

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ONONDAGA

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IN THE MATTER OF THE APPLICATION OF

TIM FLYNN

Petitioner,

-vs-

Index No. 96-094  
RJI No. 33-96-0069

for an Order pursuant to CPLR 2304  
quashing a subpoena issued by the  
Citizens Review Board of the City  
of Syracuse, New York,

-against-

The Citizen Review Board of the  
City of Syracuse, New York,

Respondent.

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DECISION

APPEARANCES:

For Petitioner:

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For Respondent:

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TORMEY, J.

Petitioner contends that the Citizens' Review Board [CRB], as created by Local Law #11 - 1993 of the City of Syracuse, is a public body within the meaning of the Public Officers Law [POL] and, therefore, has to comply with the Open Meetings Law. The CRB objects and responds that its powers are advisory only and, therefore, it should be exempt from the purview of the POL. At issue is the manner and method by which certain subpoenas were authorized. Herein, Petitioner advises the Court that the subpoenas were issued in executive session, that there was no motion by the CRB to enter executive session, that the meeting was conducted without public notice and that defective minutes were maintained concerning the meeting.

The enabling legislation for the CRB is codified in the Charter, Revised General Ordinances, Local Laws, Special Acts and Miscellaneous Provisions of the City of Syracuse, Article VI, §12-181 (p. 4985) [hereinafter Charter]. The City desired to establish "an open citizen-controlled process" for reviewing complaints against its police force and to instill accountability. The complaints are to be reviewed fairly and impartially while maintaining procedural due process to safeguard the rights of all parties [Charter §12-181] [emphasis added]. The jurisdiction of the board is to (1) hear and review complaints of police misconduct of any type and (2) make recommendations to various offices and committees of the City, together with the police benevolent

association [Charter §12-183]. Eleven members constitute the CRB [Charter §12-184] who serve for a term of years [Charter §12-185] [emphasis added] and are appointed by either the mayor or the common council [Charter §12-185]. POL §30 is applicable concerning vacancies [Charter §12-184(8)]. Any action by the CRB requires a majority vote by a quorum [Charter §§12-186 & 187] [emphasis added]. The CRB is required to hold monthly public meetings and publish monthly reports [Charter §12-187] [emphasis added]. The CRB may conduct full fact-finding hearings by its panels [Charter §12-187(3)(a)(v)]; and the panel hearings shall be open and follow a substantial evidence standard of proof [12-187(4)(a)] [emphasis added]. The board, by majority vote, may issue subpoenas to compel attendance by a witness or compel the production of documents [Charter §12-187] [emphasis added]. Additionally, the board has hired, at public expense, a board administrator "...who may be called to report to the common council." [Charter §12-186(3)].

The CRB has been granted independent subpoena power through a delegation of legislative authority [Second Class Cities Law §40 and the Charter §3-111]<sup>1</sup>. It is apparent that the common council, which independently has the power to investigate any aspect of city operations [Charter §3-111], has authorized the CRB to act on its behalf in the investigation of police conduct, to conduct hearings, and to forward its findings and recommendations to various public officials [Charter §12-187].

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<sup>1</sup> Judge Hurlbutt, in his Decision dated December 16, 1994, has determined that issuance of subpoenas was a lawful delegation of authority to the CRB by the common council.

The purpose for Article 7 of the POL is succinctly stated in §100; to wit: that public business is to be performed in an open and public manner in which citizens are to be fully aware of and able to observe the activities of its officials and to attend deliberations of its governmental organizations. The goal is to enable the public to retain control over its servants and public bodies. POL §102 defines a public body as one that: 1) requires a quorum of two or more members; 2) performs a governmental function for a public corporation (i.e., a city); and 3) includes committees, subcommittees or other similar bodies of such public body. As recited above, the CRB is a legislative creation of the City of Syracuse and functions on behalf of and through the City of Syracuse. Its eleven members are subject to a term of years and must have a quorum of six to act [Charter 12-187]. Therefore, the only issue for the Court to resolve is whether the CRB has been instilled with a governmental function.

The fact that a public body can only make recommendations or is an advisory board is not, in and of itself, the brightline test that the governmental organization is not a public body [Mtr. of Syracuse United Neighbors v City of Syracuse et al., 80 AD2d 984 (4th Dept 1981); app. den., 55 NY2d 995 (1982)]. Rather, the inquiry is directed to whether the body has been endowed with some governmental function. The essence of a governmental function is whether the body has the 'right to exercise some part of the power of the sovereign' [N. Y. Public Intr. Research Grp., et al v Governor's Advisory Commission et al, 133 M2d 613, 616 (NY Cty

1986); aff'd. 135 AD2d 1149 (1st Dept 1987)]. In this case the Court's attention is directed to that portion of the mission of the CRB to conduct investigations and hearings on alleged police misconduct, coupled with its ability to independently issue subpoenas.

It is without doubt that the ability to issue a subpoena by the CRB emanates solely from the granting of that power by a sovereign body - namely, the City of Syracuse. Additionally, the common council has directed its statutory oversight role of investigating alleged misconduct by its police force to the CRB. The Court finds that these are substantial governmental functions which the City of Syracuse has invested upon the CRB. These functions lift the CRB from a mere 'run-of-the-mill' advisory board to a board with significant governmental functions. With this empowerment, the CRB can compel the attendance and production of witnesses and documents to its hearing. With this empowerment, the CRB can seek judicial sanctions of fines and imprisonment for failure by a person or organization to abide by its subpoenas.

Therefore, this Court finds that the CRB is a public body within the definition of POL §102(2). As such, the CRB must conform its actions within the scope of Article 7 of the Public Officers Law. Additionally, this Decision conforms with the CRB's enabling legislation. Therein, as highlighted above by this Court, the common council intended that the CRB be an 'open process with public meetings publishing monthly reports and adhering to procedural due process safeguards'. By not adhering to these

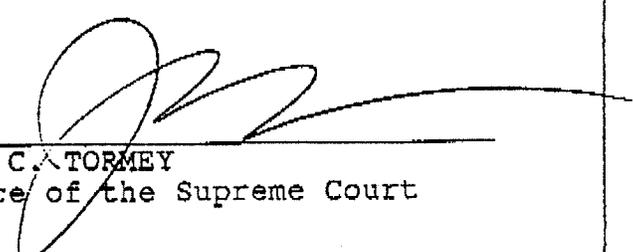
principles, the CRB ignores its mandate to be fair and impartial.

The Court, having made its ruling, now expresses its surprise that the CRB ever had any doubt that it was a 'public body' within the confines of Article 7 of the Public Officers Law. For future reference, the Court advises the CRB to consult with the State Department's Committee on Public Access to Records. Contained therein, the CRB members or its administrator would have found instructive and informative opinions declaring commissions, boards and review committees having equal or less stature and power than the CRB to be public bodies within the POL. The Court refers to OML-AO-571 [a corrections facility commission], OML-AO-573 [board of ethics is a public body], OML-AO-753 [handicapped advisory committee, airport committee, conservation committee], OML-AO-1046 [community action committees], OML-AO-1081 [Stop-DWI committees], OML-AO-1108 [architectural review committees]; OML-AO-1138 [committees to study legal services]; and OML-AO-1203 [Human Rights Commissions]. The CRB should take particular note of OML-AO-1203. This village commission was established to investigate complaints regarding violations of civil rights. As part of its investigations, the commission might have to meet confidentially or it might have to review employment history of particular persons. The opinion sets forth what the statutory requirements are of public bodies to proceed on these issues. The Court notes, therefore, that by utilizing the free resources provided by the State, the CRB would have been able to resolve the issue herein without a waste of its time and without the public incurring

needless litigation costs. Hopefully, the CRB can learn how to access said public information for future guidance.

The motion by the petitioner is granted, in part, in that any actions taken by the CRB in violation of the Public Officers Law are invalid [Mtr. of SUNY et al v Whalen et al, 46 NY2d 735 (1978)]. In this instance, the CRB has conducted business in executive session without invoking the procedure provided by the Open Meetings Law. Thereafter, it authorized certain subpoenas be issued in executive session without the benefit of a public vote by its members. The Court does not rule on the adequacy of the notice of meeting or of any minutes maintained by the CRB as they are not attached to movant's papers. The Court notes the adequacy of notice of a meeting and minutes of the CRB are subject to the requirements of Article 7 of the POL and the enabling local law. Therefore, the subpoena herein is quashed. Petitioner is directed to prepare an Order without costs in conformance with this Decision upon notice.

Dated: March 11, 1996



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JAMES C. TORMEY  
Justice of the Supreme Court