



THE COMMONWEALTH OF MASSACHUSETTS
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July 12, 2018

OML 2018 – 103

Leilani Dalpe, Chair
Middleborough Board of Selectmen
10 Nickerson Avenue
Middleborough, MA 02346

RE: Open Meeting Law Complaint

Dear Chair Dalpe:

This office received a complaint from Allin Frawley, dated March 29, alleging that the Middleborough Board of Selectmen (the “Board”) and the Oliver Estate Advisory Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the public bodies on January 10. The Board responded by letter dated January 24, and the Committee responded on or about January 26. In his complaint, Mr. Frawley alleges that an individual member of both the Board and the Committee sent e-mail that constituted improper deliberation.

Following our review, we find that Leilani Dalpe individually violated the Open Meeting Law.² In reaching a determination, we reviewed the complaint, the bodies’ responses, and the request for further review filed with our office. We also reviewed an e-mail from Ms. Dalpe dated January 9. Finally, we spoke by telephone with the complainant on June 11 and with Ms. Dalpe on July 3.

FACTS

We find the facts as follows. On January 9, Ms. Dalpe sent an e-mail to all Board members and a quorum of the Committee summarizing a contentious Board meeting that had taken place the night before.³ The underlying dispute concerned the operation of the Oliver House Estate in Middleborough, which is under the auspices of both public bodies. The Oliver House Estate supports itself financially through tourism, including “Oliver Estate Ghost Tours.” In her e-mail, Ms. Dalpe stated a policy, designed by the Board in conjunction with the town

¹ Unless otherwise indicated, all dates in this letter refer to the year 2018.

² For the sake of clarity, we refer to you in the third person.

³ The complainant is a member of the Board, and, at all times relevant to this complaint, he was its chair. Ms. Dalpe was a Board member at the times relevant to the complaint, as well as a member of the Committee.



manager, to ensure that either proof of insurance or a fee is tendered for both private and town-sponsored events. The e-mail also described low morale among Oliver House Estate volunteers. Additionally, the e-mail stated that the following rules would be in place for individuals running ghost tours: (i) a representative from the town must be present during all tours, (ii) an individual certified in CPR must be present, and (iii) private groups must sign waivers releasing the town from liability. Finally, the e-mail offered suggestions for how the bodies could avoid “unnecessary confrontations” in the future. Nothing in the January 9 e-mail had been previously discussed by either public body during an open meeting. Rather, the intention of sharing this information via e-mail appears to have been to avoid further confrontation during a meeting. It does not appear that any Board or Committee members responded to the January 9 e-mail.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based.” Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). Thus, the law requires that meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See G.L. c. 30A, §§ 20(a)(b), 21. The Open Meeting Law defines a “meeting” as “a deliberation by a public body with respect to any matter within the body's jurisdiction.” G.L. c. 30A, § 18. “Deliberation” is defined, in relevant part, as “an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction.” Id. For the purposes of the Open Meeting Law, a quorum is generally a simple majority of the members of the public body. Id. Expression of an opinion on matters within a body’s jurisdiction to a quorum of a public body is a deliberation, even if no other public body member responds. See OML 2014-148; OML 2013-29; OML 2013-27; OML 2012-15.⁴

The complaint alleges that Ms. Dalpe’s January 9 e-mail violated the Open Meeting Law. Generally, discussions of interpersonal dynamics, such as how to avoid “unnecessary confrontations” here, do not concern public business within the jurisdiction of the public body. See OML 2011-38. However, the bulk of the January 9 e-mail concerned public business within the jurisdiction of both bodies—namely, the operation of the historical estate. See OML 2015-20 (finding a violation for improper deliberation outside of a noticed meeting but acknowledging “that it can be difficult to judge the line between an interpersonal issue and administrative matters that are public business within a body's jurisdiction.”) Indeed, the content of the January 9, 2017 e-mail expressed Ms. Dalpe’s opinion about how the Board should conduct future events at the estate. This information had not previously been discussed during a noticed meeting.⁵ Because Ms. Dalpe was a member of both bodies, and because the communication reached a quorum of each, it met the definition of “deliberation.” G.L. c. 30A, § 18. Therefore, this communication should have taken place during an open meeting. See G.L. c. 30A, §§ 20(a)-(b),

⁴ Open Meeting Law determinations may be found at the Attorney General’s website: www.mass.gov/ago/openmeeting.

⁵ We note that the definition of “deliberation” does not include “the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed.” G.L. c. 30A, § 18. Here, the January 9, 2017 e-mail contains Ms. Dalpe’s opinions, and its contents were not intended for discussions at a future meeting. It is therefore clear that this statutory exception does not apply in the present case.

21. Because it does not appear that any member of the Board or Committee responded to Ms. Dalpe's e-mail, we find that this was an individual violation, rather than a violation by either body as a whole. See OML 2015-33; OML 2014-148.

CONCLUSION

For the reasons stated above, we find that Ms. Dalpe individually violated the Open Meeting Law. We order immediate and future compliance with the Open Meeting Law, and we caution that similar future violations may be considered evidence of intent to violate the law. Because it appears that both the Board and the Committee have already disclosed the January 9 e-mail to the public during subsequent meetings, we order no additional relief.

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 our office, the Board, or the Committee. Please feel free to contact the Division at (617) 963 - 2540 if you have any questions.

Sincerely,



Kevin W. Manganaro
Assistant Attorney General
Division of Open Government

cc: Allin Frawley
Oliver Estate Advisory Committee

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.