



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

May 1, 2020
OM 20-27

Mr. Justin Katz

Raymond A. Marcaccio, Esquire
Legal Counsel, Rhode Island Board of Elections

RE: Katz v. Board of Elections

Dear Mr. Katz and Attorney Marcaccio:

We have completed an investigation into the Open Meetings Act (“OMA”) complaint filed by Mr. Justin Katz (“Complainant”) against the Board of Elections (“Board”). For the reasons set forth herein, we find that the Board did not violate the OMA.

Background

The Complainant alleges that the Board’s agenda for its September 3, 2019 meeting contained the following allegedly insufficient agenda item:

“The Board may discuss and vote upon the recall election process pertaining to Town of Tiverton Councilors Robert D. Coulter and Justin P. [sic] Katz.”

The Complainant maintains that this agenda item was “deceptively vague” and that “[h]ad the item been properly noticed, interested parties, particularly those subject to recall, would likely have been in attendance[.]” The Complainant also asserts that the Board’s September 3, 2019 meeting minutes do not accurately describe “the intent of the item or the discussion that ensued.”

Attorney Raymond A. Marcaccio provided a substantive response on behalf of the Board, including an affidavit from Board Vice Chair Stephen P. Erickson and the audio from the September 3, 2019 meeting. The Board maintains that both the agenda item and the meeting minutes are sufficient. The Board explains that the agenda item was prompted by a newspaper story that indicated that the Town of Tiverton Board of Canvassers “won’t make an all-out effort

to get people to the polls because it could be construed as taking a political stand.” The Board contends that the “sole purpose for the agenda item was to ensure that the Tiverton board of canvassers followed its normal process when conducting the election for the recall[.]” During the September 3, 2019 meeting, the Board questioned Tiverton Town Clerk Nancy Mello and Tiverton Board of Canvassers members about the manner in which the recall election was being administered. The Board asserts that after Ms. Mello assured the Board that the local board was administering the recall election in a manner consistent with all other local elections, the Board moved on to other agenda items.

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. Whether the Agenda Item Was Sufficient

The OMA requires that all public bodies provide supplemental public notice of all meetings at least forty-eight (48) hours in advance of the meeting. *See* R.I. Gen. Laws § 42-46-6(b). “This notice shall 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.* (Emphasis added).

In *Anolik v. Zoning Board of Review of the City of Newport*, the Rhode Island Supreme Court held that R.I. Gen. Laws § 42-46-6(b) requires the “public body to provide fair notice to the public under the circumstance, or such notice based on the totality of the circumstances as would fairly inform the public of the nature of the business to be discussed or acted upon.” 64 A.3d 1171, 1173 (R.I. 2013); *see also Tanner v. Town of East Greenwich*, 880 A.2d 784, 797 (R.I. 2005) (appropriate inquiry is “whether the [public] notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted”).

Here, based on the undisputed evidence, we find no violation. The agenda item specified that the Board would discuss the Tiverton recall election process for Town Councilors Coulter and Katz. Based on our review of the September 3, 2019 meeting audio – which is corroborated by the affidavit of Vice Chair Erickson – that is precisely what occurred. The Board questioned Ms. Mello as to the process for the recall election. Ms. Mello assured the Board that the local board of canvassers was doing everything they normally would do to administer an election. Once the Board was satisfied that the Tiverton recall election was being run consistent with any other local election, the Board moved to the next agenda item without a vote. We conclude that the Board’s September 3, 2019 agenda item provided “fair notice to the public” under the circumstances and “fairly inform[ed] the public of the nature of the business to be discussed[.]” *Anolik*, 64 A.3d at 1173. Indeed, given that Complainant and the other individual subject to recall were specifically named in the agenda item, we fail to understand the Complainant’s contention that the item was “vague”

and “generic” and that those subject to recall would likely have been in attendance if the item was noticed differently. We accordingly find no violation.

2. Whether the Meeting Minutes Were Sufficient

Next, the Complainant alleges that the September 3, 2019 meeting minutes do not accurately describe “the intent of the item or the discussion that ensued.”

Rhode Island General Laws § 42-46-7(a), provides, in relevant part:

“[a]ll public bodies shall keep written minutes of all their meetings. The minutes shall include, but need not be limited to:

- (1) The date, time, and place of meeting;
- (2) The members of the public body recorded as either present or absent;
- (3) A record by individual members of any vote taken; and
- (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes.”

Here, the Complainant does not take issue with any other aspect of the minutes except to allege that the minutes do not accurately describe what occurred at the meeting in connection with the agenda item pertaining to the Tiverton recall election. The September 3, 2019 meeting minutes provide, in pertinent part:

“Tiverton Board of Canvassers explained to the Board the recall election process per the Tiverton charter. No vote was needed.”

The Complainant does not explain why he contends that the minutes do not comply with the OMA and his rebuttal does not contest the Board’s assertion that the minutes contain all four elements required by the OMA. Furthermore, after reviewing the audio recording of the September 3, 2019 meeting, we do not find support for Complainant’s contention that the minutes are inaccurate. As described in the minutes, the Board discussed the Tiverton recall election process with individuals from the Tiverton Board of Canvassers and no votes were taken. Although we encourage public bodies to be as detailed as possible in their meeting minutes, the OMA only requires the presence of the four elements described above. We find no violation.

Conclusion

Although the Attorney General has found no violations and will not file suit in this matter, nothing in the OMA precludes an individual from pursuing a complaint in the Superior Court as specified in the OMA. 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 this file as of the date of this decision.

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

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Katherine Connolly Sadeck
Katherine Connolly Sadeck
Special Assistant Attorney General