



MARTHA COAKLEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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July 7, 2014

OML 2014 – 76

David J. Doneski, Esq.
Kopelman and Paige, P.C.
101 Arch Street
Boston, MA 02110

RE: Open Meeting Law Complaint

Dear Attorney Doneski:

This office reviewed a complaint filed by Arthur Campbell of the *Groton Line* (the complainant) alleging that the Groton Board of Selectmen (the Board) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint specifically alleges that the Board improperly deliberated outside of a posted meeting via serial communications on April 2, 2014 and April 4, 2014. The complaint was originally filed with the Board on May 8, 2014, and a request for further review was filed with our office June 16, 2014. You responded to the complaint, on behalf of the Board, by letter dated May 29, 2014.¹

In reaching a determination, we reviewed the May 8, 2014 complaint filed with the Board; the Board's May 29, 2014 response; and the June 16, 2014 request for further review filed with our office. Additionally, we reviewed the minutes of the May 12, 2014 meeting of the Board; an editorial in the *Groton Herald*, dated April 23, 2014 titled "A Bad Idea that Needs to be Stopped;" and a letter to the editor of *The Groton Line*, dated April 28, 2014, signed by Board Chair Peter Cunningham. Finally, we communicated with the complainant via telephone and email in June 2014. Following our review, we have decided to resolve this complaint by **informal action** in accordance with 940 CMR 29.07(2)(a). We find that certain telephone calls between Board members regarding a waiver of building fees constituted impermissible deliberation outside of a properly noticed open meeting.

At issue in this complaint are a series of phone calls placed by the Chair to other members of the Board regarding the possible waiver of building permit fees for a local business that suffered a loss due to a fire. In early April 2014, in an effort to demonstrate community support for rebuilding those premises, the Chair called each member of the Board in turn to gauge support for his idea to waive the building permit fees. Two of the Board members stated during their phone calls that they believed such a conversation was inappropriate outside of a posted meeting.

¹ For the purpose of clarity in this letter, we will refer to you in the third person hereafter.



The Chair took no further action to promote his idea, and the Board did not consider it during a subsequent meeting. On April 23, 2014, an editorial appeared in the *Groton Herald* opposing the Chair's proposal. Chair Cunningham responded to the editorial by a letter to the editor that appeared in the *Groton Online* on April 28, 2014. In that letter, and during a May 12, 2014 Board meeting, the Chair disclosed the calls at issue in the present complaint.

The Board argues in its formal response to the complaint that the conversations at issue did not constitute deliberation because: 1) they were "in the nature of distributing information or documents for subsequent discussion at a subsequent meeting;" and 2) the waiver of administrative fees is not a matter of public business within the Board's jurisdiction. See G.L. c. 30A, § 18. We disagree. Gauging members' interest in a proposal prior to its introduction at a meeting constitutes active solicitation of an opinion of a Board member. We have previously stated that this behavior, when reaching a quorum, is in violation of the Open Meeting Law. See OML 2013-76; OML 2013-75. Additionally, the Board is both the appointing authority for the Town Manager and the policy-making agency for the Town, according to the Town Charter. Therefore, any discussion of whether and how the Board may influence the Town Manager in the execution of his duties is a matter of public business within the Board's jurisdiction. See OML 2013-6.

Accordingly, we find that the Board violated the Open Meeting Law. We acknowledge that two of the Board's members did raise concerns at the time the calls occurred. We also find that the Chair took appropriate action by disclosing the improper communications in an open meeting in an effort to respond to the complaint.

We order no further action but caution the Board that future similar violations could be considered evidence of intent to violate the Law. We now consider this matter closed. This determination does not address any other complaints that may be pending before this office or the Board. Please feel free to contact this office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark M. Higgins", is written over the typed name.

Mark M. Higgins
Assistant Attorney General
Division of Open Government

cc: Groton Board of Selectmen
Arthur Campbell, *The Groton Line*

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by this order 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 this order.