



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY
ATTORNEY GENERAL

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

October 16, 2013

OML 2013 – 149

Carl McKinney
Chair
Board of Assessors
Town of Clarksburg
111 River Road
Clarksburg, MA 01247

RE: Open Meeting Law Complaint

Dear Mr. McKinney,

This office received an Open Meeting Law complaint from Debora LeFave (the complainant), dated September 3, 2013, alleging that the Town of Clarksburg Board of Assessors (the Board) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint was originally filed with the Board on or about August 12, 2013, and the Board responded to the original complaint by letter dated August 26, 2013. The complaint specifically alleges that a quorum of the Board met and deliberated during a July 15, 2013 meeting of the Board of Selectmen (the Select Board), although no Board meeting was posted or convened. The complaint also alleges that the Board violated the Open Meeting Law by engaging in deliberation outside of a posted meeting prior to the July 15, 2013 meeting of the Select Board.

In resolving this complaint, we reviewed the August 12, 2013 complaint filed with the Board; the Board's August 26, 2013 response; and the September 3, 2013 complaint filed with this office. We also reviewed the open session meeting minutes for the July 15, 2013 Select Board meeting as well as the Town of Clarksburg's bylaws and the Town of Clarksburg Employee Handbook. In addition, we spoke via telephone with the complainant and Thomas E. Webb, the Town Administrator as well as Principal Assessor, in September 2013.

Following our review, we find that the Board violated the Open Meeting Law. We find that the July 15, 2013 meeting of the Select Board included deliberation by a quorum of the Board of Assessors on a matter within its jurisdiction. Accordingly, the Board should have



posted notice for this meeting. However, we find that the Select Board took appropriate remedial action to address the violation after the complaint was filed.

FACTS

Based upon our review of the material listed above, the facts are as follows. The Town of Clarksburg Board of Assessors consists of three members. These members are appointed by the Select Board. One of the members of the Board was Chair of the Select Board Carl McKinney.¹ Another member, Town Administrator Thomas Webb, also served as Principal Assessor.

Prior to the July 15, 2013 Select Board meeting, the Department of Revenue's Division of Local Services issued a report (the DOR report) recommending, among other issues, that the same person not hold both the position of Principal Assessor and the position of Town Administrator. During its July 15, 2013 meeting, the Select Board reviewed this report and its recommendations. After this review, as the Select Board meeting neared its conclusion having completed other business, the Select Board announced that the only business which remained for the meeting was the review of applications for a position with the Town's Highway Department and adjournment. Many of those in attendance left the meeting.

After reviewing the applications but before adjournment, the Select Board held a discussion about the Principal Assessor position in light of the DOR report. Present were Chair McKinney and Town Administrator Webb. The discussion resulted in a motion to appoint Ross Vivori as Assistant Assessor. The meeting then adjourned.

DISCUSSION

The Open Meeting Law requires that a public body post notice of any meeting at least 48 hours prior to such meeting. G.L. c. 30A, § 20(b). A "meeting" is defined as "a deliberation by a public body with respect to any matter within the body's jurisdiction." G.L. c. 30A, § 18. However, "meeting" shall not include . . . attendance by a quorum of a public body at a meeting of another public body that has complied with the notice requirements of the open meeting law, so long as the visiting members communicate only by open participation in the meeting on those matters under discussion by the host body and do not deliberate . . ." *Id.* For purposes of the Open Meeting Law, "deliberation" is defined, in part, 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." *Id.* A "quorum" is defined as "a simple majority of the members of the public body." *Id.*

G.L. c. 41, § 25A states that the Board of Assessors of a municipality may appoint an assistant assessor. The July 15, 2013 Select Board meeting minutes demonstrate that the position discussed and filled was that of assistant assessor. The Board characterizes its actions on July 15, 2013 as a "conversation between the Town Administrator and the Chair of the Select Board on the best way to move forward [to enact recommendations regarding personnel suggested by

¹ For the purposes of clarity, we refer to you in the third person. Mr. McKinney has since resigned from the Board of Assessors.

the DOR report]. . . .” The Board contends it is not necessary to view the conversation as that of a deliberation between members of the Board because the practice of the Town, as stated in the Town of Clarksburg Employee Manual, is that the Select Board alone has the power to appoint town officers. The Board’s argument is misplaced.

The position of assistant assessor is a matter within the Board’s jurisdiction. See G.L. c. 41, § 25A. The presence of Webb and McKinney constituted a quorum of the Board of Assessors. See G.L. c. 30A, § 18. That quorum’s communication on public business within its jurisdiction constituted a deliberation, which may only occur during a properly posted meeting. See id. We therefore find the Board violated the Open Meeting Law by failing to post notice for and take minutes of its meeting during the July 15, 2013 Select Board meeting.² Additionally, we note that the deliberation occurred after the Select Board indicated to those present that no business would be conducted after the discussion of the applications for a different town officer position. We strongly urge public bodies to honor such representations to the public in the interest of transparency.

We note that the Select Board, and by extension the Board of Assessors, has since taken remedial action to address the concerns raised by the complainant and demonstrate its adherence to the Open Meeting Law. Subsequent to the July 15, 2013 meeting, the Select Board rescinded its offer to Ross Vivori. The Select Board subsequently posted public notice of and accepted applications for the open position of Assistant Assessor. We find that this was appropriate remedial action.

While we acknowledge the necessity at times for town officers to hold multiple positions, we encourage both the Select Board and the Board of Assessors to be mindful that the concentration of multiple roles in a few persons may cause conflicts with the Open Meeting Law, even where the officers act in good faith.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by failing to post notice for and convene a meeting during the July 15, 2013 Select Board meeting. We order immediate and future compliance with the Open Meeting Law, G.L. c. 30A, §§ 18-25, and its accompanying regulations, 940 CMR 29.00. We additionally order the Board to create and approve accurate minutes from the July 15, 2013 meeting. The Board may review and adopt a copy of the minutes already taken by the Select Board, as the meeting was functionally a joint meeting of the two bodies.

We now consider the complaint addressed by this determination to be resolved. This determination does not address any other complaints which 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.

² The exception for attending another public body’s meeting is inapplicable under these facts because the Board did deliberate. See generally OML 2013-38 (explaining when attendance at another body’s meeting constitutes meeting of body at issue). Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

Sincerely,



Mark M. Higgins
Assistant Attorney General
Division of Open Government

cc: Debora LeFave

This determination was issued pursuant to G.L. c. 30A, § 23(c). A public body or any member of a body aggrieved by this order 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 this order.