

ALDO A. CIPRIANO
ATTORNEY AND COUNSELLOR AT LAW

277 MAIN STREET
VICTORIA BUILDING
SECOND LEVEL • ATRIUM SUITE
MARLBOROUGH, MASSACHUSETTS 01752
TEL. (508) 485-7245
FAX (508) 485-2304
E-MAIL: AldoC.ESQ@comcast.net

March 29, 2018

Board of Selectmen
c/o Daniel Kolenda, Chairman
Town of Southborough
Town House
17 Common Street
Southborough, MA 01772

**Re: Open Meeting Law Complaint – Attorney Donald J. O’Neil, Reopening Annual
Town Meeting Warrant, Board of Selectmen**

Dear Mr. Chairman and Board Members,

We are in receipt of Attorney Donald O’Neil’s complaint attempting to specifically allege a complaint against Daniel L. Kolenda, Chairman of the Board of Selectmen notwithstanding the suggestion in Attorney O’Neil’s letter that his is a “former Selectman”.

The substance of the allegation is that the Chairman of the Board of Selectmen, advanced for a vote of the Board consideration to re-open and close the Town Warrant for the upcoming Town Meeting. Attorney O’Neil alleges the public was not aware that the Warrant would be re-opened suggesting that the re-opening of the Warrant was not on the Board Selectmen’s agenda for that meeting.

Finally, Attorney O’Neil also alleged the action was taken without advance notice to the public in violation of the Open Meeting Law.

In response to this allegation, we offer the following legal analysis.

Clearly specified on the Board of Selectmen agenda of Tuesday, March 6, 2018, at 6:30 p.m., at the Town House, and as fully posted by the Town Clerk’s office on March 2, 2018, under Section II, *Scheduled Appointments*, Subsection (i) thereof, was the agenda item that Article 31, of the Town Warrant (a general by-law change) relative to a motion to reconsider to vote would be discussed. See Exhibit attached.

This Warrant article was previously posted as part of the Town Warrant on March 15, 2018 in the Town House, the Town Senior Center, the Library, the Transfer Station and the Town’s Website. Also, the Selectmen’s Agenda was posted in a conspicuous place in the Town Hall and on the Town’s website.

The discussion of this motion to reconsider a vote at a Town Meeting resulted in Board of Selectmen's decision, arrived at in public session that the voters at the Town Meeting should be given the opportunity to strike all reference to votes for reconsideration or to clarify such votes allowed by the procedure suggested by Article 31 as specified.

The Warrant for a Town Meeting is the Board of Selectmen's Warrant and they can decide what can be included and not included except for petitioned articles.


Full, fair and sufficient notice and warning was given to the residents and public at large as to what the Board would generally discuss as to Article 31 and changes to the general by-laws on motions to reconsider at Town Meetings.

A Lesser included part of the process, with adequate notice (which was given) was to amend warrant articles before subsequently signing the Warrant which was also an item on the agenda under Section IV, *Consent Agenda*, subsection 4 thereof, entitled Signing of warrant for April 9, 2018 Town Meeting.

It is a normal historical prospect that a Board of Selectmen in considering their warrant before signature might add an additional warrant article commensurate with matters already in the posted warrant draft. This is what occurred.

Accordingly, we conclude that the complaint of a violation is without merit and constitutes near harassment of the Town of Southborough and its Board of Selectmen.

Respectfully submitted,


Aldo A. Cipriano, Esq.
Town Counsel

AAC/fc

Cc: Donald O'Neil, Esq.
Office of the Attorney General, Division of Open Government