

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

ATTORNEY GENERAL PETER F. KILMARTIN :
IN HIS OFFICIAL CAPACITY :

V. :

RHODE ISLAND STATE :
PROPERTIES COMMITTEE :

C.A.NO.: 14-

COMPLAINT

I. INTRODUCTION

Attorney General Peter F. Kilmartin, acting in his official capacity, brings this action against the Rhode Island State Properties Committee (“Properties Committee”) for failing to timely file the minutes for its August 13, 2013, September 26, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State’s website in violation of R.I. Gen. Laws § 42-46-7(d); and when it filed the minutes for its October 8, 2013 meeting on the Secretary of State’s website on December 13, 2013, outside the thirty-five (35) days as required by R.I. Gen. Laws § 42-46-7(d).

The Attorney General respectfully requests that this Honorable Court declare that the Properties Committee’s actions or omissions violated the Open Meetings Act, assess civil fines, and enjoin the Properties Committee from further violations.

II. PARTIES

1. Plaintiff, Peter F. Kilmartin, is the Attorney General of the State of Rhode Island. Pursuant to R.I. Gen. Laws § 42-46-8, the Attorney General shall investigate Open Meetings Act (“OMA”) complaints filed with the Department of Attorney General, and if

found to be meritorious, the Attorney General may institute proceedings for civil penalties, and/or injunctive or declaratory relief.

2. Plaintiff, Attorney General Peter F. Kilmartin brings this action within the meaning of R.I. Gen. Laws § 42-46-8(a).
3. Plaintiff, Attorney General Peter F. Kilmartin also brings this action on behalf of the public interest, within the meaning of R.I. Gen. Laws § 42-46-8(f).
4. Defendant, Properties Committee is a “public body” as defined in R.I. Gen. Laws § 42-46-2(c). All meetings of the Properties Committee are subject to the Open Meetings Act, R.I. Gen. Laws § 42-46-1 et seq.

III. JURISDICTION

5. Jurisdiction over this matter is vested in the Superior Court pursuant to R.I. Gen. Laws § 42-46-8.

IV. FACTS

6. The OMA mandates that “[a]ll public bodies within the executive branch of state government and all state public and quasi-public boards, agencies and corporations shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.” R.I. Gen. Laws § 42-46-7(d). (Emphasis added).

7. The Properties Committee failed to timely file its minutes for the August 13, 2013, September 26, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State's website in violation of R.I. Gen. Laws § 42-46-7(d).
8. The Properties Committee filed its minutes for the October 8, 2013 meeting on the Secretary of State's website on December 13, 2013 in violation of R.I. Gen. Laws § 42-46-7(d).
9. On June 13, 2014, the Department of Attorney General issued Block v. Rhode Island State Properties Committee, OM 14-26. See Exhibit A.
10. The Properties Committee received a copy of this finding.
11. After concluding that the Properties Committee violated the OMA, this Department allowed the Properties Committee the opportunity to address whether the violation was knowing or willful. See Exhibit A at 8.
12. By supplemental finding dated July 9, 2014, this Department concluded that the OMA violations in Block v. Rhode Island State Properties Committee, OM 14-26, were knowing or willful. See Exhibit B, Block v. Rhode Island State Properties Committee, OM 14-26B.

COUNT I – VIOLATION OF THE OMA

13. Plaintiff hereby incorporates Paragraphs 1 through 12 herein.
14. The Properties Committee violated R.I. Gen. Laws § 42-46-7(d) when it failed to timely file its minutes for the August 13, 2013, September 26, 2013, October 8, 2013, November 5, 2013, and November 19, 2013 meetings on the Secretary of State's website.
15. Plaintiff asks that this Honorable Court declare that the Properties Committee violated R.I. Gen. Laws § 42-46-7(d).
16. Plaintiff asks that this Honorable Court enjoin the Properties Committee from future

violations of R.I. Gen. Laws § 42-46-7(d).

COUNT II – WILLFUL OR KNOWING

17. Plaintiff hereby incorporates Paragraphs 1 through 16 herein.
18. The Properties Committee violated R.I. Gen. Laws § 42-46-7(d) when it failed to timely file its minutes for the August 13, 2013, September 26, 2013, October 8, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State's website.
19. The Properties Committee is presumed to have knowledge of the law.
20. The Properties Committee willfully or knowingly violated the OMA when it failed to timely file its minutes for the August 13, 2013, September 26, 2013, October 8, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State's website.
21. Plaintiff asks that this Honorable Court assess a civil fine against the Properties Committee for a willful or knowing violation of R.I. Gen. Laws § 42-46-7(d).

WHEREFORE, pursuant to R.I. Gen. Laws § 42-46-8(d), Plaintiff respectfully requests this Honorable Court declare Defendant violated R.I. Gen. Laws § 42-46-7(d), order the Properties Committee to prospectively file all meeting minutes with the Secretary of State's website and to impose such remedies and penalties, including costs and a civil fine, as may be available at law and in equity that this Honorable Court finds just.

PLAINTIFF DEMANDS A JURY TRIAL.

Respectfully submitted,

PLAINTIFF,
By his Attorneys,

PETER F. KILMARTIN
ATTORNEY GENERAL



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EXHIBIT A



State of Rhode Island and Providence Plantations

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

June 13, 2014

OM 14-26

Mr. Kenneth J. Block

Re: Block v. Rhode Island State Properties Committee

Dear Mr. Block:

The investigation into your Open Meetings Act (“OMA”) complaint filed against the Rhode Island State Properties Committee (“Committee”) is complete.¹ By correspondence dated

¹ Among the members of the Committee is a member of the Department of Attorney General. By letter dated January 26, 2014, you noted that:

“[t]he Attorney General’s Office has a conflict of interest in this matter. One of its employees is a voting member of this Committee, as per the Committee’s Affidavit. Since I have asked for substantial financial penalties because of the egregious nature of these violations of State Law, I ask for the Attorney General’s Office to step aside from prosecuting this complaint and instead appoint a Special Prosecutor.”

By letter dated February 13, 2014, this Department responded and advised, among other things, that since you asserted a conflict of interest due to your request for “substantial financial penalties,” and since the issue of financial sanctions can be made only once a violation had been found, any issue regarding a conflict of interest and the determination of financial penalties was premature. This Department also noted that our determination was consistent with past precedent. See Giarrusso v. Cranston School Committee, OM 08-15 (School Committee member also employed by Department of Attorney General). To be sure, your February 18, 2014 letter appears to take issue with this conclusion and notes that you are “claiming a conflict of interest in this case simply because the Attorney General’s office has what at this point in time is one of the three voting seats on this committee.” In support of this assertion, you cite the first two sentences from your January 26, 2014 letter – reproduced above – although in fairness, your

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January 6, 2014, you allege the Committee violated the OMA when it failed to file its minutes for the August 13, 2013, September 26, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State's website. You also allege the Committee violated the OMA when it filed its minutes for the October 8, 2013 meeting on the Secretary of State's website on December 13, 2013, outside the thirty-five (35) days as required by R.I. Gen. Laws § 42-46-7(d). With respect to these meetings, you aver that you are aggrieved because you have been "thwarted in [your] desire to research attendance of certain Committee members at Committee meetings" and because you have "no way of monitoring what business was conducted at these meetings that I could not attend." On January 26, 2014, you supplemented your complaint to further allege that the Committee violated the OMA when it failed to maintain minutes.²

In response to your complaint, we received a substantive response from the Committee's legal counsel, Michael D. Mitchell, Esquire, who also provided a sworn affidavit from the Chairman of the Committee, Mr. Ronald N. Renaud. Attorney Mitchell states, in pertinent part:

"[t]he Affidavit includes copies of some of the State Properties Committee meeting minutes which were the subject of Mr. Block's complaint. Those meeting minutes were approved on January 16th and subsequently filed with the Secretary of State. The remaining meeting minutes (May 21st and July 2nd) are

February 18, 2014 letter omits the last sentence from your January 26, 2014 letter. See January 26, 2014 Letter ("Since I have asked for substantial financial penalties because of the egregious nature of these violations of State Law, I ask for the Attorney General's Office to step aside from prosecuting this complaint and instead appoint a Special Prosecutor.")(emphasis added). You also provide no basis, and we are aware of no basis, that would impose liability upon the Department of Attorney General under these circumstances. To state the obvious, the undersigned had no discussions concerning this matter with the Committee member employed by the Department of Attorney General.

² Respectfully, your January 26, 2014 "amended complaint" is unclear as to the dates you alleged minutes were not maintained. Specifically, your "amended complaint" referenced a portion of a newspaper article and the Committee's "opening paragraph" in its response, but neither reference contained any dates that you allege minutes were not maintained. By letter dated February 13, 2014, this Department acknowledged receipt of your "amended complaint" and indicated that your "amended complaint" was interpreted as alleging that the Committee failed to maintain minutes for its May 21, 2013 and July 2, 2013 meetings. Your February 18, 2014 correspondence objected to this interpretation and explained that your "expanded complaint should apply to all missing or late filed meeting minutes by this Committee where the minutes themselves did not exist to be filed in a timely way." Although your February 18, 2014 correspondence similarly failed to direct this Department's attention to specific meeting minutes allegedly not maintained – and despite this Department's February 13, 2014 acknowledgment letter – for purposes of this finding we interpret your "amended complaint" to allege that the Committee failed to maintain minutes for its August 12, 2013, September 26, 2013, October 8, 2013, November 5, 2013, and November 19, 2013 meetings. For reasons that shall become evident, ultimately the scope of your allegation is of no moment.

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being transcribed and shall be ready for review and approval by the State Properties Committee at its January 23rd meeting. The State Properties Committee shall supplement the record of this matter with the additional minutes after they have been filed with the Secretary of State.

Mr. Block closes his OMA complaint with a request that the Attorney General assess a fine against the State Properties Committee for each violation.^[3] A fine in this situation is not warranted because the omissions were inadvertent rather than deliberate. In addition, it should be noted that while the State Properties Committee performs a statutorily mandated function, it has no income, budget appropriation, or other revenues available with which to pay a fine or penalty. State Properties Committee members are all agency appointees (Department of Administration, General Treasurer, and Attorney General) and its executive secretary is on loan from the Department of Administration, Division of Planning.”

Chairman Renaud states, in pertinent part:

“I am employed by the State of Rhode Island as Executive Director of the Department of Administration, One Capit[o]l Hill, Providence, RI 02908.

I am the duly appointed Chairman of the Rhode Island State Properties Committee (the ‘SPC’) and have served in that capacity since March 23, 2011.

* * *

The Executive Secretary prepares the agenda and public notice for SPC meetings, records (audio) and transcribes minutes of SPC meetings, and maintains SPC records.

SPC records indicate that meeting minutes for the follow[ing] dates were not timely filed with the Secretary of State as required by the ‘Open Meetings Act,’ R.I. Gen. Laws § 42-46-7:

- August 13, 2013
- September 26, 2013
- October 8, 2013
- November 5, 2013
- November 19, 2013

* * *

³ Your January 6, 2014 complaint sought a \$1,000 fine per violation. Your January 26, 2014 “amended complaint” sought a \$5,000 fine per violation.

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The SPC's failure to timely file meeting minutes for the above referenced dates was inadvertent, not deliberate.

The SPC did not comply with the Open Meetings Act filing requirement in large measure because its minutes traditionally exceeded the minimal reporting requirements of R.I. Gen. Laws § 42-46-7 by providing an almost verbatim transcription of entire meetings, no matter how lengthy or complex the agenda. Thus, the minutes would contain not just a list of agenda items and actions taken, but also extensive details of the agency presentation for each agenda item, witness testimony, committee questions and discussions, and other pertinent information[.] The transcription, editing, and review of such detailed minutes was inordinately time consuming.

* * *

On January 16, 2014 the SPC reviewed and approved minutes for the following meetings that were the subject of the complaint: February 12; February 26; March 12; March 26; August 13; September 26; November 5; November 19.

* * *

The SPC, in conjunction with the Department of Administration, has taken corrective measures to better supervise the production and filing of meeting minutes."⁴

On January 26, 2014, you filed an "amended complaint" consistent with our discussion in footnotes one and two. By letter dated February 17, 2014, the Committee responded to your January 26, 2014 "amended complaint." Additional details will be set forth below as necessary.

In examining whether an OMA violation has occurred, we are mindful that our mandate is not to determine whether this Department believes that 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.

You raise two (2) issues. First, you contend that the Committee failed to timely file with the Secretary of State its meeting minutes for: August 12, 2013, September 26, 2013, October 8, 2013, November 5, 2013, and November 19, 2013. See R.I. Gen. Laws § 42-46-7(d). Second, you contend that the Committee failed to maintain its meeting minutes for: August 12, 2013,

⁴ Attached to Mr. Renaud's affidavit were copies of the minutes for the February 12, February 26, March 12, March 26, August 13, September 26, November 5 and November 19 Committee meetings. Also attached to the response was notification from the Secretary of State indicating that these meeting minutes were successfully uploaded to its database.

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September 26, 2013, October 8, 2013, November 5, 2013, and November 19, 2013. See R.I. Gen. Laws § 42-46-7(a). We begin with your first issue.

The OMA requires that:

“[a]ll public bodies within the executive branch of state government and all state public and quasi-public boards, agencies and corporations shall keep official and/or approved minutes of all meetings of the body and shall file a copy of the minutes of all open meetings with the secretary of state for inspection by the public within thirty-five (35) days of the meeting; provided that this subsection shall not apply to public bodies whose responsibilities are solely advisory in nature.” R.I. Gen. Laws § 42-46-7(d). (Emphasis added).

With respect to your allegation that the Committee violated the OMA when it failed to timely file its minutes for the August 13, 2013, September 26, 2013, October 8, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State’s website, we conclude the Committee violated the OMA. The Committee admits that it failed to file the afore-mentioned minutes in accordance with R.I. Gen. Laws § 42-46-7(d).

Moving to your second issue, we begin by re-observing that your January 26, 2014 “amended complaint” failed to articulate the meeting minutes the Committee allegedly failed to maintain. See supra footnote 2. Instead, your January 26, 2014 correspondence referenced a news article (apparently written in response to your initial complaint), which related in relevant part that “[a]fter Block’s news conference, [Chairman] Renaud said in a news release that court reporters have already been hired to transcribe the minutes from digital recordings so the minutes may be uploaded to the secretary of state’s website ‘as soon as possible.’” Your January 26, 2014 “amended complaint” continued that:

“[t]he above comment [from the news article], and the comment in the Committee’s opening paragraph⁵in their response to my complaint regarding transcription indicates that the Committee has not only violated OMA in the failure to file meeting minutes with the Secretary of State, but this Committee has also violated Rhode Island General Law[s] § 42-46-7(a), which in its most basic form requires that the Committee keep minutes. Clearly, based on their own words, this Committee has failed, at times, to keep minutes, let alone file them.

Given this new information which only came to me in the Committee’s response to my complaint and in news articles written after my original complaint was filed, I wish to amend and expand my complaint to include these new violations of Rhode Island’s OMA laws.” (Emphasis added).

⁵ The “opening paragraph” referenced corresponds to the opening paragraph as set forth in Attorney Mitchell’s initial response to your complaint. This “opening paragraph,” in relevant part, is reproduced on page 2-3 of this finding.

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Here, the specific minutes you allege that the Committee “at times” failed to maintain remains unspecified, but even assuming this allegation pertains to the Committee’s minutes for its meetings on August 12, 2013, September 26, 2013, October 8, 2013, November 5, 2013, and November 19, 2013, based upon the evidence presented, we must conclude that we are unable to reach the merits of your allegation. The reason for our conclusion concerns your January 26, 2014 averment that “this new information [] only came to [you] in the Committee’s response to [your] complaint and in news articles written after [your] original complaint was filed.” Upon receiving your January 26, 2014 “amended complaint” – as well as your February 18, 2014 correspondence – this Department requested that you direct our attention to the specific minutes that you alleged were not maintained. See Letter dated February 27, 2014. Even more important, this Department’s February 27, 2014 letter to you continued that:

“[a]dditionally, your January 26, 2014 correspondence indicates that ‘this new information [i.e., the new allegations] * * * only came to [you] in the Committee’s response to my complaint and news articles written after my original complaint was filed,’ and thus raises the issue concerning how you were aggrieved by these new allegations. See Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215, 222 (R.I. 2002). * * * Considering the averment in your January 26, 2014 letter that the issue of the State Properties Committee’s alleged failure to properly maintain minutes ‘only came to me’ as a result of the Committee’s [January 17, 2014] response and a [January 8, 2014] newspaper article, you may wish to present evidence concerning how you are aggrieved by this allegation with respect to all minutes that you contend were not timely maintained, including the May 21, 2013 and the July 2, 2013 minutes.” See February 27, 2014 Letter (all alterations in original, except last omission).

We received no further response from you.

The OMA provides a number of requirements to ensure that public meetings are open and accessible to the public. To enforce these provisions, the OMA provides that “[a]ny citizen or entity of the state who is aggrieved as a result of violations of the provisions of this chapter may file a complaint with the attorney general.” R.I. Gen. Laws § 42-46-8(a). In Graziano v. Rhode Island State Lottery Commission, 810 A.2d 215 (R.I. 2002), the Rhode Island Supreme Court examined the “aggrieved” provision of the OMA.

In Graziano, an OMA lawsuit was filed concerning notice for the Lottery Commission’s March 25, 1996 meeting wherein its Director, John Hawkins, was terminated. At the Lottery Commission’s March 25, 1996 meeting, Mr. Hawkins and Ms. Graziano were both present. Finding that the Lottery Commission’s notice was deficient, the trial justice determined that the Lottery Commission violated the OMA and an appeal ensued. On appeal, the Rhode Island Supreme Court determined that it was “unnecessary” to address the merits of the OMA lawsuit because “the plaintiffs Graziano and Hawkins have no standing to raise this issue” since “both plaintiffs were present at the meeting and therefore were not aggrieved by any defect in the notice.” Id. at 221. The Court continued that it:

“has held on numerous occasions that actual appearance before a tribunal constitutes a waiver of the right of such person to object to a real or perceived defect in the notice of the meeting. * * * It is not unreasonable to require that the person who raises the issue of the defect in notices be in some way disadvantaged or aggrieved by such defect. While attendance at the meeting would not prevent a showing of grievance or disadvantage, such as lack of preparation or ability to respond to the issue, no such contention has been set forth in the case at bar. The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice.” *Id.* at 221-22. (Emphases added).

While Graziano concerned an allegedly insufficient notice and you complain about an alleged failure to maintain minutes, Graziano’s holding applies with equal force in this case – “[i]t is not unreasonable to require that the person who raises the issue of the defect * * * be in some way disadvantaged or aggrieved by such defect.” *Id.* Notwithstanding this Department’s February 27, 2014 letter, which suggested that “you may wish to present evidence concerning how you are aggrieved by this allegation,” no evidence has been presented on this issue. *Id.* (“The burden of demonstrating such a grievance is upon the party who seeks to establish standing to object to the notice.”). The absence of such evidence that you are aggrieved by the allegation you raise is not trivial since in a non-OMA context the Rhode Island Supreme Court has described the standing issue as a “fundamental preliminary question.” See Watson v. Fox, 44 A.3d 130, 135 (R.I. 2012).

Here, in contrast to your first allegation, wherein you contend that the failure to file minutes on the Secretary of State’s website has “thwarted [your] desire to research attendance of certain Committee members at Committee meetings” and that you “have no way of monitoring what business was conducted at these meetings that [you] could not attend,” your January 26, 2014 “amended complaint” makes clear that the allegations relating to the second issue “only came to [you] in the Committee’s response to [your] complaint and in news articles written after [your] original complaint was filed.” In brief, the evidence demonstrates that you were not even aware of this second allegation until after you filed your initial complaint. Moreover, and significantly, based upon the evidence presented it appears that you became aware of this allegation as a result of the Committee’s response and a news article. Consistent with Graziano and this Department’s precedent, we find no evidence that you were aggrieved by this allegation, and therefore, do not reach the merits of this issue. See Hathaway v. Rhode Island Atomic Energy Commission, OM 14-08 (“[t]here is no evidence or even an assertion, however, that you requested the executive session minutes from January 2, 2013”)(not aggrieved). See also Block v. Board of Elections, OM 13-25.

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 available 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) “the court may impose a civil fine not exceeding five thousand dollars (\$5,000) 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.

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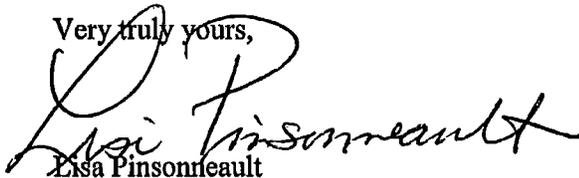
While the Committee's open session minutes are presently posted on the Secretary of State's website – and thus injunctive relief is not appropriate – in this instance, we believe it is appropriate to seek a supplemental response from the Committee concerning whether the instant violations were willful or knowing. See DiPrete v. Morsilli, 635 A.2d 1155 (R.I. 1994); Carmody v. Rhode Island Conflict of Interest Comm'n, 509 A.2d 453 (R.I. 1986). In particular, the evidence demonstrates that while the August 12, 2013, September 26, 2013, October 8, 2013, November 5, 2013, and November 19, 2013 minutes were not timely filed on the Secretary of State's website, other open session minutes were timely filed, raising the issue – at least in our minds – that the Committee was aware of its statutory obligation to file open session minutes in a timely manner, yet failed to do so in these cases. Our conclusion is buttressed – and perhaps mitigated – by the Committee's explanation for the violation:

“[t]he [Committee] did not comply with the Open Meetings Act filing requirement in large measure because its minutes traditionally exceeded the minimal reporting requirements of R.I. Gen. Laws § 42-46-7 by providing an almost verbatim transcription of entire meetings, no matter how lengthy or complex the agenda. Thus, the minutes would contain not just a list of agenda items and actions taken, but also extensive details of the agency presentation for each agenda item, witness testimony, committee questions and discussions, and other pertinent information. The transcription, editing, and review of such detailed minutes was inordinately time consuming.”

Consistent with our precedent,⁶ we shall allow the Committee ten (10) business days within receipt of this finding to respond to our concern that the instant violation is “willful or knowing” in accordance with DiPrete and Carmody. The Committee's response should not be conclusory. Should you wish, you may also provide this Department a substantive response on this same issue within ten (10) business days of receipt of this finding. Thereafter, a supplemental finding will be issued concerning whether the instant violation is “willful or knowing.”

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: Michael D. Mitchell, Esquire

⁶ See e.g., Boss v. Woonsocket Superintendent's Office, PR 13-19; Law Office of Michael Kelly v. City of Woonsocket, PR 13-13; Quirk v. Town of North Providence, PR 12-02.

EXHIBIT B



State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL

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Peter F. Kilmartin, Attorney General

VIA EMAIL ONLY

July 11, 2014
OM 14-26B

Mr. Kenneth J. Block

Re: **Block v. Rhode Island State Properties Committee**

Dear Mr. Block:

This correspondence serves as a supplemental finding to Block v. Rhode Island State Properties Committee, OM 14-26, released June 13, 2014. In Block, we reviewed your January 6, 2014 complaint and concluded that the Rhode Island State Properties Committee (“Committee”) violated the Open Meetings Act (“OMA”) when, at the time your complaint was filed, the Committee failed to file its minutes for the August 13, 2013, September 26, 2013, November 5, 2013 and November 19, 2013 meetings on the Secretary of State’s website.¹ We also concluded the Committee violated the OMA when it filed its minutes for the October 8, 2013 meeting on the Secretary of State’s website on December 13, 2013, outside the timeframe required by R.I. Gen. Laws § 42-46-7(d).

The sole issue to be addressed in this supplemental finding is whether the Committee’s violation was willful or knowing. We acknowledge your submission dated June 23, 2014, asking that a civil fine be imposed against the Committee “not to exceed \$5,000.” As requested, the Committee responded to our inquiry and we now resolve this outstanding issue.

By letter dated June 25, 2014, the Committee’s legal counsel, Michael D. Mitchell, Esquire, provided a response. Attorney Mitchell states, in pertinent part:

“As stated in the January 17, 2014 Affidavit of [Mr.] Ronald Renaud, the State Properties Committee’s (‘SPC’) failure to timely file the meeting minutes cited in Mr. Block’s OMA complaint was inadvertent, not deliberate. At all times material hereto the SPC was aware of its statutory obligation to file meeting

¹ The aforementioned minutes were approved on January 16, 2014 and filed on the Secretary of State’s website on January 17, 2014.

minutes with the Secretary of State. Unfortunately, the SPC's policy of transcribing a verbatim record of each meeting, rather than the minimum information required by the OMA, was excessively time consuming and burdensome upon the SPC's executive secretary. In mid-2013 and again in 2014 the SPC's executive secretary experienced health issues which caused her to fall behind with the preparation and filing of meeting minutes. Although it is reasonable to suggest that the SPC should have responded to the problem sooner, it did the best it could with the limited personnel resources available to it; while this may not address the violation, it provides insight into our position that the failure to file minutes was not deliberate.

To that point, the SPC's failure to file meeting minutes cannot be characterized as willful or knowing. Although the SPC members did bec[o]me aware that the executive secretary had fallen behind in filing the meeting minutes with the Secretary of State, they did not know the extent of the problem or how long it would take to transcribe and file the missing meeting minutes. The delay in filing the meeting minutes was inadvertent with no intent by the SPC to circumvent statutory requirements or to harm the public.

There is no evidence that the SPC's violation of the OMA was either willful or knowing. Such a violation requires intent which is absent from the record submitted in response to Mr. Block's OMA complaint. In fact, the SPC Chairman has stated under oath that the failure to timely file meeting minutes was inadvertent. Inadvertence is generally understood to be the equivalent of negligence. Black's Law Dictionary defines 'inadvertence' as 'heedlessness; lack of attention; want of care; carelessness; failure of a person to pay careful and prudent attention. . . .'

Since receipt of Mr. Block's OMA complaint the SPC has instituted procedures to monitor and verify the timely submission of meeting minutes in accordance with the OMA. The SPC's members are keenly aware of the responsibilities under the OMA and shall not allow another violation to occur." (Emphasis added).

By its own admission, the Committee was "at all times material hereto * * * aware of its statutory obligation to file meeting minutes with the Secretary of State." The Committee's candid admission evinces that it was aware it was statutorily obligated to file its meeting minutes on the Secretary of State's website in a timely manner and the Committee in fact had timely filed other meeting minutes on the Secretary of State's website in accordance with R.I. Gen. Laws § 42-46-7(d). The Committee proffers its failure to comply with the OMA was a negligent act, rather than willful or knowing. Respectfully, we disagree and observe that discussion on the willful or knowing analysis is noticeably absent from the Committee's response.

In Carmody v. Rhode Island Conflict of Interest Commission, 509 A.2d 452 (R.I. 1986), the Rhode Island Supreme Court examined the legal standard for a "knowing and willful" violation.

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As summarized in a later case, DiPrete v. Morsilli, 635 A.2d 1155, 1163-64 (R.I. 1994), the Court:

“has held that when a violation of the statute is reasonable and made in good faith, it must be shown that the official ‘either knew or showed reckless disregard for the question of whether the conduct was prohibited by [the] statute * * * . Consequently an official may escape liability when he or she acts in accordance with reason and in good faith. We have observed, however, that it is ‘difficult to conceive of a violation that could be reasonable and in good faith. In contrast, when the violative conduct is not reasonable, it must be shown that the official was ‘cognizant of an appreciable possibility that he [might] be subject to the statutory requirements and [he] failed to take steps reasonably calculated to resolve the doubt.’” (internal citations omitted). (Emphasis added).

Considering the “willful and knowing” standard articulated by the Supreme Court, we must conclude that the Committee was “cognizant of an appreciable possibility that [it may] be subject to the statutory requirements and [it] failed to take steps reasonably calculated to resolve the doubt.” DiPrete, 635 A.2d at 1164. Although we do not believe that the “reasonable and in good faith” standard applies to the facts of this case, we are satisfied that this standard has also been surpassed. Indeed, in our opinion, the evidence demonstrates that the Committee was well aware of its statutory obligation to file its meeting minutes on the Secretary of State’s website within thirty-five (35) days of its meeting or prior to the next regularly scheduled meeting, whichever is earlier, yet failed to do so. See id. (“it is ‘difficult to conceive of a violation that could be reasonable and in good faith’”). Again, it bears noting that in its response the Committee acknowledges that “[a]t all times material hereto the SPC was aware of its statutory obligation to file meeting minutes with the Secretary of State.” Despite this recognition, the facts establish (and the Committee acknowledges) that it failed to file minutes in a timely manner with the Secretary of State’s website. On this record, we have little trouble concluding that the Committee was cognizant of an appreciable possibility it was subject to the OMA, yet failed to take steps reasonably calculated to comply with the OMA.

As mitigating factors, the Committee states that the health of the executive secretary was an issue during parts of 2013 and 2014, and that the Committee, in lieu of completing its minutes with the minimum requirements contained in the OMA, had a practice of transcribing a near-verbatim record of each meeting. The Committee proffers this practice resulted in a burdensome and time consuming task for the executive secretary, which caused the delay at issue in this case. While this Department does not dismiss either consideration, and in particular encourages public bodies to exceed the minimum statutory reporting requirements for its minutes, see R.I. Gen. Laws § 42-46-7(a), all public bodies, including the Committee, must nonetheless comply with the minimum OMA requirements. While the factors cited by the Committee may very well be relevant in considering the ultimate remedy this Department may seek, at this juncture, we simply cannot escape that “[a]t all times material hereto the SPC was aware of its statutory obligation to file meeting minutes with the Secretary of State.” Indeed, while the Committee argues that its conduct is excused, in part, by filing with the Secretary of State more detailed – albeit untimely minutes – some could reasonably argue that providing untimely detailed minutes

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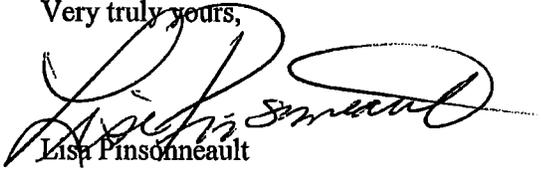
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is more detrimental to the public interest than filing timely minutes that comply with the OMA. Of course, nothing with the OMA prohibits a public body from timely complying with R.I. Gen. Laws § 42-46-7(d), and subsequently, filing more detailed minutes. In the end, and as explained above, we need not consider this policy argument at this time because our sole obligation is to determine whether the Committee willfully or knowingly violated the OMA and we answer this question in the affirmative.

We must conclude that when the Committee failed to file its meeting minutes for the August 13, 2013, September 26, 2013, November 5, 2013 and November 19, 2013 meeting on the Secretary of State's website, and when it filed its minutes for the October 8, 2013 meeting on the Secretary of State's website on December 13, 2013, it willfully or knowingly violated the OMA as described by the Supreme Court. Accordingly, this Department will file a civil lawsuit against the Committee.

We thank you for your interest in keeping government open and accountable to the public.

Very truly yours,



Lisa Pinsonneault
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Cc: Michael D. Mitchell, Esquire