



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

January 16, 2014

OM 14-02

Ms. Leah Daniels

**Re: Daniels v. Warwick Long Term Facilities Planning Committee**

Dear Ms. Daniels:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Warwick Long Term Facilities Planning Committee (“Planning Committee”) is complete. By email correspondence dated November 20, 2013, you allege the Planning Committee violated the OMA during its November 15, 2013 meeting when it held the meeting at a location that could not accommodate a large number of attendees.

In response to your complaint, we received a substantive response from the Planning Committee’s legal counsel, Rosemary Healey, Esquire. Attorney Healey states, in pertinent part:

“The Warwick Long Term Facilities Planning Committee (“LTFPC”) is a subcommittee of the Warwick School Committee.

\* \* \*

The LTFPC began meeting for purposes of developing a five-year plan on June 25, 2013. It met a total of eleven times through November 15, 2013. Eight of those eleven meetings took place in the School Committee Room of the Warwick Public Schools administration building at 34 Warwick Lake Avenue, Warwick, RI 02889. The only meetings held off-site occurred when the LTFPC decided to tour the high school facilities. For those three special purpose meetings, the meetings were held at Warwick Veterans High School, Pilgrim High School and Toll Gate High School, respectively.

The School Committee room has a total capacity of fifty-two according to the fire marshal's posting. From June 25, 2013 through and including the LTFPC's meeting of October 23, 2013, the School Committee room was more than adequate to hold all who wished to attend the meeting. Even on October 23, 2013, when the LTFPC voted to recommend the repurposing of Warwick Veterans High School to a junior high school, the capacity of the room permitted all who wished to attend to actually enter the room and sit. Under normal circumstances, however, even if the room were fully occupied, members of the public have ample room to stand out in the hallway and listen. There is no need for microphones because the space is sufficiently small that everyone should be able to listen if the audience remains silent. No public comment was received during any of these meetings and none was scheduled to take place on November 15, 2013.

On November 15, 2013, fifty-two chairs were set up in the room. Sixteen of those chairs were occupied by members of the LTFPC, the secretary recording the minutes and legal counsel. The remaining chairs were occupied by members of the public. A police officer was present and was instructed to permit additional members of the public to enter as seats became available. For the first time since the meetings began in June 2013, an overflow crowd appeared. The total number who genuinely intended to enter the meeting is unclear because a substantial portion of the group appeared to be more interested in picketing along Warwick Avenue. We would estimate that at any given time, there were no more than twenty to thirty people in the corridor outside of the meeting room.

While it was the intent to leave the doors to the School Committee room open so that the public could listen from the large corridor, the crowd began to become unruly even before the meeting started. Accordingly, the doors were closed. The unruliness, including extremely loud shouting and cheering, occurred for much of the duration of the meeting. During the course of the meeting, the superintendent asked me to call 911 due to safety concerns and concerns about the inability to continue with the business of the meeting. When I spoke to the police officer in the hall about the situation, the crowd was so loud that we could hardly hear each other standing 2 feet apart.

Ms. Daniels states that she called the superintendent's office early the week of November 15 and asked that the meeting be scheduled at an alternate location. I have checked with the superintendent's office and there is no record of any such call coming in. As to her reference to Facebook conversations, the administrators responsible for scheduling these meetings do not and did not read Facebook posts pertaining to the LTFPC. We further did not place much credibility in the accuracy of such posts. In fact, we did not become aware that some sort of rally was going to take place during this particular meeting until sometime during the 48 hour window prior to the meeting. Even at that, the information we had about

a rally was merely rumor. Out of an abundance of caution, we did call for an extra duty police officer on November 14 in the event that the rumors proved true.

Further, we thought that there was a real possibility that the rumors were untrue since the purpose of the meeting was virtually exclusively clerical. The LTFPC was meeting to approve a written report which documented recommendations that the LTFPC had already publicly voted on in previous meetings. It had already voted to recommend consolidation of the high schools, the repurposing of Veterans and the closure of two of our three junior high schools. The room was more than adequate to accommodate the attendance at those hearings. It was not anticipated that the activity at the November meeting was going to be controversial since those substantive votes had already taken place.

Also on or about November 14, 2013, we had discussions internally about moving the location of the meeting. We decided against it, however. The reports we had were mere rumors. It has also been our experience in the past that when we changed meeting locations, we were accused of changing the location just so the public could not find us. In those circumstances we had posted the meeting location change well before the 48 hour window. In this case, we learned of the rally within the 48 hour window and we were concerned that such a late amendment would violate the open meetings law.

Moreover, our meeting was posted to take place between 4 p.m. and 5 p.m. At the same time, there was some uncertainty as to whether the subject of the meeting would even take that long. The superintendent estimated to me that he thought the primary work of the committee might only take one half hour. Accordingly, if we posted a sign in the school committee room or left someone behind to inform the public that the meeting had been moved, given the distances from the school committee room to other possible locations, members of the public would have effectively missed a large majority of the meeting. On balance, we concluded that leaving the meeting at the scheduled location was in the best interest of those on the LTFPC and those members of the public who wished to attend the meeting.

\* \* \*

The OMA 'does not require a public body to provide unlimited seating.' See \* \* \* In re Town of West Warwick, ADV OM 99-02; Tubman & McGuinn v. East Providence School Committee, OM 09-06. As the history of the work of this LTFPC demonstrated, even when it was taking the votes on the consolidations themselves at previous meetings, the room size was more than adequate to accommodate the interested public. There was insufficient time to make a location change and the OMA did not require that location change."

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

As a starting point, the OMA declares that 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. Additionally, the OMA requires that "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5." R.I. Gen. Laws § 42-46-3.

Even with the above provisions in mind, however, this Department has previously observed that the OMA "does not require a public body to provide unlimited seating." See In re Town of West Warwick, ADV OM 99-02. Specifically, in In re Town of West Warwick, this Department issued an advisory opinion to the Town of West Warwick in anticipation of a meeting that was expected to exceed capacity, concluding that the OMA did not require the termination of the meeting if attendance exceeded the legal limit of 700 people. Id.

Although the facts and travel of the instant matter differ from our previous advisory opinion, the central conclusion that the OMA "does not require a public body to provide unlimited seating" applies with equal force in this case. Id. We have been directed to no provision within the OMA, nor have we found one, that requires unlimited seating to public. In the appropriate case we could envision a situation where the OMA is implicated where available seating is so sparse as to effectively eliminate the public's attendance, but, considering the instant facts, we conclude this is not that case.

As further support for this conclusion, we recognize that our nation's courtrooms are open to the public. Despite this principle, courts routinely impose capacity limitations and other restrictions far more restrictive than those imposed by the Planning Committee in this case. Although stated in the context of a criminal defendant's right to a public trial, the following excerpt from United States Supreme Court Justice Harlan provides insight into the principle at issue in this case:

"[o]bviously the public trial guarantee is not violated if an individual member of the public cannot gain admittance to a courtroom because there are no available seats. The guarantee will already have been met, for the 'public' will be present in the form of those persons who did gain admission. Even the actual presence of the public is not guaranteed. A public trial implies only that the court must be open to those who wish to come, sit in the available seats, conduct themselves with decorum, and observe the trial process." Estes v. State of Texas, 381 U.S. 532, 588-89 (1965)(Harlan, J., concurring).

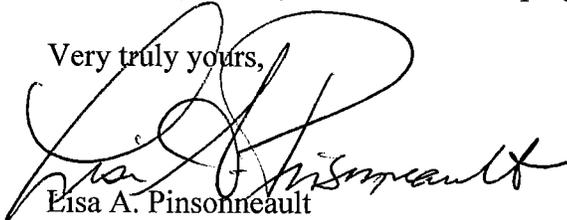
“As a courtroom can only seat a finite number of the public, [subject to the above caveat], the Open Meetings Act similarly does not expressly impose a requirement of unlimited seating.” In re Town of West Warwick, ADV OM 99-02.

As we have explained above, we have found no OMA provision, nor have we been directed to one, that would have required the Planning Committee to move its November 15, 2013 meeting. Instead, as explained above, our review must consider the language of the OMA and Rhode Island case law. On these points, and considering these facts, we simply find nothing in the OMA that required the Planning Committee to move its November 15, 2013 meeting beyond the present location. Nor do we find any evidence that the Planning Committee purposefully held the meeting at a location to minimize public attention and attendance. Lastly, you contend that there was no sound system “so that the concerned parties could hear what was being presented inside the meeting.” Again, we find no violation and observe, based upon the evidence presented, that the doors to the meeting room were closed due to the unruliness of the hallway crowd.

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, 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,



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LP/pl

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