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February 19, 2026

OML 2026 – 28

VIA EMAIL ONLY

Janelle Austin, Esq.
KP Law
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RE: Open Meeting Law Complaint

Dear Attorney Austin:

On June 18, 2025, this office received a complaint from Cynthia Allen alleging that the Ware Select Board (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was filed with the Board on May 23.[1] Your office responded to the complaint by letter dated June 18. The complainant alleges that the Board violated the Open Meeting Law at its executive session on May 6 when it (1) discussed topics that were not listed with sufficient specificity on the meeting notice; and (2) discussed topics that were not the proper subject of an executive session.

We appreciate the patience of the parties while we reviewed this matter. Following our review, we find that the Board violated the Open Meeting Law in the ways alleged. In reaching this determination, we reviewed the Open Meeting Law complaint, the Board's response, and the request for further review. We also reviewed the notice and minutes of the May 6 meeting, including redacted minutes of the executive session, and the minutes of meetings the Board held on June 17 and July 1. We reviewed emails and additional materials forwarded to us by the complainant. We viewed a recording of the open session of the Board's meeting held on July 1.[2] We reviewed a Petition for Modification, Reasonable Deviation and / or Cy Pres and addendum, and other filings and orders entered in the matter of the Trust u/w/o Lewis N. Gilbert, Hampshire Probate Court, docket no. HS25P0786PO ("the Litigation"). We reviewed filings and orders entered in the matter of General Trust Petition of Lewis Gilbert Trust, filed by the complainant in Hampshire Probate Court, docket no. HS24P0201PO. We reviewed *in camera* correspondence from counsel for Baystate Health, Inc. ("Baystate") to the Board, dated April 29. Finally, we reviewed posts made by the Facebook group Friends of Mary Lane Hospital.

[1] All dates are in 2025 unless otherwise stated.
[2] We accessed the recording at https://videoplayer.telvue.com/player/TDGUxXaDdkMUZKBTU1_JxP2_g1gEpRjc/media/961645.

FACTS

We find the facts as follows. The Mary Lane Hospital was established in the Town of Ware in 1924, funded in part by a trust established under the will of Lewis Gilbert (the "Gilbert Trust"). In or about 1991, Baystate assumed operations of The Mary Lane Hospital. The Hospital closed in or about 2023. Following the closure, residents and officials of Ware have sought the return of a healthcare facility to town. Among the considerations has been whether funds from the Gilbert Trust should be made available to Baystate for the establishment of a new convenient care center. The convenient care center contemplated by Baystate would not be located at the Mary Lane Hospital site. A related, but separate, issue was an article, Article 33, that was added by citizens' petition to the 2025 Annual Town Meeting warrant. Article 33 authorized the Board to take a temporary easement by eminent domain at the Mary Lane Hospital site, to conduct studies and testing "with respect to the suitability of said property for hospital, medical clinic, or other mental or physical health clinic purposes and / or uses." There has been sustained community interest in the Mary Lane Hospital site and in the availability of healthcare in Ware.[3]

The Board posted notice of a meeting to be held on May 6. The notice included, among others, the following executive session topic:

> Executive Session per M.G.L. Open Meeting Law, Chapter 30A, Section 22(f), (g). . . & M.G.L. Chapter 30A, Section 21(a)(3) to discuss strategy with respect to litigation where an Open Meeting may have a detrimental effect on the litigating position of the public body and the Chair so declares with respect to potential litigation. The Board will discuss and deliberate as to litigation strategy.

The May 6 meeting went forward as scheduled. Prior to the vote to enter executive session, Chair Nancy Talbot read the purposes of the executive session as they appeared on the notice. The vote to enter executive session carried. There were multiple topics to discuss in executive session. When the Board reached the discussion of "litigation strategy," Attorney Patricia Davidson addressed the Board regarding a proposal to have Baystate "come into town," according to the minutes.[4] A discussion ensued regarding Baystate's proposal and use of money from the Gilbert Trust to fund the establishment of a convenient care center in Ware. Three of the four Board members agreed that the best course was to work with Baystate and Bank of America, as trustee of the Gilbert Trust, to re-establish healthcare in town. Chair Talbot moved to allow Attorney Davidson to work with Bank of America to support Baystate's proposal to establish a convenient care or urgent care center in Ware. The motion was seconded and passed.

Cynthia Allen filed the instant Open Meeting Law complaint on May 23. The Annual Town Meeting took place on June 2. On June 25, after it had responded to the Open Meeting Law complaint, the Board posted notice of a meeting to be held on July 1. The notice did not

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[3] See, e.g., Sarah Heinonen, "Ware needs a hospital, residents say, as reuse of site considered," *The Reminder* (Feb. 28, 2024), https://thereminder.com/local-news/ware-needs-a-hospital-residents-say-as-reuse-of-si/.

[4] The minutes have been released to the public. There remain redactions as to other executive session topics unrelated to the subject of this complaint.

include as a topic of discussion Mary Lane Hospital, Baystate, or the Gilbert Trust. However, the notice did include as a topic Ms. Allen's Open Meeting Law complaint.

Specifically, the notice listed:

OLD BUSINESS

Open Meeting Law Complaint filed against Select Board by Cynthia Allen, dated May 23, 2025: acknowledge receipt of complaint, review and discuss Board's response, vote to take any remedial action, and authorize submission of response by Town Counsel *(Continued from June 17, 2025)*

On June 29, a Facebook group called Friends of the Mary Lane Hospital posted the link for the July 1 Board meeting. The group posted: "PROTECT THE TRUST FUNDS - On Tuesday July 1st our Selectboard will be discussing the Mary Lane trust funds." The June 29 post also included an open letter encouraging readers to attend the July 1 meeting to support the Friends' alternative to the Baystate plan the Board endorsed on May 6.

In open session at the Board's July 1 meeting, Chair Talbot read Ms. Allen's Open Meeting Law Complaint.[5] The Board voted to release minutes of the May 6 executive session, with redactions. The executive session minutes were also read into the record. At the suggestion of counsel for Baystate, Attorney Ryan Barry, the Board also voted to affirm the May 6 vote to work with Bank of America in support of Baystate's proposal to establish a convenient care or urgent care center in Ware.[6] The discussion of Baystate's proposal and the use of Gilbert Trust funds to finance it lasted approximately 45 minutes, much of which consisted of public comment from those opposed to the Baystate plan.

DISCUSSION

I. Baystate's proposal to establish a convenient care center and the use of the Gilbert Trust to help fund it were not proper topics for executive session.

Public bodies may enter a closed, executive session for any of the ten purposes enumerated in the Open Meeting Law. G.L. c. 30A, § 21(a). Among those ten enumerated purposes is "Purpose 3," which allows a public body to convene in executive session to "discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the public body and the chair so declares." G.L. c. 30A, § 21(a)(3). A public body may invoke Purpose 3 to discuss litigation strategy only when it has a litigating position to protect relative to the topic of that discussion. See OML 2025-201; OML 2019-161; OML 2018-110.[7]

[5] The discussion of the complaint commences at 1:10 in the recording.
[6] Minutes of the July 1 meeting do not include this vote. The minutes should be amended to include it.
[7] Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting

In her request for review, the complainant alleges that the discussion of the Gilbert Trust held in executive session on May 6 was not proper under Purpose 3 because there was no threat of litigation concerning the Gilbert Trust.[8] We agree. In its response to the complaint, the Board does not argue that there was a threat of litigation over the Gilbert Trust but states that it met in executive session to discuss a threat of litigation over Article 33, "following a written letter outlining such potential litigation by Baystate." The purpose articulated in the Board's response does not align with the discussion that was actually had in executive session. As we have been presented with no information that litigation was threatened over Baystate's plan to establish a convenient care center, we find that the Board met in executive session for an improper purpose.

II. Notice of the May 6 meeting was not sufficiently specific.

The Open Meeting Law requires that public bodies post notice 48 hours in advance of a meeting, not including weekends and holidays. G.L. c. 30A, § 20(b). Meeting notices must include, among other things, a list of the topics that the Chair, or any other individual charged with creating the meeting notice, reasonably anticipates will be discussed at the meeting. Id. The list of topics must include "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03(l)(b).

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 2019-134; OML 2015- 35. 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 to observe the discussion regarding a topic of interest. See OML 2023-86; OML 2019-95; OML 2018-22.

Notwithstanding the Board's claim that it "listed an agenda item" for the discussion it had in executive session, we find that notice of the May 6 meeting was not sufficiently specific. The notice made no mention of Baystate's proposal to establish a convenient care center or of the Gilbert Trust. Upon reading the notice of the May 6 meeting, a reasonable member of the public would not understand the anticipated nature of the Board's discussion.

Moreover, that the discussion was held in executive session does not excuse the Board from the Law's notice requirements. Even if a discussion of Baystate's plan for a convenient care center or the Gilbert Trust were proper under Purpose 3,[9] notice still was insufficiently specific. Executive session topics must be described, both in the meeting notice and in an announcement during open session prior to convening in executive session, in as much detail as possible without compromising the purpose for which the executive session was called. See G.L. c. 30A, § 21(b)(3); see also District Attorney for the N. Dist. v. Sch. Comm. of Wayland,

[8] Generally, we do not review allegations that were not raised in the complaint originally filed with the public body. See OML 2025-87; OML 2021-86. However, we have reviewed the propriety of a stated executive session purpose as a threshold matter, even if not raised by the complainant. See OML 2023-29; OML 2022-201; OML 2015-126. Here, the complainant learned of the substance of the executive session discussion after the Board released minutes in response to the Open Meeting Law complaint. In other words, it was only by filing the Open Meeting Law complaint that the complainant obtained the information that supports the additional allegation. Therefore, it is appropriate for us to review this allegation.

[9] As noted above, we find that it was not.

455 Mass. 561, 567 (2009) ("[a] precise statement of the reason for convening in executive session is necessary . . . because that is the only notification given the public that a [public body] would conduct business in private, and the only way the public would know if the reason for doing so was proper or improper").

As we have twice previously explained to the Board, when convening in executive session pursuant to Purpose 3, a public body must identify the litigation matter it will discuss, if doing so will not compromise the lawful purpose for secrecy. See OML 2020-53; OML 2019-86; see also OML 2025-185; OML 2024-111; OML 2023-189; OML 2016-12. We generally defer to a public body's assessment of whether identifying the litigation matter to be discussed would compromise the purpose for the executive session; however, a public body must be able to demonstrate a reasonable basis for that claim if challenged. See OML 2025-43; OML 2024-195; OML 2016-12; OML 2015-14. The Board has not offered any information suggesting that reference to Baystate or the Gilbert Trust in the notice of the May 6 meeting would have compromised the purpose of the executive session. Indeed, it could not offer such information where the discussion of Baystate and the Gilbert Trust was not proper for executive session. For all of the above reasons, we find that notice of the May 6 meeting was not sufficiently specific.

Additionally, the Board's July 1 vote did not remedy the violation, as the Board intended. At its July 1 meeting, the Board discussed at length the topic of Baystate's use of the Gilbert Trust to establish a convenient care center in Ware in open session. There was significant input from members of the public during this discussion. However, the Board's efforts to address the May 6 violation failed because the Board did not list the topic on the notice of the July 1 meeting. Like the notice of the May 6 meeting, the notice of the July 1 meeting failed to include as a topic Baystate's proposal to establish a convenient care or urgent care center in Ware or the funding of such a clinic by the Gilbert Trust. Although the Friends of the Mary Lane Hospital raised awareness of the July 1 meeting through its Facebook post, that outreach cannot substitute for proper notice by the public body.

Finally, we consider the complainant's suggestion, articulated in the email she sent to our office and to the Board on June 20, that the Board's violation was intentional. See G.L. c. 30A, § 23(c). An intentional violation is an "act or omission by a public body or a member thereof, in knowing violation of [the Open Meeting Law]." 940 CMR 29.02. An intentional violation may be found where the public body acted with deliberate ignorance of the law's requirement or has previously been advised that certain conduct violates the Open Meeting Law. Id.

In a prior determination, OML 2020-53, we found that the Board violated the Open Meeting Law when it failed to identify in the notice or announcement the litigation to be discussed in a Purpose 3 executive session—the same violation we find here.[10] Although this determination was issued five years prior to the May 6 meeting at issue here, at least one member sat on the Board at the time and the other members should have received a copy of the OML

[10] Arguably, the violation here is more serious because there was no threat of litigation as to the topic that was discussed in executive session, even though the notice listed litigation as the Purpose 3 topic, and so the nature of the executive session discussion was entirely obscured from the public.

2020-53 determination when they joined the Board.[11] Because the Board has been warned that failure to identify the subject of a Purpose 3 executive session discussion violates the Open Meeting Law, unless identifying the subject would compromise the lawful purpose for the executive session, we find the violation here intentional.

The complainant asks us to nullify the votes held on May 6 and July 1. See G.L. c. 30A, § 23(c) (providing that "[u]pon the finding of a violation, the attorney general may issue an order to. . . nullify in whole or in part any action taken at the meeting"). Nullification would not be disproportionate to the seriousness of the violation here. After much consideration, however, we decline to exercise our discretion to nullify the votes. The complainant has been explicit in her desire to use nullification by this office to challenge a certification of the July 1 vote filed in the Litigation with the hope of defeating the Cy Pres action. As an initial matter, we note that although our office is empowered to nullify action taken at a meeting, we may not nullify a court filing. Moreover, our decision not to nullify the vote is informed by the Litigation and the action filed by the complainant in the Hampshire Probate Court. In both of those matters, the Court found that the complainant did not have standing to object to the Cy Pres action, and in issuing its final judgment approving the Cy Pres petition, the Court did not state that it relied on the vote that the complainant seeks to nullify. Therefore, notwithstanding finding a serious violation of the Open Meeting Law, we decline to order the requested remedy.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law when it discussed topics that were not listed with sufficient specificity on the meeting notice and were not the proper subject of an executive session.

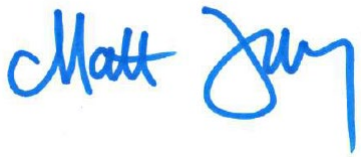
Because we find an intentional violation, as explained above, we refer this matter for a hearing pursuant to 940 CMR 29.07(3) and recommend that the Board be assessed a fine of $300 pursuant to G.L. c. 30A, § 23(c) ("Upon the finding of a violation, the attorney general may issue an order to . . . impose a civil penalty upon the public body of not more than $1,000 for each intentional violation"). We invite the Board to contact this office to discuss the hearing process or a resolution of this matter.

Furthermore, we order the Board's immediate and future compliance with the Open Meeting Law and caution the Board that future similar violations may be considered evidence of intent to violate the Open Meeting Law.

[11] Within two weeks of qualification for office, persons serving on a public body must certify that they have reviewed, among other things, a copy of each Open Meeting Law determination issued within the last five years to the public body of which they are a member and in which the Attorney General found a violation of the Open Meeting Law. See G.L. c. 30A, § 20; 940 CMR 29.04(1)(b). See also Certificate of Receipt of Open Meeting Law Materials, available at https://www.mass.gov/doc/certificate-of-receipt-of-open-meeting-law-materials-102120/download.

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,



Matthew Lindberg
Assistant Attorney General
Division of Open Government

cc: Nancy Talbot, Chair, Ware Select Board (via email: ntalbot@townofware.com)
Kathleen Galford. Assistant Town Clerk (via email: kgalford@townofware.com)
Cynthia Allen (via email: [redacted])

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.