



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903  
(401) 274-4400 - TDD (401) 453-0410

*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

April 30, 2014  
OM 14-15

John A. Pagliarini, Jr. Esquire  
3913 Main Road, Suite E  
Tiverton, Rhode Island 02878  
[john@lawpag.com](mailto:john@lawpag.com)

**Re: Pagliarini v. Tiverton Tax Assessment Board of Review**

Dear Mr. Pagliarini:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Tiverton Tax Assessment Board of Review (“Board”) is complete. By correspondence dated February 28, 2014, you allege the Board violated the OMA on January 13, 2014 when a quorum of the Board discussed public business outside the purview of the public.<sup>1</sup>

In response to your complaint, we received a substantive response and a sworn affidavit from the Board’s legal counsel, Andrew M. Teitz, Esquire, who also provided a sworn affidavit from the Tiverton Tax Assessor, Mr. David Robert.

Attorney Teitz states, in pertinent part:

“[T]he Board denies that a quorum of the Board discussed a matter prior to convening the Public Hearing. Board Chair Kathy Skrzypiec was talking generally about illiquidity and did not discuss any of the merits of the Petitioner’s

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<sup>1</sup> You further alleged that the Board’s January 13, 2014 meeting was held at a location that was beyond an office door that is closed at 4:00 p.m. You also indicated that the meeting location does not have ample seating and that the meeting location was not handicapped accessible. It appears you attended the January 13, 2014 meeting. This Department requested that you provide evidence as to how or why you were aggrieved by the issue of the location of the meeting room (behind a door that is allegedly closed at 4:00 p.m., does not have ample seating and is not handicapped accessible.) See Graziano v. Rhode Island State Lottery Comm’n, 810 A.2d 215, 222 (R.I. 2002) (requiring a person who raises an allegation of defect of notice to show how he was aggrieved by that defect). We received no response from you. As such, those allegations were not investigated as part of this complaint.

case. Moreover, she was not able to continue with her question as she was interrupted by the clerk coming into the room and by the arrival of Solicitor Teitz. The Petitioner was present for further discussion. The Board continued the matter to January 29 for a full public hearing in order to give the Petitioner the benefit of a full board and time to prepare for the proceeding. Even if a violation did occur, it was cured by the Board's action to continue this matter to a later date and the Petitioner had the ability to be heard at all times through this process."

In his affidavit, Attorney Teitz further submits:

"The Board did not consider the application on the merits on January 13, 2014. One reason is that only two of the three Board members were present, and they wanted to give the Appellant the opportunity for a continued hearing with all three members. Thus, it was mainly a procedural meeting to set the date for the hearing and discuss the process and procedures of the appeal. The Board specifically agreed with Mr. Pagliarini that the hearing would be reopened so that he could present whatever new evidence he wanted to present at the next meeting to be held on January 29, 2014."

Mr. Robert states, in pertinent part:

"Before the meeting on January 13, Board member [Mr.] Paul Caron arrived early and sat down in my office. We discussed personal topics. Although I do not recall the precise topic on January 13, we usually talk about golf since it is a common interest of both of us.

Shortly before 4:00 PM on January 13, Board Chair Kathy Skrzypiec arrived and stated that she had a general question about illiquidity as it impacted value. \* \* \* [Ms. Skrzypiec] said that she had done some research. Before I could tell [Ms. Skrzypiec] that she needed to wait until the meeting started, one of my clerks came into my office and said that Mr. Pagliarini was at the window and was complaining about us violating the Open Meetings Act. The conversation promptly ended. Shortly thereafter, Mr. Teitz arrived and brought Mr. Pagliarini into the meeting, and the meeting began a few minutes later."

You did not file 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 this law and as the Rhode Island Supreme Court has interpreted its provisions. Furthermore, our statutory mandate is limited to determining whether the Board violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

Pursuant to this Department's request, on April 8, 2014, we received sworn affidavits from the two (2) Board members present on January 13, 2014, Mr. Paul Caron and Ms. Katherine Skrzypiec. Mr. Caron states, in pertinent part:

"That on Monday, January 13, 2014, the Tiverton Tax Assessment Board of Review met in the Tiverton Tax Assessor's Office for a continued hearing on the appeal of Bourne Mill Rental 9, LLC.

Before the January 13 Board meeting, I arrived early to the meeting and entered Tax Assessor David Robert's office. We made small talk and discussed personal topics. [Mr. Robert] and I did not discuss any matters that were before the Board nor did we discuss anything related to official business. Any conversation was merely personal in nature.

A few minutes before the January 13 meeting, Board Chair Kathy Skrzypiec arrived. [Ms. Skrzypiec] said that she had done some research and stated that she had a general question for [Mr. Robert] about illiquidity based upon her research. She walked up towards [Mr. Robert] while I was sitting at the table in [Mr. Robert's] office \* \* \* Before [Ms. Skrzypiec's] question could be answered or any substantive discussion occurred, one of the clerks from the Tax Assessor's Office came into the room and stated that Mr. Pagliarini was outside and waiting to come into the room. Neither myself, [Mr. Robert], nor [Ms. Skrzypiec] continued the conversation related to illiquidity and no substantive discussion of the Pagliarini appeal took place prior to the meeting."

Ms. Skrzypiec stated, in pertinent part:

"For the January 13 Board meeting, I arrived at Tax Assessor David Robert's Office prior to the start of the meeting. [Mr.] David Robert and Board Member Paul Caron were already in the office.

I had done some research on the issue of illiquidity in order to familiarize myself with the concept as it is an issue that has recently come up in front of the Tax Assessment Board \* \* \* I had a general question based upon my research, walked up to [Mr.] David Robert, and asked him about how illiquidity affected valuations. Before my question was answered, one of the clerks from the Assessor's Office came in and said that [Mr.] John Pagliarini was at the counter waiting to come into the office for the meeting to begin. My question was not answered and we ended all discussion relating to the general issue of illiquidity. At no time did we discuss the particulars of the Pagliarini case on January 13 outside of the formal meeting."

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. Consistent with this Department's previous findings and with applicable case law, the OMA is implicated whenever a

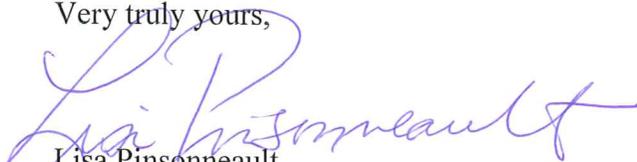
quorum of a public body has a meeting. See R.I. Gen. Laws § 42-46-3; Fischer v. Zoning Board for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). For purposes of the OMA, a “meeting” is defined as “the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” R.I. Gen. Laws § 42-46-2(a). (Emphasis added). A “quorum” is defined as “a simple majority of the membership of a public body.” R.I. Gen. Laws § 42-46-2(d).

The Board is comprised of three (3) members. It appears, based upon the evidence presented, a quorum of the Board was together prior to the start of the January 13, 2014 meeting. It appears, however, no collective discussion occurred among Board members prior to the start of the meeting. Instead, it appears Ms. Skrzypiec asked a general question regarding an accounting term and yet, based upon the evidence presented, including the sworn affidavits of all Board members, no response was given. In the instant case, since the Board did not discuss this matter outside the public purview, the element of “meeting” as defined in the OMA is missing. Respectfully, you have provided no evidence to refute the Board’s response. Based upon the evidence presented, we cannot conclude that the Board violated the OMA.

Although this Department has found no violation, 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 OMA allows the complainant to file a complaint 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. See id. Please be advised that we are closing this file as of the date of this letter.

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

Very truly yours,



Lisa Pinsonneault  
Special Assistant Attorney General  
Extension 2297

LP/pl

Cc: Andrew M. Teitz, Esquire  
andyteitz@utrlaw.com