

Minutes of the Open Meeting Law Advisory Commission
November 29, 2010
One Ashburton Place, 21st Floor, Boston, MA

Members present: Loretta Lillios, Robert Ambrogi, Peter Hechenbleikner

Members absent: Sen. Brian Joyce, Rep. Steve Walsh

Others present: John Robertson, Massachusetts Municipal Association; Britte McBride, Director, Division of Open Government, Attorney General's Office; Jonathan Sclarsic, Assistant Attorney General, Division of Open Government, Attorney General's Office; Philip Mantyla, Division of Open Government, Attorney General's Office; Lisle Baker, Alderman in Newton

Chair Loretta Lillios opened the meeting at 9:30am

Approval of Minutes of 10-25-10

Changes suggested by Peter Hechenbleikner which Jonathan Sclarsic handed out. Mr. Hechenbleikner moves to adopt corrected minutes from October 25, 2010 meeting, seconded by Robert Ambrogi. **With unanimous consent, minutes approved.**

Report from Britte McBride, Director of the Division of Open Government

Britte McBride welcomed Philip Mantyla who will serve as the new Paralegal in the Division of Open Government. Mr. Mantyla will be a resource to members of the commission regarding any questions or issues that may arise.

Currently, the Division of Open Government (the "Division") has 47 active complaints. The Division closed 4 cases within the last month: Methuen City Council, Peabody School Committee, Dennis Board of Selectmen, and Westfield School Committee.

The Division has also conducted training workshops at the Massachusetts Association of School Committees, Massachusetts Association of Regional Schools, Gloucester Community Arts Charter School, Western Massachusetts Assessor's Association, and the Central Massachusetts Regional Planning Council.

The Division is planning to schedule 4-5 regional trainings sometime after the new year. These will be open to the public. The office would like to conduct one per month. The Division is looking into planning webinars as well.

Questions/Comments:

When asked by Loretta Lillios if the Division received the attendance they had hoped for at the Gloucester training, Ms. McBride answered that all the board members did attend which was what she had hoped for.

Peter Hechenbleikner suggested that the Division schedules training events far enough in advance so people will be able to make it. Mr. Hechenbleikner also stated that the Massachusetts Municipal Association may be able to help find venues for the training and advertise the training in the monthly "Beacon."

Robert Ambrogi asked for a rundown of the closed cases. According to Ms. McBride, the Division ordered the Methuen City Council to create and release minutes of the executive session that was in dispute. In this case, the Division applied the old Open Meeting Law because the violation occurred before the revised law was in effect. The Peabody School Committee case was closed because the Division did not receive a follow up complaint from the complainant. The Dennis Board of Selectmen case was closed out when the Board released the minutes that were in dispute. The Westfield School Committee case was closed because the alleged violation occurred under the old Open Meeting Law and the complaint was not filed before the Attorney General's Office took jurisdiction.

Peter Hechenbleikner asked whether or not the Division plans to post any decisions on their website. Britte McBride answered, yes the Division does plan to build a library of decisions in the future and post them online.

Loretta Lillios asked if the Division has received any advisory opinion requests and have any been issued? Britte McBride responded that while the Division has received requests, they have not issued any formal advisory opinions. Jonathan Sclarsic clarified that the Division does answer some requests informally on a case by case basis.

Discussion on Remote Participation

Discussion opened with Loretta Lillios posing the question, when is remote participation appropriate? Should there be limits on remote participation? Ms. Lillios talked about a good reason/good cause requirement which the commission did not define at the last meeting. Should there be a limit on how many times a board has a remote participation?

Peter Hechenbleikner stated that he feels local governments should define limits and reasons why and when remote participation can be used. Mr. Hechenbleikner was concerned with setting a number. He suggested leaving it to local governments to come up with while following parameters set up by an advisory opinion.

Robert Ambrogi cautioned that a public body using remote participation needs to make sure any remote member can be heard. Mr. Ambrogi agreed with the good cause requirement and suggested that the Attorney General's Office allows cities and towns to set parameters on how remote participation is conducted.

Peter Hechenbleikner asked Britte McBride, when does the Attorney General's Office plan to issue any advisory on the issue? Ms. McBride answered that the process does take time but she hopes to have an opinion by February 2011. Mr. Hechenbleikner suggested

that the Division might want to coordinate scheduled regional trainings with the required public hearings on the topic. The Division might get more input and participation.

Lisle Baker, Alderman, City of Newton in attendance suggested that there may be a window of opportunity to discuss this topic at the Massachusetts Municipal Association Annual Meeting in January. Mr. Baker stated that he does see an advantage in allowing for remote participation.

Loretta Lillios stated that it is her strong view that the Attorney General's Office should expressly state that members of local public bodies should make every effort to meet in person rather than remotely if at all possible.

Peter Hechenbleikner cautioned that the decision to use remote participation should be left up to the community as not to discourage disabled individuals from serving on public bodies.

Robert Ambrogi feels that whoever is chairing the meeting should be physically present. Mr. Ambrogi would like to see people physically present but the decision on remote participation should be up to the city or town and the Advisory Opinion should make it clear that it is not a requirement that a city or town allow remote participation.

Discussion about Potential Legislative Amendments to G.L. c. 30A §§ 18-25

Robert Ambrogi on behalf of the Massachusetts Newspaper Association (MNPA) made 4 recommendations for potential amendments to the Open Meeting Law. Potential amendments were distributed to the board members and others present.

The board focused their discussion on section 23(c) which contains the word "intentional." It is the recommendation of Mr. Ambrogi and the MNPA to omit the word "intentional" to read that the Attorney General has authority to impose a fine for each violation, not necessarily intentional. Mr. Ambrogi contends that because the law states the Attorney General can fine a board for an "intentional" violation it will make it nearly impossible to find intent from a board. He feels that it is harder to find intent on part of a board rather than an individual. Mr. Ambrogi states that the word "intentional" was a typographical error.

Peter Hechenbleikner stated that he is not in favor of any legislative amendments at this time. This law is new and untried and before making amendments we should fully implement the law and see what works and what does not.

Loretta Lillios stated that she agrees with Mr. Hechenbleikner. Ms. Lillios stated that she believes in the educational purpose of the Open Meeting Law. The vast majority of violations in the past were because of either a lack of education or knowledge of the law.

Lisle Baker pointed out that courts have authority to determine whether or not this was a typographical error. Mr. Baker asked, is it really necessary to change the wording?

Robert Ambrogi stated that only individuals can have intent, not a board.

Peter Hechenbleikner moves to point out to the Attorney General that there appears to be a typographical error in section 23(c) which can be addressed through an advisory opinion or by minor legislation, seconded by Robert Ambrogi. **With unanimous consent, motion approved to point out to the Attorney General that there appears to be a typographical error in section 23(c) which can be addressed through an advisory opinion or minor legislation.**

Open Session for Topics Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting

The Committee discussed whether or not a December meeting would be necessary. The Committee decided that it was not.

Peter Hechenbleikner moves to reappoint Loretta Lillios as chairperson for 2011, seconded by Robert Ambrogi. **With unanimous consent, motion approved to reappoint Loretta Lillios as chairperson for 2011.**

Scheduling Next Meeting

Britte McBride asked for agenda items to be submitted the week before the next meeting.

Peter Hechenbleikner stated that he understood that the next area for discussion of a regulation of the Advisory Opinion is the definition of public bodies. Mr. Hechenbleikner asked, what is the schedule for that process?

Britte McBride explained that it will be different than the remote participation issue. Ms. McBride would like the Attorney General's Office to go back to District Attorney decisions and court decisions and would like to put together something more substantive. She would like to limit comments and feedback and hopes to derive a test.

Peter Hechenbleikner asked to include on the agenda of the next meeting discussion on the definition of a public body and to view what the Attorney General's Office has come up with in terms of a test.

Next meeting was scheduled for Friday January 14, 2011 at 9:30 AM.

Meeting adjourned by Loretta Lillios at 10:30 AM.

List of Documents used by the Commission at the Meeting:

1. Meeting Agenda for November 29, 2010.
2. Draft minutes for October 25, 2010 meeting.
3. Revised minutes for October 25, 2010 meeting.
4. Memorandum from Robert J. Ambrogi, Esq., Massachusetts Newspaper Publishers Association to the Open Meeting Advisory Commission regarding recommended amendments to the Open Meeting Law.