



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 18, 2015

OM 15-09

Ms. Melanie Thibeault

Re: Thibeault v. Smithfield Town Council

Dear Ms. Thibeault:

Your Open Meetings Act (“OMA”) complaint filed against the Smithfield Town Council (“Town Council”) is complete. You are a reporter for The Valley Breeze. By email correspondence dated March 25, 2015, you allege at the March 19, 2015 meeting, you were prevented from taking notes. Specifically, you state that the Town Manager “informed [you] that the rest of the meeting was ‘off the record’ and that [you] could not report on anything that was said.”

In response to your complaint, Attorney for the Town Council, Matthew Reeber, Esquire, provided a substantive response to this Department. The Town Council responds, in pertinent part:

“[O]n March 19, 2015, the Town Council convened the Meeting to review the Budget and Budget Book. The Meeting began at 7:00 p.m. and continued to Midnight. From 7:00 p.m. to 9:30 p.m., Town Manager Finlay went through the line items in the Budget for each specific Town department. At approximately 9:30 p.m., the Town Council took a break. The Town Council then reconvened at 10:00 p.m., Town Clerk Carol Aquilante was excused from the Meeting because she was feeling ill...Town Manager Finlay also asked whether the Meeting was to proceed to closed session. Town Manager Finlay learned that the meeting could not proceed to closed session because the Town had not noticed the Meeting for closed session. The Meeting then proceeded in open session and concluded at approximately 12:00 a.m. on Friday March 20, 2015...

Ms. Thibeault left the meeting at approximately 10:00 p.m. Mr. Finlay and others invited Ms. Thibeault to stay at the meeting...Prior to leaving the Town Hall, Ms. Thibeault asked Town Clerk Aquilante what subjects would be addressed at the second portion of the Meeting. Town Clerk Aquilante informed Ms. Thibeault that the Town would provide her with any information discussed at the Meeting...

...At the Meeting, Town Manager Finlay mistakenly believed that the Town Council would proceed to a closed session in order to discuss labor relations and benefits provided to Town employees. Upon learning that the Town had not noticed the Meeting for a closed session, the Meeting stayed open to the public. To the extent that Mr. Finlay's confusion caused Ms. Thibeault concern, Mr. Finlay encouraged Ms. Thibeault to remain at the Meeting."

We acknowledge your rebuttal.¹

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.

In order for the OMA to apply, a "quorum" of a "public body" must convene for a "meeting" as these terms are defined by the OMA. See Fischer v. Zoning Board of the Town of Charlestown, 723 A.2d 294 (R.I. 1999). For purposes of the OMA, a "meeting" is defined as "the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." R.I. Gen. Laws § 42-46-2(a). A "public body" is defined 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).

¹ Your rebuttal appears to raise an additional alleged OMA violation. Specifically, you allege that because the Town Clerk, who records the meeting minutes, was excused from the meeting prior to the meeting's adjournment, "there is no public record about what was discussed from 10 p.m. to midnight, violating the Open Meetings Act." Our April 9, 2015 acknowledgment letter to you advised that your rebuttal should not raise new issues. Accordingly, it does not appear this issue is properly before us. See Access/Rhode Island v. Providence Police Department, PR 15-33 (Department of Attorney General will not consider allegations first raised in rebuttal). See also Boss v. City of Woonsocket's School Board Review Committee, OM 14-19; Mudge v. North Kingston School Committee, OM 12-35. Nonetheless, if we were to address this issue on the merits, we would likely find no violation. The OMA requires that public bodies maintain written minutes of all meetings and that those minutes must include, at minimum, "1) The date, time, and place of the meeting; 2) The members of the public body recorded as either present or absent; 3) A record by individual members of any vote taken; and 4) any other information relevant to the business of the public body that any member of the public body requests be included or reflected in the minutes." See R.I. Gen. Laws § 42-46-7(a). Here, the evidence shows that all the required information is included in the minutes and that no votes were taken once the meeting reconvened after the break. In addition, there is no evidence that a member of the Town Council requested additional information to be reflected in the minutes and that the requested material was excluded.

In Pine v. McGreavy, 687 A.2d 1244 (R.I. 1997), the Rhode Island Supreme Court was confronted with a situation where a moderator of a financial town meeting caused a reporter to be ejected. This Department filed a complaint in the Superior Court claiming that such actions violated the OMA. A justice of the Superior Court, however, disagreed and dismissed the complaint on the ground the OMA “did not apply to a financial town meeting or to the town moderator who presided at such meeting.” Id. at 1245.

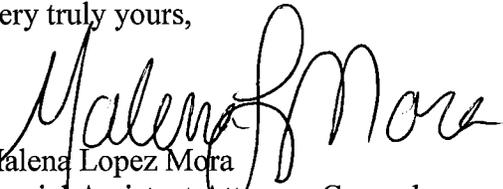
On appeal, the Rhode Island Supreme Court agreed and held that a financial town meeting of qualified electors did not fall within the definitional section of a “public body.” The Court further held that “the moderator is only the presiding officer of the financial town meeting and cannot in and of himself or herself constitute a public body.” Id. at 1245.

Based upon the reasoning articulated by the Supreme Court in Pine, as well as the evidence presented in this case, we find no violation of the OMA. In particular, we observe that your allegation pertains specifically (and only) to Town Manager Finlay and you have set forth no argument or evidence that the Town Council, or its members, precluded you from taking notes at the March 19 meeting. Indeed, your complaint states that “Town Manager Dennis Finlay...said that [you] could not report on anything that was said.” Similar to the town moderator in Pine, Mr. Finlay is not a member of the public body, i.e., the Town Council, and “cannot in and of himself [] constitute a public body.” Id. Therefore, following the Supreme Court’s reasoning in Pine, we conclude that the Town Manager’s alleged actions do not constitute an OMA violation on behalf of the Town Council. Whether the Town Manager’s alleged actions violated any other non-OMA issue, is a question not within this Department’s jurisdiction.

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,


Malena Lopez Mora
Special Assistant Attorney General
Ext. 2307

MLM/pl

Cc: Matthew C. Reeber, Esq.