

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

Attorney General Peter F. Kilmartin, :  
In his official capacity :  
Plaintiff :  
v. :  
Albion Fire District :  
Defendant :

C.A.No.: 11-

**COMPLAINT**

**I. INTRODUCTION**

Attorney General Peter F. Kilmartin, acting in his official capacity, brings this action upon information and belief that the Albion Fire District failed to specify the nature of the business to be discussed on the published agendas for the August 10, 2010 and September 21, 2010 meetings in violation of the Rhode Island Open Meetings Act. R.I. Gen. Laws § 42-46-1, et seq. The broad, general, and boilerplate terminology used by the Albion Fire District on its August 10, 2010 and September 21, 2010 agendas failed to provide any indication of the nature of the business that would be discussed and/or voted upon at the meeting. The Attorney General respectfully requests that this Honorable Court declare that the Albion Fire District's actions violate the Open Meetings Act, assess civil fines, and enjoin the Albion Fire District from further violations.

**II. PARTIES**

1. Plaintiff, Peter F. Kilmartin, is the Attorney General of the State of Rhode Island (Attorney General). 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 (Department), and if found to be meritorious, the Attorney General may institute

proceedings for civil penalties, and/or injunctive or declaratory relief on behalf of a citizen.

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

### **III. JURISDICTION**

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

### **IV. FACTS**

5. The agendas for the August 10, 2010 and September 21, 2010 meetings included the topic “New Business.” *Exhibit A* and *Exhibit B*.
6. No subcategories or further information was provided on the August 10, 2010 agenda to indicate what the Albion Fire District would discuss under the topic “New Business.”  
*Exhibit A*
7. One subcategory was provided on the September 21, 2010 agenda called “A Written Policy redirect payment for Accounts Payable to Glacial Energy.” *Exhibit B*.
8. The minutes of the August 10, 2010 meeting reveal that the Albion Fire District discussed and/or voted upon multiple unadvertised items under the topic “New Business,” including a discussion and/or vote to reschedule meeting dates, “change to Glacial Energy for the supply side of [its] electric service and allow their monthly email

bill to be processed,” authorize payment for EMT courses for several firefighters and “process payment for [the] Consolidation Committee Clerk.” *Exhibit C.*

9. The minutes of the September 21, 2010 meeting reveal that the Albion Fire District discussed and/or voted upon unadvertised items under the subcategory “A Written Policy redirect payment for Accounts Payable to Glacial Energy,” which was delineated under agenda item “New Business,” including a vote to enter into an agreement with Fire Recovery USA and discussions involving direct payments to any creditor and an unrelated matter pertaining to the Fire Recovery USA. *Exhibit D.*
10. By letter dated November 4, 2010, Mr. Ronald J. Beagan filed a complaint with the Department of Attorney General, alleging that the Albion Fire District violated the Open Meetings Act because the agendas for the August 10, 2010 and September 21, 2010 meetings did not contain “a statement specifying the nature of the business to be discussed.” *Exhibit E.*
11. By finding dated March 21, 2011, the Department of Attorney General found Mr. Beagan’s Open Meeting Act complaint meritorious in Beagan v. Albion Fire District, OM 11-06. *Exhibit F.*
12. After concluding the Albion Fire District violated the Open Meetings Act, the Department of Attorney General reviewed prior OMA violations to determine whether the within violations were willful or knowing within the meaning of R.I. Gen. Laws § 42-46-8(d).

13. On January 31, 2008, this Department issued Albion Fire District Taxpayers Association v. Albion Fire District, OM 08-12. *Exhibit G*.
14. In Albion Fire District Taxpayers, this Department noted that “our review of the agendas and open session minutes [] finds that the Fire District appears routinely to discuss multiple items under the agenda items ‘Old Business’ and ‘New Business’ [and that] these agenda items do not provide a statement specifying the nature of the business to be discussed.”
15. On December 17, 2009, this Department issued Beagan v. Albion Fire District, PR 09-20. *Exhibit H*.
16. In Beagan, this Department again found that the posting of agenda items under “New Business” violated the OMA.
17. The Fire District was warned in both Albion Fire District Taxpayers Association v. Albion Fire District and Beagan v. Albion Fire District that the notices discussed therein violated the OMA and may serve as evidence of a willful or knowing violation in a future similar violation.
18. The Albion Fire District received copies of both findings.
19. Prior to August 2010, the Albion Fire District was on notice and aware that agenda items, such as “New Business,” violated the OMA.
20. Prior to September 2010, the Albion Fire District was on notice and aware that agenda items, such as “New Business” violated the OMA.

21. This Department determined that the OMA violations found in Beagan v. Albion Fire District, OM 11-06 were willful or knowing violations. *Exhibit F.*

22. By finding dated November 18, 2010, Beagan v. Albion Fire District, OM 10-27, this Department found that the Albion Fire District's agenda for its May 11, 2010 meeting did not contain "a statement specifying the nature of the business to be discussed."

*Exhibit I.*

23. In Beagan, OM10-27, this Department again determined that the posting of agenda items such as

"New Business" and "Old Business" failed to "fairly inform the public of the nature of the business to be discussed or acted upon."

24. In the Department's Beagan finding issued November 18, 2010, this Department allowed the Albion Fire District an additional opportunity to address whether the violations within Beagan were willful or knowing.

25. Prior to May 2010, the Albion Fire District was on notice from our prior findings in Albion Fire District Taxpayers Association v. Albion Fire District, OM 08-12 and Beagan v. Albion Fire District, PR 09-20 that agenda items, such as "Old Business" and "New Business" violated the OMA.

26. By supplemental finding dated December 6, 2010, this Department determined that the OMA violation in Beagan v. Albion Fire District, OM 10-27 was a willful or knowing violation. A copy of the supplemental finding is incorporated herein by reference.

*Exhibit J.*

27. On December 6, 2010, this Department filed a complaint against the Albion Fire District in Rhode Island Superior Court for its willful or knowing violation of the OMA. *Exhibit K*: C.A.No.: 10-7084.

28. This case represents the fourth time since January 2008 that the Department of Attorney General has found that the Albion Fire District violated the Open Meetings Act by failing to comply with the requirements of R.I. Gen. Laws § 42-46-6(b).

**COUNT I – VIOLATION OF THE OMA**

29. Plaintiff hereby incorporates Paragraphs 1 through 28 herein.

30. The Albion Fire District violated R.I. Gen. Laws § 42-46-6(b) when it discussed and/or voted upon multiple items under the agenda topic “New Business” at its August 10, meeting. The Albion Fire District failed to apprise the public of what would be discussed at its August 10, 2010 meeting because the agenda for the August 10, 2010 meeting did not contain “a statement specifying the nature of the business to be discussed” for items under the topic “New Business.” R.I. Gen. Laws § 42-46-6(b)

31. Plaintiff asks that this Honorable Court declare that the Albion Fire District violated R.I. Gen. Laws § 42-46-6(b).

32. Plaintiff asks that this Honorable Court enjoin the Albion Fire District from future violations of R.I. Gen. Laws § 42-46-6(b).

**COUNT II – VIOLATION OF THE OMA**

33. Plaintiff hereby incorporates Paragraphs 1 through 32 herein.

34. The Albion Fire District violated R.I. Gen. Laws § 42-46-6(b) when it discussed and/or voted upon multiple items under the agenda topic “New Business” at its September 21,

2010 meeting. The Albion Fire District failed to apprise the public of what would be discussed at its September 21, 2010 meeting because the agenda for the September 21, 2010 meeting did not contain “a statement specifying the nature of the business to be discussed” for items under the topic “New Business.” R.I. Gen. Laws § 42-46-6(b)

35. Plaintiff asks that this Honorable Court declare that the Albion Fire District violated R.I. Gen. Laws § 42-46-6(b).

36. Plaintiff asks that this Honorable Court enjoin the Albion Fire District from future violations of R.I. Gen. Laws § 42-46-6(b).

### **COUNT III – WILLFUL OR KNOWING**

37. Plaintiff hereby incorporates Paragraphs 1 through 36 herein.

38. The Albion Fire District violated R.I. Gen. Laws § 42-46-6(b) when it discussed items under the agenda topic “New Business” at its August 10, 2010 meeting. The Albion Fire District failed to provide notice of the nature of the business to be discussed at its August 10, 2010 meeting in violation of R.I. Gen. Laws § 42-46-6(b).

39. The Albion Fire District had actual and/or constructive knowledge of the agenda requirements prescribed by R.I. Gen. Laws § 42-46-6(b) by virtue of the Department’s findings in Albion Fire District Taxpayers Association v. Albion Fire District, OM 08-12, and Beagan v. Albion Fire District, PR 09-36; as well as Tanner v. The Town Council of East Greenwich, 880 A.2d 784 (R.I. 2006).

40. The Albion Fire District is presumed to have knowledge of the law.

41. The Albion Fire District willfully and/or knowingly violated the OMA when it failed to provide notice of the nature of the business to be discussed at its August 10, 2010 meeting in violation of R.I. Gen. Laws § 42-46-6(b).

42. Plaintiff asks that this Honorable Court assess a \$5,000 civil fine against the Albion Fire District for a willful or knowing violation of R.I. Gen. Laws § 42-46-6(b).

**COUNT IV – WILLFUL OR KNOWING**

43. Plaintiff hereby incorporates Paragraphs 1 through 42 herein.

44. The Albion Fire District violated R.I. Gen. Laws § 42-46-6(b) when it discussed items under the agenda topic "New Business" at its September 21, 2010 meeting. The Albion Fire District failed to provide notice of the nature of the business to be discussed at its September 21, 2010 meeting in violation of R.I. Gen. Laws § 42-46-6(b).

45. The Albion Fire District had actual and/or constructive knowledge of the agenda requirements prescribed by R.I. Gen. Laws § 42-46-6(b) by virtue of the Department's findings in Albion Fire District Taxpayers Association v. Albion Fire District, OM 08-12, and Beagan v. Albion Fire District, PR 09-36; as well as Tanner v. The Town Council of East Greenwich, 880 A.2d 784 (R.I. 2006).

46. The Albion Fire District is presumed to have knowledge of the law.

47. The Albion Fire District willfully and/or knowingly violated the OMA when it failed to provide notice of the nature of the business to be discussed at its September 21, 2010 meeting in violation of R.I. Gen. Laws § 42-46-6(b).

48. Plaintiff asks that this Honorable Court assess a \$5,000 civil fine against the Albion Fire District for a willful or knowing violation of R.I. Gen. Laws § 42-46-6(b).

**WHEREFORE**, pursuant to R.I. Gen. Laws § 42-46-8(d), Plaintiff respectfully requests this Honorable Court declare Defendant violated R.I. Gen. Laws §42-46-6(b), order the Albion Fire District to prospectively include a statement of the nature of the business to be discussed at

each open meeting in its notice 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.

Respectfully submitted,

PLAINTIFF,  
By his Attorneys,

PETER F. KILMARTIN  
ATTORNEY GENERAL

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a copy of the foregoing document was faxed and mailed, postage prepaid, on this \_\_\_\_\_ day of March, 2011, to the following:

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