

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

Members present: Maureen Valente, Chair, Massachusetts Municipal Association designee; Robert Ambrogi, Massachusetts Newspaper Publishers Association designee; Loretta Lillios, Attorney General's designee.

Members absent: Representative Peter Kocot, Chairman of the Joint Committee on State Administration and Regulatory Oversight; Senator Kenneth Donnelly, Chairman of the Joint Committee on State Administration and Regulatory Oversight.

Attorney General's staff present: Amy Nable, Assistant Attorney General, Director, Division of Open Government; Sarah Kalis, Legal Intern, Division of Open Government; Juliana deHaan Rice, Deputy Chief, Government Bureau; Mallory Morales, Paralegal, Division of Open Government; Benjamin Meshoulam, Senior Policy Advisor, Executive Bureau.

Others present: Matthew Hartman, Legal Counsel, Office of Senator Kenneth Donnelly; Matthew Rafuse, Research Analyst, Massachusetts House of Representatives; John Hawkinson, Cambridge, MA.

Open Meeting (Chair)

Chair Maureen Valente called the meeting to order at 10:04 AM.

Review and approval of draft minutes from February 12, 2014

Ms. Valente thanked the Attorney General's office and former Legal Analyst, Laurie Zivkovich, for their assistance and moved to adopt the draft meeting minutes from February 12, 2014. **By unanimous vote (3-0), the minutes were approved.**

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

a. Update on complaints, training, and inquiries

Ms. Nable introduced new staff members: Mallory Morales, Division Paralegal, and Sarah Kalis, summer legal intern for the Division. Ms. Nable reviewed the Division of Open Government Update for the OMLAC. Since the last OMLAC meeting in February, the Division has issued 55 determinations, 3 of which included a referral to a hearing (OML 2014-24, OML 2014-41, and OML 2014-42). Ms. Nable noted that the Hamilton Finance Committee had waived a hearing and paid a \$500 penalty to the state, and that the Division was discussing a possible settlement of the Hampshire Council of Governments matter. She expects that the Wayland School Committee matter will go to a hearing, and noted that a pre-hearing conference was scheduled but had been postponed. The Division closed 36 cases where the complainant filed with the public body but did not request further review. The Division currently has 44 open complaints, 33 of which were received since the last OMLAC meeting.

Ms. Nable reported that the Division has conducted 11 training events since the last meeting, and that Assistant Attorneys General Jonathan Sclarsic and Mark Higgins were currently in Falmouth teaching a class for the Massachusetts Town Clerks Association. The Division recently introduced training webinars, and has one scheduled for next week. Thirty people have registered

to attend that online training. The Division is also currently planning regional trainings for the fall. Ms. Nable listed the top five categories of questions received by the Division, and noted that the list remains similar to those noted in the last OMLAC meeting report.

Mr. Ambrogi asked whether the result of the Hamilton Finance Committee settlement is documented and available on the Division's website. Ms. Nable answered that there is a settlement agreement, but that it is not on the website as the website is used for educational guidance. She noted, however, that the agreement is a public record and available upon request. Mr. Abrogi asked who attends the Division's trainings. Ms. Nable stated that for regional trainings it is common for the host community to invite all members of local boards. Audience members often include concerned citizens and members of the media. Webinars have proven particularly popular with municipal clerks and state agency counsel. Ms. Valente asked if these webinars are requested or scheduled. Ms. Nable answered that webinars are scheduled for once a month but if there is significant demand from a single community, the Division would consider scheduling more.

b. Michelle Bailey e-mail-Regarding OML Declination 6-2-14

Ms. Nable summarized the content of Ms. Bailey's email which expressed concern regarding the Division's 6-2-14 declination to review a complaint against a body that had disbanded. Ms. Nable stated that since the Division's approach is to enforce with an eye towards compliance, it generally declines to review complaints against bodies that no longer exist. Where there is no public body in existence to comply with an order, the Division feels it makes sense to decline to investigate but offer general guidance to the municipality or agency on relevant legal requirements. If complaints against temporary bodies contain particularly egregious allegations, likely to result in a financial penalty or equitable relief if proven, the Division may still choose to review the matter. Ms. Valente asked to clarify whether the Division's decision to review or decline complaints against temporary bodies is automatic. Ms. Nable informed her that the decision is fact specific. Ms. Valente asked if the Division's reply is sent to the entity that created the temporary committee. Ms. Valente stated that the parent board holds ultimate responsibility for the action of a committee they create. Ms. Nable stated that the declination to which Ms. Bailey refers was sent to the complainant, copied to the Town Clerk and to the chair of the defunct committee. Ms. Nable commented positively towards Ms. Valente's suggestion to send future such declinations to parent bodies of temporary committees as well. Mr. Ambrogi asked how the Division would address recommendations made by temporary committees that may have violated the law in the process. Ms. Nable responded that the Division may choose to review complaints where the allegations cast doubt on the validity of action taken by the body prior to its dissolution. Mr. Abrogi questioned how the Division can know if that is the case without first conducting a full investigation. Ms. Nable stated that the Division can generally ascertain this much from the complaint and public body response. Mr. Abrogi and Ms. Valente inquired whether Ms. Bailey is to receive a reply to her email. Ms. Nable said she believed the email was acknowledged by the Division, but will check to confirm a reply.

Ms. Lillios requested that a copy of draft minutes be sent to Ms. Bailey. Ms. Nable agreed the Division would do so.

Retention of Open Meeting Law Advisory Commission Notices

Ms. Nable stated that while the Division provides administrative support to the Commission, it is not the official custodian of OMLAC notices. The Office of the Attorney General posts notices for the OMLAC on its website, and has retained those notices since the Division and the OMLAC were created. The Statewide Records Retention Schedule says that final meeting notices need only be retained for one year after the meeting occurs, however. The Division recommended that the OMLAC seek permission from the Records Conservation Board to destroy all meeting notices older than one year, per the retention schedule. Ms. Nable provided the Commission with Form RCB-2U Universal Application for Destruction Permission. Ms. Valente asked if any notices address outstanding issues. Ms. Nable was not aware of any.

Mr. Hawkinson expressed his opinion that notices serve as a useful table of contents for OMLAC minutes.

Ms. Valente said that she would prefer that the Commission follow the retention schedule. Mr. Ambrogi commented that the notices are unlikely to take up much space and retaining them would satisfy requests from the public. He moved to retain the agenda listings. Ms. Lillios declined to second the motion. She agreed with Ms. Valente that the Commission should follow the retention schedule put into place for state agencies. Ms. Valente also declined to second the motion. Motion failed. Ms. Lillios moved to authorize the Chair to sign form RCB-2U. Ms. Valente seconded. Ms. Valente and Ms. Lillios voted in favor of the motion, and Mr. Ambrogi voted against. **Motion approved by 2-1 vote to authorize Chair to sign and submit form RCB-2U.** Ms. Nable agreed to submit the application to the Records Conservation Board by June 25, 2014.

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

Mr. Hartman reported on the status of four bills currently pending in the legislature. H.3945 has been referred to the House Committee on Ways and Means. S.1985 and S.2121 have both been ordered to a third reading. H.2843 is still with the Joint Committee on State Administration and Regulatory Oversight but he anticipates a favorable report shortly. Ms. Valente noted that this bill is important to the Massachusetts Municipal Association, and asked whether Sen. Donnelly had his own draft. Mr. Hartman confirmed that he did, and that he had discussed the bill with the MMA.

Public Comment

No public comment.

Items not Anticipated

No items.

Scheduling next meeting

Ms. Valente suggested that the next meeting be scheduled in early December and asked Ms. Morales to send some potential dates to the members.

Adjourn

Ms. Valente moved to adjourn the meeting. **By unanimous vote (3-0), the meeting adjourned at 10:32 AM.**

List of Documents Used by the Commission at the Meeting

1. Meeting Notice for June 12, 2014
2. Draft Meeting Minutes for February 12, 2014
3. Division of Open Government Update for OMLAC-June 12, 2014
4. Michelle Bailey e-mail-Regarding OML Declination 6-2-14
5. Form RCB-2U-Universal Application for Destruction Permission (Paper and Electronic)
6. H.2843: *Ac Act to exempt the deliberation of public bodies at town meeting from the Open Meeting Law*
7. S. 2121: *An act further regulating town meeting notices*
8. H.3945: *An act to improve access to public records*
9. S.1985: *An act relative to local commissions on disability*