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May 19, 2020

OML 2020 – 60

VIA EMAIL

Katherine Cooper
Dighton-Rehoboth Regional School Committee Chair
2700 Regional Road
North Dighton, MA 02764
kcooper@drregional.org

RE: Open Meeting Law Complaint

Dear Ms. Cooper:

This office received a complaint from Gerald Schwall, Chair of the Town of Rehoboth Board of Selectmen, on December 27, 2019, alleging that the Dighton-Rehoboth Regional School Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Committee on October 26, and you responded on behalf of the Committee by letter dated November 14.¹ In his complaint, Mr. Schwall alleges that the Committee voted to hold a district-wide “tent meeting” to approve the school district’s budget on either September 30 or October 17 without posting sufficient notice that such a potential “tent meeting” would be discussed. Mr. Schwall also alleges that the Committee deliberated outside of an open meeting to create the letter and warrant notifying the two towns of the “tent meeting.”²

Following our review, we find that the Committee did not violate the Law in the ways alleged. In reaching this determination, we reviewed the original complaint, the Committee’s response to the complaint, and the complainant’s request for further review. We also reviewed the letter notifying the two towns of the tent meeting and meeting notices for the Committee’s July 18, September 24, September 30 and October 17 meetings. We emailed with you on several

¹ Unless otherwise specified, all dates refer to 2019.

² Rehoboth Town Counsel asserts that the Committee was required to vote to re-authorize the “tent meeting” sometime after the July 18 authorization as the Committee had agreed to delay holding the two-town meeting until Rehoboth could hold its own special town meeting on October 29 to resolve the ongoing budget issues facing the two-town school district. Counsel also asserts that the Committee lacked the authority to call the “tent meeting” without an additional vote to approve the warrant language. We note that, even if true, these allegations would not constitute a violation of the Open Meeting Law, G.L. c. 30A, §§ 18-25. Accordingly, we decline to review them. See OML Declination 1-25-16 (Nahant Housing Authority Board of Commissioners).

occasions in February, March and April 2020 and reviewed both open and executive session meeting minutes for the Committee's July 18, September 10, September 24, September 30, October 17 and October 22 meetings which you sent to us in response to our request. Finally, we spoke with the complainant's counsel on April 28.

FACTS

We find the facts as follows. The Committee is a ten-member public body, thus six members constitute a quorum.³ The Dighton-Rehoboth School District is a regional school district comprising the towns of Dighton and Rehoboth. In order to apportion budgetary responsibility to each town, separate town meetings are generally held to pass separate budgets to fund the regional school system. If either town fails to pass a budget during its town meeting, the Committee can convene a two-town "tent meeting" to discuss the district's school budget.

On July 18, during an open session meeting, the Committee discussed the possibility of holding a two-town "tent meeting" related to the FY20 Budget for the Dighton-Rehoboth regional school district. As reflected in the Committee's July 18 meeting minutes, the Committee discussed "the logistics of contacting legal to write the warrant language, needing a date and a venue of a possibility of the Venus de Milo." A motion was then made to authorize "a district wide meeting with the details/particulars to be determined by the School Committee Chair, Mrs. Cooper and Vice Chair, Mrs. Dingus." The Committee voted seven to three in favor of the motion. It is evident from the Committee's meeting minutes that the Committee understood that details concerning the warrant language, date and venue for the "tent meeting" would be subsequently determined by the Chair and Vice Chair. The Committee did not hold any subsequent votes regarding the "tent meeting."

Legal counsel for the School District drafted the warrant language and sent it to the Committee Chair and the Superintendent on July 29. Legal counsel's warrant language was later used for posting a district-wide meeting. However, the planning for the "tent meeting" was put on hold for several months while budget negotiations were ongoing between the Committee and the Rehoboth Board of Selectmen.

On October 14, the complainant, as Chair of the Rehoboth Board of Selectmen, was notified by a letter from the Committee that a "tent meeting" would take place at the Dighton-Rehoboth Regional High School on November 2.

On October 17, the Committee met primarily to discuss "strategy with respect to litigation with the Town of Rehoboth" in executive session. After approximately an hour and a half, the Committee returned to open session to discuss one noticed item, "Continued Discussion of the FY20 budget." According to the October 17 meeting minutes, the Chair informed the Committee that as the Committee had re-voted the budget assessment at the last meeting, and was operating under a 1/12th budget,⁴ any changes to the minimum contribution must be adhered to. The Chair further explained that "the State" now required the Committee to hold the "tent meeting" and that details of that meeting would "be forthcoming."

³ For the purposes of the Open Meeting Law, a "quorum" is a simple majority of the members of a public body. G.L. c. 30A, § 18.

⁴ See G.L. c. 71, § 16B.

On October 26, Mr. Schwall filed his Open Meeting Law complaint. The “tent meeting” was cancelled prior to November 2 and did not take place.

DISCUSSION

I. The Committee did not discuss the “tent meeting” at either its September 30 or October 17 meeting without sufficient notice.

The Open Meeting Law requires that all meeting notices “shall be printed in a legible, easily understandable format and shall contain the date, time, and place of such meeting and a listing of topics that the chair reasonably anticipates will be discussed at the meeting.” G.L. c. 30A, § 20(b). When reviewing a meeting notice for sufficiency, unless it is clearly insufficient on its face, we do not review a meeting notice standing alone. See OML 2015-109; OML 2014-155.⁵ Rather, we review what the public body actually discussed at the meeting to determine if the notice was sufficiently detailed to make the public aware of the discussion topics. Id. When a public body does not actually deliberate on a topic, the public body cannot violate the Open Meeting Law with respect to that topic, even if the notice would have been insufficiently detailed had the public body proceeded with its deliberation. See OML 2015-63; OML 2014-81.

The complaint alleges that the Committee, at its September 30 or October 17 meetings, “voted pursuant to MGL c. 71, sec. 16B to hold a hold a [sic] district-wide meeting a/k/a ‘tent meeting’ to approve the school’s district budget, and thus override the local Town Meeting votes regarding the same.” The Committee explains that no such vote was included as an item on the Committee’s September 30 or October 17 meeting notices as the Committee had already voted to authorize the “tent meeting” at a July 18 meeting. Because the Committee did not vote to authorize the “tent meeting” at either the September 30 or October 17 meetings, we find that the Committee did not violate the Open Meeting Law by failing to include that topic on its meeting notices.⁶

Additionally, we find that the Committee’s October 17 meeting notice, which contained the item “Continued discussion of the FY20 budget” was sufficiently detailed to make the public aware of the discussion topic. See OML 2020-43. During this portion of the meeting, the Chair summarized the Committee’s current position regarding the budget, explained that state officials had required the Committee to hold the “tent meeting” and noted that more details would be announced soon. Each portion of this discussion naturally flowed from the topic of the FY20 budget. See OML 2018-14. Therefore, as the notice informed the public that the Committee would be discussing the FY20 Budget, and that is in fact what was discussed, the notice was sufficiently detailed to comply with the Open Meeting Law in this respect.

⁵ All previous determinations issued by the Division can be found on the Attorney General’s website: <https://www.mass.gov/the-open-meeting-law>.

⁶ We take no position as to the sufficiency of the notice for the Committee’s July 18 meeting, at which it voted to authorize the “tent meeting,” as that allegation was not made in the complaint. Our office does not conduct broad audits of public bodies and will address only specific allegations made in an Open Meeting Law complaint. See OML 2020-2; OML Declination 4-22-15 (Natick Economic Development Committee).

II. We find no evidence that the Committee deliberated outside of a meeting.

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The Law requires that meetings of a public body be noticed and open to the public, unless an executive session is convened. G.L. c. 30A, §§ 20(a)-(b), 21. A “meeting” is defined, in relevant 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:

[A]n 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; provided, however, that “deliberation” shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed. G.L. c. 30A, § 18.

Here, the complaint alleges that the Committee deliberated outside of a public meeting when choosing the date and location of the “tent meeting,” as well as when drafting the warrant language. We find no evidence of deliberation outside of a posted meeting. The Committee’s July 18 minutes make clear that the “details/particulars” of the warrant language, scheduling the meeting and choice of venue would later be determined by the Committee’s Chair and Vice Chair, who together do not constitute a quorum. The Chair has informed us, and we credit the Chair’s account, that this is indeed how the meeting’s date and location were chosen; there were no subsequent communications among a quorum of the Committee on this issue.

Regarding the drafting of the warrant language, the Chair also informs us, and we find no evidence to the contrary, that the School District’s legal counsel drafted the warrant language and sent the language to the Committee Chair and the Superintendent. Here, too, we find no evidence of communications among a quorum of the Committee. Therefore, we do not find that the Committee deliberated outside of a posted meeting in violation of the Open Meeting Law.

CONCLUSION

For the reasons stated above, we find that the Committee 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 Committee. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Sarah Chase

Assistant Attorney General

Division of Open Government

cc: Gerald Schwall (via e-mail: gschwall@town.rehoboth.ma.us)

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.