



STATE OF RHODE ISLAND  
OFFICE OF THE ATTORNEY GENERAL

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*Peter F. Neronha*  
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**VIA EMAIL ONLY**

January 26, 2024  
OM 24-05

Mr. David Fagnoli  
davefagnoli@yahoo.com

Mr. Frank J. Milos, Jr., Esquire  
Solicitor, City of Pawtucket  
Fmilos@pawtucketri.com

**Re: Fagnoli v. City of Pawtucket Charter Review Commission**

Dear Mr. Fagnoli and Attorney Milos:

We have completed our investigation into the Open Meetings Act (“OMA”) Complaint filed by Mr. David Fagnoli (“Complainant”) against the City of Pawtucket Charter Review Commission (“Commission”). For the reasons set forth herein, we find the Commission violated the OMA.

*Background*

*Complainant’s allegations*

The Complainant asserts seven violations of the OMA were committed by the Commission related to its August 1, 2023, August 2, 2023, and August 8, 2023 meetings.

(1) The Complainant asserts that the Commission publicly denied receiving his email during the August 8, 2023 meeting, despite him having received a confirmation of receipt email from the Pawtucket City Clerk.

(2) He asserts that the Chair of the Commission denied his request to participate during the public participation portion of the August 8, 2023 meeting.

(3) He asserts that during the August 8, 2023 meeting, the Commission cut off a public speaker during his allotted speaking time and did not call for a vote to adjourn their meeting in violation of Robert’s Rules of Order and the OMA.

(4) He asserts that the Commission's agendas for their August 1, 2023 and August 8, 2023 meetings did not provide appropriate details regarding the business to be conducted at the Commission's meetings.

(5) He asserts that the Commission failed to file its August 8, 2023 meeting agenda forty-eight hours prior to the meeting as required by the OMA.

(6) He asserts that no contact information is available on the Commission's website for the Commission members.

(7) He asserts that the City of Pawtucket and the Rhode Island Secretary of State's websites have contradictory information regarding the identities of the Commission members.

### *The Commission's Response*

The Commission submitted a substantive response through Pawtucket City Solicitor Frank J. Milos, Jr., Esq.

Regarding Counts (1), (2), (3), and (6), and (7), the City primarily argues that the allegations do not allege a violation of any provision of the OMA and are thus outside of this Office's authority to investigate alleged violations of the OMA. *See* R.I. Gen. Laws § 42-46-6(d).

Regarding Count (4), the Commission states that the public notice for both the August 1, 2023 and August 8, 2023 meetings stated "that the Commission would be discussing 'ideas and/or modifications to the Pawtucket City Charter.'" The Commission concedes that "with the benefit of hindsight, the Commission agrees that it should have provided statements for both meetings that more specifically set forth the particular Charter provisions and/or subject matters of the Charter that were to be discussed." However, the Commission notes that no votes took place at these meetings and any violation was not willful or knowing. The Commission further notes that subsequent meeting notices posted by the Commission have been more specific.

Regarding Count (5), the Commission concedes that it failed to post the August 8, 2023 meeting agenda with the Secretary of State "within a minimum of forty-eight (480 hours, excluding weekends and state holidays)" are required by R.I. Gen. Laws § 42-46-6(b). Nonetheless, the Commission argues that the Complainant was not "aggrieved" by the lack of notice because he had actual notice of the meeting and attended said meeting. The Commission further argues that if there was a violation, no votes took place at the meeting and any violation was inadvertent and not willful or knowing.

### *Relevant Law and Findings*

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.

*Public Input (Counts 1 and 2)*

R.I. Gen. Laws § 42-46-6(d) states that “[n]othing contained in this chapter requires any public body to hold an open-forum session to entertain or respond to any topic nor does it prohibit any public body from limiting comment on any topic at such an open-forum session.”

Although we encourage all public bodies to provide ample opportunities to receive public comment, we have been clear that nothing in the OMA mandates public comment. *See, e.g., Straus v. Westerly Town Council*, OM 21-10; *Brunetti, et al. v. Town of Johnston*, OM 17-19; *Sheldon v. Warwick Minimum Housing Review Board*, OM 14-14. Therefore, the Complainant’s allegations related to the Commission’s failure to acknowledge his email and let him speak at the August 8, 2023 meeting fail to articulate an OMA violation.

*Alleged Cutting Off of Speaker and Meeting Adjournment (Count 3)*

As explained above, R.I. Gen. Laws § 42-46-6(d) expressly states that the OMA does not require public bodies to provide opportunities for public comment. *See Straus*, OM 21-10; *Brunetti*, OM 17-19; *Sheldon*, OM 14-14. Therefore, the Complainant’s allegation that the Commission cut-off another person from speaking at the August 8, 2023 meeting fails to articulate an OMA violation.

R.I. Gen. Laws § 42-46-6(b)(1) requires that public bodies record “all votes taken at all meetings of public bodies, listing how each member voted on each issue” in their meeting minutes. However, while the OMA mandates that all votes taken be recorded, it does not dictate under what circumstances a vote must be taken. Therefore, we find that the Commission’s failure to vote on adjournment of its August 8, 2023 meeting does not constitute an OMA violation.

Insofar as the Complainant alleges that the Commission’s failure to take a vote on adjournment violated Robert’s Rules of Order, such an allegation fails to articulate a violation of the OMA as the OMA itself does not mandate adherence to Robert’s Rules of Order. *See Langseth v. Rhode Island State Planning Council*, OM 11-30 (finding that “this Department has no jurisdiction over Robert’s Rules of Order”).

*Sufficiency of the Meeting Agendas (Count 4)*

The OMA requires that all public bodies provide supplemental public notice of all meetings at least forty-eight (48) hours in advance of the meeting. *See* R.I. Gen. Laws § 42-46-6(b). “This notice shall include the date the notice was posted, the date, time and place of the meeting, and a *statement specifying the nature of the business to be discussed.*” *Id.* (emphasis added). Here, the Complainant asserts that the Commission violated R.I. Gen. Laws § 42-46-6(b) because its August 1, 2023 and August 2, 2023 meeting agendas failed to provide appropriate details about the public business to be discussed.

In *Tanner v. Town of East Greenwich*, the Rhode Island Supreme Court examined the OMA’s requirement that a public notice contains “a statement specifying the nature of the business to be discussed.” 880 A.2d 784 (R.I. 2005). The Court determined that the appropriate inquiry is

“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.” *Id.* at 797-98; *see also Anolik v. Zoning Board of Review of the City of Newport*, 64 A.3d 1171, 1173 (R.I. 2013) (holding 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”).

We have previously determined that public bodies violate the OMA by posting broad and insufficient agenda items such as “Tax Collector’s Report,” “Treasurer’s Report,” “Chief’s Report,” “Committee Reports,” “Old Business,” and “New Business.” These broad agenda items typically fail to “fairly inform the public of the nature of the business to be discussed or acted upon.” *Spodnik v. West Warwick*, OM 19-28; *Beagan v. Albion Fire District*, OM 10-27.

Here, the Commission’s posted agendas for both the August 1, 2023 and August 2, 2023 meetings informed the public only that the Commission would be discussing “ideas and/or modifications to the Pawtucket City Charter.” This agenda item is facially broad and vague. The agenda item is especially broad given the fact that it is for a meeting of the Charter Review Commission, which presumably discusses “ideas and/or modifications to the Pawtucket City Charter” at almost all of its meetings. The minutes from the August 1, 2023 meeting reveal that at that meeting the Commission discussed changes to the City Charter pertaining to purchasing and unspecified suggested amendments from department heads. The minutes from the August 2, 2023 meeting reveal that at that meeting the Commission discussed potential alternatives to the method for selection of school committee members. The agenda item used for both meetings was too vague to inform the public that these Charter-related topics would be discussed and to differentiate between what business would be discussed at each of the two meetings.

The Commission concedes that “with the benefit of hindsight, the Commission agrees that it should have provided statements for both meetings that more specifically set forth the particular Charter provisions and/or subject matters of the Charter that were to be discussed.” In these particular circumstances, we agree with the Commission and find that given the totality of the circumstances, the agendas for the August 1, 2023 and August 2, 2023 Commission meetings did not sufficiently “inform the public of the nature of the business to be discussed or acted upon.” *See Tanner*, 880 A.2d at 796.<sup>1</sup> Accordingly, we find the Commission violated the OMA.

#### *Timing of the Posting of the Supplemental Notice (Count 5)*

The Commission makes an argument that the Complainant lacks standing because he was not “aggrieved” by this violation, but such an argument is unavailing. Because the Office of the

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<sup>1</sup> Our analysis is based on the particular circumstances in this case. Although we find that the agenda item in question violated the OMA in these circumstances, we do not discount the possibility that it could comply with the OMA in other circumstances. For instance, we do not express an opinion about whether it would violate the OMA if a town council were to use similar language to notice a meeting to broadly discuss modifications to a charter that is not limited to any particular subject within the charter.

Attorney General may initiate a complaint on behalf of the public interest, *see* R.I. Gen. Laws § 42-46-8(e), we need not address whether the Complainant qualifies as an aggrieved person under the OMA. Pursuant to our statutory authority, we proceed to consider the alleged violations set forth in the Complaint on the merits. *See Jerzyk v. Central Falls Detention Facility Corporation*, OM 19-03; *Solas v. North Kingstown School Committee*, OM 22-24.

The OMA requires that all public bodies “give supplemental written public notice of any meeting within a minimum of forty-eight (48) hours, *excluding weekends* and state holidays in the count of hours, before the date.” R.I. Gen. Laws § 42-46-6(b) (emphasis added). Here, the Commission posted the supplemental notice (meeting agenda) for the August 8, 2023 meeting on August 6, 2023.

Because August 6, 2023 was a Sunday, the Commission failed to post the supplemental notice of its August 8, 2023 meeting within forty-eight hours, excluding weekends. *See* R.I. Gen. Laws § 42-46-6(b). The Commission concedes that “per the strict language of the statute, [it] should have filed said notice on or before August 4, 2023.” Accordingly, we find the Commission violated the OMA.

*Commission Member Contact Information Online (Counts 6 and 7)*

The Complaint asserts that the Commission violated the OMA because it failed to provide contact information on its website for the Commission members and had conflicting information with the Secretary of State’s website about the Commission members. Although we encourage all public bodies to post accurate and clear information about their public body and ways for the public to contact them, the OMA does not mandate that any particular contact information or information about public body members be posted on the public body’s website or the Secretary of State’s website aside from public notice and meeting minutes. Accordingly, we find no violation.

Conclusion

Upon the finding of an OMA violation, the Office of the Attorney General may institute an action in Superior Court. *See* R.I. Gen. Laws § 42-46-8(a), (e). The Superior Court may issue injunctive relief and declare null and void any actions of the public body found to be in violation of the OMA. *See* R.I. Gen. Laws § 42-46-8(d). Additionally, the Superior Court may impose fines up to \$5,000 against a public body found to have committed a willful or knowing violation of the OMA. *Id.*

Here, based on the totality of the evidence, we do not find a willful or knowing violation. We note that the Commission stated that it took steps to remedy its violative actions for future meetings. It stated that subsequent meeting notices “specifically reference[d] the Charter provisions, which were to be the subject matter of its intended discussions” and “all other meeting notices, posted either before and [sic] after the August 8, 2023 meeting, were posted by the Commission within the time requirements.” Further, the record contains no evidence to cast doubt upon the Commission’s assertion that its failure to timely post the August 8, 2023 supplemental notice was “inadvertent.” Our conclusion is supported by the fact that the Commission does not have any recent, similar violations. However, we remind the Commission that this finding serves as notice

that the actions and omissions discussed herein violate the OMA and may serve as evidence of a willful or knowing violation in any similar future situation.

Additionally, injunctive relief is not appropriate because no substantive votes were taken during the Commission meetings for which insufficient supplemental notice was given.

Although the Attorney General will not file suit in this matter at this time, nothing in the OMA precludes an individual from pursuing a complaint in the Superior Court as specified in the OMA. The Complainant 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 thank you for your interest in keeping government open and accountable to the public.

Sincerely,

PETER F. NERONHA  
ATTORNEY GENERAL

By: /s/ Patrick Reynolds  
Patrick Reynolds  
Special Assistant Attorney General