



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

VIA EMAIL ONLY

November 27, 2017

OM 17-34

Mr. Robert Jones

**RE: Jones v. Kingston Hill Academy**

Dear Mr. Jones:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Kingston Hill Academy (“KHA”) is complete.

Your complaint alleges, in pertinent part:

“I am filing a violation of the Rhode Island (RI) Open Meetings Act (OMA) by Kingston Hill Academy (KHA), an organization subject to the OMA per § 16-77-6.1e. I contend KHA closed a section of an open meeting on April 3, 2017 in violation of the OMA.

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On April 3, 2017, KHA held a public meeting. The agenda for the meeting was published on the RI Secretary of State’s website[.] \*\*\*

Item 6 of the KHA meeting agenda for April 3, 2017 stated:

6. Executive Session pursuant to R.I.G.L. § 42-46-5(a)(5): Discussions or considerations related to the acquisition or lease of real property for public purposes, **or of the disposition of publicly held property – proposed sale of KHA property (bold emphasis mine).**

\*\*\* I contend that the KHA property discussed in the meeting is not publicly held property and thus not entitled to the OMA exemption.

(1) Kingston Hill Academy is a registered Domestic Non-Profit Corporation in the state of RI.

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(2) While KHA may serve a public purpose (which has an exemption for the \*acquisition\* of real property[]), its owned property in question is not public.

KHA pays property taxes on the property lots in question, another indicator the property is not publicly held. \*\*\*

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(4) The KHA board minutes of Nov 26, 2012 show the property was financed by a private sector entity (The Groden center), the sole “member” of the KHA corporation (as noted in KHA by-laws).”

The KHA submitted a substantive response through its counsel, Matthew R. Plain, Esquire, and Greg Vanden-Eykel, Esquire. In affidavit form, Attorney Vanden-Eykel stated the following, in relevant part:

“6. As an independent charter school, KHA is a ‘charter *public* school’ as defined by R.I.G.L. § 16-77-2.1[.] \*\*\*

7. Pursuant to R.I.G.L. § 16-77-3.1(b), independent charter schools ‘shall be deemed to be a *public school* acting under state law . . . .’ (*emphasis supplied*). Indeed, all students of independent charter schools ‘shall be deemed to be *public* school students . . . .’ See id. (*emphasis supplied*)[.]

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11. KHA is subject to the same federal statutory and regulatory requirements applicable to traditional Rhode Island public schools. \*\*\*

12. In accordance with R.I.G.L. § 16-77-2.1(2) and R.I.G.L. § 16-77-3.1(a)(1), The Groden Center, which is a Rhode Island non-profit corporation, served as the supporting organization for KHA’s charter application. However, KHA as mandated by the applicable Rhode Island statutes and regulations, operates as a public school in the same fashion as traditional public schools.

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20. KHA admits, and Mr. Jones concedes, that KHA owns the property at issue[.]

21. KHA’s board purchased and financed this property pursuant to statutes and regulations pertaining to public school housing aid and public school construction.

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24. \*\*\* KHA is a public school and its own local education agency, equivalent to the North Kingstown School Department. Although KHA is registered with the Secretary of State as a ‘non-profit corporation,’ such a designation does not alter the fact that by statute, KHA is a public entity. \*\*\*

25. Mr. Jones cites no authority for his position that property owned by duly authorized independent charter schools is not ‘publicly held.’ He has merely pointed out that KHA should approach the Town of South Kingstown about the payment of local property taxes.

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27. Accordingly, property owned by KHA, including land at 850 Stony Fort Road as conceded by Mr. Jones in his Complaint, is *publicly* held. Therefore, KHA properly invoked R.I.G.L. § 42-46-5(a)(5) when it convened an Executive Session of its Finance Committee to discussed the ‘proposed sale of KHA property.’” (Emphases in original).

You provided a rebuttal,<sup>1</sup> stating, in pertinent part:

“First, it is important to establish the two property lots in question are Plat/Lot 16-1/3 (822 Stony Fort Road) and 16/2 (850 Stony Fort Road). These are zoned residential and commercial by the Town of South Kingstown (see Items 1 and 2) and are not essential to the continued functioning and operating of KHA. KHA has not discussed closing of the school with regard to the selling of the two lots in questions [sic]; the sole focus of disposing of these lots was to generate revenue.

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The property lots were purchased in June 2004. \*\*\* [T]he Groden Center board was essentially the controlling entity of KHA in 2004. \*\*\*

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According to South Kingstown GIS records, Groden Center is listed as a co-owner of the lots in question. Hence, KHA’s notion that it as [sic] an independent entity/board financed and purchased the land is inaccurate; it was in fact a private corporation that did so and to this day still retains final control over KHA.

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Charter schools in RI are subject to public control to the extent the law and statute [sic] provide. The AG should not give KHA’s claim that some public nature fully extends to all aspects, especially in KHA’s case where it is clear the private nature of KHA and Groden Center clearly are intertwined.

\*\*\* I find it difficult that KHA and Compass, both schools that have run operational budget deficits in recent years, would pay tens of thousands of dollars in needless taxes if it truly considered its non-essential property as ‘public.’ The fact KHA has yet to file for an exemption or redesignation of the property as ‘school’ is evidence to this.”

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

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<sup>1</sup> You also provided an additional email correspondence on August 17, 2017, which preceded the submission of your rebuttal. This correspondence notes that it would “help clarify the review of the complaint if additional information was provided by Kingston Hill or its counsel.” Respectfully, as stated in our August 3, 2017 acknowledgment letter, after the KHA’s substantive response you had an opportunity to respond via rebuttal. We emphasized that “after this opportunity to respond, neither party will be allowed additional response without permission or inquiry from this Department.” Because you clearly marked your August 17, 2017 correspondence as an extra correspondence in addition to your rebuttal, and because this Department did not inquire nor give permission for additional responses, your August 17, 2017 submission will not be addressed.

The OMA requires that “[e]very meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5.” R.I. Gen. Laws § 42-46-3. A public body may hold a meeting closed to the public for one of the ten purposes enumerated under R.I. Gen. Laws § 42-46-5(a). Among the enumerated exemptions is that a public body may convene into executive session for “[a]ny discussions or considerations related to the acquisition or lease of real estate for public purposes, or of the disposition of publicly held property wherein advanced public information would be detrimental to the interest of the public.” See R.I. Gen. Laws § 42-46-5(a)(5).

Here, your complaint centers on whether the property in question was, in fact, “publicly held[.]” In support, you note that the KHA is a non-profit corporation, appears to pay property tax like a private entity, and is, as you put it, “intertwined” with the private entity, The Groden Center. These characteristics, in your view, posit the KHA as an entity bearing enough indicia of a private entity to deem the “publicly held” OMA requirement inapplicable.

Respectfully, we disagree. To be sure, as a practical matter, charter schools occupy a position that can, at times, blur the line between public and private schools. However, regardless of what practical imprecisions manifest, the KHA’s legal status is crystal clear: the KHA is a “charter public school,” which “shall be deemed to be a public school acting under state law” whose students “shall be deemed to be public school students[.]” R.I. Gen. Laws §§ 16-77-2.1, 16-77-3.1(b). Clearly, the KHA is a public school and you provide no argument to dispute this central fact. Indeed, you concede that the KHA is a “public body” under the OMA and that the OMA governs the KHA’s actions. R.I. Gen. Laws §§ 42-46-2(3); 16-77-6.1(e). With respect, we find untenable your position that the KHA is – in reality – a private entity, but should be sanctioned as a “public body” under the OMA.

As a public entity, property owned by the KHA is “publicly held.” See Merriam Webster Dictionary (“publicly: by a government.”). You do not dispute that the property at issue during the April 3, 2017 meeting was owned, at least in part, by the KHA. Therefore, the KHA properly convened into executive session to discuss the disposition of its own publicly held property pursuant to R.I. Gen. Laws § 42-46-5(a)(5). To find otherwise, we would have to conclude that the KHA is subject to the OMA, but could not convene into executive session to discuss the disposition of its own property as provided in R.I. Gen. Laws § 42-46-5(a)(5). 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.

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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 "Sean Lyness". The signature is written in a cursive, flowing style.

Sean Lyness  
Special Assistant Attorney General

SL/kr

Cc: Matthew R. Plain, Esq.