



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

January 15, 2014  
OM 14-01

Mr. Bill Mudge

**Re: Mudge v. North Kingstown School Committee**

Dear Mr. Mudge:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the North Kingstown School Committee (“School Committee”) is complete. You are a member of the School Committee.

By e-mail dated September 9, 2013, you contend that the School Committee violated the OMA. In its entirety, your September 9, 2013 e-mail indicated:

“[p]ursuant to the Open Meetings Act[,] Title 42-46-6, I am submitting the following OMA violation regarding the North Kingstown School Committee’s Executive Committee meeting of August 13, 2013.

Specifically, an unadvertised/unnoticed discussion took place during the subject meeting regarding a request made by the North Kingstown Town Council President, Elizabeth Dolan, to School Committee Chairperson, Kimberly Page, concerning the school committee’s interest in consolidating certain Town and School Departments finance functions.

As a result of this discussion, Chair[person] Page said she would contract [sic] Council President Dolan and advise her that a consensus of the school committee members present were amendable to discussing this matter. (Please advise as to the appropriateness and legality of a consensus determination conveying the position of committee members to another elected body, absent a vote on a subject matter).

As of this date, to my knowledge there has been no response or continuing discussions concerning this matter.”

In response to your complaint, we received a substantive response from the School Committee's legal counsel, Mary Ann Carroll, Esquire, who argues that the School Committee properly entered into executive session under the agenda item "Employee Job Performance pursuant to RIGL 42-46-5(a)(1)," and that the subject-matter concerned the Director of Administrative Services for the North Kingstown School Department, who is responsible for the Finances in the District. As related by Ms. Carroll:

"[t]he purpose of discussing her job performance was due to the fact that the Town of North Kingstown had approached the Chairperson of the School Committee regarding the possibility of consolidating the finance responsibilities of the School Department and the Town. As a result, the School Committee needed to discuss [the Director's] job performance as it pertained to the possibility that she would take on more duties."

With respect to your allegation that the School Committee reached a "consensus," but did not vote, Ms. Carroll indicates that there was "no consensus taken" and "[a]fter discussion of the possible consolidation, Chairperson Page simply stated that she would let the Town Council President know that the committee was open to the idea." Chairperson Page supplied an affidavit, which supports Ms. Carroll's response, and we have also been provided the executive session minutes, which we have reviewed.

On October 2, 2013, you responded to the School Committee's reply. You contend that the subject-matter of the executive session did not relate to "job performance," and instead related to the consolidation of finance functions. You also related that the topic discussed did not fall within the ambit of R.I. Gen. Laws § 42-46-5(a) and that a second person was discussed in executive session, but there is no evidence that this second person was provided advanced written notice in accordance with R.I. Gen. Laws § 42-46-5(a)(1).<sup>1</sup>

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 determine whether this Department believes that an infraction has occurred or to examine the wisdom of a given statute, 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 School Committee violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

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<sup>1</sup> These latter allegations were not raised in your original complaint, and consistent with our practice and precedent, cannot be raised on a reply and will not be discussed herein. See Mudge v. North Kingstown School Committee, OM 12-35 (declining to address issues raised in reply for first time). It also bears noting that you do not have standing to allege that an affected person did not receive advanced notice in accordance with R.I. Gen. Laws § 42-46-5(a)(1). See Okwara v. Rhode Island Commission on Deaf and Hard of Hearing, OM 00-07.

The OMA requires all public bodies provide supplemental public notice of all meetings at least forty-eight (48) hours in advance of the meeting. See R.I. Gen. Laws § 42-46-6(b). “This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed.” *Id.* (Emphasis added). The level of specificity that must be detailed for each agenda item depends on the facts and circumstances surrounding each item. In Tanner, the Supreme Court discussed what constitutes a statement specifying the nature of the business to be discussed. The Court stated that “the Legislature intended to establish a flexible standard aimed at providing fair notice to the public under the circumstances, or such notice, based on the totality of the circumstances, as would fairly inform the public of the nature of the business to be discussed or acted upon.” *Id.*

In Tanner, the Court determined that the agenda item “Interviews for Potential Boards and Commission Appointments” did not adequately apprise the public of the nature of the business to be discussed at a Town Council meeting. Specifically, after conducting interviews as indicated on the notice, the East Greenwich Town Council proceeded to vote to appoint various individuals to the planning and zoning boards for the Town. The Court reasoned that, although the standard is “somewhat flexible,” the contents of the notice “reasonably must describe the purpose of the meeting or the action proposed to be taken.” *Id.* at 797-98. Although the Court provided no bright line rule regarding the specificity of a posted notice, the Court viewed the “totality of the circumstances” and found that the notice was misleading since it implied that merely “interviews” would be conducted, and that a vote or other action would not take place. The Court also observed “that the OMA places an affirmative duty on the public body to provide adequate notice of meetings.” *Id.* at 799. See also Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171 (R.I. 2013)(OMA violation where “text [of agenda] provides no basis for any further inference as to what might happen with respect to the request that had been ‘received’”).

Further, with respect to an executive session notice, this Department indicated in Graziano v. Lottery Commission, OM 99-06 that:

“[i]f the matter to be discussed is one of public record, such as a pending court case or the well publicized negotiation of a principal or executive director’s contract, the public body should cite the name of the case or reference that it will discuss the contract. However, where the matter to be discussed in executive session is not yet public, the public body may limit its open call to the nature of the matter, such as ‘litigation’ or ‘personnel.’”<sup>2</sup>

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<sup>2</sup> In your October 2, 2013 reply, you aver that:

“[i]t should also be noted that the consolidation of these same positions were recently and publically [sic] addressed by a special committee appointed by the Town Council. The committee’s recommendation to

Here, consistent with Anolik, Tanner, and Graziano, we find that adequate notice was provided. In particular, the School Committee clearly provided public notice that it would discuss the job performance of the Director of Administrative Services and, based upon the evidence presented, the expansion of her job duties falls squarely within the posted notice. While you contend that this discussion was not related to the Director's "job performance," but instead related to the "consolidation of two separate job functions/positions within the Town," there is no dispute that the subject-matter and the end result leaves the Director with additional job responsibilities and duties.

Lastly, your September 9, 2013 complaint asks this Department to "advise as to the appropriateness and legality of a consensus determination conveying the position of committee members to another elected body, absent a vote on a subject matter." As discussed in Cosper v. Mental Health Advocate Search Committee, OM 13-01 and Clarke v. North Cumberland Fire District, OM 10-21, a public body may not circumvent the disclosure procedures by contending that a "vote" was not taken, but instead, only a "consensus" was reached. See R.I. Gen. Laws § 42-46-7(a)(3)(requiring minutes to contain a record by individual member of all votes). Based upon the evidence presented, in this case, we find no violation. Specifically, having reviewed the executive session minutes and the evidence presented, we conclude that the School Committee discussed this matter in executive session and, as Chairperson Page states in her affidavit, she "told the Committee that [she] would let the Town Council President know that [the School Committee was] open to the idea [of consolidation] but that there were issues that needed to be worked out."<sup>3</sup> Under these circumstances, we find no violation.

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initiate further study on the matter was publicly approved by the council, but rejected by the School Committee."

You provide no information concerning when this general subject-matter was publicly known and it is unclear whether this public revelation occurred before or after August 13, 2013. At the very least, it appears that it was not publicly known that the Director of Administrative Services may be expanding her job duties and responsibilities.

<sup>3</sup> In your reply, you request this Department obtain a copy of an e-mail sent from the North Kingstown Town Council President to the School Committee Chairperson, and that this Department obtain an affidavit from the Town Council President "detailing all discussions she has had with any school/town administrators or elected officials concerning consolidation of the finance department[.]" In our opinion, this information is unnecessary to resolve the OMA issue you properly raise – improper notice – and it is unclear why you believe this information would be pertinent to the OMA issues properly raised. We also observe that the Ms. Carroll asks this Department "to please address [the matter of allegedly breaching executive session confidentiality] with Mr. Mudge so that there will be no more breaches of Executive Session." Respectfully, nothing within the OMA addresses this issue, and accordingly, we decline to address this issue.

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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.

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

Very truly yours,

A handwritten signature in cursive script, reading "Lisa A. Pinsonneault". The signature is written in black ink and is positioned above the typed name and title.

Lisa A. Pinsonneault

Special Assistant Attorney General

cc: Mary Ann Carroll, Esquire  
[macarroll@brasm.com](mailto:macarroll@brasm.com)