



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 12, 2014
OM 14-25

Mr. Brian J. Kelly

Re: Kelly v. Woonsocket Budget Commission

Dear Mr. Kelly:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Woonsocket Budget Commission (“WBC”) is complete. By correspondence dated April 18, 2014, you alleged that the Commission violated the OMA when: 1) members of the Commission voted to terminate the services of the Finance Director Tom Bruce through email communications, and 2) when the Commission failed to post proper notice on the Secretary of State website.

In response to your complaint, this Department received a substantive response from Mr. Edmund L. Alves, Jr., Esq., legal counsel to the Woonsocket Budget Commission. Mr. Alves states, in pertinent part:

“The [Commission] was established by the Rhode Island Director of Revenue on May 29, 2012 pursuant to G.L.R.I. §45-9-6. ***

G.L.R.I. §45-9-6 (a) provides that budget commissions are subject to the OMA only when meeting to take action on five (5) specific matters. The statute reads in pertinent part as follows:

‘The budget commission shall be subject to chapter 42-46 of the general laws ‘Open Meetings’ when meeting to take action on the following matters:

- (1) Levy and assessment of taxes;
- (2) Rulemaking or suspension of rules;
- (3) Adoption of a municipal budget;

- (4) Approval of collective bargaining agreements and amendments to collective bargaining agreements; and
- (5) Making a determination under § 45-9-7 that the powers of the budget commission are insufficient to restore fiscal stability to the city or town.'

The Department of the Attorney General has issued two recent advisory opinions confirming that the Woonsocket Budget Commission is not subject to the OMA unless it meets to take action on one of the five matters listed in G.L.R.I. §45-9-6(a). *See, Boss v. Woonsocket Budget Commission*, OM 13-09 and OM 13-26.

***the OMA complaint alleges that the WBC terminated the services of Finance Director Thomas Bruce by e-mail communication. The Complaint further alleges that the WBC did not post proper notice of its meeting on the Secretary of State website. ***. This e-mail exchange did result in the termination of the employment of Finance Director Thomas M. Bruce, III on April 17, 2014. Since the termination of an employee is not one of the five matters enumerated in G.L.R.I. § 45-9-6 (a), the OMA was not implicated by the April 17, 2014 action of the [Commission].”

You did not file a rebuttal.

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 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 only applies to “meetings” of a “quorum” of a “public body.” See *Fischer v. Zoning Board of the Town of Charlestown*, 723 A.2d 294 (R.I. 1999). Under Rhode Island General Laws § 45-9-6(a), budget commissions are subject to the OMA only when they meet to take action on one or more of five (5) enumerated matters:

The budget commission shall be subject to chapter 42-46 of the general laws “Open Meetings” when meeting to take action on the following matters:

- (1) Levy and assessment of taxes;
- (2) Rulemaking or suspension of rules;
- (3) Adoption of a municipal budget;

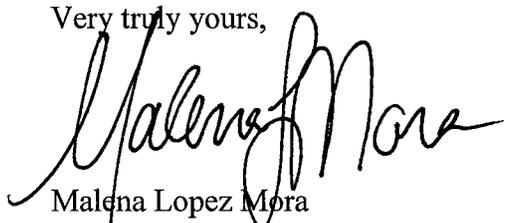
- (4) Approval of collective bargaining agreements and amendments to collective bargaining agreements; and
- (5) Making a determination under § 45-9-7 that the powers of the budget commission are insufficient to restore fiscal stability to the city or town.

In your April 18, 2014 complaint you state that “[s]ection 45-9-6 does confir [sic] upon the Budget Commission the powers to ‘Appoint, remove, supervise and control all city and town employees....’ This I do not dispute. However, this same act also states that the Budget Commission is subject to Chapter 42-46 when taking certain actions, including the power that I just cited.” Respectfully, the plain language of the Rhode Island General Laws contradicts your argument. Rhode Island General Laws § 45-9-6(a) clearly defines the five (5) instances under which the Commission must comply with the OMA. The termination of an employee does not fall into any of those five (5) situations and you have provided no rebuttal to the Commission’s legal argument. Further, since this matter is not subject to the OMA, the Commission was not required to post notice on the Secretary of State’s website. Thus, we find no violation.

Although the Attorney General 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. 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. R.I. Gen. Laws § 42-46-8. Please be advised that we are closing your 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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