



**STATE OF RHODE ISLAND**  
**OFFICE OF THE ATTORNEY GENERAL**

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*Peter F. Neronha*  
*Attorney General*

**VIA EMAIL ONLY**

March 8, 2021  
OM 21-06

Ms. Kelly Stewart

Amy H. Goins, Esquire  
Assistant Town Solicitor, Town of West Greenwich

**RE: Stewart v. West Greenwich Planning Board**

Dear Ms. Stewart and Attorney Goins:

We have completed an investigation into the Open Meetings Act (“OMA”) complaint filed by Ms. Kelly Stewart (“Complainant”) against the West Greenwich Planning Board (“Board”). For the reasons set forth herein, we find that the Board violated the OMA but there is no need for injunctive relief and insufficient evidence of a willful or knowing violation.

**Background**

The Complainant contends that the Board violated the OMA when it failed to post the minutes of its August 24, 2020 meeting on the Secretary of State’s website within 35 days of the meeting. Specifically, the Complainant alleges that the minutes posted by the Board in connection with its August 24, 2020 meeting were actually the minutes from its July meeting, rather than the minutes for its August 24, 2020 meeting.

The Board submitted a substantive response through counsel, Amy H. Goins, Esquire, which included an affidavit from Deputy Town Clerk Kaitlin Boyd. The Board acknowledges that “the Board met on August 24, 2020, and that the minutes for that meeting were not timely filed as required by the OMA.” The Board, however, maintains that “the untimely posting was inadvertent and unintentional.” Deputy Clerk Boyd attests that “[o]n September 2, 2020, I intended to post the draft meeting minutes for August to the Secretary of State’s website, within the deadline required

by the Open Meetings Act (OMA). Instead, I selected the wrong PDF file and accidentally posted the minutes from the July meeting.”<sup>1</sup>

The Board also states that:

“On the evening of the day on which the Town received notice of this complaint, undersigned counsel contacted the Deputy Town Clerk and asked for a copy of the minutes so that they could be provided to Ms. Stewart as soon as possible. Undersigned counsel attempted to provide the minutes to Ms. Stewart via email on November 5, 2020; however, an email bounceback was received indicating that Ms. Stewart’s electronic mailbox was full. Additionally, the minutes were posted on the Secretary of State’s website that day as well.”

Based on this Office’s independent search, the Board’s August 24, 2020 minutes were posted on the Secretary of State’s website on November 5, 2020.

The Complainant did not submit a 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 section 7(d) quoted above, the Board was required to post its August 24, 2020 minutes no later than September 28, 2020. The Board concedes that it did not timely file meeting minutes for its August 24, 2020 meeting. As such, 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

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<sup>1</sup> Although this issue is not directly relevant to our analysis since the Board concedes that it failed to timely post its minutes, we note that the Clerk indicates that she intended to post “draft” minutes but R.I. Gen. Laws § 42-46-7(d) requires the posting of “official and/or approved minutes” within thirty-five days of the meeting.

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 here because the meeting minutes have already been posted on the Secretary of State's website. Our review of the Secretary of State's website also indicates that the August 24, 2020 meeting minutes were approved at the Board's September 21, 2020 meeting.

We are concerned that the Board has had a prior similar violation within this last year, *see Stewart, et al. v. West Greenwich Planning Board*, OM 20-13, but we do not find evidence of a willful or knowing violation in the circumstances of this case. It is clear from the record that the Board attempted to timely file minutes of its August 24, 2020 meeting, but inadvertently selected the wrong PDF file. The evidence indicates that upon learning of this error, the Board immediately moved to file the correct August minutes. We also acknowledge the Board's candor and representation that the Board's legal counsel "met with several Town employees, including the Town Clerk and Deputy Town Clerk, to provide a training on issues related to the OMA" following this Office's finding in *Stewart v. West Greenwich Planning Board*, OM 20-13. Additionally, the Board represents that Complainant did not bring the Board's error regarding mistakenly filing the July minutes to its attention prior to filing this Complaint and that if Complainant had done so, the Board would have immediately rectified the problem. We cannot help but wonder if the Board's mistake could have been most expeditiously resolved if the Complainant had raised this issue directly to the Board or Solicitor. This finding serves as notice 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 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 Complaint 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/ Kayla E. O'Rourke  
Kayla E. O'Rourke  
Special Assistant Attorney General