



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

November 22, 2017

OM 17-33

Mr. John R. Dionne

RE: Dionne v. Woonsocket City Council

Dear Mr. Dionne:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Woonsocket City Council (“City Council”) is complete. By email correspondence dated September 7, 2017, you allege that the City Council violated the OMA when it amended its agenda at the April 17, 2017 meeting to add an additional item, yet not only discussed this item, but also voted on this additional item. More specifically, the agenda listed a Resolution to appoint an individual to fill a vacant position on the Board of Canvassers (“Board”). You allege the City Council amended its agenda to appoint a different person than advertised to the position of Clerk of the Board. The Resolution, as amended, passed by a 6-1 vote.

In response to your complaint, we received a response from the City Council’s legal counsel, John J. DeSimone, Esquire. Attorney DeSimone states, in pertinent part:

“Resolution 17 R 46 was a resolution for the Appointment of Mr. John F. Ward to the Board of Canvassers and was duly posted on the agenda. This agenda was properly noticed with the Secretary of State’s office.

Upon deliberations of the Resolution, there was an oral amendment made, which was voted on and passed on a 6-1 roll call vote.”

We note that you did not file a rebuttal.

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

The subject agenda item stated:

“Appointing John F. Ward as Clerk and member of the Board of Canvassers and Registration of the City of Woonsocket.”

At the April 17, 2017 meeting, the evidence reveals that a motion was made (and seconded) to amend the agenda. More specifically, it appears the City Council intended to appoint Mr. Ward as a member of the Board, and not as both Clerk and member. The City Council amended its agenda to add “Suzanne M. Vadnais as Clerk of the Board of Canvassers and Registration of the City of Woonsocket” and to remove the words “Clerk and” appearing right after Mr. Ward’s name. The Resolution, as amended, was then voted upon.

The OMA expressly allows a City Council to amend its agenda. See R.I. Gen. Laws § 42-46-6(b) (“Nothing contained [in the OMA] shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members.”). With respect to any amended matter, however, “[s]uch additional items shall be for informational purposes only and may not be voted on except where necessary to address an unexpected occurrence that requires immediate action to protect the public or to refer the matter to an appropriate committee or to another body or official.” Id. Here, the City Council added a topic to its agenda during the April 17, 2017 meeting, (namely appointing Ms. Vadnais to the position of Clerk of the Board); however, the City Council did not simply discuss this amended agenda item, but actually voted to appoint Ms. Vadnais as the Clerk. Therefore, this Department finds that the City Council violated the OMA by voting on the additional agenda item. The City Council, in its response, admits that “there was an oral amendment made, which was voted on and passed on a 6-1 roll call vote.”

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) “[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];” or (2) “the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA].” R.I. Gen. Laws § 42-46-8.

Here, we find insufficient evidence that the City Council knowingly or willfully violated the OMA. While injunctive relief would be appropriate, we prefer that the City Council remedy the violation on its own. The City Council should, therefore, reconsider and re-vote on the matter discussed at its April 17, 2017 meeting at a properly posted future meeting. See Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784, 802 (R.I. 2005) (“By scheduling, re-noticing, and re-voting on the challenged appointment, the town council, albeit belatedly, was acting in conformity with both the letter and spirit of the avowed purpose of the OMA – to ensure that ‘public business be performed in an open and public manner.’”). With respect to this

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point, we have conferred with Mr. DeSimone, who (as legal counsel) has represented that the City Council will take such remedial action.

This finding serves as notice to the City Council that the conduct discussed herein is unlawful and may serve as evidence of a willful or a knowing violation in any similar future situation. Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursuing a complaint in the Superior Court. The complainant may pursue an OMA complaint within “ninety (90) days 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 our file as of the date of this finding, although we reserve the right to reopen this matter in the event the City Council fails to comply with this finding and the OMA.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Pinsonneault". The signature is fluid and cursive, with a large initial "L" and "P".

Lisa Pinsonneault
Special Assistant Attorney General

LP/kr

Cc: John J. DeSimone, Esq.