



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

April 28, 2016
OM 16-09

Dorothy Hodge MSL, CI, CT

Re: Hodge v. Rhode Island Department of Health

Dear Ms. Hodge:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Rhode Island Department of Health (“DOH”) is complete. By correspondence dated March 30, 2015, you filed a complaint alleging violations of the OMA and alleging several violations of R.I. Gen. Laws §§ 5-71, 23-1, and 23-1.8. As explained to you in our April 14, 2015 acknowledgment letter, only allegations that implicate the OMA can be properly reviewed by this Department.¹ See R.I. Gen. Laws § 42-46-8. Accordingly, we advised you that only the allegations contained in paragraphs seven (7), eight (8) and ten (10) of your complaint would be investigated, since only those allegations concerned the OMA. Specifically, Paragraphs 7 and 8 alleged that DOH failed to timely post minutes from the Board of Examiners for Interpreters for the Deaf’s (“Board”) February 12, 2014 and June 11, 2014 meetings (respectively), and Paragraph 10 alleged that the minutes for the Board’s July 23, 2014 meeting did not reflect information that you, as a Board member, requested to be included in the minutes, in violation of R.I. Gen. Laws § 42-46-7(a)(4).²

¹ These allegations against DOH under the Health and Safety provision and the Businesses and Professions provisions of Rhode Island General Laws do not come within the purview of the OMA and cannot be adjudicated here. Under the OMA, this Office’s jurisdiction is limited only to the OMA and any violations thereof.

² In your March 30, 2015 complaint, you also alleged that there was a closed meeting attended by members of the RI Commission on the Deaf and Hard of Hearing (RICDHH) and DOH on October 1, 2014. The only evidence you cite for such a meeting was an email you received from the Manager of the Board, who is employed by DOH. In that email, you state that the Board

Legal counsel for DOH, Ms. Amy Coleman, Esquire, submitted a substantive response to your complaint. In relevant part, DOH states:

“The Department has provided explanations in the affidavit as to all three paragraphs. However, it is the Department’s position (as stated in the affidavit) that the 180 day statute of limitations has expired as to the alleged violation in Paragraph 10.”

Ms. Arlene Hartwell, Manager for the Board, submitted an affidavit that states, in relevant part:

“As of the date of the submission of this complaint to the Attorney General’s Office, the minutes of the February 12, 2014 meeting had not been posted on the Secretary of State’s website.

This was an oversight and was not intentional.

...

On April 20, 2015, I posted the subject meeting minutes on the Secretary of State’s website to remedy the situation.

As of the date of the submission of this complaint, the June 11, 2014 minutes were posted under the June 4, 2011 [sic] minutes location on the Secretary of State’s website.

However, the subject minutes were not posted until December 4, 2014.

The subject minutes were also inadvertently posted under the location for the February 12, 2014 minutes until the February 12, 2014 minutes were properly posted.

The minutes for the July 23, 2014 meeting were approved at the September 10, 2014 meeting and were posted on September 12, 2014. Accordingly, the one hundred eighty day statute of limitation under the Open Meetings Act has expired and this claim cannot be reviewed.

Manager wrote: “I met with Pam, Holly, and Steve today at RICDHH.” For purposes of this finding, and without evidence to the contrary, this Office assumes that those three people were members of RICDHH. A quorum of a public body is needed to implicate the OMA. See R.I. Gen. Laws § 42-46-2. According to the laws governing the RICDHH, a quorum of the RICDHH is five (5) members. See R.I. Gen. Laws § 23-1.8-1(b). Because only three (3) members of RICDHH met with the Board Manager, the OMA is not implicated. Further, this allegation may have been filed outside the 180-day statute of limitations as outlined pursuant to R.I. Gen. Laws § 42-46-8(b).

We acknowledge your rebuttal.³

Before we begin our analysis, 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 DOH violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate and although you raise non-OMA issues, our focus concerns only the OMA issues raised in paragraphs 7, 8 and 10 of your complaint.

We begin with a procedural peculiarity. You are a member of the Board and allege that the Board's February 12, 2014 and June 11, 2014 minutes were not timely posted to the Secretary of State's website, and that the Board's July 23, 2014 minutes did not contain an item that you wished memorialized. You filed the instant complaint, however, against the DOH and not the Board, and among the remedies you seek from this Department is to preclude the DOH "from interfering with impairing the effectiveness of the business of the Board of Examiners." It is clear from a review of your complaint, that your allegations are properly focused against the Board, and not against the DOH, despite the fact that the Board may fall under the auspices of the DOH. For this reason, this finding examines whether the Board violated the OMA.

In your March 30, 2015 complaint, you allege that the Board violated the OMA when it failed to timely post the minutes of the Board's February 12, 2014 and June 11, 2014 meetings on the Secretary of State's website. Rhode Island General Laws § 42-46-7(d) provides:

All public bodies within the executive branch of the state government and all state public and quasi-public boards, agencies and corporations, and those public bodies set forth in subdivision (b)(2), shall keep official and/or approved minutes of the meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.

While the Board acknowledges that the February 12 and June 11 meeting minutes may not have been timely posted, upon review of the evidence, we find that these allegations are barred by the statute of limitations. Rhode Island General Laws § 42-46-8(b) prohibits the filing of a

³ Your rebuttal focuses almost exclusively on the very allegations this Office previously advised you did not implicate the OMA and would not be investigated. The remedies you seek are also not remedies available under the OMA. See R.I. Gen. Laws § 42-46-8. For example, you seek "a remedy via the use of audio recordings at all future meetings, so the Board is able to refer back to the recording when there is a challenge concerning what an individual did or did not say." You also ask that this Department direct "the DOH be precluded from interfering with impairing the effectiveness of the business of the Board of Examiners, and from compromising the legal validity of my obligation under RIGL 5-71-5." The OMA does not provide these remedies.

complaint by this Department after 180 days from the date of the public approval of the meeting minutes at which the alleged violation(s) occurred. As noted above, this Department is bound to apply the law as the General Assembly enacted it and for more than a decade this Department has declined to review OMA complaints filed after the expiration of the statute of limitations for this Department to file a lawsuit. See e.g., Block v. Rhode Island Board of Elections, OM 12-05; Costantino v. Smithfield School Committee, OM 12-12. Here, according to your complaint, the February 12 and June 11, 2014 Board minutes were approved by the Board on July 23, 2014. Pursuant to R.I. Gen. Laws § 42-46-8(b), the 180-day statute of limitations began running as of “the date of public approval of the minutes,” i.e., July 23, 2014. Therefore, the time to file a complaint with this Office expired on or about January 6, 2015, prior to you filing this complaint on March 30, 2015.

You also allege that the minutes for the Board’s July 23, 2014 meeting did not include information that you, as a Board member, requested be reflected in the minutes. While we acknowledge that the precise evidence supporting this claim is unclear, this factual ambiguity is of little moment. The OMA requires all public bodies to keep written minutes for their meetings which shall include, among other information, “[a]ny 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.” See R.I. Gen. Laws § 42-46-7(a)(4). Despite the foregoing, for reasons discussed above, the statute of limitations relating to this allegation has expired. Here, the Board submits that the minutes for the July 23, 2014 meeting were “approved at the September 10, 2014 meeting...Accordingly, the one hundred eighty day statute of limitation under the Open Meetings Act has expired and this claim cannot be reviewed.” Indeed, the evidence demonstrates that the July 23, 2014 Board meeting minutes were approved by the Board on September 10, 2014, at which time the statute of limitations began to run. As such, the statute of limitations expired on or about March 8, 2015, prior to you filing this complaint on March 30, 2015.

Because we conclude that the statute of limitations for this Department to file a lawsuit with respect to the February 12, June 11, and July 23, 2014 meetings expired prior to the receipt of your March 30, 2015 complaint, and consistent with our past practice, we decline to address the merits of these allegations. See e.g., Block v. Rhode Island Board of Elections, OM 12-05; Costantino v. Smithfield School Committee, OM 12-12.⁴

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

⁴ It bears mentioning that on or about May 8, 2015, you telephoned Special Assistant Malena Lopez Mora inquiring whether this Department was going to file a lawsuit in this matter and whether the statute of limitations had passed. As such, it appears that you may have been aware of the requirements of R.I. Gen. Laws § 42-46-8 and the possibility that your claims were already barred by the statute of limitations. Moreover, even though both the May 8, 2015 telephone discussion and DOH’s April 23, 2015 response addressed the statute of limitations, at no point in your May 13, 2015 rebuttal do you discuss or offer any defense as to why your complaint should not be barred by the statute of limitations.

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. Whether this provision applies where the statute of limitations has expired is a matter for the Superior Court to determine and not this Department. 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 that reads "Maria R. Corvese".

Maria R. Corvese
Special Assistant Attorney General
Ext. 2225

Cc: Kenneth Alston, Esquire
Kimberly McNulty