



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

October 17, 2014
OM 14-33

Mr. Mike Buckley

Re: Buckley v. Rhode Island Turnpike and Bridge Authority

Dear Mr. Buckley:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Rhode Island Turnpike and Bridge Authority (“RITBA”) is complete. By email correspondence dated August 14, 2014, you allege the RITBA violated the OMA when it failed to timely post its minutes for the July 9, 2014 meeting on the Secretary of State’s website in violation of R.I. Gen. Laws § 42-46-7(d).

In response to your complaint, we received a response from the RITBA’s legal counsel, William E. O’Gara, Esquire. Attorney O’Gara states, in pertinent part:

“[t]he procedure followed by the board of the Rhode Island Turnpike and Bridge Authority has been to approve and adopt the minutes of the previous meeting. Once the minutes are approved, the minutes are posted.

In August there was not a monthly board meeting and as such the July minutes were not approved. Upon receipt of the complaint, minutes for the July meeting were posted. * * * The minutes have not been approved by the board. I anticipate that will occur at the next meeting on the 10th of September.”

We acknowledge your reply dated September 6, 2014.

In examining whether an OMA violation has occurred, we are mindful that our mandate is not to determine whether this Department believes that 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 RITBA violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA requires that:

“[a]ll public bodies within the executive branch of state government and all state public and quasi-public boards, agencies and corporations 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 (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.” R.I. Gen. Laws § 42-46-7(d). (Emphasis added).

The evidence reveals that the RITBA failed to file its official and/or approved minutes for the July 9, 2014 meeting on the Secretary of State’s website within thirty-five (35) days of the meeting in violation of R.I. Gen. Laws § 42-46-7(d). This evidence is uncontradicted. As such, the RITBA violated the OMA.

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 available 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) “the court may impose a civil fine not exceeding five thousand dollars (\$5,000) 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.

While the RITBA’s open session minutes for July 9, 2014 are presently posted on the Secretary of State’s website – and thus injunctive relief is not appropriate – in this instance, we do have concerns whether the RITBA willfully or knowingly, violated the OMA. Respectfully, in its response RIBTA provides very little detail to explain its violation. See DiPrete v. Morsilli, 635 A.2d 1155 (R.I. 1994); Carmody v. Rhode Island Conflict of Interest Comm’n, 509 A.2d 453 (R.I. 1986) (willful and knowing).

We shall allow the RITBA ten (10) business days within receipt of this finding to respond to our concern that the instant violation is willful or knowing in accordance with our precedent. The RITBA’s response should not be conclusory. Should you wish, you may also provide this Department a substantive response on this same issue within ten (10) business days of receipt of this finding. Thereafter, a supplemental finding will be issued concerning whether the instant violation is willful or knowing.

Buckley v. Rhode Island Turnpike and Bridge Authority

OM 14-33

Page 3

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 Pinsonneault". The signature is written in a cursive, flowing style with a large initial "L" and "P".

Lisa Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: William E. O'Gara, Esquire