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April 17, 2019

OML 2019 – 34

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

RE: Open Meeting Law Complaints

Dear Mr. 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 #42 and #48. The complaints were originally filed with the Committee on or about April 16 and April 24, and you responded to the complaints, on behalf of the Committee, by letter dated November 29, following mediation and then an extension of time granted by our office. In his complaints, Mr. Alexander alleges that the Committee failed to comply with certain procedural requirements for convening in executive session on March 19 and March 26.² Additionally, Mr. Alexander alleges that the Committee improperly reviewed open meeting law complaints in executive session.

Following our review, we find that the Committee violated the Open Meeting Law by failing to comply with three of the procedural requirements for convening an executive session and by failing to record in the meeting minutes the roll call votes taken prior to those executive sessions. However, we find no violation with respect to the other allegations cited

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

² Specifically, Mr. Alexander alleges that someone other than the chair stated the purposes for the executive sessions; the Committee failed to identify in the open session statement the individual, nonunion personnel and collective bargaining unit(s) that were the subject of the executive sessions; the chair failed to state that having a discussion in open session would be detrimental to the Committee’s bargaining position; and the Committee failed to vote by roll call to convene in executive session and failed to include the roll call vote in its meeting minutes.



in the complaints, including the Committee's executive session discussion of open meeting law complaints. In reaching a 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, open session minutes and video-recordings of the Committee's March 19 and March 26 meetings.³ Finally, we communicated with you by telephone and email on March 21 and April 8, 2019.

FACTS

We find the facts as follows. On March 19, the Committee convened in executive session. According to the meeting notice and the public statement made in open session, the reasons for the executive session were to discuss the following:

- 1) 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.
- 2) 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.

Committee member Firkins Reed made a motion to enter into executive session for the reasons stated above and stated that the Committee would not return to open session following the executive session. The Committee approved the motion by roll call vote. The minutes state, "by roll call vote of those present, the School Committee members present were in favor of entering into Executive Session for these purposes."

On March 26, the Committee convened again in executive session. According to the meeting notice and the public statement made in open session, the reasons for the executive session were to discuss the following:

1. complaints or charges brought against, a public officer, employee, staff member or individual (open meeting law complaints filed: 3/8/18, 3/8/18, 3/13/18, 3/15/18, 3/15/18, 3/18/18, 3/19/18, 3/20/18, 3/20/18, 3/22/18, 3/22/18, 3/22/18, 3/22/18) and
2. to discuss contract negotiations with nonunion personnel in accordance with the provisions of Chapter 30A, Section 21(a) of the Massachusetts General Laws.

Committee member Firkins Reed made a motion to enter into executive session for the reasons stated above. Although the minutes do not reflect it, Ms. Reed stated that the Committee would return to open session following the executive session. The Committee approved the motion by roll call vote. The minutes state, "by roll call vote all members present were in favor of entering into Executive Session for these purposes."

³ The video-recordings are available at <https://www.natickpegasus.org/>.

DISCUSSION

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). A public body may 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 2014-94.⁴ 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. 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.

I. The Committee’s Executive Session Topics Stated During its March 19 and March 26 Meetings Were Sufficiently Detailed, Except for One.

The complainant alleges that the executive session topics described in open session on March 19 and March 26 lacked sufficient detail. With respect to the March 19 executive session for which the Committee cited to Purposes 1 and 3, we find that the Committee provided our office with a sufficient basis for withholding specific information about the confidential subject matter. See G.L. c. 30A, § 21(b)(3). However, the chair should have

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

made the declaration during the meeting that, pursuant to Purpose 3, having the discussion in open session may have been detrimental to its litigating position. See G.L. c. 30A, § 21(a)(3).

With respect to the Purpose 1 executive session topic described in open session on March 26, the complainant alleges that the meeting notice “failed to identify by name the individual, public officer, employee, or staff member discussed.” Additionally, the complainant alleges that open meeting law complaints may not be discussed in executive session. We have said that a public body may review open meeting law complaints under Purpose 1. See OML 2013-82. Accordingly, the Committee’s discussion was appropriate for executive session. Additionally, the statement of the purpose for the executive session properly indicated that the Committee would be discussing open meeting law complaints, listed by date they were filed with the Committee. 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, rather than one specific individual(s). See G.L. c. 30A, § 23(b); OML 2013-50; OML 2013-82. Therefore, the topic contained sufficient detail in this respect.⁵

However, the Purpose 2 topic listed on its March 26 meeting notice lacked sufficient detail because the Committee failed to identify the non-union personnel with whom it was negotiating. 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 in the open session statement of the purpose, and its omission violated the Open Meeting Law.⁶ See OML 2014-133.

II. The Chair Technically Should Have Made the Statement of Purpose for the Executive Session.

The complainant alleges that a Committee member other than the chair made the statement of the purpose for the executive sessions held on March 19 and March 26. The Open Meeting Law specifically provides that the chair must state the purposes for executive session. See G.L. c. 30A, § 21(b)(3) (“before the executive session, the chair shall state the purpose for the executive session, stating all subjects that may be revealed without compromising the purpose for which the executive session was called[.]”). Accordingly, we are constrained to find a violation of the Open Meeting Law. See OML 2016-75. We note, however, that it would have been permissible for the chair to explicitly delegate the responsibility for making the required statement to another individual. See OML 2016-124 (it is not a violation where the chair specifically asked legal counsel to make the statement on his behalf). Where, as here, the statement was made in open session, but by a Committee member other than the chair, the violation is *de minimis*. See OML 2013-128; OML 2013-187. We encourage the complainant to consider whether filing a complaint about such a violation is an appropriate use of the resources of the Committee and our office.

⁵ 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.

⁶ We remind the Committee that this level of detail should also be included in the meeting notice.

III. The Committee's March 19 and March 26 Meeting Minutes Failed to Record the Roll Call Vote Taken Prior to Entering Executive Session.

The complainant alleges that the Committee failed to take a roll call vote to enter executive session on March 19 and March 26 and failed to record a roll call vote in the meeting minutes. 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. We find that the Committee did take a roll call vote, but should have recorded it as such in the minutes of the March 19 and March 26 meetings by clearly indicating the name and vote of each member. The minutes state, “By roll call vote all members were in favor of entering into Executive Session” This does not satisfy the Open Meeting Law’s requirement that public bodies record the roll call vote of each member before convening in executive session. Even unanimous votes need to be recorded in the minutes by roll call. See G.L. c. 30A, § 21(b)(2) (a public body may meet in closed session for one or more of the enumerated purposes, provided that “a majority of members of the body have voted to go into executive session and the vote of each member is recorded by roll call and entered into the minutes”); OML 2015-131; OML 2013-195. The Committee’s failure to do so here violated the Open Meeting Law.

IV. The Committee Did Not Intentionally Violate the Open Meeting Law.

We must determine whether the violations were, as the complainant urges, intentional. 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. The complainant points to OML 2011-7 as evidence of the Committee’s intent to violate the law. However, that determination found a violation for the Committee’s insufficiency of topics listed on a meeting notice. This office has not issued any determinations that advised the Committee that a failure to comply with the requirements for convening in executive session violated the Open Meeting Law. 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 decline to find that these violations were intentional. Additionally, we appreciate the considerable time and resources that the Committee spent responding to a substantial number of requests and complaints that the complainant had filed with the Committee between March and October. We commend the Committee for pledging to comply with the law’s requirements going forward.

CONCLUSION

For the reasons stated above, we find that the Committee violated the Open Meeting Law by failing to comply with three of the procedural requirements for convening an

executive session, including failing to include sufficient detail in its statement describing a Purpose 2 discussion; failing to declare that having a discussion in open session may be detrimental to the Committee's litigation strategy; and failing to have the chair make the statement of the executive session purposes. The Committee also violated the Open Meeting Law by failing to record in the meeting minutes the roll call votes taken prior to those executive sessions. 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,



Hanne Rush
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.