



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

June 23, 2015
OM 15-10

Mr. Ernest Pitochelli, Sr.

Re: Pitochelli v. Town of Johnston

Dear Mr. Pitochelli:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Town of Johnston (“Town”) is complete. By correspondence dated March 4, 2015, you allege the Town violated the OMA when it improperly convened into an executive session meeting on January 12, 2015 and without proper notice. You also allege the Town violated the OMA when it failed to disclose the vote upon convening into open session.

In response to your complaint, we received a response from the Town’s Solicitor, William J. Conley, Jr., Esquire, who provided affidavits from the Town Clerk, Mr. Vincent P. Baccari, Jr., as well as the five (5) members of the Town Council.

Town Clerk Baccari states, in pertinent part:

“I caused to be posted at the Johnston Town Hall and the Johnston Municipal Court the Public Notice for the Agenda of the Special Meeting of the Johnston Town Council to be held January 20, 2015 at 6:30 pm. * * *

I caused to be posted on the open meetings website of the Office of the Secretary of State for the State of Rhode Island a notice of the Johnston Town Council to be held January 20, 2015 at 6:30 pm. * * *

The night of the special meeting on January 20th, I arrived at the Municipal Court building to prepare everything for the Special Meeting and the regular Meeting to follow. Our typical procedure is to have a Special Meeting that will be conducted in Executive Session in a conference room that shares a common door with the Municipal Court room.

I follow this procedure as it allows attendees that are arriving for the Regular Meeting, which was to be held at 7:00 pm that same evening, to assemble inside, out of the weather, as many people arrived early. We do this to avoid having to tell many people in the building that they have to leave due to a closed session.

That night, the meeting began in open session in the Municipal Court conference room with the door to the room open. When the Council voted to enter into Executive Session I closed the door. While the door is open, there is a clear view of the Municipal Court room where all of the attendees of the Regular Meeting gather. * * * Not at any point, did anyone request, or inquire as to whether the Special Meeting was open or closed or showed any interest in walking through the open door in the conference room.”

We acknowledge your reply dated March 31, 2015.

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

The OMA provides:

“[b]y open call, a public body may hold a meeting closed to the public upon an affirmative vote of the majority of its members. * * * The vote of each member on the question of holding a meeting closed to the public and the reason for holding a closed meeting, by a citation to a subdivision of § 42-46-5(a), and a statement specifying the nature of the business to be discussed, shall be recorded and entered into the minutes of the meeting.” R.I. Gen. Laws § 42-46-4(a).

Additionally, “[a]ll votes taken in closed sessions shall be disclosed once the session is reopened; provided, however, a vote taken in a closed session need not be disclosed for the period of time during which its disclosure would jeopardize any strategy, negotiation or investigation undertaken pursuant to discussions conducted under § 42-46-5(a).” R.I. Gen. Laws § 42-46-4(b).

Here, it appears that you contend that the Town Council violated the OMA when it improperly convened an executive session without providing proper notice and without articulating an open call in open session. We find no violation.

To begin, the evidence is uncontradicted that the Town Council posted notice for its January 20, 2015 executive session meeting on the Secretary of State’s website on January 16, 2015 and the Town Clerk’s affidavit indicates that this meeting was also posted in other locations. This notice clearly indicated that the Town Council would convene a “special meeting” at 6:30 p.m. to

discuss two (2) litigation matters in executive session. In this respect, we have been provided no evidence that the instant meeting was improperly noticed, and in any event, the evidence makes clear that you were present at the meeting location prior to the beginning of the January 20, 2015 6:30 p.m. executive session. As such, notwithstanding the properly posted notice, it does not appear that you would be aggrieved by any allegedly defective notice. See *Graziano v. Rhode Island Lottery Commission*, 810 A.2d 215, 222 (R.I. 2002)(“The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice.”).

You also contend that the Town Council violated the OMA because “the Council never publicly voted to go into executive session.” This Department has long made clear that in order to properly convene into executive session, a public body must articulate an open call and this open call must be articulated in open session. See *Balzar v. Jamestown School Committee’s Administrative Search Committee*, OM 97-01. Even if a public body convenes a meeting for the sole purpose of adjourning into executive session, the public body must begin its meeting with an open call articulated in open session.

Here, the Town Clerk’s affidavit provides that it began the 6:30 p.m. executive session in the Municipal Court conference room, which shares a common door with the Municipal Courtroom. As stated by the Town Clerk, the reasoning behind the Town Council’s decision was to allow citizens to assemble in the Courtroom, rather than waiting outside in the cold weather, while the Town Council was in executive session. The Town Clerk also explains that the Town Council began the executive session “with the door to the [conference] room open” and that “[w]hen the Council voted to enter into Executive Session [the Town Clerk] closed the door.” According to the Town Clerk, “[w]hile the door is open, there is a clear view of the Municipal Court room where all of the attendees of the Regular Meeting gather” and the affidavit also makes clear that no person was excluded from the open session portion of the 6:30 p.m. meeting. While we have some questions whether the Town Council could have convened in the Courtroom to articulate its open call, and then convened into executive session in the conference room, on the instant record we cannot find a violation. In particular, the evidence demonstrates that the Town Council convened its January 20, 2015 meeting in an open session room accessible to the public and after articulating its open call, adjourned into executive session by closing its door. You provide no allegation that the substance of the January 20, 2015 executive session was improper. Accordingly, we find no violation.

Lastly, you contend that the Town Council violated the OMA when it failed to articulate the executive session votes upon reconvening into open session. See R.I. Gen. Laws § 42-46-4(b). While you contend that the open session was re-convened without the disclosure of the executive session votes, the Town Council Vice-President’s affidavit notes that “[a]t the conclusion of the executive session a [m]otion was made to go back into open session” and “at that time the council president noted the votes taken.” The open session minutes disclose the two (2) substantive executive session votes. Accordingly, we find no violation.

Although the Attorney General will not file suit in this matter, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so

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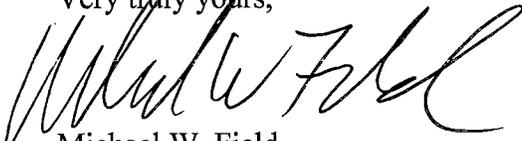
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within “ninety (90) days of the attorney general’s closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.” R.I. Gen. Laws § 42-46-8.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "Michael W. Field".

Michael W. Field
Assistant Attorney General

Cc: William Conley, Esquire