State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

June 11, 2020
OM 20-32

Ms. Lisa Castelli

David D'Agostino, Esquire
Assistant Solicitor, Town of Coventry

RE: Castelli v. Coventry Town Council

Dear Ms. Castelli and Attorney D'Agostino:

We have completed an investigation into the Open Meetings Act ("OMA") complaint filed by Ms. Lisa Castelli ("Complainant") against the Coventry Town Council ("Town Council"). For the reasons set forth herein, we find that the Town Council violated the OMA.

Background

The Complainant contends that the Town Council violated the OMA by having an insufficiently specific agenda for its February 10, 2020 meeting. Specifically, the Complainant argues that the agenda items "President's Comments" and "District One Update by Councilwoman Dickson" did not sufficiently describe "what topics would be mentioned." The Complainant maintains that for each of these agenda items, the President and Councilwoman, respectively, made remarks about issues such as Town vacancies and the "formation of a charter study group" that had not been specified on the agenda. Finally, the Complainant avers that she is aggrieved because, had the agenda included more specificity, she would have attended the meeting in order to "hear the comments and speak during public comment."

Attorney David M. D'Agostino submitted a response on behalf of the Town Council. The Town Council first argues that the Complainant lacks standing because she "has not articulated a basis on which to find that she has standing to bring the instant complaint." As to the substance of the Complaint, the Town Council argues that the specificity sought by the Complainant is only required by the OMA when business is to be "discussed" or proposed actions are to be taken. The Town Council notes that "no action" was taken and "no decision(s)" were made as a result of the

"President's Comments," which the Town Council describes as "gratuitous pleasantries." Similarly, as to the "District One Update by Councilwoman Dickson," the Town Council reiterates that there was "no discussion" and "no action taken," and that the Councilwoman's comments did not involve any "Town business" such that the OMA would be implicated. As such, the Town Council maintains that the Complainant was not aggrieved.

The Complainant did not submit a rebuttal.

Relevant Law & 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 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").

We have previously determined that public bodies violate the OMA by posting broad and insufficient agenda items such as "Tax Collector's Report," "Treasurer's Report," "Chief's Report," "Committee Reports," "Old Business," and "New Business." These broad agenda items typically fail to "fairly inform the public of the nature of the business to be discussed or acted upon." *Spodnik v. West Warwick*, OM 19-28; *Beagan v. Albion Fire District*, OM 10-27; *see also Wilson v. Coventry Sewer Committee*, OM 19-34 (finding that Subcommittee violated the OMA when Subcommittee members initiated discussions on topics not noticed on the agenda under the "Public/Subcommittee Member Comment" agenda item).

Similarly, in *Fagnant v. Woonsocket City Council*, OM 19-44, this Office held that an agenda item titled "Good and Welfare" violated the OMA. Although the Woonsocket City Council argued that the matters discussed were solely "congratulatory and informative in nature," the meeting minutes revealed that the City Council members utilized the "Good and Welfare" agenda item to discuss various substantive matters of City business. This Office accordingly found that the "Good and

Welfare" agenda item "did not adequately inform the public of the nature of the business to be discussed" and was thus violative of the OMA. *See Fagnant*, OM 19-44.[1]

Here, the pertinent agenda items were titled "President's Comments" and "District One Update by Councilwoman Dickson." As to the "President's Comments," the agenda item did not provide any information regarding the nature or topic of the President's comments. The Town Council acknowledges that pursuant to this agenda item, the President spoke about how "the Town was actively looking for people to volunteer to serve on Boards and Commissions and encouraged interested people to contact the Town Clerk or Town Manager." He also discussed how the Charter Commission was short members. Based on the undisputed evidence, including our review of the minutes and video recording of the meeting, we reject the Town Council's argument that the "President's Comments" were merely "gratuitous pleasantries." Although the Comments were brief, the President did discuss the need for volunteers on Town Boards and Commissions, which is a substantive matter of Town business. The effect of these comments that were not noticed on the agenda was that the public, as a whole, was not made aware of the need for volunteers, or even that the Charter Commission would be discussed, and instead only those in attendance were advised. As such, even assuming a distinction could be made between non-substantive gratuitous remarks and substantive remarks, this agenda item was not limited to purely non-substantive matters. We find that the item failed to adequately provide notice regarding the nature of the President's remarks and what would be discussed.

Similarly, the item "District One Update by Councilwoman Dickson" does not provide any information regarding the subject matter of the "update" or what would be discussed about District One pursuant to the agenda item. The Town Council acknowledges, and our review of the minutes and video recording confirm, that under this agenda item, the Councilwoman "reported on a 'community forum'" and noted she was trying to gather members and support for a Coventry Charter Review Study Group. The minutes indicate that the Councilwoman reviewed the process of the Study Group, which would forward recommendations to the Town Manager, who would then obtain the opinion of legal counsel. The matter would then be put to a vote by the Town Council. The agenda item did not provide notice that these topics, which pertain to Town business, would be addressed. As such, we conclude that this agenda item failed to fairly encompass and provide notice of the substance of what would be discussed.

We now turn to addressing the Town Council's argument that because there was "no discussion" among councilmembers and "no action taken" on the two subject agenda items, the OMA was not implicated. The Town Council asserts that the agenda items did not violate the OMA because any councilor "has the right to speak about matters of interest to him/herself; matters involving the Town." To be sure, members of public bodies may speak on matters of interest to themselves, but in doing so, they must also comply with the OMA. These two interests and principles are not mutually exclusive.

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[1] As to standing, we question the Town Council's argument that the Complainant was not aggrieved given her representation that she would have attended the February 10, 2020 meeting had she known what would be discussed. Nonetheless, we do not need to address this issue, as this Office may proceed based on the public interest. *See* R.I. Gen. Laws § 42-46-8(e).

The OMA requires the Town Council to give notice of the business to be discussed during an open meeting. *See* R.I. Gen. Laws § 42-46-6(b). In this case, the remarks in question related to Town business and were made by members of the Town Council, pursuant to agenda items, during what was undisputedly an open meeting of the Town Council. As such, the Town Council was required to give notice of what would be discussed.

The OMA's notice requirements do not prohibit members of a public body from "responding to comments initiated by a member of the public during a properly noticed open forum even if the subject matter of a citizen's comments or discussions were not previously posted[.]" R.I. Gen. Laws § 42-46-6(d). It is notable that this provision does not extend to members of a public body. Moreover, this same provision provides that "[n]o public body, or the members thereof, may use this section to circumvent the spirt or requirements of this chapter." *Id.*

Here, members of the public body were not responding to public comments made during a properly noticed open forum. Rather, members of the public body raised non-agenda item issues related to Town business on their own, unrelated to any comments made by a member of the public in an open forum. We have previously held that although the OMA allows members of a public body to respond to public comments, "that provision of the OMA cannot be utilized for members of the public body to discuss topics that were not properly noticed on the agenda and that are not initially raised by a member of the public during public comment." *Wilson*, OM 19-34.

Finally, we find no support for the Town Council's argument that certain portions of a publicly noticed meeting are not subject to the OMA based on the number of members actually participating in a discussion. Such a result would make the OMA inapplicable when the members themselves determine that less than a quorum will speak on any particular issue at a meeting. Here, the Town Council provided public notice that it would convene an open meeting and discuss certain topics – including the agenda items at issue – all subject to the OMA. While we do not suggest through this finding that every off-handed comment or utterance must be duly noticed on an agenda, we do conclude that when a public body provides notice to the public that it will convene a public meeting pursuant to the OMA and discuss certain topics, the OMA applies. *See* R.I. Gen. Laws § 42-46-6(d).

Accordingly, we find that the Town Council violated the OMA. *See* R.I. Gen. Laws § 42-46-6(b).

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.*

Here, we do not find injunctive relief appropriate because it is undisputed that the Town Council did not take any action related to the relevant agenda items. The record also does not support a

finding of a willful or knowing violation, nor are we aware of any recent, similar violations by the Town Council. 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.[2]

Although the Office of the Attorney General will not file suit in this matter, 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/ *Adam D. Roach* ____
Adam D. Roach
Special Assistant Attorney General

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[2] The Complainant cites to minutes from a January 28, 2019 Town Council meeting as evidence of the Town Council's "awareness" of a need for specificity as to agenda items. The January 28, 2019 minutes indicate that the President spoke about how insufficiently specific agenda items can be a basis for OMA complaints and how there would no longer be district updates for that reason, but that he would continue to offer President's Comments that would not involve any substantive discussion. Although it is unclear why the Town Council still included a District One Update agenda item for its February 10, 2020 meeting in light of these prior comments, we do not find that the referenced minutes evidence a willful or knowing violation. Rather, the January 28, 2019 minutes suggests that the President (as well as the Town Council) intended to limit comments to topics that — they believed — would not violate the OMA's notice requirements. The record indicates that the Town Council was operating under the erroneous but good faith belief that the topics discussed pursuant to the two agenda items in this case would not implicate the OMA.