



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

December 31, 2015
OM 15-20

Mr. William 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. By email correspondence dated January 1, 2015, you alleged that sometime between June 3, 2014 and the October 14, 2014 School Committee meeting, four (4) members of the School Committee met and discussed, outside the public purview, matters “related to the planning, specification development and award of a \$500,000 sole source, no bid, lease contract with the Quonset Development Corporation,” in violation of R.I. Gen. Laws § 42-46-3.

The School Committee’s legal counsel, Mary Ann Carroll, Esquire, submitted a substantive response to your complaint. In addition, five members of the School Committee provided affidavits addressing your allegation.¹ In relevant part, the School Committee contends that:

“According to [the five (5) School Committee members that submitted affidavits] none of them collectively met and discussed, outside the public purview, matters ‘related to the planning, specification development, and award of a \$500,000 sole source, no bid, lease contract with the Quonset Development Corporation,’ in violation of R.I. Gen. Laws § 42-46-3.

According to the Members of the Committee, the only time that the topic of leasing space for an administration office occurred, was at an open public meeting to discuss the Superintendent’s goals and Committee goals that was held on June 3, 2014. At this meeting the subject was discussed in open session as a suggestion, but no votes were taken. No other discussion occurred regarding any

¹ You were a sixth member of the School Committee and a seventh member did not submit an affidavit. Since a majority of the School Committee members submitted affidavits attesting that none of them discussed this matter with other members outside of a public meeting, the fact that one member of the School Committee did not submit an affidavit does not affect our analysis.

Mudge v. North Kingstown School Committee

OM 15-20

Pg. 2

lease between Committee Members until the matter was discussed and voted on at the meeting of October 14, 2014. The discussion and vote was in open session. (Emphasis in original).

Once a new agenda is sent out, individual members, on occasion, may contact the Superintendent, Phil Auger and the Director of Administration, Mary King, to ask questions on an item on the agenda, but at no time do Members meet and discuss an agenda item ahead of time.

Please note that Mr. Mudge did not attend the School Committee meeting of June 3, 2014.”

School Committee Members Kimberly Page, Cheryl Clarkin, Robert Jones, John Boscardin, and Lynda Avanzato submitted affidavits addressing your allegation. In relevant part, School Committee members Boscardin, Jones, and Clarkin attest that:

“On June 3, 2014, the School Committee met in open session for a goals session.

There were four (4) members present at that meeting: [Robert Jones]; John Boscardin; Cheryl Clarkin; and Kimberly Page. In addition to the Committee, Dr. Auger, Superintendent of Schools; Dr. Humbyrd, Assistant Superintendent of Schools; Ms. King, Director of Administration; and Laureen Berglund, School Committee Clerk were present.

Dr. Auger sent out his proposed goals for 2014-2015 prior to the meeting and the Committee discussed the possibility of moving the administration offices as part of his goals.

The meeting was advertised, held in public and no votes regarding the possibility of moving offices were taken.

That meeting was the only time that [School Committee members Jones, Boscardin, Clarkin, and Page] participated in a discussion with other School Committee Members regarding the lease contract with the Quonset Development Corporation.”

School Committee member Page’s affidavit, in addition to attesting to the same statements that members Boscardin, Jones, and Clarkin testified to above, further contends that:

“[The June 3, 2014] meeting was the only time that I participated in a discussion with other School Committee Members regarding the leasing of a building, other than to discuss it with School Committee Member Larry Ceresi; Dr. Auger; and Ms. King in preparing the agenda for the October 14, 201[4] meeting.

As Chairman of the Committee, Ms. King kept me informed of the different possibilities that she was looking into. However, I never discussed it with other Committee Members.”²

Also, School Committee members Boscardin, Jones and Clarkin indicate that:

“I did discuss the proposed lease with Dr. Auger and Ms. King prior to the School Committee meeting of October 14, 2014. This item was on the agenda for the October meeting and I had a few questions about the lease that I asked them. However, at no time did I have any discussions with a majority of the School Committee prior to this meeting. To the best of my recollection, I did not discuss this lease with any member of the School Committee.”

School Committee member Avanzato attests, in pertinent part:

“At no time did I ever meet and discuss with any Member of the North Kingstown School Committee a lease contract with the Quonset Development Corporations.”

We acknowledge your rebuttal and will address your relevant points in our finding.

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

In your complaint, you allege that the School Committee violated the OMA when “four members of the school committee” discussed matters “related to the planning, specification development and award of a \$500,000 sole source, no bid, lease contract with the Quonset Development Corporation” outside of a public meeting because “there is no evidence that ‘leasing administrative space’ was 1) ever included as a topic for discussion on a School Committee meeting agenda and 2) was not reported as being discussed and voted upon in any meeting

² The OMA specifically provides that “discussion of a public body via electronic communication * * * shall be permitted only to schedule a meeting.” R.I. Gen. Laws § 42-46-5(b)(1). If discussions may occur via electronic communications to “schedule a meeting,” we see no reason why the OMA would prohibit these same communications in-person when such discussions are solely limited to scheduling a meeting and the agenda items. Based upon the evidence presented, we cannot conclude that a substantive discussion about the lease occurred between members Page and Ceresi, Dr. Auger, and Ms. King. Instead, it appears that this discussion was limited to placing the agenda item on the October 14, 2014 agenda. See Marcello v. Scituate School Committee, OM 15 -19. In any event, there is no evidence that this discussion constituted a quorum of the School Committee, and therefore, it did not violate the OMA.

minutes prior to October 14 and 3) was not addressed in a recorded school committee meeting discussion.” At all times relevant to this complaint, you were a member of the School Committee.

The OMA provides 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.” See R.I. Gen. Laws § 42-46-3. This Department has long observed that in order for the OMA to apply, a “quorum” of a “public body” must convene for a “meeting” as these terms are defined by R.I. Gen. Laws § 42-46-2. See Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999). The OMA defines “quorum” as “a simple majority of the membership of a public body.” See R.I. Gen. Laws § 42-46-2(4). This Department has previously recognized the “rolling” or “walking” quorum, where a majority of the members of a “public body” attain a quorum through a series of one-on-one conversations or interactions that individually do not constitute a quorum, but which collectively do constitute a quorum.³ See In re Pawtucket City Council, ADV OM 05-01. Our prior findings make clear that a “quorum” of a “public body” convening for a “meeting” is necessary to implicate the OMA. See e.g., Krammer v. City of Newport, OM 11-08; Johnson v. West Greenwich Town Council, OM 11-37.

While your complaint alleges that a quorum of the School Committee discussed public business outside of a public meeting, you fail to articulate any specific facts to support your allegation. For instance, you allege that four (4) members of the School Committee were part of these conversations, yet fail to identify which School Committee members discussed this matter. As indicated supra, a “quorum” is defined as a “simple majority of the membership of a public body.” See R.I. Gen. Laws § 42-46-2(4). You provide the barest of allegation to claim that four (4) members of a seven (7) member committee engaged in impermissible communications, and you provide no identity as to the members that you contend violated the OMA. It is not lost on this Department that the evidence would need to show that, at minimum, four (4) members of the School Committee discussed the lease in private in order to find that an OMA violation occurred.

You also fail to provide a specific time frame during which these alleged conversations took place. In fact, in your complaint you allege that private discussions occurred sometime between June 3, 2014 and October 14, 2014. In your rebuttal you allege that the “members participated in discussions to lease space between June 3, 2014 and October 1, 2014,” however, later in your rebuttal you allege that these private discussions took place “between June 3 and September 1, 2014.” Notwithstanding the inconsistent time frames, at no moment do you provide this

³ In your rebuttal, you indicate that you “assum[e] that Mr. Ceresi’s statements [the seventh member that did not submit an affidavit] are consistent with” the statements in School Committee members Page, Clarkin, Boscardin and Jones’ affidavits. Even if we accept your assumption as true, there is no evidence that the members had a collective discussion about the proposed lease outside of an open meeting. In fact, Attorney Carroll submits that “individual members...may contact the Superintendent, Phil Auger and the Director of Administration, Mary King, to ask questions on an item on the agenda, but at no time do Members meet and discuss an agenda item ahead of time.” Furthermore, there is no evidence that a rolling quorum was created through either Dr. Auger or Ms. King.

Department with any guidance as to why these alleged conversations transpired after June 3, 2014, but before October 14, 2014. Moreover, it should be noted that your allegation that the School Committee improperly discussed the leasing issue during its June 3, 2014 open session conflicts with your allegation that the School Committee must have met outside the public purview sometime between June 3, 2014 and October 14, 2014 to discuss the leasing subject. Indeed, you provide no probative evidence that an improper discussion occurred.

Instead, you ask this Department to find that the School Committee violated the OMA based on pure speculation and to draw certain inferences based on the absence of certain occurrences. For example, your complaint is based almost entirely on your presumption that the School Committee must have discussed this matter behind closed doors since you were not aware that the School Committee considered "leasing administrative space" until the October 14, 2014 meeting. You place significant emphasis on the fact that "lease" does not appear on the agenda or in the meeting minutes for the June 3, 2014 meeting.⁴ Therefore, in your opinion, "there can be but one conclusion, either between June 3, 2014 and September 1, 2014's [sic], Dr. Auger and Mrs. King were given tacit authority by certain few school committee members to a) embark on an effort to lease space...or otherwise they acted independent of the school committee authority."

The OMA does not require that meeting minutes be a verbatim transcript of the meeting. See R.I. Gen. Laws § 42-46-7. As such, the fact that a particular word, phrase, or topic is not reflected in the minutes is not proof that the topic was not discussed, as you suggest. Since the June 3, 2014 meeting addressed moving certain School Department offices and programs to different locations, it is not unreasonable to conclude that the topic of leasing office space transpired during this meeting. Indeed, the four members of the School Committee who were present at the June 3, 2014 meeting attest that the "leasing of a building" was in fact discussed during open session. As previously noted, you did not attend the June 3, 2014 meeting. More

⁴ In your rebuttal, you state, in relevant part, "this OMA complaint...argues that...b) the school committee meeting agenda of June 3, 2014 did not properly or adequately notice that subject of leased space would be a topic for discussion by the entire committee." In our January 1, 2015 acknowledgment letter to you, we indicated that "[y]our rebuttal should be limited to the matters addressed in the School Committee's response and should not raise new issues that were not presented in your complaint or addressed in the School Committee's response." Since this issue was first raised by you in your rebuttal, it will not be addressed in this finding. Also, the statute of limitations for this Department to file a lawsuit with respect to this allegation expired prior to your January 1, 2015 complaint. See R.I. Gen. Laws § 42-46-8(b) ("No complaint may be filed by the attorney general after one hundred eighty (180) days from the date of public approval of the minutes of the meeting at which the alleged violation occurred"). The June 3, 2014 meeting minutes were approved on June 24, 2014. Since you filed your complaint on January 1, 2015, more than one hundred eighty (180) days after the minutes were approved, this allegation is barred by the statute of limitations. As such, even if this matter had been properly raised in your complaint, consistent with our past practice and the OMA, we would have declined to address the merits of that allegation. See R.I. Gen. Laws § 42-46-8(b). See e.g., Block v. Rhode Island Board of Elections, OM 12-05; Costantino v. Smithfield School Committee, OM 12-12.

importantly, five (5) members of the School Committee attest, and the evidence presented support their attestations, that no member of the School Committee discussed this matter with other School Committee members outside of a public meeting in a manner that would violate the OMA.

You also suggest that this topic could not have occurred at a public meeting because in October of 2012, three (3) years prior, “[Superintendent] Auger stated his intention to look “into making better use of [School Department] buildings particularly the use of Davisville Elementary school and the central administration building.” Specifically, you argue that leasing office space “would be counter to...Dr. Auger’s...intentions” and you “submit that there can be but one conclusion,” i.e., that four (4) members of the School Committee discussed matters “related to the planning, specification development and award of a \$500,000 sole source, no bid, lease contract with the Quonset Development Corporation” outside of a public meeting. You advance this argument despite the fact that Superintendent Auger indicated to you at the October 14, 2014 meeting that the lease topic was part of his goals for the School Department and that the School Committee had been apprised of these goals during the June 3, 2014 meeting.

Indeed, the evidence establishes that at the June 3, 2014 School Committee meeting, as part of the Superintendent’s and the School Committee’s goals, the School Committee discussed relocating certain School Department offices to a leased office space. Specifically, School Committee members Jones, Clarkin, Boscardin, and Page attest that during open session at this meeting the School Committee discussed “the leasing of a building.” While you were a member of the School Committee at that time, you were not present at this meeting and acknowledge that you “cannot attest to the accuracy or credibility” of the School Committee’s “assertions that the specific topic of leasing space, particularly the QDC lease, did transpire within the framework of a publicly advertised and convened quorum of school committee members.” The fact that you were not present at the June 3, 2014 meeting is significant because, as indicated supra, your allegation rests primarily on your presumption that since you had not been aware that the School Committee was considering “the leasing of a building” until the School Committee voted on the matter at the October 14, 2014 meeting, four (4) members of the School Committee must have discussed this matter outside of an open meeting. Respectfully, the fact that the October 14, 2014 meeting was the first time that you became aware of this issue is not evidence that four (4) members of the School Committee discussed this matter outside of a public meeting.

In order for this Department to find a violation, our attention must be directed to specific conduct that is contrary to the OMA. We have always required evidence of a violation in each and every case and we see no reason to diverge from these legal principles. Based on all the evidence presented, and the lack of substantive and specific allegations, we find no violation. 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

Mudge v. North Kingstown School Committee

OM 15-20

Pg. 7

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,

A handwritten signature in black ink, appearing to read "Malena Lopez Mora". The signature is written in a cursive style with a large initial "M".

Malena Lopez Mora
Special Assistant Attorney General
Ext: 2307

Cc: Mary Ann Carroll, Esquire