



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

(617) 727-2200
www.mass.gov/ago

April 17, 2019

OML 2019 – 32

Timothy Luff
Assistant Superintendent
Natick Public Schools
13 East Central Street
Natick, MA 01760

RE: Open Meeting Law Complaints

Dear Assistant Superintendent Luff:

This determination addresses two complaints that Ronald Alexander filed with this office on December 31 alleging that the Natick School Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ Between March and October, Mr. Alexander filed approximately 600 separate open meeting law complaints with the Committee. This determination addresses complaints #69 and #78. The complaints were originally filed with the Committee on May 17 and May 21 and you responded, on behalf of the Committee, by letter dated November 29, following mediation and then an extension of time granted by our office.² Complaint #69 alleges that 1) the notice for the Committee’s April 9 meeting lacked sufficient detail because it failed to identify the individual against whom complaints were filed and the nonunion personnel to be discussed in executive session, and 2) that the minutes failed to record the roll call vote of each member when it convened in executive session. Complaint #78 alleges that the notice for the Committee’s April 23 meeting lacked sufficient detail because it failed to identify the individual against whom complaints were filed and the nonunion personnel to be discussed in executive session.

Following our review, we find that the Committee violated the Open Meeting Law by failing to identify on its April 9 notice the specific nonunion personnel that would be discussed during the executive session, and by failing to record a roll call vote in the April 9 minutes. We find no evidence, however, that the Committee violated the law in the other ways alleged in the

¹ All dates in this letter refer to the year 2018, unless otherwise indicated.

² The parties engaged in mediation pursuant to 940 CMR 29.05(9), which concluded unsuccessfully in August. This office granted the Committee an extension until November 30 to respond to these complaints.



two complaints. In reaching this determination, we reviewed the original complaints, the Committee's response to the complaints, and the complaints filed with our office requesting further review. We also reviewed the notices and open and executive session minutes of the Committee's April 9 and April 23 meetings. Finally, we spoke with you by telephone on February 1, 2019.

FACTS

We find the facts as follows. The Committee duly posted notice for a meeting to be held on April 9 at 6:00 P.M. The notice included the following topics: Public Speak; Action Items; Executive Session; and Future Meeting Dates/Agenda Items. Specifically, the notice listed two Executive Session topics: 1) to discuss "complaints or charges brought against a public officer, employee, staff member or individual (open meeting law complaints filed . . .)" and then identified seven dates in March when those complaints were filed; and 2) to discuss contract negotiations with nonunion personnel.

The April 9 meeting was held as planned. The Committee first convened in open session at 6:00 P.M. and reorganized. It then approved a unanimous vote by roll call to convene in executive session to discuss contract negotiations with nonunion personnel and complaints or charges brought against a public officer, employee, staff member or individual. Committee member Hayley Sonneborn stated that these complaints referred specifically to open meeting law complaints, two of which were filed on March 23 and five of which were filed on March 27. The minutes of this meeting read "By roll call vote all members were in favor of entering Executive Session for these purposes."

During the executive session, the Committee discussed the seven open meeting law complaints filed between March 23 and March 27 and unanimously voted to have the school administration and/or the school attorney respond to the complaints on behalf of the Committee. The Committee then discussed one-time compensation payments for the Interim Superintendent and Assistant Superintendent for work performed outside of their job descriptions. The Committee reconvened in open session at 7:27 P.M. and discussed the remaining noticed topics.

The Committee duly posted notice for a meeting to be held on April 23 at 6:00 P.M. The notice included the following topics: Public Speak; Action Items; Executive Session; and Future Meeting Dates/Agenda Items. Specifically, the notice listed three Executive Session topics: 1) to discuss "complaints or charges brought against a public officer, employee, staff member or individual (open meeting law complaints filed . . .)" and then identified several specific dates in April when those complaints were filed; 2) to "discuss strategy with respect to litigation (Superior Court Civil Action No. 2018-1115 – Corey Spaulding and Karin Sutter v. Town of Natick School Committee, Lisa Tabenkin, in her capacity as Chair of the Natick School Committee, and Anna Nolin, in her capacity as Interim Superintendent of Natick Public Schools)"; and 3) to "conduct strategy session in preparation for contract negotiations with nonunion personnel (Interim Superintendent)."

The April 23 meeting was held as planned. The Committee first convened in open session at 6:00 P.M. and approved a unanimous vote by roll call to convene in executive session to discuss the three topics listed on the notice: complaints or charges brought against a public

officer, employee, staff member or individual, litigation, and contract negotiations with nonunion personnel. Committee Chair Lisa Tabenkin read the exact language that was listed on the notice for each executive session topic. The minutes of this meeting include the vote of each Committee member.

During the executive session, the Committee discussed the 22 open meeting law complaints filed between April 9 and April 17 and unanimously voted to have the school administration and/or the school attorney respond to the complaints on behalf of the Committee. The Committee then discussed contract terms for the interim superintendent and the Superior Court civil action filed against it. The Committee reconvened in open session at 7:45 P.M. and discussed the remaining noticed topics.

DISCUSSION

I. With Respect to the Executive Session Topics, the April 9 Notice was Not Sufficiently Detailed but the April 23 Notice was Sufficiently Detailed.

The Open Meeting Law requires that all meetings of a public body be conducted in an open session, with some exceptions. G.L. c. 30A, §§ 20(a), 21(a). Public bodies may enter a closed, executive session for any of the ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). Executive session topics must be described, both in the meeting notice and in an announcement during open session, in as much detail as possible without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland, 455 Mass. 561, 567 (2009) (“[a] precise statement of the reason for convening in executive session is necessary ... because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper”).

One purpose for executive session permits a public body to discuss “the reputation, character, physical condition or mental health, rather than professional competence, of an individual, or to discuss the discipline or dismissal of, or complaints or charges brought against, a public officer, employee, staff member or individual.” G.L. c. 30A, § 21(a)(1) (“Purpose 1”). Public bodies may meet in executive session under Purpose 1 to review Open Meeting Law complaints against the body. See OML 2015-105; OML 2013-82; OML 2012-119; OML 2011-6.³ Another permissible reason to convene in executive session is to “conduct strategy sessions in preparation for negotiations with nonunion personnel or to conduct collective bargaining sessions or contract negotiations with nonunion personnel.” G.L. c. 30A, § 21(a)(2) (“Purpose 2”). A public body may also convene in executive session “to discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares.” G.L. c. 30A, § 21(a)(3) (“Purpose 3”). When convening in executive session pursuant to Purpose 2 or Purpose 3, a public body must identify the nonunion personnel with whom it will be negotiating or the litigation matter it will discuss, if doing so will not compromise the lawful purpose for secrecy. See OML 2017-53; OML 2016-43; OML 2016-12; OML 2013-151.

³ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

The complaint alleges that both the April 9 and April 23 meeting notices with respect to the executive session topics lacked sufficient detail. We find that the April 9 meeting notice was not sufficiently detailed because the notice failed to identify the non-union personnel with whom the Committee was negotiating under Purpose 2. This additional detail would have provided the public with an understanding of the specific subject of the executive session discussion. The Committee does not suggest that inclusion of such information would have compromised the purpose for the executive session. Accordingly, it should have been included on the notice, and its omission violated the Open Meeting Law. See OML 2014-133. We find that the April 23 meeting notice was sufficiently detailed because the notice identified the non-union personnel, the Interim Superintendent, with whom the Committee was negotiating under Purpose 2, and identified the litigation matter by case name and docket number that the Committee planned to discuss under Purpose 3. See OML 2017-43.

With respect to the Purpose 1 executive session topics on both the April 9 and April 23 notices, the complaint alleges that the meetings notices “failed to identify by name the individual, public officer, employee, or staff member discussed.” Here, the notices indicated that the Committee would be discussing 29 Open Meeting Law complaints. Because the Open Meeting Law requires a public body to meet to review complaints filed with it, it was sufficiently clear that the complaints being reviewed under Purpose 1 were made against the Committee itself. See G.L. c. 30A, § 23(b). Therefore, the meeting notices contained sufficient detail in this respect.⁴

II. The Committee Failed to Record in its Minutes a Roll Call Vote Before Entering Executive Session.

The Open Meeting Law permits a public body to enter executive session provided that it has first convened in open session, that a majority of the members of the body have voted to go into executive session, and that “the vote of each member is recorded by roll call and entered into the minutes.” See G.L. c. 30A, § 21(b); OML 2014-94. A roll call vote is “the act or an instance of calling off a list of names.” Webster's Third New International Dictionary of the English Language, 683 (unabridged ed. 1961). These requirements are intended to create a clear record of what occurred and to reflect the significance of holding a discussion behind closed doors. See OML 2015-131; OML 2014-94; OML 2012-10.

Here, the minutes of the April 9 meeting indicate that the Committee failed to record a roll call vote to enter executive session. The minutes simply state “By roll call vote all members were in favor of entering into Executive Session” Although the minutes reflect that the Committee conducted a roll call vote before convening in executive session as required, this still does not satisfy the Open Meeting Law’s requirement that the vote of each member be recorded by roll call and entered in the minutes. Even unanimous votes need to be recorded by roll call in the minutes. See OML 2015-131; OML 2013-195. The Committee’s failure to do so here violated the Open Meeting Law.

⁴ Although not raised in these complaints, we note that a Purpose 1 topic should generally include the name of the person who filed the Open Meeting Law complaints. See OML 2013-82.

We must determine whether these violations were, as the complainant urges, intentional ones. See G.L. c. 30A, § 23(c). An intentional violation is an “act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law].” 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the law’s requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id. This Office has not issued any determinations that advised the Committee that minutes must include the recorded roll call vote of each member. Several years ago, we advised the Committee of its obligations under the law to include sufficient detail in its meeting notices. See OML 2011-7. However, that advice related to the sufficiency of open session topics; we have not previously advised the Committee of its obligations under the law with respect to the sufficiency of executive session topics. Because we find no evidence that the Committee acted with deliberate ignorance of the law and where the Committee had not been notified of its obligations prior to the events addressed in this letter, we find that these violations were not intentional.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by posting an insufficiently detailed notice for its April 9 meeting and by failing to record a roll call vote in its April 9 minutes. We order the Committee’s immediate and future compliance with the Open Meeting Law, and we caution that similar future violations may be considered evidence of intent to violate the law.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with our office or the Committee. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Ronald Alexander
Natick School Committee

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.