February 28, 2020

Mr. Sean Lyness
Special Assistant Attorney General
150 South Main St.
Providence, RI 02903
SLyness@riag.ri.gov

Re: *Cook v. Tiverton Town Council*, Response to Town of Tiverton

Dear Special Assistant Attorney General Lyness,

In response to my Open Meetings Act (OMA) complaint, Tiverton's Town Council majority, through its recently retained lawyer, claims (1) that I am not "an aggrieved person" because I was present at the meeting, and (2) that the council's continuing conversation after Fire Chief Joseph Mollo had left "did not constitute a meeting." If upheld by your office, these arguments would wipe out the intent and practical usefulness of the OMA not just in Tiverton but throughout all of Rhode Island.

If the first argument were upheld, then the people who are best positioned to know that a violation of the OMA occurred would be barred from filing complaints.

If the second argument were upheld, then public bodies in Rhode Island will be able to claim that they can meet anywhere and at any time to discuss their feelings about the issues that they oversee.

To be specific, my complaint does not state that I am aggrieved by a "defect" in the notice. Rather, it asserts that the actions of the Tiverton Town Council violated the Open Meetings Act, which I have standing to challenge as a member of the general public with an interest in ensuring open and transparent government. This is the plain conclusion of the Rhode Island Supreme Court in the case of *Ohs v. North Kingstown S.C.*, 05-441 (R.I.Super. 2005), No. WC 05-441 (Sup. Ct. R.I. 2005). Specifically addressing the *Graziano v. Rhode Island Lottery Commission* case, on which the council majority relies to dispute my standing, the court in *Ohs* stated:

> ... plaintiff Ohs — individually, as a member and on behalf of the other members of the Wickford Elementary PTO and as a member of the general public — has standing as an aggrieved party to claim that the School Committee violated the notice provisions of the Open Meetings Act. By law, the School Committee had an obligation to the plaintiff and to the public generally to give notice of its meetings in accordance with the provisions of the Open Meetings Act; by alleging that the School Committee failed to do so in and thus violated "the right" of plaintiff specifically (and, by extension, the members of the public generally) "to be advised of and aware of'" the

> nature of the business to be conducted at the meeting of May 11, 2005, plaintiff acquires standing to contest such a violation. Tanner, slip op. at 7 (quoting R.I. Gen. Laws § 42-46-1). "[S]ince members of the general public have a right to receive notice of public meetings, a member of the public [such as plaintiff] should have standing to enforce that right." Id., slip op. at 7.
>
> While the defendants, in reliance on the Supreme Court's earlier decision in Graziano, seek to require the plaintiff not only to allege that the School Committee failed to meet its statutory obligation to give proper notice, but to prove that she was disadvantaged or aggrieved by the absence of notice in order to establish her standing as an "aggrieved" party in this case, this Court, for the reasons indicated above, is not convinced that such proof is required under the dictates of Tanner. ...
>
> The Act requires public bodies to give the public proper notice of their meetings. ... If a citizen is not allowed to challenge a failure by a public body to live up to its notice obligations under the law when the public itself or the media gives notice to the public instead, then the avowed purpose of the Open Meetings Act to ensure that "public business be performed in an open and public manner" could be thwarted, see id. § 42-46-1, and the notice provisions of the Act could be rendered meaningless; a public body could be relieved improperly of its legal obligation to give notice; that body might be encouraged to give inadequate notice or no notice at all, especially with respect to the most controversial issues, leaving that task, if accomplished at all, to the media and members of the public; and a plaintiff could be deprived of a vehicle to enjoin potential future violations of the Act.

Indeed, my case for standing is even stronger than in *Ohs*. In that case, as in *Graziano,* the court refers to the attendance of members of the public and members of the media at the meeting in question. Whether intentional or incidental, the continued discussion of the fire chief's raise after adjournment of the Tiverton Town Council's meeting ensured that there was no such coverage and that the most conceivably aggrieved party, Fire Chief Joseph Mollo, was not able to bear witness.

Therefore, I am aggrieved in multiple capacities. I am aggrieved on behalf of Chief Mollo as a member of the governing council of the municipal corporation for which he works. I am aggrieved on behalf of the public whom I was elected to serve, who were deprived not only of the opportunity to observe the discussion, but also to have it recorded in minutes, in news reports, on video, or on an audio recording. I am also aggrieved on my own behalf, as a member of the council, for having been deprived of the opportunity to participate in this conversation in a fully open setting that would have such a record. Councilor Nancy Driggs, absent that evening, also does not have the benefit of a full, proper record to review and inform her continuing duties as a councilor.

It is understandable that the court would step back from the consequences of *Graziano* as it did in *Ohs*, as well as in the case *Tanner v. Town Council of Town of East Greenwich,* 880 A.2d 784 (R.I. 2005). After all, one consequence of *Graziano* is that a witness to an unlawful meeting would be barred from filing a complaint about it.

Even *Graziano* finds that "attendance at the meeting would not prevent a showing of grievance or disadvantage, such as lack of preparation or ability to respond to the issue." My grievances described above should satisfy this requirement. Nonetheless, to dispel all doubt, I have attached as Exhibit A a letter from town resident Justin Katz, who was not in attendance at the post-adjournment meeting and requests either to join me in this complaint or to have my complaint be considered resubmitted by him.

As to the "post-adjournment conduct of the town council members," as the council majority's response phrases it, their own legal citation and affidavits prove that an OMA violation occurred. The majority cites *Lepierre v. Batterers' Intervention Programs Standard Oversight Subcommittee,* OM 02-22, pg. 2 (R.I.A.G. October 2, 2002), as if it concludes:

> Reactions of members of a public body to a meeting or a vote after a public meeting has adjourned where no votes are taken does not constitute a meeting from which the OMA applies.

The *Lapierre* ruling concludes no such thing. Indeed, in that case, your office found that a violation had occurred, arguing as follows:

> ... although much of the evidence presented leads us to the conclusion that the gathering of Subcommittee members after the June 7, 2002 meeting to discuss "their personal reactions to the tenor of the meeting that had just concluded" and to add "Sub-Committee leadership" to the June 26, 2002 agenda did not violate the OMA, we nonetheless conclude that certain aspects of this discussion did concern public business. For instance, Ms. Smallman relates that discussion concerned "[p]ossible candidates for Chair of the Sub-Committee," and "that no one should be approached concerning possible leadership of the Sub-Committee until and unless Mr. Lapierre stepped down or was replaced through Sub-Committee action." With respect to these matters, we opine that these discussions concerned matters over which the Subcommittee had supervision, control, jurisdiction, or advisory power, and therefore, fell within the purview of the OMA. R.I. Gen. Laws § 42-46-2(a).

Here, your office drew a distinction between two types of post-adjournment discussion. One was "personal reactions to the tenor of the meeting that had just concluded," wherein the members "were simply voicing their reactions to his style and manner of conducting the sub-committee meeting." The other is discussion concerning "public business." In the case of my complaint, there are at least two examples of substantive discussion that are stronger than those cited in *Lapierre.*

First, Council President Patricia Hilton's expressing "disappointment" at the outcome of the vote (see Mr. Clarke's affidavit) did not concern the conduct of the meeting, as in *Lapierre.* It was a statement on the outcome of a vote, which constitutes a continuation of debate. This is especially relevant because the matter subsequently returned to the council agenda for discussion at another meeting in the future. Moreover, she did not simply express "disappointment" at the outcome, but rather enumerated other consequences and problems that would ensue. I contend that a statement of the council president's displeasure with an outcome is itself apt have an effect on the behavior of other members of the body. But statements about the consequences certainly do.

As noted, Councilor Clarke acknowledges having heard the president's statement. Councilors Denise deMedeiros, John Edwards, V, Patricia Hilton, and Joseph Perry (all four are aligned politically) all deny that the council president "yelled or hollered," but none of them deny that she stated words to the effect that I described in my complaint. Whether they would characterize her speech as "yelling or hollering," I specifically remember both Edwards and Perry responding to her statement verbally and with body language. It is important to note that Perry's statement that he left the chambers "immediately after the vote for adjournment" is contradicted by the extended audio of the meeting so the accuracy of Perry's recollection is obviously questionable. Note, also, that deMedeiros asserts that she saw Perry and Clarke leaving the meeting while she was already outside and that Clarke acknowledges having heard Hilton's "venting."

The degree of the council president's unprofessionalism should not be a distraction from or a defense against the clear, central problem: The council majority, a quorum, engaged in an unposted meeting in violation of the OMA.

Second, Council Vice President Denise deMedeiros's statement of intent to quit the negotiating committee, as affirmed in the affidavit of John Edwards, V, is clearly public business subject to the OMA. In this instance, I have already affirmed that I heard the statement. Edwards mentions it in his affidavit, and deMedeiros alludes to it. Additionally, Hilton acknowledges that she "observe[d] and overhear[d]" deMedeiros and me "engaged in conversation about the contract salary increase."

Of themselves, the conflicting statements of council members about the timing of various statements only serve to amplify my complaint: Understanding that the meeting had ended, members of the public had left, the media was gone, and even the audio recording had stopped. The absence of an audio record is not a consequence of a technological glitch, but of the fact that the clerk had been led to believe that the conversation was over. For his part, the fact that Chief Mollo remained through the closed executive session illustrates that he intended to hear all relevant discussion, and he likely would not have left if the meeting had not adjourned.

At the end of the day, whatever the statements of intent or impressions about tone of voice and behavior might be, the council proceeded to act exactly as it would have if Hilton and deMedeiros's statements were intended to change the outcome. At a future council meeting, the council majority reversed itself to fall in line and conform with the late-night unposted session that my complaint addresses.

Respectfully submitted,

Donna Cook

Donna Cook

Exhibit A

Justin Katz
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Re: *Cook v. Tiverton Town Council*
Request to Join or Duplicate Complaint

February 27, 2020

Sean Lyness
Special Assistant Attorney General
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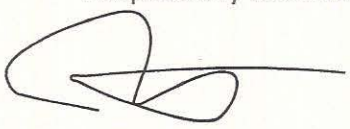
Dear Special Assistant Attorney General Lyness,

As a resident and elector of the Town of Tiverton, I hereby request to be added as a complainant to the above-cited Open Meetings Act (OMA) complaint filed by Donna Cook in the event that your office or the Superior Court may find that she lacks standing or status as "an aggrieved person." I did not attend the post-adjournment meeting of the Tiverton Town Council on December 9, 2019, and could not therefore be considered to have waived my right to file an OMA complaint about the lack of notice.

If there is no mechanism by which I may join Mrs. Cook's complaint, please consider this letter as a separate complaint with hers incorporated by assumption.

Respectfully submitted,



Justin Katz