



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

TEL: (617) 727-2200
www.mass.gov/ago

January 21, 2022

OML 2022 – 5

VIA EMAIL ONLY

Brian W. Riley, Esq.
KP Law
Town Counsel to the Town of Sudbury
briley@k-plaw.com

RE: Open Meeting Law Complaint

Dear Attorney Riley:

This office received a complaint from Henry Sorett on April 9, 2021,¹ alleging that the Town of Sudbury's Goodnow Library Board of Trustees (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on February 11, and you responded on behalf of the Board by letter dated March 3. The complaint alleges that the Board deliberated outside of a properly noticed meeting regarding the library's relationship with the independent nonprofit organization the Friends of Goodnow Library (the "Friends"), of which the Complainant is a member.²

Following our review, we find that the Board violated the Open Meeting Law by deliberating outside of a properly noticed meeting when a written statement prepared by the Chair of the Board was circulated to the full Board via email. We do not find evidence of other instances of deliberation outside of a properly noticed meeting. In reaching this determination, we reviewed the Open Meeting Law complaint, the Board's response, the request for further review, additional response from the Board, emails and other documents provided to our office, and the minutes and video recordings of seven Board meetings held from September 8, 2020, to

¹ All dates are in 2021 unless otherwise stated.

² Our review is limited to allegations raised in the original Open Meeting Law complaint and which allege violations of the Open Meeting Law. The complaint identifies other concerns outside of the scope of our review.

January 19, 2021, inclusive.³ Additionally, we communicated by phone with Counsel for the Board,⁴ the Chair of the Board, and the Library Director.

FACTS

We find the facts to be as follows. The Board is a six-member public body; therefore, four members constitute a quorum. The Friends of Goodnow Library is an independent nonprofit organization that provided funding and other support to the Goodnow Library. For approximately two years prior to the January 19 meeting at issue here the working relationship between the library and the Friends had been strained. The Board had discussed the strained relationship on several occasions prior to the January 19 meeting, including at each of the six meetings preceding the January 19 meeting. The Board had also taken steps to address the relationship prior to the January 19 meeting, including sending a letter to the Friends dated October 15, 2019, which expressed concern about the deteriorating relationship, and sending the Friends a memorandum of understanding.

During the Board's December 1, 2020, meeting the Chair reported to the Board regarding a meeting she had with the President of the Friends, the Town Manager, and a member of the Board of Selectmen to discuss the library's relationship with the Friends. The Chair expressed her opinion that no progress was made during that meeting and that the Friends would not agree to sign the memorandum of understanding the Board had proposed. The Board then discussed the relationship with the Friends, what steps might be taken with respect to the relationship—including whether there might be a way to move forward collaboratively or whether the Board would need to end the relationship—and whether to have a meeting to fully discuss those possible steps. The Board ended its discussion of the Friends by agreeing to schedule a meeting to discuss potential next steps.

After the December 1 meeting, believing that it was clear that the library's relationship with the Friends was not salvageable, the Chair began drafting a statement she intended to read during the Board's next meeting. The Chair was also in communication with the Library Director and the Vice Chair of the Board regarding the future of the relationship with the Friends. Additionally, the Chair discussed with one other Board member a timeline of events the Chair intended to include in her statement. That same member also communicated with the Library Director regarding a donation that the library received, and which had caused some controversy between the library and the Friends.

Prior to the January 19 meeting, the library engaged, in addition to legal counsel, a public relations firm to assist with messaging should the Board vote to terminate the relationship with the Friends. On January 15, the Library Director sent an email to the full Board. Attached to the email were several documents to be used at the upcoming January 19 meeting, including the Chair's four-page statement she intended to read at the meeting. The statement included, among other things, the Chair's thoughts and opinions regarding the relationship between the library and the Friends and the next steps the Board should take with respect to that relationship, including that the Chair would ask for a motion to terminate the relationship.

³ Recordings of Board meetings may be found at <https://goodnowlibrary.org/about/trustees/>.

⁴ For the sake of clarity, we refer to you in the third person.

On or about January 17, the Friends provided the Board with its own proposed memorandum of understanding. During the Board's January 19 meeting the Board discussed the Friends' memorandum of understanding, with members expressing concern and frustration. The Board voted to reject the Friends' memorandum of understanding. Thereafter, the Chair read her prepared statement and then opened the floor to Board members for discussion. Three Board members spoke regarding the library's relationship with the Friends, the deterioration of that relationship, and the amount of time the Board had spent trying to repair the relationship. The Chair then opened the floor for public comment. Five members of the public spoke, including the President of the Friends and the Complainant. Thereafter, the Chair moved to end the library's relationship with the Friends. The Board voted to support the motion, thus ending the relationship with the Friends.

DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding the deliberations and decisions on which public policy is based." Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 (1978). The Law requires that meetings of a public body be noticed and open to the public, unless an executive session is convened. G.L. c. 30A, §§ 20(a)-(b), 21. A "meeting" is defined, in relevant part, as "a deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. The Law defines "deliberation" as "an oral or written communication through any medium, including electronic mail, between or among a quorum of a public body on any public business within its jurisdiction; provided, however, that 'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting [sic] or the distribution of reports or documents that may be discussed at a meeting . . ." G.L. c. 30A, § 18. For purposes of the Open Meeting Law, a quorum is "a simple majority of the members of the public body." G.L. c. 30A, § 18.

Although certain administrative tasks are excluded from the definition of "deliberation," that exception includes a strong caveat: such administrative communications are permissible "provided that no opinion of a member is expressed." G.L. c. 30A, § 18; OML 2019-75.⁵ Email attachments are considered along with the body of an email when determining whether a public body member has expressed an opinion. See OML 2014-152. The expression of an opinion by one public body member on matters within the body's jurisdiction to a quorum of a public body is considered a deliberation, even if no other public body member responds. See OML 2021-133; OML 2015-33; OML 2012-73. Documents that are circulated for the stated purpose of being discussed at a future meeting may not be used to telegraph one member's opinion to the other members ahead of an open meeting. See OML 2014-148. Finally, a public body may not use a non-member, such as a staff member, to facilitate communication on matters that the public body should otherwise save for discussion at an open meeting. See District Attorney for the Northern District v. School Committee of Wayland, 455 Mass. 561, 569-71 (2009); OML 2013-76; OML 2018-43.

⁵ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

Here, we find that the Board deliberated outside of a properly noticed meeting when the Library Director circulated to the full Board via email the Chair's prepared statement sharing her thoughts and opinions regarding the relationship between the library and the Friends and the next steps the Board should take with respect to that relationship. See OML 2014-148; OML 2019-75.

Other than circulating the Chair's prepared statement prior to the January 19 meeting, our investigation revealed no other evidence of deliberation outside of a posted meeting. In particular, we note that although communication occurred between the Library Director, the Chair, the Vice Chair, and—to a limited degree—one other Board member, these communications did not involve a quorum of the Board and therefore did not constitute impermissible deliberation.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by deliberating outside of a properly noticed meeting on January 15 when a copy of the Chair's statement was circulated to the full Board via email. We order the Board's immediate and future compliance with the Open Meeting Law, and caution that future similar violations may be considered evidence of an intent to violate the Law. Because the statement that constituted the unlawful deliberation was read aloud in full during the Board's January 19 open meeting, we do not order additional remedial action.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints that may be pending with the Board or with our office. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Elizabeth Carnes Flynn
Assistant Attorney General
Division of Open Government

cc: Ingrid Mayyasi, Chair Goodnow Library Board of Trustees (via email:
imayyasi@gmail.com)
Henry Sorett (via e-mail: hanksorett@gmail.com)

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by a final order of the Attorney General may obtain judicial review through an action filed in Superior Court pursuant to G.L. c. 30A, § 23(d). The complaint must be filed in Superior Court within twenty-one days of receipt of a final order.