



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

April 30, 2020
OM 20-26

Mr. Robert Jones

Matthew Plain, Esquire
Legal Counsel, Kingston Hill Academy Board of Trustees

RE: Jones v. Kingston Hill Academy Board of Trustees

Dear Mr. Jones and Attorney Plain:

The investigation into the Open Meetings Act (“OMA”) complaint filed by Mr. Robert Jones (“Complainant”) against the Kingston Hill Academy Board of Trustees (“Board”) is complete. For the reasons set forth herein, we find the Board did not violate the OMA.

Background and Arguments

Complainant alleges the Board violated the OMA in multiple ways in connection with its June 26, 2019 emergency meeting. First, the Complainant alleges the Board failed to sufficiently state in the meeting minutes why the emergency meeting was necessary. Complainant next contends that voting to appoint a new Interim President of the Board was outside the scope of the emergency purpose for the meeting. Then, the Complainant alleges the Board improperly convened into executive session during the emergency meeting to discuss the job performance of an individual when that individual had requested the discussion be held in open session. Lastly, Complainant alleges that “some members” of the Board had a “rolling quorum” “to facilitate the ‘emergency meeting’ minutes.”

Attorney Matthew Plain provided a substantive response on behalf of the Board, which included an affidavit from himself and Board member Paul Meleedy, as well as copies of the Board’s June 26 open and executive session minutes.¹ Mr. Meleedy’s affidavit and the executive session minutes

¹ The Board argues that the complaint is time-barred. In relevant part, R.I. Gen. Laws § 42-46-8(b) permits this Office to file an OMA complaint in the Superior Court within 180 days from the date of the public approval of the minutes for the meeting at which the alleged violation(s) occurred.

were submitted *in camera*. The Board contends that its June 26 emergency meeting was necessary to discuss the job performance of a Board member that could potentially expose the Board to legal liability and that this information was noted on the emergency meeting agenda and in the meeting minutes. The Board argues that the emergency circumstances necessitated removing the then-Interim President and appointing a new Interim President. Next, the Board maintains that the Complainant “lacks standing to bring the claim that the Board violated § 42-46-5” because the Complainant was not the affected person discussed during the executive session. Finally, the Board argues that the Complainant offers nothing but “speculation and bald conclusions” to allege that the Board convened a “rolling quorum” outside the public purview about the emergency meeting.

We acknowledge 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.

Every meeting of all public bodies shall be open to the public unless closed pursuant to R.I. Gen. Laws §§ 42-46-4 and 42-46-5. *See* R.I. Gen. Laws § 42-46-3. Public bodies are required to give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours, excluding weekends and state holidays, before the date of the meeting. R.I. Gen. Laws § 42-46-6(b).

The OMA permits public bodies to forego the usual notice requirements and conduct emergency meetings subject to certain strict requirements. Pursuant to R.I. Gen. Laws § 42-46-6(c), an emergency meeting may occur:

“upon an affirmative vote of the majority of the members of the body when the meeting is deemed necessary to address an unexpected occurrence that requires immediate action to protect the public. If an emergency meeting is called, a meeting notice and agenda shall be posted as soon as practicable and shall be electronically filed with the secretary of state pursuant to subsection (f) and, upon meeting, the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours in accordance with subsection (b) of this section and only discuss the issue or issues that created the need for an emergency meeting. Nothing contained herein shall be used in the circumvention of the spirit and requirements of this chapter.”

Here, it is undisputed that the June 26 meeting minutes were approved on July 24, 2019. Pursuant to R.I. Gen. Laws § 42-46-8(b), the 180-day statute of limitations began running as of July 24 and expired on or about January 20, 2020. The Complainant did not submit this complaint to this Office until December 23, 2019. As such, the statute of limitations expired soon after this complaint was received. Nonetheless, because the complaint was filed before the statute of limitations expired, we will address the merits of the Complainant’s allegations.

First, Complainant contends that the Board did not sufficiently state and record in the minutes the reasons for the emergency meeting. It is undisputed that the Board stated, and recorded in the open session meeting minutes, that it convened the June 26 emergency meeting “to address an unexpected occurrence, a potential liability to the Board of Trustees, that arose within the last 24 hours and needed immediate action to protect the public.” In responding to this complaint, the Board represents that “[a]ny additional public disclosure of the details of the emergency would subject the Board to potential liability, even at this time.”

Based on the record before us, including the *in camera* submissions, we conclude that the Board’s statement regarding the reasons for the emergency meeting satisfied the OMA’s requirement that “the public body shall state for the record and minutes why the matter must be addressed in less than forty-eight (48) hours.” *See* R.I. Gen. Laws § 42-46-6(c). The Board’s statement conveyed that an emergency meeting was necessary because of an issue that had arisen in the prior 24 hours and involved potential liability for the Board. Although public bodies are encouraged to provide as much detail as possible regarding the emergency need for a meeting, we recognize the Board’s representation that providing additional detail in this case could have exposed the Board to potential liability. Based on our review of the *in camera* materials, we do not think the Board’s concern regarding providing additional detail is unreasonable or violated the APRA.² Accordingly, we find no violation.

Complainant next alleges that the Board’s discussion and vote to appoint an Interim Board President went beyond the scope of the emergency because “[n]othing in the minutes demonstrate why this additional action was required to solve the issue.” The Board argues that “it was necessary for the Board to appoint an Interim President due to the reasons the emergency meeting was called in the first place *** due to the nature of the emergency, which was a potential liability to the Board.” Although the *in camera* nature of our review limits our ability to comment, the evidence indicates that the emergency meeting was held to address certain conduct involving a member of the Board that occurred the day before the June 26 meeting and that the Board believed may expose it to legal liability. Based on the evidence presented, the decision to remove the Interim President and to appoint a new Interim President resulted from the issue that was the basis for the emergency meeting. As such, we find that the discussion and vote to appoint an Interim President at the emergency meeting came within the ambit of the issue “that created the need for an emergency meeting.” R.I. Gen. Laws § 42-46-6(c).

Next, Complainant contends that the Board improperly convened into executive session at the emergency meeting to discuss the job performance of a Board member when that Board member

² Mr. Meleedy’s *in camera* affidavit describes the underlying situation that caused the need for an emergency meeting and asserts that there was a need to immediately address the situation before it was exacerbated and further harmed the school. To the extent Complainant questions whether there was a need for an emergency meeting on June 26, we find that the Board’s assertion that the situation needed to be addressed promptly and that delay could have exacerbated the situation did not violate the APRA.

requested the discussion be held in open session.³ The Board argues that the Complainant does not have standing to file a complaint about this issue because he was “not one of the affected persons entitled to notice.”

The OMA provides that “aggrieved” citizens may file a complaint with this Office. *See* R.I. Gen. Laws § 42-46-8(a); *Graziano v. Rhode Island Lottery Commission*, 810 A.2d 215 (R.I. 2002). Here, pursuant to R.I. Gen. Laws § 42-46-8(a), and *Graziano*, in order to have standing to complain about an alleged violation, the Complainant must demonstrate that he is “in some way disadvantaged or aggrieved” by the allegation raised in his complaint. *Graziano*, 810 A.2d at 221. Based on the record before us, we find no evidence that the Complainant was aggrieved in connection with his allegation that the person discussed in executive session was not provided the opportunity to have the discussion in open session. It is undisputed that the Complainant was not the subject of the executive session discussion.⁴ Although this Office does have authority to pursue complaints in the public interest, *see* R.I. Gen. Laws § 42-46-8(e), this particular allegation chiefly implicates the interests of the specific person who was the topic of the discussion rather than the public interest. The person discussed in the executive session did not submit a complaint to this Office. In these circumstances, we conclude that the Complainant is not “aggrieved” with regard to this allegation and decline to address the merits of it.

Finally, the Complainant argues that “some members” of the Board convened a “rolling quorum” to “facilitate the emergency meeting” and to remove the Board Interim President and appoint a new one.

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). Based on this Office’s independent research, the Board consists of thirteen (13) members, seven (7) of which would constitute a quorum.

³ The OMA provides that a public body may hold a meeting closed to the public for certain specific reasons, including “[a]ny discussions of the job performance, character, or physical or mental health of a person or persons provided that such 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).

⁴ The Complainant alleges that he is a member of the North Kingstown School Committee who has an interest in the happenings of the Board and that he was harmed because if the discussion had been held in open session he would have been better informed of what happened and could have spoken on behalf of the person being discussed. However, the OMA does not provide a right to public comment, *see* R.I. Gen. Laws § 42-46-6(d), and the OMA only provides the person being discussed the opportunity to require the discussion be held in open session. As such, the OMA did not provide Complainant with any right to comment or right to observe the discussion.

The Complainant provided this Office with a series of emails that he contends evidence Board members planning a meeting. The emails consist of a thread where the then-Interim President notified the members in the evening of June 25 that a meeting scheduled for June 26 was being cancelled. Five (5) members “reply all” indicating that they will still attend the previously scheduled meeting. The evidence indicates that the June 26 emergency meeting that is the subject of this complaint was scheduled after the then-Interim President cancelled the previously scheduled June 26 meeting.⁵

Upon our review of the emails provided by the Complainant in support of his position, we find that the email exchange does not involve a discussion regarding a substantive issue before the Board, but rather only involves certain members expressing whether they would attend a meeting. Additionally, only six (6) members sent emails, which is less than a quorum of the thirteen (13) member Board. We also note that the OMA explicitly permits electronic or telephonic communications to schedule a meeting. *See* R.I. Gen. Laws § 42-46-5(b)(1). In sum, no evidence has been presented to suggest that a quorum of the Board convened a meeting, as that term is defined in the OMA, outside the public purview. As such, we find no violation.

Conclusion

Although this Office has found no violation, nothing within the OMA prohibits an individual from instituting an action for injunctive or declaratory relief in Superior Court. *See* R.I. Gen. Laws § 42-46-8(c). The OMA allows the Complainant to file a complaint 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. *See id.* 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/ Kayla E. O’Rourke
Kayla E. O’Rourke
Special Assistant Attorney General

⁵ Mr. Meleedy’s affidavit indicates that he conferred with two other Board members regarding the need to schedule an emergency meeting. This conference between three Board members involves less than a quorum and does not implicate the OMA.