



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

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Peter F. Neronha
Attorney General

VIA EMAIL ONLY

September 10, 2020
OM 20-44

Bob Cooper
Executive Secretary, Governor's Commission on Disabilities

Raymond A. Marcaccio, Esquire
Legal Counsel, Board of Elections

RE: Governor's Commission on Disabilities v. Board of Elections

Dear Mr. Cooper and Attorney Marcaccio:

The investigation into the Open Meetings Act ("OMA") complaint filed by Mr. Bob Cooper on behalf of the Governor's Commission on Disabilities ("Complainant") against the Board of Elections ("Board") is complete. For the reasons set forth herein, we find that the Board violated the OMA.

Background and Arguments

The Complainant alleges that the Board held a March 3, 2020 meeting pursuant to the OMA at a facility that did not comply with the OMA's accessibility requirements for persons with disabilities. The Complainant maintains that the Board's location at 2000 Plainfield Pike, Cranston, Rhode Island did not conform to applicable state and federal accessibility laws and that the Board was "advised on February 4th by the Commission not to conduct open meetings at the 2000 Plainfield Pike location" because of the alleged nonconformities. The Complainant provided an affidavit from Assistant ADA Coordinator Denyse M. Wilhelm attesting that she attended the Board's March 3, 2020 meeting and noted various instances of non-compliance with Uniform Federal Accessibility standards.

The Board submitted a substantive response through counsel, Raymond Marcaccio, Esquire, including an affidavit from Board Executive Director Robert B. Rapoza. The Board principally argues "that the Commission lacks standing to bring the instant complaint, as it does not allege, or even attempt to allege, that it is an 'aggrieved person' under the terms of the OMA." The Board

maintains that the Complainant “does not allege that it or any of its members had either an interest in or were personally unable to access the meeting held on March 3, 2020 at the Board’s new headquarters at 2000 Plainfield Pike, Cranston, RI, 02921.”

The Board states that “the City of Cranston inspected the premises and [the Board] relied on the City of Cranston’s determination that the Plainfield Pike site was fully compliant with all applicable building codes as of February 6, 2020,” which Executive Director Rapoza understood to include “those building codes and standards relating to accessibility.” Executive Director Rapoza maintains that he received the Complainant’s February 4, 2020 letter “advising the Board that the Plainfield Pike site was allegedly not ADA-compliant” and “began remediation efforts immediately” with the Landlord. The Board states that the “COVID-19 pandemic has delayed further efforts both by limiting construction access to the Plainfield Pike site and because the Board and Board staff’s attention has been consumed with management of elections during the pandemic.” “However, the Landlord has been diligent in addressing those modifications, and the Board expects them to be fully addressed in the near future.”

We acknowledge Complainant’s rebuttal. When submitting its rebuttal, the Complainant also provided notice that after filing an OMA complaint with this Office, Complainant subsequently also filed a complaint with the Civil Rights Coordinator for the United States Attorney for the District of Rhode Island alleging that the Board’s facility did not comply with federal prohibitions against disability-related discrimination.

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 Board argues that the Complainant lacks standing to bring the instant OMA complaint because “it does not allege, or even attempt to allege, that it is an ‘aggrieved person’ under the terms of the OMA.” *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). We need not examine this argument, however, 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). 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 relating to the March 3, 2020 meeting.

Unless some specific exemption applies, the OMA requires that all meetings of public bodies be held open to the public. *See* R.I. Gen. Laws § 42-46-3. Rhode Island General Laws § 42-46-13, in pertinent part, requires that:

“All public bodies, to comply with the nondiscrimination on the basis of disability requirements of R.I. Const., Art. I, § 2 and applicable federal and state nondiscrimination laws (29 U.S.C. § 794, chapter 87 of this title, and chapter 24 of

title 11), shall develop a transition plan setting forth the steps necessary to ensure that *all open meetings of said public bodies are accessible to persons with disabilities.*" (Emphasis added).

The OMA further requires that:

"[A]ll meetings required to be open to the public pursuant to chapter 46 of this title are held in accessible facilities[.]" R.I. Gen. Laws. § 42-46-13(c).

"The public body may comply with the requirements of this section through such means as reassignment of meetings to accessible facilities, alteration of existing facilities, or construction of new facilities. The public body is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section." R.I. Gen. Laws § 42-46-13(d).

The Complainant alleged that the location of the Board's March 3, 2020 meeting did not comply with a number of "Uniform Federal Accessibility Standards," including non-compliance with accessibility requirements for ramps, handrails, doors, parking, protruding objects, drinking fountains, and bathrooms. For purposes of resolving this Complaint, we need not determine whether each of the various asserted non-compliances implicated the OMA and created a hindrance for persons with disabilities to attend an open meeting. At the very least, one or more of the accessibility barriers identified by Complainant implicates the ability of disabled persons to attend the meeting (or a meeting), even if no evidence has been presented in this case that any person was unable to attend the March 3, 2020 meeting. Significantly, the Board does not dispute that its Plainfield Pike property had accessibility barriers and did not comply with R.I. Gen. Laws § 42-46-13 at the time of its March 3, 2020 meeting. Accordingly, we find the Board violated the OMA.

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 find neither remedy appropriate. Based on our review of the Board's March 3, 2020 meeting minutes, we do not find injunctive relief to be appropriate, nor has the Complainant sought any form of injunctive relief regarding any actions taken by the Board during the March 3, 2020 meeting. The meeting minutes indicate that the Board did not take any action in open session besides voting to approve prior minutes. Additionally, the violation at issue here would not warrant declaring any possible action taken in executive session to be null and void since members of the public ordinarily do not attend executive sessions. *See McFadden v. Exeter-West Greenwich School Committee*, OM 19-13 ("the option to extend an invitation to an individual to attend an

executive session is held by the public body, and not the individual seeking to attend the executive session.”); *see also Vargas v. Providence School Board*, OM 94-26 (OMA not violated where third party not allowed to attend executive session). Moreover, there was no allegation that any member of the public sought to access any portion of the Board's March 3, 2020 meeting and could not do so because of accessibility barriers. Although we do not find injunctive relief appropriate in these circumstances, we emphasize that it is imperative that public meetings are accessible to all members of the public. Providing access to open meetings is not only required by the OMA, it is also essential to ensuring that government business is conducted in an open and transparent manner. Going forward, the Board must ensure that it complies with the OMA's accessibility requirements and that there are not accessibility barriers that hinder access to its open meetings.

We note that the Board presented undisputed evidence that it continues to take remedial measures to bring the Plainfield Pike location into compliance with the state and federal accessibility laws. Complainant filed a complaint against the Board under Title II of the Americans with Disabilities Act that remains pending with the United States Attorney's Office for the District of Rhode Island and that addresses many of the same inaccessibility issues raised here. It is our understanding that the United States Attorney's Office is currently working with the Board to attempt to reach a resolution regarding remedial measures. To the extent additional remedial action may be necessary to bring the Plainfield Pike location into conformance with applicable disability laws, that issue falls more squarely with the purview of Title II of the Americans with Disabilities Act and not the OMA. Thus, complete remedial action is outside this Office's purview. Nonetheless, going forward the Board must ensure its meetings are held at a location that satisfies the OMA's accessibility requirements.

Further, based upon the foregoing, we decline to find a willful or knowing violation. Although it is undisputed that the Board conducted its March 3, 2020 meeting despite receiving notice on February 4, 2020 that its Plainfield Pike facility may not be in compliance with OMA's accessibility requirements, we think it best for any potential relief to be determined in the context of the pending federal complaint. We acknowledge the Board's representation that it did not learn about the accessibility issues with its new facility until a relatively short time before the meeting and that it took at least some remedial measures prior to the meeting date. We also note that in this particular case, there is no suggestion that any person was unable to attend the meeting as a result of the Board's violation. Nonetheless, this finding serves as notice to the Board 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 the Complainant 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.

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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