



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

March 17, 2020

OM 20-18

Mr. James Angelo

William J. Conley, Jr., Esquire
Town Solicitor, Town of Westerly

RE: Angelo v. Westerly Town Council

Dear Mr. Angelo and Attorney Conley:

We have completed our investigation into the Open Meetings Act (“OMA”) complaint filed by Mr. James Angelo (“Complainant”) against the Westerly Town Council (“Town Council”). For the reasons set forth herein, we find that the Town Council did not violate the OMA.

Background

The Complainant alleges that the Town Council’s September 23, 2019 executive session meeting regarding the disposition of property at 11 Rockridge Road (“the property”) was not a proper subject for executive session under R.I. Gen. Laws § 42-46-5(a)(5).¹

In its substantive response – which included an affidavit from Town Clerk Donna L. Giordano – the Town Council avers that the relevant executive session discussion concerned the Town’s interest in the property and that it would have been detrimental to the interests of the public to have the discussion in open session because public notice would compromise the Town Council’s strategy and could expose the Town to unnecessary litigation. The Town Council also provided a copy of the September 23, 2019 executive session minutes for our *in camera* review.

¹ Both the complaint and rebuttal in this matter raised various allegations about the Town’s handling of the property that do not pertain to the OMA. As stated in our acknowledgement letters to the parties, those allegations are outside the scope of this Office’s authority under the OMA and will not be addressed in this finding.

We acknowledge receipt of 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.

Unless exempt, the OMA requires that all meetings of public bodies be held open to the public. Among the exemptions where a meeting may be held in executive session (but does not have to be held in executive session) is for “[a]ny discussions or considerations related to the acquisition or lease of real property for public purposes, *or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.*” R.I. Gen. Laws § 42-46-5(a)(5) (emphasis added).

We first consider whether the executive session pertained to “the disposition of publicly held property.” The Complainant stated that “[t]he property in question is Town Property and has been since 1971[.]” Clerk Giordano attested that the executive session pertained to whether the Town would defend “its interest in the property, or alternatively, whether it would prefer to dispose of the Town’s interest therein.” Although there appears to be some broader dispute regarding who possesses title to the property, both parties agree that the Town at least has some level of ownership interest in the property. For the limited purpose of analyzing this OMA Complaint, we conclude that the property fits within the ambit of “publicly held property.” We expressly do not make any determination about whether the Town actually possesses title to the property under principles of property law, as that issue is not before us.

Clerk Giordano explains that the executive session occurred because “it was necessary for the Town Solicitor to advise the Town Council about the process and associated costs of having to defend the Town’s interest in the property in court so that the Town Council could employ a cost-benefit analysis of defending the Town’s property versus disposition of its interest therein.” Our review of the evidence, including our *in camera* review of the executive session minutes, indicates that the Town Council determined during executive session that it would opt to “not take action related to the Town’s interest in the property,” effectively opting to dispose of the property. One definition of “disposition” found in Black’s Law Dictionary is “the relinquishing of property.” We conclude that the Town Council’s consideration of whether to defend or effectively relinquish its interest in the property falls within the ambit of “discussions or considerations related to ... the disposition of publicly held property.” R.I. Gen. Laws § 42-46-5(a)(5).

We now turn our inquiry to whether “advanced public information would be detrimental to the interest of the public.” *Id.* Having reviewed the September 23, 2019 executive session minutes, we conclude that the Town Council did not violate the OMA when it convened into executive session to discuss the potential disposition of the property at 11 Rockridge Road. Although the sealed nature of the executive session minutes and our *in camera* review require limited discussion of our

reasoning, our *in camera* review reveals the Town Council discussions concerned the Town Council's strategy with respect to defending its interest in the property. If held in open session, this discussion could conceivably be detrimental to the interests of the public by hampering the Town Council's ability to act effectively. We also agree with the Town Council's statement that disclosure of this discussion "could expose the Town to unnecessary litigation if another party proactively sought relief in Superior Court to lay claim to the property[.]" We accordingly find that the Town Council did not violate the OMA by convening into executive session on September 23, 2019 to discuss disposition of the property at 11 Rockridge Road.²

However, we can certainly understand the Complainant's desire for transparency in this situation. While there is no provision within the OMA that automatically unseals properly sealed executive session minutes, to the extent that disclosure of the executive session discussions relating to the property at 11 Rockridge Road would no longer be detrimental to the public interest, we would encourage the Town Council to consider reviewing and unsealing relevant portions of the executive session minutes.

Conclusion

Although the Office of Attorney General has found no violations in this matter, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The Complainant may do so within ninety (90) days from the date 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. Please be advised that we are closing our file as of the date of this letter.

We thank you for your interest in keeping government open and accountable to the public.

² Additionally, the Complainant contends that he should have been permitted to attend the executive session because the OMA "does not prohibit interested parties from attending closed sessions[.]" However, the OMA does not require public bodies to permit members of the public to attend a properly noticed appropriate executive session. *See* R.I. Gen. Laws § 42-46-4(a). We have previously indicated that a public body *may* allow individuals who are not members of the public body to participate in executive session as long as its actions do not amount to permitting and excluding members of the public from the contemplated executive session in a way that would circumvent the spirit or requirements of the OMA. *See In re Pawtucket Fire Department*, ADV OM 01-02. But we have never held that a public body is required to permit any and all interested persons to attend executive sessions; indeed, such a rule would contravene the very purpose for executive sessions. The Complainant did not offer any evidence or allegations to suggest that the Town Council invited members of the public to attend its executive session in a manner that would circumvent the spirit of the OMA.

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Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Sean Lyness

Sean Lyness

Special Assistant Attorney General