

PUBLIC AUTHORITIES LAW § 1266-d(2); PUBLIC OFFICERS LAW § 30.

If a member of the Long Island Rail Road Commuter's Council (LIRRCC) is absent without good cause from three consecutive regular meetings, his/her position on the LIRRCC may be deemed vacant by the Governor. Any resulting vacancy shall be filled by appointment of the Governor upon the recommendation of the county executive, pursuant to the provisions of Public Authorities Law § 1266-d(2).

April 21, 1998

Hon. Jonathan Siegall  
Associate Director  
Long Island Rail Road  
Commuter's Council  
347 Madison Avenue  
New York, NY 10017

Formal Opinion  
No. 98-F5

Dear Mr. Siegall:

You have requested an opinion regarding whether the unexcused absence of a member of the Long Island Rail Road Commuter's Council ("LIRRCC") from three consecutive regular meetings vacates that member's position on the LIRRCC.

Members of the LIRRCC are appointed by the Governor. Public Authorities Law § 1266-d(2). To date, the member at issue has had 12 consecutive unexcused absences from the regular meetings of the LIRRCC. You have informed us that this member has not asked to be excused from the meetings he/she has missed and has not been excused. Additionally, there is no evidence that this member has been absent from the meetings for good cause.

Under Public Officers Law § 30,

[w]hen any member of a board, commission, committee or authority, holding office by appointment of the governor, fails to attend three consecutive regular meetings of such board, commission, committee or authority, unless such absence is for good cause and is excused by the chairman or other presiding officer thereof or, in the case of such chairman or other presiding officer, by the governor, the office may be deemed vacant for purposes of the nomination and appointment of a successor. Public Officers Law § 30(3).

Therefore, Public Officers Law § 30 provides that when any gubernatorial appointee of a board, commission, committee or authority fails to attend three consecutive regular meetings, the Governor may deem the position vacant, unless the absence is for good cause and has been excused.

Implicit in the statute is the requirement that members be given adequate notice of the date, time and place of each regular meeting of the applicable board, commission, committee or authority. Without such notice, members could argue that they had "good cause" excusing their absence. See, Matter of Kiernan v Mirante, 53 Misc 2d 173, 177 (Sup Ct Oneida Co 1967) (noting requirement of receipt of adequate notice of the meetings at issue).

You have informed us that at the beginning of each year, all members of the LIRRCC receive calendars detailing the date, time and place of each regular monthly meeting. Each member is personally notified if there are any changes to the calendared information. Additionally, each member is mailed an agenda approximately one week prior to each regular meeting. Accordingly, under these facts, all members receive adequate notice of the date, time and place of each regular meeting of the LIRRCC.

We conclude that if a member of the LIRRCC is absent without good cause from three consecutive regular meetings, the member's position may be deemed vacant by the Governor. Any resulting vacancy shall be filled by appointment of the Governor upon the recommendation of the county executive, pursuant to the provisions of Public Authorities Law § 1266-d(2).

Very truly yours,

DENNIS C. VACCO  
Attorney General