



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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*Peter F. Kilmartin, Attorney General*

**VIA EMAIL ONLY**

September 5, 2014  
OM 14-28

Ms. Christen McCarthy

Mr. John F. Ward

**RE: McCarthy v. Woonsocket School Board**  
**Ward v. Woonsocket School Board**

Dear Ms. McCarthy and Mr. Ward:

The investigations into your Open Meetings Act (“OMA”) complaints filed against the Woonsocket School Board (“School Board”) are complete. By two separate correspondences, you each allege the School Board violated the OMA during its April 9, 2014 meeting when it convened into executive session for an improper purpose. More specifically, you allege the School Board violated the OMA when it voted to approve the contract with the Local 1137 union and when it discussed and voted to approve the extension of the Superintendent’s contract, both without proper notice and that the topic of the extension of the Superintendent’s contract was not an appropriate topic for executive session.<sup>1</sup> Mr. Ward alleges, among other things, that because the School Board had not previously evaluated the Superintendent’s job performance, discussions about extending her contract were not appropriate for executive session. Ms. McCarthy alleges, among other things, because the expiration of the Superintendent’s contract was a well known fact, discussions about the contract’s extension should have occurred in open session. Additionally, Ms. McCarthy alleges that the agenda item listed “contracts,” leaving the

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<sup>1</sup> We pause to note that Ms. McCarthy’s OMA complaint did not allege a violation with respect to the approval of the Local 1137 contract, but only the discussion and approval of the extension of the Superintendent’s contract.

public to conclude that more than one contract would be discussed. Because this Department considers your OMA complaints to be substantially similar, we will address both of your complaints within this single finding.

In response to your complaint, we received a response from the School Board's legal counsel, Aubrey L. Lombardo, Esquire, who provided a sworn affidavit from Mr. George Lacouture, Chair of the School Board.<sup>2</sup> Mr. Lacouture stated, in pertinent part:<sup>3</sup>

“[t]he April 9, 2014 Agenda clearly details the nature of the business to be discussed, specifically stating, in bold that:

**‘Committee will seek to convene into executive session in accordance with R.I. Law: 42-46-5(a)(1) – Administrative contracts/job performance...’ and ‘42-46-5(a)(2) Collective Bargaining (Local 1137 Contracts)’**

The notice given on the Agenda with respect to administrative contracts/job performance and collective bargaining (Local 1137 contracts), clearly meets the standard set forth in Tanner v. Town Council of the Town of East Greenwich, 880 A.2d 784, 796-98 (R.I. 2005), which states that ‘The contents of the notice reasonably must describe the purpose of the meeting or the action proposed being taken’ and that the Legislature intended to establish a flexible standard aimed at providing fair notice to the public under the circumstances, as would fairly inform the public of the nature of the business to be discussed or acted upon.

\* \* \*

Under R.I. Gen. Laws § 42-[4]6-5(a)(2), a public body may hold a meeting closed to the public for the purpose of ‘sessions pertaining to collective bargaining or litigation, or work sessions pertaining to collective bargaining or litigation.’ Therefore, the discussion of collective bargaining and the Local 1137 contract was a permissible topic for discussion in executive session.

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<sup>2</sup> On June 27, 2014, this Department received affidavits from the other School Board members “agree[ing] and attest[ing] to the authenticity and accuracy of the facts contained in the Affidavit of [Mr.] George Lacouture.”

<sup>3</sup> Mr. Lacouture filed affidavits in both cases. As the affidavits are substantially similar, and since Mr. Ward's complaint contains allegations not raised in Ms. McCarthy's complaint, we make reference to the affidavit filed in response to Mr. Ward's complaint.

The School Board voted, in open session, to approve a contract with Local 1137, at the April 9, 2014 meeting. \* \* \*

The April 9, 2014 Agenda clearly states that Collective Bargaining with Local 1137 and the Local 1137 contracts will be discussed. The Agenda also states, in bold, that 'The School Board may vote on all items listed on this Agenda.' This constitutes 'fair notice' of the business that might be conducted under the standard set forth in Tanner, *supra*.

\* \* \*

With respect to Mr. Ward's allegation that proper notice was not given that an extension of the superintendent's contract was up for consideration, as noted above, R.I. Gen. Laws § 42-46-6(b) requires that a public body's notice for a meeting shall include 'statement specifying the nature of the business to be discussed.'

\* \* \*

The School Board voted, in open session, to extend the contract of the Superintendent of Schools at the April 9, 2014 meeting.

\* \* \*

During the April 9, 2014 executive session meeting, the School Board discussed the job performance of the superintendent in light of the upcoming conclusion of her contract. This is a permissible topic for closed session pursuant to R.I. Gen. Laws § 42-46-5(a)(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 School Board violated the OMA. See R.I. Gen. Laws § 42-46-8. In other words, we do not write on a blank slate.<sup>4</sup>

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<sup>4</sup> It is unclear, based upon the evidence presented, whether either of you attended the April 9, 2014 meeting raising the issue of whether or not you were aggrieved. 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." See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002) (requiring a person who raises an allegation of defect of notice to show how he or she was aggrieved by that defect). As the School Board does not raise this issue in its response, we continue with our analysis.

The OMA requires that:

“Public bodies shall give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours before the date. 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.” R.I. Gen. Laws § 42-46-6(b). (Emphasis added).

With respect to an executive session agenda, this Department indicated in Graziano v. Lottery Commission, OM 99-06, that:

“[i]f the matter to be discussed is one of public record, such as a pending court case or well publicized negotiation of a principal or executive director’s contract, the public body should cite the name of the case or reference that it will discuss the contract. However, where the matter to be discussed in executive session is not yet public, the public body may limit its open call to the nature of the matter such as ‘litigation’ or ‘personnel.’”

The Rhode Island Supreme Court examined R.I. Gen. Laws § 42-46-6(b) in Tanner v. Town of East Greenwich, 880 A.2d 784 (R.I. 2005), wherein the Court held that the agenda must provide sufficient information to the public so that the citizenry may be informed as to what matters will be addressed at a meeting and the agenda must not be misleading. Id. at 797-98. The Court determined the appropriate inquiry is “whether the [public] notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted.” Id. at 797.

The Rhode Island Supreme Court, on April 2, 2013, re-examined the Tanner standard in Anolik v. Zoning Board of Review of the City of Newport, 64 A.3d 1171, 1175 (R.I. 2013). The relevant facts of that case are as follows. In November of 2008, defendants received a letter from counsel for Congregation Jeshuat Israel requesting an extension of the time in which to substantially complete certain improvements to Congregation Jeshuat Israel’s property that had been approved by a previous zoning board decision. Id. at 1172. That previous decision expressly contained a condition to the effect that there be substantial completion of the improvements within two years. Id. The agenda item for the February 23, 2009 meeting stated:

“IV. Communications:

Request for Extension from Turner Scott received 11/30/08 Re: Petition of Congregation Jeshuat Israel”

At the meeting, the board voted unanimously to approve the request for an extension of time requiring that the “improvements must be started and [be] substantially complete [by] February 23, 2011.” Id. at 1173. On August 21, 2009, the plaintiffs filed a complaint in Superior Court alleging that the agenda item violated the OMA because it was “a ‘vague and indefinite’ notice to the public and one lacking in specificity.” Id. The Superior Court granted defendants’ motion

for summary judgment. *Id.* On appeal, the Supreme Court examined Tanner and noted that R.I. Gen. Laws § 42-46-6(b) requires the “public body to provide fair notice to the public under the circumstance, or such notice based on the totality of the circumstances as would fairly inform the public of the nature of the business to be discussed or acted upon.” *Id.* at 1175 (*quoting Tanner*, 880 A.2d at 797). The Court held that the agenda item was “completely silent as to which specific property was at issue; the agenda item provided no information as to a street address, a parcel or lot numbers, or even an identifying petition or case number.” *Id.* (Emphasis in original). The agenda item “fails to provide any information as to exactly what was the reason for the requested extension or what would be its duration.” *Id.* at 1176.

We begin our analysis with the agenda and the minutes of the April 9, 2014 meeting. The agenda for the April 9, 2014 meeting states in bold that “The School Board may vote on all items listed on this agenda.” Furthermore, it states, in pertinent part:

“COMMITTEE WILL SEEK TO CONVENE INTO EXECUTIVE SESSION IN ACCORDANCE WITH RI LAW: 42-46-5(a)(1) – Administrative Contracts/Job Performance; \* \* \* 42-46-5(a)(2) Collective Bargaining (Local 1137 Contracts)”

A review of the open session audio and meeting minutes indicate that the School Board members entered into executive session at 5:30 p.m. and re-convened into open session at 6:45 p.m. This Department’s *in camera* review of the executive session minutes reveals that no votes were taken in executive session. Once the School Board re-convened into open session, it voted to approve the contract with the Local 1137 union. The School Board then engaged in a discussion of the contract extension for the Superintendent of Schools. The School Board voted to extend the Superintendent’s contract to June 30, 2015, while in open session.<sup>5</sup>

In the instant case, we conclude that the agenda items were sufficient to adequately inform the public of the nature of the business to be discussed, consistent with our finding in Graziano. The agenda item indicated that the School Board was going to discuss and may vote on “Administrative Contracts/Job Performance” under R.I. Gen. Laws § 42-46-5(a)(1) and “Collective Bargaining (Local 1137 Contracts)” under R.I. Gen. Laws § 42-46-5(a)(2). Our review of the open session meeting minutes reveals that the School Board voted to approve the Local 1137 contract and voted to extend the School Superintendent’s contract. Respectfully, we find these agenda items were not misleading. Notably, the April 9, 2014 agenda indicated that the School Board “may vote on all items listed on this agenda,” and for this reason, we must reject Mr. Ward’s allegation that insufficient notice was provided that the School Board may vote on the Local 1137 contract.

Turning to the allegation that members of the public, knowing that the Superintendent’s contract was nearing expiration, would be watchful for a meeting containing such an agenda item, we also find no violation. Respectfully, applying the Graziano standard, and based upon the

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<sup>5</sup> It is our understanding that the Woonsocket Budget Commission decided not to renew the Superintendent’s contract.

evidence presented, simply because a School Superintendent's contract was coming up on renewal, without more, does not present adequate evidence to fall within our finding in Graziano. Accordingly, pursuant to the Graziano standard, the School Board could have simply listed "job performance," yet the School Board listed more specifically "administrative contracts/job performance." Since the School Board could have lawfully cited "job performance" pursuant to Graziano, we find that the School Board did not violate the OMA by additionally citing "administrative contracts." Again, we also note that no evidence has been presented that you were "aggrieved" by the allegedly deficient notice, see Graziano, 810 A.2d 215, and that we again observe that the April 9, 2014 notice indicated that "[t]he School Board may vote on all items listed on this agenda."

Lastly, Ms. McCarthy alleges the extension of the Superintendent's contract was not appropriate for executive session under R.I. Gen. Laws § 42-46-5(a)(1) and Mr. Ward alleges any contract extension was improper because the School Board had not previously evaluated the Superintendent and because R.I. Gen. Laws § 42-46-5(a)(1) contains no language referencing "contracts." Rhode Island General Laws § 42-46-5(a)(1) allows a public body to convene into executive session to discuss "job performance, character, or physical or mental health of a person or persons." Based upon the evidence presented, that is exactly what the School Board did in the context of extending the Superintendent's contract. In his affidavit, Mr. Lacouture states:

"During the April 9, 2014 executive session meeting, the School Board discussed the job performance of the superintendent in light of the upcoming conclusion of her contract. This is a permissible topic for closed session pursuant to R.I. Gen. Laws § 42-46-5(a)(1)."

We agree. Respectfully, we find no merit to the allegation that the School Board could not discuss the Superintendent's job performance in executive session under R.I. Gen. Laws § 42-46-5(a)(1) because the School Board had not previously evaluated the Superintendent. The School Board was not prohibited from discussing the Superintendent's job performance during a properly noticed executive session. As discussed supra, we conclude that the agenda item was properly noticed and the topic was appropriate for executive session. In sum, the School Board did not violate the OMA.

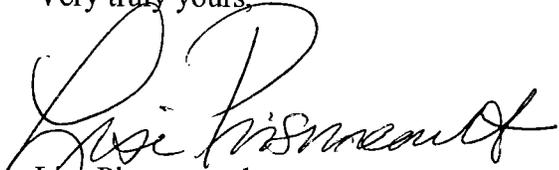
Although this Department has found no violations, nothing within the OMA prohibits an individual or entity from obtaining legal counsel for the purpose of instituting injunctive or declaratory relief in Superior Court. See R.I. Gen. Laws § 42-46-8(c). The OMA allows the complainant to file a complaint within ninety (90) days from the date of the Attorney General's

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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 keeping government open and accountable to the public.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lisa Pinsonneault". The signature is written in black ink and is positioned above the printed name.

Lisa Pinsonneault  
Special Assistant Attorney General

Cc: Aubrey L. Lombardo, Esquire