



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

September 18, 2015

OM 15-16

Ms. Nancy Grieb

**Re: Grieb v. Aquidneck Island Planning Commission  
May 15, 2015 Complaint**

Dear Ms. Grieb:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Aquidneck Island Planning Commission (“Commission”) is complete. By email correspondence dated May 15, 2015, you allege the Commission violated the OMA when its May 12, 2015 agenda item #3 entitled “Other Board Business” did not adequately inform the public of the nature of the business to be discussed.

In response to your complaint, we received a substantive response, dated May 26, 2015, which was later amended by correspondence dated June 1, 2015, from the Commission’s legal counsel, Jeremiah C. Lynch, III, Esquire. Attorney Lynch states, in pertinent part:

“I \* \* \* assert that the form of notice was not intentionally misleading.

Even if the notice of agenda item was deficient, the Complain[ant] is not an aggrieved party. Macomber v. Warren Town Council, OM 13-21, Graziano v. R.I. State Lottery Commission, 810 A.2d. 215 (R.I. 2002). Mrs. Grieb was present at the Commission meeting and was not disadvantaged or aggrieved by the defective notice.”

We acknowledge your replies dated June 2, 2015 and June 9, 2015.

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

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

The OMA provides that only “aggrieved” citizens may file a complaint regarding an alleged OMA violation. See R.I. Gen. Laws § 42-46-8(a). In Graziano v. Rhode Island Lottery Commission, 810 A.2d 215 (R.I. 2002), the trial court found that the Lottery Commission’s notice was deficient due to its failure to post a meeting notice within the forty-eight (48) hour time frame pursuant to R.I. Gen. Laws § 42-46-6(b). On appeal, the Rhode Island Supreme Court found that it was “unnecessary” to address the merits of the OMA lawsuit because “the plaintiffs Graziano and Hawkins ha[d] no standing to raise this issue” since “both plaintiffs were present at the meeting and therefore were not aggrieved by any defect in the notice.” Id. at 221. The Supreme Court explained that:

“on numerous occasions that actual appearance before a tribunal constitutes a waiver of the right of such person to object to a real or perceived defect in the notice of the meeting. \* \* \* It is not unreasonable to require that the person who raises the issue of the defect in notices be in some way disadvantaged or aggrieved by such defect. While attendance at the meeting would not prevent a showing of grievance or disadvantage, such as lack of preparation or ability to respond to the issue, no such contention has been set forth in the case at bar. The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice.” Id. at 221-22. (Emphases added).

Similar to Graziano, because you attended the meeting in question, you have not demonstrated that you are aggrieved as a result of the alleged improper notice. Although we certainly have questions concerning the sufficiency of the agenda item “Other Board Business,” especially considering case law and our many prior findings,<sup>1</sup> in accordance with Rhode Island Supreme Court precedent we must address the aggrieved issue.

In an attempt to demonstrate that you are aggrieved, you indicate that it is well known that your interest in the Commission is limited to two (2) topics, neither of which were discussed at the May 12, 2015 meeting. You relate that the fact that your two (2) topics of interest were not discussed, yet you were “forced to travel to that meeting to find that out, \* \* \* makes [you] an aggrieved citizen.” Frankly, since the Commission discussed two (2) matters under the agenda item “Other Board Business,” and one (1) of these items concerned the subject-matter of your pending open government complaints, it is difficult

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<sup>1</sup> Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I. 2013); Beagan v. Albion Fire District, OM 10-27B (civil lawsuit filed); Gilkensen v. City of Cranston, OM 13-16; Staven v. Portsmouth Town Council, OM 14-04.

to accept your premise that had the Commission indicated it would discuss the subject-matter of your pending open government complaints and not the other topics of your interest, you would not have attended the May 12, 2015 meeting. Even if were accepted this premise, however, we simply find no legal support or authority for the proposition that you were aggrieved because you took the time and effort to attend a meeting at which the topics of your typical interest were not discussed. In brief, the May 12, 2015 agenda did not indicate that the Commission would discuss the two (2) topics of your typical interest and the Commission did not discuss the two (2) topics of your typical interest. Respectfully, we are unaware of any authority, nor is any authority presented for our review, to support the conclusion that a public body violates the OMA and a citizen is aggrieved when a public body does not discuss a topic that is not on its agenda. Moreover, it appears that you do not take issue with the two (2) matters that were, in fact, discussed under the agenda topic "Other Board Business." Rather, as discussed above, you claim to be aggrieved when a subject-matter that was not discussed, i.e., the bike path initiative, was not posted as an agenda item.

Additionally, your June 9, 2015 rebuttal advises that "[i]t should be noted that my complaint to your office was made not only for myself but also as a representative of the public." While we have great respect for the OMA and your situation, we have carefully reviewed the evidence presented and can find no situation where you were aggrieved by the alleged improper notice. You attended the meeting and provided no evidence or argument, consistent with Graziano, that you were "disadvantaged, such as lack of preparation or ability to respond to the issue." Id. Although you attempt to distinguish the instant case from Graziano, the fact remains that you were not aggrieved, and respectfully, you lack legal standing to raise this issue as a "representative of the public." Additionally, it bears noting that no evidence has been submitted that any member of the public was aggrieved. See Graziano, 810 A.2d at 222 ("It is argued that plaintiff Graziano objects to the notice on behalf of the public. Insofar as she was a representative of the public, she was also present at the meeting.") Thusly, this Department finds you were not aggrieved and therefore lack standing to object to the notice. See to R.I. Gen. Laws § 42-46-8(a).<sup>2</sup>

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 of the attorney general's closing of the

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<sup>2</sup> Your rebuttal contends that if this Department does not find a violation, we would simply be encouraging the Commission to place similar agenda items on their public notice. As noted earlier, this Department must apply the OMA as written by the General Assembly and as interpreted by the Rhode Island Supreme Court. In this respect, our application is without discretion. To your point, however, we simply disagree that this Department is encouraging an OMA violation. As this Department has made clear, any public body that violates the OMA or the Access to Public Records does so at its own peril. See supra footnote 1.

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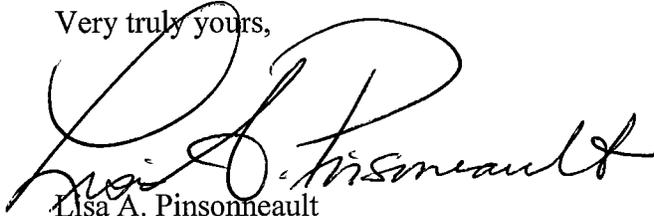
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complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.” R.I. Gen. Laws § 42-46-8. We are closing our file as of the date of this finding.

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

Lisa A. Pinsonneault  
Special Assistant Attorney General

Cc: Jeremiah C. Lynch, III, Esq.