



THE COMMONWEALTH OF MASSACHUSETTS
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December 12, 2023

OML 2023-222

VIA EMAIL

Robert W. Galvin, Esq.
Galvin & Galvin, PC
10 Enterprise Street, Suite 3
Duxbury, MA 02332-3315

RE: Open Meeting Law Complaints

Dear Attorney Galvin:

This office received two complaints alleging that the Marshfield Select Board (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25 on August 31, 2023. The first complaint was received from John Cusick on November 4.¹ That complaint was originally filed with the Board on September 13, and Town Counsel, Attorney Robert Galvin,² responded on behalf of the Board by letter dated September 26. The second complaint was received from Joseph Pecevich on November 29. It was originally filed with the Board on September 25, and the Board responded by letter of Town Counsel dated October 2. Both complainants allege that the notice of the Board's August 31 meeting incorrectly stated that the Board would meet in executive session, and that an amended notice was not timely posted.

Following our review, we find that the Board did not violate the Open Meeting Law as alleged. In reaching this determination, we reviewed the original complaints, the Board's responses to the complaints, and the complainants' requests for further review. We also reviewed the notice of the August 31 meeting and viewed segments of the video recording of the August 31 meeting.³

¹ Unless otherwise specified, all dates refer to 2023.

² For the sake of clarity, you are referenced in the third person.

³ The video may be accessed at <https://vimeo.com/mcmgov>

FACTS

We find the facts as follows. On August 7, 49 residents of Tea Rock Gardens, a Marshfield Housing Authority (“Authority”) property, filed a written complaint with the Board, demanding removal of Joseph Pecevich as a commissioner of the Authority. The next day, a notice of public hearing was delivered in hand to Mr. Pecevich. The hearing, to discuss his discipline or dismissal from the Authority, was to be conducted on August 24, pursuant to the notice. Because the notice failed to include a copy of the complaint, the hearing was rescheduled to August 31.

On August 23, 2023, the Board posted notice of the August 31 meeting. At the top of the notice was a text box containing the words “NOTICE OF PUBLIC MEETING.” The notice also indicated that the meeting was to be a “HYBRID (REMOTE AND IN PERSON) MEETING” and that “members of the public may attend in person or may participate remotely.” The only item to be discussed at the meeting was a “PUBLIC HEARING” to “discuss the discipline or dismissal of. . . an elected member of the Marshfield Housing Authority. . . in accordance with Gen. L. C. 121B sec. 6, pursuant to Mass. Gen. L. c. 30A sec. 21(a)(1).” On August 30, at 4:11 p.m., Mr. Pecevich emailed the Board and Town Administrator Michael A. Maresco, and inquired about the reference to G.L. c. 30A, §21(a)(1), which concerns the conduct of executive sessions. Noting the contradiction between the “Public Hearing” language and the reference to section 21(a)(1), Mr. Pecevich stated: “I am entitled to seek advice and do research to consider what kind of Hearing or Session I want. Therefore the meeting you have scheduled as described violates my Rights. Please postpone that meeting and tell me how you intend to conduct this Hearing in a Closed Executive Session or if in an Open Session.” Mr. Maresco responded approximately one-half hour later that “[t]here is no Executive Session on the posted agenda for August 31, 2023. The Meeting on August 31, 2023 is being conducted in OPEN SESSION.” That evening, in response to further inquiry, Town Counsel explained to Mr. Pecevich that the hearing “was posted as a public hearing notice in open session and being conducted in accordance with GL c. 121B, sec.6.” Counsel agreed that the hearing could not be conducted in executive session and acknowledged that the notice erroneously referenced subsection (a)(1), which concerns executive session.

On the morning of August 31, the Board posted an amended notice titled “AMENDED AGENDA,” the sole amendment being a line through the words “pursuant to Mass. Gen. L. c. 30A sec. 21(a)(1).” The Board estimates that more than 60 members of the public attended the August 31 meeting. At the commencement of the public hearing, Mr. Pecevich noted that he had communicated with Town Counsel regarding his questions about the process and stated that he “reserve[d] [his] right to object and appeal.” Following the hearing, the Board found misconduct on the part of Mr. Pecevich and issued him a warning.

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); see also OML 2023-56.⁴ Pursuant to the Open Meeting Law, “[e]xcept in an emergency ... a public body shall post notice of every meeting at least 48 hours prior to such meeting, excluding Saturdays, Sundays and legal holidays.” G.L. c. 30A, § 20(b). The notice must 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.” Id.

We generally consider a topic to be sufficiently specific when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion. See OML 2023-199; OML 2023-3; OML 2019-134. The Open Meeting Law requires that the notice describe topics with sufficient specificity so that the public can make an informed decision whether to attend the meeting in order to observe the discussion regarding a topic of interest. See OML 2023-199; OML 2023-86; OML 2019-95.

Mr. Cusick and Mr. Pecevich do not allege that the notice failed to adequately describe the topic to be discussed.⁵ Rather, they complain that the notice, posted on August 23, referenced the statute allowing the Board to convene in executive session. Section 21(a)(1) of chapter 30A, referenced in the originally posted meeting notice and crossed out in the amended notice, provides that a public body may meet in executive session 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.” The complainants allege that the amended notice (with the statutory reference crossed out) was inadequate because it was posted less than 48 hours prior to the meeting.

We find that the original notice, posted on August 23, satisfied the Open Meeting Law. The words “executive session” do not appear on the notice. Any ambiguity created by the mistaken reference to section 21 was resolved by the references to a “PUBLIC HEARING” and “PUBLIC MEETING,” and language that “members of the public may attend in person or may participate remotely.” These words provided Mr. Pecevich and other members of the public with adequate notice of an open session. See OML 2013-9 (“Open session” or similar notation on meeting notice informs public that there will be an open meeting that they are permitted to attend, even if sole purpose of that open meeting is to satisfy procedural requirements to enter executive session.) Cf. OML 2013-85 (Although meeting ultimately was held in open session, board violated open meeting law because it posted notice that entire meeting would be conducted in executive session, thereby depriving public of any notice that board would meet in open session.) Furthermore, even if a meeting notice includes an executive session, there is never a guarantee that a public body will discuss the noticed topic in executive session. The public body

⁴ Open Meeting Law determinations may be found at the Attorney General’s website, <https://www.mass.gov/the-open-meeting-law>.

⁵ This is not a case in which the meeting discussion departed from the item as listed on the notice. Contrast, e.g., OML 2023-100 (discussion of potential demolition of the Old Town Hall under topic “Annual Town Election - Ballot Questions Results”); OML 2023-24 (discussion of, and vote approving, salary increases for City Councilors and School Committee members, under topic “A favorable Ordinance Committee report: Chapter 7 Ordinance Revisions”); OML 2021-116 (discussion of zoning amendments and warrant articles under topic “Summer work plan - next meetings July 21 and August 18”).

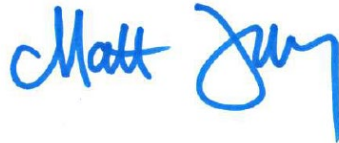
must meet in open session to vote to enter into executive session; this vote could fail, or the public body could otherwise choose not to convene in executive session. See OML 2019-150. Members of the public who attend the required open session will be present in the event that the public body does not enter into executive session and instead holds its discussion in open session. Id. Although a public body should not notice topics for executive session that it fully intends to discuss in open session with the intent of discouraging public attendance at a meeting, there is no indication that occurred here.

Based upon available information, the reference to section 21 did not render the meeting notice insufficient. More than 60 people attended the meeting. Mr. Cusick does not seem to argue that the reference to section 21 would dissuade the public from going to the meeting, as he suggests in his request for review that the Board could have cured the allegedly defective notice by announcing at the meeting that it would not enter executive session. Mr. Pecevich, who was the subject of the meeting, noted the reference to section 21 prior to the meeting but emailed the Board and Town Administrator to clarify that the Board would not meet in executive session. To the extent that Mr. Pecevich alleges a violation of his civil rights, those fall outside the Open Meeting Law. The Division of Open Government is tasked specifically with enforcing the Open Meeting Law. We offer no opinion on whether any actions taken by the Board could be a violation of any other law or regulation pertaining to public hearings. See OML 2023-212; OML Declination 10-30-20 (Billerica Zoning Board of Appeals); OML Declination 6-25-18 (Rowley Planning Commission). Because we find that the notice posted on August 23 satisfied the Open Meeting Law, we need not consider the complainants' allegation that the amended notice was not timely posted.

CONCLUSION

For the reasons stated above, we find that the Board did not violate the Open Meeting Law as alleged. 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 Board. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: John Cusick (via e-mail: jfcusick@gmail.com)
Joseph Pecevich (via e-mail: joeal4357@verizon.net)
Marshfield Select Board (via e-mail: selectboard@townofmarshfield.org)
Marshfield Town Clerk (via e-mail: ncasper@townofmarshfield.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.