



State of Rhode Island and Providence Plantations

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VIA EMAIL ONLY

June 23, 2020

OM 20-34

Mr. Richard Finnegan

David R. Petrarca, Jr., Esquire
Assistant Town Solicitor, Town of Scituate

RE: Finnegan v. Scituate Housing Authority

Dear Mr. Finnegan and Attorney Petrarca:

We have completed an investigation into the Open Meetings Act (“OMA”) complaint filed by Mr. Richard Finnegan (“Complainant”) against the Town of Scituate Housing Authority (“SHA”). For the reasons set forth herein, we find that the SHA violated the OMA.

Background

The Complainant contends that the SHA violated the OMA when it failed to post the minutes for its October 1, 2019 meeting on the Secretary of State’s website within 35 days of the meeting. The Complainant further notes that the SHA had an opportunity to “approve and post meeting minutes” at its January 22, 2020 meeting and failed to do so.

The SHA submitted a substantive response through its counsel, David R. Petrarca, Jr., Esquire, which included an affidavit from Theodore Richard, Chairman of the SHA Board of Commissioners. The SHA does not dispute that it failed to timely post minutes for its October 1, 2019 meeting but asserts that “any technical violation of the OMA” was not willful or knowing. The SHA further acknowledges that it “intended to vote to approve the minutes of the October 1, 2019 meeting at its January 22, 2020 meeting.” However, due to a “typographical error,” the vote on the subject minutes was not included on the January 22, 2020 meeting agenda and was thus not properly before the SHA, preventing a vote from taking place. The SHA further notes that an unapproved version of the subject minutes was posted with the Secretary of State on February 4, 2020 and that it is making arrangements to meet and vote to approve the minutes. The SHA also asserts that it has taken steps, including scheduling a training on the OMA, to ensure such an

oversight does not occur in the future. The SHA additionally avers that the Complainant lacks standing because he is not “in some way disadvantaged or aggrieved” by the alleged OMA violation.

We acknowledge Complainant’s 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 provides that:

“All public bodies shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five days of the meeting[.]” R.I. Gen. Laws § 42-46-7(d).

Pursuant to the OMA, the SHA was required to file official and/or approved minutes for its October 1, 2019 meeting with the Secretary of State within thirty-five (35) days of the meeting, which was no later than November 5, 2019. The undisputed evidence shows that the SHA did not post minutes for that meeting on the Secretary of State’s website until February 4, 2020, when it posted unapproved minutes.¹ As such, the SHA violated the OMA.² *See* R.I. Gen. Laws § 42-46-7(d).

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. On February 4, 2020, the SHA posted unapproved minutes for the October 1, 2019 meeting and represented that it was making arrangements to meet and approve the subject minutes. In response to our inquiry, SHA’s counsel represented that on February 13, 2020, the SHA met and approved the minutes for the October 1, 2019 meeting that were posted on

¹ As noted below, the version of the minutes posted on February 4, 2020 became the “official and/or approved” minutes on February 13, 2020.

² We question the SHA’s argument that Complainant was not aggrieved, but we need not decide that issue as this Office may pursue a complaint on behalf of the public interest. *See* R.I. Gen. Laws § 42-46-8(e).

February 4, 2020. As such, the minutes of the October 1, 2019 meeting posted on the Secretary of State website on February 4, 2020 constitute the posted, approved minutes for the October 1, 2019 meeting. Since these minutes are not designated or labeled as the official and/or approved minutes, we encourage the SHA to designate these already-filed minutes on the Secretary of State's website so that other members of the public will know these minutes represent the official and/or approved minutes for the SHA's October 1, 2019 meeting.

We also do not find sufficient evidence of a willful or knowing violation of the OMA. We have previously declined to find a willful or knowing violation where — as here — a public body did not meet within thirty-five days after the subject meeting, and thus did not have the opportunity to vote to approve the minutes within the statutory timeframe. *See Buckley v. Rhode Island Turnpike and Bridge Authority*, OM 14-33B (noting that public body arguably still could have posted “official” meeting minutes on the Secretary of State's website within thirty-five days of the meeting since the OMA requires posting “official and/or approved” minutes within thirty-five days but does not define what constitutes “official” minutes). And, while here the SHA did meet on January 22, 2020, the minutes were not approved at that time because the matter was not posted on the agenda and voting to approve the minutes could have constituted an OMA violation. We observe that there are no recent similar violations found against the SHA. We also note the SHA's representation that the SHA Board members are newly appointed and that it has taken measures and will provide training to the SHA Board in order to avoid future similar violations.

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 file 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