



THE COMMONWEALTH OF MASSACHUSETTS
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September 11, 2023

OML 2023 – 139

VIA EMAIL ONLY

David Moskin
Chair, Hadley Housing Authority Board of Commissioners
dsmoskin@gmail.com

RE: Open Meeting Law Complaint

Dear Chair Moskin:

This office received a complaint from Risë Smythe-Freed, a member of the Hadley Housing Authority Board of Commissioners (the “Board”), on March 20, 2023, alleging that the Board, and specifically members John Allen and Harry Chadwick, violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on or about December 27, 2022.¹ The complaint alleges that the Board improperly deliberated via email on December 17 and 18, 2022.²

Following our review, we find that the Board violated the Open Meeting Law as alleged. In reaching this determination, we reviewed the Open Meeting Law complaint; a response drafted by Mr. Allen; the request for further review, an April 4, 2023, email from Mr. Chadwick; other various communications with our office from the Complainant and other members of the

¹ On January 10, 2023, the Board met to review the complaint. During this meeting, Mr. Allen presented a response to the complaint that he had drafted. The Board discussed the complaint, Mr. Allen’s draft response, and what steps it needed to take next, but ultimately did not vote to authorize any response or any individual to respond. Our office received a copy of the draft response as well as an April 4, 2023, email from Mr. Chadwick forwarding an email from the Department of Housing and Community Development that relates to the subject matter of the emails at issue in this complaint.

² Our review is limited to the allegations raised in the original complaint filed with the Board on or about December 27, 2022. See OML Declination 1-29-15 (Holbrook Planning Board); OML 2021-186, n. 1. Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

Board; and the December 17 and 18, 2022, emails at issue in the complaint. Additionally, we reviewed a video recording of the Board's January 10, 2023, meeting.³

FACTS

We find the facts to be as follows. The Board is a five-member public body; therefore, three members constitute a quorum. On December 11, 2022,⁴ Board member John Allen emailed Evelyn Muasya at the Department of Housing and Community Development (DHCD) asking for a copy of a management agreement between the Hadley Housing Authority and the Amherst Housing Authority signed by DHCD. Richard Witkos, the chair of the Board at the time, was copied on this email. On December 16, Ms. Muasya responded to Mr. Allen by email explaining that DHCD never actually received a copy of the agreement from the Amherst Housing Authority and so had not signed the agreement. Copied on this email were Chair Witkos and the Assistant Director of the Bureau of Housing Management.

On December 17, Mr. Allen sent an email addressed to Chair Witkos, on which he also copied Mr. Chadwick and Ms. Smythe-Freed, stating as follows:

Mr. Chairman,

I received an email from DHCD at 4:58 PM Friday confirming some members' suspicions that there is currently no valid contract between AHA [(Amherst Housing Authority)] and HHA [(Hadley Housing Authority)].

Unfortunately, this directly contradicts repeated assurances from AHA that a valid contract exists and raises potentially serious questions about the use and oversight on funds from Hadley tenant's rent and Hadley's subsidies from DHCD over the last 2.5 years.

AHA and DHCD are trying to resolve this issue but I think it wise that we involve Hadley's attorney in any negotiations and that the Hadley Board be actively in [sic] involved.

Knowing what I now know, I am not comfortable voting the warrant so I am planning to miss the next meeting. With luck this will get resolved by early January when we have a full five-member Board. Perhaps we should postpone the meeting till then.

On December 18, Mr. Chadwick responded to Mr. Allen's email, copying Chair Witkos and Ms. Smythe-Freed. Mr. Chadwick's email stated as follows:

Rich,

Given the recent, most disturbing information, received on Friday, December 16, 2022, that the Hadley Housing Authority has not had a valid contract in place for the past 2 plus years, I would suggest that this upcoming meeting on Tuesday, December 20, 2022, be postponed, as there are a number of real serious issues that exist here, and need to be sorted out!

³ A video recording of the Board's January 10, 2023, meeting may be found at https://www.youtube.com/watch?v=fw6APG0z8fo&list=PLuAxVh4DPo5wfcP6z8_or8-sM5ozlD3TA&index=4.

⁴ All dates are in 2022 unless otherwise stated.

In light of this, I will not be in attendance for Tuesday's upcoming meeting!
Thank you,
Harry

DISCUSSION

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 Board of Southbridge, 376 Mass. 70, 72 (1978). To that end, the Law requires that meetings of a public body be noticed and open to the public, unless an executive session is lawfully convened. G.L. c. 30A, §§ 20(a)-(b), 21. The Law defines “meeting,” 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. The Law defines “deliberation” broadly 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.” The Law includes several narrow exceptions to the definition of deliberation for “the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting [sic] 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 (emphasis added). For purposes of the Open Meeting Law, a quorum is “a simple majority of the members of the public body.” G.L. c. 30A, § 18. A one-way communication from one public body member to a quorum on business within a body’s jurisdiction is deliberation, even if no other members respond. See OML 2020-136.

The complaint alleges that Mr. Allen’s December 17 email and Mr. Chadwick’s December 18 response constituted deliberation outside of a noticed meeting in violation of the Open Meeting Law. We agree. Based on communications from Mr. Allen and Mr. Chadwick we understand that they assert that their emails did not constitute deliberation because they were simply sharing information learned from the email sent by DHCD.⁵ We find this argument unavailing. As explained above, the Open Meeting Law includes several exceptions to the definition of deliberation—for example, the distribution of a meeting agenda, scheduling information, or reports or documents to be discussed at a meeting (provided no opinion of a member is expressed)—however, these exceptions are construed narrowly. See OML 2016-172; OML 2014-51. Additionally, the definition of “deliberation” is not limited to opinion or decision-making communications and includes updates on matters to be discussed by the public body. See OML 2018-9; OML 2015-3. We find that the December 17 and 18 emails sharing Mr.

⁵ Some communications with our office suggest that Mr. Allen forwarded the email he received from DHCD to the rest of the Board and that therefore Mr. Allen’s email fell within the exemption to the definition of deliberation for the distribution of documents to be discussed at a future meeting. After reviewing the Board’s January 10, 2023, meeting it is clear that Mr. Allen had not in fact forwarded DHCD’s email to the Board. Regardless, even if Mr. Allen had forwarded DHCD’s email, his own email sharing his understanding, thoughts, opinions, and suggestions would have still constituted deliberation, as would Mr. Chadwick’s response. On the other hand, had Mr. Allen simply forwarded DHCD’s email to the Board, without including his own opinion and exposition, this likely would not have violated the Open Meeting Law. See OML 2016-172 (chair of Historic District Commission did not violate the law when he forwarded to the Commission emails from other historic districts because the forwarded emails fell within the narrow exception to “deliberation” for the distribution of documents to be discussed at a future meeting and because the chair’s email forwarding the other emails did not include his opinion, “which is the proper procedure under the law”).

Allen's and Mr. Chadwick's thoughts, opinions, and suggestions regarding the status of a contract between the Hadley Housing Authority and the Amherst Housing Authority were communications between or among a quorum of the Board regarding matters within the Board's jurisdiction and that these communications did not fit within any of the narrow exceptions to the definition of deliberation. Therefore, we find that Mr. Allen and Mr. Chadwick violated the Open Meeting Law when they deliberated via email on December 17 and 18. See OML 2023-65.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law when Mr. Allen and Mr. Chadwick deliberated via email on December 17 and 18. We order the Board's immediate and future compliance with the Open Meeting Law and caution that a future similar violation may be considered evidence of an intent to violate the Law. Additionally, we order the Board to publicly release the December 17 and 18 emails within 30 days of receipt of this determination if it has not already done so. The Board may publicly release the emails by reading their content during a meeting and listing the emails in the meeting minutes, or by referencing the emails during a meeting and posting the emails along with the minutes of the meeting on the municipal website.

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 the Board or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

- cc Members of the Hadley Housing Authority Board of Commissioners:
Richard Witkos (via email: rwitkos2823@gmail.com)
Harry Chadwick (via email: umppesci@yahoo.com)
Risë Smythe-Freed (via email: rsmlythefreed@gmail.com)
Sue Oppenheimer (via email: oppenheimersue@gmail.com)
Jessica Spanknebel, Hadley Town Clerk (via email: clerk@hadley.ma.org)

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.