



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

January 27, 2015

OM 15-01

Ms. Kathy Alix

Re: Alix v. Harrisville Fire District

Dear Ms. Alix:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Harrisville Fire District (“Fire District”) is complete. By email correspondence dated April 1, 2014, you allege the Fire District violated the OMA when its Fire Subcommittee held a meeting in March 2014 without notice to the public.

In response to your complaint, we received a substantive response from the Fire District’s legal counsel, Richard A. Sinapi, Esquire. Attorney Sinapi states, in pertinent part:

“Harrisville is governed by an Operating Committee composed of seven members elected to staggered three year terms by the registered voters residing in the District. The Operating Committee has two standing subcommittees: the Fire Subcommittee and the Water Subcommittee. The Chairperson of the Operating Committee is an *ex officio* member of all subcommittees. The Fire Subcommittee is composed of three members – [Mr.] Richard Gingell, Subcommittee Chairperson, [Mr.] Bruce Fournier, and [Ms.] Michelle Bouchard.

At the March 11, 2014 regular monthly meeting of the Harrisville Operating Committee (‘Committee’), the Committee voted 6–0 to refer to the Fire Subcommittee concerns from taxpayer [Ms.] Kathleen Alix of the rescue not getting out * * *. The vote followed a lengthy colloquy between members of the Committee and these concerned taxpayers, which concluded with the representation that the Committee would look into it and get back to her. [Mr.]

Richard Gingell, the Chairperson of the Fire Subcommittee, was not present at the March Committee meeting.

Upon learning of this referral from the Committee, Mr. Gingell, the Fire Subcommittee Chair, arranged with Subcommittee member [Mr.] Bruce Fournier to meet with the Chief of the Harrisville Fire Department, Mark St. Pierre, during regular business hours. Neither subcommittee member [Ms.] Michelle Bouchard nor the ex officio member, Committee Chairperson Ron Slocum, was notified of the interview meeting scheduled with the Chief. Accordingly, Mr. Gingell and Mr. Fournier met with the Chief to obtain information relative to issues of which the taxpayers had complained. As this was not a meeting of the Fire Subcommittee, but merely two members gathering information, the interview of Chief St. Pierre was not subject to the Open Meetings Act ('OMA') and therefore no notice was posted. To the extent it could be said that the interview of Chief St. Pierre constituted a meeting of the Fire Subcommittee, the meeting was not subject to the OMA because there was no quorum and it was merely for informational purposes.[]

* * *

Mr. Gingell drafted a letter dated March 21, 2014 in which he references that a meeting of the Fire Subcommittee was held and that the subcommittee found the explanations of the Chief acceptable.^[1] As District Counsel, I must respectfully disagree with Mr. Gingell's description that any meeting of the Fire Subcommittee was held, particularly since subcommittee members [Ms.] Michelle Bouchard and [Mr.] Ron Slocum were never notified of the scheduling of a meeting of the Fire Subcommittee, while the interview of the Chief did not constitute a meeting as it was merely an informational session. * * * in addition, as District Counsel, it is my opinion that the Fire Subcommittee was not authorized by the Committee to make any determination on the issue, but merely to look into it and report back to the Committee. While the minutes of the March meeting are admittedly ambiguous on this point, it appeared rather apparent to the undersigned, who was present at the meeting, that the Fire Subcommittee was merely directed to gather information and report back to the Committee. * * *

Including ex officio member [Mr.] Ron Slocum, there are four members of the Fire Subcommittee. A majority of the Fire Subcommittee is therefore three members. Accordingly, Mr. Gingell and Mr. Fourier convening together, even if purportedly in their official capacities as members of the Fire Subcommittee, is insufficient to establish a quorum and therefore does not constitute a 'meeting' subject to the OMA."

¹ It is our understanding that this letter has been rescinded.

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 concerning 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 Fire District violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA was enacted by the General Assembly because “[i]t is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.” R.I. Gen. Laws § 42-46-1. In order 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). A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(d). 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(a). See Zarella et al. v. East Greenwich Town Planning Board, OM 03-02. All three of these elements (a quorum, meeting, and 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. Id.

Although the evidence and arguments submitted by the Fire District is sometimes conflicting, our inquiry focuses on whether a “quorum” of the Fire Subcommittee gathered for a March meeting. Because the evidence is undisputed that two (2) members of the Subcommittee gathered, and because no evidence has been submitted that this meeting was posted, we must determine whether the Subcommittee is composed of three (3) members, or whether the Subcommittee is composed of four (4) members, which would include the ex officio member. As noted above, the OMA provides that a “quorum” means “unless otherwise defined by applicable law, [] a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(4). Respectfully, neither party has provided any insight or legal authority concerning whether an “ex officio” member is considered part of “the membership of a public body.” Id.

In the instant case, the Fire District states that the ex officio member has voting rights, albeit to break a tie, and we see no reason, nor have we been presented with any argument, why an ex officio member of a public body would not be counted towards a quorum. Here, it appears that the Fire District is governed by an Operating Committee composed of seven members elected to staggering three year terms by the registered voters residing in the District. The Operating Committee has two standing subcommittees: the Fire Subcommittee and the Water Subcommittee. The Chairperson of the Operating Committee is an ex officio member of these two subcommittees. The Fire Subcommittee is composed of Mr. Richard Gingell, Subcommittee Chairperson, Mr. Bruce Fournier, Ms. Michelle Bouchard and ex officio member, Committee Chairperson, Mr. Ron Slocum. It is undisputed that two (2) Subcommittee members attended the March meeting, accordingly, if the Subcommittee consists of three (3) members, excluding the ex officio member, the Subcommittee would have violated the OMA; conversely, if the

Subcommittee consists of four (4) members, including the ex officio member, the Subcommittee would not have violated the OMA.

In the Office of the Attorney General, State of Alabama, Opinion No. 2009-080, the Alabama Attorney General held that an “ex officio officer is a person who has power by virtue of the authority implied by an office,” *quoting* Black’s Law Dictionary 616 (8th ed. 2004). The Alabama Attorney General further concluded that “[c]ourts have held that an ex officio member is one who is a member by virtue of his or her title to a certain office without further warrant or appointment than that resulting from the holding of a particular office.” *Id.* at 2. The Alabama Attorney General cited Seiler v. O’Maley, 227 S.W. 141, 142 (Ky.App. 1921):

“[W]e can see no logical reason nor has one been presented to us, why an ex officio member of a representative body should not have, * * * all of the authority of the other members. * * * [W]hen one is made by the proper authority an ex officio member of a created body or board, it is to be presumed that those responsible for its creation had some purpose in view in designating the ex officio member. Manifestly that purpose was to constitute that individual member of the board or body because of his holding some office of trust, and that whoever held that office should perform, in addition to his official duties, also those incumbent upon the board of which he was made an ex officio member.”

The Alabama Attorney General concluded that an ex officio officer is a person who has power by virtue of the authority implied by an office. An ex officio officer has the same rights and privileges as other members, including the right to vote. *Id.* at 2. See also, Louisville & Jefferson County Planning & Zoning Commission v. Ogden, 210 S.W.2d 771, 774 (Ky. App. 1948) (“ex-officio members of a public body are members for all purposes and must be counted in determining the presence of a quorum”). A Rhode Island Supreme Court case seems to be in accord. See Stefanik v. Nursing Education Committee, 37 A.2d 661, 664 (R.I. 1944)(“The director is made a member ex officio of the committee by the express provision of the statute.”)

Based upon the foregoing, we answer the question whether Committee Chairperson Mr. Ron Slocum, as ex officio member of the Fire Subcommittee, is member to be counted towards a quorum in the affirmative. The facts presented establish that two members of the Fire Subcommittee met with the Fire Chief to discuss concerns, some of which were brought up by you at the March 11, 2014 regular monthly meeting of the Harrisville Fire District Operating Committee. As mentioned *supra*, a quorum is the simple majority of the membership of the public body. Since two (2) of the four (4) Subcommittee members were present for this unnoticed March 2014 meeting, a “quorum” was not present and the OMA was not implicated. As such, we find no violation.

Although this Department has found no violations, nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting 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,

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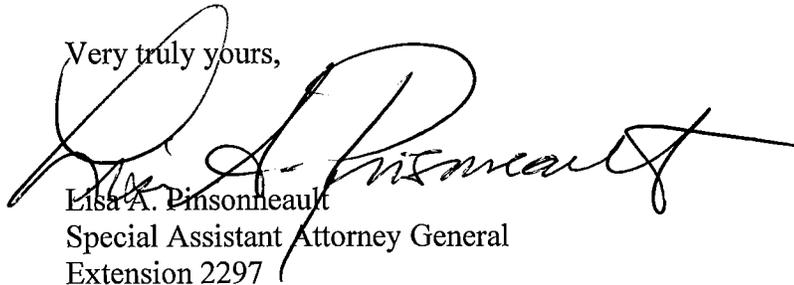
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whichever occurs later. See id. Please be advised that we are closing this file as of the date of this letter.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa A. Pinsonneault". The signature is fluid and cursive, with a large initial "L" and "P".

Lisa A. Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: Richard A. Sinapi Esq.