



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

May 12, 2017  
OM 17-15

Mark McBurney, Esquire

Re: **DesMarais v. Manville Fire District**

Dear Mr. McBurney:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Manville Fire District (“Fire District”) is complete. Your complaint, which you entitled DesMarais v. Manville Fire District, alleges that the Fire District violated R.I. Gen. Laws § 42-46-7(b)(2) and (d) when it failed to timely post and/or make available unofficial and/or official minutes to various meetings. You contend that such omission represents a willful or knowing violation.

In due course, we received a substantive response from the Fire District’s legal counsel, Daniel V. McKinnon, Esquire, and subsequently, you filed a 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 the 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.

Rhode Island General Laws § 42-46-7(b)(2) provides, in pertinent part:

“[i]n addition to the provisions of subdivision (b)(1), 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.”

Rhode Island General Laws § 42-46-7(d) requires the Fire District, among other public bodies, to “keep official and/or approved minutes of all meetings of the body and [] 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[.]”

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.

This Department has previously applied Graziano to, inter alia, situations involving alleged defects in the posted notice of a meeting and to alleged insufficiencies in a meeting's agenda. See, e.g., Costa, et al v. Rhode Island Statewide Independent Living Council, In re: Rhode Island Statewide Independent Living Council, OM 16-13, ADV OM 16-02; see also Rider v. Foster Town Council, OM 14-11. More recently, we applied Graziano to the precise circumstances presented in this case – an allegation that official minutes were not timely posted on the Secretary of State's website where there was no evidence that the Complainant sought to access the official minutes during the period of time that minutes should have been posted but allegedly were not posted. See Ayotte v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 17-12.

Here, we have carefully reviewed the evidence presented and find no evidence (or argument) that the Complainant attempted to access the unofficial and/or official minutes at any point, but was unable to do so. At no point does the evidence suggest that the Complainant ever sought to access such minutes and this omission is fatal. See Ayotte, OM 17-12 (“This failure to sufficiently articulate how the alleged late posting disadvantaged you individually is fatal to your claim.”). For

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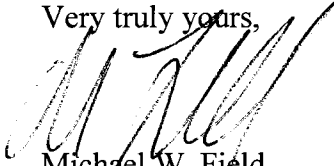
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this reason, and consistent with Ayotte, we find no evidence that the Complainant is aggrieved and we find no violation.

Although the Attorney General will not file suit in this matter, nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 42-46-8(c). We are closing this file as of the date of this correspondence.

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

Very truly yours,



Michael W. Field  
Assistant Attorney General

MWF/kr

Cc: Daniel V. McKinnon, Esq.