



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

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January 27, 2013

OML 2014 – 6

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

**RE: Open Meeting Law Complaint**

Dear Attorney Coyle:

This office received a complaint from Dana Manning (the complainant), dated November 2, 2013, alleging that the Town of Holland Board of Selectmen (the Board) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was filed with the Board on October 7, 2013. You responded for the Board by letter dated October 22, 2013. Specifically, the complaint alleges that the Board failed to give proper notice when it voted to reconvene a meeting after adjourning a properly noticed meeting on September 3, 2013.

In resolving this complaint, we reviewed the October 1, 2013 complaint filed with the Board; the Board's October 22, 2013 response; and the complaint dated November 2, 2013, filed with our office. We also reviewed the notice of the Board's September 3, 2013 meeting. We further spoke by telephone with counsel for the Board in November and December 2013.<sup>1</sup>

Following our review, we find that the Board violated the Law by deliberating after the adjournment of its September 3, 2013 meeting. We do not order any additional relief because the Board acknowledged the violation and took appropriate remedial action.

**FACTS**

Based upon our review of the material listed above, the facts are as follows. The Holland Board of Selectmen properly noticed for its September 3, 2013 meeting an agenda item relating to the appointment of a candidate for employment. During the meeting, which was broadcast locally, the candidate did not appear, and therefore the item was not considered. The meeting was adjourned at the conclusion of all other business and the broadcast ceased. Approximately

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<sup>1</sup> For the purpose of clarity, we refer to you in the third person.



ten minutes after adjournment, the candidate appeared. The Board reconvened the meeting and considered the appointment. It did not resume the broadcast. This complaint followed.

In its response to the complaint, the Board acknowledged that its actions were in error. The decision to reconvene was made in the mistaken belief that the notice posted for the adjourned meeting was sufficient to continue deliberating after adjournment. Furthermore, the Board nullified the appointment and then reconsidered it during its November 5, 2013 meeting after proper notice.

## DISCUSSION

The Open Meeting Law requires that a public body post notice of any meeting at least 48 hours prior to such meeting. G.L. c. 30A, § 20(b). A “meeting” is defined as “a deliberation by a public body with respect to any matter within the body's jurisdiction.” G.L. c. 30A, § 18. For purposes of the Open Meeting Law, “deliberation” is defined, in part, 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.* Once a public body adjourns a meeting, or represents that it will adjourn a meeting, the public reasonably expects that the public body will honor such representation. *See* OML 2013-149.<sup>2</sup> Any further discussion by a quorum of the body after adjournment is improper and, if a body wishes to continue discussion of a topic from the meeting, it should post notice for a meeting at a later date.

Here, the Board reconvened its meeting after voting to adjourn in the belief that the notice for the adjourned meeting still was in effect and no new notice was required. This situation is akin to one in which a public body decides to continue a discussion to another time. In such circumstances, the Open Meeting Law requires that the public body treat the continued discussion as though it is a new meeting for purposes of notice posting.<sup>3</sup> Because the adjournment of the Board’s September 3, 2013 meeting indicated to the public that no further deliberation would occur on that date, the Board violated the Open Meeting Law by continuing its discussion after that time. In future instances, should the Board wish to continue to discuss a topic within its jurisdiction after a meeting is adjourned, the Board should postpone discussion until such a time as notice can be properly posted.

We note that the Board has since taken remedial action to address the concerns raised by the complainant and demonstrate its adherence to the Open Meeting Law. Subsequent to the September 3, 2013 meeting, the Board rescinded the appointment made during the improper portion of its discussion. The Board properly posted public notice and reconsidered the

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<sup>2</sup> Open Meeting Law determinations may be found at the Attorney General’s website, [www.mass.gov/ago/openmeeting](http://www.mass.gov/ago/openmeeting).

<sup>3</sup> *See* OML FAQ: Meeting Notices, available at the Attorney General’s website:

Q: If a public body holds a properly noticed meeting, and decides to continue the meeting until a future date, is the public body required to post another meeting notice?

A: Yes the public body must treat the meeting as though it is a new meeting for the purposes of notice posting. The public body must post the meeting 48 hours in advance and post a new meeting notice.

appointment at its November 5, 2013 meeting. We find that this was appropriate remedial action.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law. Because we find that the Board took appropriate remedial action in response to the complaint, we order no additional relief.

We now consider this matter closed. This determination does not address any other complaints which may be pending with our office or the Board. Please contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Mark M. Higgins  
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.**