



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

April 18, 2016

OM 16-08

Mr. Charles Wilk

RE: Wilk v. Cumberland Fire District

Dear Mr. Wilk:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Cumberland Fire District (“CFD”) is complete. You allege the Fire District violated the OMA when the agenda for its May 20, 2015 meeting did not include a time the meeting was to commence. In response to your complaint, we received a substantive response from the Fire District’s legal counsel, Kelley Nickson Morris, Esquire, who also provided affidavits from the Chairman of the Cumberland Fire District Commission, the Chief and the Deputy Chief of the CFD. Attorney Nickson Morris states, in pertinent part:

“[t]he CFD acknowledges that the Agenda dated May 20, 2015 did not include the time of the meeting. * * * However, the Secretary of State’s (SOS) website clearly lists the time of the meeting on at least two of its webpages * * * The SOS requires that meeting information be included when posting, including the date, time, and location. Before opening an agenda document, the reader sees the date, time and location of every meeting. * * * [T]he CFD virtually always begins its meetings at 7:00 p.m., as was the case on May 20, 2015.

The notice was posted by the Chief of the CFD at the CFD’s headquarters, located at 3502 Mendon Road, Cumberland, and the Deputy Chief posted a second notice at Station 1, 555 High Street, Cumberland. Headquarters employs an administrative staff during normal office hours. Both stations are manned 24 hours a day. It is not clear where Mr. Wilk saw the subject notice, but a follow up question to staff would have resulted in knowing the time of the meeting. * * * In addition, he has never attended a Cumberland Fire District meeting since it was established in November, 2014, neither before nor after the May 20, 2015

meeting. [] We challenge whether Mr. Wilk is an ‘aggrieved party’ as required by the statute.”

Chairman Lemois states, in pertinent part:

“I prepare all agendas for the CFDC.

With regards to the May 20, 2015 agenda, I inadvertently failed to include the time of said meeting; however, I entered the date, time and location of the meeting on the RI Secretary of State’s website as required. I also emailed the agenda to the Chief of the CFD, who causes the notice to be posted at two Stations on a regular basis. * * *

[Mr. Wilk] has never attended a meeting of the CFDC since its establishment.”

Chief Kenneth Finlay states, in pertinent part:

“On May 15, 2015, I received by email a copy of the Cumberland Fire District’s May 20, 2015 agenda. I personally posted the agenda on our public bulletin board in the lobby area of the Cumberland Fire District Headquarters where taxes are paid.

On the same date, I put a copy of the agenda in inter-office mail for delivery to Station 1 at 555 High Street, Cumberland. Deputy Chief Mitchell delivered the agenda and posted same on the bulletin board where public notices are generally posted.”

Deputy Chief Fred A. Mitchell, Jr. states, in pertinent part:

“On May 15, 2015, I received from Chief Kenneth Finlay a copy of the agenda for the May 20, 2015 CFDC meeting. I personally posted the agenda on our public bulletin board in the lobby area of the Cumberland Fire District, at 555 High Street, Cumberland.”

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

As an initial matter, there is no question that you did not attend the May 20, 2015 CFD meeting. The CFD alleged, however, that you have never, since the CFD's formation, attended any meetings. You do not refute this assertion in your rebuttal and this evidence (as well as argument by the CFD) presented the issue to this Department whether you did not attend the May 20, 2015 CFD meeting because of an allegedly deficient public notice, or whether you did not attend the May 20, 2015 CFD meeting because of a reason unrelated to the allegedly deficient public notice.

With respect to the foregoing inquiry and the May 20, 2015 meeting, this Department sent correspondence to you dated November 16, 2015 inquiring whether the reason you did not attend the May 20, 2015 meeting was because you did not know the time of the meeting, or because you generally do not attend these meetings. We received no response from you. On December 3, 2015, this Department again sent correspondence to you in which we attached a copy of the November 16, 2015 letter. We again requested that you provide a response to our request. We received no response.

The argument raised by the CFD, our inquiry, and your lack of response are significant because the OMA provides that "[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general." R.I. Gen. Laws § 42-46-8(a). In Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), the Supreme Court examined the "aggrieved" provision of the OMA. In Graziano, an OMA lawsuit was filed concerning notice for the Lottery Commission's March 25, 1996 meeting wherein its Director, John Hawkins, was terminated. At the Lottery Commission's March 25, 1996 meeting, Mr. Hawkins and Ms. Graziano were both present. Finding that the Lottery Commission's notice was deficient, the trial justice determined that the Lottery Commission violated the OMA and an appeal ensued. On appeal, the Rhode Island Supreme Court determined that it was "unnecessary" to address the merits of the OMA lawsuit because "the plaintiffs Graziano and Hawkins have no standing to raise this issue" since "both plaintiffs were present at the meeting and therefore were not aggrieved by any defect in the notice." Id. at 221. The Court continued that it:

"[i]t is not unreasonable to require that the person who raises the issue of the defect in notices be in some way disadvantaged or aggrieved by such defect. The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice." Id. at 221-22. (Emphasis added).

Here, pursuant R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, you have not demonstrated that you were "in some way disadvantaged or aggrieved by such defect" in the notice. Id. at 221. Specifically, although the evidence is clear that you did not attend the May 20, 2015 meeting, no evidence has been presented that the reason for your non-attendance was the allegedly deficient notice and in fact, the evidence suggests that you routinely do not attend the CFD meetings. Since you have presented no evidence to the contrary, and because you did not respond to this Department's inquiries concerning the reason for your non-attendance, this Department finds that you are not an "aggrieved" party and have no standing to object to the notice in accordance with Graziano. Accordingly, we find no violation.

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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 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.

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 A. Pinsonneault". The signature is fluid and cursive, with a large initial "L" and "P".

Lisa A. Pinsonneault
Special Assistant Attorney General
Extension 2297

LP/pl

Cc: Kelley Nickson Morris, Esquire