

Minutes of the Open Meeting Law Advisory Commission
February 12, 2014
100 Cambridge Street, Room 2A, Boston, MA

Members present: Robert Ambrogi, Chair, Massachusetts Newspaper Publishers' Association designee; Loretta Lillios, Attorney General's designee; Maureen Valente, Massachusetts Municipal Association designee; Senator Kenneth Donnelly, Chairman of the Joint Committee on State Administration and Regulatory Oversight; and Representative Peter Kocot, Chairman of the Joint Committee on State Administration and Regulatory Oversight (joined the meeting at 10:13 AM).

Attorney General's Staff present: Juliana deHaan Rice, Deputy Chief, Government Bureau; Amy Nable, Assistant Attorney General, Director, Division of Open Government; Hanne Rush, Assistant Attorney General, Division of Open Government; and Laurie Zivkovich, Legal Analyst, Division of Open Government.

Others present: Matthew L. Hartman, Esq., Legal Counsel, Office of Senator Kenneth Donnelly; John Hawkinson, Cambridge, MA; Katie McCue, Massachusetts Municipal Association; David Rosenberg, Norfolk, MA; and Joanna Baker, Brookline, MA.

Open Meeting (Chair)

Chair Robert Ambrogi called the meeting to order at 10:04 AM and announced that Representative Kocot has been delayed by traffic.

Reorganization of the Commission for 2014 – Election of Chair

Mr. Ambrogi stated that traditionally the chair of the Commission is elected to a one-year term. He asked for nominations for a new chair. Ms. Lillios thanked Mr. Ambrogi for his service and nominated Ms. Valente for the position of Chair of the Commission. The motion was seconded by Senator Donnelly. **By unanimous vote (4-0), Ms. Valente was elected Chair of the Commission.** Ms. Valente thanked her fellow Commission members.

Review and Approval of Draft Meeting Minutes from September 10, 2013

Ms. Valente asked if there were any comments on the meeting minutes. Ms. Lillios thanked the Attorney General's Office for its assistance and moved to adopt the draft meeting minutes from September 10, 2013. The motion was seconded by Mr. Ambrogi. Ms. Valente noted one typographical error on page 4: the word "tying" in the 17th line of print from the bottom of the page should be "trying." **By unanimous vote (4-0), the minutes were approved, changing the word "tying" in the 17th line of print from the bottom of page 4 to "trying."**

Ms. Valente noted that she attended the Massachusetts Municipal Association meeting last month, and she commended Ms. Nable and Kevin Batt for doing a fabulous job on the Open Meeting Law update.

Designation of Repository and Custodian of Open Meeting Law Advisory Commission Records

Mr. Ambrogi stated that he put this item on the agenda because the Commission received a public records request since its last meeting, and the Commission does not have an established procedure or repository for Commission documents. He was able to respond to the request. He suggested that the Attorney General's Office (the "AGO") serve as the repository. Ms. Lillios

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first wanted to hear from the AGO about its ability and willingness to do so, and she noted that there is a distinction between procedure and being a repository. Mr. Ambrogi stated that he has received emails as the chair of the Commission, and he is concerned with preservation of emails sent to the chairs of the Commission.

Representative Kocot joined the meeting.

Ms. Valente questioned the impact to her town of emails she receives as Commission chair on her town email. Ms. Nable said that while she did not have the answer as to how to obtain emails from prior chairs, the AGO is happy to provide administrative support to the Commission by serving as the physical repository for documents and helping it search those records in response to public records requests. The AGO is not the official custodian of the Commission's records, however, and the Commission remains the responsible party. Ms. Valente stated that if she receives emails as the chair of the Commission, she will forward them to Ms. Zivkovich to print out and keep a hard copy.

Report from the Attorney General's Division of Open Government, regarding the Open Meeting Law and the Activities of the Division of Open Government

Ms. Nable reviewed the Division of Open Government's 2013 Annual Report, noting that the number of complaints filed with Division was slightly higher than in the previous year and that violations were found in just over half of the decisions. The Division currently has 79 open complaints. For Spring 2014, the Division is scheduled to participate in three training events, and it is planning to conduct four regional trainings, with dates confirmed for Pittsfield and Provincetown. The Division is working on new educational material for this year, and it is open to any suggestions from the Commission on areas where additional guidance is needed. Since the Commission's last meeting, the top five categories of questions received by the Division are 1) meetings, including meeting on holidays and attendance at workshops; 2) proper/improper purposes for executive sessions; 3) procedures for posting notice, including cancellations and continuances, particularly in light of snow storms; 4) notice for agendas, including specificity and items added within 48 hours; and 5) the definition of a public body, particularly subcommittees. Ms. Nable requested that the Committee let her know if this list of questions is no longer helpful to the Committee. Mr. Ambrogi asked if there are any court actions pending. Ms. Nable is not aware of any.

Status of Bills Pertaining to the Open Meeting Law Recently Filed in the Legislature

For upcoming hearings on the legislative bills, Representative Kocot asked if the Attorney General's Office (AGO) could look at the content of the bills in the context of what has happened over the last year or so. He also invited members of the Commission to do the same. Senator Donnelly stated that in his five communities, the biggest question or problem with the Open Meeting Law (the "OML") is its applicability to volunteer commissions. He is concerned that in all five communities volunteers are saying it is not worth it. He used the example of a tree commission, where the issues on which it decides have to be decided on by the board of selectmen anyway. He considers another problem being that town counsels are being very conservative in order to protect towns. He also hears of confusion over quorums and serial communication. He asked about redefining the OML or cleaning up areas so as not to discourage participation by volunteers who are not final decision makers. Representative Kocot

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posed the scenario of when is a meeting called by a legislator looking for information a legislator's meeting and when is it a meeting of a town board. Ms. Nable acknowledged that the questions regarding deliberation and a public body's attendance at another's meeting are often the subject of calls to the Division's OML hotline. With respect to legislative commissions, while the legislature is exempt from the OML, legislative commissions frequently are public bodies subject to the OML.

Both Mr. Ambrogi and Ms. Valente commented positively on S. 1458. Mr. Ambrogi noted that the bill has been redrafted, and its current number is S. 1985.

Ms. Lillios read aloud from the OML the statutory mission of the Commission, and she cautioned the Commission to remain true to the language of its enabling legislation. Representative Kocot clarified that his earlier invitation for comment on the legislative bills was for the members' views as individuals and not as a board.

Public Comment

Ms. McCue thanked Ms. Nable for participating in the Massachusetts Municipal Association's meeting and workshop. She highlighted S. 2843, noting that the continuance of the bill is a priority for the MMA.

Ms. Baker commented in favor of H. 2908 and the allowance of participation in internet discussions. Representative Kocot responded, citing to the approximate number of communities in western Massachusetts without high speed internet. Ms. Baker cited to statistics regarding access to broadband through public libraries. Mr. Ambrogi disagreed with Ms. Baker's statistics. Ms. Baker opined that she sees the internet as a benefit, offering more accessibility than physical attendance. Mr. Ambrogi stated that he sees the answer as webcasting and not eliminating physical meetings.

Mr. Rosenberg commented on H. 2908, noting that the bill allows public internet discussions as an option. He supports the bill and also has sent to the Joint Committee areas to be improved. Representative Kocot asked Mr. Rosenberg to speak to the areas of western Massachusetts that do not have in-home access to high-speed internet and in some cases no, or limited, cell phone service. Mr. Rosenberg reviewed his research and statistics regarding broadband access in 160 districts and stated that the Massachusetts Broadband Institute is working to increase infrastructure. Representative Kocot disagreed with Mr. Rosenberg's numbers, stating that they do not reflect home internet access. Representative Kocot also explained the large geographic distance involved in the districts cited by Mr. Rosenberg. The discussion continued about library versus in-home internet access, broadband versus dial-up service, the time needed to download documents, and information available on the Wired West website.

Mr. Hawkinson stated that his understanding of H. 2908 is that it is an election to use public internet discussions. He questioned why it is a conflict and why it cannot be like remote participation. Representative Kocot commented on trying to institute the OML for the entire Commonwealth and not just for Cambridge or specific areas.

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Mr. Rosenberg commented that H. 2908 is consistent with remote participation, stating that the AGO's guidance on remote participation is that it is a local option but shouldn't be used where it is not appropriate. Mr. Rosenberg stated that he has sent three requests to the AGO, which have been acknowledged but not answered, for advisory opinions asking if the AGO could explore public internet discussions like remote participation.

Mr. Ambrogio wants to make clear that H. 2908 would allow meetings to take place solely on the internet, even though internet meetings have been characterized as being optional and not mandatory. He cited to statistics from the Pew Research Center regarding the number of adults who do not use the internet, emphasizing that this issue is about not just access but also lack of savvy and understanding. He opined that it would be a bad policy.

Ms. Lillios stated that the main thrust of this bill is not to enhance public participation; it addresses the facility of community members to convene in a more convenient fashion. It is always a balance. The discussions have been appropriate and interesting, but she is not sure that the Commission will come to a consensus. The issue has been discussed thoroughly, and the Commission will continue to accept public insight. Ms. Valente concurred.

Mr. Rosenberg stated that the AGO's Guide discusses striking a balance, and H. 2908 tries to strike that balance. It does make a distinction between meetings and deliberations, and it envisions the benefits of asynchronous discussions.

Items Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting
There were no items.

Schedule Next Meeting

Ms. Lillios stated that the Commission has tended to meet quarterly, and she suggested meeting every six months instead. Representative Kocot requested that the Commission members be mindful of the legislative schedule, which wraps up July 31st. The consensus was to look for a mid-June meeting and then go to a six-month meeting schedule after that.

Adjourn

Senator Donnelly moved to adjourn the meeting, seconded by Representative Kocot. **By unanimous vote, the meeting adjourned at 11:00 AM.**

List of Documents Used by the Commission at the Meeting

1. Meeting Notice for February 12, 2014
2. Draft Meeting Minutes for September 10, 2013
3. Division of Open Government 2013 Annual Report
4. H. 2786: *An act to improve the Open Meeting Law*
5. H. 2843: *An act to exempt the deliberation of public bodies at town meeting from the Open Meeting Law*
6. H. 2908: *An act to enhance technology in civic engagement*
7. H. 2817: *An act relative to the Open Meeting Law*
8. S. 975: *An act further regulating town meeting notices*

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9. H. 2867: *An act relative to the use of audio or video recordings as minutes of public bodies*
10. H. 2846: *An act to improve access to public records*
11. S. 1458: *An act relative to local commissions on disability*
12. The Open Meeting Law G.L. c. 30A
13. *Before the Joint Committee on State Administration and Regulatory Oversight, Testimony of the Massachusetts Newspaper Publishers Association on Open Meetings and Public Records Laws*, dated October 15, 2013

Approved: June 12, 2014