



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

October 25, 2017
OM 17-32

Mr. John Flaherty

Flaherty v. Town of North Smithfield Municipal Building Review Task Force

Dear Mr. Flaherty:

The review of your Open Meetings Act (“OMA”) complaint against the Town of North Smithfield Municipal Building Review Task Force (“MBRTF”) is complete.

Your complaint alleges, in pertinent part:

“I am writing to file a complaint against the [MBRTF], a public body authorized by the North Smithfield Town Council, for what I believe to be a violation of the Open Meetings Act that occurred last evening, Wednesday, July 19, 2017.

I attended the MBRTF meeting that convened at approximately 5:30 PM. The meeting adjourned at approximately 6:45 PM after which I left the premises. I understand from another member of the public that a quorum of members (I believe all five members of the MBRTF) continued meeting in the parking lot and continued to discuss business relevant to the agenda for approximately 30 minutes with two others present.

Not knowing that the meeting would continue informally in the parking lot after adjournment, I was denied the opportunity to participate in the unofficial meeting. What’s even more troubling is that I learned from a witness that I was the subject of some of the discussion because of my former roles as an elected and appointed official in the community.”

In response to a prompt from this Department to provide more information, you submitted the following, in relevant part:

“It is my understanding that the following people were present at the ‘extended’ meeting of the MBRTF.

MBRTF Members

Paul Vadenais (Chairman)

David Chamberland

John Perry

Paul Nordstrom

John Beauregard (also served as Town Council President)

In addition, I understand that Town Councilor Paul Zwolenski and resident Michael Rapko [] were present.

Reportedly, the approximately 30-minute discussion was largely an extension of the subject matter of the official meeting that had just adjourned – the controversial status of town bond projects and a path forward to their eventual implementation. It’s my understanding that there was discussion about a Town Council action that occurred on 7/17/17 (the official hiring of a new architect) and the seeking of reassurance from MBRTF members about their confidence in that approach to moving the project forward, given that there was considerable disagreement about this at the 7/17/17 Town Council meeting and serious questions raised about the most responsible path forward.

In addition, I understand that my role as a former elected town official and as a member of the previous committee responsible for advising the Town Council on project implementation were discussed. I believe that my performance and that of the committee on which I served was discussed outside of the public process and denying me and others advanced notice or the opportunity to defend previous actions. It is plausible this discussion will have a bearing on future actions of the MBRTF and the Town Council regarding the implementation of the bond projects. The basis of this information came from Mr. Rapko, a member of the public who was witness to the discussion.” (Emphasis in original).

The MBRTF submitted a substantive response through its counsel, David V. Igliozzi, Esquire, stating, in relevant part:

“This Complaint should be denied for two reasons:

1. The [MBRTF] is not a public body under the Open Meetings Act, as set forth in RIGL [§] 46-42 et seq. The [MBRTF] has a voluntary membership that meets as necessary and does not implement policy or legislative changes but instead act[s] strictly as an advisory committee that makes recommendations to the North Smithfield Town Council. ***
2. Based upon the attached substantive responses from the members of the [MBRTF], after the [MBRTF] meeting was concluded on July 19, 2017, a majority of the members of the [MBRTF] did not discuss issues related to [MBRTF] agenda business.” (Emphasis in original).

The substantive response included affidavits of MBRTF members John J. Perry, Jr., Paul Vadenais, Paul Nordstrom, David Chamberland, and John A. Beauregard. The substantive response also included a copy of the Town Council Resolution that established the MBRTF.

You provided a rebuttal, which included a notarized statement from Mr. Michael Rapko describing his observations of the July 19, 2017 parking lot discussion.

At the outset, we note that in examining whether an entity is subject to the OMA we are mindful that our mandate is not to substitute this Department's independent judgment concerning whether an entity falls within the purview of the OMA, 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 MBRTF violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

Here, for reasons that shall become apparent shortly, we assume but do not decide that the MBRTF is a public body subject to the OMA.¹ Therefore, we turn to a consideration of whether the MBRTF convened a "meeting" on July 19, 2017 in the parking lot following the scheduled meeting. 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). Here, we focus on the "meeting" requirement. 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(1).

Several cases from this Department have reviewed the "meeting" requirement and determined that either "action" or a "collective discussion" by a quorum of the public body on matters over which they have "supervision, control, jurisdiction, or advisory power," is required to satisfy the "meeting" element, and thus, trigger the OMA and its attendant requirements. See, e.g., The Valley Breeze v. Cumberland Fire Committee, OM 15-04. Conversely, if a "quorum" of a "public body" convenes, but do not collectively discuss and/or act upon matters over which they have "supervision, control, jurisdiction, or advisory power," a "meeting" has not convened. Id.

Initially, we note that your complaint contains no first-hand allegations and instead is based upon second-hand knowledge. Respectfully, we provide this second-hand hearsay evidence no weight. In support of your allegations, however, you do provide a notarized statement from Mr. Michael Rapko, who does provide a first-hand account. Mr. Rapko's statement relates, in pertinent part:

"After the meeting adjourned, I then approached the door with North Smithfield Town Councilor Paul Zwolenski. Standing near the door were the five members of the Task Force [MBRTF]. Mr. Zwolenski started a discussion with the Task Force

¹ Indeed, we note that the MBRTF's argument that it is not a public body is almost entirely unsupported and we harbor serious doubts as to its merit.

members about his concern for the need to spend additional funds for the renovation of the Kendall Dean-Bushee complex.

I then added my comments about the presentations made by Mr. Michael Clifford and Mr. John Flaherty, which were made during the Open Forum section of the July 17, 2017 North Smithfield Town Council meeting. I was concerned about the comments made by several members of the Town Council that new windows and a new roof were not included in the bid prepared by the previous architect, Studio Meja. I noted that these comments were damaging to Mr. Flaherty's reputation as he was involved in this project from the beginning. After a brief discussion with Mr. John Beauregard, a member of the Task Force and Chairperson of the North Smithfield Town Council, the matter was resolved.

The discussion then shifted to the performance of the Public Buildings Improvement Commission (PBIC) and the previous architect, Studio Meja. Mr. David Chamberland, a member of the Task Force, provided most of the commentary with support from the rest of the Task Force. Mr. Chamberland concluded that he was impressed with the newly hired architect, Mr. Mark Saccoccio, because of his previous work and it was worth spending the budgeted \$48,000.

The discussions at the door inside the building lasted at least thirty (30) minutes and, as everyone exited the building, smaller groups continued the discussion in the parking lot as we approached our vehicles.”

The MBRTF provided affidavits from each of its five members on this matter. All MBRTF members maintain that “at no point in time was there a majority of the members of the Task Force Committee discussing issues related to Task Force Committee agenda business[.]” The affidavit from MBRTF member John J. Perry, Jr. is representative:

“3. That when the meeting ended, as we were walking out Councilor Paul Zwolenski started talking to us about everyone getting along from the 2 different boards. The whole discussion was about people's feelings and nothing about building or planning was discussed.

4. That the only people to discuss and mention John Flaherty's name was Councilor Zwolenski and Mike Rapko.”

Although we are presented with conflicting narratives of what transpired in the parking lot on July 19, 2017, we find credible the five-time corroborated account of MBRTF members. It certainly seems that some discussion occurred in the parking lot on July 19, 2017, but it is not evident, from the record before us, that a quorum of the MBRTF ever collectively discussed any matters within their supervision, control, jurisdiction, or advisory power. The MBRTF members expressly deny that such a collective discussion occurred amongst a quorum of its members. Indeed, the account you provided notes that the initiator of the discussion was Mr. Zwolenski, who is not a MBRTF member, and articulates that three different topics were discussed. At no point, however, is there

evidence that a quorum of the MBRTF members collectively discussed any of these topics. For example, Mr. Rapko writes that, “Mr. Zwolenski started a discussion with the Task Force members about his concern for the need to spend additional funds for the renovation of the Kendall Dean-Bushee complex.” Later, Mr. Rapko addresses a different subject-matter that was discussed (apparently at his initiation) and notes that “[a]fter a brief discussion with Mr. John Beauregard, a member of the Task Force *** the matter was resolved.” Even Mr. Rapko’s statement concerning the performance of the Public Buildings Improvement Commission falls short. In this circumstance, Mr. Rapko indicates that “Mr. David Chamberland, a member of the Task Force, provided most of the commentary with support from the rest of the Task Force.” We also note Mr. Rapko’s closing sentence, which states that “as everyone exited the building, smaller groups continued the discussion in the parking lot as we approached our vehicles,” but this assertion contains no representation concerning the subject-matter of these smaller group discussions, nor is there any evidence that a quorum of MBRTF members comprised any of these smaller groups.

Because the evidence fails to establish that a quorum of MBRTF members collectively discussed any matter within their supervision, jurisdiction, control, or advisory power, 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). 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. 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,



Sean Lyness
Special Assistant Attorney General

SL/kr

Cc: David Igliazzi, Esq.