



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

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September 6, 2017

OML 2017 – 137

Barbara Huggins Carboni
Huggins and Witten, LLC
156 Duck Hill Rd.
Duxbury, MA 02332

RE: Open Meeting Law Complaint

RECEIVED
TOWN CLERK OF MARION, MA
2017 SEP 27 P 3:55

Dear Attorney Huggins Carboni:

This office received a complaint from Dr. Michael Popitz on June 20, alleging that the Marion Conservation Commission (the “Commission”) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25.¹ The complaint was originally filed with the Commission on May 17, and the Commission responded by letter dated June 16.² In his complaint, Dr. Popitz alleges that the Commission failed to create and approve meeting minutes in a timely manner.³

Following our review, we find that the Commission did not violate the Open Meeting Law. In reaching a determination, we reviewed the original complaint, the Commission’s response, and the request for further review filed with our office. We also reviewed notices and minutes of Commission meetings held on February 8 and 22, March 22, and April 8. Finally, we spoke with the Commission’s legal counsel by telephone on July 6, and reviewed a supplementary letter from the Commission’s legal counsel dated August 15.⁴

¹ Unless otherwise indicated, all dates in this letter refer to the year 2017.

² Within 14 business days of receipt of an Open Meeting Law complaint, a public body must review the complaint’s allegations; take remedial action, if appropriate; and send to the Attorney General a copy of the complaint and a description of any remedial action taken. G.L. c. 30A, § 23(b); 940 CMR 29.05(5). Here, the complaint was filed with the Commission on May 17. The Commission’s response was dated June 16, and it was not received by our office until June 21. We take this opportunity to remind the Commission of its obligations under the Open Meeting Law.

³ The complaint contains other allegations that, even if true, would not constitute violations of the Open Meeting Law, G.L. c. 30A, §§ 18-25. Specifically, the complaint alleges that the Commission failed to comply with the notice requirement of the Wetlands Protection Regulations, 310 CMR § 10.04. Because this complaint process concerns only violations of the Open Meeting Law, we decline to review allegations of violation of any other laws. See OML 2013-135.

⁴ For the sake of clarity, we refer to you in the third person.



FACTS

We find the facts as follows. The Commission typically meets twice per month. The complaint concerns a series of four Commission meetings, held on February 8 and 22, March 22, and April 8.⁵ Each of these meetings included a discussion of the complainant's proposed driveway project. The Commission approved the minutes of its February 8 meeting on March 22. The minutes of the February 22 meeting were approved on March 8. The March 22 and April 8 minutes have not yet been approved and remain in draft form.

DISCUSSION


The Open Meeting Law requires public bodies to be create and approve meeting minutes in a "timely manner." See G.L. c. 30A, § 22(a), (c). Although the Open Meeting Law does not define "timely manner," we recommend that minutes of a meeting be approved at the next meeting wherever possible. See OML 2017-71; OML 2016-118; OML 2014-15.⁶ For public bodies that meet regularly—that is, either weekly or bimonthly—we have concluded that a delay of two to three months in approving minutes violates the law. See OML 2017-117; OML 2016-118.

The complaint alleges that the Commission failed to approve minutes of the four meetings at issue in a timely manner. Because the February 8 and 22 minutes were approved the following month, we find that Commission satisfied its obligation to approve minutes in a timely manner with respect to those minutes. The Commission has not yet approved the March 22 and April 8 meeting minutes. While the Commission has therefore taken longer than the prescribed time limit to approve these minutes, we do not find a violation of the Open Meeting Law because those meetings had occurred within one to two months before the complaint was filed. See OML 2017-117. We remind the Commission that it must approve its March 22 and April 8 minutes as soon as is practicable.

CONCLUSION

For the reasons stated above, we find that the Commission 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 Commission. 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

⁵ The complaint identifies a series of four hearings, and specifies that the last one was held on April 8. Based on this, the Commission identified the four meetings at issue.

⁶ Open Meeting Law determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

cc: Dr. Michael Popitz

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.