



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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October 15, 2013

OML 2013 – 146

Benjamin M. Coyle, Esq.
Bacon Wilson, P.C.
33 State Street
Springfield, MA 01103

RE: Open Meeting Law Complaint

Dear Attorney Coyle:

This office received a complaint from Dana Manning, dated June 19, 2013. The complaint alleges that the Holland Board of Selectmen (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. Specifically, the complaint alleges that the Board deliberated outside of an open meeting on May 3, 2013 when one member of the three-member Board sent an email to another member of the Board that included a complaint about the Tax Collector. Ms. Manning filed her complaint with the Board on May 16, 2013. The Board responded to the complaint by letter on June 6, 2013.

In reaching our determination, we reviewed the complaint filed with the Board on May 16, 2013; the Board's June 6, 2013 response; the June 19, 2013 complaint filed with our office; the May 3, 2013 email at issue; an email sent from one Board member to the rest of the Board on May 5, 2013; and a memo delivered to the Tax Collector on May 6, 2013. We also spoke with Board Attorney Benjamin M. Coyle¹ by telephone on July 20, 2013 and September 16, 2013.

Following our review, we find that the Board violated the Open Meeting Law by deliberating over email, outside of a properly posted open meeting.

FACTS

The Board is a three-member public body, thus two members constitute a quorum. As the Chief Executive Officer for the Town, the Board has jurisdiction over personnel matters. On

¹ For purposes of clarity, we will refer to you in the third person.



May 3, 2013, Board member Lynn Arnold sent an email to Board Chair James Wettlaufer indicating that the complainant was in the Tax Collector's office when she was not supposed to be. The email also included the following: "The clerk is suddenly necessary?? I vote No at this late date. This is not an all consuming job..." According to Attorney Coyle, Ms. Arnold was referring to a proposal to add a secretary to the Tax Collector's office, which had been introduced from the floor at prior Town Meetings and was not a proposal under consideration by the Board at that time. The Board Chair did not respond to this email.

On May 5, 2013, Chair Wettlaufer sent an email to the entire Board with a memo to the Tax Collector attached. The memo included a reprimand of the Tax Collector for having visitors in his office during public hours; a header that included the line, "From: Board of Selectmen;" and a signature block that read, "For the Board." According to Attorney Coyle, Chair Wettlaufer copied the Board on his e-mail to the Tax Collector, but did not discuss it with the Board prior to sending. The Board then discussed the letter with the Tax Collector at its next meeting.

DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based." Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The Open Meeting Law therefore requires that "[e]xcept as provided in [G.L. c. 30A, § 21(a)], all meetings of a public body shall be open to the public." G.L. c. 30A, § 20(a). "Meeting" is defined, in part, as "a deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. "Deliberation" is defined as "an 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.

The May 3, 2013 email sent from one Board member to another Board member, which contained a complaint about the Tax Collector having visitors in his office, constituted an improper deliberation. The communication was between a quorum of the Board's members, and the comments about the Tax Collector concerned a matter of public business within the Board's jurisdiction, as evidenced by the Board's subsequent memo to the Tax Collector, and follow up discussion during a meeting, regarding the subject. See OML 2013-29; OML 2013-30.

The Board maintains that when the Board member sent the email on May 3, 2013, she was not acting in her capacity as a member of the Board, but in her capacity as an individual and resident of the Town. Because the sender was a member of a public body and her email expressed an opinion on matters within the Board's jurisdiction to a quorum of that body's members, it constituted deliberation. Additionally, the Board acted on the opinion expressed in the email prior to discussing the matter during a properly posted open meeting. We therefore find that the Board violated the Open Meeting Law.

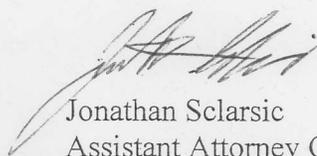
Ms. Arnold's May 3, 2013 email also included a remark about voting against a clerk/secretary for the Tax Collector. It appears that this remark was merely commentary on a matter considered at previous Town Meetings, rather than discussion of any matter under consideration by the Board. We therefore find that it was not deliberation.

CONCLUSION

We find that the Board violated the Open Meeting Law because the May 3, 2013 email constituted an improper deliberation outside of an open meeting. We order the Board's immediate and future compliance with the Open Meeting Law, and caution the Board that a similar future violation may be considered evidence of an intentional violation of the law.

We now consider this matter closed. If you have any questions regarding this determination, please contact our office at (617) 963-2540.

Sincerely,



Jonathan Sclarsic
Assistant Attorney General
Division of Open Government

cc: Holland Board of Selectmen
Dana Manning ✓

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.