



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

March 14, 2023

OML 2023 – 32

VIA EMAIL ONLY

David J. Doneski, Esq.
KP Law
ddoneski@k-plaw.com

RE: Open Meeting Law Complaint

Dear Attorney Doneski:

This office received two complaints—one from Antonio Segalla and one from Daniel Seitz—on August 16, 2022,¹ alleging that the Great Barrington Selectboard (the “Board”), and specifically its Chair and Vice Chair, violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaints were originally filed with the Board on June 17, and you responded on behalf of the Board by letters dated July 8. The complaints allege that the Board created a subcommittee, and that the subcommittee failed to post notice of its meetings and held meetings that were not open to the public.

Following our review, we find that the Board created a subcommittee, and that the subcommittee violated the Open Meeting Law as alleged. In reaching this determination, we reviewed the Open Meeting Law complaints, the Board’s responses, the requests for further review, video recordings of the Board’s March 7 and May 23 meetings,² and a July 5 email sent from Board member Ed Abrahams to complainant Daniel Seitz.

FACTS

We find the facts to be as follows. During the Board’s March 7 meeting Christopher Rembold, Assistant Town Manager and Director of Planning, presented a draft short-term rental bylaw to the Board. After a lengthy discussion of the proposed bylaw, the Board reached an

¹ All dates are in 2022, unless otherwise stated.

² Video recordings of the Board’s meetings may be found at https://www.youtube.com/playlist?list=PLIiD8BG2vkq4AKFMOBvrIi80M_9gg37sg.

impasse regarding certain provisions. At that point, the chair of the Board, Stephen Bannon, asked what the Board wanted to do to move forward on this matter. Mr. Rembold proposed that, if the Board wanted, he could work directly with two members on a new draft bylaw to bring back to the Board for further consideration.

Thereafter, the Board's vice chair, Leigh Davis, volunteered to work with Mr. Rembold and another Board member to revise the draft bylaw. Board member Ed Abrahams recommended that Chair Bannon be the second Board member to assist in this effort, and Chair Bannon agreed. After some additional discussion, as Chair Bannon began to turn to public comment, Vice Chair Davis asked what the Board had decided to do with respect to revising the draft bylaw. Chair Bannon responded, "Ed nominated me, you volunteered, and we [will] work with Chris to try to bring something back." Thereafter, the Board again discussed how many and which members of the Board should participate in the effort to revise the draft bylaw. From there the discussion turned to further disagreement regarding the substance of the draft bylaw until Chair Bannon stated "let's move ahead. Leigh and I will work with Chris on this, and let's move ahead."

During the Board's May 23 meeting it again discussed the proposed short-term rental bylaw. During this discussion, Mr. Rembold explained that he had left the Board's March 7 meeting with "a charge to work with the Chair and Vice Chair to develop a draft" bylaw based on the Board's March 7 discussion. Mr. Rembold then reviewed highlights from the revised draft bylaw and noted that the revised draft was the result of discussion between himself, the Town Manager Mark Pruhenski, Chair Bannon, and Vice Chair Davis.

In response to questions about the removal of a clause from previous drafts of the bylaw, Chair Bannon explained that "the Select Board, as Chris has pointed out, had asked Leigh and I, Chris and Mark, mainly Leigh and I, to come with a draft to bring back to the full Select Board." After further discussion, the Board voted to approve the draft bylaw, without further changes, for public comment. After hearing public comment regarding the short-term rental bylaw, the Board voted to include the bylaw on the warrant for the Town's upcoming Town Meeting. The bylaw was passed at the June 6 Annual Town Meeting.

DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 (1978). To that end, the Open Meeting Law requires "[e]xcept in an emergency, in addition to any notice otherwise required by law, a public body shall post notice of every meeting at least 48 hours prior to such meeting excluding Saturdays, Sundays and legal holidays." G.L. c. 30A, § 20(b). Additionally, the Open Meeting Law requires that, unless lawfully convened in executive session, all meetings of a public body must be open to the public. G.L. c. 30A, § 20(a).

The Open Meeting Law applies only to public bodies. See G.L. c. 30A, §§ 18-25. The law defines "public body" as "a multiple-member board, commission, committee or subcommittee . . . however created, elected, appointed or otherwise constituted, established to serve a public purpose[.]" G.L. c. 30A, § 18. A subcommittee is a "multiple-member body

created to advise or make recommendations to a public body.” G.L. c. 30A, § 18. Whether a public body created a subcommittee is a fact-intensive inquiry and our analysis hinges on the public body’s actions and whether it intended to create a multiple-member body. Compare, e.g., OML 2017-111 (finding that no subcommittee was created where a single volunteer was sought to work on a matter and another board member thereafter, on their own initiative, volunteered to assist), with OML 2018-23 (finding that a subcommittee was created where multiple volunteers were sought to work on a matter and after two individuals volunteered, the public body, by consensus, formally agreed to the arrangement).³

The complaints allege that the Board created a subcommittee tasked with revising the draft short-term rental bylaw in order to present a new proposed bylaw to the Board for its consideration. The complaints further allege that this subcommittee did not post notice of its meetings or hold its meetings open to the public. The Board does not specifically deny that Chair Bannon, Vice Chair Davis, and Mr. Rembold met to review and revise the draft short-term rental bylaw, nor does the Board assert that any such meetings were properly posted and open to the public. Instead, the Board asserts that the group was not a subcommittee because during the Board’s March 7 meeting “[t]here was no vote of the Board[;] [t]here was no statement regarding creation of a subcommittee[;] and there was no delegation or grant of any authority to the chair and Selectwoman Davis.” Furthermore, the Board appears to assert that the group was not “created to advise or make recommendations to” the Board, stating that the draft bylaw presented to the Board on May 23 “was for the purpose of, and subject to, the Board’s discussion and approval; it was not a recommendation.” Finally, the Board compares the facts of the case at hand to the facts presented in OML 2017-111 in which we found a subcommittee had not been created where a single volunteer was sought to work on a matter and another board member thereafter, on their own initiative, volunteered to assist.

We disagree with the Board’s characterization of the events that took place during its March 7 meeting. Although the Board did not take a formal vote and did not use the word “subcommittee,” the Board discussed at length having two members work with Mr. Rembold to revise the proposed short-term rental bylaw and bring a new version of the bylaw to the Board for further consideration. After discussion of which and how many Board members should work with Mr. Rembold on this effort, the Board agreed that Chair Bannon and Vice Chair Davis would be the two members to do so. Although it may be the case that the Board did not literally intend to create a subcommittee, based on the facts presented in this case, we find that the Board’s actions during its March 7 meeting clearly created a subcommittee and that the subcommittee failed to post notice of its meetings or to hold its meetings open to the public. See OML 2019-93; OML 2018-23; OML 2021-78.

CONCLUSION

For the reasons stated above, we find that the Board created a subcommittee to revise a proposed short-term rental bylaw and that this subcommittee failed to comply with the Open Meeting Law. We order the Board’s and Subcommittee’s immediate and future compliance with the Open Meeting Law and caution that future similar violations may be considered evidence of

³ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

intent to violate the Law. With the understanding that any meetings of the Subcommittee occurred sometime ago, we order the Subcommittee to create minutes for any meetings it held, to the best of its ability, using any means available, including notes, records, and the recollections of those in attendance at such meetings. Although we order the Subcommittee to create minutes to the best of its ability, we acknowledge the potential infeasibility of accurately capturing the substance of discussions that occurred approximately one year ago during meetings that the Subcommittee mistakenly believed were not subject to the Open Meeting Law; we remind the Subcommittee that minutes must accurately capture what was actually discussed during a meeting. Within 30 days of receipt of this letter, the Subcommittee shall certify to our office that it has complied with this order by creating minutes for any meetings it held. If the Subcommittee is unable to create accurate minutes for its meetings, it must, within 30 days of receipt of this letter, explain to this office in writing what efforts it made to create meeting minutes. Furthermore, if the Subcommittee communicated via email regarding the short-term rental bylaw, we order the Subcommittee to publicly release all such emails, either by reading them aloud at an open meeting, or by attaching the emails to the minutes of an open meeting.

Finally, we decline to order the remedy requested in the complaints—nullifying the Board’s May 23 vote to include the short-term rental bylaw on the Annual Town Meeting warrant and thereby nullifying the action taken at the Annual Town Meeting. There is no suggestion that the Board’s May 23 meeting did not comply with the Open Meeting Law. Additionally, by the time the complaints were filed the Annual Town Meeting had already occurred. See OML 2013-195; OML 2013-92.

We now consider the complaints addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Board, the Subcommittee, or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Stephen Bannon, Chair, Great Barrington Selectboard (via email: sbannon@Townofgb.org)
Leigh S. Davis, Vice Chair, Great Barrington Selectboard (via e-mail: LDavis@Townofgb.org)
Mark Pruhenski, Great Barrington Town Manager (via e-mail: MPruhenski@townofgb.org)
Daniel Seitz (via e-mail: danseitz@verizon.net)
Antonio Segalla (via e-mail: tonysegalla@gmail.com)

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.