



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

January 23, 2015
OM 14-09B

Mr. David Gorman

Mr. Stephen P. Fay

Re: **Gorman v. Central Coventry Fire District, Board of Directors**
Fay v. Central Coventry Fire District, Board of Directors

Dear Mr. Gorman and Mr. Fay:

This correspondence serves as a supplemental finding to Gorman v. Central Coventry Fire District, Board of Directors and Fay v. Central Coventry Fire District, Board of Directors, OM14-09, released June 27, 2014. In Gorman v. Central Coventry Fire District, Board of Directors and Fay v. Central Coventry Fire District, Board of Directors, we reviewed your November 13, and November 14, 2013 Open Meetings Act (“OMA”) complaints against the Central Coventry Fire District (“Board” or “Fire District”). With the exception of one (1) violation, this Department concluded that five (5) other matters/violations warranted further investigation. Specifically, these matters included the Board’s:

- (1) failure to timely post open session minutes on the Secretary of State’s website;
 - (2) failure to maintain and post on the Secretary of State’s website its August 18, 2013 and October 21, 2013 open session minutes, as well as post on the Secretary of State’s website public notice for the August 18, 2013 meeting;
 - (3) failure to maintain executive session minutes for those meetings post-July 2, 2013 that were not provided to this Department for in camera review;
 - (4) discussing matters during the July 25, 2013, July 31, 2013, August 18, 2013, and August 28, 2013 meetings that were not appropriate for executive session;
- and

(5) convening into executive session, and possibly discussing in executive session, an improper topic during its October 7, 2013 meeting.¹

Accordingly, we directed the Board to provide a supplemental response, addressing why these matters should not be considered willful or knowing as identified by the Supreme Court and this Department. 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).

In Carmody v. Rhode Island Conflict of Interest Commission, 509 A.2d 452 (R.I. 1986), the Rhode Island Supreme Court examined the legal standard for a “knowing and willful” violation. As summarized in a later case, DiPrete v. Morsilli, 635 A.2d 1155, 1163-64 (R.I. 1994), the Court explained:

“that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute * * * Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.’ (internal citations omitted). Id. at 1164. (Emphasis added).

Even though we asked for a supplemental response in order to shed light on the Board’s actions and/or omissions, we recognized in our initial finding that “the Fire District was in receivership and even the filing of a lawsuit in Superior Court, as well as enforcement, [could] present some unique challenges, including possibly seeking Court approval to file a lawsuit.” See Gorman v. Central Coventry Fire District, Board of Directors and Fay v. Central Coventry Fire District, Board of Directors, OM 14-09.

By correspondence dated July 21, 2014, Attorney David D’Agostino provided a supplemental response. Based on the Board’s supplemental response, we are satisfied that matters two (2), three (3), and five (5) listed above, were not willful or knowing. In particular, with regards to item number two (2), the evidence shows that there was no August 18, 2013 meeting but that the date on the executive session minutes was a “typographic/scrivener error: the date should have

¹ We also found that the Board violated the OMA when it failed to properly memorialize in its open session minutes an open call. Specifically, the Board failed to record, in the open session minutes, the “reason for holding a closed meeting, by citation to the subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed.” See R.I. Gen. Laws § 42-46-4. Notwithstanding our finding, insufficient evidence was presented that the Board’s failure to provide a proper open call was willful or knowing. As such, this violation will not be addressed in the present supplemental finding.

been September 18, 2013.” We are also satisfied that the failure to post minutes from the October 21, 2013 meeting, which was the annual financial meeting, was not willful or knowing since financial meetings are not subject to the requirements of the OMA. See Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997). With regard to items three (3) and five (5), the evidence demonstrates that, with the exception of meetings held on July 25, 31, August 28, and September 18, 2013 – meetings which were not the subject of our supplemental inquiry – there were no executive sessions held. As such, no evidence exists to substantiate a willful or knowing violation, and based upon the additional information provided, it is doubtful that an OMA violation even occurred.

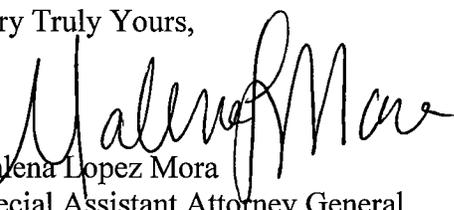
Lastly, based upon the totality of the evidence, we find insufficient evidence to support a willful or knowing violation for the remaining two categories. Although certain open session minutes were not timely filed with the Secretary of State’s website, we acknowledge that this statutory requirement became effective in July 2013 and most of the minutes you complain about were posted on the Secretary of State’s website as of the date of your complaint. Additionally, we find insufficient evidence to support a willful or knowing violation for the Board’s improper discussion of topics in executive session. Because of these conclusions, this Department will not file a civil lawsuit against the Board for a willful or knowing violation. We are also cognizant that the Fire District has recently filed for bankruptcy protection.

Our conclusion should in no way be seen by the Fire District, or any public body, as approval by this Department of the Fire District’s practices. As indicated in our initial finding, our investigation into the allegations raised great concerns, however, we trust that these issues will be addressed through the re-organization of the Fire District. This finding serves as notice 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.

Thank you for your interest in keeping government open and accountable to the public.

Very Truly Yours,


Malena Lopez Mora
Special Assistant Attorney General
Extension 2307

Cc: David M. D’Agostino, Esq.,