



THE COMMONWEALTH OF MASSACHUSETTS
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OML 2021 – 20

Brian W. Riley, Esq.
KP Law, P.C.
101 Arch Street, 12th Floor
Boston, MA 02110

By e-mail only: briley@k-plaw.com

RE: Open Meeting Law Complaint

Dear Attorney Riley:

This office received a complaint from Leonard Simon on August 27, 2020, alleging that the Sudbury Board of Selectmen (the “Board”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Board on July 13, and you responded, on behalf of the Board, by letter dated July 22. The complaint alleges that the Board violated the Open Meeting Law by failing to announce the name of each member who was participating in the June 22 meeting remotely.²

We resolve this complaint by informal action in accordance with 940 CMR 29.07(2)(a), after reviewing the complaint, the Board’s response, and the request for review of the complaint.

¹ All dates in this letter refer to the year 2020.

² The complaint also alleges that the Board, and specifically its chair, violated the Board’s own policies and procedures by not allowing board members to speak at various times during the meeting, in particular by muting other board members. The Division of Open Government is charged specifically with reviewing complaints to determine compliance with the Open Meeting Law, G.L. c. 30A, §§ 18-25. The Division does not review for compliance with a public body’s own policies and procedures. Furthermore, this allegation, even if true, would not constitute a violation of the Open Meeting Law. The Open Meeting Law states, in part, that “[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent.” G.L. c. 30A, § 20(g). The term “person” in this section of the law applies to both members of the public and members of the public body. See OML 2020-134; OML 2013-135. Therefore, the chair has discretion to determine who may speak during a meeting. Nonetheless, we strongly discourage the use of technology to silence fellow members engaging in civil discourse regarding Board business. See OML 2020-134.

We also reviewed a video recording of the Board's June 22 meeting.³ Following our review, we find that the Board violated the Open Meeting Law as alleged.

On March 12, 2020, Governor Baker issued an executive order temporarily suspending certain provisions of the Open Meeting Law during the state of emergency. See Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20 (Mar. 12, 2020) (the "Executive Order"). The Executive Order, in relevant part, temporarily suspends the requirements under the Open Meeting Law and the Attorney General's Open Meeting Law regulations that a quorum of a public body, including the chair, be physically present at the meeting location and allows all members of a public body to participate in a meeting remotely. All other provisions of the law and regulations regarding remote participation remain in effect, including the requirement that "[a]t the start of the meeting, the chair shall announce the name of any member who will be participating remotely. This information shall also be recorded in the meeting minutes." 940 CMR 29.10(7)(b); see also OML 2020-138.⁴

The Board's June 22 meeting was held entirely remotely, with all members of the Board participating remotely. The Board acknowledges that neither the Board's chair, nor anyone else, announced at the start of the meeting the names of the Board members participating remotely. Although the Board questions the utility in announcing the names of Board members participating remotely at a meeting where all Board members participated remotely, the Open Meeting Law regulations nonetheless require such an announcement. See id.; OML 2020-138. We therefore find that the Board violated the Open Meeting Law. We acknowledge that the Board has committed to complying with the Law's requirement that the Chair announce the names of all Board members participating remotely. We order the Board's immediate and future compliance with the Open Meeting Law and note that future similar violations may be considered evidence of an intent to violate the law.

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 our office or the Board. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Carrie Benedon
Assistant Attorney General
Division of Open Government

³ A video recording of the Board's June 22 meeting is available at <https://sudbury.vod.castus.tv/vod/?nav=recent>.

⁴ Open Meeting Law determinations may be found on the Attorney General's website, <https://www.mass.gov/the-open-meeting-law>.

cc: Leonard Simon (by e-mail only: lensimon@comcast.net)
Sudbury Board of Selectmen (by e-mail only: boardofselectmen@sudbury.ma.us)

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.