

Minutes of the Open Meeting Law Advisory Commission
July 7, 2015
One Ashburton Place, Ashburton Café Function Room, Boston, MA

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

Members absent: Senator Joan Lovely, Chair of the Joint Committee on State Administration and Regulatory Oversight; Representative Peter Kocot, Chair of the Joint Committee on State Administration and Regulatory Oversight

Attorney General's staff present: Amy L. Nable, Assistant Attorney General, Director, Division of Open Government; Kevin Manganaro, Assistant Attorney General, Division of Open Government; Jonathan Sclarsic, Assistant Attorney General, Division of Open Government; Hanne Rush, Assistant Attorney General, Division of Open Government; Angela Szymcik, Legal Intern, Division of Open Government; Mallory Morales, Paralegal, Division of Open Government.

Others present: Grace Harrington, Legal Counsel, Office of Senator Joan Lovely; John Hawkinson, Cambridge, MA; David Rosenberg, Norfolk, MA; Matthew Rafuse, Research Analyst, Office of Representative Peter Kocot; Carolyn Alessi, Office of Representative Peter Kocot; Nicole Stephens, Office of Representative Paul Heroux.

Review and approval of draft minutes from April 8, 2015

Loretta Lillios called the meeting to order at 10:01 AM. She introduced the members present and asked all others present to introduce themselves. Ms. Lillios thanked the Division of Open Government for preparing the minutes of the last OMLAC meeting. Bob Ambrogi moved to approve the minutes. Jeffrey Hull seconded the motion. **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

Ms. Lillios explained that the Open Meeting Law required the Attorney General to present a report to the Commission.

Ms. Nable presented the update on the Division of Open Government's activities since the last meeting. Since April 8, the Division issued 47 determinations and declined to review 12 complaints. Ms. Nable explained that declinations are typically issued when complaints are untimely or the allegations do not concern the Open Meeting Law. The Division closed 45 cases where the complainant did not file a request for further review. Currently, the Division has 85 open complaints, the bulk of which were received since the last OMLAC meeting. The median resolution time for that time period was 63 days from the date when the complaint was filed.

Since the last OMLAC meeting, the Division settled with the Hinsdale Board of Selectmen concerning OML 2015-9. The Board paid \$500 to the Massachusetts General Fund and agreed to waive its right to a hearing. Additionally, one of the pending appeals, *Steven K. Kaplan v. Office of the Attorney General*, was voluntarily dismissed by the plaintiff.

The Division has responded to 334 inquiries since April 8. The most frequent questions concern executive session, rules about email deliberation, the complaint process, and notice posting methods. The Division hosted three webinars with 93 participants in total, and participated in two other training events that reached another 70 people. Ms. Nable mentioned that there is no webinar scheduled for July but they will resume in August. Additionally, the Division has four regional trainings scheduled for the fall in Sandwich, Cambridge, Southbridge, and Avon. Ms. Nable emphasized that the Division is always interested in hearing from communities that would like to host a training.

Ms. Nable then asked Jonathan Sclarsic to speak on a recent development with LexisNexis. Mr. Sclarsic informed the Commission that LexisNexis is now uploading the Division's determinations in a searchable database. Subscribers can access the decisions through LexisNexis Advance, which offers a robust search function. Mr. Sclarsic noted that the decisions in Lexis will be posted a month after issuance due to Lexis' review process. He recommended checking the Division website to find the most recent decisions.

Mr. Ambrogi asked Mr. Sclarsic whether the Division had to approach LexisNexis to develop this feature. Ms. Sclarsic confirmed that he did. Mr. Ambrogi asked if the decisions would be available on other databases. Mr. Sclarsic stated that the Division also approached Westlaw. Ms. Nable mentioned that she would welcome suggestions as to other websites where the Commission believes decisions should be available.

John Hawkinson expressed his concern that this development would stall improvements on the Division's website. He said that he had raised issues with the website's inability to provide links to specific decisions. Ms. Lillios mentioned that she has not been on the website for six or seven months and asked the Division to refresh her memory about the site's functions. Mr. Sclarsic explained that users may browse and search determinations. Determinations are listed chronologically and searchable by town, public body, date, and key word. Ms. Lillios asked whether linking to determinations was possible from the browse page and Mr. Sclarsic confirmed that it was not. Mr. Hawkinson opened the Division's webpage (www.mass.gov/ago/openmeeting) on his laptop and brought it to the Commission for viewing.

Ms. Nable said that the website's limitations, such as the inability to create an RSS feed, have to do with the technology, budget, and resources available. Ms. Nable said that the Division is always considering ways to improve the decision database and that third party sites, such as Lexis, are meant to supplement, not replace the office's website. Mr. Hawkinson explained that an RSS feed without links would not be helpful.

Mr. Ambrogi asked whether other opinions of the Attorney General are available online. Ms. Nable said that she believes the Division's current database was modeled after the Fair Labor Division's database. Mr. Sclarsic stated that he did not believe that the Coakley administration issued any advisory opinions but that the opinions of prior administrations were available on LexisNexis. Mr. Hawkinson mentioned Representative Kocot's bill, H.2775 [Ed. note: Mr. Hawkinson clarified after the meeting that he misspoke, and meant to cite H. 2772], which would require that the Attorney General's Office publish all its determinations on its website. Mr.

Hawkinson said that he could build an automation to make downloading decisions easier and would be happy to build something for the public.

Mr. Ambrogi noted that since the last meeting, the Division received about 20 complaints each month. He asked how this compared to the usual flow of complaints. Ms. Nable answered that the number of complaints is a little higher than usual and speculated that this increase was due in part to one particular gentleman who had recently filed numerous complaints. Mr. Ambrogi asked for more information about the nature of those complaints, and Ms. Nable explained that the complaints mostly concerned the specificity of meeting notices.

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

Ms. Lillios asked whether there had been hearings since the last OMLAC meeting and requested an update from Grace Harrington. Ms. Harrington informed the Commission that none of the bills on the agenda were scheduled for a hearing but that she would be happy to inform the Commission about future hearings. Ms. Lillios inquired whether the bills listed on the agenda were the same bills discussed during the last OMLAC meeting. Ms. Nable stated that they were, though a few had been added. Mr. Ambrogi noted that H.2780 and H.2806 are not on the agenda, but also concern OML matters.

Public Comment

Ms. Lillios asked if any member of the public wished to speak. David Rosenberg volunteered. He pointed out that H.2816 addresses the four problems with the Open Meeting Law that he has brought up in the past. He said that he did not find it necessary to summarize the points he had previously made but wanted to know whether anyone had thoughts or proposed any solutions. Ms. Lillios asked the newest Commission member, Mr. Hull, whether he was aware of the concerns brought up by Mr. Rosenberg. Mr. Hull asked for a summary.

Mr. Rosenberg summarized four concerns with the Open Meeting Law: (1) when a town has a web-based discussion of Town Meeting warrants, those who are most knowledgeable on the topics cannot participate in the online discussion; (2) when public bodies are made up of unpaid, part-time volunteers, there is a tendency to meet infrequently and progress is stalled. If there was a way for volunteer boards to discuss matters online, then public bodies could operate more efficiently; (3) the OML does not allow for members of the town who are elderly or unable to travel due to inclement weather to access meetings online; (4) the OML encourages violations in instances where email deliberation occurs, since public bodies have a strong motivation to hide violations.

Ms. Lillios thanked Mr. Rosenberg for his continued passion. She explained that OMLAC serves an advisory role and suggested that the Attorney General respond to Mr. Rosenberg's concerns. Ms. Nable stated that the root of the issues he raises was the change in the law, which broadened the definitions of "deliberation" and "public body" in 2009. Ms. Nable said the Division is sensitive to these matters throughout its enforcement capacity. The Division's approach is to provide clarification on the law, especially for first time offences. With regard to Town Meetings, the Attorney General's Office has exercised prosecutorial discretion by declining to review complaints regarding public bodies' discussions during Town Meeting. Ms. Nable also

pointed out that broadcasting meetings online allows members of the public to view proceedings without being physically present. This practice is not prohibited by the Open Meeting Law.

Mr. Hull commented that most of issues with the Open Meeting Law come from resource constraints of smaller communities. He wondered whether other states addressed this. Ms. Lillios said that she believed the law exempted general housekeeping matters from the definition of deliberation. Ms. Nable clarified that there are certain statutory exemptions to the definition of deliberation but that they are rather limited. Ms. Nable also explained that while a quorum may not deliberate outside of a meeting, tasks can be delegated to individual members who may conduct work outside of meetings without violating the law.

Mr. Ambrogi stated for the record that he disagreed with Ms. Lillios' prior comments regarding the scope of the Commission. He said he believes the Commission can make recommendations on legislative matters through the Attorney General. Mr. Ambrogi stated that he remains hesitant to permit online deliberations considering that a significant portion of the population lacks strong internet access. Mr. Rosenberg said that H.2816 would make public internet discussion optional so that communities could adopt it as they see fit. Mr. Rosenberg mentioned that public internet access is available in senior centers and public libraries.

Ms. Lillios asked whether any member of the Commission was planning to provide testimony on the bills. Mr. Ambrogi confirmed that he was and said he would brief the Commission on his testimony when it happens. Mr. Hull said he would check with the MMA before deciding whether he would testify.

Items not reasonably anticipated by the Chair 48 hours in advance of the meeting

No Items

Schedule next meeting

After checking with Mr. Hull and Mr. Ambrogi on their preferences, Ms. Lillios asked the Division to schedule a meeting for December.

Adjourn

Mr. Hull moved to adjourn the meeting. **By unanimous vote (3-0), the meeting adjourned at 10:42 AM.**

List of Documents Used by the Commission at the Meeting

1. Meeting Notice for July 7, 2015
2. Draft Meeting Minutes for April 8, 2015
3. Division of Open Government Report
4. H.2715: An Act to improve the Open Meeting Law
5. H.2753: An Act relative to the Open Meeting Law
6. H.2774: An Act to exempt the deliberation of public bodies at town meeting from the Open Meeting Law
7. H.2775: An Act updating the Open Meeting Law
8. H.2816: An Act to permit enhanced public access to deliberations of public bodies and to permit improved efficiency of public bodies
9. H.3304: An Act relative to the Open Meeting Law
10. Division of Open Government Website, <http://www.mass.gov/ago/openmeeting>

Approved September 14, 2016