



STATE OF RHODE ISLAND  
OFFICE OF THE ATTORNEY GENERAL

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*Peter F. Neronha*  
*Attorney General*

**VIA EMAIL ONLY**

August 7, 2020  
OM 20-40

Mr. David Loureiro

Kelley Morris Salvatore, Esquire  
Town Solicitor, Town of Cumberland

**RE: Loureiro v. Town of Cumberland Finance and Ordinance Subcommittees**

Dear Mr. Loureiro and Attorney Salvatore:

We have completed an investigation into the Open Meetings Act (“OMA”) complaint filed by Mr. David Loureiro (“Complainant”) against the Town of Cumberland Finance Subcommittee (“Finance Subcommittee”) and Town of Cumberland Ordinance Subcommittee (“Ordinance Subcommittee”) (collectively, “Subcommittees”). For the reasons set forth herein, we find that the Finance Subcommittee violated the OMA but that the Ordinance Subcommittee did not.

**Background**

The Complainant alleges that the Subcommittees violated the OMA when they failed to post meeting minutes with the Secretary of State for at least the past two (2) years.

Attorney Kelley Morris Salvatore, Solicitor for the Town of Cumberland, submitted a substantive response on behalf of the Subcommittees, which included an affidavit from Town Council member and Finance Subcommittee Clerk, Michael L. Kinch. The Subcommittees first contend that the Complainant lacks standing to bring this Complaint as he has failed to articulate how he is “aggrieved” pursuant to R.I. Gen. Laws § 42-46-8(a). The Subcommittees also represent that the Ordinance Subcommittee “is solely advisory to the full Town Council and, therefore, minutes need not be posted on the Secretary of State’s website.” The Subcommittees maintain that the Finance Subcommittee “is generally advisory to the full Town Council” yet “makes decisions on claims of less than \$1,000 presented to the Town.” The Subcommittees acknowledge that “regretfully, the

Finance Subcommittee appears to be in violation, however, it is diligently preparing minutes for filing.” Mr. Kinch attests that, as Clerk of the Finance Subcommittee, he understood the requirement to keep minutes but “did not understand the requirement to post [minutes] to the Secretary of State’s website.” Mr. Kinch attests that going forward he “intend[s] to complete and submit for posting all minutes of meetings within the timelines required by the Open Meetings Act.”

In investigating the question of whether the Ordinance Subcommittee is “solely advisory in nature” under the OMA, *see* R.I. Gen. Laws § 42-46-7(d), this Office requested additional information from the Ordinance Subcommittee, including details regarding the nature of the public business delegated to it. The Ordinance Subcommittee submitted additional information and argument regarding this inquiry. The Ordinance Subcommittee consists of three members of the Town Council and the Town Council President, as an ex-officio member. Regarding the nature of its authority, the Ordinance Subcommittee provided a quotation from Section 2-114 of the Cumberland Code of Ordinances which states, in pertinent part: “The ordinance subcommittee shall provide the Town Council its recommendation regarding any ordinance to be moved out of committee for consideration by the entire Town Council.”

The Complainant did not submit a 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.

The Subcommittees assert that the Complainant lacks standing and does not qualify as an aggrieved person under the OMA because he failed to articulate how he was “aggrieved” by the Subcommittees’ alleged failure to post minutes. *See* R.I. Gen. Laws § 42-46-8(a); *see also* *Graziano v. Rhode Island State Lottery Commission*, 810 A.2d 215 (R.I. 2002). Although the Complainant did not provide a rebuttal addressing his “aggrieved” status, we decline to examine this argument because the Office of the Attorney General may initiate a complaint on behalf of the public interest. *See* R.I. Gen. Laws § 42-46-8(e); *see also* *City of Central Falls v. Central Falls Detention Facility Corporation*, OM 19-03. We conclude that the allegations in this matter implicate the public interest. Accordingly, pursuant to our independent statutory authority, we proceed to consider the allegations related to the Subcommittees.

Pursuant to the OMA, a public body is required to file official and/or approved minutes of all meetings with the Secretary of State within thirty-five (35) days of the meeting; however, “public bodies whose responsibilities are solely advisory in nature” are exempt from this requirement. R.I. Gen. Laws § 42-46-7(d).

Finance Subcommittee

The Finance Subcommittee does not dispute that it is subject to the OMA's requirements. Further, it has acknowledged "its failure to file minutes since February 2018, and understands the importance of doing so." In light of the record before us, including the Finance Subcommittee's own acknowledgement, we find that it violated the OMA by failing to post minutes of its meetings on the Secretary of State's website since February 2018. *See* R.I. Gen. Laws § 42-46-7(d).

Ordinance Subcommittee

Merriam Webster Dictionary defines "advisory" as "having or consisting in the power to make recommendations but not to take action enforcing them." Based on the undisputed evidence presented, the sole function of the Ordinance Subcommittee is to review proposed ordinances "in detail and provide a *recommendation* for modifications, approval and/or denial. It makes no final decisions on any matter." (Emphasis added). This is also confirmed by the text of the Cumberland Code of Ordinances Ordinance Subcommittee establishment clause. Accordingly, based on the record before us, we find the Ordinance Subcommittee is "solely advisory in nature" and therefore exempt from R.I. Gen. Laws § 42-46-7(d). As such, we 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 Finance Subcommittee represented that it intends to comply with the OMA's requirements for posting minutes going forward. Additionally, in responding to this Complaint, the Finance Subcommittee represented that it was in the process of preparing its prior minutes for filing. Based on this Office's independent review of the Secretary of State's website, it appears the Finance Subcommittee has now posted minutes of its meetings since February 2018.

Complainant does not allege, nor do we find evidence of, a willful or knowing violation. The Finance Subcommittee represented that its failure to file minutes was due to a change in the law in 2018 and the Clerk's misunderstanding about the requirements of the OMA. Additionally, we note the Finance Subcommittee's representation that although it previously failed to file meeting minutes, audio recordings of all its meetings are available to the public at the Town Clerk's office. We also find no record of any findings of previous similar violations against the Finance Subcommittee. 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 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