



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

December 26, 2013  
OM 13-33

Mr. James A. Angelo

**Re: Angelo v. Dunn's Corners Fire District**

Dear Mr. Angelo:

The investigation into your Open Meetings Act ("OMA") complaint filed against the Dunn's Corners Fire District ("Fire District") is complete. By correspondence dated July 31, 2013, you allege the Fire District's Truck Committee met outside the public purview to discuss public business over which the Truck Committee had supervision, control, jurisdiction or advisory power prior to a May 13, 2013 meeting. At this May 13, 2013 meeting, you contend that the Truck Committee made a presentation recommending the replacement of Engine 4. You allege the Truck Committee provided no notice to the public of any of its deliberations or meetings prior to its May 13, 2013 presentation, and no minutes were kept of any of these meetings.

In response to your complaint, we received a response from the Fire District's legal counsel, Vincent J. Naccarato, Esquire, who provided sworn affidavits from the Fire Chief of the Dunn's Corners Fire District and Dunn's Corners Fire Department, Mr. Michael J. Frink and the Moderator of the Dunn's Corners Fire District, Mr. Matthew H. Thomsen. Chief Frink states, in pertinent part:

"I am the fire chief of the Dunns Corners Fire District which is a Rhode Island Legislatively Chartered Fire District with taxing authority serving portions of the Towns of Westerly and Charlestown, Rhode Island.

I am also the fire chief of the Dunns Corners Fire Department which is an unincorporated association comprised of volunteer fire fighters. The fire department has no taxing authority and does not post public notice of its meetings.

On May 13, 2013 in my capacity as fire chief of the Dunns Corners Fire District I attended a publicly notice meeting of the Operating Committee of the Dunns Corners Fire District. In my report to the Operating [C]ommittee I suggested that

Engine 4 be retired and that I would put together a truck committee to develop specifications for its replacement \* \* \*

The truck committee I was referring to was to be a committee of the Dunns Corners Fire Department and would consist of the line officers of the fire department (Two captains and four lieutenants, all volunteer fire fighters of the Dunns Corners Fire Department).

The truck committee was appointed by me by informing the above described line officers of the purpose and intent of the committee. I did not serve on this committee myself.

On June 10, 2013 members of the truck committee attended a publicly noticed meeting of the Operating Committee and made their presentation regarding the replacement of Engine 4. \* \* \*

The matter was included on the Agenda [ ] and in the Chief's report at the annual meeting of the electors of the Fire district on July 17, 2013.

The [ ] resolution was adopted by the electors of the fire district at said annual meeting authorizing the purchase and financing of the replacement for Engine 4."

Mr. Thomsen states, in pertinent part:

"I am the Moderator of the Dunns Corners Fire District, a Rhode Island quasi-municipality, and as Moderator I am also the chair of the Operating Committee, which pursuant to the Charter of the said Fire District manages the District; and

That I have been Moderator for over two years; and

That during this period I did not appoint any committees, ad hoc or otherwise, to study the need to replace any fire trucks used by our fire department and neither did the Operating Committee; and

The minutes to the meetings of the Operating Committee support my statements."

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 the OMA defines those terms. Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999). The OMA broadly defines a “public body” to be “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government or any library that funded at least twenty-five percent (25%) of its operational budget in the prior budget year with public funds, and shall include all authorities defined in § 42-35-1(b).” R.I. Gen. Laws § 42-46-2(c). A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(d). Lastly, 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).

With respect to this so-called “Truck Committee,” you allege that “[p]rior to their presentation on May 13, the Truck Committee labored in obscurity for some time.” A review of the May 13, 2013 Dunn’s Corners Fire District Operating Committee meeting minutes reveals, under the agenda item, “Chief’s Report”:

“Engine 4 is twenty-five years old and will need to be retired. The Chief plans to put together a truck committee to develop specifications for a replacement vehicle estimated to cost approximately \$450,000.00.” (Emphasis added).

In his sworn affidavit, Chief Frink states, in pertinent part:

“On May 13, 2013 in my capacity as fire chief of the Dunns Corners Fire District I attended a publicly notice meeting of the Operating Committee of the Dunns Corners Fire District. In my report to the Operating [C]ommittee I suggested that Engine 4 be retired and that I would put together a truck committee to develop specifications for its replacement.” (Emphasis added).

Respectfully, you allege that this Truck Committee has “labored in obscurity for some time” outside the purview of the public prior to May 13, 2013, yet it appears, based upon the evidence presented, that the Truck Committee’s genesis began at the very meeting held on May 13, 2013. Namely, Chief Frink under the agenda item of “Chief’s Report,” stated that Engine 4 was twenty-five years old and would have to be retired in the near future. As a result, a plan had to developed for the truck’s replacement. In your complaint, you allege that at the May 13, 2013 meeting, the Truck Committee provided a 23 page hand-out and made a presentation lasting approximately 20 minutes. Respectfully, the minutes from the May 13, 2013 meeting contradict this assertion and it appears (based upon the open session minutes) that the Truck Committee made its presentation at a June 10, 2013 meeting. As noted supra, during the May 13, 2013 meeting there was the announcement that a Truck Committee would be “put together.” As such, we find no evidence to support your allegation that the Truck Committee met outside the public

purview prior to May 13, 2013, and we conclude that the Fire District did not violate the OMA with respect to your allegation.<sup>1</sup>

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 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 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,



Lisa A. Pinsonneault  
Special Assistant Attorney General

LP/pl

Cc: Vincent J. Naccarato, Esquire

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<sup>1</sup> We pause to address an item in Chief Frink's affidavit, namely that the "Dunns Corners Fire Department \* \* \* has no taxing authority and does not post public notice of its meetings." Section 42-46-7 of the OMA, entitled "Minutes" was amended in July 2013. Although this amendment post-dates the Fire District's May 13, 2013 meeting, the amendment language is significant. The new language states:

"(2) In addition to the provisions of subdivision (b)(1), all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meetings, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website." (Emphasis added).

While not before us, we have concerns regarding Chief Frink's statement that the Fire Department does not post public notice of its meetings.