

CONTACT INFORMATION

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PUBLIC BODY THAT IS SUBJECT OF THIS COMPLAINT

TOWN ... NAME OF PUBLIC BODY: Board of Selectmen, Southborough, MA 01772
SPECIFIC PERSON: Daniel Kolenda, Chairman of Board of Selectmen.

DATE OF ALLEGED VIOLATION : 08. 21. 2017

ABBREVIATIONS USED IN THIS COMPLAINT:

AG – Attorney General, Commonwealth of Massachusetts.
BOS – Board of Selectmen, Town of Southborough.
LETTER – (Unless otherwise noted) LETTER dated August 21, 2017, from Kolenda to Parry.
OML – Open Meeting Law. MGL C 30A. SECTION refers to sections within the OML.

DESCRIPTION OF ALLEGED VIOLATION

1. Kolenda conducted “public business”, without proper authority, in violation of OML, concluding in sending a letter to Parry, with disciplinary action, on August 21, 2017. (See attachment 2.)
 2. It is not lawful for the Chairman, to conduct the pertinent “public business” on his own.
 3. The “public business” accords with OML Section 21 (a): “ A public body may meet in executive session ... to discuss the ... discipline ... or complaints ... brought against an individual”.
 4. Parry contacted the AG office to ask if Parry constitutes an “individual” under the OML, Section 21. The AG confirmed that Parry is considered an “individual”. He does not have to be an employee.
 5. Section 21 (a) 1, states that in “executive session” the following must occur (quote): “The individual to be discussed ... shall be notified in writing by the public body at least 48 hours prior ... (the public body) shall hold an open session if the individual involved requests that the session be open. If an executive session is held, such individual shall have the following rights ... i. To be present at such executive session ... ii. To have counsel or a representative present ... for the purpose of advising the individual ... iii. To speak on his own behalf ... iv. To cause an independent record to be created ... The rights of an individual set forth in this paragraph are in addition to the rights that he may have from any other source, including the rights under any laws ... ” (End quotes from section 21).
 6. A “Meeting” is defined in Section 18, as follows: “ A deliberation by a public body with respect to any matter within the body’s jurisdiction.”
 7. A “Deliberation” is defined in Section 21 to include “an oral or written communication through any medium ... between or among a quorum of a public body on any public business within its jurisdiction.”
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8. A “deliberation” took place, as verified by BOS member Shea, with whom Parry spoke on Nov 26. Shea said he had no involvement in any procedures concerning a prior meeting with the Police Chief (see paragraph 10). However, he did receive a draft of the Kolenda letter, was told that no BOS meeting was required, was asked for comments but made none, and subsequently received a copy of the final letter. (Parry believes the same involvement applies to other members of BOS, and to Town Counsel). Therefore under OML definitions, “deliberation” by the BOS took place.

9. Therefore a “meeting” took place, but no meeting was posted, no executive session was held, Parry was not afforded his rights, and he was unable to refute the lies in Kolenda’s letter.

10. The Kolenda letter refers to a meeting of the Police Chief and Parry. This meeting was requested by Parry on Nov 4, to complain to the Chief about overt police harassment of Parry on July 29, and to find out who had initiated the harassment -- for which there are records, witnesses and photographs. But instead of discussing the events of Nov 4, the Chief immediately started by accusing Parry of several unrelated, alleged violations. Parry explained how the Chief was seriously misinformed. The Chief listened, agreed he was misinformed, and apologized. Parry then asked what the REAL reason was. The Chief admitted it was because Kolenda and the Administrator had instructed him to tell them about these allegations, then try to use the allegations against Parry to lower criticism of Kolenda. (See Att 3).

11. Complaint Form: “IF YOU BELIEVE THE ALLEGED VIOLATION WAS INTENTIONAL,, SAY SO AND INCLUDE THE REASONS SUPPORTING YOUR BELIEF”. -- It was “intentional”, for the following reasons:

- A. The letter WORDING is careful, and deliberately intended to mislead and obscure the violation.
 - i. The letter text does not mention the words “Board of Selectmen”. Therefore the other members of the BOS were lead to believe that no meeting was required.
 - ii. The letter uses the term “we”, but it does not define who “we” is. Kolenda could not use the word “I” (in place of “we”), because that would confirm that he was the sole author, with authority, as an individual member of BOS, to act outside of a meeting, which he knew was illegal. The wording misleads the reader to conclude that “we” refers to the persons named as copied on the letter.
 - iii. The letter is copied to 3 persons only: Town Counsel, Police Chief, and Town Administrator. The BOS is not named as copied, but Parry has proved that the full BOS were copied and deliberated (see paragraph 8). Once again, the intent is to avoid the appearance of involvement by other members of the BOS, to obscure the requirement for a meeting, and to hide the fact that a “hidden” meeting did occur.
 - iv. Town Counsel is copied on the letter. Parry spoke to Counsel on Nov 16. Counsel supported what Shea said (see paragraph 8). Counsel said he (also) had no prior knowledge or involvement in the meeting with the Police Chief. Counsel received a draft letter from Kolenda, followed by a final letter, was told by Kolenda that the other Selectmen had not been involved (deliberated), that Kolenda believed he had authority to send the letter, and that no meeting was required. Therefore, Town Counsel was also misled by Kolenda and the Administrator into believing that the correct procedures had been followed. The same applies to the Police Chief. He too was misled, and misused.
 - v. There is no mention of the word “meeting” in the letter. This is clearly deliberate, and intended to mislead the other members of the BOS into believing no meeting was required. And also to make all other readers of the letter, such as Parry, and his legal advisors, to assume likewise.
 - v. All the above points show the letter was written by Kolenda, with assistance of the Administrator, with the intention of misleading ALL persons, including other members of the BOS and Town Counsel, and Parry, and his legal advisors, that no meeting was required, and none took place.

vi. It was a successful effort to conceal EARLY discovery of the violation. (See paragraph 17 for later).

B. Who wrote the letter and what is their political agenda and motivation to intentionally violate OML? Kolenda and the Administrator wrote the letter. Kolenda is an attorney. He has served on various boards and has been Chairman for several years. He has a reputation as a stickler for following proper legal procedure. He is very familiar with the OML. He has a strong personal dislike of Parry, because of Parry's vocal political opposition to the plan for Main St reconstruction. Kolenda has caused harassment of Parry, for which there is evidence and witnesses (See attachment 3) and which can be detailed later (if necessary) --- Likewise the Administrator is also very familiar with the OML. He has been Administrator for many years and was previously Town Manager of Ashland. He is responsible for enforcing compliance with the OML by all town bodies and has given hundreds of instructions to follow all OML rules. The Administrator, like Kolenda, has a personal dislike of Parry and has had many political arguments with Parry over the years, and in particular his disagreement over the design of Main street. The Administrator instructed the Police Chief to confront Parry with alleged violations, in an attempt to intimidate Parry into reducing his vocal opposition, at the meeting of August 4 (see paragraph 10).

12. EFFECTIVENESS AND CONSEQUENCE OF INTENTIONAL VIOLATION.

The PROCEDURES followed by Kolenda and the Administrator were intentionally obscure, to mislead all of the following persons -- all the other members of the BOS, Town Counsel, Parry, and any attorney with whom Parry discussed the case --- into believing that:

- A. All proper procedures had been followed.
- B. Kolenda had proper legal authority to act.
- C. No meeting was legally required.
- D. No meeting took place.
- E. An appeal by Parry would be useless, since there was no violation.

This had two consequences:

- i. The other Selectmen and Town Counsel became unwitting accomplices to an illegal act, all of which was fully intended by Kolenda and the Administrator.
- ii. Parry and his initial advisors, including former town officials and attorneys, all fell for the intentionally devious Kolenda ploy --- in exactly the same manner as the full BOS and Town Counsel fell for it --- and all believed Kolenda's intended conclusions to be true (paragraph 12, A through E, above).
- iii. Parry therefore concluded that he had no basis for a legal appeal within 30 days. On the 30th calendar day, (Sept 21), following receipt of the Kolenda letter on August 21, Parry sought to protect his interest and preserve his legal rights, by writing a letter to Kolenda stating: "With reference to your letter of August 21, 2017, I dispute all matters contained therein, and I reserve all my rights". (That was the total extent of what Parry thought he could do, within the 30 days.)

13. TIMING OF THIS APPEAL. The deadline for filing is provided in OML section 23, para (b), which requires the complaint to be filed within 30 days of the violation --- but there is a very important caveat --- UNLESS it can be shown that the violation was "NOT REASONABLY DISCOVERABLE".

14. Parry has ALREADY demonstrated, IN DETAIL, in several paragraphs above (8, 9, 10, 11 and 12)_that the violation was "NOT reasonably discoverable". Of all the reasons cited, the most important are the

intentional acts of Kolenda and the Administrator --- to obscure, deceive and mislead ---- which were extremely successful, as proven by the FACT that essentially everyone was deceived --- until Nov 2.

15. Not until November was Parry able to discover the violation, and that was by pure chance. Parry had shown the letter to attorneys within 30 days, but none discovered a violation. However on Nov 2, when Parry was discussing totally unrelated matters with another attorney, the conversation turned to Southborough politics, and Parry showed the example of the Kolenda letter. Fortunately for Parry, that particular attorney was, by chance, personally familiar with the pertinent section of OML -- because that attorney, himself, had been the topic of "individual" discipline, at a meeting, but without notice to him of executive session. He noted to Parry that the Kolenda letter was very obscure about any BOS involvement and meeting, and suggested Parry look for records of any meeting, which Parry did, but found none. Parry then asked a third attorney for advice and that attorney suggested Parry call the AG office for advice. Parry called the AG office which confirmed the possibility of a violation, and the AG suggested Parry file the Official Complaint Form.

16. The AG rep pointed out the 30 day limit, but said Parry's evidence of intentionally hiding the violation could override that. Furthermore, the AG pointed to Section 23 (f): "As an alternative to the procedure in subsection (b), the attorney general or 3 or more registered voters may initiate a civil action to enforce the open meeting law". The AG rep stated that having the AG office take action under subsection (f) would depend of the circumstances, and Parry had the right to ask the AG to intervene.

17. Since November 2, when the violation was discovered, Parry has worked diligently to uncover all possible details. He has searched for any meetings, spoken to other attorneys, Selectmen, Town Counsel, the Offices of the AG and Civil Rights, and prepared this complaint. This has taken 15 working days. IN CONCLUSION, THE VIOLATION WAS NOT REASONABLY DISCOVERABLE BECAUSE IT WAS INTENTIONALLY OBSCURED. IT WAS DISCOVERED BY PURE CHANCE, AND SINCE THEN ALL EFFORTS HAVE BEEN MADE TO MAKE AS SPEEDY A FILING AS POSSIBLE.

COMPLAINT FORM -- WHAT ACTION DO YOU WANT THE PUBLIC BODY TO TAKE IN RESPONSE ?

1. BOS written, unequivocal retraction of all accusations, plus a public apology, with copies to press.
2. A reprimand of Kolenda and the Administrator, and resignation or removal of Kolenda as Chairman.
3. A written promise of no retaliatory action or law suit filed by any person involved in this case, or any other official or employee of the town.
4. All legal costs incurred by Parry to be reimbursed in full, including any future costs which may be incurred in any subsequent actions flowing from this complaint, from any participant.

COMPLAINT FORM -- REVIEW SIGN AND SUBMIT YOUR COMPLAINT.

I certify that I have read and understood the provisions above, and certify that the information I have provided is true and correct to the best of my knowledge. Signed November 28, 2017, by David Parry. The COMPLAINT FORM, with signature, is submitted in the original, to Town Hall, and to Town Clerk. --- Attachment 2 is the Kolenda letter of Aug 21, 2017.

Attachment 3 is an APPENDIX providing context and detail, but is not part of the complaint form.