RE: Benjamin v. South Kingstown School Committee

Dear Mr. Benjamin and Attorney Lombardo:

We have completed an investigation into the Open Meetings Act ("OMA") complaint filed by Roland Benjamin ("Complainant") against the South Kingstown School Committee ("School Committee"). For the reasons set forth herein, we find that the School Committee did not violate the OMA.

Background and Arguments

The Complainant alleges that the School Committee violated the OMA in three ways. First, the Complainant alleges that the School Committee convened into executive session for an improper purpose during its August 13, 2019 meeting when it discussed candidates for the superintendent position. Second, the Complainant alleges that the School Committee failed to report executive session votes taken at its August 13, 2019 meeting pertaining to the superintendent position. Third, the Complainant alleges that the School Committee convened a rolling quorum at a retreat on August 14, 2019 when they discussed candidates for the open superintendent position. Specifically, the Complainant takes issue with the fact that the retreat was used "to achieve the desired result on the Monday (8/19) vote[.]

Legal Counsel for the School Committee, Attorney Lombardo, submitted a substantive response in affidavit form from School Committee Chairperson Stephanie Canter along with affidavits from Vice Chairperson Sarah Markey, and Committee members Emily Cummiskey, Kate McMahon Macinanti, and Jacy Northrup. The School Committee also submitted the August 13, 2019 executive session minutes for our in camera review. The School Committee maintains that the
August 13, 2019 executive session was appropriate under R.I. Gen. Laws § 42-46-5(a)(1) because the School Committee discussed the “job performance, character, or physical or mental health” of the candidates for the open superintendent position. The School Committee avers that each candidate discussed was provided with written advanced notice as prescribed in the OMA.

The School Committee further contends that nondisclosure of the two executive session votes was appropriate under R.I. Gen. Laws § 42-46-4(b) as “disclosure would jeopardize any strategy, negotiation or investigation” undertaken during the executive session. In particular, the School Committee maintains that announcing the executive session votes would “compromise its ability to negotiate an appropriate and acceptable contract with the chosen candidate.”

With respect to the rolling quorum allegation, five Committee members submitted affidavits denying that a discussion concerning the superintendent position occurred during the August 14, 2019 retreat. Chairperson Canter’s averment is representative:

“At no time during the August 14, 2019 meeting did I engage in, or otherwise witness, discussions about the School Committee’s prior August 13 executive session vote on the superintendent position, or any other matter not involving school climate.”

We acknowledge the Complainant’s rebuttal.

Relevant Law and Findings

When we examine an OMA complaint, our authority is to determine whether a violation of the OMA has occurred. See R.I. Gen. Laws § 42-46-8. In doing so, we must begin with the plain language of the OMA and relevant caselaw interpreting this statute.

1. The August 13, 2019 Executive Session

The OMA requires all meetings of public bodies to be open to the public. R.I. Gen. Laws § 42-36-3. However, the OMA permits public bodies to enter executive session for a limited number of enumerated purposes. See R.I. Gen. Laws § 42-36-4. One such permissible reason for executive session is “[a]ny discussions of the job performance, character, or physical or mental health of a person or persons affected shall have been notified in advance in writing and advised that they may require that the discussion be held at an open meeting.” R.I. Gen. Laws § 42-46-5(a)(1).

The Complainant’s rebuttal also asserted new allegations pertaining to the Access to Public Records Act (“APRA”). As explained in this Office’s acknowledgment letter to the Complaint, “[y]our rebuttal *** should not raised new issues that were not presented in your complaint[.]” If the Complainant wishes to file an APRA complaint with our Office, he may submit a new complaint in writing.
The Complainant maintains that the discussion of candidates for the open superintendent position was improper under R.I. Gen. Laws § 42-45-S(a)(1) because “it is presumed that this [exception] refers to employees of the district. Candidates for position are typically not employees of the district, and thus appear to not be covered in this executive session carve out.”

However, the language of R.I. Gen. Laws § 42-46-5(a)(1) does not limit permissible discussion to employees of the public body, but instead pertains to discussions of the “job performance, character, or physical or mental health of a person or persons[,]” (emphasis added). We have therefore held that in certain circumstances it can be permissible for public bodies to convene into executive session under R.I. Gen. Laws § 42-46-5(a)(1) for the purpose of hiring an individual. For example, in Belmore v. Newport City Council, OM 18-13, we found that the City Council did not violate the OMA when it convened into executive session to interview applicants for the City Council position. This Office concluded that the City Council’s discussions with the applicants concerning their employment qualifications were appropriate for closed session pursuant to R.I. Gen. Laws § 42-46-5(a)(1). See also Jenkins, et al. v. Narragansett Town Council, PR 19-38 (finding discussions and interviews were appropriate topics for executive session to the extent they related to the job performance or qualifications of specific applicants); Friend v. East Greenwich Town Council, OM 13-31 (Town Council did not violate the OMA when it conducted interviews for the position of Town Manager in executive session with non-employees.)

Our in camera review of the August 13, 2019 executive session minutes indicates that the School Committee discussed the merits of superintendent finalists. This is consistent with the affidavit of Chairperson Canter. Based on the evidence before us indicating that the School Committee’s executive session discussions concerned the employment qualifications of specific candidates, those discussions permissibly fell within the ambit of R.I. Gen. Laws § 42-46-5(a)(1). We accordingly find no violation.

2. Nondisclosure of the August 13, 2019 Executive Session Votes

All votes taken in executive session must be disclosed once the session is reopened. See R.I. Gen. Laws § 42-46-4(b). However, the OMA permits a public body to withhold an executive session vote “for the period of time during which its disclosure would jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).” Id. This Office has previously recognized that when a public body reasonably believes that immediate public disclosure of a vote will jeopardize legal strategy, the body may withhold disclosing the vote. See Valley Breeze v. North Smithfield Town Council, OM 17-21.

Here, the School Committee avers that nondisclosure of the two executive session votes pertaining to the superintendent position was necessary because it needed the ability to negotiate an appropriate contract with the chosen candidate. Specifically, the School Committee notes that no contract terms had been discussed with any candidate and accordingly the School Committee was uncertain as to whether the chosen candidate would accept the offer. Should the chosen candidate have rejected the offer, the School Committee believed disclosure of the votes would have compromised its ability to negotiate with a second-choice candidate. Finally, the School
Committee avers that it later announced these votes in open session at its next meeting on August 19, 2019 after successfully completing the negotiation process.

Based on this undisputed evidence, we find that the School Committee reasonably believed that disclosure of its August 13, 2019 executive session votes would “jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).” R.I. Gen. Laws § 42-46-4(b). The School Committee’s position is reinforced by its representation that the School Committee disclosed the executive session votes at its next scheduled meeting when the asserted reason for nondisclosure no longer existed. We accordingly find no violation.

3. **The August 14, 2019 Retreat**

The OMA is implicated whenever a quorum of a public body convenes for a “meeting.” See R.I. Gen. Laws § 42-46-3; Fischer v. Zoning Board for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). For purposes of the OMA, a “meeting” is defined as “the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” R.I. Gen. Laws § 42-46-2(1); see also Zarella, et al. v. East Greenwich Town Planning Board, OM 03-02. A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(4).

The Complainant alleges that the School Committee’s August 14, 2019 retreat violated the OMA when the School Committee collectively discussed the open superintendent position in order “to achieve the desired result on the Monday (8/19) vote[.]” Yet the undisputed evidence does not support this conclusion. The School Committee submitted affidavits from five of its seven members and avers that a sixth member did not attend the retreat. Each of the five affidavits confirms that no discussions occurred during the retreat about the School Committee’s August 13, 2019 executive session vote on the superintendent position, which was reported out on August 19, 2019. Instead, the retreat was for the purposes of meeting with administrators to learn about school climate. Although the Complainant takes issue with the submitted affidavits, the Complainant does not offer any specific evidence to refute them. We accordingly find that without a collective discussion among a quorum of the School Committee regarding the superintendent position – a matter over which the public body has supervision, control, jurisdiction, or advisory power – there was no “meeting.” R.I. Gen. Laws § 42-46-2(1). Based on the undisputed evidence, we find no violation.

**Conclusion**

Although the Office of the Attorney General does not find a violation and will not file suit in this matter, nothing in the OMA precludes an individual from pursuing a complaint in the Superior Court. The Complainant may pursue an OMA complaint within “ninety (90) days of the attorney general’s closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.” R.I. Gen. Laws § 42-46-8. We are closing our file as of the date of this finding.
We thank you for your interest in keeping government open and accountable to the public.

Sincerely,

PETER F. NERONHA,
ATTORNEY GENERAL

By: /s/ Sean Lyness
Sean Lyness
Special Assistant Attorney General