



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

April 4, 2014

OM 14-11

Ms. Lynne S. Rider

RE: Rider v. Foster Town Council

Dear Ms. Rider:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Foster Town Council (“Town Council”) is complete. By correspondence dated January 27, 2014, you allege the Town Council violated the OMA when the agenda for its November 21, 2013 meeting failed to specify the nature of the business to be discussed. The November 21, 2013 agenda indicated “Town Hall Clerk’s Position, Disc/Action”.

In response to your complaint, we received a substantive response from the Town Council, which consisted of, among other documents, a letter from Ms. Renee M. Bevilacqua, Esquire (Foster Town Solicitor), the agenda, sound file, and meeting minutes for the November 21, 2013 meeting.

Attorney Bevilacqua states, in pertinent part:

“There should be no finding of an OMA violation involving the Town Council November 21, 2013, meeting or Agenda because Ms. Rider, the Complainant, is not an ‘aggrieved party’ within the meaning of the Act.

In Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), the Supreme Court rejects the argument that a person who is a ‘representative of

the public' is aggrieved when they were present at said meeting, and fully participated. As the Town's audio recording of this Council Meeting will demonstrate, the complainant was allowed to speak, ask questions and even inform the Council as well as the audience regarding the history and circumstances surrounding the subject matter which was described in the Agenda item.

Further, we recognize that the Supreme Court more recently, in Tanner v. Town Council of Town of East Greenwich, 880 A.2d 784 (R.I. 2005), has indicated, "*even an individual who actually attends a meeting may still establish standing through demonstrating that he or she was aggrieved or disadvantaged by, for example, the lack of preparation or inability to respond to an issue.*" [Original emphasis]

It is worth noting here that the complainant, Lynne Rider, appears not once but at length in the Minutes of this Meeting. ***

Consequently, this Complainant fails to establish a claim for an OMA violation on the part of the Foster Town Council because there is no evidence, and she has offered no showing, that she was unprepared or unable to respond to the subject at issue during the meeting."

In this Department's February 7, 2014 acknowledgment letter sent to you, we requested that you provide us with evidence showing that you were aggrieved by the alleged violation. You provided no response to that inquiry nor did you respond to the Town's February 21, 2014 correspondence.

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

Before the Department can address the allegation raised in your complaint, we must first address the issue of whether you are an aggrieved party and have legal standing. Rhode Island General Laws § 42-46-8(a) states, in pertinent part:

"Any citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general."

In Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), the Supreme Court examined the "aggrieved" provision of the OMA. In Graziano, an OMA lawsuit was filed

concerning notice for the Lottery Commission's March 25, 1996 meeting wherein its Director, John Hawkins, was terminated. At the Lottery Commission's March 25, 1996 meeting, Mr. Hawkins and Ms. Graziano were both present. Finding that the Lottery Commission's notice was deficient, the trial justice determined that the Lottery Commission violated the OMA and an appeal ensued. On appeal, the Rhode Island Supreme Court found that it was "unnecessary" to address the merits of the OMA lawsuit because "the plaintiffs Graziano and Hawkins have no standing to raise this issue" since "both plaintiffs were present at the meeting and therefore were not aggrieved by any defect in the notice." Id. at 221. The Court continued that it:

"has held on numerous occasions that actual appearance before a tribunal constitutes a waiver of the right of such person to object to a real or perceived defect in the notice of the meeting. * * * It is not unreasonable to require that the person who raises the issue of the defect in notices be in some way disadvantaged or aggrieved by such defect. While attendance at the meeting would not prevent a showing of grievance or disadvantage, such as lack of preparation or ability to respond to the issue, no such contention has been set forth in the case at bar. The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice." Id. at 221-22. (Emphasis added).

Here, pursuant R.I. Gen. Laws § 42-46-8(a), and the standard established in Graziano, you must demonstrate that you were "in some way disadvantaged or aggrieved by such defect" in the notice. Id. at 221. A review of the evidence before us, including the meeting minutes and sound file of the meeting, indicate that you were present at the November 21, 2013 meeting and you were given the opportunity to voice your opinions and concerns. Furthermore, nothing in the sound file could be construed to show that you were unprepared or disadvantaged in any way. Most importantly, by letter dated February 7, 2014, this Department referenced Graziano and asked you to present evidence that we were aggrieved. We received no response. Since you have presented no evidence to the contrary, the Department finds that you are not an "aggrieved" party and have no standing to object to the notice.¹

Although the Attorney General will not file suit in this matter at this time, nothing in the OMA precludes an individual from pursuing an OMA complaint in the Superior Court. 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. Please be advised that we are closing our file as of the date of this letter, although we reserve the right to reopen this matter should the Town Council not remedy this violation on its own.

¹ Even if we were to address the merits of your allegation, we have substantial concerns that your allegation does not violate the OMA. See R.I. Gen. Laws § 42-46-6. For the reason addressed above, we need not resolve this issue.

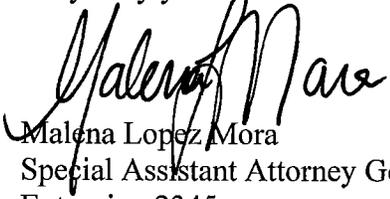
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We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in black ink, appearing to read "Malena Lopez Mora". The signature is fluid and cursive, with the first name being the most prominent.

Malena Lopez Mora
Special Assistant Attorney General
Extension 2345

Cc: Renee Bevilacqua, Esquire
rmbesquire@gmail.com