



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

August 30, 2016

ADV OM 16-01

Katherine J. Duncanson, Esquire

***RE: In Re: Coventry School Committee***

Dear Attorney Duncanson:

In your capacity as legal counsel for the Coventry School Committee (“School Committee”), you have sent this Department a correspondence wherein you indicate that you have “self-reported” a possible violation of the Open Meetings Act (“OMA”). Because there are no allegations of any “aggrieved” parties, as required by R.I. Gen. Laws § 42-46-8(a), this Department will treat your correspondence as a request for an Open Meetings Act (“OMA”) advisory opinion concerning whether such similar future conduct would violate the OMA.

In your letter, you submit:

“I am the attorney for the Coventry Public Schools School Committee. It was brought to my attention that a possible violation of the Open Meetings Act occurred on October 14, 2015. It has been requested of me, as attorney for the School Committee, to self-report this possible violation in an effort in acknowledgment of the potential violation and our attempts to put measures in place so this does not happen again.

In Coventry, we have a group called the Advisory Council for Coventry Education (ACCE). This group meets regularly and posts all meeting agendas in accordance with the Rhode Island Open Meetings Act. There are two members of the School Committee on ACCE. These members are Katherine Patenaude and Ann Dickson.\*\*\*

On October 14, 2015, during the posted meeting of ACCE [], a third member of the Coventry School Committee (David Florio) showed up at the meeting. This created a quorum of the School Committee. Matters related to the School

Department were discussed by all school committee members. Since Mr. Florio was not a member of ACCE, his name was not recorded in the meeting minutes as a member of the ACCE group holding the meeting. [] He did, however, attend the meeting and participate in the discussions[.] \*\*\*

[T]he meeting of ACCE was posted by the school department on the Secretary of State's website. It was posted under the School Committee's Entity name. It was posted, however, as an ACCE meeting and not a meeting of the School Committee.\*\*\*

[T]here was no vote of the quorum present of the School Committee taken during [the ACCE] meeting. There was [a] lengthy discussion during the meeting, relating to School Department matters which all three members took part in, thus creating the potential violation.”

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 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.

We initially observe the purpose of the OMA is that:

“[i]t is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.” R.I. Gen. Laws § 42-46-1.

The OMA applies when a “quorum” of a “public body” convenes for a “meeting.” Fischer v. Zoning Board of Review for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). The OMA defines a “public body” as “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government[.]” R.I. Gen. Laws § 42-46-2(c). Likewise, 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).

The evidence in this case indicates that when Mr. Florio attended the October 14, 2015 meeting of the ACCE as an audience member, a quorum of the School Committee was present. The presence of a quorum of the School Committee at the ACCE meeting does not, by itself, compel a finding that a meeting of the School Committee convened. See Mageau v. Charlestown School Committee, et al., OM 06-44. Rather, we must review the evidence to determine whether a quorum of the School Committee collectively discussed and/or acted on a matter over which it had supervision, control, jurisdiction, or advisory power. See R.I. Gen. Laws § 42-46-2(a).

This Department faced a related question in In Re Bristol Warren Regional School Committee, ADV OM 07-01. There, the Bristol Warren Regional School Committee (BWRSC) asked this Department for an advisory opinion on, *inter alia*, whether the participation of a BWRSC member in the audience of a subcommittee meeting would create a “meeting” of the BWRSC and thus violate the OMA. We noted that “[p]articipation . . . requires close and particular attention because participation could rise to the level of collective discussion and/or action taken . . . as between the [BWRSC] audience member and fellow [BWRSC] members that sit on the subcommittee.” *Id.* We found that “a ‘meeting’ between these parties would only be found if collective discussion and/or action occurred on [BWRSC] committee business.” *Id.* As a result, assuming that the BWRSC member, as a member of the audience, participated on matters strictly reserved for subcommittee business, the BWRSC would not have violated the OMA since no meeting of a quorum of the BWRSC would have convened. We cautioned, however, that although participation of BWRSC members at a subcommittee meeting may not technically rise to the level of a BWRSC meeting, “their participation runs a fine line and should be practiced only when limited to subcommittee business.” *Id.*; *see also* Mageau v. Charlestown School Committee, et al., OM 06-44.

In the instant matter, we have insufficient information to make the factual determinations required to find a violation. It is unclear what exactly the purview of the ACCE is, both in its purpose and scope of authority. *See* Daly-LaBelle v. South Kingstown School Committee, OM 13-23 (examining subcommittee bylaws to determine purpose and scope of authority of subcommittee). Additionally, there is little evidence concerning precisely what was collectively discussed during the ACCE meeting. Furthermore, the ACCE meeting agenda and minutes provide little guidance to answer these factual questions. Without more information, we are unable to determine if an OMA violation occurred, and considering that there is no evidence of an “aggrieved” person, the general guidance we have provided through this advisory opinion is appropriate. *See* Access/Rhode Island v. West Warwick School Department, PR 15-24.

We advise the School Committee (and the ACCE) that to avoid similar potential OMA issues the ACCE should “clearly define its role and the scope of its authority so that [ACCE] business may be easily distinguished from [S]chool [C]ommittee business.” *Id.*; *see also* Daly-LaBelle v. South Kingstown School Committee, OM 13-23. Due care must be taken to ensure that School Committee members attending subcommittee meetings strictly limit their participation to subcommittee business. As we cautioned previously, “[i]f it is unclear whether the topic of discussion overlaps with [S]chool [C]ommittee business, best practice dictates that the [S]chool [C]ommittee member in attendance should refrain from interacting at the subcommittee [ACCE] meeting.” In Re Bristol Warren Regional School Committee, ADV OM 07-01.

This advisory opinion is based upon the specific facts as you related. If the facts should differ in any respect, it may affect this Department’s interpretation and ultimate opinion regarding whether such action would result in a violation of the OMA.

Additionally, this advisory opinion does not abrogate any rights that the Department of the Attorney General is vested with pursuant to R.I. Gen. Laws § 42-46-8, and is strictly limited to

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this Department's interpretation of the OMA. This opinion does not address the School Committee's responsibilities under any other state law, rule, regulation, or ordinance, nor does it shield the School Committee or its members from a complaint filed in the Superior Court by a citizen or entity pursuant to R.I. Gen. Laws § 42-46-8.

We hope that this advisory opinion is of assistance as this Department is committed to ensuring that public bodies comply with the OMA.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sean Lyness".

Sean Lyness

Special Assistant Attorney General