



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 13, 2015
OM 15-04

Marcia Green

Re: The Valley Breeze v. Cumberland Fire Committee

Dear Ms. Green:

The investigation into your Open Meetings Act (“OMA”) complaint, filed on behalf of The Valley Breeze, against the Cumberland Fire Committee (“CFC”) is complete. Pursuant to Public Laws 2013, Chapter 505, which passed on July 17, 2013 and became effective on November 4, 2014, the four (4) fire districts in Cumberland – Cumberland, North Cumberland, Cumberland Hill, and Valley Falls – were consolidated into one Cumberland Fire District with one governing body – the Cumberland Fire Committee (“CFC”). In the November 4, 2014 General Election, seven (7) members were elected to the CFC and were scheduled to be sworn in on November 10, 2014. On November 6, 2014, the CFC members-elect met at Angelo’s Palace Pizza. By email correspondence dated November 6, 2014, you alleged that the CFC violated the OMA when, on Thursday November 6, 2014, the CFC members-elect met outside the public purview to “discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power.” See R.I. Gen. Laws § 42-46-2. Accordingly, the issue to be decided is whether the November 6 meeting was subject to the OMA. See R.I. Gen. Laws § 42-46-1 et. seq.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 CFC

¹ In response to your complaint, we received a substantive response from Attorney Phillip Koutsogiane, legal counsel for the CFC, and affidavits from each of the seven (7) CFC members. The contents of the CFC’s response and accompanying affidavits will be discussed throughout this finding. You provided no rebuttal.

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

The CFC offers two arguments as to why the November 6 meeting did not implicate the OMA: 1) the CFC was not a public body on November 6 according to Chapter 505, Section 10 of Public Law 2013; and 2) that “[t]he purpose of the informal meeting held on [November] 6, 2014 was akin to a social gathering and/or information session only.” We address each argument below.

The CFC contends that, only upon the dissolution of the four (4) former Cumberland board of fire commissioners, did the CFC become fully vested as a public body. In support thereof, the CFC directs our attention to Public Laws 2013, Chapter 505, Section 10, which states, in relevant part:

“The existing boards of commissioners for the Cumberland, North Cumberland, Cumberland Hill, and Valley Falls Fire Districts as created by the General Assembly shall be dissolved, upon the swearing in of the Cumberland Fire Committee, and all of their powers and duties shall pass to the Cumberland Fire Committee not inconsistent with this act.”

While we do not contest the fact that, under Section 10, the former board of fire commissioners dissolved once the CFC members took their oath of office on November 10, we respectfully disagree with the notion that the CFC was formed simultaneous with the dissolution. Stated differently, the fact that the former boards ceased to exist on November 10, is not evidence that the CFC did not exist at the time of the November 6 meeting, and nothing in Section 10 supports this theory. Instead, based on Chapter 505 in whole, it appears that the CFC and the former boards co-existed from at least November 4 (the date of the general election) until the four (4) boards’ dissolution on November 10. Specifically, Section 3 of the 2013 Public Law states, in relevant part:

“Sections 2, 3 and 10 of Section 1 and Sections 2 and 3 of this act shall take effect upon passage. The remaining sections of this act shall take effect upon the election of the Cumberland Fire Committee.” (Emphasis added).

The 2013 Public Law passed on July 17, 2013 and the CFC members were elected on November 4, 2014. Therefore, at the very latest, the 2013 Public Law was effective in its entirety as of November 4, 2014. While we acknowledge at least a six day overlap between formation of the CFC and the dissolution of the existing fire boards, as a matter of law, we cannot conclude that the CFC did not exist as a legal entity on November 6, 2014. Since the actions in question occurred on November 6, 2014, we have little difficulty concluding that the CFC became a “public body” prior to November 10, 2014.²

² In pertinent part, 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.” See R.I. Gen. Laws § 42-46-2(3).

Next, we address the CFC's argument that the "[t]he purpose of the informal meeting held on [November] 6, 2014 was akin to a social gathering and/or information session only."

The OMA requires that "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to §§ 42-46-4 and 42-46-5." R.I. Gen. Laws § 42-46-3. Consistent with this Department's previous findings and with applicable case law, the OMA is implicated whenever a quorum of a public body has a meeting. See R.I. Gen. Laws § 42-46-3; Fischer v. Zoning Board for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). All three of these elements (a quorum, meeting, and public body) must be present in order for the OMA to apply; the OMA is not applicable when one or more of these elements is absent.

Here, there is little question that the CFC is a "public body," and there is no doubt that seven (7) members of the seven (7) member Committee comprises a "quorum." Likewise, in determining whether the "public body" or the "quorum" elements have been satisfied, there does not appear to be any disagreement that council members-elect must be considered. See Schanck v. Glocester Town Council, OM 97-03. Accordingly, for the moment, we focus on the "meeting" requirement.

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(1). Several cases from this Department have reviewed the "meeting" requirement and determined that either "action" or a "collective discussion" by a quorum of the public body on matters over which they have "supervision, control, jurisdiction, or advisory power," is required to satisfy the "meeting" element, and thus, trigger the OMA and its attendant requirements. Conversely, if a "quorum" of a "public body" convenes, but do not collectively discuss and/or act upon matters over which they have "supervision, control, jurisdiction, or advisory power," a "meeting," subject to the OMA, has not convened. Id.

It is uncontested that on November 5, 2014, Mr. Bruce Lemois, a member-elect of the CFC, emailed the other members-elect seeking to schedule "a quick meeting to meet each other" on November 6, 2014, at Angelo's Palace Pizza. All seven members-elect attended this meeting at which time the members-elect "literally went around the table introducing [themselves] and telling each other a little about [themselves]." See Mr. Bruce Lemois' Affidavit. In addition, all seven members-elect affirmed that, after introductions, the topic of chairman and vice-chairman appointments were mentioned. Specifically, Mr. Lemois indicated that he was interested in the chairman position, Mr. Ronald Champagne and Mr. Philip Koutsogiane expressed interest in the vice-chairman position, Mr. Lemois voiced his support for Mr. Koutsogiane as vice-chairman, Mr. Champagne questioned how Mr. Lemois "became to support Mr. Koutsogiane," and Mr. James Scullin, after he was asked for his "opinion on discussing the two candidates for vice-chair," stated that "this subject should not be discussed at this gathering."

After reviewing all the evidence, including each member's affidavit, the evidence shows that two distinguishable topics were discussed on November 6. Specifically, all members attest that they introduced themselves and provided "short biographies." See Mr. Frank Matta Affidavit. See also Mr. Christopher Parent Affidavit ("we each greeted each other and gave a quick

bio/background of ourselves.”) Ms. Cynthia Ouellette Affidavit (“upon introductions we gave our background and biographies.”) This part of the meeting is clearly social in nature and thus not subject to the OMA. See Parks v. Cumberland School Department, OM 04-12 (OMA did not apply to a social gathering of the school committee and student government leaders because the event was social in nature and no business was conducted). With respect to the second topic discussed, all members further attest that, albeit briefly, the topic of chairman and vice-chairman was also discussed. See Mr. Lemois Affidavit (“[a]fter some small talk about personal issues I mentioned I would be putting my name in the ring for Chairman, two others had mentioned they were interested in vice-chair”). See Mr. Ronald Champagne Affidavit (“after everyone finished giving their biographies Mr. Lemois stated that he would be seeking the position of chairman of the Cumberland Fire Committee at the committee’s first meeting”). Although this discussion was brief, based upon the evidence presented we conclude that the CFC did collectively discuss the topic of chairman and vice-chairman of the CFC.

Having concluded that a quorum of the CFC collectively discussed the topic of chairman and vice-chairman, we must examine whether the collective discussion of this subject matter violated the OMA. Our analysis becomes complicated, however, because the definition of a “public body” excludes political parties. Specifically, the OMA provides 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.” See R.I. Gen. Laws § 42-46-2(3). In the past, this Department has held that a political entity that does not discuss public business does not violate the OMA. See McCaffrey v. Providence City Council, OM 97-18 (The Providence City Council did not hold a meeting as defined by the OMA, because “the meeting . . . was that of the Democratic City Council Caucus, which is expressly exempt from the Act”). Nevertheless, the evidence suggests that the CFC is a non-partisan public body and there has been no assertion from the CFC that it falls within one of the exemptions articulated in R.I. Gen. Laws § 42-46-2(3). As such, we conclude that the November 6, 2014 meeting did not fall within this exception and our sole inquiry is whether the chairman/vice-chairman discussion is “a matter over which the public body has supervision, control, jurisdiction, or advisory power.” See R.I. Gen. Laws § 42-46-2(1).

In Offer v. Newport City Council, OM 95-31, a quorum of newly elected council members held a series of meeting at which time council members-elect discussed, among other business, the selection of ex-officio representative to other council related entities, matters related to “orientation of the new members,” and the “informal election of the new Chairman-elect.” This Department found that the meetings violated the OMA because the City Council “convene[d] to discuss public business without noticing their meeting and without holding such meetings open to the public.” Id. In a similar finding, members-elect of the Gloucester Town Council met in private and discussed the appointments of “individuals who might be interested in serving the Town.” Like in Offer and the case presently before us, the Gloucester Town Council argued that the “conversation was informational in nature and no decisions were made with respect to any appointments.” In accordance with our finding in Offer, this Department concluded the Gloucester Town Council had violated the OMA since “meetings of any of the members-elect of the Council to discuss matters over which they have jurisdiction, control, or advisory power must

be noticed; minutes must be made and maintained and such discussions and meeting are otherwise subject to the provisions of R.I. Gen. Laws § 42-46-1 et. seq.” See Schanck v. Gloucester Town Council, OM 97-03. While this Department did not directly acknowledge that the appointment discussions in Offer and in Schanck were matters “over which the public body has supervision, control, jurisdiction, or advisory power,” such a determination was implicit in our findings.

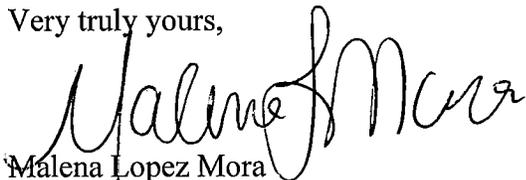
Here, like in Offer and Schanck, a quorum of the CFC met outside of a properly noticed open meeting and collectively discussed public business, *i.e.*, the future chair and vice-chair of the CFC. See R.I. Gen. Laws § 42-46-2(1). Therefore, in accordance with this Department’s prior findings, we find that the CFC violated the OMA on November 6, 2014 when a quorum of its members met in private and discussed who would be appointed chairman and vice-chairman. It is significant that neither party addressed this issue on a legal basis. As such, we do not exclude the possibility that future similar discussions would not fall within the ambit of the OMA, but here, the CFC has failed to meet its burden of proof on this issue.

Upon a finding that a complaint brought pursuant to the OMA is meritorious, the Attorney General “may file a complaint on behalf of the complainant in the superior court against the public body.” R.I. Gen. Laws § 42-46-8(a). “The court may issue injunctive relief” and/or “may impose a civil fine not exceeding five thousand dollars (\$5,000) against a public body or any of its members” for a willful or knowing violation. R.I. Gen. Laws § 42-46-8(d). In this instance, we find no evidence that the CFC knowingly or willfully violated the OMA. Additionally, injunctive relief is not appropriate since no action was taken at the November 6, 2014 meeting. This finding serves as notice to the CFC that the conduct discussed herein is unlawful and may serve as evidence of a willful or a knowing violation in any similar future situation.

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,



Malena Lopez Mora
Special Assistant Attorney General
Ext. 2307

Cc: Phillip Koutsogaine, Esquire