



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

February 12, 2014
OM 14-05

Mr. Rodney Santos

Re: Santos v. Exeter Town Council

Dear Mr. Santos:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Exeter Town Council (“Town Council”) is complete.¹ The relevant facts are set forth below.

On Saturday, December 14, 2013, the Town of Exeter held a special election concerning whether to recall four (4) Town Council members – Councilors Johnson, Monahan, Ellis, and Hicks. It is understood that the recall efforts largely, if not entirely, concerned gun-right issues. By correspondence dated Thursday, December 9, 2013 (received by this Department on December 10, 2013), you allege a majority of the Town Council violated the OMA when you were not allowed to attend a June 20, 2013 meeting held at the Exeter Library. In relevant part, you relate:

“I have enclosed and attached an email[,] which was sent by Council Member Bob Johnson to the other members of the Exeter Town Council, namely William Monahan, Calvin Ellis, and Arlene Hicks. In this email he requests that the Town Council have a meeting on Thursday June 20th, 2013 at the Exeter Library at 7:00

¹ By letter dated December 22, 2013, you take issue with this Department’s designation that your complaint was filed against the “Town Council.” You relate that you are “not claiming that a ‘[T]own Council’ meeting was held,” but instead, assert that three (3) Town Council members held a “private” meeting where Town business was discussed. In order for the OMA to apply, a “quorum,” of a “public body,” must convene a “meeting.” See Fischer v. Zoning Board of Review for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). Accordingly, even though you suggest that your complaint is against three (3) Town Council members, as a matter of law, the OMA applies only to “public bodies,” and since you allege that a “quorum” of the Town Council privately convened to discuss Town business, this matter is properly captioned.

pm. The Council was to discuss some upcoming events in Exeter then to want to discuss the pending recall election efforts.

“I was at the library with several other witnesses to attend the meeting at 7:00 pm on the 20th. I viewed Arleen [sic] Hicks, Calvin Ellis, Robert Johnson along with a few other town members enter the library. I was attempting to enter the public library with several other individuals but was stopped by the State Police.”

In response to your complaint, we received a substantive response from the Town Council’s legal counsel, James P. Marusak, Esquire, who provided sworn affidavits from himself, the Exeter Town Clerk and the Town Council members who faced recall.

In its entirety, Councilor Johnson’s affidavit relates:

“I am the current Chair of the Exeter Democratic Town Committee (a local unit of the Democratic Party) and was acting in that capacity on June 20, 2013.

As Chair of the Exeter Democratic Town Committee, I set the dates for meetings and I e-mail the members to inform them of the meeting date, time and agenda. The e-mail address I use * * *² my personal, home e-mail address. In the contact list, I have a group named ‘Exeter Democratic Town Committee.’ The e-mails you see within that group are to members of the Committee. On June 12, 2013, I sent an e-mail to the ‘Committee’ to inform the members of our upcoming meeting on June 20, 2013, as the e-mail clearly states in the first paragraph:

I wanted to update you on some upcoming events in Exeter that we AS A COMMITTEE should be involved with, and I would invite a friend. I would like to hold A COMMITTEE MEETING next Thursday June 20, 2013 at the library at 7pm, please let me know if you can attend. (Capitalization added by Councilor Johnson).

I should also note that in the several terms I have been on the Exeter Town Council I have never scheduled a Town Council meeting. Those meetings are scheduled by the Town Clerk or the Council Assistant, and this is done to ensure proper postings for all meetings of the Council.

The day before the Democratic Committee meeting, a male subject entered the Library to question the Library staff as to who scheduled the meeting and how many people the room held in the event ‘he had to notify the Fire Department of overcrowding and shut the meeting down’. Because of this threatening action, I contacted the State Police to advise of a possible problem at the Library the night of our meeting. When I arrived for the meeting that night, there was a group forming in the parking lot – none were members of our Committee. Once inside

² We decline to include the email address for privacy reasons.

the Library, I spoke with the State Police officer who, out of an abundance of cause, did come to the Library to monitor this event. I explained that this meeting was for the Exeter Democratic Town Committee, not the Town Council, so it was not a public meeting pursuant to State Law.

At some point, several subjects tried to enter the Library. They met with the Rhode Island State Police officer and then left. As I was not outside at the time, I cannot comment on what was said; but if they were coming to our meeting, I am sure the Rhode Island State Police officer informed them that it was not a public meeting.

Some of Committee members who came for the meeting were also asked by the Rhode Island State Police officer if they were there for the meeting, and when they explained what the meeting was they were allowed in as members.

I can attest that only political matters and strategies were discussed at the Democratic Town Committee meeting; that no Town business (i.e, matters that would come before the Exeter Town Council for action or consideration) were discussed; and that no votes, actions, or discussions were conducted in the capacities of any attendees as Town Council members.”

Councilors Ellis and Hicks submitted similar affidavits explaining that the June 20, 2013 meeting was an Exeter Democratic Town Committee meeting, that the purpose for the meeting was to inform Town Committee members of the recall petition and discuss an appropriate response, and that no town business, i.e., matters that would come before the Town Council, was discussed. Councilor Monahan also submitted an affidavit indicating that he did not attend the June 20, 2013 meeting. Lastly, Mr. Marusak submitted an affidavit affirming that once the recall was initiated, i.e., prior to June 20, 2013, the Town Council had no discretionary involvement with the process and all administrative actions were taken by the Clerk and/or the Board of Canvassers. Mr. Marusak adds that to his knowledge, no members of the Town Council involved themselves in the municipal conduct or administration of the recall process.

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. In other words, we do not write on a blank slate.

The OMA applies when a “quorum” of a “public body” convenes for a “meeting.” Fischer v. Zoning Board of Review for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). The OMA defines a “public body” as “any department, agency, commission, committee, board, council, bureau, or authority or any subdivision thereof of state or municipal government[.]” R.I. Gen. Laws § 42-46-2(c). The OMA continues that “any political party, organization, or unit thereof meeting or convening is not and should not be considered to be a public body; provided, however that no such meeting shall be used to circumvent the requirements of this chapter.” Id.

In McCaffrey v. Providence City Council, OM 97-18, the complainant alleged that the Providence City Council (“Council”) violated the OMA when it conducted a private meeting at the house of the Council President. The City Solicitor represented that it was not a meeting of the City Council but rather a caucus of the Democratic members of the Council. This Department determined, based upon the evidence presented, that the only action taken at the meeting was to elect the Majority Leader and Deputy Majority Leader of the Democratic City Council Caucus. The minutes of that meeting reflected that no other business was discussed or votes taken. Under those facts, we concluded that the Providence City Council did not hold a meeting as defined by the OMA. Rather, we explained “the meeting . . . was that of the Democratic City Council Caucus, which is expressly exempt from the Act.” Notwithstanding this finding, this Department did caution the Council that since all members of the Providence City Council were also members of the Democratic City Council Caucus, the convening of members of a political organization may not be used to conduct business that is subject to the jurisdiction, control or advisory power of a unit of municipal or state government. We added that if “this ‘caucus’ had addressed Council business it would be viewed as a meeting under the Act.” Id.

In this Department’s advisory opinion, In Re Frank J. Alfano, Warren Town Council President, ADV OM 05-05, the crux of Mr. Alfano’s inquiry concerned the procedural requirements for meetings of the Warren Democratic Town Committee (“WDTC”) in conjunction with the OMA. This Department found based upon the facts presented that the WDTC, a political caucus, was “not considered to be a public body[.]” Id. Notwithstanding this conclusion, however, this Department again cautioned that “the convening of members of a political organization may not be used to conduct business which is subject to the jurisdiction, control or advisory power of a unit of municipal or state government.” If the WDTC did address business of the Warren Town Council, or the Sewer Commission, this Department explained “the OMA’s provisions will apply.”

In Cranston Democratic City Committee, ADV OM 00-02, the Cranston Democratic City Committee (“CDCC”) held a meeting of all nine (9) elected city council members, yet “[t]he purpose of the meeting [was] not to discuss any policy or procedure concerning Cranston city government per se.” Instead “the meeting [was] strictly a political caucus, where political strategy [would] be discussed.” This Department opined that if all nine (9) elected Democratic officials convened as a political caucus where political strategy is discussed, the CDCC would not be subject to the OMA because the definition of a “public body” exempts any “political party, organization, or unit thereof.” R.I. Gen. Laws § 42-46-2(c).

Here, there is simply no evidence to support your complaint. The e-mail you complain about was sent to members of the Democratic Town Committee and not limited to members of the Town Council. Additionally, the affidavits submitted by Councilors Hicks, Ellis, and Johnson contradict the assertion that Town business was discussed and instead make clear that on June 20, 2013 a meeting of the Democratic Town Committee convened where, among other matters, the recall efforts were discussed. As such, the nature of this discussion did not materially differ from any similar type of pre-election party/political discussion. See id. Moreover, Mr.

Marusak's affidavit makes clear that based upon his knowledge neither the Town Council nor any of its members played any role in the recall process.

It also bears noting that your December 22, 2013 correspondence asserts that this "complaint is justified by the evidence in the email and several witnesses that seen [sic] [Councilors Hicks, Ellis, and Johnson] enter the Exeter public library for a meeting." As discussed above, whether the three (3) Town Council members attended the June 20, 2013 meeting is not at issue. Instead, the issue concerns the subject-matter of the June 20, 2013 meeting. On this point, you claim that Councilor Johnson's email supports your position and that in this email Councilor Johnson "requests that the Town Council have a meeting." (Emphasis added). The plain language of this email simply contradicts this assertion and provides, in relevant part:

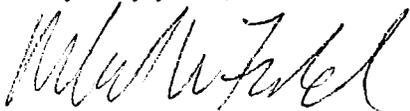
"I wanted to update you on some upcoming events in Exeter that we as a committee should be involved with, and I would ask that you invite a friend. First I would like to hold a committee meeting next Thursday June 20, 2013 at the Library at 7pm, please let me know if you can attend." (Emphases added).

As explained above, Councilor Johnson sent this email to the members of the Exeter Democratic Town Committee, as well as those associated with this Committee. Accordingly, for the reasons discussed, 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 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.

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

Very truly yours,



Michael W. Field
Assistant Attorney General

Cc: James P. Marusak, Esquire