



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

January 30, 2020

OM 20-08

Kent C. Novak

J. William W. Harsch, Esquire
Legal Counsel, Western Coventry Fire District

RE: Novak v. Western Coventry Fire District [September 12, 2019 Complaint]

Dear Mr. Novak and Attorney Harsch:

We have completed an investigation into the Open Meetings Act (“OMA”) complaint filed by Mr. Kent C. Novak (“Complainant”) against the Western Coventry Fire District (“Fire District”). For the reasons set forth herein, we find that the Fire District violated the OMA.

Background and Arguments

The Complainant alleges that the Fire District violated the OMA when it: (1) posted notices for its April 19, 2019, May 16, 2019, and June 20, 2019 meetings that failed to include the date the notice was posted; (2) failed to timely post minutes for its June 20, 2019 meeting; and (3) voted on an item added to the agenda during its June 20, 2019 meeting.

The Fire District submitted a substantive response through its counsel, J. William W. Harsch, Esquire, that included an affidavit from Fire District Chairman Stephen Bousquet. The Fire District candidly admits that the its April 19, 2019 and May 16, 2019 notices failed to include the date the notice was posted and that the June 20, 2019 notice only included the month it was posted. The Fire District explains that the April and May notices were filed under an Acting Director and that a draft copy of the June notice was mistakenly filed as a result of a computer issue.

The Fire District also concedes that the minutes for its June 20, 2019 meeting were not timely filed, explaining that the July meeting (when the June minutes would have been approved) was cancelled, which led the clerk to inadvertently miss posting the June minutes. The Fire District asserts that when the clerk realized the error the June minutes were immediately posted.

Finally, the Fire District acknowledges that it voted to add an item to its June 20, 2019 agenda, but contends that it did not vote on this item. The addition to the agenda came under the following agenda item:

“Chief’s Report to include:*

- a. Department’s operational and administrative activity for the past month of May, 2019.”

The asterisk indicated that “[v]otes may be taken[.]”

During this agenda item pertaining to the Fire Chief’s Report, the Fire District voted under R.I. Gen. Laws § 42-46-6(b) to add to the agenda discussion of a letter from Coventry Police Chief Colonel MacDonald. After discussing the Fire Chief’s Report and the Police Chief’s letter, the Fire District then voted to approve the Fire Chief’s Report. These actions are detailed in the June 20, 2019 meeting minutes:

“Chief Cady read the Chiefs [sic] Report into the minutes. A copy of the Chiefs [sic] report is attached to the minutes. The Chief also reported that the Barb’s Hill Rd bridge is closed for repairs, and Ed Blanchard will be working on an Explorer’s program for 14-15 year old’s.

A motion was made by Mr. Holt and second by Mr. Jackson to amend the agenda to include the discussion of a letter from Coventry Police Chief McDonald within the Chief’s report.

All in Favor. All voted aye. Motion carried.

The letter from Chief McDonald was discussed. Mr. Mays noted that the police chief was looking for our support to update the dispatch system for the town and to combine fire and police. The police have had computer aided dispatch for about 10 years. This would be a good thing for the fire district. Currently the fire dispatch is manual. The Chief thinks it needs to be done and updated. We depend on the towers, and the coverage in the most western end is not good.

A motion was made by Mr. Holt and second by Mr. Jackson to accept the Chiefs report for May 2019.

All in favor. Motion Carried.”

We acknowledge the Complainant’s rebuttal.

Relevant Law

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.

The OMA requires public bodies to provide supplemental written public notice of any meeting within a minimum of forty-eight hours. *See* R.I. Gen. Laws § 42-46-6(b). The notice must include “the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed.” *Id.* Items may be added to the agenda by majority vote of the members, however “[s]uch additional items shall be for informational purposes only and may not be voted on[.]” *Id.*

The OMA also requires public bodies to post official and/or approved minutes of all meetings with the secretary of state within thirty-five days of the meeting. *See* R.I. Gen. Laws § 42-46-7(d). Fire entities are further required to “post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier[.]” R.I. Gen. Laws § 42-46-7(b)(2).

Findings

Based on the undisputed representations of the parties and our review of the relevant agenda and meeting minutes, we conclude that the Fire District’s April 18, 2019, May 16, 2019, and June 20, 2019 meeting notices failed to include “the date the notice was posted[.]” R.I. Gen. Laws § 42-46-6(b). The April and May notices were posted without any date of posting and the June notice was posted with only the month of posting included. These actions violated the OMA.

Further, as the Fire District acknowledged, we find that the Fire District failed to timely post official minutes for its June 20, 2019 meeting. *See* R.I. Gen. Laws § 42-46-7(d). Minutes labelled “Official Not Yet Approved Minutes” were filed on August 5, 2019 and the official minutes were filed on August 29, 2019. These posting do not comport with the OMA’s timelines for unapproved minutes or approved minutes and thus violate the OMA. *See* R.I. Gen. Laws §§ 42-46-7(b)(2), (d).

However, with respect to the Complainant’s third allegation, we find no violation. The OMA expressly permits a public body to amend its agenda by majority vote of its members for discussion purposes only. *See* R.I. Gen. Laws § 42-46-6(b). Here, the Fire District properly voted to amend its agenda to include discussion of a recently received letter from the Coventry Police Chief. Based on our review of the undisputed record, no votes were taken with respect to that letter. Instead, the Fire District merely discussed the contents of the Police Chief’s letter. The Fire District then voted to approve the *Fire* Chief’s Report as specified in the original agenda. We do not find any evidence to support the Complainant’s contention that the Police Chief’s letter somehow became part of the Fire Chief’s Report simply because the Fire District discussed these two items together. We accordingly find no violation.

Conclusion

The OMA provides that the Office of the Attorney General may institute an action in Superior Court for violations of the OMA on behalf of a complainant or the public interest. *See* R.I. Gen. Laws § 42-46-8(a), (e). The Superior Court may issue injunctive relief and declare null and void any actions of the public body found to be in violation of the OMA. *See* R.I. Gen. Laws § 42-46-

8(d). Additionally, the Superior Court may impose fines up to \$5,000 against a public body found to have committed a willful or knowing violation of the OMA. *Id.*

Injunctive relief is not appropriate because the meeting notices and meeting minutes have already been posted, and the meeting minutes indicate the date when the agendas were posted.

Turning to whether the violations were willful or knowing, we note that we have previously found the Fire District in violation of OMA provisions regarding the posting of notices and meeting minutes. *See Novak v. Western Coventry Fire District*, OM 14-06, PR 14-06; *see also Novak v. Western Coventry Fire District*, OM 15-03B (lawsuit filed); *Novak v. Western Coventry Fire District*, OM 17-02. However, the Fire District provided an affidavit explaining that a change in personnel, computer issues, and a last-minute cancelled July meeting contributed to the violations in this case. The Fire District represents that steps have been taken to ensure future compliance with the OMA. While this does not excuse the violations found herein, it indicates that the violations were the result of mistake or negligence, not willful or knowing intent. Based on the totality of the circumstances, we find that mitigating circumstances exist. Nonetheless, this finding serves as notice that the conduct discussed herein violates the OMA and may serve as evidence of a willful or a knowing violation in any similar future situation.

Although the Office of the Attorney General will not file suit in this matter, please be advised that nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting an action for injunctive or declaratory relief in Superior Court. *See* R.I. Gen. Laws § 42-46-8(c). Please be advised that we are closing this Complaint as of the date of this letter.

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