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OML 2022 – 212

VIA EMAIL ONLY

Mariem Marquetti, Esq.
Murphy, Hesse, Toomey & Lehane, LLP
mmarquetti@mhtl.com

RE: Open Meeting Law Complaint

Dear Attorney Marquetti:

This office received a complaint from Christine McCue Potts on June 5, 2022,[1] 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 April 22, and you responded on behalf of the Committee by letter dated May 12. The complaint alleges that during the Committee's March 24 meeting, the Committee discussed an anticipated topic that was not included on the notice for that meeting.

Following our review, we find that the Committee violated the Open Meeting Law as alleged. In reaching this determination we reviewed the original Open Meeting Law complaint, the Committee's response, the request for further review, the notice and minutes for the Committee's March 24 meeting, a video recording of the March 24 meeting,[2] and additional documents provided by the Complainant.

FACTS

On March 22 at 5:13 p.m., the Committee posted notice for a meeting to be held on March 24 at 6:00 p.m. The notice included the following eight headings in bold text: Executive Session, Public Input (on matters not on the agenda), Approval of Minutes, New Business, Old Business, Informational Items, Future Agenda Items (anticipated schedule), and Next Meeting.

[1] All dates are in 2022, unless otherwise noted.
[2] A video recording of the Committee's March 24 meeting can be found at https://www.google.com/search?q=medfield+school+committee+march+24&rlz=1C1GCEA_enUS971US972&oq=medfield+school+committee+march+24&aqs=chrome..69i57.8201j0j4&sourceid=chrome&ie=UTF-8#fpstate=ive&vld=cid:0c0a8853,vid:MagGEtlncH4.

All of the headings except for "Public Input" and "Informational Items" included additional information.

At some point a memorandum dated March 22 from Superintendent Jeffrey Marsden was circulated to the Committee. The memorandum was entitled "Narrative for the School Committee Meeting, Thursday, March 24, 2022" and included the same topics as were listed on the March 24 meeting notice. For some of those topics, the memorandum included additional information. Under the heading "Informational Items," the memorandum included the following: "School Rankings Presentation – Christine Power."

During the March 24 meeting, when introducing the notice topic "Informational Items" the Chair explained that she knew that the Superintendent and Christine Power, the Director of Instruction and Innovation at Medfield Public Schools, wanted to present on school district rankings and explained that the topic had been "floating around on all sorts of different social media platforms and is really making people enormously concerned . . . ." Thereafter, the Committee received and discussed a presentation regarding the school district's rankings in Boston Magazine and US News and World Report. This discussion lasted for approximately 25 minutes with the Director of Instruction and Innovation and the Superintendent presenting information and Committee members commenting and asking questions.

DISCUSSION

The Open Meeting Law requires that public bodies 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). Every notice must include "the date, time and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting." Id. When the chair of a public body delegates the responsibility for creating a meeting notice to another individual, any topics that individual anticipates will be discussed must be included on the meeting notice; however, such delegation does not relieve the public body of the responsibility for also including topics that the chair specifically anticipates 48 hours in advance will be discussed at a meeting. See OML 2020-164.[3]

Public bodies are required to list topics on a notice with "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03(1)(b). We generally consider a topic 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. Finally, the Open Meeting Law defines deliberation broadly as any "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction . . . ." G.L. c. 30A, § 18.

The complaint alleges that the topic of school district rankings was anticipated for discussion 48 hours prior to the March 24 meeting and that the Committee violated the Open Meeting Law by discussing this topic without including it on the notice for the March 24 meeting. In support of this allegation the complaint asserts that both the Chair and the

[3] Open Meeting Law determinations may be found at the Attorney General's website, www mass.gov/ago/openmeeting

Superintendent anticipated the topic, and that the Superintendent has responsibility for creating the Committee's meeting notices. The complaint also cites to the March 22 memorandum as evidence that the topic was anticipated.

The Committee does not assert that the specific topic of school district rankings was unanticipated, but rather that the notice topic "Informational Items" was sufficient to inform the public of the anticipated nature of the discussion. Specifically, the Committee states in its response that the notice topic "Informational Items" was sufficient to inform the public that "items of importance such as the school district's rankings and ratings were to be discussed," and "that the Committee planned to inform the public on items or occurrences relevant to Medfield's public education, which includes accurate information and context on those rankings and ratings." Finally, the Committee asserts that "[t]he presentation on school district rankings and ratings was informational in nature, as no deliberation or vote took place nor was required for this topic."

We find that the notice topic "Informational Items" was in no way sufficient to inform a reasonable member of the public that the Committee would receive and discuss a presentation regarding school district rankings. Therefore, we find that the Committee violated the Open Meeting Law by discussing school district rankings during its March 24 meeting where that topic was anticipated but not included on the meeting notice.

Additionally, we note that to the extent the Superintendent has sole or joint responsibility for creating the Committee's meeting notices or adding items to meeting notices, in addition to any topics anticipated by the Chair, any topics anticipated by the Superintendent must be included on the Committee's meeting notices. See OML 2020-152.

Next, we must determine whether the violation was intentional, as the Complainant urges. 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. In support of the request that we find the violation to be intentional, the Complainant cites to an earlier determination (OML 2020-41) issued to the Committee on March 24, 2020. OML 2020-41 resolved a complaint in which the Complainant alleged, in part, that the Committee had included insufficient topics on a meeting notice, one of which was "Informational Items." In OML 2020-41, we found that the notice topic "Informational Items" was sufficient where the Superintendent simply informed the Committee of his involvement with the Police Chief Search Committee, a high school cruise event, and an agreement with a company for a school messaging and alert application. Therefore, we find that OML 2020-41 does not support a finding of an intentional violation in this instance. Additionally, we find no other evidence that the Committee acted to intentionally violate the Open Meeting Law or with deliberate ignorance of the law. Therefore, we decline to find an intentional violation here.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by discussing an anticipated topic during its March 24 meeting without that topic having been included on the notice for the meeting. We order the Committee's immediate and future compliance with the Open Meeting Law and caution 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 or the Committee. Please feel free to contact the Division at (617) 963-2540 if you have any questions.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Anna Mae O'Shea Brooke, Chair, Medfield School Committee (via e-mail: scchair@email.medfield.net)
Jeffrey Marsden, Superintendent of Medfield Public Schools (via e-mail: jmarsden@email.medfield.net)
Christine McCue Potts (via email: [redacted])

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.