

Minutes of the Open Meeting Law Advisory Commission
February 13, 2013
One Ashburton Place, 21st Floor, Boston, MA

Members present: Peter Hechenbleikner, Chair, Massachusetts Municipal Association designee; Robert Ambrogi, Massachusetts Newspaper Publishers' Association designee; Loretta Lillios, Attorney General's designee; Rep. Peter Kocot, Chairman of the Joint Committee on State Administration and Regulatory Oversight.

Members absent: Sen. 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; Jonathan Sclarsic, Assistant Attorney General, Division of Open Government; Hanne Rush, Assistant Attorney General, Division of Open Government; Philip Mantyla, Paralegal, Division of Open Government; Aaron Kravitz, Director of New Media and Publications; Benjamin Meshoulam, Policy Advisor, Policy and Government Division.

Others present: Katie McCue, Massachusetts Municipal Association; David Rosenberg, Norfolk, MA; Ron Coler, Ashfield Board of Selectmen, Ashfield, MA; Susan Clark, Ashfield Board of Health, Ashfield, MA; Brian Clark, Ashfield, MA.

Chair Peter Hechenbleikner called the meeting to order at 10:07AM.

Mr. Hechenbleikner announced that this will be his last meeting, as he is retiring in the coming months. Maureen Valente will be taking his seat on the Commission as the Massachusetts Municipal Association ("MMA") representative.

Mr. Hechenbleikner announced that the Commission will put off reorganization until Robert Ambrogi arrives.

Review and Approval of Draft Minutes from September 4, 2012

Loretta Lillios moves to adopt the minutes from September 4, 2012, seconded by Rep. Peter Kocot. **With unanimous consent, minutes 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

Amy Nable provided the report on behalf of the Division.

Ms. Nable highlighted the Division's 2012 annual report. In 2012, the Division received 212 complaints, a steady increase over previous years. The Division resolved 179 complaints, issued 8 informal determinations letters, and issued 111 formal determination letters.

Since the last Commission meeting: the Division received 70 new complaints; issued 49 determinations; declined to review 13 complaints; and closed out 27 cases where the complainant filed a complaint with the public body but did not follow up with a complaint to the Division. The Division currently has 151 open complaints.

The Division conducted four regional workshops on the Open Meeting Law in 2012, reaching more than 270 attendees. The Division is currently in the process of scheduling its Spring regional workshops. The Division participated in 23 additional training events in 2012, including presentations to the MMA, Massachusetts Association of School Committees (MASC), the Massachusetts City and Town Clerks Association, and the Massachusetts City Solicitors and Town Counsel Association (CSTCA). The Division also conducted its first Train the Trainers event in cooperation with the Massachusetts Bar Association. Next month, the Division will be speaking at the CSTCA Municipal Law Conference.

Since the last Commission meeting, the Division participated in 15 trainings, including the MMA Annual Meeting. This was the third year that the Division participated in this event. The Division saw a strong attendance at its session, with more than 60 people in attendance. The Division discussed the top five questions it received last year and discussed the answers. The Division received a number of thoughtful and interesting questions. Overall, it was a good experience.

The Division responded to more than 880 inquiries by telephone and email since the last Commission meeting. The Division currently has ten open inquiries. The top five questions received by the Division since the last Commission meeting has not changed significantly, however the order changed. The Division has written guidance on these questions posted on its website.

The Division received 14 comments in response to the collective bargaining request for comment. Seven comments were from town officials, four were from town counsel, one comment was from the Massachusetts Teacher's Association, one comment was from the MASC, and one comment was from a member of the public. Most commenters believed that a public body must enter into executive session to conduct collective bargaining and to discuss its strategy with respect thereto. The majority of the commenters felt that the public body should take its final vote on the agreement in executive session, then convene in open session and either ratify the vote or announce the results of the vote publically.

Rep. Kocot asked if Ms. Nable could characterize the types of public bodies that are receiving complaints. Ms. Nable replied that she does not have specific numbers, but a large number of complaints are against local public bodies, such as boards of selectmen or school committees. The Division receives complaints against state and county public bodies as well.

When asked by Rep. Kocot about the number of staff members working on Open Meeting Law complaints, Ms. Nable stated that the Division employs three attorneys and one paralegal. Rep. Kocot stated that some state agencies do not lobby the legislature for additional funding. Does the Attorney General have any plans to ask the legislature for additional funding to put towards enforcement of the Open Meeting Law? Benjamin Meshoulam stated that he was not sure about the Division, but the Office has specific line items that could be used for multiple divisions, including the Division of Open Government, as well as line items for specific divisions. Rep. Kocot stated that the budget will be discussed in April, and if the Office wants to make any additional budget requests to the legislature, it should make those requests soon.

Mr. Hechenbleikner asked whether the Division is making any progress on reducing the backlog and the amount of time it takes to resolve cases. Ms. Nable stated that the number of complaints continues to rise each year, along with the number of determinations the Division issues. While the Division is trying its best to resolve cases as quickly as possible, the Division also wants to make sure that it carefully considers each complaint.

Rep. Kocot stated that other agencies with low staff levels and a high work load are being criticized for their quality of work, but do not ask the legislature for more resources. Rep. Kocot stated that he does not want this criticism to be directed towards the Division. The Division should not hesitate to go to the legislature to ask for more resources.

Robert Ambrogi entered the meeting at 10:18AM.

Mr. Hechenbleikner stated that there is still a concern about the Division's ability to inform the public of Open Meeting Law information as it is posted on its website.

Aaron Kravitz manages the website for the Attorney General. Mr. Kravitz stated that the Division's website is housed by the state's Information Technology Division. The Division's determination database is housed internally by the Office, however. That means there are higher security aspects with the determination database. The database was custom built for the Division. The main difference between the Division's main website and the determination database is where information is being pulled from. The Division's system pulls information from an internal database, Service Desk Express (SDE). SDE is used by almost every division within the office. The determination database was custom designed for the Division in order to pull certain data to post on its website. Because the determination database is intertwined with SDE, there would be an inherent security risk if the website becomes 2-way communication. The Office had to hire a developer to create the system because it is separate from mass.gov. There were many challenges on how to display the data without causing security concerns. Most changes can be done by the Office in house. However, any major changes, such as adding an alert system or RSS feed would require hiring a developer to come in and create it.

While it would be possible to create a Twitter account for Open Meeting Law information, it might not be feasible to constantly update the account. The Office has two Twitter accounts, the MassAGO account and the HomeCorps account. The amount of followers on the HomeCorps account is less than 50, whereas the MassAGO account has over 9,000 followers. If the Division were to create a separate Twitter account, the tweets would only be linking back to the determination database which is not a good use of social media.

Creating an RSS feed would be a major change to look-up database, and would require the Office hiring a developer to build that in. RSS feeds use a specific web file and the Office does not have that capability. On the mass.gov end, they can do that. The Office's press releases have RSS capability, but they do not have the search capability that the look-up database has.

Ms. Nable summarized that the current technology allows the Division to either do an RSS feed or have a look-up database, but not both. The Division chose the database because it believes that the searchable database is more useful to the public.

Mr. Ambrogi asked whether a listserv or a Google Group would be a simple solution. The person posting the determinations could simply send out a message every time a decision is posted. Mr. Kravitz responded that the Office cannot set up a Google Group because it cannot agree to the terms of service. However, if the Commission were willing to, it could set up a Google Group on its own and post updates.

Ms. Nable stated that as far as setting up an internal listserv, the need to constantly update it would cause additional administrative burden. Ms. Nable also questioned how useful it would be if the Division just sent out a weekly email stating that it posted new decisions, without summarizing or listing those decisions.

Ms. Lillios thanked Mr. Kravitz for attending the meeting and explaining the issues in a way that is easy to understand. This has been a recurring question from the Commission. From her perspective, the searchable database is very user friendly.

Rep. Kocot asked whether the Office has done any work to assess the costs of creating a system that would allow for an RSS feed. Mr. Kravitz stated that the current system cost about \$40,000.00. If the Office were to develop a new system, it would be at least that, probably more.

As a follow up question, Mr. Kocot asked how long it took for a contractor to create the current system. Mr. Kravitz reported that it took six months.

Mr. Hechenbleikner acknowledged that a lot of work has been done to implement the determination database. However, the more information you can push to your customer base, the better. Mr. Hechenbleikner stated that someone should not have to rely on visiting the website just to see if it has been updated. This is something to keep on the radar, but does not have to be an agenda item each meeting. Mr. Hechenbleikner noted that in his opinion, it is not a matter of whether the Division would develop the RSS capability, but when it would develop that capability.

Mr. Ambrogi asked whether the Commission would be willing to set up a Google Group. Mr. Hechenbleikner questioned whether the Commission would share the same legal restrictions as the Office does with respect to their terms of service. However, this is something that the Commission could consider. Mr. Ambrogi stated that perhaps a member of the Commission can set something up.

Reorganization of the Commission for 2013

Mr. Hechenbleikner opened up nominations for chairperson.

Ms. Lillios moves to nominate Mr. Ambrogi as chairperson for 2013, seconded by Rep. Kocot.

Ms. Lillios acknowledged Mr. Hechenbleikner's contribution to the Commission as it got off the ground.

With unanimous consent, Mr. Ambrogi was elected chairperson for 2013.

Mr. Ambrogi thanked the Commission and acknowledged Mr. Hechenbleikner for his service as chairperson.

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

Mr. Ambrogi stated that it is his understanding that the text of the bills text have not been posted yet.

Rep. Kocot stated that the bills are being assigned to committees. Once all of the bills have been assigned, they will show up on the General Court website and the docket numbers will be changed to bill numbers. If members would like copies before that, they can contact the bill sponsor who can provide copies. Rep. Kocot stated that he filed a bill on behalf of the MMA that deals with public bodies meeting during Town Meeting.

Rep. Kocot left the meeting at 10:52AM.

Mr. Ambrogi acknowledged that David Rosenberg is in attendance to discuss House Docket 3092, *An Act to Enhance Technology in Civic Engagement*.

Mr. Rosenberg stated that this bill is identical to the bill filed last year, House Docket 04135, *An Act to Enhance Technology in Civic Engagement*. Mr. Rosenberg distributed handouts that explain why he believes this bill is a good idea. Mr. Rosenberg stated that if the Commission sees anything that can be improved with the bill, he would appreciate any suggestions.

With regards to the bill that the MMA filed, Mr. Hechenbleikner stated that the MMA's interest is memorializing the Division's guidance regarding deliberation during Town Meeting. With regards to Mr. Rosenberg's bill, technology is always a good thing, but he has concerns with the direction at this time. Mr. Hechenbleikner stated he is concerned that people are going to be excluded from public meeting dialogue. Some small town halls only have one computer. Some small towns do not even have internet access. This bill may end up disenfranchising people from serving on public bodies. This takes a meeting from a physical space to cyber space. Mr. Hechenbleikner stated that he does not feel comfortable with this particular concept.

Ms. Lillios stated that before discussing the use of technology further, the Commission should think about whether remote participation has enhanced the current law or not.

Mr. Ambrogi stated that he agrees with Mr. Hechenbleikner. He is concerned with the digital divide specifically as it relates to the elderly or low income. Some may not have access to the internet while others may not be technologically savvy.

Katie McCue stated that the MMA's bill simply memorializes the Division's guidance. As far as Mr. Rosenberg's bill goes, the MMA's Municipal and Regional Policy Committee may want to weigh in on it as it moves through the legislative process.

Mr. Ambrogi stated that there are additional bills that have been filed, but the texts of the bills are not available, although he expects them to be available soon.

Correspondence Received

Mr. Ambrogi stated that Christopher Loreti's correspondence was circulated to the Commission in advance of the meeting for review.

Ms. Nable stated that Mr. Loreti disagrees with the Division's decision of his Open Meeting Law complaint. Ms. Nable stated that the decision speaks for itself and the Division stands behind its decisions.

Mr. Hechenbleikner stated that he had a long conversation with Mr. Loreti. Mr. Hechenbleikner stated that believes that Mr. Loreti wants the Commission to overturn the decision. Mr. Hechenbleikner noted that the Commission has no jurisdiction to do so.

Mr. Ambrogi stated that the Commission will note that it received the letter. Other than that, Mr. Ambrogi stated that there is not much that the Commission can do at this time.

Public Comment

Ron Coler addressed the Commission. Mr. Coler stated that he is a first term selectman in the Town of Ashfield. Mr. Coler stated that between the Open Meeting Law and the Public Records Law, the Town is getting hammered with complaints and requests. When he was elected, his mission was to help out the greatest amount of people that he could in Town. However, he cannot do that because the Board receives numerous complaints from the same three individuals. The Town is comprised of part-time staff members who are working full-time just to address Open Meeting Law complaints. Mr. Coler stated that there needs to be a forum where the Town and complainants can sit down and resolve these issues. Mr. Coler stated that he understands and agrees with the intentions of the Open Meeting law, but feels that the law is being abused in Ashfield.

Brian Clark was next to address the Commission. Mr. Clark stated that all of Ashfield's public bodies are staffed by unpaid volunteers. It was his belief that the quality of those serving on bodies in Town is deteriorating because of all the complaints. A former select board member resigned because of the level of attacks. The atmosphere makes it very unattractive to find members to serve on bodies in Town. Currently, there is no recourse to stop this abuse.

Mr. Hechenbleikner stated that many communities are in the same kind of situation. He has not seen any community that has been able to deal with this issue. Mr. Hechenbleikner stated that this is not a regulatory issue, but rather an interpersonal issue. He understands where Mr. Coler and Mr. Clark are coming from. These issues drive people out of government.

Mr. Coler stated that the Town is overwhelmed. They cannot get minutes done because they are too busy responding to complaints and requests. He sees this as a harassment issue and thinks that the Division should have a system in place to address this issue. Perhaps, something akin to bankruptcy; where the Division puts a six month moratorium on people filing complaints to allow the Town to catch up and resolve the issues.

Mr. Ambrogi stated that he has heard stories like this before. He agrees with Mr. Hechenbleikner that these are interpersonal issues. Mr. Ambrogi suggested community mediation where all parties could sit down and address their concerns.

Ms. Nable stated that the Division is sympathetic to Mr. Coler and Mr. Clark and noted that they are not alone. There are various towns that have repeat complainants. However, the Division has an obligation to investigate every legitimate complaint that it receives. Mediation is an interesting idea and might be something worth considering.

Mr. Ambrogi stated that mediation would not necessarily have to be administered by the Division. It could be done at the local level. He does not want to create legislation that discourages people from filing complaints, however.

Ms. Lillios stated that in her experience enforcing the Open Meeting Law, the dynamics between certain public bodies and complainants were apparent. She is not sure what is going on in Ashfield, but is sure that the Division has its pulse on the dynamics as best it can. Mediation has the potential to be successful. Town Counsel might be able to play a role in getting people around the table.

Mr. Coler stated that he feels mediation is not an option. He believes that certain residents would not be willing to sit down and work these issues out.

Mr. Hechenbleikner suggested that Mr. Coler contact the MMA to discuss this matter further.

Mr. Ambrogi stated that the Commission would be happy to entertain any ideas that Mr. Coler might have to address this issue.

Ms. McCue was next to address the Commission. Ms. McCue stated that the MMA would be willing to support any requests for additional resources for the Division. Additionally, Ms. McCue stated that the MMA continues to announce Open Meeting Law updates on its website and in its monthly publication, the Beacon.

Mr. Ambrogi asked Ms. McCue whether members of the public can subscribe to the Beacon and access their website. Ms. McCue stated that only members of the MMA can subscribe to the Beacon, and its website contains portions that are member only, as well as portions that are open to the public.

Mr. Rosenberg addressed the Commission. Mr. Rosenberg stated he understands that the Commission has reservations regarding House Docket 3092, *An Act to Enhance Technology in*

Civic Engagement. Mr. Rosenberg invited Commission members to provide feedback on any areas of improvement to the bill.

Mr. Ambrogi stated that he does not support the bill. He does not want to alienate those who are not technologically savvy. However, this is something that the Commission can continue to consider moving forward at future meetings.

Items Not Reasonably Anticipated by the Chair 48 Hours in Advance of the Meeting

Mr. Hechenbleikner stated that he has enjoyed working with the Commission and Division staff. Mr. Hechenbleikner stated that this is important work. He believes that the Commission will enjoy working with Ms. Valente in the future.

Mr. Ambrogi stated that it has been a pleasure working with Mr. Hechenbleikner. Even though both come from different sides of many issues, surprisingly the two have agreed upon a lot of things.

Schedule Next Meeting

The Commission agreed that its next meeting will take place sometime in June.

Mr. Hechenbleikner moves to adjourn the meeting, seconded by Ms. Lillios.

With unanimous consent, meeting adjourned at 11:33AM.

List of Documents Used by the Commission at the Meeting

1. Meeting agenda for February 13, 2013
2. Draft minutes for September 4, 2013
3. Division of Open Government update
4. Division of Open Government 2012 annual report to the Commission
5. David Rosenberg correspondence dated February 4, 2013
6. Christopher Loreti correspondence dated November 16, 2012

Approved: June 18, 2013