



MAURA HEALEY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

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

December 5, 2017

OML 2017 – 184

Robert S. Troy, Esq.
Troy Wall Associates
90 Route 6A
Sandwich, MA 02563

RE: Open Meeting Law Complaint

Dear Attorney Troy:

This office received a complaint from Ronald Beaty on October 2, alleging that the Barnstable County Assembly of Delegates (the “Assembly”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Assembly on or about September 12, and you responded to the complaint, on behalf of the Assembly, by letter dated September 28. In his complaint, Mr. Beaty alleges that, during its September 6 meeting, the Assembly discussed an anticipated topic that was not listed on the meeting notice.

Following our review, we find that the Assembly did not violate the Open Meeting Law. In reaching a determination, we reviewed the original complaint, the Assembly’s response to the complaint, and the complaint filed with our office requesting further review. We also reviewed the notice and a transcript from the Assembly’s September 6 meeting. Finally, we spoke with Assembly Speaker Suzanne McAuliffe by telephone on November 30.

FACTS

We find the facts as follows. Barnstable County has a bicameral governmental model in which the Assembly serves as the legislative branch and the Board of County Commissioners (“the County Commission”) serves as the executive branch of government. The complainant is a County Commissioner. The County Commission provides a status report to the Assembly at each of the Assembly meetings. During the Assembly’s September 6 meeting, County Commission Chair Leo Cakounes, delivered such a status report to the Assembly on the status of the County Commission’s business. This topic was listed on the notice as “Communications from the Board of Regional Commissioners.” During this report,

¹ All dates refer to the year 2017.



Mr. Cakounes informed the Assembly that the County Commission had discussed a code of ethical conduct for the County Commission; a topic which was raised by the complainant during the County Commission's August 23 meeting. Several delegates proceeded to discuss the topic with Mr. Cakounes.

DISCUSSION

A public body must post notice of every meeting at least 48 hours in advance, not including Saturdays, Sundays, and legal holidays. G.L. c. 30A, § 20(b). The notice must be printed in a legible, easily understandable format and must contain the date, time and place of the meeting, as well as a listing of topics that the chair reasonably anticipates will be discussed. Id. The list of topics shall have "sufficient specificity to reasonably advise the public of the issues to be discussed at the meeting." 940 CMR 29.03 (l)(b). We generally consider a topic to be sufficiently specific when a reasonable member of the public could read the topic and understand the anticipated nature of the public body's discussion. See OML 2015-35.²

The complainant alleges that, during its September 6 meeting, the Assembly discussed a code of ethical conduct that was not listed on its meeting notice. In support of this allegation, the complainant asserts that the Assembly anticipated the topic because it had discussed the topic months prior and Mr. Cakounes communicates with members of the Assembly between meetings. This topic arose during the County Commission's status report to the Assembly, listed on the notice as "Communications from the Board of Regional Commissioners." The Assembly Speaker did not speak with Mr. Cakounes about the topic before the meeting or otherwise anticipate that Mr. Cakounes would raise the topic, nor did she anticipate that it would prompt other delegates to discuss it. Because the topic was unanticipated, we find that the Assembly did not violate the Open Meeting Law by pursuing the brief discussion of the topic at its meeting. We encourage the Speaker, however, to solicit a more detailed set of topics from the County Commission for the meeting notice for such reports in the future. See OML 2017-90; OML 2011-23; OML 2013-111; see also OML 2012-19 ("best practice dictates that the Chair make reasonable efforts to ascertain the specific topics the Superintendent plans to discuss and include all matters that are reasonably anticipated in the meeting notice").

CONCLUSION

For the reasons stated above, we find that the Assembly 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 Assembly. Please feel free to contact our office at (617) 963-2540 if you

² Open Meeting Law determinations and declinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

have any questions regarding this letter.

Sincerely,



Hanne Rush
Assistant Attorney General
Division of Open Government

cc: Ronald Beaty
Barnstable County Assembly of Delegates

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.