



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

February 23, 2016

OM 16-03

Elizabeth M. Tanner, Esq.

[liz@tannerlawltd.com](mailto:liz@tannerlawltd.com)

**RE: Tanner v. Bristol 4<sup>th</sup> of July Committee**

Dear Attorney Tanner:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Bristol Fourth of July Committee (“Committee”) is complete. By correspondence dated January 9, 2016, you alleged that the Committee violated the OMA when the agenda for the Committee’s January 6, 2016 meeting failed to adequately state the nature of the business to be discussed. Specifically, you allege that:

“[T]he agenda refers to Old Business and New Business. Further, the agenda did not list a particular item to be voted on – the reduction of the parade route length. Additionally, the committee members were not told of this agenda item before the meeting.”

Legal counsel for the Committee, Michael Ursillo, Esquire, provided a substantive response to your complaint on January 13, 2016. In addition, Fran O’Donnell, Vice Chair of the Committee submitted an Affidavit. In relevant part the Committee:

“...admits that the agenda for its meeting on January 6, 2016, does not satisfy the OMA’s mandate that a meeting notice must specify the nature of the business to be discussed. In recognition of this unintentional oversight, the Committee intends to meet again on January 14, 2016, to conduct a re-vote on the parade route. A copy of the Committee’s agenda for January 14, 2016, is attached. Item number 4 on the agenda states as follows: ‘Discussion for the purpose of shortening the parade route and to call for a second vote regarding same.’ Injunctive relief is thus inappropriate and unnecessary, as the Committee intends to correct its mistake.

...I have advised the Committee that future agendas must provide more specific notice of the nature of the business to be discussed, and the agenda that has been posted for January 14, 2016, shows that the Committee has heeded this advice..."

In pertinent part, Ms. O'Donnell attests:

"4. After the Town Solicitor advised me that a complaint had been filed regarding the vote that was taken on January 6, 2016, the Committee scheduled another meeting to conduct another vote regarding the parade route.

5. The agenda for the meeting scheduled on January 14, 2016, specifies that the Committee intends to conduct a vote regarding the parade route. As with the vote taken on January 6, 2016, this vote will be taken in open session. The Committee intends to receive public comment on this topic in advance of the vote.

6. The Committee has been advised of the requirements of the Open Meetings Act and future agendas will provide specific notice of the business to be discussed and/or acted upon."

You provided no 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 Committee violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.

The OMA requires that all public bodies provide supplemental written public notice of all meetings at least forty-eight (48) hours in advance of the meeting. See R.I. Gen. Laws § 42-46-6(b). "This notice shall include the date the notice was posted, the date, time and place of the meeting, and a statement specifying the nature of the business to be discussed." Id. (Emphasis added).

The Rhode Island Supreme Court examined this requirement in Tanner v. The Town Council of the Town of East Greenwich, 880 A.2d 784 (R.I. 2005), wherein the Court held that the agenda item "Interviews for Potential Boards and Commission Appointments" did not adequately apprise the public of the nature of the business to be discussed or acted upon. Specifically, after conducting interviews as indicated on the notice, the East Greenwich Town Council proceeded to vote to appoint various individuals to the planning and zoning boards for the Town. The Court reasoned that, although the standard is "somewhat flexible," the contents of the notice "reasonably must describe the purpose of the meeting or the action proposed to be taken." Id. at 797-98. Although the Court provided no bright line rule regarding the specificity of the posted notice, the Court viewed the "totality of the circumstances" and concluded that the notice

violated the OMA since it implied that merely “interviews” would be conducted, and that a vote or other action would not take place. The Court also observed “that the OMA places an affirmative duty on the public body to provide adequate notice of meetings.” Id. at 799. See also Anolik v. Zoning Board of Review of the City of Newport; 64 A.3d 1171 (R.I. 2013).

Here, the Committee’s January 6, 2016 agenda lists the following twelve (12) topics of discussion:

- “1. Call to Order
2. Pledge of Allegiance
3. Attendance
4. Minutes of the November 19, 2015 Meeting
5. Correspondence/Sunshine Fund Report
6. Treasurer’s Report
7. Committee Reports
8. Old Business
9. New Business
10. Upcoming Meetings
11. Items for the Good of the Committee
12. Adjournment.”

As evidenced above, at no point in the agenda is it noticed that the Committee would discuss the shortening of the Bristol Fourth of July Parade route or that the Committee would vote on the matter. In past findings, this Department has concluded that general agenda headings like “Old Business” and “New Business” are insufficient and fail to adequately apprise the public of the nature to be discussed. See Okwara v. Rhode Island Commission on the Deaf and Hard of Hearing, OM 00-07. See also Blanchard v. Glendale Board of Fire Wardens, OM 97-13. Here, we have no difficulty reaching the same conclusion and find that the Committee’s January 6, 2016 agenda violated the OMA when it failed to provide a “statement specifying the nature of the business to be discussed.” See R.I. Gen. Law § 42-46-6(b). Frankly, the evidence presented speaks for itself and, since the Committee acknowledges the violation, no further discussion is required.

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 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) “[t]he court may impose a civil fine not exceeding five thousand (\$5,000) dollars 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(d).

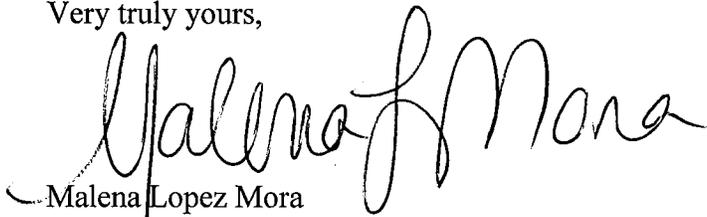
Here, we conclude that neither remedy is appropriate. Although we conclude that the Committee’s January 6, 2016 agenda violated the OMA, we have been provided with no facts that suggest that the Committee willfully or knowingly violated the OMA. Moreover, the evidence reveals that the Committee took steps to remedy the violation and held a new vote on

this matter at its January 14, 2016 meeting. With no allegation that the January 14, 2016 vote was improper or that the agenda was deficient, injunctive relief would be inappropriate. See Tanner, 880 A.2d at 802 (“By scheduling, re-noticing, and re-voting on the challenged appointment, the town council, albeit belatedly, was acting in conformity with both the letter and spirit of the avowed purpose of the OMA – to ensure that ‘public business be performed in an open and public manner.’”). This finding serves as notice to the Committee that its actions violated the OMA and may serve as evidence of a willful or knowing violation in any future similar case.

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 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,

A handwritten signature in cursive script that reads "Malena Lopez Mora". The signature is written in black ink and is positioned above the typed name.

Malena Lopez Mora  
Special Assistant Attorney General  
Extension 2307

MLM/pl

Cc: Michael Ursillo, Esquire