

THE COMMONWEALTH OF MASSACHUSETTS
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June 3, 2013

OML 2013 - 73

Jeffrey Bernstein, Esq.
BCK Law P.C.
One Gateway Center, Suite 809
Newton, MA 02458

RE: Open Meeting Law Complaints

Dear Attorney Bernstein:

This office received two Open Meeting Law complaints from Mr. Eric Bibler, dated July 3, 2012 and July 6, 2012, alleging that the Governing Boards of the Cape Light Compact ("CLC") and the Cape & Vineyard Electric Cooperative, Inc. ("CVEC") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The July 3, 2012 complaint specifically alleges that the CLC Governing Board either "conducted an *unnoticed and illegal meeting* for the purpose of considering, and approving the letter that [Chairman William] Doherty publicly presented to the Assembly as CLC's official response to the Special Committee report" at its May 31, 2012 meeting, or that "Mr. Doherty *misrepresented* his personal views representing the consensus of the CLC board of directors and the organizations as a whole." (emphasis in original). The complaint was originally filed with the CLC on June 26, 2012. The CLC responded to the complaint by letter dated July 3, 2012.

The July 6, 2012 complaint alleges that the CVEC Governing Board or its Executive Committee either conducted "an *unnoticed and illegal meeting* for the purpose of considering, and approving, the letter that [President Charles] McLaughlin publicly presented to the Assembly as CVEC's official response to the Special Committee report" at its June 1, 2012 meeting, or that President McLaughlin "*misrepresented* his personal views as representing the consensus of the CVEC board of directors and the organization as a whole." (emphasis in original). The complaint was originally filed with the CVEC on June 1, 2012. The CVEC responded to the complaint by letter dated July 5, 2012.

Following our review, we find that the Governing Boards of the CVEC and the CLC did not violate the Open Meeting Law. In reaching a determination with regards to the July 3, 2012 complaint, we reviewed the June 26, 2012 complaint filed with the CLC Governing Board; the CLC's July 3, 2012 response; and the July 3, 2012 complaint filed with our office. We also reviewed the CLC Governing Board's July 11, 2012 meeting minutes; an email from Mr. Bibler addressed to our office, dated July 18, 2012, providing additional information with respect to his complaint; an email from CLC Administrator Margaret Downey, dated July 20, 2012, sent to our office in response to Mr. Bibler's July 18, 2012 email; and the minutes of the Board's May 9, 2012 meeting. In reaching a determination with regards to the July 6, 2012 complaint, we reviewed the June 1, 2012 complaint filed with the CVEC Governing Board; the CVEC's July 5, 2012 response; the July 6, 2012 complaint filed with our office; and an email dated September 18, 2012 from CVEC President Charles McLaughlin, provided to our office by the CVEC.

FACTS

The Cape Light Compact was formed in 1997 through an inter-governmental agreement, pursuant to G.L. c. 164, §134; G.L. c. 25A, § 6; and G.L. c. 40, § 4A. The CLC Board is a 23 member body, consisting of Barnstable County, Dukes County, and all of the 21 municipalities located within these counties on Cape Cod and Martha's Vineyard. The purposes of the CLC include aggregating consumers as part of the competitive market for electricity; negotiating the best terms and conditions for electricity supply; and supporting environmental protection, energy efficiency, and renewable energy development. The CLC is funded through ratepayer funds, federal and state grants, county general funds, and administrative charges levied on electricity sold through the CLC's aggregated power supply contract with its private competitive electric supplier. The CLC Governing Board is a public body subject to the Open Meeting Law.

The Cape & Vineyard Electric Cooperative, Inc., was formed out of a strategic planning process commissioned and undertaken by the CLC. The CVEC was organized in 2007 with three members: CLC, Barnstable County, and the Town of Barnstable. Currently, the CVEC has 19 members consisting of 16 towns, Barnstable and Dukes County, and the CLC. The CVEC's long term goal is to develop electric generation projects or contracts to stabilize electric rates for all CLC customers. The CLC does not have the authority to develop electric generation projects. The CVEC Board is a public body subject to the Open Meeting Law.

The CVEC and the CLC have entered into an administrative agreement with Barnstable County so that Barnstable County can perform certain administrative and fiscal functions for both the CVEC and the CLC. The two entities share a close relationship, with some individual municipal representatives serving on both boards. The CLC also finances the CVEC.

In the Spring of 2011, several individuals and groups appeared before the Barnstable County Commissioners and the Barnstable County Assembly of Delegates to complain about the CLC's and the CVEC's alleged lack of transparency. On August 3, 2011, the Barnstable County Assembly of Delegates passed a resolution creating a subcommittee to investigate and create a report regarding the relationship between the CLC and the CVEC. On May 2, 2012, the Special Committee of Inquiry on the Cape Light Compact and the Cape & Vineyard Electric Cooperative (the "Special Committee") approved its final report. During the CLC Governing Board's meeting on May 9, 2012, the Board circulated a draft response to the Special Committee's report.

On May 31, 2012, CLC Chair William Doherty sent the Special Committee a twenty-five page letter in response to the Special Committee's report. The letter included the following heading, "Cape Light Compact's Response to Assembly Committee on Inquiry into Cape Light Compact." The introductory paragraph of the letter states:

The Cape Light Compact ("CLC") Governing Board is in receipt of the *Report to the Barnstable County of Delegates from the Special Committee on Inquiry into Cape Light Compact (CLC) and Cape & Vineyard Cooperative, Inc. (CVEC)* dated May 2, 2012 (the "Report"). I am responding to the Report on behalf of the CLC Governing Board.

During the CLC Governing Board's July 11, 2012 meeting, Chair Doherty explained that he had to respond quickly to the Special Committee, thus he submitted the letter on behalf of the Board without its vote of approval. The Board then discussed the authority of the Chair to act on behalf of the Board.

During the CVEC Board of Directors meeting on May 23, 2012, CVEC President Charles McLaughlin reported that he was in the process of drafting a response to the Special Committee's report. On June 1, 2012, President McLaughlin sent the Special Committee an eleven page letter in response to the Special Committee's report. The letter included the following heading, "Response of CVEC to the Barnstable County Assembly of Delegates." The introductory paragraph of the letter states, in part:

Responding to a request of the County Commissioners for an opportunity to discuss the workings and accomplishments of the Cape and Vineyard Electric Cooperative, Inc. ("CVEC"), its board of directors elected to *voluntarily* participate in the Assembly's Special Committee (the "Committee") hearings.

In an email dated September 18, 2012, President McLaughlin explains that the Special Committee "accelerated the process and the matter was taken up in early June. Alerted to this schedule, I prepared and submitted my response without any consultation with any member of the Board."

DISCUSSION

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 "a deliberation by a public body with respect to any matter within then body's jurisdiction." G.L. c. 30A, § 18. A "deliberation" is "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; however, that 'deliberation' shall not include the distribution of a meeting agenda, scheduling information or distribution of other procedural meeting [material] or the distribution of reports or documents that may be discussed at a meeting, provided that no opinion of a member is expressed." Id. A "quorum" is "a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order or other authorizing provision." Id.

In both complaints, Mr. Bibler alleges that the Chairs either deliberated with members of

their respective Governing Boards outside of a meeting, or else acted unilaterally without approval, in issuing a letter in response to the Special Committee's report. The Open Meeting Law does not govern the authority of individual public body members to act, thus we decline to review this allegation and consider only whether there was improper deliberation by the Boards.

The complaint against the CLC alleges that the Chair communicated with a quorum of the Governing Board outside of an open meeting in order to receive approval to issue a response to the Special Committee's report. The minutes of the CLC Governing Board's May 9, 2012 meeting show that the Chair circulated a draft response to the Special Committee's report during that meeting. The Chair then submitted a letter to the Special Committee on May 31, 2012. During the CLC Governing Board's July 11, 2012 meeting, Chair Doherty explained that he had to respond quickly to the Special Committee and that he submitted the letter on behalf of the Board without its vote of approval. In the absence of evidence to the contrary, we credit the Chair's account, and find that the Chair did not communicate with a quorum of the Board members outside of a meeting, thus the Board did not violate the Open Meeting Law.

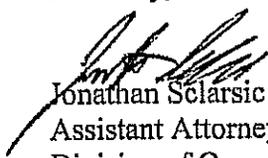
The complaint against the CVEC similarly alleges that the President communicated with a quorum of the Board of Directors outside of an open meeting in order to receive approval to issue a response to the Special Committee's report. The President of the CVEC Board of Directors reported to the Board on May 23, 2012 that he was drafting a response to the Special Committee's report. In an email provided to our office, President McLaughlin explains that he "prepared and submitted [his] response without any consultation with any member of the Board." In the absence of evidence to the contrary, we credit the President's account and find that the President did not communicate with a quorum of the Board outside of a meeting in preparing and sending a letter on behalf of the CVEC to the Special Committee.

CONCLUSION

We find that neither the Governing Board of the CLC nor the CVEC Board of Directors violated the Open Meeting Law when their respective chairs issued letters on behalf of the Boards in response to the Special Committee's report.

We appreciate the patience and cooperation of the parties during this investigation, and now consider this matter closed. This letter does not resolve any complaints that may be pending with our office or the CLC or the CVEC. Please contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,


Jonathan Selarsic
Assistant Attorney General
Division of Open Government

cc: Eric Bibler, Save Our Seashore
Cape Light Compact

cc: Cape & Vineyard Electric Cooperative, Inc.

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.