

## The “Missing” September 26th Resolutions

There’s the letter of the law – and the spirit of the law. And when it comes to an open and transparent town government, at times, our elected officials appear to have forgotten the latter while hiding behind the former.

When that happens, all the residents of Yorktown are the losers. Without a truly open and transparent government, we lose our trust in our elected officials. We lose our confidence in our town government. We lose our faith in democracy.

The Town Board’s actions relating to the former town comptroller at its September 26th work session, and its aftermath, highlight the gap between the letter and the spirit of the law. The actions should serve as a wake-up call to all residents who value the democratic concept of an open and transparent government and our democratic right to know what our elected officials are doing.

On September 26th, the Town Board complied with the *letter* of the Open Meetings Law when, at the conclusion of its regular open agenda, it voted to go into a closed executive session. According to the published agenda, the closed session was for the purpose of discussing the “Comptroller Position.”

At the conclusion of the executive session, the Board again complied with the *letter* of the law when it voted to go back into open session.

The following day, I submitted a freedom of information request (FOIL) for copies of any resolutions that might have been approved by the Board in its second open session. (Under the Open Meetings Law, resolutions that involve an expenditure of town funds must be passed in an open session.) One week later, on October 3rd, the Town Clerk’s office complied with the *letter* of the Freedom of Information Law when it responded to my request by providing me, initially, with four resolutions, and then, after a follow up request for any additional resolutions, a fifth resolution.

- Two were “housekeeping” resolutions that formalized practices that had been in effect for many years without resolutions.
- Two authorized the supervisor to prepare RFPs (requests for proposals) for forensic audits.
- The “missing” fifth resolution demanded that the former town comptroller return \$76,960 she received for accumulated unused vacation pay within one business day and stated that if she didn’t, the Town Attorney was to take all legal actions to recover the funds.

### **Now for the SPIRIT of the law, and some disturbing open government questions.**

1. *Why did it take a week for routine Board resolutions to be made public – and why was there a delay in making the most controversial resolution available to the public?*

Although Board resolutions are typically drafted in advance of the vote and are available soon after they are voted, as late as Tuesday evening, October 2nd, one week after the September 26th meeting, I was informed by the Town Clerk’s office that it had not yet received written copies of the resolutions from the Town Attorney and that the office would send me copies as soon as they were received – which it did on October 3rd.

However, according to one of the exhibits in the comptroller's lawsuit, the Clerk's office had a copy of the controversial fifth resolution dealing with the comptroller on September 27th.

*2. Why did the Board vote for resolutions, sight unseen, on September 26th?*

After the closed discussion, why couldn't Board members have waited one week until the October 3rd meeting to vote on the resolutions when it would have had a chance to review written drafts of the resolutions – and when the public would have seen the resolutions in the published agenda? What was so urgent about passing the resolutions that night?

There's also the related issue of Board members voting for resolutions based only on a general verbal intent and without having time to do their due diligence to review the text of a resolution in advance so that they know exactly what they're voting for.

*3. Why did three Board members think that a forensic audit of the Town's finances were needed?*

Forensic audits are usually associated with court cases and often deal with negligence or investigations of criminal acts such as embezzlement or fraud. Did three Board members know or suspect something they weren't telling residents? Why did they feel the need to spend taxpayer dollars for a forensic audit? And, did they have any idea what a forensic audit would cost?

Local government works best when it operates in an open and transparent manner, and when residents are kept informed about what their elected officials are doing. The companion Open Meetings Law and Freedom of Information Law are powerful tools designed to protect our right to an open and transparent government. But the laws are only effective when our elected officials are committed to honoring both the letter and the spirit of these laws. And, while there may be nothing illegal in the Board's recent actions, there seems to be little concern about being open and transparent.

*For more information about your rights under the Open Meetings Law and the Freedom of Information Law, visit [yorktownbettergovernment.org](http://yorktownbettergovernment.org).*