



State of Rhode Island and Providence Plantations

OFFICE OF THE ATTORNEY GENERAL

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VIA EMAIL ONLY

June 27, 2019

OM 19-11

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RE: Hilton, et al. v. Tiverton Town Council

Dear Town Councilors Hilton, DeMedeiros, and Perry and Solicitor Cicione:

We have completed an investigation into the Open Meetings Act (“OMA”) complaint filed by Tiverton Town Councilors Patricia M. Hilton, Denise M. DeMedeiros, and Joseph C. Perry (“Complainants”) against the Tiverton Town Council (“Town Council”). For the reasons set forth herein, we find that the Town Council did not violate the OMA.

Background and Arguments

The Complainants allege that four members of the Town Council — Councilors Donna Cook, Robert Coulter, Nancy Driggs, and Justin Katz — met outside the public purview in violation of the OMA on or before December 27, 2018 for the purpose of discussing and selecting the solicitor for the Town Council. In particular, the Complainants contend that comments made during the December 27, 2018 meeting suggest that certain Town Council members met with each other or with Giovanni Cicione, Esquire, whom the Town Council voted to select as Town Solicitor at the

December 27, 2018 meeting, prior to the December 27, 2018 meeting and thus constituted a rolling quorum.

The Complainants further allege that an item on the December 27, 2018 Town Council meeting agenda relating to the Town Solicitor did not adequately specify the nature of the business to be discussed. The Complainants assert that the agenda item only identified “Attorney Giovanni Cicione” as the candidate for Town Solicitor and did not make clear that Attorney Cicione “was actually representing the firm of Cameron and Mittleman.”¹

Town Council Solicitor Cicione submitted a detailed substantive response along with affidavits from the four Town Council members named in the Complaint. The Town Council maintains that Complainants misquote and misinterpret the statements at the December 27, 2018 Town Council meeting that allegedly suggested that certain Town Council members had previously met with Solicitor Cicione. Further, the Town Council contends that, in any event, only three of the seven Town Council members are directly implicated by the allegations and that they do not constitute a quorum. Specifically, the Town Council maintains that Town Council member Donna Cook never spoke with either Solicitor Cicione or other members of the Town Council about the selection of Solicitor Cicione.

In her affidavit, Ms. Cook states that she “met Giovanni D. Cicione *** briefly at a Christmas party on Friday, December 21, 2018. We did not discuss his potential appointment or any proposed engagement agreement.” Further, Ms. Cook states that she “did not possess nor review Mr. Cicione’s draft engagement agreement prior to the December 27, 2018 meeting of the Tiverton Town Council. *** In deciding to second the motion to appoint Mr. Cicione as interim solicitor, I trusted in the knowledge and judgment of my long-time friends and associates[.]”

With respect to the agenda item, the Town Council asserts that the Complainants are not aggrieved by the alleged insufficiency – as they were admittedly present at the meeting – and that, in any event, the agenda item provided adequate notice of the business to be discussed.

We acknowledge the Complainants’ rebuttal, prepared by Attorney Daniel Connors on behalf of the Complainants, which argues that Town Council members Driggs, Katz, and Coulter acknowledged their collective discussion regarding the selection of Solicitor Cicione. With respect to the fourth Town Council member, the Complainants note that Ms. Cook admitted to meeting Solicitor Cicione at a Christmas Party six days before the December 27, 2018 meeting. Further, the Complainants point to an alleged inconsistency in Ms. Cook’s affidavit where she stated that she relied on the knowledge and judgment of her friends and associates in seconding Ms. Driggs’ motion to appoint Solicitor Cicione, but contend that her seconding of the motion came before Town Council members Mr. Katz or Mr. Coulter had publicly voiced their support. With respect to the allegedly insufficient agenda item, the Complainants maintain that the agenda item did not provide adequate notice of Attorney Cicione’s relationship with Cameron & Mittleman, LLP.

¹ As stated in this Office’s acknowledgment letter to the Complainants, the Complainants’ third allegation that a document was not provided to all Council members did not implicate the OMA and thus was outside this Office’s jurisdiction. *See* R.I. Gen. Laws § 42-46-8(a).

After reviewing the parties' submissions, this Office requested that the Town Council submit supplemental affidavits from Town Councilors Cook, Driggs, Coulter, and Katz regarding what, if any, discussions occurred between council members regarding the potential appointment of Giovanni Cicione as Town Solicitor prior to the December 27, 2018 meeting. We additionally asked Ms. Cook to provide "[a] detailed explanation of her statement in her initial affidavit that she trusted in the 'knowledge and judgment' of the other Town Council members in deciding to second the motion to appoint Mr. Cicione as Town Solicitor."

The Town Council accordingly submitted affidavits from Town Council members Robert Coulter, Nancy Driggs, Donna Cook, and Justin Katz. All four affidavits corroborate that Ms. Cook did not have any discussions with any Town Council member regarding the potential appointment of Attorney Cicione prior to the December 27, 2018 meeting. In particular, Ms. Cook's affidavit notes that "I didn't have any discussion with these councilors except in public session of the various Town Council meetings regarding this subject." Further, in response to our specific inquiry about her statement that she trusted in the "knowledge and judgment" of other Town Council members in seconding the motion to appoint Solicitor Cicione as Town Solicitor, Ms. Cook stated:

"Councilor Katz brought Mr. Cicione's name forward to be considered for the job of solicitor. I then did my own independent research on Mr. Cicione and his firm. Councilor Driggs placed him on the agenda so I knew she was in favor. I have served with both Nancy Driggs and Justin Katz in the past and trust them. Councilor Driggs is also an attorney, as is Councilor Coulter. Mr. Cicione was the only person put forward for consideration. Considering all of this, I felt comfortable seconding the motion for discussion and interview."

Relevant Law

When we examine an OMA complaint, our authority is to determine whether a violation of the OMA has occurred. *See* R.I. Gen. Laws § 42-46-8. In doing so, we must begin with the plain language of the OMA and relevant caselaw interpreting this statute.

The OMA is implicated whenever a quorum of a public body convenes for a "meeting." *See* R.I. Gen. Laws § 42-46-3; *Fischer v. Zoning Board for the Town of Charlestown*, 723 A.2d 294 (R.I. 1999). For purposes of the OMA, a "meeting" is defined as "the convening of a public body to discuss and/or act upon a matter over which the public body has supervision, control, jurisdiction, or advisory power." R.I. Gen. Laws § 42-46-2(1); *see also Zarella et al. v. East Greenwich Town Planning Board*, OM 03-02. A "quorum" is defined as "a simple majority of the membership of a public body." R.I. Gen. Laws § 42-46-2(4).

It is noteworthy that a quorum may be created, and a meeting "convened," by a "rolling" or "walking" quorum, where a majority of the members of a public body attain a quorum by a series of one-on-one conversations or interactions. *See, e.g., In Re: South Kingstown School Committee Electronic Mail Policy*, ADV OM 04-01 (series of email communications among a quorum of a Committee would satisfy the quorum requirement and implicate the OMA). Importantly, our

findings have centered on the nexus between these one-on-one conversations and whether they serve as a chain of communication sufficient to constitute a collective discussion. *See Guarino, et al. v. Rhode Island Atomic Energy Commission*, OM 14-07 (“[I]f a quorum of members of a public body creates a chain of communication and responses, through any electronic media, about any matter over which a public body has supervision, jurisdiction, control or advisory power, other than to schedule a meeting, the OMA may be violated.”).

Further, the OMA requires that a public body’s meeting agenda provide “a statement specifying the nature of the business to be discussed.” R.I. Gen. Laws § 42-46-6(b). In *Anolik v. Zoning Board of Review of the City of Newport*, the Rhode Island Supreme Court held that R.I. Gen. Laws § 42-46-6(b) requires the “public body to provide fair notice to the public under the circumstance, or such notice based on the totality of the circumstances as would fairly inform the public of the nature of the business to be discussed or acted upon.” 64 A.3d 1171, 1173 (R.I. 2013); *see also Tanner v. Town of East Greenwich*, 880 A.2d 784, 797 (R.I. 2005).

Findings

1. Rolling Quorum

We begin with an analysis of whether a rolling quorum occurred. Although we recognize the considerable disagreement between the Complainants and the Town Council as to the substance and nature of the discussions between Town Council members Mr. Katz, Ms. Driggs, and Mr. Coulter with each other and with Solicitor Giovanni, it is undisputed that a quorum of the seven-member Town Council is four members. Thus, the existence of a rolling quorum depends on whether four Town Council members engaged in a collective discussion about the selection of Solicitor Cicione.

As both the Complainants and the Town Council acknowledge, here the fourth Town Council member who potentially engaged in a rolling quorum is Ms. Cook. Based on the undisputed affidavit and supplemental affidavit of Ms. Cook, no such collective discussion occurred. We observe that Ms. Cook details how she “did not discuss [Solicitor Cicione’s] potential appointment or any proposed engagement agreement.” Further, Ms. Cook states that she “did not possess nor review Mr. Cicione’s draft engagement agreement prior to the December 27, 2018 meeting of the Tiverton Town Council.” Finally, in her supplemental affidavit, Ms. Cook affirmatively states that she did not “have any discussion with these councilors except in public session of the various Town Council meetings” regarding the selection of Solicitor Cicione. We note that this last contention is corroborated by the supplemental affidavits of Town Council members Driggs, Coulter, and Katz.

The Complainants do not specifically dispute these contentions but instead demur generally, insisting that Ms. Cook seconded the motion to appoint Solicitor Cicione based on her respect for her colleagues *before* either Town Council members Mr. Katz or Mr. Coulter had voiced support for Solicitor Cicione’s nomination, suggesting the existence of a prior communication. However, this circumstantial evidence is directly refuted by Ms. Cook’s affidavit which conclusively states that she “did not discuss [Solicitor Cicione’s] potential appointment or any proposed engagement agreement.” Further, in her supplemental affidavit Ms. Cook explains that “Councilor Katz

brought Mr. Cicione's name forward" and that "Councilor Driggs placed [Mr. Cicione] on the agenda[.]" These undisputed facts sufficiently explain the statement by indicating that Ms. Cook knew that at least two of her colleagues supported Mr. Cicione's appointment as Town Solicitor when she seconded the motion. She also noted that Mr. Cicione was the only name put forth for consideration.

Besides this circumstantial statement from Ms. Cook's first affidavit, which she has now explained, Complainants do not point to any evidence that Ms. Cook discussed Mr. Cicione's appointment with Mr. Cicione or with any member of the Town Council prior to the December 27, 2018 meeting. As such, based on the evidence presented, we cannot conclude that the Town Council engaged in a collective discussion regarding appointing Mr. Cicione. Without Ms. Cook's involvement, the Complainants' allegations at best implicate only three members of the Town Council. Accordingly, we do not find that a "quorum" of the Town Council convened, and thus find no violation.

2. Insufficient Meeting Agenda Item

Assuming that the Complainants were "aggrieved" and have standing to challenge the meeting agenda item, we do not find that the agenda item violates the OMA. As instructed by the Rhode Island Supreme Court, our analysis focuses on "whether the [public] notice provided by the [public body] fairly informed the public, under the totality of the circumstances, of the nature of the business to be conducted." *Tanner*, 880 A.2d at 797; *see also* R.I. Gen. Laws § 42-46-6(b).

The agenda item in question stated:

- "1. Councilor Driggs – Consideration of and Possible Vote on Engagement of New Town Solicitor
 - a. Attorney Giovanni Cicione"

The Complainants' sole contention is that the agenda item did not identify Attorney Cicione's law firm, Cameron & Mittleman, and that he would be hired in his capacity as a member of that firm. We cannot find that this lack of such further specification is tantamount to "vague and indefinite notice to the public[.]" *Anolik*, 64 A.3d at 1175; *see also Fagnant v. Woonsocket City Council*, OM 15-17.

It is undisputed that the relevant discussion at the December 27, 2018 meeting centered on the selection of Mr. Cicione as Town Solicitor. The meeting minutes reflect that the Town Council discussed and then affirmatively voted "to appoint Atty Giovanni Cicione as new Interim Counsel." Based on our review of the evidence submitted we conclude that the agenda item "[c]onsideration of and possible vote on engagement of New Town Solicitor . . . Attorney Giovanni Cicione" fairly encompassed the Town Council's discussion and action during the December 27,

2018 meeting.² As such, the agenda item “fairly inform[ed] the public of the nature of the business to be discussed or acted upon.” *Anolik*, 64 A.3d at 1175. We find no violation.

Conclusion

Although the Office of the Attorney General does not find a violation and will not file suit in this matter, nothing in the OMA precludes an individual from pursuing a complaint in the Superior Court. The Complainants may pursue an OMA complaint within “ninety (90) days of the attorney general’s closing of the complaint or within one hundred eighty (180) days of the alleged violation, whichever occurs later.” R.I. Gen. Laws § 42-46-8. We are closing our file as of the date of this finding.

We thank you for your interest in keeping government open and accountable to the public.

Sincerely,

Peter F. Neronha,
Attorney General

By: /s/ Sean Lyness
Sean Lyness
Special Assistant Attorney General

² Complainants contend that the Town Council ultimately executed a counsel agreement with Cameron & Mittleman, rather than with Attorney Giovani. Our authority in this matter is limited to examining whether the OMA has been violated. For our purposes, it is sufficient that the agenda item provided notice that the Town Council would discuss and potentially vote to appoint Attorney Giovanni as Town Solicitor; the meeting minutes and evidence presented to us confirm that is what occurred at the December 27, 2018 meeting.