to be discussed. They can request to discuss the item, question the item or register a vote against the item.
- ★ If an item is removed from the consent portion, the President/Chairperson will place it on the regular meeting agenda.
- ★ The Chairperson then asks for a motion to accept the consent agenda.

The consent agenda items typically appear very near the beginning of the regular meeting. This allows any item to be removed and placed into the overall agenda for discussion and action late in the meeting. As with all formal Board action, a quorum must be present in order to have action on the consent agenda items that is legitimate and binding.

Sample of a Consent Agenda

- I. Welcome
 - II. Consent Agenda
 - a. Board meeting minutes
 - b. Contract to retain HR Consultant
 - c. Marketing Committee meeting minutes and report
 - d. Executive Director's report
 - III. Finance Report
 - IV. Discussion Item
 - Change recommendation for XYZ Program
- and so on.....

As a single item on the agenda, the consent agenda is voted on with a single vote - to approve the consent agenda. The key to the Consent Agenda's effectiveness is that there is NO DISCUSSION of that item.

The motion sounds like this:

Dick: I move to approve the consent agenda.

Sue: I'll second that motion.

Chair: There is a motion and a second to approve the consent agenda. All in favor signify by saying "Aye."

Again, because there will be no discussion of these items individually, using a consent agenda requires that Board materials be provided in plenty of time for Directors to read them all. It is a requirement that the Directors read these materials before the meeting.

Handling Items That Require Clarification or Discussion

Sometimes a board member will read the board materials related to the Consent Agenda, and he will have a question he would like answered before he votes. Or he feels the issue still requires discussion before he would feel comfortable voting. Those are two distinct scenarios, and they receive two distinct treatments.

Items for Clarification or Questions

For items that require clarification, or for which a board member has a question, that clarification must be requested before the meeting. An item cannot be pulled from the consent agenda just to have a question answered. That sort of information gathering should happen ONLY before the meeting.

In that way, the person being asked the question has time to gather the information. (There is nothing worse than having an issue tabled for the next meeting, only because a question could not be answered then and there.) In addition, that clarification can then be sent to all board members, so everyone has the same information before the meeting.

This is particularly useful for clarifying the minutes, which often takes absurd amounts of time that could otherwise be spent in more meaningful discussion.

Items for Discussion

If there is an item about which a board member disagrees, or believes that item requires discussion, then a request is made at the board table to pull that one item from the Consent Agenda, and to add it to the regular agenda as an item to be discussed. The remainder of the Consent Agenda items are voted on and approved, and only that single item is held out for discussion.

"Ms. Chairwoman, I would like to request that the Item 'c' be pulled from the Consent Agenda for discussion."

"All in favor of approving the Consent Agenda, minus Item 'c,' signify by saying Aye."

Item 'C' will then be discussed as a regular discussion item.

Nonprofit Law Jargon Buster: What is a Consent Agenda

Posted on May 3, 2012 by Ellis Carter • 0 Comments

A consent agenda is the practice of bundling routine matters into one board vote to free up board meeting time to focus on the substantive issues facing the organization. Because every board action must be agreed upon and documented in the board meeting minutes, time is frequently wasted discussing and approving actions such as the previous meeting's minutes, ratification of decisions that were previously discussed, or approval of routine matters. A consent agenda allows the board to bundle these items into one agenda item and vote on the entire package without separate discussion of each item.

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Two

Despite its usefulness in freeing up time for more substantive matters, there are also some items which are inappropriate to include on a consent agenda. A consent agenda should not be used to hide important issues or stifle difficult decisions. The following items may be inappropriate to include in a consent agenda: an audit report, financial reports, executive committee decisions, or other decisions that are instrumental to the governance of the organization.

Boards using consent agendas must ensure they meet their fiduciary duties by paying attention to the items on the consent agenda and asking questions in advance of the meeting. While it is not difficult to use, a board must be disciplined in working through the following steps:

1. Set the meeting agenda
2. Distribute materials in advance
3. Read materials in advance
4. Introduce the consent agenda at the meeting
5. Remove (if requested) an item from the consent agenda
6. Approve the consent agenda
7. Document approval of the consent agenda

Although change can be difficult and a consent agenda requires thoughtful planning, it is a great tool to free boards from the time consuming task of wading through every item that needs approval. Consent agendas create better governance through allowing the board to regularly dig deeper on important issues and focus on how the organization can better fulfill its mission in the future.

Ellis Carter is a nonprofit lawyer licensed to practice in Washington and Arizona. Ellis advises tax-exempt clients on federal tax matters nationwide.

Related Articles:

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Addison, TX 75001

August 14, 2014

Avalon Water Supply and Sewer Services Corporation
P.O. Box 70
Avalon, TX 76623

RECEIVED
AUG 25 2014
UTILITIES & DISTRICTS
SECTION

RE: Open Records Request

To Whom it May Concern:

This is a request under the Texas Open Records Act, chapter 552 of the Government Code (formerly V.T.C.S. article 6252) as well as Article I, Sec. 8 of the Texas Constitution, the First Amendment to the United States Constitution, the common law of the State of Texas and any statute providing for public access to government information:

I request that I be sent via email or postal mail copies of the following documents:

1. Minutes of the July 10, 2014 meeting of Avalon Water Supply and Sewer Services Corporation.
2. Financial report from the August 14, 2014 meeting.

If you have any questions about the nature or scope of this request, please email me at the address listed above. If you determine that all or some portion of the information requested is excepted from required disclosure, I request that you provide me with the portions of the requested information that are public and reasonably segregable from that which you believe is excepted. If any records are in active use or in storage, please certify this fact in writing and set a date and hour within a reasonable time when the records will be available, as required by section 552.221 of the Act.

If you determine that all or some portion of the information requested is excepted from required public disclosure under a particular exception, I request that you advise me as to which exceptions you believe apply. If you rely on previous determination, please advise me of the applicable court decision or Attorney General's opinion. If there is no such determination, please advise me of the request for such an opinion, as required under section 552.301 of the Act, and a dated copy of your letter to the Attorney General. I call your attention to section 522.353 of the Act, which provides penalties for a failure to release public records.

I am prepared to pay reasonable costs for copying, within the guidelines set by sections 552.261, 552.262, 552.263, 552.267, 552.268, 552.269. Please email the address listed above with an estimate of the charges and with instructions on remitting payment for documents.

In making this request, I understand that Avalon Water Supply and Sewer Services Corporation is under no obligation to create a document to satisfy my request or to comply with a standing request

for information. I further understand that the information will be released in accordance with the Public Information Act, which may require a determination as to confidentiality by the Texas Attorney General prior to release. I further understand that the Avalon Water Supply and Sewer Services Corporation has ten (10) business days in which to request such a determination and/or to comply with this request.

I appreciate your prompt attention to this request.

Sincerely,


Carol D. Gillespie

cc: Fred Bednarski, TCEQ

Lisa Fuentes, TCEQ

CAROL D. GILLESPIE
caroldgillespie@earthlink.net
3921 Bobbin Lane
Addison, TX 75001
214 536-1784

August 14, 2014

Avalon Water Supply and Sewer Service Corp.
PO Box 70
Avalon, TX 76623

RECEIVED
AUG 25 2014

**UTILITIES & DISTRICTS
SECTION**

Dear Board of Directors:

According to the Tariff of Avalon Water Supply, any member of Avalon Water Supply may present "a letter to the Board of Directors stating the individual's grievance or concern and the desired result. The Board of Directors shall respond to the complaint by communicating the Board's decision in writing."

I had planned to address this topic during Open Forum at the meeting tonight, but since members are limited to 3 minutes, I chose to address the consent agenda issue instead. I then decided to submit this in writing.

Since Avalon Water Supply and Sewer Services Corporation is a non-profit, their income tax returns are available online at no cost. I recently obtained a completed copy of the 2012 return which was not filed until November 15, 2013. The deadline for filing is May.

David C. Waishes signed the return, "Under penalties of perjury, I declare I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete."


I have several questions which I would like answers:

- 1) On page 7, the form states to "List all of the organizations current officers, directors, trustees...." There are 7 directors listed. One of those 7 directors resigned in January 2012 and two resigned in April of 2012. Why is David Waishes who was appointed to the Board in March 2012 not listed? Why are Jimmy Brown and Jeremy Langley who were both appointed to the Board in April 2012 not listed?
- 2) On page 17 there is a construction in progress item for \$41,502. What exactly was AWS&SSC constructing? How was the amount derived?
- 3) On page 20 where you must list Business Transactions Involving Interested Persons you have Santos Munguia (former director) and \$4,016 in legal fees that I presume were paid to his nephew, Jesse Joe Munguia, attorney. Why is Patsy Russell not listed? She was President of the Board. She and Santos Munguia resigned at the exact same time. And, she is a grandmother to Jesse Joe Munguia.
- 4) On page 21 there is a statement, "THE RETURN IS REVIEWED AT A BOARD MEETING PRIOR TO FILING." The return was filed on November 15, 2013. I was present at all meetings during that time frame and do not recall the return being reviewed. It was mentioned that it had been

filed, but that is all I recall being said about the return. Please advise at which meeting the return was reviewed at.

I look forward to your written response to these questions.

Respectfully,


Carol Gillespie

cc: Fred Bednarski, TCEQ

Lisa Fuentes, TCEQ



House Bill (HB) 1600 and Senate Bill (SB) 567 83rd Legislature, Regular Session, transferred the functions and records relating to the economic regulation of water and sewer utilities from the TCEQ to the PUC effective September 1, 2014.

Central Records Personally Identifiable Information Audit

NOTICE OF REDACTION

Documents containing Personally Identifiable Information* have been redacted from electronic posting, in accordance with Texas privacy statutes.

*"Personally Identifiable Information" (PII) is defined to include information that alone or in conjunction with other information identifies an individual, including an individual's: Social security or employer taxpayer identification number, driver's license number, government-issued identification card number, or passport numbers, checking and savings account numbers, credit card numbers, debit card numbers, unique electronic identification number, address, or routing code, electronic mail names or addresses, internet account numbers, or internet identification names, digital signatures, unique biometric data, and mother's maiden name, marriage and any other numbers or information used to access an individual's financial account.

The courts have been required to face the question whether a meeting could be convened without a quorum for the sole purpose of making the announcement that the executive session will be held. The situation presented to the court was one in which the school district posted notice that the meeting would be held in the school administration building. The members of the board would convene in the superintendent's office, the president of the board would go into the auditorium, convene the meeting and announce that the board would meet in executive session. In some cases, the president of the board would be the only member present in the auditorium when the meeting was convened and the announcement was made. The Supreme Court relied on the requirement that an open meeting is required to be convened before an executive session can begin and the fact that there can be no meeting unless a quorum is present and physically able to deliberate to conclude that a quorum had to be present when the president announced the executive session. The court concluded that the public was entitled to know which members were present and whether there was a quorum for the closed session. *Cox Enterprises v. Board of Trustees*, 706 S.W.2d 956, 959 (Tex. 1986).

V. EXCEPTIONS AUTHORIZING CLOSED MEETINGS

A. Specific Exceptions

A fundamental premise of the statute is that all meetings of governmental bodies are open to the public unless they are specifically excepted by the Open Meetings Act or are specifically permitted by the Constitution. There are several exceptions that are found in section 2 of the Act.

1. PERSONNEL

Section 551.074 [art. 6252-17, § 2(g)] of the Act provides:

- (a) This chapter does not require a governmental body to conduct an open meeting: (1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee; or (2) to hear a complaint or charge against an officer or employee;
- (b) Subsection (a) does not apply if the officer or employee who is the subject of the deliberation or hearing requests a public hearing.

a. Applicable to Individual Employees Rather Than Groups

One of the most important opinions under the personnel exception is Attorney General Opinion H-496 (1975). The opinion concluded that a school board could discuss whether to grant a teacher a raise in closed session since the adjustment of an individual's salary necessarily involved an evaluation of the employee's job performance. The more important aspect of the opinion, however, was its further statement that the exception applied only in cases of discussion relating to individual employees. If the school board discussed salaries or salary scales of a class of employees rather than on an employee-by-employee basis, a closed session was not permitted. See also, Op. Tex. Att'y Gen. No. DM-35 (1991) (meeting to consider abolishing office of public weigher not covered by any exception permitting closed meeting). Thus, the board is permitted to discuss a specific teacher's salary in closed session, although it may not discuss across the board raises without meeting in open session. It should be noted that section 551.083 [art. 6252-17, § 2(m)] of the Act does permit closed sessions by boards operating under consultation agreements pursuant to section 13.901 of the Education Code when the boards are deliberating regarding the standards, guidelines, terms or conditions that they or their representatives will follow in consultation with representatives of teacher groups. See Op. Tex. Att'y Gen. No. H-651 (1975).

b. Applicable to Officers and Employees

It is also important to note that although section 551.074 [art. 6252-17, § 2(g)] is commonly referred to as the personnel exception, the word "personnel" does not appear in the body of the statute. The Act refers to "officers and employees." Thus, a governmental body has been found to be authorized to meet in closed session to discuss the election of its own officers or to discuss the election of persons to fill a vacancy in public office. Op. Tex. Att'y Gen. No. DM-377 (1996); Op. Tex. Att'y Gen. No. H-1047 (1977); Attorney General Letter Advisory LO 94-063 (1994) (city council appointments to transit authority board may be discussed in closed session). While the term "officers and employees" would permit discussion in closed session prior to election of board officers, the mere discussion of individuals, without more, will not permit a session to be closed. For example, a college board of regents may not meet in executive session when considering whether to grant an honorary degree to an individual since the discussion does not relate to the appointment or employment of an officer or employee of the university. Op. Tex. Att'y Gen. No. H-246 (1974). Similarly, it is not permissible to meet in executive session to discuss appointment of persons to advisory committees since the appointees would not be officers or employees. Op. Tex. Att'y Gen. No. DM-149 (1992).

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UTILITIES & DISTRICTS
SECTION

Avalon Water Supply and Sewer Service Corporation

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Deposits													
	2,426.18	1,114.32	511.87	1,433.02	1,881.99	809.76	625.51	1,638.84					10,441.49
	1,530.64	1,590.65	705.03	2,778.48	1,348.20	2,093.69	553.35	617.40					11,217.44
	818.23	1,608.84	1,071.01	2,718.10	2,158.02	6,310.20	675.98	404.42					15,764.80
	3,237.63	2,644.73	1,706.68	3,140.17	2,195.69	1,889.85	681.11	1,703.29					17,199.15
	1,534.69	2,521.47	3,179.78	1,265.20	2,791.01	1,446.34	874.02	1,481.42					15,093.93
	996.37	1,159.99	2,326.52	1,911.58	2,227.11	329.96	2,089.32	3,070.64					14,111.49
	3,329.51	2,776.79	734.50	1,635.61	1,449.00	1,597.45	653.05	400.40					12,576.31
	1,180.12	1,181.75	617.93	1,325.20	1,983.98	2,396.22	821.93	653.08					10,160.21
	548.59	1,347.15	1,722.07	1,459.71	2,124.73	2,058.43	5,410.03						14,670.71
	1,701.19	1,323.61	1,356.84	1,197.19	1,533.44	1,902.21	3,492.44						12,506.92
	2,034.31	398.41	471.45	1,711.03	1,153.95	2,360.19	384.61						8,513.95
	1,635.90	1,576.98	1,615.98	2,157.36	427.54	2,729.57	2,711.96						12,855.29
	1,120.19	1,849.27	1,677.40	990.08	1,654.54	1,296.77	2,901.83						11,490.08
	770.45	3,481.00	1,583.39	1,115.55	1,579.75	1,806.12	(200.00)						10,136.26
	660.63	468.73	1,716.32	1,230.37	1,149.15	2,215.52	2,037.77						9,478.49
		680.62	2,044.16	574.10	1,603.43	1,772.88	464.10						7,139.29
		1,140.51	109.27	841.79	1,316.64		3,890.50						7,298.71
		1,089.31	1,232.66	100.00	941.93		139.64						3,503.54
		22.00	413.42	115.71			2,089.82						2,640.95
		983.10					477.32						2,489.75
							272.32						1,215.82
							672.19						1,715.61
							10,000.00						10,292.88
													0.00
													0.00
Return of Petty Cash to bank account						100.00							100.00
Total Cash Receipts	23,524.63	28,959.23	28,105.41	27,700.25	29,520.10	33,115.16	41,718.80	9,969.49	0.00	0.00	0.00	0.00	222,613.07
Membership buy-in													
Capital Investment													
Tap Fee													
Membership													
Total Membership Buy-in	0.00	1,404.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1,404.00
Total Monthly Revenue	23,524.63	30,363.23	28,105.41	27,700.25	29,520.10	33,115.16	41,718.80	9,969.49	0.00	0.00	0.00	0.00	224,017.07

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Avalon Water Supply and Sewer Service Corporation

Disbursements	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Attorney & CPA Expense													
Almee Hess, Attorney			3,750.00			4,165.00							7,915.00
KSA Engineers			385.00										385.00
Kendall Stone CPA													0.00
Wray, Willett & Stoffer		700.00											700.00
Total Attorney & CPA Expense	0.00	700.00	4,135.00	0.00	0.00	4,165.00	0.00	0.00	0.00	0.00	0.00	0.00	9,000.00
Banking Fees													
Charge Back Item					67.41								67.41
Bank Fee					5.00								5.00
Bank to adjust													0.00
Visa Credit Card Interest		6.52	2.14										8.66
Total Banking Fees	0.00	6.52	2.14	0.00	72.41	0.00	0.00	0.00	0.00	0.00	0.00	0.00	81.07
Chemicals & Supplies Purchased - Water & Sewer													
Blackland Building Supply Inc			134.59	41.89		37.30							213.78
Bowles Sand & Gravel			411.37										411.37
Helena Chemical Co.				72.65									72.65
K W Utilities													0.00
Longhorn Industrial Supply				34.70		89.48	35.00						159.18
Morrison Supply Company						1,129.43							1,129.43
OK Lumber Co	18.79		53.72	212.34			70.26						355.11
Tractor Supply		25.94											25.94
Wiseman Hardware - construction Vests		43.28	21.64										64.92
Total Chemicals & Supplies - Water & Sewer	564.75	69.22	75.36	149.24	212.34	1,256.21	105.26	0.00	0.00	0.00	0.00	0.00	2,432.38
Chemicals & Supplies Purchased - Water													
Britton Meter Supply		1,438.17	710.79	892.10	617.84	1,236.82							4,895.72
Elliott Electric		511.48											511.48
Home Depot		374.23	53.67										427.90
K-D Water Service			403.75		125.29	208.83							995.63
Lonestar Maintenance Inc	257.76	809.00	35.00	35.00	616.09	831.00							2,684.19
TMS.WBS Inc	358.10												85.42
Buster Russell Construction			85.42										85.42
Smith Pump Company	3,206.28												3,206.28
Total Chemicals & Supplies - Water	3,822.14	3,132.88	1,288.63	927.10	1,359.22	2,276.65	0.00	0.00	0.00	0.00	0.00	0.00	12,806.62
Chemicals & Supplies Purchased - Sewer													
Hach													0.00
Home Depot - equipment		114.68	96.23										210.91
Kendall Acquisition (sewer buggs)		420.00											420.00
Lowes - Heaters for plant & screwdrivers		78.95											78.95
Walmart - Misc for sewer plant		24.20	37.65										61.85
Russell Bros Contracting													0.00
Total Chemicals & Supplies - Sewer	0.00	637.83	133.88	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	771.71

Avalon Water Supply and Sewer Service Corporation

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Insurance													
AIA Insurance													0.00
Capps Insurance Agency	348.00		953.00	272.00	272.00	272.00	956.00						956.00
Service Lloyds Insurance Company	150.00	150.00	150.00	150.00	225.00	150.00	272.00						2,389.00
Rodriguez, Gregg - Insurance								75.00					75.00
Total Insurance	498.00	150.00	1,103.00	422.00	497.00	422.00	1,378.00	75.00	0.00	0.00	0.00	0.00	4,545.00
Office Expense													
Best Buy - computer software, misc items	108.24	106.06	165.68										
Card Service Center				328.73	763.81	723.90	639.03						379.98
Cash - Reimb Petty Cash				51.03	69.59	69.73	0.00						2,455.47
Deluxe Checks				107.60			215.66						190.35
Secretary of State				5.00									323.26
Ink, envelopes misc supplies		419.60											5.00
Office Depot - paper, file boxes		95.21											419.60
Gregg Rodriguez - travel exp			469.92			301.28	93.00	150.52					95.21
Ellis Associates Surveyors - Gillespie Land				487.13									1,014.72
Ellis County Abstract & Title - Gillespie Land				1,000.00	5,265.54								487.13
Ellis County Medical Associates					350.00	170.00							6,265.54
TEEX - Class training for Gregg License	475.00												520.00
Ed Hettinger - Misc supplies and equip				785.68	1,377.10	1,122.92	23.07						475.00
RVS Software						864.92	487.13						3,308.77
TX Dept State Health Services - Tier 2				50.00									1,352.05
TRWA - Books and Information				173.20									50.00
USPS - Postage	516.97	115.68	178.61	136.00	102.00	332.00							351.81
La Estrellita - lunch workers			15.99										1,311.14
Total Office Expense	1,100.21	736.55	938.69	3,124.37	7,928.04	3,584.75	1,457.89	150.52	0.00	0.00	0.00	0.00	19,021.02
Payroll													
Gregg Rodriguez - Payroll	3,465.14	3,376.57	3,199.03	3,055.43	4,661.37	3,540.76	3,191.31	1,771.25					26,260.86
Valdez, Joe - payroll	1,587.26	1,598.58	1,739.64	1,544.10	2,439.76	1,544.10	1,648.22	850.77					12,952.43
Waishes, Daniel - payroll	603.45	166.23	147.76	110.82	383.25	475.60	489.81	333.93					2,710.85
Waishes, Jacob - payroll						64.64	73.88						138.52
Elton Crocker - part time			27.70										27.70
Baker, Scott - part time			147.76										602.43
Howell, Heather					73.88	380.79							
Total Payroll	5,655.85	5,141.38	5,261.89	4,710.35	7,558.26	6,005.89	5,866.36	3,489.09	0.00	0.00	0.00	0.00	42,692.79
Sanitation / Landfill Services													
DCI Sanitation - Dumpster	136.00	68.00	68.00	68.00	44.62	68.00	68.00						520.62
Lee Way Sanitation						111.81							198.41
Richland Sanitation	75.00	75.00	75.00		150.00								375.00
Total Sanitation/Landfill Services	211.00	143.00	143.00	68.00	194.62	179.81	0.00	154.60	0.00	0.00	0.00	0.00	1,094.03

Avalon Water Supply and Sewer Service Corporation

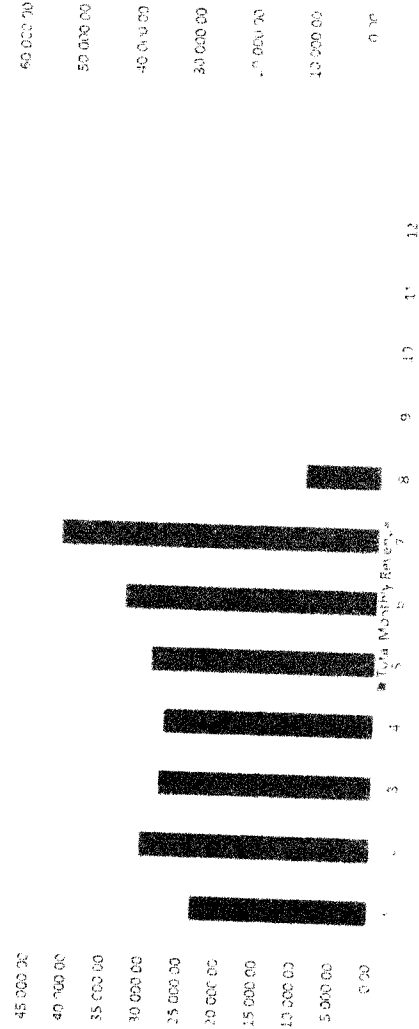
	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Services Required													
Calke Boring													
H2O Steel Contractors, LLC					4,094.75								4,094.75
Joe Valdez - mileage to repair lines						22,500.00							22,500.00
J L Myers		535.84	38.64										38.64
KW Utilities			6,000.00					44,709.52					51,245.36
Brian Roberts - Repair pump				375.00		400.00							400.00
Cate Welding													
Neptune - Wilkinson - maps		850.00			328.67								375.00
Buster Russell Construction					150.00								850.00
Moore Service Repair													328.67
Total Services Required	0.00	1,385.84	6,038.64	375.00	4,573.42	22,900.00	1,094.20	44,709.52	0.00	0.00	0.00	0.00	79,982.42
Taxes													
United States Treasury - 2012 taxes	4,291.41												4,291.41
United States Treasury - 2013 taxes	7,040.06				23.39								7,040.06
United States Treasury - 2014 taxes			3,165.51	889.58	1,439.46								5,494.55
Texas Workforce Audit 2012							248.28						248.28
Texas Workforce Quarterly Taxes				30.77			1,145.62						1,176.39
Total Taxes	11,331.47	0.00	0.00	3,780.93	912.97	1,439.46	1,393.90	0.00	0.00	0.00	0.00	0.00	18,858.73
Testing & Misc Fees													
Bio Chem Lab, Inc	433.00	540.00	421.00	706.00	1,433.00	986.00	491.00						5,010.00
Crisp Analytical Laboratories													0.00
Environmental Monitoring Lab													0.00
Lower Colorado River Authority													0.00
Prairie Lands Groundwater	561.51	453.96	413.63	402.45	397.22	574.26		507.91					3,310.94
TCEQ - 1/2% sales tax	1,418.06												1,418.06
TCEQ - Annual Wastewater Permit Fee													0.00
TCEQ - Annual Water Permit Fee													0.00
Texas Dept St Health Service													0.00
Texas Workforce Commission	41.31												41.31
Jerod Mandrell Sand and Gravel													0.00
Trinity River Authority	186.00		186.00	93.00	93.00	93.00		150.00					41.31
Total Testing & Misc Fees	2,639.88	993.96	1,020.63	1,201.45	1,923.22	1,653.26	491.00	750.91	0.00	0.00	0.00	0.00	744.00
Loans													
First State Bank Loan Payment	1,065.45	1,087.91	1,081.89	1,082.21	1,087.52	1,080.00	1,080.00						7,564.98
USDA Loan Payment	1,447.00	1,447.00	1,447.00	1,447.00	1,447.00	1,447.00	1,447.00						10,129.00
USDA Loan Payment (Apr final pmt)	1,449.00	1,449.00	1,449.00	7,530.97									11,877.97
Total USDA Loan Payments	3,961.45	3,983.91	3,977.89	10,060.18	2,534.52	2,527.00	2,527.00	0.00	0.00	0.00	0.00	0.00	29,571.95
Utilities													
AT&T	213.96	214.29	214.29	214.29	214.35	214.35	215.13	216.81					1,717.47
TXU Electric	6,236.68		5,767.59	3,042.30	3,276.02	3,580.55							21,903.14
Windstream Comm	386.60	188.63	198.28	188.99	188.99	188.99	200.15						1,540.63
Total Utilities	6,837.24	402.92	6,180.16	3,445.58	3,679.36	3,983.89	415.28	216.81	0.00	0.00	0.00	0.00	25,161.24

File: Monthly Cash Transactions

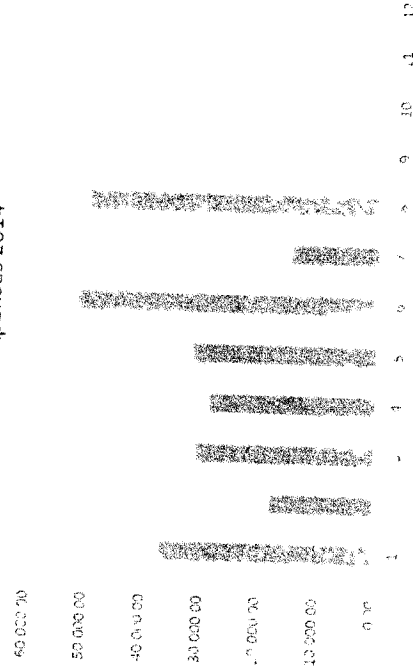
Avalon Water Supply and Sewer Service Corporation

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
Income/Loss	(13,724.22)	12,302.39	(2,577.92)	(1,026.70)	(2,480.34)	(18,859.90)	26,448.67	(40,178.54)	0.00	0.00	0.00	0.00	(37,956.08)
Beginning balance	57,452.78	43,728.56	56,030.95	53,353.03	52,326.33	49,845.99	30,986.09	57,434.76	17,256.22	17,256.22	17,256.22	17,256.22	
End of month balance	43,728.56	56,030.95	53,353.03	52,326.33	49,845.99	30,986.09	57,434.76	17,256.22	17,256.22	17,256.22	17,256.22	17,256.22	
Bank Reconciliation balance	43,728.56	56,030.95	53,353.03	52,326.33	49,845.99								
Balance from Spreadsheet - payments	37,248.85	18,060.84	30,783.33	28,726.95	32,000.44	51,975.06	15,270.13	50,148.03	0.00	0.00	0.00	0.00	
Balance from Check Book - payments	37,248.85	18,060.84	30,783.33	28,726.95	32,000.44	51,975.06	15,270.13	50,148.03	0.00	0.00	0.00	0.00	
Balance from Spreadsheet - deposits	23,524.63	30,363.23	28,105.41	27,700.25	29,520.10	33,115.16	41,718.80	9,969.49	0.00	0.00	0.00	0.00	
Balance from Check Book - deposits	23,524.63	30,363.23	28,105.41	27,700.25	29,520.10	33,115.16	41,718.80	9,969.49	0.00	0.00	0.00	0.00	

Revenue Deposits 2014



Total Expenses 2014



CAROL D. GILLESPIE
caroldgillespie@earthlink.net
3921 Bobbin Lane
Addison, TX 75001
214 536-1784

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PUBLIC AFFAIRS SECTION
FILING CLERK

August 20 , 2014

Fred Bednarski
Lisa Fuentes
Texas Commission on Environmental Quality
MC 153
P.O. Box 13807
Austin, TX 78711-3087

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RE: Avalon Water Supply and Sewer Services Corporation

UTILITIES & DISTRICTS
SECTION

Dear Mr. Bednarski and Ms. Fuentes:

On July 14, 2014 I filed an additional complaint against Avalon Water Supply and Sewer Services Corporation with TCEQ. My concern is the manner in which the monthly meetings continue to be held and the actions of the Board members. These issues were to be resolved by training conducted by TRWA and provided by TCEQ earlier this year. However, the meetings continue to violate the bylaws and the Texas Open Meetings Act (TOMA).

Representatives from TCEQ have told me that I need to prove that Avalon Water Supply and Sewer Services Corporation is in violation of their own bylaws for TCEQ to have jurisdiction and to prove that they are not operating as a non-profit, member-owned, and member-controlled corporation. Here are the facts:

- 1) First of all, AWS&SSC was formed under Chapter 67 of the Texas Water Code.
- 2) Texas Government Code Open Meetings 551.001 (3) includes definitions of governmental bodies that must follow the Texas Open Meetings Act. Definition (K) is a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code. According to this, AWS&SSC must comply with TOMA.
- 3) In fact, AWS&SSC's bylaws Article V, Section 4 states, "The Board of Directors shall ensure that all meetings comply with the requirements of the Open Meetings Act, Article 6252-17, Tex. Rev. Div. Stat., including any subsequent amends thereto."
- 4) Therefore, if AWS&SSC is in fact violating their own bylaws by not following the Texas Open Meetings Act, then TCEQ does have jurisdiction.

For over two years I have attended meeting after meeting where AWS&SSC did not follow the Texas Open Meetings Act. I have filed several complaints with the Ellis County District Attorney and others have filed complaints, too. The Ellis County District Attorney chose not to prosecute. So, as part of my complaint, I am now asking TCEQ to investigate AWS&SSC for not following their own bylaws, and therefore, not being a non-profit, member-owned, and member-controlled corporation.

Obviously, I do not wish to go back 2 ½ years and re-document all of the violations of the Texas Open Meetings Act unless it is absolutely necessary. However, I will list the major violations that I have alleged in the past, and will provide documentation supporting my claims if asked:

- 1) Closed sessions were held during the majority of meetings during 2012. TOMA is very specific on what an entity can go into closed session for. AWS&SSC moved topics to closed session at almost every meeting in 2012 that were not valid reasons for going into closed session, according to TOMA.
- 2) Discussing items not on agenda.
- 3) Voting on items not on agenda.
- 4) Less than 72 hours posted notice for a meeting.
- 5) Allowing people to stay in closed session that should not have been allowed. At one meeting it seemed to be easier for the Board to ask a reporter, my sister, and I to leave for closed session since they were allowing everyone else present (many non-Board members) to remain.
- 6) Voting in closed session, not in open session.
- 7) No recording or minutes taken during closed session.
- 8) Secret ballot. Board has passed resolutions around the table for signatures at least twice in the past few months as a way of voting. In one instance the resolution was never read aloud, and in the second I had to request that it be read aloud. This is clearly a secret ballot.
- 9) Two directors signed a resolution that were not present at the meeting where it was presented. According to TOMA, a Board member must be present to vote.
- 10) There was another incident when a Board member went by the office and approved minutes, but did not attend the meeting.

My complaint dated July 14th details recent specific TOMA violations:

- 1) On May 8th the Board added an item to an existing agenda for that same evening, stating it was an emergency. The item referenced a purchase of land. Purchasing land is not an emergency, according to TOMA.
- 2) Calling a Special Meeting for May 15th to sign a corporate resolution to purchase land. The resolution was actually dated May 8th and was passed around for Directors' signatures. It was not read aloud until I requested. Two directors "signed" the document but were not present at the meeting. This is a TOMA violation. Directors must be present to vote.
- 3) On the July 10, 2014 agenda there is an item, "Assignment of responsibilities of personnel." The Board voted to make one of the Directors (Gary Low) the General Manager. Visitors and members tried to explain to them that they could not vote to make Mr. Low the General Manager because it was not worded on the agenda to vote to make anyone GM. The President replied that they were trying to include broad-based topics so they could do what they needed to do. I believe this is a Texas Open Meetings Act violation.

AWS&SSC held their most recent monthly meeting on August 14, 2014. At this time, I would like to offer additional information regarding my complaint that AWS&SSC is not operating as a non-profit, member-owned, and member-controlled entity:

- 1) There were approximately 11 visitors/members present. There were no copies of the agenda available at the meeting.

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UTILITIES & DISTRICTS
SECTION

- 2) The agenda and format of the meeting has changed to using a *consent agenda* beginning with the August 14, 2014 meeting. This change was neither discussed by the Board nor voted on by the Board at any public meeting. It was never mentioned in the previous meeting on July 10, 2014. The members of Avalon Water Supply and Sewer Services Corporation were never given an opportunity to voice their opinion on this drastic change away from transparency. I am not objecting to a consent agenda per se, I am objecting to *how AWS&SSC is using it*. I do not believe that anything as important as financials should be under the consent agenda.
- 3) And, under a true consent agenda, Directors should receive documents prior to the meeting to approve at the meeting without discussion. The President's Report, the General Manager's Report, and the Operations Manager's reports were all verbal. And the Directors were allowed to ask questions and discuss. This is not how a consent agenda works.
- 4) Plus, the Directors all should have agreed (voted) on the change and understand how the consent agenda works prior to the August 14, 2014 meeting. This means that the Directors must be making decisions outside of the meetings and/or meeting outside of posted meetings. If so, this is a violation of the Texas Open Meetings Act.
- 5) At the August 14, 2014 meeting the President of the Board announced that there will be, "no written minutes from this point forward." He stated that instead the meetings will be recorded. Later it was stated that members will be able to purchase copies of the audio on CD. However, the bylaws of AWS&SSC specifically state, "The Secretary-Treasurer shall keep regular books and shall keep minutes of all meetings of Members and Directors."
- 6) It was stated later in the meeting that the Board is moving towards an electronic format, but "is not there yet." So, when will the July 2014 minutes be available? If the Board is not ready to provide electronic copies, then paper copies still should be available.
- 7) It is my belief that AWS&SSC is trying to keep members from having the minutes, since members have used the minutes to complain to the Ellis County District Attorney and TCEQ.
- 8) It is listed on the agenda to approve "Minutes of June 10, 2014." There was no meeting on June 10th. The regular monthly meeting of AWS&SSC was on July 10, 2014. If there are no longer minutes, how can the Board approve? If there are minutes from the July 2014, why were the not read aloud (or copies distributed) at the August 2014 meeting?
- 9) There was no financial report given during the meeting. The only information given was by General Manager who stated, "Number 2 well is paid in full.....\$44,000.....We managed to do this without borrowing against clear CDs that we had." Then a person who works in the office gave a short statement without mentioning any financial amounts. At no time did the Board state how much money is in the bank. In fact, the only dollar amount mentioned was the \$44,000 in well repairs.
- 10) The Board Directors had copies of the monthly financial statement and appeared to be reading it during the meeting. However, no copies were given to members/visitors at this time and the report was not read aloud.
- 11) The Board placed the financial report under the Consent portion of the agenda. However, consent agendas are to be used only for non-controversial items. AWS&SSC only has \$17,256.22 in the bank at this time. This dire financial situation should be a major topic on the agenda.
- 12) On the financial reports, there is a deposit for \$10,000 made at the end of July. This is for an even amount. The deposits are never for even amounts and are never that large. The highest monthly deposit that AWS&SSC is approximately \$33,000. With this \$10,000 deposit, the total deposits for July are over \$41,000.

- 13) Since the GM stated that they did not borrow from "any clear CDs," I do not know where the money came from. I was given the report at the close of the meeting and was unable to ask about the mysterious deposit. Is it possible that the Board renegotiated the \$35,000 loan that originated in December 2013? As I stated earlier, I believe that the approximately \$38,000 CD containing members' deposits was used as collateral. Payments have been made totaling \$7564 on the loan. Is it possible that the bank allowed them to renegotiate and obtain an additional \$10,000? Wherever this money came from, it should have been mentioned in the meeting.
- 14) If the Board borrowed additional funds or renegotiated their existing loan, the decision should have been made in a meeting. If they did this outside of a meeting, it could be a violation of the Texas Open Meetings Act.
- 15) There is still no audit for the year ending December 31, 2013. It is now August 2014. During the meeting it was also mentioned that they had filed for an extension. Since I was unable to ask (having used my 3 minute limit on speaking to address the consent agenda), I have to assume the 2013 income tax return has not been filed.
- 16) It also came up during the meeting that the Board removed someone's meter without notice and they were not behind in payments. The reason given was that documentation was missing from their file. I really don't know the particulars, but it does concern me because it seems to be in violation of the tariff.
- 17) During this discussion, the President told the member complaining that his three minutes were up. However, members have been told if we needed to speak more than 3 minutes that we could sign up to be placed on the agenda. This member was on the agenda to discuss this matter. Clearly, the Board did not want to discuss. This was not during Open Forum. The Board needs to follow the rules that they set for the members.
- 18) On the agenda for the August 14, 2014 meeting was an item, "Recess into executive session to discuss pay rates for employees after a year of employment." According to TOMA, is this not allowed. The Attorney General Opinion H-496 concluded that closed sessions can only be used to discuss individual employees rather than groups. The Board could only have gone into a closed session to discuss an individual's pay raise because more than likely that would include a discussion of the individual's work performance and would need to be held in private.
- 19) When the Board came out of closed session, they voted to accept the proposal pay rate. They didn't tell us what the pay rate was. We were never told what the proposal pay rate was. They might as well not voted in open session.
- 20) The Board President stated during Open Forum that in the 2 years that he has been President (since April 2012) members have never asked questions about the financials and he saw no reason to continue to distribute them. I have attended all but three of the 30 monthly meetings since then. I have only received a copy of the financial report at 11 of those meetings – August 2012, September 2013, October 2013, November 2013, December 2013, January 2014, February 2014, March 2014, May 2014, July 2014, and now August 2014. Almost every time I have had to ask for a copy, and several times were denied a copy. Many times I did not receive a copy until the meeting was over, making it difficult to ask any questions. Plus, since the Sheriff was called to have me arrested for speaking out on why the Board was going into closed session in June 2012 and who was attending the closed session, I am hesitant to speak during the meetings. If the Board ever admits that they were wrong to call 9-1-1 about that and apologize to me at a public meeting, only then will I feel comfortable addressing the Board at a meeting.

- 21) On the August 14, 2014 agenda, AWS&SSC included the following wording in regards to the financial report, "Copies will be available in paper format during normal office hour no earlier than two working days after the meeting. A written request and Charges for copies will apply, in accordance to Texas Government Code, Chapter 552." During the meeting the Board argued that they never stated that we did had to file an open records request or pay to obtain copies of the financial report. Well, that's what the statement says. They did give me a copy of the financials at the end of the meeting, but it was too late to ask any questions.
- 22) During the meeting the Operations Manager mentioned moving a building to Avalon that was going to be donated to AWS&SSC. The estimate given for moving and renovating this building that in his words, "is in bad shape," is \$6500. It was also stated that they needed this so everyone can have their own office. It's only my opinion, but I do not believe that a water supply corporation with only \$17,000 in the bank (and has apparently borrow that) should be concerned about office space for an office that is only open a limited amount of hours per day. Any money that the wsc has should be going to repair the aging infrastructure and save for emergencies.
- 23) The Board apparently voted to give raises. Actually, I'm not sure what they voted on. It was not really explained. But again, it's my opinion, that the Board should not be giving raises when they have little money on hand.
- 24) The bylaws state that the next meeting should be scheduled at the previous meeting. This is not being done.

I am enclosing a copy of the meeting that I recorded with a hand-held recorder. I apologize for the shakiness of the video. It was my first time to use the camera, and I was unfamiliar with all the settings. But hopefully, you can view enough to see for yourself how the meeting was conducted.

Please call or email with any questions.

Sincerely,



Carol D. Gillespie

**SECTION A.
RESOLUTIONS**

THE BOARD OF DIRECTORS OF AVALON WATER AND SEWER SERVICE CORPORATION ESTABLISHES THAT :

1. This Tariff of the Avalon Water and Sewer Service Corporation, serving in Ellis County consisting of Sections A. through H. and forms inclusive, is adopted and enacted as the current regulations and policies effective as of May 8, 2003.
2. Only those preexisting written contracts or agreements executed by the present or previous Board of Directors shall remain in effect, unless the contract or agreement requires compliance with changes of the tariff from time to time.
3. The adoption (or revisions) of this tariff does not prohibit or limit the Corporation from enforcing previous penalties or assessments from before the current effective date.
4. An official copy of this and all policies or records shall be available during regular office hours of the Corporation. The Secretary of the Corporation shall maintain the original copy as approved and all previous copies for exhibit.
5. Rules and regulations of state or federal agencies having jurisdiction shall supersede any terms of this policy. If any section, paragraph, sentence, clause, phrase, word, or words of this policy are declared unconstitutional or invalid for any purpose, the remainder of this policy shall not be affected.
6. This tariff has been adopted (revised) in compliance in Open Meeting in compliance with the Open Meeting Act, Chapter 551 of the Texas Government Code.

PASSED and APPROVED this 8th day of May 2003.

H. L. Southard, President
Avalon Water and Sewer Service Corporation

SEAL

RECEIVED
AUG 25 2014

UTILITIES & DISTRICTS
SECTION

ATTEST:

Irene Kelly/Anthony, Secretary
Avalon Water and Sewer Service Corporation

SECTION B.

STATEMENTS

1. **Organization.** The Avalon Water and Sewer Service Corporation is a member-owned, non-profit corporation incorporated pursuant to the Texas Water Code Chapter 67, Nonprofit Water Supply or Sewer Service Corporations and as supplemented by the Texas Non-Profit Corporation Act, Tex. Rev. Civ. Stat. Ann., Article 1396-1.01, et seq. (West 1980, Vernon Supp. 1996 as amended) for the purpose of furnishing potable water and or sewer utility service. Corporation operating policies, rates, and regulations are adopted by the Board of Directors elected by the Members of the Corporation.
2. **Non-Discrimination Policy.** Membership in the Corporation and service is provided to all Applicants who comply with the provisions of this Tariff regardless of race, creed, color, national origin, sex, disability, or marital status.
3. **Policy and Rule Application.** These policies, rules, and regulations apply to the water and or sewer services provided by the Avalon Water and Sewer Service Corporation, also referred to as Corporation, (AWSSC) , or (AWSSC). Failure on the part of the Member, Consumer, or Applicant to observe these policies, rules and regulations gives the Corporation the authority to deny or discontinue service according to the terms of this Tariff as amended from time to time by the Board of Directors of the Corporation.
4. **Corporation Bylaws.** The Corporation Members have adopted bylaws (see Article 1396-2.09) which establish the make-up of the Board of Directors and other important regulations of the Corporation. The bylaws are on file at the Corporation's office.
5. **Fire Protection Responsibility.** The Corporation does not provide nor imply that fire protection is available on any of the distribution system. All hydrants or flush valves are for the operation and maintenance of the system and may be used for refill only by authorized fire departments. The Corporation reserves the right to remove any hydrant, due to improper use or detriment to the system as determined by the Corporation, at any time without notice, refund, or compensation to the contributors unless such hydrants are installed pursuant to the terms of a Non-Standard Service Contract as provided for in Section F, in which event the terms and conditions of the Contract shall apply.
6. **Damage Liability.** The Avalon Water and Sewer Service Corporation is not liable for damages caused by service interruptions, events beyond its control, and for normal system failures. The limits of liability of the Avalon Water and Sewer Service Corporation is the extent of the cost of service provided. By acceptance of Membership, Member consents to waiver of such liability.
7. **Information Disclosure.** The records of the Corporation shall be kept in the Corporation office in Itasca, Texas. All information collected, assembled, or maintained by or for the Corporation shall be disclosed to the public in accordance with the Texas Public Information Act. An individual customer may request in writing that their name, address, telephone number, or social security number be kept confidential. Such confidentiality does not prohibit the utility from disclosing this information to an official or employee of the state or a political subdivision of the state acting in an official capacity or

an employee of the Corporation acting in connection with the employee's duties. Further, such confidentiality does not prohibit the Corporation from disclosing the name and address of each member on a list to be made available to the Corporation's voting members, or their agents or attorneys, in connection with a meeting of the Corporation's members. The Corporation shall give its applicants and customers notice of rights to confidentiality under this policy and all prevailing associated fees for such request.

8. ***Grievance Procedures.*** Any Member of the Corporation or individual demonstrating an interest under the policies of this Tariff in becoming a Member of the Corporation shall have an opportunity to voice concerns or grievances to the Corporation by the following means and procedures:
 - a. By presentation of concerns to the Corporation's manager or authorized staff member. If not resolved to the satisfaction of the aggrieved party then,
 - b. By presenting a letter to the Board of Directors stating the individual's grievance or concern and the desired result.
 - c. The Board of Directors shall respond to the complaint by communicating the Board's decision in writing.
 - d. Any charges or fees contested as a part of the complaint in review by the Corporation under this policy shall be suspended until a satisfactory review and final decision has been made by the Board of Directors.
9. ***Customer Service Inspections.*** The Corporation requires that a customer service inspection certification be completed prior to providing continuous water service to new construction and for all new members as part of the activation of standard and some non-standard service. Customer service inspections are also required on any existing service when the corporation has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction or addition to the members' water distribution facilities. This inspection is limited to the identification and prevention of cross connections, potential contaminant hazards and illegal lead materials. (30 TAC 290.46(i-j))
10. ***Submetering Responsibility.*** Submetering and Non-Submetering by Master Metered Accounts may be allowed in the Corporation's water distribution or sewer collection system provided the Master Metered Account customer complies with the Texas Commission on Environmental Quality Chapter 291 Subchapter H rules pertaining to Submetering. The Corporation has no jurisdiction over or responsibility to the tenants. Tenants receiving water under a Master Metered Account are not considered customers of the Corporation. Any interruption or impairment of water service to the tenants is the responsibility of the Master Metered Account Customer. Any complaints regarding submetering should be directed to the Texas Commission on Environmental Quality.

GOVERNMENT CODE

TITLE 5. OPEN GOVERNMENT; ETHICS

SUBTITLE A. OPEN GOVERNMENT

CHAPTER 551. OPEN MEETINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 551.001. DEFINITIONS. In this chapter:

(1) "Closed meeting" means a meeting to which the public does not have access.

(2) "Deliberation" means a verbal exchange during a meeting between a quorum of a governmental body, or between a quorum of a governmental body and another person, concerning an issue within the jurisdiction of the governmental body or any public business.

(3) "Governmental body" means:

(A) a board, commission, department, committee, or agency within the executive or legislative branch of state government that is directed by one or more elected or appointed members;

(B) a county commissioners court in the state;

(C) a municipal governing body in the state;

(D) a deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;

(E) a school district board of trustees;

(F) a county board of school trustees;

(G) a county board of education;

(H) the governing board of a special district created by law;

(I) a local workforce development board created under Section 2308.253;

(J) a nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and

(K) a nonprofit corporation organized under Chapter 67, Water Code, that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code.

(4) "Meeting" means:

(A) a deliberation between a quorum of a governmental body, or between a quorum of a governmental body and another person, during which public business or public policy over which the governmental body has supervision or control is discussed or considered or during which the governmental body takes formal action; or

(B) except as otherwise provided by this subdivision, a gathering:

(i) that is conducted by the governmental body or for which the governmental body is responsible;

(ii) at which a quorum of members of the governmental body is present;

(iii) that has been called by the governmental body; and

(iv) at which the members receive information from, give information to, ask questions of, or receive questions from any third person, including an employee of the governmental body, about the public business or public policy over which the governmental body has supervision or control.

The term does not include the gathering of a quorum of a governmental body at a social function unrelated to the public business that is conducted by the body, or the attendance by a quorum of a governmental body at a regional, state, or national convention or workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of public business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

The term includes a session of a governmental body.

(5) "Open" means open to the public.

(6) "Quorum" means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body.

special Membership meeting, at which time the general Membership shall elect a successor for the balance of the term. If the removal of a Director pursuant to this Section 2 occurs at an annual Membership meeting, then the successor shall be elected by majority vote of the Membership in attendance at the meeting.

Section 3. The Board of Directors shall provide access for the public, new service applicants, or Members to the regular monthly meetings of the Board of Directors by setting aside a time for hearing of suggestions, proposals, or grievances. The Board of Directors shall establish reasonable rules for access to such meetings.

Section 4. The Board of Directors shall ensure that all meetings comply with the requirements of the Open Meetings Act, Article 6252-17, Tex. Rev. Div. Stat., including any subsequent amendment thereto. In the event of any conflict between the provisions of these Bylaws and the requirements of the Open Meetings Act, the provisions of the Open Meetings Act shall prevail.

Section 5. In conducting their duties as members of the Board, each Director (1) shall be entitled to rely, in good faith and with ordinary care, on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or the Corporation's affairs, that have been prepared or presented by one or more officers or employees of the Corporation; or by legal counsel, public accountants, or other persons retained by the Corporation for the

Agenda

Officers

Davis Washes, President

Lubbock Carter, Vice-President

Robin Donaldson, Secretary/Treasurer

Directors

Denise Wainwright

Marlene Rodriguez

Ricky Johnston

Gary Cook

Notice of Monthly Meeting for August 2014

The regular meeting of Avalon Water Supply And Sewer Service Corp. will be held at the First Baptist Church, 2106 Cedar St., Avalon, Texas on Thursday August 14, 2014 at 7:30 PM.

1. Meeting to order

2. Pledge of Allegiance

3. Declare notices legally posted according to TOMA

2. Consent Agenda. All matters listed under this section, are considered to be routine by the Board of Directors and will be enacted/approved by one motion. Approval of the Consent Agenda authorizes the General Manager to execute all matters necessary to implement or make suggested changes to each item. There may be separate discussion of these items and any item may be removed from the Consent Agenda for separate discussion and consideration by any member of the Board.

A. Operation Manager's report *

B. General Manager's report *

C. Presidents report *

D. Minutes of the last Meeting of June 10, 2014 *

E. Motion to approve *

3. Action Ag. The Board reserves the right on all matters listed under this section to take action by motion and vote. Said action including but not limited to, discuss, amend, table, approve or reject as is determined appropriate by the majority of the quorum.

A. Appointment of Jan Hettinger to fill the vacant seat on the Credentials Committee.

B. Jimmy Brown to discuss water and sewer on the property located at 408 Old Main Road.

C. Recast into executive session to discuss pay rates for employees after a year of employment.

4. Return from executive session

5. Open Public forum, limited to three minutes per speaker. No action and only limited discussion on topics not on the agenda from the board members are allowed.

6. Adjournment

The governing body of Avalon Water Supply And Sewer Service Corp. reserves the right to adjourn into closed or closed session at any time during the course of this meeting to discuss any of the matters listed in this agenda, in the order deemed appropriate, and authorized by Texas Government Code 551, or to seek the advice of an attorney on any matter in which the duty of the attorney to Avalon Water Supply And Sewer Service Corporation under Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Texas Government Code Chapter 551 or as otherwise may be permitted under 551.

* All verbal reports will be available only on the digital copy of the minutes.

** Copies will be available in paper format during normal office hour no earlier than two working days after the meeting. A written request and charges for copies will apply, as accordance to Texas Government Code, Chapter 552.

Robin Donaldson

CAROL D. GILLESPIE
caroldgillespie@earthlink.net
3921 Bobbin Lane
Addison, TX 75001
214 536-1784

August 14, 2014

Avalon Water Supply and Sewer Service Corp.
PO Box 70
Avalon, TX 76623

RECEIVED
AUG 25 2014

UTILITIES & DISTRICTS
SECTION

Dear Board of Directors:

According to the Tariff of Avalon Water Supply, any member of Avalon Water Supply may present "a letter to the Board of Directors stating the individual's grievance or concern and the desired result. The Board of Directors shall respond to the complaint by communicating the Board's decision in writing."

Tonight's agenda and subsequent meeting clearly indicates a drastic move away from transparency as do previous actions taken eliminating "Visitor Comments and Concerns" from the agenda and the 3 minute time limit.

According to Roberts Rules of Order, a consent agenda should only be only used for non-controversial items and no discussion or questions are allowed. Five of tonight's eight items on the agenda have been combined under the consent agenda. However, the Board never approved a motion to adopt the consent agenda format for Board meetings. The Board should have also adopted a policy of what may or may not be included in the consent portion of the agenda. Are all Board members familiar on how a consent agenda works?

Other Water Supply Corporations put invoices to be paid under the consent agenda, but a full financial report is still listed as a stand-alone item. Now members must file an open records request and must PAY for the financial report? There has been no annual audit completed for the year ending December 31, 2013. It's mid-August 2014! Directors, Avalon Water Supply is OWNED by the members, not the Directors and are entitled to copies of minutes and financials without having to file a Public Information Request. Several previous PIR's to AWS have yet to be fulfilled and the District Attorney has told me that he will prosecute anyone refusing to follow the law regarding the Public Information Act (Government Code 552).

A July 2013 complaint to TCEQ regarding the annual meeting and the failure to complete the 2012 audit resulted in AWS being investigated and mandatory training of the corporation with the assurance that failure to follow the law and the bylaws would no longer be tolerated. Training was conducted by TRWA and provided by TCEQ. It was communicated that reports and minutes were to be read aloud or copies provided to members.

Mr. Waishes, in previous meetings you have stated that you would like more members to attend meetings and be involved. There is little need when everything is available to Directors only. Just looking at tonight's agenda will discourage anyone from attending.

Directors, it's up to you. Continue on this path of secrecy that is only going to hurt the corporation and community or adopt procedures promoting transparency. You can start by offering every member present tonight a copy of the minutes and the financial report from tonight's meeting. It would be a tremendous display of good faith for the Directors to share their copies with members.

Sincerely,


Carol D. Gillespie

cc: Fred Bednarski, TCEQ

Lisa Fuentes, TCEQ

Chapter 2 - The Order of a Business Meeting

A business meeting provides members with the opportunity to propose ideas and to participate in forming the plans and actions of the organization. To do this in an orderly and efficient fashion, the business of the meeting is conducted according to the first principle of parliamentary procedure, which states that business is taken up one item at a time. The plan or the established order in which the items of business are taken up is called an agenda. This is a Latin word meaning "things to be done." Common parliamentary law over the years has arrived at an accepted order for a business meeting. Sometimes, however, an organization may wish to follow a different order of business. In that case, the organization must write the order of business in its own rules of order, which should be with, but not part of, the bylaws.

This chapter introduces the accepted order of business and explains how to plan and adopt an agenda, as well as determine when special kinds of agendas are needed. It gives an overview of each aspect of the agenda, from determining a quorum and receiving reports from officers and committees to hearing new business and adjourning the meeting.

PLANNING AND USING AGENDAS

In any kind of meeting, the person leading the meeting should preside from an agenda - an outline of items, listed in order of importance, that are to be accomplished at the meeting. Having an agenda keeps the meeting on track and saves time.

The basic structure of an agenda comes from the order of business as established either by the parliamentary authority or by the rules of the organization.

Accepted Order of Business

This section outlines the commonly used order of the agenda. Before any business can be transacted at a meeting, the president must determine that a quorum (the required minimum number of members needed to have a meeting) is present. The president then calls the meeting to order. He or she proceeds with the organization's established order of business. If an organization has no established order of business, the following is the customary order of business for organizations that have regular meetings within a quarterly time period.

1. **The minutes of the previous meeting are read and approved.** Often members want to dispense with the reading of the minutes because they do not feel that the minutes are important to hear. However, keep in mind that the minutes are a legal document for the organization. By approving the minutes, the members agree that this is what happened at the meeting. When a legal action has been brought against the organization, courts use minutes for evidence. Therefore, it is important that the assembly (or a committee named for the purpose of approving the minutes) approves the minutes. There is no time limit on minute corrections.

The minutes also serve to inform members who were absent from the previous meeting of what happened at the meeting. The minutes provide an opportunity to correct oversights. For example, there may be motions that carry over business to the present meeting that are in the minutes but not on the agenda. Members who are alert while the minutes are being read can ask that these motions be added to the agenda of the present meeting. Another important point is that the motion lay on the table, which allows members to temporarily set aside a motion in order to take up more urgent business, is recorded in the minutes but not put on the agenda. It is a parliamentary rule that, because the members vote to lay the motion on the table, only the members can make a motion to take it from the table. By listening carefully when the minutes are read, members take note of this and know the right course of action to take.