



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

March 22, 2016

OM 16-04

Mr. John Mathews
jfm@eidentracing.com

RE: Mathews v. Newport City Council

Dear Mr. Mathews:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Newport City Council (“City Council”) is complete. You allege the City Council violated the OMA during its March 18, 2015 meeting when a quorum of the members met just prior to the start of the meeting to discuss a matter over which the City Council had supervision, control, jurisdiction or advisory power.

According to your complaint, prior to the March 18, 2015 meeting:

“the four council members who voted against [the measure] (McLaughlin, Ceglie, Neville, and Florez) were spotted outside the building before 6 pm by [a] Newport resident * * * who] walked into the building and walked around and at about 6:05 he asked the Mayor if the four were boycotting the vote and I believe he told her they were outside. The Mayor (JeanneMarie Napolitano) [sic] then went outside and [Councilor] Ceglie told her ‘hold on we are working something out’ or words to that effect. The four then walked into the meeting together.”

Your complaint offers to provide affidavits from Mayor Napolitano and the Newport resident, although you never submitted either document to this Department (the City did provide a written statement from the Mayor).

In response to your complaint, we received a substantive response from the Solicitor for the City of Newport, Christopher J. Behan, Esquire, who also provided written statements

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from the Mayor of the City of Newport/Chairperson of the City Council, Ms. Jeanne-Marie Napolitano; City Council members, Mr. John Florez, Ms. Naomi Neville, Mr. Justin McLaughlin, and Ms. Lynn Ceglie; and from *Newport This Week* reporter, Mr. Barry Bridges.

Mayor/Chairperson Napolitano states, in pertinent part:

“I attended the Newport City Council meeting held on March 18, 2015. This was a special meeting which was to start at 6 PM. * * *

On the night in question, I had seen Councilors Lynn Ceglie and Justin McLaughlin on the dais. I looked up shortly after and realized that only Councilors Camacho and Leonard were present on the dais with me. I made an announcement to the audience that there would be a slight delay and left the dais to look for Councilors Ceglie and McLaughlin. Someone told me they were outside. I opened the door and as I recall, saw who I believe were Councilors Lynn Ceglie, Justin McLaughlin, Naomi Neville and John Florez outside in various locations and told them we needed to get going, that the meeting was starting and there were people in the audience waiting. I turned around to return to the dais. It is quite possible that Councilors Florez and Neville were just arriving and coming to the building when I saw them. Within minutes, the meeting was called to order with all councilors seated.”

Ms. Neville states, in pertinent part:

“We had a special council meeting on March 18, 2015 to consider three agenda items, two of which dealt with the applications of Eident Racing and Gray Matter Marketing for a license to hold the Newport Marathon. This meeting was to start at 6:00 PM. Our regular Council meetings start at 6:30 PM. The early start time did cause me an issue in terms of my babysitter being late. While en route to the meeting, I received a text from Councilor John Florez written to Mayor Napolitano, Councilor Leonard and myself indicating that he was running 5-7 minutes late. I replied to the text ‘Me too!’ at 5:56 PM. * * *

As I arrived, I started walking up to the building and saw Councilors Lynn Ceglie and Justin McLaughlin standing outside of the entrance to the lobby. As I was walking up to the entrance, Mayor Napolitano poked her head out of the door and asked if we were coming in. Justin and Lynn were close to the

door and I was on the steps walking up to the entry. At that moment, I did not know where Councilor John Florez was.

I remember by the time I walked to the door, [Councilor Florez] had been dropped off and was running toward the entrance. I believe Councilor Florez and I walked in at about the same time.

The minutes of the meeting show that the meeting was called to order at 6:03 PM which is right at the time that I arrived at the building. At no time [were] myself or Councilors McLaughlin, Ceglie or Florez together, and at no time were we discussing anything just prior to the meeting after my arrival. The claim that we were before 6 PM, or at any other time before the meeting after my arrival, together discussing anything is false.”

Ms. Ceglie states, in pertinent part:

“I remember arriving at the school at 5:45 PM and the doors were locked. I panicked a little, thinking I might have not realized that the meeting would be in a different location. I called Councilor John Florez who did not answer. The Acting City Manager arrived and opened the door. Councilor Neville texted me stating that she was going to be late. Councilor Florez actually called me back and told me he would see me in an hour. I asked him what he meant since the meeting was going to start in 10 minutes. He then realized that he had mistakenly believed that the meeting was going to start at 7 PM instead of 6 PM. * * *

Just prior to the meeting Councilor Justin McLaughlin asked me to step outside the building so that there was not a quorum with the other three councilors present in the cafeteria. He wanted to make sure all of the Council members were present for the start of the meeting to consider the agenda items. At 6:00 PM, Mayor Napolitano came out and asked what was going on, obviously wanting us to come in to start the meeting. At that point, I saw Councilor Neville parking her car and starting to walk up to the building. I told Mayor Napolitano to hold on and we walked in together as soon as Councilor Neville arrived. I called Councilor Florez at 6:01 PM to see where he was and he said he was * * * just around the corner. Thereafter, Councilor Florez arrived and went straight to the dais. The meeting was called to order at 6:03 PM. * * *

At no time did I have any discussions with the other Councilors concerning the docket items to be heard that night, including the Eident Racing application. At no time did I meet or have discussions with Councilors McLaughlin, Neville or Florez before the meeting. It was physically impossible to do so since we were not all together at any time before the meeting was called to order. We certainly had no discussions among ourselves regarding any City business before the meeting. Allegations that we were together and discussing this application are plain and simply false and inaccurate.”¹

Mr. Florez states, in pertinent part:

“I was running late that night and at 5:54 PM sent a text message to Mayor Jeanne-Marie Napolitano, Councilor Kate Leonard and Councilor Naomi Neville that I was running 5-7 minutes late. I was being driven by my assistant. Councilor Neville responded ‘me too.’ I received a call from Councilor Lynn Ceglie at 6:01 PM and that is the time that I arrived at the location of the meeting. I did not at any time join or meet up with any other councilor persons. I went straight from my car to the dais.

At no time did I meet with any other council members before the meeting to discuss the * * * Marketing petitions. Such allegations are completely false.”²

Mr. Bridges states, in pertinent part:

“I am a reporter for *Newport This Week*, a local newspaper publication. I cover City Council meetings. The meetings for the time being are taking place at the Pell School cafeteria in Newport, Rhode Island. As I was walking into the cafeteria before the 6:00 PM start of the March 18, 2015 meeting, I saw Councilors Justin McLaughlin and Lynn Ceglie in the lobby and said hello. I entered the cafeteria and as I was waiting for the meeting to begin, I believe I heard someone saying they were looking for particular councilors to get the meeting started. I then saw Councilor Ceglie, Councilor McLaughlin and Councilor Naomi Neville walking to the cafeteria for the start of the meeting. I assume based on my previous observations that

¹ Ms. Ceglie attached copies of her telephone records confirming the timing of the calls.

² Mr. Florez attached a copy of his text print screen, which is consistent with his statement.

Councilor Neville joined them when she arrived and they entered the building. I then saw Councilor John Florez arrive shortly thereafter. I did not see these four council people together at any time nor did I see them together in discussions.”

We acknowledge your rebuttal and affidavit.³

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. Consistent with this Department’s previous findings and with applicable case law, the OMA is implicated whenever a quorum of a public body has a meeting. See R.I. Gen. Laws § 42-46-3; Fischer v. Zoning Board for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). For purposes of the OMA, a “meeting” is defined as “the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” R.I. Gen. Laws § 42-46-2(a). (Emphasis added). A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(d). Here, there is no dispute concerning the legal issue involved, but instead, we are presented with a factual dispute, i.e., whether four members of the City Council met outside the public purview prior to its March 18, 2015 meeting to discuss a matter over which the City Council had supervision, control, jurisdiction, or advisory power.

The City Council is comprised of seven (7) members. There exists conflicting evidence as to whether a quorum of the City Council was together prior to the start of the March 18, 2015 meeting. Perhaps this issue is best framed through your June 18, 2015 rebuttal, which explains that the assertions of an improper meeting are “not only my assertions but the assertions of the Mayor, Councilwoman Leonard, and a resident of Newport.” Careful examination of this statement helps to resolve the factual discrepancy.

In particular, your rebuttal makes clear that the Newport resident discussed herein made the claim that “he saw [the four City Council members] outside. I cannot, nor have I ever made that claim personally.” Accordingly, the evidence makes clear that neither you nor

³ Attached to your emailed response was a copy of your telephone records, which you allege are calls from/to Mayor Napolitano and Council Member Leonard. Respectfully, there is simply insufficient evidence to establish the content of these telephone calls. Rather, they only demonstrate the calls themselves occurred. By separate email you attached voice recordings from voice mail messages left for you by two (2) City Council members. The recording from Councilor Florez has no relevance to the OMA issue discussed herein. The recording from Councilor Leonard provides no firsthand knowledge concerning the issue discussed in this finding and instead suggests that you contact the Newport resident referenced earlier in this finding to support your allegation. All evidence suggests that Councilor Leonard did not leave the dais and had no actual knowledge concerning any events that occurred – or did not occur – outside the meeting venue.

Councilor Leonard had any actual knowledge concerning the events – or non-events – that occurred outside the meeting. See supra footnote 3. Moreover, although your rebuttal suggests that this Newport resident “saw them outside,” the evidence reveals that the first-hand knowledge of this resident ends at this point. The reason for this conclusion is because your complaint relates that after this resident “spotted” the Councilors outside the building, he advised Mayor Napolitano, and the Mayor “then went outside.” No evidence has been presented that this Newport resident overheard the nature of the discussion, if any; and based upon the evidence presented, at most, the Newport resident only witnessed the four City Council members outside. There is little dispute on this point and such a gathering, by itself, does not violate the OMA. See e.g., In re Pawtucket City Council, ADV OM 05-01.

The foregoing leaves the basis of your OMA allegation to the assertion that after Mayor Napolitano went outside, Councilor Ceglie allegedly told the Mayor “hold on we are working something out,” or something to this effect. But the Mayor’s statement provided to this Office says nothing about this alleged statement. Rather, the Mayor’s statement indicates that she saw the four Councilors “in various locations and told them we needed to get going,” and that it was “quite possible that Councilors Florez and Neville were just arriving and coming to the building when I saw them.” These assertions – from the only first-hand eyewitness – contradict the assertion set forth in your complaint that Councilor Ceglie told Mayor Napolitano “hold on we are working something out.” It also bears noting that Councilor Ceglie provided a statement that indicated:

“[a]t no time did I meet or have discussions with Councilors McLaughlin, Neville or Florez before the meeting. It was physically impossible to do so since we were not all together at any time before the meeting was called to order. We certainly had no discussions among ourselves regarding any City business before the meeting. Allegations that we were together and discussing this application are plain and simply false and inaccurate.”

On this basis alone, we find no violation.

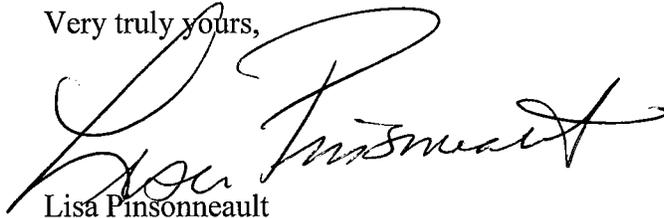
While the foregoing supports our conclusion that no OMA violation occurred in this case, additional evidence adds to our conclusion. For instance, statements from the four (4) Council members who were outside the meeting venue deny any such improper discussion. More importantly, the telephone records produced evidence calls made/received at 5:42 PM, 5:45 PM and 6:01 PM. The text screen shot produced by Mr. Florez also evidences a text was sent at 5:54 PM to three (3) City Council members indicating he was running 5-7 minutes late and City Council member Neville responded to the text at 5:56 PM indicating she was also running late. The minutes of the March 18, 2015 meeting reveal that the special meeting was called to order at 6:03 PM. Considering that Councilor Florez sent a text message at 5:54 PM indicating that he was running 5-7 minutes late, that Councilor Neville responded to this text message at 5:56 PM indicating that she was also running late, and that Councilor Ceglie called Council Florez at 6:01 PM – and keeping in mind that there is no dispute that the meeting was

called to order at 6:03 PM – it is virtually impossible for a quorum of the City Council to have had a substantive conversation concerning City Council business in the time frame in question. Respectfully, you have presented no evidence to the contrary. Based upon the evidence presented, we cannot conclude that a quorum of City Council members discussed a matter over which the City Council had “supervision, control, jurisdiction, or advisory power.” R.I. Gen. Laws § 42-46-2(a). See Kammerer v. City of Newport, OM 11-08. We find no violation.

Although this Department has found no violation, 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,

A handwritten signature in black ink, appearing to read "Lisa Pinsonneault", written in a cursive style.

Lisa Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

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