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OML 2024 – 39

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By email only: mhparks@mhtl.com

RE: Open Meeting Law Complaint

Dear Attorney Harris-Parks:

This office received a complaint from Christine McCue Potts on September 13, 2023, alleging that the Medfield School Committee (the "Committee") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Committee on July 20, 2023, and you responded, on behalf of the Committee, by letter dated August 9, 2023. The complaint alleges that the notice for the Committee meeting held on June 21, 2023, was insufficiently specific with respect to the location and start time of the meeting.

Following our review, we find that the Committee violated Open Meeting Law by failing to publicize the specific meeting room but find that the Committee did not violate the law in the other way alleged. In reaching this determination, we reviewed the original complaint, the Committee's response to the complaint, the complaint filed with our office requesting further review, and the notice and minutes of the Committee meeting held on June 21, 2023, as well as a video recording of that meeting.[1] Finally, we communicated with you on February 8, 2024.

FACTS

We find the facts as follows. On June 16, 2023, the Committee posted notice of a meeting to be held on June 21, 2023, at 11 A.M. The notice listed an executive session at 11

[1] A video recording of the Committee meeting held on June 21, 2023, is available at https://www.youtube.com/watch?v=6pn68QHw-WM.

A.M. and then a "Workshop" at 11:45 A.M. The notice then listed five specific item descriptions that further advised the public of the topics to be discussed under "Workshop." The notice included the location of the meeting as the Warren Conference Center at 529 Chestnut Street in Ashland and via Zoom. The notice provided information necessary to access the virtual meeting, including a link to the Zoom meeting, several telephone numbers the public could use to dial into the meeting, and the Webinar ID number required to log into the meeting.

The Warren Conference Center consists of three main buildings: the Inn, the Hayden Lodge, and the Warren House. On June 21, 2023, around 11 A.M., the Committee convened in open session in the Maple Room at Warren House and then entered executive session to discuss the deployment of security personnel or devices. The Committee met in executive session for approximately one hour and then went to lunch at Hayden Lodge around 12:15 P.M. The Committee reconvened in the Maple Room at Warren House at 1:09 P.M. and discussed the open session topics listed under "Workshop" for the next three hours.

The complainant arrived at the Warren Conference Center around 11:30 A.M. and had trouble locating the Committee meeting. She was directed to the Maple Room after asking staff for assistance. Upon arriving at the Maple Room, the complainant learned that the Committee was still in executive session. After the conclusion of the executive session, the complainant followed the Committee to the Hayden Lodge and then back to the Maple Room where the Committee reconvened the meeting in open session.

DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). At the core of the Open Meeting Law is the requirement that meetings of public bodies be open and accessible to the public. G.L. c. 30A, § 20(a) (except when meeting in executive session, "all meetings of a public body shall be open to the public."). Generally, access to a meeting must include the opportunity to be physically present as well as to see and hear what is being discussed by the members of the public body. See OML 2020-100; OML 2018-75; OML 2016-54.[2]

In addition, the Open Meeting Law requires that, except in an emergency, "a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays." G.L. c. 30A, § 20(b). The notice must be printed in a legible, easily understandable format and must contain the date, time and place of the meeting, as well as a listing of topics that the chair reasonably anticipates will be discussed. Id. The list of topics shall have "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03(l)(b). We generally consider a topic to be sufficiently specific when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion. See OML 2015-35.

[2] Open Meeting Law determinations may be found at the Attorney General's website, https://www.mass.gov/the-open-meeting-law.

The complaint alleges that the notice for the Committee meeting held on June 21, 2023, was not sufficiently specific because it did not include a precise meeting location. Here, the notice for the Committee's June 21, 2023, meeting stated the location as the Warren Conference Center without identifying a specific meeting room. The Committee explains that it was not informed of the exact room location in which the meeting would take place until members arrived at the Conference Center on June 21, 2023. Notice which does not clearly identify the location of the meeting does not conform to the Open Meeting Law. See OML 2022-120 (notice was insufficiently specific were it failed to include the physical location of the meeting); OML 2022-106 ("Suffolk Field Office" insufficiently specific); OML 2016-38 ("Fairhaven Fire Station" insufficiently specific, even though there is only one fire station in Fairhaven). When the Committee learned that it would be meeting in the Maple Room at Warren House, it should have posted an amended notice with the specific meeting room, posted signs at the Conference Center or publicized the location information through whatever channels it uses to communicate with the public, such as list serves, automated email notifications, social media platforms and online messaging boards. See OML 2017-179. Members of the public should not have to guess where in a building or at a large conference center the meeting is being held. See OML 2014-21. We find that the Committee's failure to take any steps to publicize the specific meeting room was a violation of the Open Meeting Law. See, e.g. OML 2022-180 (finding a violation of the Open Meeting Law where public body did not provide any meaningful notice to the public of the change in the meeting location). However, because the complaint does not allege that any member of the public was misled or confused by the meeting notice, or that the meeting was inaccessible to the public, we order no further remedial action. See OML 2022-106; OML 2016-77.

The complaint also alleges that the public body inaccurately listed the start time for the workshop portion of the meeting. Here, the notice indicated that the meeting would begin at 11 A.M. with an executive session first followed by a "Workshop" at 11:45 A.M. The Open Meeting Law requires that a public body post notice with an accurate and clear start time. See OML 2016-97; OML 2013-161; OML 2012-59. Because the notice posted for the June 21, 2023, meeting listed an 11:00 A.M. start time, and, indeed, the meeting began at that time, we find that the Committee complied with this aspect of its notice posting obligations under the Open Meeting Law. See G.L. c. 30A, § 20(b); OML 2015-171. Moreover, a public body must list anticipated discussion topics in its notice but is not required to discuss those topics in any particular order. See OML 2014-54. In fact, once a meeting begins, the public body controls its own agenda. See OML 2022-153. If a public body chooses to indicate times at which it anticipates different items of discussion to occur, the body should make reasonable efforts to honor such representations in the interest of government transparency and the logical expectations of attendees. See OML 2020-77; OML 2014-35. However, failure to do so does not constitute a violation of the Open Meeting Law.

Nonetheless, we note our concern with the Committee's one hour lunch break that occurred between the conclusion of the executive session and the beginning of the "Workshop." Here, the Committee left the original meeting location, the Maple Room at Warren House, went to lunch at Hayden Lodge, and then reconvened in the Maple Room. Although the Open Meeting Law does not expressly address recesses or the permissible duration thereof, we have previously explained that recesses are generally reserved for relatively brief breaks to use the

bathroom, to copy documents, or to change venues to accommodate a greater number of attendees. See OML 2022-187; OML 2016-85. Furthermore, we caution that the resumption of a meeting following an exceptionally long recess – in excess of the length of time the public could reasonably be expected to wait, especially in the absence of accurate information as to when the meeting would resume – may be considered the commencement of a new meeting, which would require its own notice and accurate start time. As such, we caution the Committee on recessing a meeting for lengthy periods of time - in this case, approximately one hour - out of respect for the audience. See OML 2017-163.

Finally, we must determine whether the violation was, as the complainant urges, an intentional one. See G.L. c. 30A, § 23(c). An intentional violation is an "act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law]." 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the law's requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. Although this Office has issued previous determinations finding that the Committee violated the Open Meeting Law by posting insufficiently specific notices, we have not previously warned the Committee against the violation found here, nor do we find other evidence that would support a finding of an intentional violation, by the Committee. See OML 2023-83. We therefore decline to find that the violation was intentional.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by not identifying a specific meeting location on the notice for the June 21, 2023, meeting. We order the Committee's immediate and future compliance with the law's requirements and caution the Committee that similar future violations could be considered evidence of intent to violate the law.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office, the Committee. Please feel free to contact the Division at (617) 963-2540 if you have any questions.

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Christine McCue Potts – By email only: christine.mccue@verizon.net
Medfield School Committee – By email only: scchair@email.medfield.net
Medfield Town Clerk – By email only: mbonoldi@medfield.net

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.