



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

June 28, 2013  
OM 13-19

Ms. Deborah Carney

**Re: Carney v. Charlestown Town Council**

Dear Ms. Carney:

The investigation into your Open Meeting Act (“OMA”) complaint filed against the Charlestown Town Council (“Town Council”) is complete. By correspondence dated March 12, 2013, you allege the Town Council violated the OMA when it voted by secret ballot during an open session meeting on March 11, 2013 and when it failed to disclose how each member voted. The facts in this case are undisputed. During the March 11, 2013 meeting, the Town Council interviewed three candidates and voted by secret ballot to appoint one candidate to fill a vacancy on the Charho Regional School District Committee. By letter dated April 14, 2013, you added that the alleged violation was willful or knowing because three of the four current Town Council members were also members of a prior Town Council who were advised by a member of the public (and former Town Council member) that voting by secret ballot could be considered an OMA violation.

In response to your complaint, Peter D. Ruggiero, Esquire, Town Solicitor, submitted an affidavit that explains:

“[a]t the conclusion of the deliberations, one Town Council member suggested a paper ballot be taken and that the candidate with the most votes would obtain the appointment. Each Town Council member drafted their paper ballot in open session, handed their ballot to the Deputy Town Clerk who opened the ballots in open session to determine whether any of the three candidates had garnered a majority vote.”

See Ruggiero Response, April 10, 2013, at p. 2; citing Minutes of March 11, 2013 Charlestown Town Council Regular Meeting at p. 2. Upon opening and reviewing the ballots, the Clerk

announced that Ms. Donna Chambers was voted to fill the vacancy on the Chariho Regional School District Committee.

Mr. Ruggiero further states, in pertinent part:

“I discussed this issue with the Town Council President and recommended that the vote of each Town Council member be disclosed at the very next Council meeting to address any defect which may have occurred in the original disclosure of the vote result. This action was performed at the Town Council meeting held on April 8, 2013.”

See Ruggiero Response, April 10, 2013, at p. 2.

Indeed, at the April 8, 2013 meeting, the Town Council disclosed each Town Council members' prior secret ballot vote. See Minutes of April 8, 2013 Charlestown Town Council Meeting, at p. 9.

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

The Open Meetings Act explains that “[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.

This Department addressed the issue of secret ballot votes in In Re: Health Services Council, Adv. OM 99-12. In this advisory opinion, the Department of Health sought our input concerning whether the Health Services Council's By-Laws violated the OMA when the By-Laws mandated that elections for board officers shall be conducted by secret written ballot. After observing that the OMA does not expressly address secret balloting in open session, we reviewed the OMA as a whole in order to “glean the intent and purpose of the Legislature.” Id. See also RIH Medical Foundation, Inc. v. Nolan, 723 A.2d 1123, 1126 (R.I. 1999). In doing so, we observed that:

“R.I. Gen. Laws § 42-46-7(b) mandates that within two (2) weeks of a vote (in open or closed session), a record of all votes taken, listing how each member voted on each issue, must be made available to the public at the office of the public body. Moreover, the OMA requires that all votes cast in an executive session ‘shall be disclosed once the session is reopened.’ R.I. Gen. Laws § 42-46-4. Despite these provisions mandating disclosure of votes within certain time frames, the OMA does not contemplate a time frame for disclosing votes that are

cast in open session. The absence of such a provision leads us to the inescapable conclusion that the General Assembly intended that all votes that are cast in open session be disclosed to the public as they are cast, thereby precluding a secret ballot vote.

In addition, if this Department were to construe the OMA to permit secret ballot voting during open session meetings, this would create an anomalous result whereby votes cast in executive session would ‘be disclosed once the session is reopened,’ R.I. Gen. Laws § 42-46-4, yet votes cast in open session via a secret ballot, would not be subject to disclosure for possibly two (2) weeks. See R.I. Gen. Laws § 42-46-7(b). This, we believe, would create an absurd result not intended by the General Assembly.”

In Re: Health Services Council, Adv. OM 99-12.

Here, after reviewing the March 11, 2013 Town Council meeting minutes, as well as the submitted evidence, we agree that an OMA violation occurred. It is undisputed that at the March 11, 2013 Town Council meeting, the Town Council conducted a secret ballot vote. Accordingly, for the reasons we discussed in In Re: Health Services Council, voting by secret ballot violates the OMA, and we therefore find that the Town Council violated the OMA.

Upon a finding of an OMA violation, the Attorney General “may file a complaint on behalf of the complainant in the superior court against the public body.” R.I. Gen. Laws § 42-46-8(a). “The court may issue injunctive relief” and/or “may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members” for a willful or knowing violation. R.I. Gen. Laws § 42-46-8(d).

In this case, we find neither remedy appropriate. Regarding injunctive relief, the Town Council disclosed the vote of each individual Town Council member during its April 8, 2013 meeting. As such, we conclude that injunctive relief is inappropriate. See Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784, 802 (R.I. 2005) (“By rescheduling, re-noticing, and re-voting on the challenged appointments, the town council, albeit belatedly, was acting in conformity with both the letter and the spirit of the avowed purpose of the OMA—to ensure that ‘public business be performed in an open and public manner.’”)

Additionally, we do not find that the instant violation was willful or knowing. In this respect, Mr. Ruggiero explained that:

“[t]he entire proceedings; beginning with the announcement of the availability of the appointment, the interview of the three candidates, the Town Council’s deliberation of the three candidates qualifications, the method of voting, the canvassing of the vote and the announcement of the vote result were all done in public during open sessions of Town Council meetings... Even if the [Department of Attorney General] finds that a technical violation of the OMA did occur in this matter when the disclosure of the vote result [on March 11, 2013] failed to

indicate each Council member's individual vote, it cannot and should not constitute a knowing or willful violation by the Town Council under the totality of the circumstances of this case. This Town Council was elected in November 2012. To my knowledge and based on my research, no OMA complaint has been filed with your office or the R.I. Superior Court against this Town Council."

Based upon the totality of the evidence, we agree and find that this violation was not willful or knowing. This finding serves as notice to the Town Council, however, that the conduct discussed herein is unlawful 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 an OMA complaint in the Superior Court. The complainant may file a suit "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, whichever occurs later. R.I. Gen. Laws § 42-46-8(c). 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,



Michael W. Field  
Assistant Attorney General

Cc: Peter D. Ruggiero, Esquire