

2018 Mass. Op. Atty. Gen. No. 145 (Mass.A.G.), 2018 WL 7500519

Office of the Attorney General

Commonwealth of Massachusetts

Opinion No. OML 2018-145

November 5, 2018

RE: Open Meeting Law Complaint

*1 Michele E. Randazzo, Esq.
KP Law, P.C.
101 Arch Street
Boston, MA 02110

Dear Attorney Randazzo:

This office received a complaint from Michael LaChapelle, dated September 21, alleging that the Provincetown 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 June 26, and the Committee responded by letter dated July 12. In his complaint, Mr. LaChapelle alleges that a quorum of the Board deliberated outside of a noticed meeting through a private online social media group.

Following our review, we find that the Board did not violate the Open Meeting Law. However, we caution the Board that the use of a closed social media group by a quorum of its members raises significant concerns, and we advise against this practice. In reaching a determination, we reviewed the original complaint, the Board's response, and the request for further review filed with our office. We also reviewed several undated screenshots of postings allegedly made in the closed Facebook group at issue. We also reviewed the notice and minutes of a Board meeting held on June 25. We reviewed supplementary e-mails from the Board's legal counsel dated July 2 and August 20. Finally, we spoke with the complainant by telephone on October 25.

FACTS

We find the facts as follows. The Board is a five-member public body, thus three members constitute a quorum. Current Board member Lise King was elected to the Board on May 1. At all times relevant to this complaint, three Board members—Louise Venden, Cheryl Andrews, and Ms. King—were members of a closed Facebook group called the “Provincetown Women's Collective.” While membership in this Facebook group is restricted, it has over 950 members. Those seeking to join this group must be approved by an administrator.

The dispute that underlies this complaint concerns the potential establishment of a human rights commission in Provincetown. During a Board meeting held on June 25, Ms. King introduced a proposal to create a human rights commission, and Board member Robert Anthony disagreed, stating that such a commission was unnecessary. At some point following the June 25 meeting, Ms. King posted the following message to the “Provincetown Women's Collective” group:

I was surprised (and not in a good way) I have to say, that Bobby Anthony was adamantly opposed, from the position of being the former police chief In these times, especially, to insist that law enforcement is the arbiter and provider of civil/human rights protections and education, is short sighted at best.

It is not clear whether the other two Board members who were members of the Facebook group (Ms. Venden and Ms. Andrews) read or replied to this comment. The complainant subsequently provided our office with screenshots of two other comments made in the closed Facebook group by Ms. King. They read as follows:

**2 I'm re-posting the Human Rights Commission post for the record. The original post asked if anyone wanted to come support the article on the agenda last Monday night to create a Provincetown Human Rights Commission, to come make a statement during the public comment period. (I don't have a screenshot of that original post[.]) Here is the comment section, including my note about Bobby Anthony's reaction to my proposal.*

The article got pushed to the very end of the night... like 10:50 P.M. We had a short discussion/debate, and then it got continued until next month. The Board asked me to provide more specifics about how to convene the advisory board I proposed to create the commission. Thank you to supporters...

Shortly after the present complaint was filed, Ms. Andrews left the closed group.

DISCUSSION

The Open Meeting Law was enacted “to eliminate much of the secrecy surrounding deliberation and decisions on which public policy is based.” [Ghiglione v. School Board of Southbridge, 376 Mass. 70, 72 \(1978\)](#). The Open Meeting Law requires that meetings of a public body be properly noticed and open to members of the public, unless an executive session is convened. See 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.”

Id. For the purposes of the Open Meeting Law, a “quorum” is a simple majority of the members of a public body. Id.

Here, the complaint alleges that a quorum of the Board improperly deliberated via the closed Facebook group. Because the question of establishing a human rights commission was before the Board for a vote, it is clear that the matter is one within the Board's jurisdiction. It is also clear that Ms. King wrote posts concerning the human rights commission and posted them to the closed group. Our office has advised public body members that, while they may use social media to communicate with their constituents on matters of public concern, those members should be cautious to avoid communicating with other public body members via social media.² We find no evidence that Ms. Venden or Ms. Andrews commented on Ms. King's posts, and, indeed, it is not clear whether the other members even read what Ms. King wrote in the closed group. Posting to a social media group, standing alone, does not amount to communication between or among a quorum of a body that must occur only in the context of a posted meeting. See OML 2017-192.³ We also note that the period during which a quorum of the Board were members of the closed group was quite brief. Ms. King became a Board member on May 1, so any communications prior to that date would not constitute deliberation; Ms. Andrews left the closed group shortly after the present complaint was filed on June 26. Given the lack of evidence showing deliberation between or among a quorum of the Board, and the brief time period when a quorum belonged to the closed Facebook group, we find no violation of the Open Meeting Law.

***3** Nonetheless, we remind the Board that social media may not be used to facilitate discussion between or among a quorum of its members. Where a social media group is closed to the public—as the Provincetown Women's Collective group was in this case—it raises concerns that conversations may be happening outside of public view. When comments are made on an individual public body member's social media account or on an open social media group, those comments are more likely to be targeted towards a general public. When comments are made in a closed group, it is reasonably inferable that posts are directed solely at the members of that group, and, when a quorum of a public body belongs to a closed group, it becomes likely that posts and comments are targeted towards the other public body members. See OML 2017-111 (in determining whether improper deliberation took place, a communicator's intended audience must be examined). While the closed group at issue certainly had a large number of members, it is nonetheless closed to the public, as an administrator's approval is required before individuals may view the posts. We commend Ms. Andrews' removal of herself from the group once this issue was raised.

CONCLUSION

For the reasons stated above, we find that the Board did not violate the Open Meeting 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 the Division at (617) 963 - 2540 if you have any questions.

Sincerely,

Kevin W. Manganaro
Assistant Attorney General
Division of Open Government

Footnotes

- 1 Unless otherwise indicated, all dates in this letter refer to the year 2018.
- 2 The Attorney General's "Frequently Asked Questions" on the Open Meeting Law may be found here: <https://www.mass.gov/service-details/frequently-asked-questions-about-the-open-meeting-law-public-bodies-quorum-and>.
- 3 Open Meeting Law determinations may be found at the Attorney General's website: www.mass.gov/ago/openmeeting.

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