



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 14-14

Ms. Marilyn Sheldon

RE: Sheldon v. Warwick Minimum Housing Review Board

Dear Ms. Sheldon:

This Department's investigation into your Open Meetings Act ("OMA") complaint filed against the Warwick Minimum Housing Review Board ("Board") is complete. By email correspondence dated February 11, 2014, you allege the Board violated the OMA with respect to its January 6, 2014 meeting when the Board did not allow you to videotape the meeting. You further allege that the minimum housing clerk told you that you "wouldn't be allowed to speak" at the meeting. Lastly, you contend "I wasn't advised of the meeting[,] I learned about it."

In response to your February 11, 2014 complaint, this Department received a substantive response from Mr. Robert J. Sgrio, Esquire, Mr. Sgrio states in pertinent part:

"I did in fact advise the Warwick Minimum Housing Review Board to not allow Ms. Sheldon to videotape the meeting scheduled for January 6, 2014. I mistakenly assumed that Ms. Sheldon would be disruptive at the meeting; I was wrong, and I apologized to Ms. Sheldon on behalf of the City of Warwick.**"

I have requested from the Board a copy of all session minutes and any accompanying audio and/or video tapes, and will forward them to you and Ms. Sheldon as soon as they become available."

This Department received your March 17, 2014 rebuttal which states, in pertinent part:

"Re: the grievance per my not being advised of the [Minimum Housing Board] meeting. The clerk Marchetti and [building] inspector Al DeCorte made every effort to keep it from me so as I wouldn't know what was going on. Yes I learned of it and was there but clerk Marchetti told [me the] day before I couldn't speak."

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.

Although the OMA does not specifically address the issue of the public's right to videotape the open portions of an open meeting, case law and several of this Department's findings have interpreted the OMA to permit audio or videotaping of meetings, subject to reasonable restrictions set forth by the public body. In this Department's finding of Pagliarini v. Kent County Water Authority, OM 06-24, we recognized that the United States District Court for the District of Rhode Island ruled in Belcher v. Mansi that "a determination that the [OMA] requires [a public body] to allow members of the press and public to tape record its meetings follows inexorably from the policy set forth [in the OMA,]" and that this practice may also extend to videotaping. 569 F.Supp. 379, 382-83 (D.R.I. 1983). The Court recognized that "[t]here may well be reasonable restrictions which could lawfully be imposed." Id. at 384. In Staven v. Portsmouth Financial Subcommittee (School Committee), OM 02-16, this Department interpreted Belcher to allow videotaping of public meetings, and that same interpretation was advanced in Pagliarini. We take the same position in the instant matter, and find that the Board violated the OMA when it issued a blanket decision that you were not permitted to videotape the January 6, 2014 meeting. The Board also acknowledges this violation.

Next we address your allegation that you not permitted to speak at the January 6, 2014 meeting. Although we have concerns whether this directive came from the Board, regardless, there is no statutory requirement that mandates public comment. In fact, the OMA is clear on this issue. Rhode Island General Laws §42-46-6(d) states that "[n]othing contained in this chapter requires any public body to hold an open forum session, to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic at such an open forum session." Therefore, we find no violation.

Lastly, we address the issue raised in your complaint that you were not "advised" of the meeting, but that you "learned about it." Your precise allegation is unclear. In an attempt to bring clarity to your allegation, in our February 18, 2014 acknowledgment letter we asked you to provide evidence as to how you were aggrieved by the lack of notice, particularly considering that you attended the January 6, 2014 meeting. In your March 17, 2014 rebuttal you responded to our inquiry by stating that "[t]he clerk Marchetti and [building] inspector Al DeCorte made every effort to keep [the meeting] from me so I wouldn't know what was going on. Yes I learned of it and was there***." While your rebuttal provided us with no further insight into your notice allegation, this Department finds it unnecessary to address the adequacy of the notice on the merits since you are not aggrieved and therefore lack standing to raise the issue.

Rhode Island General Laws § 42-46-8(a) provides that "[a]ny citizen or entity of the State who is aggrieved as a result of violations of the provisions of the [OMA] may file a complaint with the

attorney general.” In Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), the Rhode Island Supreme Court examined the “aggrieved” provision of the OMA when a lawsuit was filed concerning notice for the Lottery Commission’s March 25, 1996 meeting wherein its Director, John Hawkins, was terminated. Similar to the matter at hand, 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 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.

Based upon the forgoing, we conclude that you were not aggrieved by the alleged lack of notice violation. In particular, you attended the meeting and provided no evidence or argument, consistent with Graziano, that you were “disadvantaged, such as lack of preparation or ability to respond to the issue.” Id. Moreover, while not dispositive, it appears that you complain that you were not provided actual notice, whereas the OMA governs public notice. Thusly, this Department finds you were not aggrieved and therefore lack standing to object to notice. See to R.I. Gen. Laws § 42-46-8(a).

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General may initiate suit in the Superior Court. R.I. Gen. Laws § 42-46-8(a). There are two remedies available in suits filed under the OMA: (1) “[t]he court may issue injunctive relief and declare null and void any actions of a public body found to be in violation of [the OMA];” or (2) “the court may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members found to have committed a willful or knowing violation of [the OMA].” R.I. Gen. Laws § 42-46-8.

In this case, neither remedy appears to be appropriate. Specifically, we have found no evidence that this violation was willful or knowing. Indeed, the Board contends that their actions were inadvertent. Further, the Board has taken subsequent remedial measures to ensure that videotaping is permitted at future meetings.

Although the Attorney General will not file suit in this matter, nothing in the OMA prohibits an individual from pursuing an OMA complaint in the Superior Court. The complainant may do so within ninety (90) days of the Attorney General’s closing of the complaint or within one hundred

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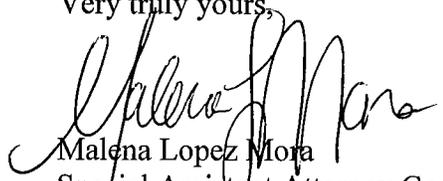
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eighty (180) days of the alleged violation, whichever occurs later. R.I. Gen. Laws § 42-46-8.
Please be advised that we are closing our file as of the date of this correspondence.

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

Very truly yours,



Malena Lopez Mora
Special Assistant Attorney General
Extension 2307

Cc: Robert Sgroi, Esquire
rjs@mtlesq.com