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VIA EMAIL ONLY

July 14, 2020
OM 20-36

Pamela Rowland

Matthew F. Callaghan, Jr, Esquire
Town Solicitor, North Kingstown

RE: Rowland v. North Kingstown Town Council

Dear Ms. Rowland and Attorney Callaghan:

We have completed an investigation into the Open Meetings Act (“OMA”) complaint filed by Ms. Pamela Rowland (“Complainant”) against the North Kingstown Town Council (“Town Council”). For the reasons set forth herein, we find that the Town Council did not violate the OMA.

Background and Arguments

The Complainant alleges that the Town Council engaged in a rolling quorum related to the School Department budget outside the public purview before its April 6, 2020 meeting. In support, the Complainant notes that during the April 6, 2020 meeting, Councilman Kerry McKay stated, “[w]e have a vote, we potentially have a 3:2 vote on the School Department on no increase to the funding there.” From that comment alone, Complainant contends that “Mr. McKay appears to have discussed the budget with his other council members and [] know[s] the outcome of the vote *** when the committee hadn’t finished public discussion of the budget[.]”

Legal Counsel for the Town Council, Attorney Matthew F. Callaghan, Jr., submitted a substantive response along with affidavits from the five council members – Mary Brimer, Richard Welch, Kerry McKay, Stacey Elliot, and Gregory Mancini. All of the Town Council members deny the existence of a rolling quorum prior to the April 6, 2020 meeting and their affidavits largely mirror each other in support of this contention.

Mr. McKay avers that he has not been involved in any rolling quorum regarding the 2021 town budget, which includes the School Department budget. The record reflects that there were two workshop meetings related to the budget, respectively on April 3 and 6, and that these workshops were public, open meetings. The record indicates that the comment that prompted this Complaint was made by Mr. McKay several hours into the April 6 workshop meeting. Mr. McKay notes that “[a] few days before the budget hearing on April 3, 2020, [he] did telephone Town Council President Greg Mancini” and—as a courtesy—told him “that [his] goal this year was to pass a budget which would not raise the tax rate and *** asked him how he felt about that.” In reply, Mr. Mancini stated that “he did not want to raise taxes either but that he first wanted to see what was presented at the budget hearings.” Mr. McKay additionally notes that his comment at the April 6 meeting “was based upon the comments of all council members at the two (2) workshops[.]” Mr. McKay also avers that “[t]here had been no pre-vote agreements with other council members” on votes related to the budget.

Town Council President Mancini corroborates and confirms Mr. McKay’s account of the April 3, 2020 telephone call in his affidavit. Mr. Mancini also avers that he did not have discussions with any other members of the Town Council prior to the public meetings.

Town Council member Mary Brimer avers that she “did not participate in a rolling quorum with other council members prior to any of the votes taken on April 6, 2020.” She avers that she met with Town Manager Ralph Morris—who is not a member of the public body—“prior to the 2 day budget workshop on April 3 and April 6” to discuss her “concerns about passing the budget as presented.” Following the workshop meeting on April 3, 2020, Mr. Morris sent out two emails to the five council members presenting a “list of ‘safe’ cuts, or recommendations of areas within the Town’s budget that the Council could make without causing significant damage in the following fiscal years.” Ms. Brimer “believe[d] the Town Manager *** recognized the desire of at least 3 Town Councilors (Kerry McKay, Richard Welch and [her]self) to cut the budget and hold the line on any property tax increase” during the April 3 workshop and that this recognition is what led to Mr. Morris sending the two emails. A copy of the emails was attached to the affidavit and the record does not indicate that any of the members of the Town Council replied to Mr. Morris’ emails.

Town Council member Richard Welch avers that he “did not have any discussions with any of the other Town Council members regarding the 2021 town budget.” However, he does note that he made his position clear—that he would not support any increase in the School Department budget—during the April 3rd and April 6th meetings and that “last year [he] had taken the same position.” He notes that he was “pleased to see that two (2) of the council members had pretty much come around to [his] point of view *** but that outcome was not the result of any pre-vote discussions.”

Finally, Town Council member Elliot avers, consistent with the other affidavits, that “[a]t no point, either before or after the Town Council meeting on April 6, 2020, did [she] have any discussions, or communications of any nature, with Councilor Kerry McKay, Councilor Richard Welch, or Councilor Mary Brimer regarding the 2021 town budget.”

The Complainant did not file a rebuttal.

Relevant Law

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 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). A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(4).

A quorum may be created, and a meeting “convened,” by a “rolling” or “walking” quorum, where a majority of the members of a public body attain a quorum by a series of one-on-one conversations or interactions. *See, e.g., In Re: South Kingstown School Committee Electronic Mail Policy*, ADV OM 04-01 (series of email communications among a quorum of a Committee would satisfy the quorum requirement and implicate the OMA). Importantly, our findings have centered on the nexus between these one-on-one conversations and whether they serve as a chain of communication sufficient to constitute a collective discussion. *See Guarino, et al. v. Rhode Island Atomic Energy Commission*, OM 14-07 (“[I]f a quorum of members of a public body creates a chain of communication and responses, through any electronic media, about any matter over which a public body has supervision, jurisdiction, control or advisory power, other than to schedule a meeting, the OMA may be violated.”).

Findings

It is undisputed that a quorum of the five-member Town Council is three members. Thus, the existence of a quorum or rolling quorum depends on whether three Town Council members engaged in a collective discussion regarding the School Department budget outside the public purview prior to the April 6, 2020 meeting.

Here, the Complainant’s allegations rest entirely on Mr. McKay’s statement made during the April 6, 2020 meeting, which is corroborated by the public video recording of the meeting.¹ However, the undisputed affidavits from all five Town Council members explicitly deny any collective discussions regarding the budget between a quorum of Town Council members prior to the April 6, 2020 meeting. Although it does appear that Mr. McKay had a one-on-one conversation with Mr. Mancini regarding the 2021 town budget, there is no evidence of any link between this singular

¹*See* http://northkingstown.granicus.com/MediaPlayer.php?view_id=3&clip_id=1057 (at approximately 4 hours 15 minutes).

discussion between two members of the Town Council—which would not constitute a quorum—and any other discussions involving any other members of the Town Council. *See Finnegan v. Scituate Town Council*, OM 20-22 (finding that where there is no nexus between a one-on-one conversation and other separate communications of a public body to constitute evidence of a collective discussion, the OMA is not implicated).²

Given these undisputed affidavits, we find no evidence that a rolling quorum of at least three Town Council members engaged in a collective discussion regarding the School Department budget prior to the April 6, 2020 meeting. Instead, it appears that Mr. McKay had a general understanding—based on the voting history of Mr. Welch and conversations during the several-hours-long public meetings on April 3, 2020 and April 6, 2020—of how at least three of the Town Council members would vote regarding the School Department budget. Further, we note that the final vote apparently resulted in an increase to the School Department’s budget, contrary to Mr. McKay’s predictive statement. Accordingly, based on the uncontested evidence, we do not find that a quorum of the Town Council convened outside the public purview for a collective discussion about an issue over which the Town Council has supervision, control, jurisdiction, or advisory power, and thus find no violation.

Conclusion

Although the Office of the Attorney General does not find a violation and will not file suit in this matter, nothing in the OMA precludes an individual from pursuing a complaint in the Superior Court. 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 our file as of the date of this finding.

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

² Further, the emails sent from Town Manager to the five members of the Town Council do not, by themselves, constitute a rolling quorum conducted outside the public purview. It is undisputed that Mr. Morris is not a public body member. “An email sent from a non-public body member to a quorum of a public body does not, without more, constitute a collective discussion among members of the public body any more than [] an email sent from a citizen to a quorum of a public body would, by itself, violate the OMA.” *Katz v. Tiverton Library Board of Trustees*, OM 20-33. The undisputed evidence shows that no Town Council members responded to Mr. Morris’ email or otherwise engaged in a collective discussion about it. *See* R.I. Gen. Laws § 42-46-2; *see also Guarino*, OM 14-07 (“[A] single email disseminating information that was not responded to by other members of the public body” does not violate the OMA).

Rowland v. North Kingstown Town Council

OM 20-36

Page 5

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Sean Lyness

Sean Lyness

Special Assistant Attorney General