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May 14, 2013

OML 2013 - 63

John B. DeRosa, Esq.
City Solicitor
120 Mass MoCA Way
North Adams, MA 01247

RE: Open Meeting Law Complaint

Dear Attorney DeRosa:

This office received an Open Meeting Law complaint from Robert Cardimino on August 1, 2012, alleging that the North Adams City Council (the "Council") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaint specifically alleges that at the Council's June 12, 2012 meeting, the Council President interrupted Mr. Cardimino while he was addressing the Council, and prohibited him from finishing his remarks. The complaint was filed with the Council on or about July 2, 2012. The Council responded to the complaint by a letter from Counsel dated July 19, 2012.

Following our review, we find that the Council did not violate the Open Meeting Law. In reaching this determination, we reviewed the July 2, 2012 complaint filed with the Council; the Council's July 19, 2012 response; and the August 1, 2012 complaint filed with our office. We also reviewed a June 18, 2012 letter from Attorney John DeRosa,¹ addressed to Mr. Cardimino. Finally, we reviewed a video recording of the Council's June 12, 2012 meeting, provided to our office by Mr. Cardimino.

FACTS

The Council met on June 12, 2012. At the end of the meeting, the Council entertained comments from members of the public. Mr. Cardimino was recognized by the Council President and permitted to address the Council. During Mr. Cardimino's remarks, Mr. Cardimino identified a specific Councilor by name for allegedly failing to pay municipal taxes. At that point, the Council President told Mr. Cardimino that he was out of order and told him to sit down. Mr. Cardimino continued to speak. As he spoke, the Council adjourned the meeting.

¹ For purpose of clarity, we will refer to you in the third person.



DISCUSSION


The Open Meeting Law does not require that a public body allow public participation. OML 2012-23.¹ The law states 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(f). Thus, the President of the Council had discretion to decide who could speak during the Council’s June 12, 2012 meeting and for how long. See id.; OML 2012-23. During the meeting, the Council President permitted Mr. Cardimino to address the Council. During Mr. Cardimino’s address, the Council President determined that Mr. Cardimino was out of order, and told him to sit down. Because the Council President, as the chair of the Council, has the authority to decide who may address the Council, he did not violate the Open Meeting Law by cutting off Mr. Cardimino’s remarks.²

CONCLUSION

For the reasons stated above, we find that the Council did not violate the Open Meeting Law.

We appreciate the patience and cooperation of the parties during this investigation, and now consider this matter closed. Please contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,


Jonathan Sclarsic
Assistant Attorney General
Division of Open Government

cc: Robert Cardimino

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.

¹ Open Meeting Law determinations may be found at the Attorney General’s website, www.mass.gov/ago/openmeeting.

² Mr. Cardimino also alleges that the Council President “violated [his] constitutional right to free speech.” The Division of Open Government only interprets and enforces the Open Meeting Law, thus we decline to review allegations of violation of any other laws. See OML 2013-10.