



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 13, 2015

OM 15-18

Ms. Catherine Costantino

Mr. John Howell

**RE: Costantino v. Warwick School Department
The Warwick Beacon v. Warwick School Committee**

Dear Ms. Costantino and Mr. Howell:

The investigations into your Open Meetings Act (“OMA”) complaints filed against the Warwick School Department and the Warwick School Committee (“School Committee”)¹ are complete. We have consolidated the findings because your allegations are substantially similar. By two separate correspondences, you each allege the School Committee violated the OMA during its April 14, 2015 executive session meeting when it failed to disclose an executive session vote in open session. Specifically, both complaints contend that the School Committee failed to disclose that it voted in executive session to reduce the list of candidates for Superintendent. Mr. Howell also alleges the School Committee improperly conducted business in executive session and that the School Committee violated the OMA during its June 8, 2015 meeting when it voted on a school consolidation plan, yet the agenda listed that item as being for “discussion purposes” only. On June 9, 2015, the following evening, the School Committee voted to reaffirm the vote taken the previous night.

In response to your complaint, we received a response from the School Committee’s legal counsel, Aubrey L. Lombardo, Esquire, who provided an affidavit from the Chair of the School Committee, Ms. Jennifer Ahearn.² Ms. Ahearn states, in pertinent part:

¹ For purposes of this finding, we will refer to the School Committee and not the School Department since the Chair of the School Committee filed affidavits in both cases.

² The School Committee also provided additional affidavits from Ms. Ahearn for this Department’s in camera review, along with a copy of the April 14, 2015 sealed executive session meeting minutes.

Costantino v. Warwick School Department
The Warwick Beacon v. Warwick School Committee

OM 15-17

Page 2

“At the April 14, 2015 meeting of the Warwick School Committee, the School Committee properly voted to convene in closed session pursuant to R.I. Gen. Laws § 42-46-5(a)(1), (a)(2), (a)(4) and (a)(9).

While in executive session, there was lengthy discussion regarding personnel matters and possible litigation. There was also discussion pertaining to an active investigation that was being undertaken by Attorney Vincent Ragosta.

The results of Attorney Ragosta’s investigation may have had a large impact on personnel negotiations.

The results of Attorney Ragosta’s report may have had implications for litigation.

* * *

One vote was taken during executive session, the disclosure of which would have jeopardized:

- a. The ongoing investigation.
- b. Possible litigation which may have had been related to the investigation.
- c. Negotiation related to personnel.

Therefore, the vote was not disclosed during open session at that time.

During the July 14, 2015 School Committee meeting, the vote that was taken in executive session during the April 14, 2015 School Committee meeting * * * was disclosed during open session, as the disclosure of said vote would no longer jeopardize the investigation, possible litigation or negotiations.

* * *

The June 8, 2015 School Committee meeting Agenda lists as a ‘Discussion Item,’ ‘Master Planning Workshop-SMMA’ and as a subtopic, ‘Information and Proposals.’ * * *

According to the meeting minutes, there was extensive discussion on Master planning and proposals/options for the School Department. * * *

According to the meeting minutes, the purpose of the June 8, 2015 meeting was to ‘review all proposals.’ * * *

During the June 8th meeting, the audience was given extensive time to discuss the options that the School Committee was considering in terms of school planning and possible closures. * * *

Costantino v. Warwick School Department

The Warwick Beacon v. Warwick School Committee

OM 15-17

Page 3

The School Committee chairperson noted at the June 8th meeting that ‘there is no decision made at this point; we are listening to all the plans, tomorrow on the agenda it will be listed as action/discussion.’ * * *

The School Committee did vote to consider another proposed plan, plan No. 10, but simply for discussion purposes and not for action purposes, as reflected in the meeting minutes. * * *

At one point in the meeting, Ms. Ahearn asked informally what options the different school committee members were in favor of and they each responded with the plan they favored as of that night, June 8, 2015. * * *

There was no vote taken the night of the June 8th meeting with respect to which plan the School Committee would enact with respect to master planning. * * *

To further emphasize the fact that there was no vote on June 8th, the meeting minutes reflect that a member of the audience commented that there was no vote on the agenda and Ms. Ahearn once again stated that ‘there is no decision made at this point; we are listening to all the plans, tomorrow on the agenda it will be listed as ‘discussion/action.’ * * *

The June 9, 2015 School Committee agenda has listed under New Business: ‘Discussion/Action: Closure of Gorton or Aldrich’ and ‘Consolidation plan’ and ‘Discussion/Action: Consolidation Plan.’ * * *

At the June 9, 2015 meeting, both the closure of Gorton or Aldrich; and the ‘Consolidation Plan’ were formally voted on.”

We note you did not file rebuttals.

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

Initially, we address the allegation that the School Committee convened into executive session for an improper purpose. The agenda for April 14, 2015 states, in pertinent part:

Costantino v. Warwick School Department
The Warwick Beacon v. Warwick School Committee

OM 15-17

Page 4

“Vote to go into closed session for discussion and/or action regarding those items of business exempt from open meetings under General Laws of Rhode Island 42-46-5(a)(1), (a)(2), (a)(4), (a)(9).

Discussion Items

1. Personnel Matters
 - Superintendent Discussion
2. Collective Bargaining
 - WISE Contract
 - Negotiation Counsel
3. Litigation”

Rhode Island General Laws § 42-46-5(a)(1) permits a public body to convene into executive session for “discussion of the job performance, character, or physical or mental health of a person or persons * * *.” Rhode Island General Laws § 42-46-5(a)(2) permits a public body to convene into executive session for “[s]essions pertaining to collective bargaining or litigation * * *.” Rhode Island General Laws § 42-46-5(a)(4) permits a public body to convene into executive session for “[a]ny investigative proceedings regarding allegations of misconduct, either civil or criminal.” Rhode Island General Laws § 42-46-5(a)(9) permits a public body to convene into executive session for “hearings on, or discussions of, a grievance filed pursuant to a collective bargaining agreement.” Although we are limited on the information we can disclose, based upon this Department’s in camera review of the executive session minutes, we are satisfied that the School Committee convened into executive session for reasons that were properly exempt under sections (a)(1), (a)(2) and (a)(4). Respectfully, Mr. Howell’s complaint on this issue raises nothing but the barest of allegation and provides no supporting evidence, details, or arguments to support a violation.

We now turn to the allegation that the vote was not reported once the School Committee re-convened into open session. Once again, both complaints allege that the executive session vote concerned narrowing the list of Superintendent candidates.

Rhode Island General Laws § 42-46-4(b) states that:

“[a]ll votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).” (Emphasis added).

By its plain language, R.I. Gen. Laws § 42-46-4(b) provides that a public body must disclose all votes taken in executive session, but allows a public body not to disclose a vote during the time period in which the disclosure of the vote would “jeopardize any strategy negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).” With respect to your common allegation that the School Committee violated the OMA when it failed to disclose

Costantino v. Warwick School Department
The Warwick Beacon v. Warwick School Committee

OM 15-17

Page 5

its executive session vote to narrow the list of Superintendent candidates, we find no violation. In particular, our in camera review finds that the School Committee did not take an executive session vote to narrow the list of Superintendent candidates during its April 14, 2015 executive session. On this basis alone, we find no violation with respect to your allegation. Moreover, based upon our in camera review of the executive session minutes, and although we consider this determination to be a close call, we agree with the School Committee that disclosing the executive session vote would have jeopardized a strategy, negotiation or investigation undertaken. The School Committee disclosed the vote in public at its July 14, 2015 meeting.

Finally, Mr. Howell alleges the School Committee violated the OMA during its June 8, 2015 meeting when it voted on a school consolidation plan, yet the agenda listed that item as being for “discussion purposes” only. The School Committee’s June 8, 2015 agenda stated, in pertinent part:

“Discussion Items

1. Master Planning Workshop – SMMA Information and Proposals”

A review of the open session meeting minutes for June 8, 2015 reveals that there was a lengthy discussion about the future of certain middle and high schools and the options available regarding school consolidations and school closures. There was a motion to add an additional item, namely “Option #10” for consideration. The motion passed 4 to 1. Subsequently during the same meeting, a motion was made to remove Option #10 “off the table.” This motion passed unanimously.

Rhode Island General Laws § 42-46-6(b) provides that a public body must provide public notice a minimum of forty-eight (48) hours before the date of a meeting and that this notice must include, inter alia, “a statement specifying the nature of the business to be discussed.” Although it is arguable whether or not the School Committee’s discussion of “Option 10” was encompassed within its posted agenda – and therefore the effect of its motion to add for consideration an item that may have been already properly noticed is debatable – there can be no argument that after discussing “Option 10” the School Committee voted unanimously “to take Option #10 off the table.” This vote to no longer consider “Option 10” fell outside the posted notice, which was limited to “discussion.” See Tanner v. Town of East Greenwich, 880 A.2d 784 (R.I. 2005). Accordingly, this vote to no longer consider “Option 10” violated the OMA.

It appears the next meeting of the School Committee occurred the following day, June 9, 2015. The School Committee’s June 9, 2015 agenda stated, in pertinent part:

“Discussion/Action: Closure of Gorton or Aldrich
Discussion/Action: Consolidation plan”

At that meeting, the School Committee discussed and voted to “table discussion/action of closure of Gorton or Aldrich.” The School Committee discussed and voted on a consolidation plan.

Costantino v. Warwick School Department
The Warwick Beacon v. Warwick School Committee

OM 15-17

Page 6

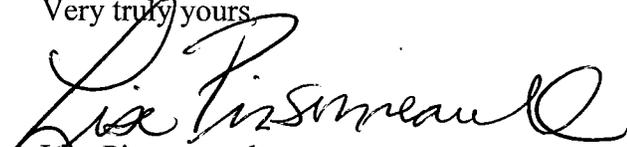
Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) “[t]he court may issue injunctive relief and declare null and void 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.

In this instance, we conclude that the School Committee did not willfully or knowingly violate the OMA. No evidence has been presented or gleaned to support this conclusion. We also conclude that injunctive relief would not be appropriate with respect to the June 8, 2015 meeting since the School Committee already re-voted on this matter at its next meeting. See Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784, 802 (R.I. 2005) (“By scheduling, re-noticing, and re-voting on the challenged appointment, the town council, albeit belatedly, was acting in conformity with both the letter and spirit of the avowed purpose of the OMA – to ensure that ‘public business be performed in an open and public manner.’”). This finding serves as notice to the School Committee 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 do so 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. 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 Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: Andrew Henneous, Esquire