



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

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Peter F. Neronha
Attorney General

VIA EMAIL ONLY

October 30, 2020
OM 20-50

Mr. Jason Sirois

Timothy F. Kane
Town Solicitor, Town of Glocester

RE: Sirois v. Glocester Town Council

Dear Mr. Sirois and Attorney Kane:

The investigation into the Open Meetings Act (“OMA”) complaint filed by Mr. Jason Sirois (“Complainant”) against the Glocester Town Council (“Council”) is complete. For the reasons set forth herein, we find that the Council did not violate the OMA.

Background

The Complainant alleges that sometime between May 1, 2020 and May 5, 2020 the Council violated the OMA by discussing Complainant’s employment outside of a properly noticed public meeting. During its May 7, 2020 meeting, the Council publicly voted to accept the Public Works Director’s recommendation to not offer a permanent position to Complainant, who was a probationary employee.

The Council submitted a substantive response through counsel, Timothy F. Kane, Esquire, including affidavits from all five members of the Council. Attorney Kane states that, “[o]n or about May 1, 2020 [he] received a telephone call from the Glocester DPW director informing [him] that Mr. Sirois’ probationary employment period would expire on May 9, 2020 and that the DPW director would not be recommending Mr. Sirois for further employment with the Town of Glocester.” After Attorney Kane’s conversation with the Glocester DPW director, Attorney Kane states that he “called Glocester Town Council President George O. Steere, Jr. and informed him of my conversation with the DPW director and that the matter was in order to be scheduled for the next Town Council meeting namely, May 7, 2020.”

Based upon the affidavits submitted by Council President Steere and Council members Julian Forgue and Patricia Henry, Council President Steere had a conversation with Council member Forgue and also had a conversation with Council member Henry regarding the subject of scheduling the topic of Complainant's job performance on the May 7, 2020 meeting agenda. Council President Steere and Council members Forgue and Henry each attest that they "do not recall discussing Mr. Sirois' job performance" with any other councilmember between May 1 and May 5, 2020, although Council members Forgue and Henry "may" have had a telephone conversation with each other during the relevant time period "with respect to scheduling the subject of Mr. Sirois' job performance for the May 7, 2020 Town Council agenda."

Council member Walter M.O. Steere attests that he had a conversation with Council member William Reichert wherein Council member Reichert informed Council member Walter Steere that the DPW Director had recommended not offering Complainant permanent employment and that the matter would be on the agenda for the upcoming meeting. Council member Walter Steere attests that he did not discuss Complainant's job performance with Council member Reichert and that he did not discuss Complainant with any of the other Council members. Council member Reichert attests that he had a conversation wherein Council member Forgue told him that the DPW Director would not be recommending permanent employment for Complainant and Council member Reichert responded that he was already aware, and the conversation ended. Council member Reichert also confirms Council member Walter Steere's account of their conversation and attests that he had no other discussions with any other Council members about Complainant between May 1 to May 5, 2020.

In sum, the Council members acknowledge having various separate conversations with other Council members about scheduling an agenda item related to the DPW Director's non-recommendation to offer Complainant permanent employment on the May 7, 2020 meeting agenda but deny having any substantive conversations regarding Complainant's employment or job performance between May 1 and May 5, 2020, as Complainant alleged.

We acknowledge Complainant's rebuttal.¹

¹ This Office's authority in this matter is limited to investigating alleged violations of the OMA. See R.I. Gen. Laws § 42-46-8. To the extent Complainant's submissions raise allegations about his employment that do not implicate the OMA, those allegations are outside the scope of this Office's authority under the OMA. Further, to the extent Complainant raises issues outside the scope of this Complaint, our initial acknowledgement letter opening this investigation described the nature of the Complaint and notified the Complainant that the "rebuttal should be limited to the matters addressed in the Council's response and should not raise new issues that were not presented in [the] complaint or addressed in the Council's response." This Office declines to review issues which are raised for the first time in a rebuttal and/or that are outside the scope of the Complaint specified in the acknowledgment letters since the public body has no opportunity to respond to the new allegations and this Office cannot fully investigate them. See *Mudge v. North Kingstown School Committee*, OM 12-35.

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.

For the OMA to apply, a “quorum” of a “public body” must convene for a “meeting” as these terms are defined by the OMA. *See Fischer v. Zoning Board of 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). All three of these elements — a quorum, a meeting, and a public body — must be present in order for the OMA to apply; the OMA is not applicable when one or more of these elements is absent. *See Ahlquist v. Energy Facilities Siting Board*, OM 17-25.

This Office has previously recognized that a “rolling” or “walking” quorum may be created where a majority of the members of a public body attain a quorum by a series of one-on-one conversations or interactions. *See In Re: Pawtucket City Council*, ADV OM 05-01 (warning against the “walking quorum,” where public business is conducted in a series of individual encounters that may not constitute a quorum, but which collectively do so); *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.”); *Katz v. Tiverton Board of Canvassers*, OM 20-28.

Here, there is no question that the Council is a “public body” and that three (3) members constitute a quorum. It is also undisputed that a number of the Council members engaged in discussions with other Council members regarding scheduling an agenda item related to Complainant’s job performance. But, discussions outside the public purview to schedule a meeting are expressly permitted pursuant to the OMA. *See* R.I. Gen. Laws § 42-46-5(b)(1) (“discussions of a public body via electronic communication, including telephonic communication and telephone conferencing, shall be permitted only to schedule a meeting”). Even assuming a collective discussion occurred through a rolling quorum, the affidavits attest that the discussions only pertained to placing an item on the agenda for the May 7, 2020 meeting. The affidavits expressly attest that the Council members do not recall discussing Complainant’s job performance between May 1 and May 5, 2020. *See Marcello v. Scituate School Committee*, OM 15-19 (“[W]e cannot conclude that a substantive discussion *** occurred *** and instead, it appears that this discussion was limited to placing the agenda item on the March 2015 agenda.”); *see also Katz v. Tiverton Board of Canvassers*, OM 20-28 (noting discussion was limited to placing an item on the agenda

and there was no evidence of a substantive discussion regarding the merits of the agenda item); *Mudge v. North Kingstown School Committee*, OM 15-20.

Based on the totality of the evidence presented, we do not find sufficient evidence that a quorum of the Council engaged in a collective discussion regarding the Complainant's job performance or the substance of the May 7, 2020 agenda item. See *Marcello*, OM 15-19 ("If discussions may occur via electronic communications to 'schedule a meeting,' we see no reason why the OMA would prohibit the same communications in-person, when such discussions are solely limited to scheduling a meeting and the agenda items."); R.I. Gen. Laws § 42-46-5(b)(1). Although the Complainant believes that the Council must have discussed his job performance prior to the May 7, 2020 meeting for various reasons, including because no discussion of the agenda item related to his employment occurred during the May 7, 2020 meeting prior to a vote, the Complainant has not proffered evidence to dispute the affidavits of the Council members. We also note that the actual vote to not offer Complainant permanent employment took place during a public meeting. We find no violation.

Nonetheless we urge the Council to be mindful about having any discussions regarding matters related to the Council outside of a properly noticed meeting. Having such conversations not only risks violating the OMA but also can create the impression that public business is being conducted outside the public purview and erode trust in government.

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. We consider this matter closed as of the date of this decision.

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

Sincerely,

By: /s/ Kayla E. O'Rourke

Kayla E. O'Rourke

Special Assistant Attorney General