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VIA EMAIL ONLY

March 15, 2021
OM 21-09

Mr. Richard Finnegan

David D'Agostino, Esquire
Legal Counsel, Scituate School Committee

RE: Finnegan v. Scituate School Committee [10.06.20], [10.13.20]

Dear Mr. Finnegan and Attorney D'Agostino:

We have completed an investigation into the Open Meetings Act ("OMA") complaints filed by Mr. Richard Finnegan ("Complainant") against the Scituate School Committee ("Committee") on October 6, 2020 (relating to an August 25, 2020 meeting) and on October 13, 2020 (relating to an October 6, 2020 meeting). For the reasons set forth herein, we find that the Committee violated the OMA.

Background

The Complainant alleges that the Committee violated the OMA at its August 25, 2020 meeting when it failed to provide adequate notice that the Committee would discuss and/or take action upon a vacation "buy back" option for certain school administrators. Similarly, and in a separate complaint, the Complainant alleges that the Committee violated the OMA at its October 6, 2020 meeting when an agenda item, "C. Report of Committee Liaisons," did not adequately provide notice of the business that was to be discussed and/or acted upon pursuant to that agenda item.

Attorney David M. D'Agostino submitted a response on behalf of the Committee as to both complaints. As an initial matter, the Committee argues that the Complainant lacks standing as to both complaints because "he was in attendance at the meeting, participating remotely on the Zoom platform. Because the Complainant was in attendance at the meeting, he cannot be deemed to have been aggrieved by any defect in notice."

As to the substance of the Complaint pertaining to the August 25, 2020 meeting, the Committee argues that agenda item "4. New Business ... Discussion of administrator review matrix for salary increases, benefit incentives, etc." sufficiently described what occurred at the meeting and that discussion of the vacation "buy back" for certain administrators was properly subsumed within

that agenda item. More specifically, the Committee argues that the vacation “buy back” was a “one time, one-year, non-pyramiding benefit to those administrators to which the benefit applied” and that because the “buy back” was “tied to the particular administrator’s [individual] ‘performance,’” the phrase “benefit incentives” properly reflected the scope of the Committee’s subsequent conversation.

As to the October 6, 2020 meeting, the Committee avers that agenda item “C. Report of Committee Liaisons” was supposed to include a hyperlink which was intended to “direct the viewer to a sheet that accompanies the agenda” and provide more substantive information as to “Committee Liaisons.” Due to a “technical issue,” this hyperlink was not included in the October 6, 2020 agenda.

We acknowledge the Complainant’s rebuttal as to the August 25, 2020 meeting complaint.

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.¹

The OMA requires that all public bodies provide supplemental public notice of all meetings at least forty-eight (48) hours in advance of the meeting. *See* R.I. Gen. Laws § 42-46-6(b). “This notice shall include the date the notice was posted, the date, time and place of the meeting, and *a statement specifying the nature of the business to be discussed.*” *Id.* (Emphasis added).

In *Anolik v. Zoning Board of Review of the City of Newport*, the Rhode Island Supreme Court held that R.I. Gen. Laws § 42-46-6(b) requires the “public body to provide fair notice to the public under the circumstance, or such notice based on the totality of the circumstances as would fairly inform the public of the nature of the business to be discussed or acted upon.” 64 A.3d 1171, 1173 (R.I. 2013); *see also Tanner v. Town of East Greenwich*, 880 A.2d 784, 797 (R.I. 2005) (appropriate inquiry is “whether the [public] notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted”).

With respect to the August 25, 2020 meeting, the pertinent agenda item stated:

Discussion of administrator review matrix for salary increases, benefit incentives, etc., tied to individual and school performance. This could be incorporated into a new Personnel Policy to be adopted by the School Committee in compliance with the Educational Accountability Act.
(Discussion/Action/Vote.)

¹ The record evidences that Complainant was in attendance at the meetings that are the subjects of the Complaints. We need not address the issue of standing to bring either Complaint, as this Office may proceed based on the public interest and we find the public interest is implicated by the allegations in this case. *See* R.I. Gen. Laws § 42-46-8(e).

The Complainant alleges that “[t]he term ‘benefits’ does not give the public notice of topics to be discussed.” The Complainant also argues that the subject matter of the agenda item was a “review matrix,” not benefits:

the subject matter of the agenda item is matrix. The discussion was supposed to be about the matrix, the administrator review matrix. Administrator review describes the type of the matrix that was being reviewed. Salary increases and benefit incentives are objects of the preposition for, therefore, the School Committee informed the public that they were going to discuss the matrix used for those incentives. Simply stated any motion discussed and voted upon should have been concerned with the matrix and not any benefit, especially a benefit tied to the prior fiscal year.

As Complainant notes, the subject matter of the agenda item was not “benefits,” it was an “administrator review matrix” *for* benefit incentives and salaries. The agenda item further noted that this “review matrix” that was to be discussed “could be incorporated into a new Personnel Policy.” Based on the totality of the circumstances, this agenda item failed to give adequate notice that the Committee would be considering the actual awarding of benefits rather than a “review matrix” for awarding benefits. Accordingly, we find that the Committee violated the OMA by failing to provide sufficient notice of the business to be discussed.

As to the October 6, 2020 meeting complaint, the pertinent agenda item is titled “C. Report of Committee Liaisons.” The Complainant alleges that notice was not proper as to this agenda item because subtopics such as “the Scituate Prevention Partnership (SPP),” the “Policy Committee,” the “Committee on Health and Wellness” and updates to the “FMIS system” were all discussed under this “Committee Liaisons” umbrella. The Complainant argues that the public was not given notice “as to what committees were to be reported upon by their liaisons” and that the relevant agenda item “completely omitted any information regarding the name of the committees and their liaisons.”

In response, the Committee concedes that “the October 6, 2020 notice did not include a hyperlink (which directs the viewer to a sheet that accompanies the agenda) to the Liaisons agenda item, as is the usual practice.” Further, the Committee states that it “can offer no reasonable explanation as to why or how the Liaison hyperlink was not included (or perhaps working) on the October 6, 2020 agenda.” The Committee indicates that it will change its practices with respect to the “Report of Committee Liaisons” agenda item for future meetings and individually list any Committee updates.

Here, the public was not fairly informed that the “Committee Liaisons” topic would include subjects such as “Health and Wellness,” “Policy,” the “FMIS system,” and the “Scituate Prevention Partnership (SPP).” The Committee admits that information pertinent to the relevant agenda was inadvertently omitted and that it will change its processes going forward. We find that the public was not fairly informed of the nature of the business to be discussed at this meeting and we consequently find a violation.

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.*

Injunctive relief is not appropriate here. Regarding the October 6, 2020 meeting, the record reflects that no action or vote occurred under the relevant agenda item. Regarding the August 25, 2020 meeting, action was taken under the relevant agenda item, but the Complainant has not alleged that anyone was prejudiced by the notice provided for the meeting. It is undisputed that the discussion and action occurred in open session and the Complainant attended the meeting. Additionally, even though we have determined that the agenda notice was insufficient, it did inform members of the public that topics related to benefit incentives and salaries (albeit within the review matrix) would be discussed and possibly acted upon, such that anyone interested in those topics would have had notice to attend. We have not been presented with sufficient evidence that injunctive relief is necessary under these circumstances.

We also do not find sufficient evidence of a willful or knowing violation of the OMA. We observe that there are no recent similar violations found against the Committee. With regard to the October 6, 2020 meeting, we also note the Committee's representation that it will take measures in order to avoid future similar violations. 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 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. Please be advised that we are closing this file as of the date of this decision.

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

Sincerely,

PETER F. NERONHA
ATTORNEY GENERAL

By: /s/ Adam D. Roach
Adam D. Roach
Special Assistant Attorney General