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May 18, 2015

OML 2015 – 66

Timothy D. Norris, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

RE: Open Meeting Law Complaint

Dear Attorney Norris:

This office received a complaint from Ms. Desiree Aselbekian, dated February 12, 2015, alleging that the Southborough Board of Selectmen (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on February 4, 2015, and the Board responded by letter dated February 26, 2015. In her complaint, Ms. Aselbekian alleges that the Board held a vote that was not listed on the meeting notice.

Following our review, we find that the Board did not violate the Open Meeting Law as alleged in the complaint. In reaching a determination, we reviewed the original complaint; the Board’s response; and the request for further consideration filed with our office. We also reviewed the meeting notice and minutes of an open session meeting the Board held on January 20, 2015. Finally, we reviewed, *in camera*, the minutes of an executive session meeting also held by the Board on January 20, 2015.

FACTS

We find the facts as follows. The Board held a meeting on January 20, 2015. The notice for this meeting listed one anticipated executive session topic:

The Board will be entering into Executive Session per M.G.L. Chapter 30A, Section 21, and then returning to Open Session- issue to be discussed is to conduct contract negotiations with non-union personnel (Exemption 2).¹

¹ Under the Open Meeting Law, one appropriate reason for entering executive session is “[t]o conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining session or contract negotiations with nonunion personnel.” G.L. c. 30A, § 21(a)(2).

During this executive session, the Board met with Police Chief Kenneth Paulhus and discussed his compensation. Because the negotiations conducted in executive session were successful, the Board decided during the meeting that it was ready to vote on a salary increase. The Board then reconvened in open session, and voted to increase Chief Paulhus' salary.

DISCUSSION

The Open Meeting Law requires that public bodies post notice 48 hours in advance of a meeting and include a "listing of topics that the chair reasonably anticipates will be discussed at the meeting." G.L. c. 30A, § 20(b). A public body may discuss a topic that was not included in the meeting notice if the chair did not reasonably anticipate the discussion of that topic 48 hours in advance of the meeting. See OML 2012-3; OML 2011-13.²

Here, the complaint alleges that, because the vote in open session was not specifically listed on the meeting notice, the Board violated the Open Meeting Law by voting to increase Chief Paulhus' salary during its January 20, 2015 meeting. It is reasonably foreseeable that a public body may hold a vote following discussion of a topic listed on a meeting notice. See OML 2012-75. Further, while the notice at issue did not specify that the Board may take a vote, the vote that occurred flowed naturally from the Board's consideration of a posted agenda item. See OML 2014-102; OML 2014-58; OML 2014-44; OML 2014-38. Accordingly, we find that the posted notice was sufficient to inform the public of the open session discussion that occurred, and the Board did not violate the Open Meeting Law. See OML 2014-132; OML 2013-145.

Although the executive session notice topic is not at issue in the complaint, we remind the Board that, generally, a public body must identify the specific non-union personnel or collective bargaining unit with which it is negotiating in its meeting notice and before entering into executive session for this purpose. See OML 2013-139. A public body may withhold the identity of the non-union personnel or collective bargaining unit if publicly disclosing that information would compromise the purpose for which the executive session was called. Id. Because this issue was not raised in the complaint, we do not address whether the Board violated the Open Meeting Law in this regard. However, we urge the Board to be attentive to future meeting notices to ensure that they include all required information.

CONCLUSION

For the reasons stated above, we find that the Board did not violate the Open Meeting 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 Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Kevin W. Manganaro
Assistant Attorney General

² Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

Division of Open Government

cc: Ms. Desiree Aselbekian
Southborough Board of Selectmen

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.