



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

June 11, 2014
OM 14-24

Mr. Kent C. Novak

RE: Novak v. Western Coventry Fire District

Dear Mr. Novak:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Western Coventry Fire District (“Fire District”) is complete. By correspondence dated January 31, 2014, you allege the Fire District violated the OMA. More specifically, you allege the Fire District violated R.I. Gen. Laws § 42-46-7(b)(2) when:

- its January 9, 2014 minutes were not posted on the Secretary of State’s website prior to the January 16, 2014 meeting. The minutes were not posted until February 2, 2014.
- its December 19, 2013 minutes were not posted on the Secretary of State’s website prior to the January 9, 2014 meeting. The minutes were not posted until January 14, 2014
- its November 4, 2013 minutes were not posted on the Secretary of State’s website until November 19, 2013, two (2) days prior to the November 21, 2013 meeting.
- its October 28, 2013 minutes were not posted on the Secretary of State’s website prior to the November 4, 2013 meeting. The minutes were not posted until November 21, 2013.
- its October 17, 2013 minutes were not posted on the Secretary of State’s website prior to the October 28, 2013 meeting. The minutes were not posted until November 19, 2013.
- its September 19, 2013 minutes were not posted on the Secretary of State’s website prior to the October 17, 2013 meeting. The minutes were not posted until November 17, 2013.
- its August 15, 2013 minutes were not posted on the Secretary of State’s website prior to the September 19, 2013 meeting. The minutes were not posted until November 17, 2013.

In response to your complaint, we received a substantive response from the Fire District's legal counsel, J. William W. Harsch, Esquire, who also provided a sworn affidavit from the Chair of the Board of Directors of the Fire District, Mr. John Humble. Attorney Harsch states, in pertinent part:

“[T]he District was not made aware of the changes to RIGL 42-46-7 until November 4, 2013. At that time, the District immediately began the process for updating its Standard Administrative Procedure regarding minutes and implementing the changes that were then necessary.

The District disputes Mr. Novak's claim #1 as, according to RIGL 42-46-7, minutes are to be posted not later than 7 days prior to the next regularly scheduled meeting. Based on this, the minutes of the January 9 meeting would have had to have been posted on the same day as the meeting.

The District further disputes Mr. Novak's claim #2, as the January 9, 2014 meeting was not a regularly scheduled meeting and therefore minutes of the December 19, 2013 meeting did not have to be posted prior to the January 9 meeting.

The District also disputes Mr. Novak's claim #3, for the same reason as stated above. The January 9 meeting was not a regularly scheduled meeting and therefore the minutes of the December 19 meeting did not have to be posted until 7 days prior to the next regularly scheduled meeting which was January 16. The District does agree that the minutes were not posted until January 14 as opposed to January 9.

The District does not dispute the facts as provided by Mr. Novak in his January 31, 2014 complaint as to his [remaining] claims * * * which relate to meetings prior to the receipt of the November 4 letter from the Attorney General's office.”

Mr. Humble states, in pertinent part:

“It is my understanding that regularly scheduled meetings as stated in the law are those meetings listed in the meeting schedule posted at the beginning of each calendar year to the Secretary of State site.

Upon receipt of the November 4, 2013 letter, Chief Quattrini immediately forwarded the letter to me for appropriate action. I then made arrangements for the matter to [be] taken up at the next meeting of the Standard Administrative Procedures (SAP) Committee on December 5, 2013.

At the December 5, 2013 SAP Committee meeting * * * the need to update our Minutes of Meetings SAP 5211.00 based on the change in the statute was discussed and a recommendation was submitted to the Board of Directors.

The recommended changes to SAP 5211.00 were discussed at the next-scheduled Board meeting on December 19, 2013 and were approved. * * *

A review of the posted minutes on the Secretary of State's website will show that the Clerk of the Western Coventry Fire District has been diligent in posting the minutes."

We acknowledge your reply dated April 2, 2014.

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

The OMA requires all public bodies give written notice of their regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings and shall be provided to members of the public upon request and to the Secretary of State at the beginning of each calendar year. See R.I. Gen. Laws § 42-46-6(a). Additionally, "[a]ll public bodies shall keep written minutes of all their meetings." R.I. Gen. Laws § 42-46-7(a). "The minutes shall include, but need not be limited to: (1) The date, time, and place of the meeting; (2) The members of the public body recorded as either present or absent; (3) A record by individual members of any vote taken; and (4) Any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes." Id. Rhode Island General Laws § 42-46-7(b)(2), which became effective on July 15, 2013, states that "all volunteer fire companies, associations, fire district companies, or any other organization currently engaged in the mission of extinguishing fires and preventing fire hazards, whether it is incorporated or not, and whether it is a paid department or not, shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier, on the secretary of state's website." R.I. Gen. Laws § 42-46-7(b)(2). (Emphasis added).

Based upon the evidence presented in this case, the Fire District filed its 2013 annual notice on December 19, 2012 and filed its 2014 annual notice on January 4, 2014. The 2013 annual notice listed thirteen (13) meeting dates, one each month, except for the month of April wherein the regularly scheduled meeting was noticed for April 18 and the Fire District's annual meeting was noticed for April 1. Similarly, the 2014 annual notice listed thirteen (13) meeting dates, one each month, except for the month of April wherein the regularly scheduled meeting was noticed for April 17 and the Fire District's annual meeting was noticed for April 7.

It appears that in 2013, the Fire District held at least two additional meetings that were not regularly scheduled, one on October 28, 2013 and one on November 4, 2013. It also appears that

in 2014, the Fire District held at least one additional meeting that was not regularly scheduled, namely on January 9, 2014. It appears the Fire District failed to comply with the provisions of R.I. Gen. Laws § 42-46-7(b)(2) with respect to the seven meetings alleged in your OMA complaint. More specifically, the minutes for its January 9, 2014 meeting should have been posted no later than seven (7) day prior to January 16, 2014, which was the date for its next regularly scheduled meeting. These minutes were not posted until February 2, 2014. The August 15, 2013 meeting minutes should have been posted by September 5, 2013, but were not posted until November 17, 2013. The minutes for the September 19, 2013 meeting should have been posted by October 10, 2013, (within twenty-one (21) days of the meeting), but were not posted until November 17, 2013.

Additionally, the minutes for the October 17, 2013 meeting should have been posted by November 7, 2013, (within twenty-one (21) days of the meeting), but were not posted until November 19, 2013. The minutes for the October 28, 2013 meeting should have been posted by November 14, 2013 (seven (7) days prior to the next regularly scheduled meeting), but were not posted until November 21, 2013. The minutes for the November 4, 2013 meeting should have been posted by November 14, 2013 (seven (7) days prior to the next regularly scheduled meeting), but were not posted until November 19, 2013. The minutes for the December 19, 2013 meeting should have been posted by January 2, 2014 (seven (7) days prior to the next regularly scheduled meeting), but were not posted until January 14, 2014. The minutes for these meetings were not timely posted on the secretary of state's website in violation of R.I. Gen. Laws § 42-46-7(b)(2) ("shall post unofficial minutes of their meetings within twenty-one (21) days of the meeting, but not later than seven (7) days prior to the next regularly scheduled meeting, whichever is earlier").

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) "[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];" or (2) "the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA]." R.I. Gen. Laws § 42-46-8.

In this instance, we find no evidence that the Fire District knowingly or willfully violated the OMA. Additionally, injunctive relief is not appropriate because the minutes for the meetings at issue have all been posted on the secretary of state's website. This finding serves as notice to the Fire District that the conduct discussed herein is unlawful and may serve as evidence of a willful or a knowing violation in any similar future situation.

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.

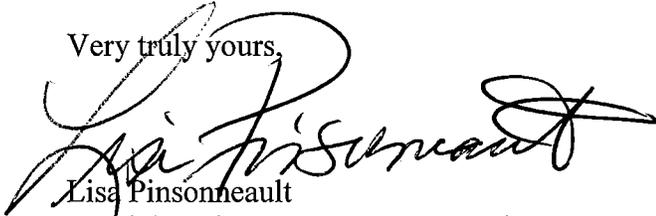
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We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Pinsonneault". The signature is fluid and cursive, with a large initial "L" and a long, sweeping tail.

Lisa Pinsonneault

Special Assistant Attorney General

Extension 2297

LP/pl

Cc: J. William Harsch, Esquire