



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

December 22, 2016

OM 16-15

Ms. Kristen J. Catanzaro

Re: Catanzaro v. North Providence Public Safety Complex Committee

Dear Ms. Catanzaro:

The investigation into your Open Meetings Act (“OMA”) complaint is complete. By correspondence dated January 7, 2016, you indicated that you are “filing a complaint against Mayor Charles Lombardi (public safety director, Town of North Providence), Chris Pelagio (acting police chief, Town of North Providence) and the Administrative Branch of Government of the Town of North Providence.” Your complaint indicated that on or about July 22, 2015, Mayor Lombardi and Acting Chief Pelagio formed a nine (9) member committee (hereafter the “Public Safety Complex Committee”) to advise and assist in the construction of a new Public Safety Complex in North Providence. During this time period – from July 22, 2015 to the date of your complaint – you contend that the Public Safety Complex Committee held various unnoticed meetings resulting in recommendations to hire a particular architect for the Public Safety Complex. You do not direct this Department to any specific dates unnoticed meetings allegedly occurred.

As a result of your complaint, this Department opened this matter, under the above-captioned heading, and forwarded an acknowledgment of this complaint to you. A similar letter was also sent to the Town Solicitor, Anthony M. Gallone, Esquire, seeking a substantive response. Prior to the Town’s response, you responded to our acknowledgment letter seeking to “clarify a few issues.” You clarified that you were “made aware that there were numerous nonpublic and unadvertised meetings held on unknown dates of the Public Safety Complex” and that “[t]he basis of my complaint is the Mayor of North Providence initiated the committee to be formed.” Your clarification email continued that your “complaint is against the two parties who jointly formed the committee, Mayor Charles Lombardi and Acting Chief Christopher Pelagio for not complying with the Open Meetings Act.” Lastly, you added that “[t]he committee members were asked to serve on the board but are not charged with the compliance of [the OMA].” You did not indicate when or how you were “made aware that there were numerous nonpublic and unadvertised meetings held on unknown dates of the Public Safety Complex.”

In response to your correspondences, Mr. Gallone responded that it is “[t]he Town’s position that neither Mayor Lombardi nor Acting Chief Pelagio constitute public bodies under the Open Meetings Act.” Mr. Gallone continued that your correspondences:

“do not demonstrate any specific harm or aggrievement sustained * * * relative to any potential violation of the OMA and as such the prerequisite threshold for filing a complaint under the OMA has not been satisfied. It should also be noted that as far as the acquisition of land relative to the proposed complex, Ms. Catanzaro, as a sitting council member, attended both of the Council meetings where the acquisition of land was discussed and voted upon.”

The Town also describes the formation of the Public Safety Complex Committee and contends that the formation of such an “ad hoc” committee does not implicate the OMA. See generally Weaver v. Department of Environmental Management, OM 98-10. The Town also provided affidavits from the Acting Police Chief and the Town’s Purchasing Agent.

By letter dated March 10, 2016, you provided a rebuttal. In relevant part, you denied Mr. Gallone’s accusations that your complaint was politically motivated, and rather indicated that you were filing this complaint “as a citizen, as opposed to an elected official.” In response to Mr. Gallone’s argument that you were not aggrieved, and therefore lacked standing to file this complaint, you assert that you are a citizen and taxpayer “who in fact is aggrieved if I am precluded from attending meetings, that should be open to the public and where my taxpayer dollars and the expenditure of the same are being discussed.” (Emphasis added). With respect to this issue, you continue that you “have not seen a provision or decision that requires that an aggrieved citizen provide evidence of a specific physical or mental injury to be deemed ‘aggrieved,’ and that:

“[w]hen meetings are closed and held without public notice every member of the public (and in this case every resident of North Providence including myself), are ‘aggrieved’ just by the lack of ‘awareness of the performance of public officials.[’]
* * * A citizen should not have to provide evidence of a specific harm done to them as Mr. Gallone argues.”

Lastly, with respect to the merits of this matter, you relate that your:

“response to the complaint holding Mayor Charles Lombardi and Acting Chief Pelagio additionally responsible is correct. They are the town officials who have jointly exercised their position to create a committee to vote and advise other committees to accept the advisory opinion of this North Providence Public Safety Complex Committee. The other members of the committee are not charged with the responsibility of posting a meeting. It clearly falls back on the aforementioned parties who have not made sure that the North Providence Public Safety Complex Committee complied with OMA.”

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

We begin by expressing some confusion concerning the entity (or person) you filed this complaint against. Your initial complaint and February 15, 2016 e-mail are clear that you have filed this complaint against the Mayor and the Acting Police Chief. Moreover, even after we have opened this matter with the above-referenced caption, your rebuttal reiterates that your response “to the complaint holding Mayor Charles Lombardi and Acting Chief Pelagio additionally [sic] responsible is correct.” Despite the foregoing, the following paragraph notes that your “complaint was filed against the North Providence Safety Complex Committee.” We need not let this issue sidetrack us.

To the extent that you claim that the Mayor and/or the Acting Police Chief violated the OMA, your complaint fails to state a cause of action. In order for the OMA to apply, a “quorum” of a “public body” must convene for a “meeting” as these terms are defined by the OMA. See Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999). A “public body” is defined 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(3). A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(4). Neither the Mayor nor the Acting Police Chief satisfy this definition, and thus, neither are subject to the OMA in their individual capacities. Such was precisely the conclusion of the Rhode Island Supreme Court. See Pine v. McGreavy, 687 A.2d 1244, 1245 (R.I. 1997)(“The moderator is only the presiding officer of the financial town meeting and cannot in and of himself or herself constitute a public body.”).¹

¹ Your complaint contends that the Mayor and the Acting Police Chief should be responsible for any violations the Public Safety Complex Committee and that the “members of the committee are not charged with the responsibility of posting a meeting.” With this assessment, we strongly disagree that a person or entity that creates a “public body” is responsible for any subsequent OMA violation the “public body” commits when the person or entity creating the entity is not a member of the “public body.” You compare this situation to Oliviera v. Independent Review Committee, OM 04-10, where this Department determined that the Independent Review Committee created by Governor Carcieri violated the OMA. While you accurately portray this Department’s finding, we never found or otherwise suggested (nor was it alleged) that Governor Carcieri was responsible for the Independent Review Committee’s OMA violation.

As noted, supra, your rebuttal does reference that you filed your complaint against the Public Safety Complex Committee and this Department – well aware of McGreavy's limitation on your complaint that certain individuals violated the OMA – construed your complaint as against the Public Safety Complex Committee. Accordingly, we review your complaint as against this entity, but upon examination, we find that your complaint runs into Mr. Gallone's argument that you have presented no evidence that you are aggrieved by the allegation you raise – the Public Safety Complex Committee holding unnoticed meetings.

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 Rhode Island Supreme Court examined the “aggrieved” provision of the OMA. There, 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, as well as his attorney, 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 found 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:

“has held on numerous occasions that actual appearance before a tribunal constitutes a waiver of the right of such person to object to a real or perceived defect in the notice of the meeting. * * * It 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. While attendance at the meeting would not prevent a showing of grievance or disadvantage, such as lack of preparation or ability to respond to the issue, no such contention has been set forth in the case at bar. 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, even assuming that the Public Safety Complex Committee did convene unnoticed meetings, no evidence has been presented that you missed these meetings because of the lack of public notice. The evidence buttresses our conclusion.

For instance, your February 15, 2016 email advises that you were “made aware that there were numerous nonpublic and unadvertised meetings held on unknown dates of the Public Safety Complex Committee.” While the timing and manner in which you were “made aware” is unclear, it is apparent that in response to Mr. Gallone's argument that you are not aggrieved, you never provided any evidence to contradict this assertion. Indeed, you characterized your involvement as

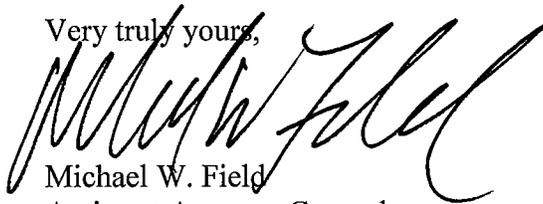
a citizen and taxpayer “who in fact is aggrieved if I am precluded from attending meetings, that should be open to the public and where my taxpayer dollars and the expenditure of the same are being discussed.” (Emphasis added). This assertion leaves unanswered the very question that Graziano requires that we address. Although you contend that “[a] citizen should not have to provide evidence of a specific harm done to them,” the Rhode Island Supreme Court has held that “[t]he burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice.” Id. at 222. Respectfully, on this record, you have failed to meet this standard.

To be clear, you need not demonstrate a “physical or mental injury” as you suggest, but consistent with Graziano you must demonstrate that you were “in some way disadvantaged or aggrieved by such defect.” Id. In this respect, the only identifiable “injury” you assert is that “[w]hen meetings are closed and held without public notice every member of the public (and in this case every resident of North Providence including myself), are ‘aggrieved’ just by the lack of ‘awareness of the performance of public officials.[.]’” As Graziano and our findings have made clear, however, a general allegation that notice was improperly (or not) posted without demonstrating that you were specifically “disadvantaged or aggrieved by such defect” does not suffice. See e.g., Costa v. Rhode Island Statewide Independent Living Council, OM 16-13, p. 16 (complaints not aggrieved since they missed meetings due to illness and vacation and not due to alleged improperly posted notices). Based on the lack of evidence, or even an allegation, that you did not attend a Public Safety Complex Committee meeting due to the lack of public notice or that you were otherwise “disadvantaged or aggrieved by such defect,” the precedent discussed herein compels our conclusion. We find no violation.

Although the Attorney General will not file suit in this matter and has found no violation, 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 this 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,



Michael W. Field
Assistant Attorney General

Cc: Anthony Gallone, Esquire