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

September 15, 2014
OM 14-29

Mr. John F. Ward

RE: Ward v. Woonsocket School Board

Dear Mr. Ward:

The investigation into your Open Meetings Act ("OMA") complaint filed against the Woonsocket School Board ("School Board") is complete. By correspondence dated March 11, 2014, you allege the School Board violated the OMA during its February 26, 2014 meeting when, after recessing to review the resume of the interim legal counsel, members of the School Board discussed public business outside the purview of the public. Following this discussion, you allege the School Board then voted to appoint the candidate as interim legal counsel in open session. The basis of your allegation is unclear.

In response to your complaint, we received a response from the School Board's legal counsel, Aubrey L. Lombardo, Esquire, who provided affidavits from all the School Board members. The Chairman of the School Board, Mr. George Lacouture states, in pertinent part:

> "Mr. Ward specifically alleged in his March 11, 2014 letter with respect to the February 26, 2014 School Board meeting, that the Board was given the resume of a candidate for temporary legal counsel. It then took a recess in the middle of the open session meeting, in which 'they turned their microphones off and spoke amongst themselves and others onstage in a quiet manner' and '[i]mmediately following the 'recess' discussion, the full board voted to appoint the discussed candidate as temporary legal counsel for the school board making no mention of the nature or content of their discussion.'
>
> * * *

> The School Board properly noticed on its Agenda for the February 26, 2014 School Board meeting the topic of 'Discussion/Vote to Hire Temporary Legal Counsel' in accordance with R.I. Gen. Laws § 42-46-6(b). * * *
>
> [T]here was discussion on the hiring of temporary legal counsel and the resume of a candidate was circulated. * * *
>
> [T]he Board inquired about going into closed session to review the qualifications of the proposed candidate's resume. The Board was advised by counsel that it could not legally do so because of notice requirements. * * *
>
> [T]he Board then voted to take a ten minute recess so that members could review the resume of the proposed candidate.
>
> During the recess, the Board members individually reviewed the resume of the candidate for temporary legal counsel.
>
> During the recess, there was no discussion by a quorum of the Board regarding the candidate for temporary legal counsel.
>
> * * *
>
> Any and all discussion by a quorum of the Board or voting to confirm the appointment of temporary legal counsel was done during the open session of the February 26, 2014 School Board meeting."[1]

We note that you did not file any 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 School Board 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 "[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

---

[1] The affidavits from the other School Board members "agree and attest to the authenticity and accuracy of the facts contained in the Affidavit of [Mr.] George Lacouture." The other School Board members are Ms. Susan Pawlina and Messers. Soren Seale, Jose J. Rivera, and Daniel Chattman.

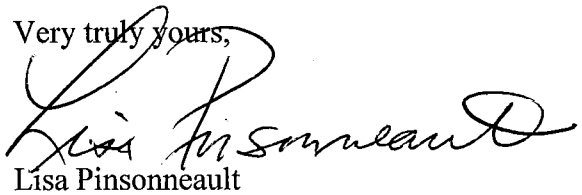
for the Town of Charlestown, 723 A.2d 294 (R.I. 1999). For purposes of the OMA, a "meeting" is defined as "the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." R.I. Gen. Laws § 42-46-2(a). A "quorum" is defined as "a simple majority of the membership of a public body." R.I. Gen. Laws § 42-46-2(d).

It appears the individual School Board members reviewed a resume of a potential candidate for interim legal counsel during a break at the February 26, 2014 School Board meeting. Based upon the evidence presented, we cannot conclude that during this break to review the resume, discussions occurred amongst a quorum of School Board members regarding matters over which the School Board has supervision, control, jurisdiction, or advisory power. In light of the affidavits submitted by all School Board members, the evidence falls short of any collective discussion by a quorum of the School Board. The evidence reveals that, after the break, the School Board discussed the appointment of temporary legal counsel in open session and voted to hire the candidate. As such, we find no violation.

Although this Department has found no violations, nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 42-46-8(c). The OMA allows the complainant to file a complaint 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. See id. Please be advised that we are closing this 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,



Lisa Pinsonneault
Special Assistant Attorney General
Extension 2297

Cc: William J. Connell