



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

September 25, 2014
OM 14-32

Mr. Bill Aiello

Re: Aiello v. Westerly School Redesign Advisory Committee

Dear Mr. Aiello:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Westerly School Redesign Advisory Committee (“Committee”) is complete. By email correspondence dated August 7, 2014, you alleged the Committee violated the OMA when you were denied access to the August 7, 2014 meeting at 23 Highland Drive, Westerly Rhode Island, Babcock Hall room B111. Specifically, you stated: “I attempted entry between approximately 6:05-6:10pm. The entry doors were locked and nobody answered the door buzzer. There also wasn’t any meeting notice or cancellation posted at/near the entry doors. There were, however, some vehicles parked in the front lot near the doors.”

On August 21, 2014, this Department received a response from the Committee. The Committee states, in pertinent part:

“1. The Westerly Redesign Advisory Committee had a scheduled meeting for August 7, 2014;

6. The custodial staff is given a list of meeting dates for the Advisory Committee Meetings and are instructed by Shelia Bowes, Administrative Assistant in the Buildings Department, to insure the doors are unlocked;

10. The Westerly School Advisory Committee finds it unfortunate that Mr. Aiello, an active participant in the school meetings, was unable to attend said meeting. The Committee will confer with the Administration regarding the alleged locked doors to insure it is not an issue in the future.”

We acknowledge your September 3, 2014 rebuttal.

At the outset, we note that in examining whether a violation of the OMA has occurred, we are mindful that our mandate is not to substitute this Department's independent judgment regarding whether an infraction has occurred, but instead, to interpret and enforce the OMA as the General Assembly has written this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Committee violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

As a starting point, the OMA requires "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5." R.I. Gen. Laws § 42-46-3. Turning to the substance of your complaint, you alleged that the Committee violated the OMA when it denied you access to the building where the August 7, 2014 meeting was held. The evidence presented indicates the meeting was scheduled to begin at 6:00 p.m. on August 7, 2014. It appears you arrived at the meeting location between 6:05-6:10 p.m., but that "[t]he entry doors were locked and nobody answered the door buzzer."

Rhode Island General Laws § 42-46-14 states, "[i]n all actions brought under this chapter, the burden shall be on the public body to demonstrate that the meeting in dispute was properly closed pursuant to, or otherwise exempt from the terms of this chapter." Here, although the evidence shows that the members of the Committee and one member of the public were in attendance, the Committee has produced no evidence that the entry doors to the building were indeed unlocked or that you were able to access the meeting. Indeed, the evidence presented suggests otherwise. Accordingly, we find the Committee violated the OMA when it denied you access to the August 7, 2014 meeting.

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies in suits filed under the OMA: (1) "[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];" or (2) "[t]he court may impose a civil fine not exceeding five thousand (\$5,000) dollars against a public body or any of its members found to have committed a willful or knowing violation of [the OMA]." R.I. Gen. Laws § 42-46-8(d).

Here, we conclude that neither remedy is appropriate. Although we conclude that the Committee violated the OMA, we have been provided with no facts that suggest that the Committee willfully or knowingly violated the OMA. Moreover, we find it noteworthy that the Committee made assurances that it would "confer with the Administration regarding the alleged locked doors to insure it is not an issue in the future." The Committee is instructed to ensure public access to its open meetings.

Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so

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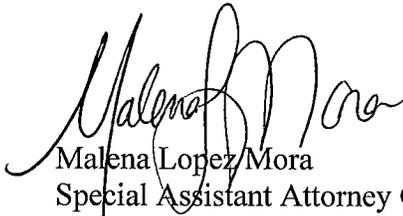
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within “ninety (90) days of the attorney general’s closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.” R.I. Gen. Laws § 42-46-8. Nonetheless, this finding serves as notice to the Committee that the conduct discussed herein is unlawful and may serve as evidence of a willful or knowing violation in any similar situation. Please be advised that we are closing our file as of the date of this letter.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "Malena Lopez Mora".

Malena Lopez Mora
Special Assistant Attorney General
Extension 2307

Cc: William Nardone, Esquire