



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 • www.riag.ri.gov

Peter F. Neronha
Attorney General

VIA EMAIL ONLY

October 8, 2020
OM 20-42B

Mr. Richard Langseth

John M. Boehnert, Esquire
Legal Counsel, Buttonwoods Fire District

RE: Langseth v. Buttonwoods Fire District

Dear Mr. Langseth and Attorney Boehnert:

We have reviewed the supplemental submissions filed by the parties in connection with the above-referenced Open Meetings Act (“OMA”) Complaint.

Original Finding

In our prior finding, OM 20-42, we determined that the Buttonwoods Fire District (“Fire District”) violated the OMA when it failed to post annual notice of its regularly scheduled meetings at the beginning of the calendar year as required by R.I. Gen. Laws § 42-46-6(a). We directed the Fire District to provide a supplemental submission addressing whether the Fire District’s violation was willful or knowing and what, if any, measures it implemented to prevent this violation as a result of this Office’s finding in *Langseth v. Buttonwoods Fire District*, OM 19-27 (finding the Fire District failed to file annual notice of its regularly scheduled meetings), when those measures were taken, and why any such measures did not prevent the violation found in OM 20-42. We also directed the Fire District to provide evidence of the new “procedure” that it indicates has been adopted to avoid future similar violations, including a copy of this procedure if it is in writing and information regarding how the procedure has been adopted and implemented. Additionally, we directed the Fire District to state (and provide evidence) regarding whether the Fire District has now complied with the OMA’s requirements by posting its annual notice for this year.

Supplemental Submissions

The Fire District submitted its supplemental submission, which provided evidence that notice of its remaining regularly scheduled meetings for 2020 was posted as a “Public Announcement” on

the Secretary of State's website on July 20, 2020.¹ The Fire District's supplemental submission also included affidavits from Senior Supervisor Peter Charland and former-Senior Supervisor John Carbone, who was Senior Supervisor in January 2020. Mr. Carbone states that, because Mr. Charland works full-time in North Carolina, "Mr. Charland was unable to commit to specific dates he could make *** I prepared a schedule that I hoped would work for Mr. Charland and distributed this to the two supervisors, but I simply forgot to file the scheduled meetings with the Secretary of State's office." Additionally, Mr. Carbone states that he "own[s] and operate[s] a full time business, January was an extremely busy time of the year for [him], and [he] simply forgot to make the filing with the Secretary of State." Mr. Charland maintains that it was his "understanding that Mr. Carbone filed the 2020 meeting dates with the Secretary of State" and when he learned that the annual filing had not been made, he "promptly filed with the Rhode Island Secretary of State the remaining meetings for 2020." The Fire District contends that the violation found in OM 20-42 was neither willful or knowing, rather the supervisors "simply forgot."

The Fire District also provided this Office with a copy of the manual it prepared related to its obligations under the OMA and which designated the "Senior Supervisor as the person responsible to deal with all government officials, including the Secretary of State[.]" The Fire District asserts that is created this manual after this Office issued its October 17, 2019 finding in OM 19-27 and that a copy was provided to each supervisor. The Fire District additionally notes that in order to prevent this issue from happening again, in July 2020, it modified the Board's Calendar of Responsibilities document to add the responsibility of the Senior Supervisor to post the annual meeting notice in January.

We acknowledge the Complainant's supplemental submission wherein he argues that the Fire District's failure to comply with its manual and the OMA, coupled with this Office's prior findings in OM 19-27 and *Langseth v. Buttonwoods Fire District*, OM 07-05 (finding the Fire District failed to post annual notice of its regularly scheduled meetings) rise to the level of a willful or knowing violation for which this Office should file a lawsuit in Superior Court "to seek out an injunction and take other actions as the Court finds to be appropriate."²

¹ In OM 20-42, we noted that "[b]ased on our review of the Secretary of State website, it does not appear that an annual notice document has been properly posted for this year. If the Fire District is unsure how to do so, it may wish to contact the Secretary of State's Office for guidance." While the OMA does not specify how the annual notice must be posted on the Secretary of State's website, it appears that the Fire District filed its notice on July 20, 2020 as a "Public Announcement," which may make it difficult for members of the public to locate. There is an option to file the notice as an "Annual Calendar," and it is this Office's understanding that this is the way in which public bodies typically post notice of their annual meetings. We again encourage the Fire District to contact the Secretary of State's Office for guidance on proper filing.

² The Complainant also argues that the Fire District failed to post notice of its annual meeting in two physical locations. Although the OMA requires supplemental meeting notices (agendas) to be posted in two physical places as specified in the OMA, in addition to being filed electronically with the Secretary of State, *see* R.I. Gen. Laws § 42-46-6(c), the OMA provides that the annual

Analysis

Based on the undisputed evidence presented, we do not believe injunctive relief to be appropriate because the Fire District has now filed notice of its regularly scheduled meetings for 2020 on the Secretary of State's website. As noted above, we encourage the Fire District to contact the Secretary of State's Office to ensure that its notice was filed in a manner that conforms with usual procedures.

Additionally, although it is a close question, we do not find evidence of a willful or knowing violation. This determination is based, in part, on the fact that we were not presented with any evidence to suggest that the Fire District intended to disadvantage the public by not posting the annual notice on the Secretary of State's website or that the Complainant, or any other member of the public, was disadvantaged by the lack of annual notice. Additionally, based on our review of the Secretary of State's website, it appears the Fire District filed supplemental "agenda" notices for each of its 2020 meetings. Certainly, no allegation to the contrary has been made. The Fire District also represented that it posted notice of its meetings in physical locations as well, at least 48 hours before the meetings. While we acknowledge the Fire District's two similar, prior violations, we note that only one, OM 19-27, was issued within the last ten years. We also note the Fire District's attestations that it has taken steps necessary to educate its members and Senior Supervisor(s) on the OMA's requirements, including filing annual notice, and has implemented a manual outlining these requirements and the appropriate person(s) responsible for carrying them out.

Nevertheless, this Office is concerned about the multiple similar violations committed by the Fire District. We strongly encourage the Fire District to have any members who are responsible for OMA compliance to watch the OMA portion of this Office's 2020 Open Government Summit training, which is available on our website: <http://www.riag.ri.gov/CivilDivision/OpenGovernmentUnit.php>.

The Fire District is on notice that the conduct discussed in *Langseth v. Buttonwoods Fire District*, OM 20-42 violates the OMA and that this finding may serve as evidence of a willful or a knowing violation in any similar future situation. Should the Fire District be found to have committed a similar OMA violation in the future, this Office will be mindful of this history and the multiple admonishments that the Fire District has now received regarding OMA notice violations.

Conclusion

Although the Attorney General 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.

notice should be filed with the Secretary of State at the beginning of the year and made available to members of the public upon request. *See* R.I. Gen. Laws § 42-46-6(a).

Langseth v. Buttonwoods Fire District

OM 20-42B

Page 4

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