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OML 2018 – 97

Aldo A. Cipriano, Esq.
277 Main Street
Marlborough, MA 01752

RE: Open Meeting Law Complaint

Dear Attorney Cipriano:

This office received a complaint from Donald J. O'Neil, Esq., dated June 4, alleging that the Southborough Board of Selectmen (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Board on March 15, and the Board responded by letter dated April 2. In his complaint, Attorney O'Neil alleges that the Board violated the Open Meeting Law by opening and closing the town warrant without proper notice.

Following our review, we find that the Board did not violate the Open Meeting Law. In reaching a determination, we reviewed the original complaint, the Board's response, and the complaint filed with our office requesting further review. In addition, we reviewed the video recording of the Board's March 6 meeting.² Finally, we spoke with the complainant's legal counsel by telephone on June 11, and we spoke with the Board's legal counsel on June 13.³

FACTS

We find the facts as follows. In advance of the annual Town Meeting, the Board of Selectmen publishes a "Town Warrant" which includes all matters to be discussed at the Town Meeting. It has been the past practice of the Board to include the "opening" of the warrant as an agenda item on its meeting notices. The warrant then goes through a drafting process with input from town boards and officials. When it is finalized, the Board votes to "close" the warrant. After this point, it has been practice that the warrant is not changed unless the Board provides notice that it will re-open the warrant and then votes to do so. The Board voted to close the warrant on February 6.

¹ Unless otherwise indicated, all dates in this letter refer to the year 2018.

² This video can be found at: http://www.youtube.com/watch?v=3p4hBMax_Yc

³ For the sake of clarity, we refer to you in the third person.



On March 2, the Board posted notice of a meeting to be held on March 6. The notice included the following topic:

II. Scheduled Appointments (Board may vote)

I. Discussion of April 9, 2018 Town Meeting warrant articles and Board recommendations: ...

i. Article 31 – Bylaw: motion to reconsider a vote

The Board held the March 6 meeting as scheduled, with its legal counsel present. During discussion on Article 31, which was an amendment to the bylaws clarifying the procedure for a motion to reconsider a previous vote, a member of the Board proposed adding a preceding article which would eliminate the motion altogether. Upon consultation with the town manager and with legal counsel, the Board came to the conclusion that in order to add the article, it would have to re-open the warrant. The Board then voted to “open” and immediately “close” the warrant with the addition of the new article by a 3-2 vote.

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). The Open Meeting Law also 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). Public bodies are required to list topics in a meeting notice with “sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting.” 940 CMR 29.03(1)(b). A notice need not include every detail about an anticipated discussion; the Division of Open Government generally considers a topic to include sufficient specificity when a reasonable member of the public could read the topic and understand the anticipated nature of the public body’s discussion. See OML 2018-7; OML 2015-35.⁴ We have previously stated that it is reasonably inferable that a public body may take action on any topic listed in a meeting notice. See OML 2014-127; OML 2013-134; OML 2012-75.

In his complaint, Mr. O’Neil alleges that the Board violated the Open Meeting Law by opening and closing the warrant without first listing it as an independent agenda topic. Legal counsel for Mr. O’Neil argued to our office that, due to past practice, residents who saw the posted notice would not be aware that the warrant may be re-opened, and thus would have assumed that the Board would only be discussing the listed articles, not that it would be changing articles or adding new ones.⁵ We find that the Board’s March 6 meeting notice was sufficiently specific to comply with the Open Meeting Law. The notice listed the specific topic to be discussed—that is, Article 31 of the town warrant. It was reasonably inferable from the meeting notice that the Board could have taken action regarding Article 31, and since taking action

⁴ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

⁵ The complainant relies on the past local practice of the Board for the argument that residents would not be reasonably advised that the Town Warrant may be opened. Though town by-laws or local practice may impose additional requirements on public bodies regarding notice posting, our review concerns only compliance with the Open Meeting Law. See G.L. c. 30A § 20; OML 2015-73.

required that the warrant be opened, the public was reasonably advised that this may occur. See OML 2014-127. We also note that the Open Meeting Law requires the meeting notice to include only "a listing of topics that the chair *reasonably anticipates* will be discussed at the meeting." See G.L. c. 30A, § 20(b) (emphasis added). The addition of a new article which would have eliminated the motion to which Article 31 referred was raised by a Board member other than the chair during the discussion on Article 31. This new article is what precipitated the necessity that the warrant be re-opened. To the extent that this was not included in the original meeting notice, it is clear that the chair did not anticipate the addition of a new article, and thus was not required by the Open Meeting Law to provide notice of it. See id.

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: Donald O'Neil, Esq.
Southborough Board of Selectmen
Ginny Sinkel Kremer, Esq.

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.