



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 1, 2018
OM 18-15

Mr. Ramsey Davis

RE: Davis v. Cranston City Council

Dear Mr. Davis:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Cranston City Council (“City Council”) is complete. By email correspondence dated December 5, 2017, you allege the City Council violated the OMA when it referred a resolution, namely “No Guns in Schools” to the Ordinance Committee, yet later in the meeting – after you left the meeting – decided not to forward this resolution to the Ordinance Committee.

In response to your complaint, we received a substantive response from the Solicitor for the City Council, Mr. Christopher M. Rawson, Esquire. Attorney Rawson states, in pertinent part:

“The Gun Resolution was listed under the Introduction of New Business and was referred to the Ordinance Committee that was going to meet the following month. * * *

Later in the meeting, through a seconded motion, the Council sought to amend its referral of New Business to include all of the Resolutions except the Gun Resolution. The matter was discussed, and five council members voted to not refer the Gun Resolution to the Ordinance Committee, and three voted to refer the Gun Resolution to the Ordinance Committee. * * *

There is no factual dispute that (1) the Gun Resolution was properly listed on the Cranston City Council agenda; * * * (2) it was properly noticed to the public to be on that night’s agenda; (3) the agenda stated that all matters listed are subject to final action; (4) the public had an opportunity to comment on the Gun Resolution (the Council is not mandated to permit public comment); (5) a proper motion was made as to whether or not to refer it to the Ordinance Committee; (6) a majority

vote was executed to not refer the Resolution; and (7) all of the proceedings took place in open session.

During the discussion, it was pointed out that the Gun Resolution was not necessarily New Business, and that it had been discussed by the City Council and the Ordinance Committee in prior months. While there is no direct legal impediment to having the non-binding Gun Resolution being listed on the New Business agenda every session, as noted in the minutes, many Council members opined that this legislation should be addressed at the state level. * * *

The Cranston City Council did not have to amend its agenda to address the referral, and had every right to address it before the meeting was adjourned.

Complainant states that the City Council was underhanded in purposely waiting until ‘the public left’ to address the referral of the Gun Resolution. There is no direct evidence of any willful or nefarious intent. As detailed in the Meeting Minutes, all council members had an opportunity to discuss the referral, and the public had a right to be there.”

We acknowledge your 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 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 public policy set forth in the OMA states:

“It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy.”

This Department has previously opined that whether or not taking agenda items out of order violates the OMA depends on whether such actions may cause a member of the public to miss a portion of the meeting based on his or her reliance on the agenda. See Epke v. Tiverton Town Council, OM 06-29; Crowell v. Little Compton School Committee, OM 05-09

(recognizing that misinformation concerning when the public portion of a meeting will commence may compromise the public's ability to opt to be present).

Here, as Mr. Ramsey notes, whether “intentionally or not,” the City Council’s re-introduction of an agenda item that it had previously considered and voted upon earlier in the meeting, left interested citizens without the benefit of witnessing the public process. It is hardly unreasonable for citizens, such as Mr. Ramsey, to attend a public meeting to witness the deliberation(s) of specific interested agenda item(s). After the conclusion of these item(s), many citizens may leave the public meeting rather than sit through – perhaps hours – of the remainder of the meeting that is of little interest to them just in case the agenda item that is of interest and already decided, re-appears before the public body. While the City Council is correct that the Gun Resolution was on the agenda, under the circumstances presented, we hardly believe that it is unreasonable for a citizen who witnesses the conclusion of an agenda item and the public body moving onto the next agenda item, to anticipate that the concluded agenda item will not re-appear out of order later in the meeting. Indeed, the City Council’s implicit invitation for us to adopt such a rule, which would require all citizens to attend the entire meeting in case a concluded agenda item were to re-appear, finds little support within the OMA and conflicts with our precedent. See supra. While we cannot predict whether some future set of circumstances would allow such a reintroduction, on the record presented, we conclude that this is not one of those cases.¹ As such, we find City Council violated the OMA.

Upon a finding of an OMA violation, the Attorney General “may file a complaint on behalf of the complainant in the superior court against the public body.” R.I. Gen. Laws § 42-46-8(a). “The court may issue injunctive relief and/or “may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members” for a willful or knowing violation. R.I. Gen. Laws § 42-46-8(d).

We are not persuaded that the City Council knowingly or willfully violated the OMA. Moreover, since the City Council’s second vote was to not refer the Resolution to the City Council, injunctive relief is not appropriate. 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.

¹ As one example, the OMA provides that “[n]othing * * * shall prevent a public body, other than a school committee, from adding additional items to the agenda by majority vote of the members.” R.I. Gen. Laws § 42-46-6(b). In such a case, the “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, assuming this provision was applicable, no evidence was presented that the City Council amended its agenda pursuant to R.I. Gen. Laws § 42-46-6(b) prior to the City Council deciding not to forward the resolution. While we conclude that whether R.I. Gen. Laws § 42-46-6(b) must be invoked in such circumstances – or whether the re-consideration of the agenda item is so related in time to the original consideration that an amendment is unnecessary – is a fact-specific inquiry, in this case the City Council violated the OMA.

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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.

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: Christopher Rawson