

Minutes of the Open Meeting Law Advisory Commission
Tuesday, October 29, 2019, 3:00PM

Approved on March 3, 2020

100 Cambridge Street, Room B of the Leverett Saltonstall Building
Boston, MA 02108

Members Present: Robert Ambrogi (OMLAC Chair), Massachusetts Newspaper Publishers Association designee; Hanne Rush, Attorney General's designee; Jeffrey Hull, Massachusetts Municipal Association designee

Attorney General's Staff Present: Carrie Benedon, Assistant Attorney General, Director, Division of Open Government; KerryAnne Kilcoyne, Assistant Attorney General, Division of Open Government; Elizabeth Carnes Flynn, Assistant Attorney General, Division of Open Government; Sarah Chase, Assistant Attorney General, Division of Open Government; Mira Netsky, Paralegal, Division of Open Government; Gabrielle Viator, Senior Policy Advisor/Assistant Attorney General

Others Present and Identified: John Hawkinson, Resident of Cambridge; Kyle Murray, Office of Senator Marc Pacheco; Jennifer Mercadante, Office of Representative Danielle Gregoire; David Rosenberg, Resident of Norfolk; Gretchen Van Ness, Office of Senator Becca Rausch; Jake Moldowry, Office of Senator Becca Rausch

Call to Order

Mr. Robert Ambrogi called the meeting to order at 3:09pm. Mr. Ambrogi, Ms. Hanne Rush, and Mr. Jeffrey Hull introduced themselves to those present. Mr. Ambrogi advised that Senator Marc Pacheco was not expected to be present, and that Representative Danielle Gregoire was expected to arrive later in the meeting.

Review and approval of draft minutes for May 14, 2019 Commission meeting

Mr. Ambrogi stated that the first order of business would be to review and approve draft minutes from the May 14, 2019 meeting. Mr. Ambrogi said that the minutes were circulated shortly before the meeting and asked if there were any comments or corrections to the minutes. Mr. Hull said that he did not have any comments or corrections. Ms. Rush moved to approve the minutes. Mr. Hull seconded the motion. **By unanimous vote (3-0), the minutes were approved.**

Mr. Ambrogi noted that at the last meeting, the Commission had agreed to try an experiment of making a phone number available for outside parties to dial in. Mr. Ambrogi said that those present in the room had witnessed that the first attempt at this experiment had failed, as the phone line was not working. Mr. Ambrogi said that the OMLAC would work on this in advance of the next meeting so that hopefully, next time, the phone line would work.

Status of bills pertaining to the Open Meeting Law filed in the Legislature

Mr. Ambrogi said that the next item on the agenda was a status update on bills filed in the legislature. Mr. Ambrogi asked if anyone from the Committee's staff could report.

Ms. Jennifer Mercadante introduced herself as Chief of Staff to Representative Gregoire and said that the Rep. had been planning to attend but had been called into a meeting. Ms. Mercadante said that all of the bills were still before the Joint Committee, and that staff in both the House and the Senate was doing due diligence on the bills, but that as of now, no action had been taken by the Committee.

Mr. Ambrogi asked for a reminder on the timing of the action to be taken. Ms. Mercadante said that she believed the Joint Rule 10 would be in early February; perhaps the first Wednesday in February. Ms. Mercadante said that the Senate docket had not yet been received, but that the others were before the Committee.

Mr. Ambrogi asked if hearings had been held on all of these bills, and Ms. Mercadante said that she believed they had. Mr. Ambrogi asked if there were any questions.

Mr. Hull said that he had a comment.

Discussion regarding the posting of meeting notices and consideration of whether posting meeting notices to a website should be mandated

Mr. Hull said that he was not sure which bill discussed the prospect of requiring meeting notices to be posted on a town's website, but that he knew the issue had come up and had done some outreach to get a sense of if this requirement would pose an issue. Mr. Hull said that he had received comments from a few communities in Western MA that had concerns, in part because of not having a website and/or because of not having internet in town.

Mr. Hull read emails from Ray Purington (Town Administrator, Gill), Thomas W. Hutcheson (Town Administrator, Conway), Kayce Warren (Town Administrator, Ashfield) and Mari Enoch (Town Administrator, New Marlborough).

Mr. Ambrogi said that this issue came up in the context of correspondence received and not in the context of a bill filed. Mr. Ambrogi noted that the correspondence read by Mr. Hull should be included with the minutes of the meeting. Mr. Ambrogi asked Director Benedon if the Division had looked into the issue.

Director Benedon agreed that the issue came up as the result of an email from a citizen who suggested mandatory web posting. Director Benedon said that in May, the Commission had asked the Division to look into whether this change could be mandated or whether a legislative change would be required. Director Benedon said that the Division had looked at the text of the Open Meeting Law (OML) and that it seemed clear that the OML authorizes the AG to prescribe particular methods of posting, and thus that the AG would have the ability to mandate web posting. Director Benedon said that there was also the question of whether this would be good policy. Director Benedon said that she had reached out to Mr. Hull as the representative of the Municipal Association and asked him to reach out to others. Director Benedon said that she

appreciated the feedback Mr. Hull had shared, and noted that reaching out to the Clerk's Association, as mentioned in one of the emails read by Mr. Hull, seemed like a great idea. Director Benedon said that the Division was looking to hear from the Commission as to whether given the feedback received, this policy change seemed valuable to pursue further.

Ms. Rush suggested that the Commission should consider trying to find out how many communities really do not have access to internet/do not have some sort of website. Ms. Rush said it was her understanding that a resource existed for towns to create and build their own website at minimal cost, and that she was curious how many towns did not at least use this resource.

Mr. Hull said that last night at a Board of Selectmen meeting, the Board was discussing a topic using a document posted on the town website, and a representative from the senior community chastised the Board for having the document on the website and not having it in hard copy at the senior center and at a couple of other locations. Mr. Hull said that the Commission needed to be mindful of recipients, and that a number of populations may not have access to computers. Mr. Hull expressed concerns about communities that do not have broadband capability to post on a website and about people who don't have access to computers or who are not as tech-savvy as others. Mr. Hull said that it would be one thing to make it an option, but that it was another thing to make it a mandate. Mr. Hull said that if the goal is to provide as much access as possible, he was not sure that mandating web posting would necessarily achieve that.

Mr. Ambrogi said that a study from a few years ago found about 40 communities without broadband access in Western MA. Mr. Ambrogi said that he tends to sympathize with the position that there are a number of people in the state who do not have consistent access to internet, and that he would hate to see web posting be the exclusive method of notification. Mr. Ambrogi said that the law now permits notices to be posted online and that he does not know that there is a need to make it more proscriptive than it is right now, but that he would entertain a motion if anyone felt otherwise.

Ms. Rush said that she concurred with both Mr. Ambrogi and Mr. Hull about the issues of access to internet and Broadband. Ms. Rush said that she saw the issues of whether a town government can post to a website and whether residents can access web postings as two separate issues. Ms. Rush said that if the AG's office took the position that a web posting was necessary, there should still be the requirement of a physical notice being posted, and that there would be a dual posting requirement. Ms. Rush said that she was not sure if this would be too much work, but that many public bodies do this anyway. Ms. Rush said that it did not sound like the Commission was in agreement about mandating.

Mr. Ambrogi agreed that there were two separate issues here and said that he did not intend to conflate them.

Mr. David Rosenberg (resident of Norfolk) noted that Ms. Rush had mentioned mytowngovernment.org. Mr. Rosenberg said that this site currently has postings from 21 MA towns and is either free or very low cost to use. Mr. Rosenberg said that the site provides a place for towns to put notices for people to read on the web. Mr. Rosenberg said that this platform also

has voice synthesis, so people can call a number and have notices and agendas read to them. Mr. Rosenberg said that it would be nice if there were a state service like that.

Mr. John Hawkinson (Cambridge) said that it might be worth considering making web posting mandatory with a waiver provision by the Division.

Mr. Ambrogi said that he was not inclined to make a motion on the issue today, and that he would leave this for another day unless anyone else wanted to make a motion.

Ms. Rush said that she wanted to hear more from the Division as to whether it would be prepared to revise the regulations at this point, as the Division recently held hearings on regulations and considered posting options and requirements at that time. Ms. Rush said that the Division could go back to look at public comments from those hearings and see whether towns expressed concerns about being required to use websites.

Mr. Ambrogi asked if the Division was hearing any feedback to that effect.

Director Benedon said that she was not with the Division when the previous regulations took effect, so she did not know offhand the extent to which comments were made on that issue. Director Benedon said that the Division hears from town clerks who say that they do not have a website, or that if they do have a website, there are dozens of boards and committees that all need to post notice but there are only one or two people who know how to post on the web. Director Benedon said that in investigations, for example, the Division might see that the Chair of a board posts notice and then sends a copy to the clerk to put on file. So even if there are one or two people in town who know how to post notice on a website, it might be others who, in practice, are posting physical notices.

Mr. Ambrogi said that this discussion had come up in response to a single piece of correspondence and suggested that the Commission would need to collect more information. Mr. Ambrogi said that there did not seem to be a pressing need for some sort of change in the regulations at this point. Mr. Ambrogi said that it sounded as though changes could be made by regulation, but that there were factors weighing against it. Mr. Ambrogi said that unless there were any further comments, he would suggest moving on to the next issue.

Public Comment

Mr. Ambrogi asked if any members of the public in attendance had comments.

Mr. Rosenberg said that he had become aware of a problem a number of public bodies face with respect to remote participation. Mr. Rosenberg said that an example is a state-wide commission with members from across the state, which holds meetings intended to be open to people from across the state. Mr. Rosenberg said that there have been situations wherein slightly less than a quorum attended the meeting, and members of the public came to the meeting prepared to provide input. Mr. Rosenberg said that this public body has adopted remote participation, and that some public body members call in remotely. Mr. Rosenberg said that a problem arises where there is less than a quorum of the public body physically in the room, and so the public body

cannot officially meet. Mr. Rosenberg noted that there would be a quorum if the public body members on the phone were counted. Mr. Rosenberg said that people have traveled extensively to attend the meeting, and that the public body has tight deadlines to produce something. Mr. Rosenberg said that the public body is stymied because under the OML, the public body cannot meet without a quorum in the room. Mr. Rosenberg said that he did not have a solution but wanted to make the OMLAC aware of the situation. Mr. Rosenberg said that he was aware of other public bodies facing similar problems. Mr. Rosenberg suggested that H2775 would not quite solve the problem but would provide a partial solution, as the bill would make it possible for a public body to post a meeting notice and to post notice of internet discussion. Mr. Rosenberg said that with this bill, if a quorum does not show up, the public body can have an internet discussion. Mr. Rosenberg said that he wanted to make the Commission aware of this problem and aware of H2775 as a solution.

Mr. Ambrogi asked Mr. Rosenberg if he had witnessed this directly, and Mr. Rosenberg said yes. Mr. Ambrogi asked if he had a sense of how often this occurred, and Mr. Rosenberg said that the public body tried to meet monthly. Mr. Ambrogi asked if Mr. Rosenberg could identify the public body, and Mr. Ambrogi said that he preferred not to, but said that the public body had three consecutive attempts at monthly meetings and failed to convene a quorum at all three.

Mr. Ambrogi thanked Mr. Rosenberg and asked if any Commission members had comments. No Commission members had comments. Mr. Rosenberg asked Director Benedon if she had any comments.

Director Benedon said that Mr. Rosenberg had reached out to the OML hotline and brought this issue to the Division's attention. Director Benedon said that she did not have a sense of how often this happens. Director Benedon said that the issue is that the OML requires that to have remote participation, there must be a quorum present in the meeting room. Director Benedon said that if less than a quorum is in the room, the public body cannot meet. Furthermore, if there would be a quorum counting public body members on the phone, the public body cannot discuss its business because this would be deliberation outside of a meeting.

Items Not Reasonably Anticipated

Mr. Ambrogi asked for any other public comment and asked if there were any other matters that had not been reasonably anticipated that Commissioners wished to raise. No Commissioners raised unanticipated issues.

Schedule Next Meeting

Mr. Ambrogi suggested scheduling the next minutes in six months or so. The Commission agreed to aim to meet in late May. Director Benedon reminded the Commission that the Division files an annual report due for the year on January 31st. Director Benedon said that in the past, the Commission has met soon after that date to hear a recap from the prior year. Director Benedon said that it was up to the Commission when to schedule the meeting but noted that the next meeting would include a report on 2019 activities. Mr. Ambrogi suggested meeting in February or March. Ms. Rush and Mr. Hull agreed.

Adjourn

Ms. Rush made a motion to adjourn. Mr. Hull seconded the motion. **The meeting concluded at 3:43pm.**

List of Documents Used by the Commission during the Meeting

1. OMLAC Meeting Notice for October 29, 2019
2. Draft Minutes from OMLAC Meeting of May 14, 2019
3. October 28, 2019 Email from Ray Purington (Town Administrator, Gill) to MMA
4. October 28, 2019 Email from Thomas W. Hutcheson (Town Administrator, Conway) to MMA
5. October 28, 2019 Email from Kayce Warren (Town Administrator, Ashfield) to MMA
6. October 28, 2019 Email from Mari Enoch (Town Administrator, New Marlborough) to MMA



Brittney Franklin <bfranklin@mma.org>

FW: STAM Listserv- FW: Open Meeting Law Advisory Committee

Ray Purington/Gill Selectboard <administrator@gillmass.org>

Mon, Oct 28, 2019 at 11:28 AM

To: bfranklin@mma.org

Cc: Andrea Llamas <allamas@northfieldma.gov>

Hi Brittney,

In Gill, our official posting location is the website. (That decision was made long enough ago that it doesn't show up on the OML's list of posting locations for cities and towns. It's on our radar to get the Selectboard to officially adopt the website, again, so we can notify & update the OML list.)

We prefer the website because our Town Hall doesn't lend itself to have a 24x7 illuminated location to display the postings. The Town Clerk does the postings, with the Assistant Town Clerk and me as backups. Having physical postings at some other town-owned property wouldn't be convenient.

So, we have our own reasons for what we do. I suspect every other city and town has its own unique set of circumstances and reasons. For the AG's Office to require a specific methodology is overstepping their bounds. If the topic ever grows substantially beyond "a communication from a constituent" – a single message from a single person! – then the AG's Office could explore further changes.

A second point – what about towns that don't have an official municipal website? As far as I know, there is no requirement for a town to have a digital presence. For example, little bitty Monroe, population 121, doesn't have a website. Could a requirement to post meetings on the town's website be construed as an unfunded mandate?

Ray

Ray Purington

Town Administrator

Town of Gill

325 Main Road

Gill, MA 01354

P: 413 863 9347 F: 413 863 7775

administrator@gillmass.org www.gillmass.org

[Quoted text hidden]



Virus-free. www.avg.com

[Quoted text hidden]



Brittney Franklin <bfranklin@mma.org>

Open Meeting Law Advisory Committee

Tom Hutcheson <selectboard@townofconway.com>

Mon, Oct 28, 2019 at 9:36 AM

To: "bfranklin@mma.org" <bfranklin@mma.org>

Brittney—

Small towns would definitely feel a pinch here—do all towns even have websites? Some might not, which would make this an unfunded mandate. Perhaps the state would sponsor a state-wide posting website. (I know, I know....) Postings are of course the responsibility of the Town Clerk, so checking with their association would be helpful, if you haven't (and I know, they eschew joining MMA).

The difficulty of course is that there are two disadvantaged populations. Having a physical posting place may disadvantage the less mobile, but having it online might disadvantage lower-income residents, as not everyone is online. Yes, there's always (we hope) a library, but that's as inconvenient as going to Town Hall.

If the point is to make the information as widely and equally available as possible (which I think it is), the point of communication most people have is their telephone. I doubt many people would have the patience to sit through a listing of meetings, but a directory by public body might work. It sounds clunky, though.

Thanks for your work on this—

--Tom

Thomas W. Hutcheson

Town Administrator

32 Main St., P.O. Box 240

Conway, MA 01341

www.townofconway.com

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From: stammembers@googlegroups.com <stammembers@googlegroups.com> **On Behalf Of** Andrea Llamas
Sent: Monday, October 28, 2019 8:37 AM
To: STAM (stammembers@googlegroups.com) <stammembers@googlegroups.com>
Subject: STAM Listserv- FW: Open Meeting Law Advisory Committee

Last chance to comment on this issue with the AG's office before the 29th deadline – if you have any feeling either way....

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Brittney Franklin

Senior Legislative Analyst

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Brittney Franklin <bfranklin@mma.org>

Open Meeting Law Advisory Committee

Kayce Warren <townadmin@ashfield.org>
To: "bfranklin@mma.org" <bfranklin@mma.org>

Mon, Oct 28, 2019 at 10:36 AM

Good Morning,

I wanted to send a few comments regarding proposed changes to the Open Meeting Law.

First, small communities in the western hill towns of Massachusetts do not have many full-time staffers—which is a posting issue no matter whether a posting is online or on a physical bulletin board. Second, most towns do not have IT staff to assist with website postings. Third, Ashfield, like many of the Towns around us does not have broadband, nor to many residents have access to the internet. Ashfield is in process of installing a broadband next work, but upon completion, may not serve more than 60% of residents. This means that if the law requires meetings to be posted online, the information is not guaranteed to reach even as many residents as drive past Town Hall and check the bulletin board. Honestly, in my entire 23+ years as a municipal employee, I have observed that the Legislature does not take into account the unique characteristics of the western part of the state. What is good for Boston and the surrounding environs is not necessarily what is best for Western Mass Towns.

Thank you for the opportunity to share comments on the proposed changes to the Open Meeting Law.

Sincerely,

Kayce D. Warren

Town Administrator

Town of Ashfield

412 Main Street, PO Box 560

Ashfield MA 01330

www.ashfield.org

Voice: 413-628-4441 x7

Fax: 413-628-0228

The Secretary of State deems email a public record.



Brittney Franklin <bfranklin@mma.org>

Official posting site of agenda

Mari Enoch <nmbos@newmarlboroughma.gov>

Mon, Oct 28, 2019 at 9:09 AM

To: bfranklin@mma.org

Dear Brittney,

I am writing with feedback on the proposed requirement to post agendas on Town websites. In general, I believe that posting electronically is the best way for the public to stay informed. That being said, I have some concerns. Just last week there were power outages that covered virtually the entire town, including Town Hall. Though Town Hall was only out for about 18 hours, some areas were out for more than three days. We were able to handwrite an agenda and have the Town Clerk physically post it officially on our bulletin board during this outage. As soon as power was restored, the agenda was posted electronically, but it was not within the legal 48 hours. Power outages are common here and it is entirely possible that a requirement to post electronically could cause postponement of meetings. I heartily endorse a best practice of posting agendas on the website 48 hours ahead of a meeting, but hope that Towns can continue to use a manual method for official posting. I recognize that a generator at Town Hall would have helped the situation, but then again, few people in Town could have accessed it electronically until the power was restored. Perhaps a requirement to post both electronically and physically but with the stipulation that the physical posting is still the official one?

Thanks,

Mari

Mari Enoch
Town Administrator
Town of New Marlborough
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(413) 229-8116 fax (413) 229-8253