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December 19, 2014

OML 2014 – 147

Mr. Joshua R. Coleman, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

RE: Open Meeting Law Complaint

Dear Attorney Coleman:

This office received two related complaints from Ms. Lisa Cappello and Ms. Desiree Aselbekian. Both complaints allege that the Southborough Board of Selectmen (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25, by deliberating outside of an open meeting.¹ Ms. Cappello’s complaint was dated July 21, and Ms. Aselbekian’s complaint was dated July 23. The complaints were originally filed with the Board on May 23 and June 5, respectively. After this office granted an extension, the Board responded to both complaints in a letter dated July 2.

We appreciate the patience of the parties as we considered these complaints. Following our review, we find that the Board did not violate the Open Meeting Law. In reaching a determination, we reviewed the original complaints; the Board’s response; and the requests for further review filed with our office. We also interviewed Ms. Aselbekian by telephone on December 5.

FACTS

We find the facts as follows. The Board is a five-member public body which meets at regular intervals to discuss the governance of the Town of Southborough (the “Town”).² On April 16, Southborough held its annual Town Meeting to approve the Town Warrant. As part of the proposed town budget, there was an item concerning the privatization of the town cemetery. The Warrant states, in pertinent part, as follows: “Another initiative is to keep the DPW at a

¹ Unless otherwise indicated, all dates in this letter refer to the year 2014.

² Ms. Aselbekian represented to our office that the Board consisted of three members at the time of the May 13, 2014 meeting. Prior to 2013, the Board consisted of three members. The 2013 Town Warrant contained a provision which reads, in part, that “[t]here shall be a Board of Selectmen consisting of five (5) members.” At the time of the May 13, 2014 meeting, all five members had been installed.



virtual level budget for FY15 by privatizing the Cemetery maintenance. Cemetery administrative operations, records retention, burials and grounds maintenance planning will still be the responsibility of DPW, however most grounds maintenance would be contracted out under this plan. Current staff retirements allow an opportunity to pursue this with the possibility of no layoffs.” (emphasis added)

During the April 16 Town Meeting, the Town Warrant was approved in its entirety. Approximately one week later, Bridget Gilleney-DeCenzo, a 25-year employee of the town, was terminated from her position as Cemetery Supervisor. In response to this termination, Ms. Aselbekian circulated three related petitions in town with the aim of restoring Ms. Gilleney-DeCenzo to her position.

On May 13, a Board meeting took place during which the topic of Ms. Gilleney-DeCenzo’s termination was discussed. The minutes reflect that Selectman Bill Boland stated that it was his understanding that the termination of the Cemetery Supervisor position stemmed from a discussion that had taken place the previous October. He stated that the budget was predicated on an employee’s retirement, which ultimately did not take place. Because that employee did not retire when expected, “the lay-off became real.” Selectman John Rooney stated that, “he was unaware that there was going to be a layoff as a result of the privatization of the cemetery.” Selectman Daniel Kolenda stated that he wanted to understand the chronology of what happened. Finally, Ms. Aselbekian submitted a letter to the Board informing it of the three petitions in town. Ultimately, Ms. Gilleney-DeCenzo was reinstated to her position as Cemetery Supervisor around July 1.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). To this end, the law requires that meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)-(b), 21. A “meeting” is defined, in relevant part, as “a deliberation by a public body with respect to any matter within the body's jurisdiction.” G.L. c. 30A, § 18. A “deliberation” is defined, in relevant part, as “any 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.” Id. Finally, a “quorum” is defined as a simple majority of the members of the public body, unless otherwise provided. Id.

Here, the complaints allege that two members of the Board conspired with the DPW Superintendent and the Town Administrator to eliminate the Cemetery Supervisor position. The complaints allege that, because the DPW Superintendent has the right to hire and fire employees only with the consent of the Board of Selectmen,³ some deliberation must have taken place whereby the Selectmen gave their consent to the termination. As evidence of this, the complaints state that Selectmen Boland and Kolenda made comments during the May 13 meeting which allegedly demonstrate that the Selectmen had knowledge of the proposed lay-off prior to Town Meeting.

³ See Act of Dec. 29, 1991, ch. 477, Mass. Acts of 1991.

The complainants have not identified any specific instances of deliberation outside of an open meeting. The Board has denied that any such deliberation took place. As an initial matter, even if two selectmen did discuss the issue prior to Town Meeting, as alleged, this would not constitute a violation of the law if it occurred after the Board became a five member body. Since a quorum of the body is three members, discussions between fewer than three members are not considered deliberation. G.L. c. 30A, § 18. However, we do not find sufficient evidence to demonstrate that such a discussion occurred, either before or after the constitution of the body changed. Absent evidence to support the complainants' allegations, we credit the Board's account of the facts and find no violation of the Open Meeting Law. See OML 2014-122; OML 2013-133.

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
Division of Open Government

cc: Ms. Lisa Cappello
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 this order 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 this order.