



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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June 12, 2018

OML 2018 – 79

Darren Klein, Esq.
KP Law, P.C.
101 Arch Street
Boston, MA 02110

RE: Open Meeting Law Complaint

Dear Attorney Klein:

This office received a complaint from Michael Kiely on April 26, alleging that the Somerville Board of Aldermen Confirmation of Appointments and Personnel Matters Committee (the “Committee”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Committee on or about February 20, and you responded to the complaint, on behalf of the Committee, in a letter dated March 12. In his complaint, Mr. Kiely alleges that during its the Committee’s January 25 executive session, a Board of Aldermen member who is not a member of the Committee passed a document to a Committee member.²

Following our review, we find that the Committee did not violate the Open Meeting Law. In reaching a determination, we reviewed the original complaint, the Committee’s response to the complaint, and the complaint filed with our office requesting further review. We also reviewed the notice and open session minutes of the Committee’s January 25 meeting.

FACTS

We find the facts as follows. The Committee is a standing committee of the Somerville Board of Aldermen. As a five-member public body, three members constitute a quorum of the Committee. The Board of Aldermen is an 11-member public body, thus six members constitute a quorum of the Board of Aldermen. During its January 25 meeting, the Committee considered recommending individuals, including the complainant, for

¹ All dates refer to the year 2018.

² Mr. Kiely also alleges that this Board member is biased against him and that a Committee member pressured him to make a decision. Even if true, these allegations would not constitute violations of the Open Meeting Law. Accordingly, we decline to review them. See OML 2017-125.

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appointment to the position of police lieutenant. During this meeting, the Committee convened in executive session pursuant to G.L. c. 30A, §21(a)(1). The Committee invited members of the Board of Aldermen who do not serve on the Committee to attend the executive session for observation, only. One of those visiting Board of Aldermen members, Mark Neidergang, passed a document to Committee (and Board of Aldermen) member Lance Davis. Mr. Neidergang then left the meeting. Mr. Davis did not pass along this document to any other Committee member.

DISCUSSION

The Open Meeting Law requires that meetings of a public body (during which all deliberation takes place) be open and accessible to the public unless an executive session is convened. See G.L. c. 30A, §§ 18, 20(a); OML 2012-49.³ Access must include the opportunity to be physically present as well as to see and hear what is being discussed by the members of the public body. See OML 2017-16; OML 2013-189; OML 2012-66; OML 2012-48.

The complaint alleges that, during the Committee's January 25 executive session, a Board of Aldermen member who is not a member of the Committee, passed a document to a Committee member who also serves on the Board of Aldermen. The passing of this document between these two individuals is not deliberation, as defined by the Open Meeting Law, because it is not a communication between a quorum of either the Committee or the Board of Aldermen. See G.L. c. 30A, § 18 (a "deliberation" is defined 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"). Furthermore, the Committee member who received the document did not share it with anyone else or initiate a discussion about it at the meeting. Accordingly, we find that the Committee did not violate the law.

CONCLUSION

For the reasons stated above, we find that the Committee 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 Committee. Please feel free to contact our office at (617) 963-2540 if you have any questions regarding this letter.

Sincerely,



Hanne Rush
Assistant Attorney General
Division of Open Government

³ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

cc: Michael Kiely
Somerville Board of Aldermen Confirmation of Appointments & Personnel Matters
Committee

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.