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THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

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February 6, 2014

OML 2014 - 8

Bruce Turner
Chair
Egremont Select Board
P.O. Box 368
Egremont, MA 01258-0368

Dear Mr. Turner:

This office received two complaints from Kevin Zurrin (the complainant) on October 7, 2013 and December 6, 2013 alleging that the Egremont Select Board (the Board) violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. Specifically, the first complaint alleges that the Board forbade the complainant to make a video recording of its September 9, 2013, meeting because he had not notified the Chair of his intention to record prior to the meeting. The second complaint alleges that the Board forbade him to make a video recording of its September 13, 2013 meeting due the same lack of timely notification and eventually ejected him from the meeting unlawfully because the Chair determined he was disrupting the meeting. The first complaint was originally filed with the Board on September 10, 2013, and the Board responded by letter dated September 23, 2013. The second complaint was originally filed with the Board October 10, 2013 and the Board responded by letter dated October 22, 2013.

Following our review, we find that the Board violated the Open Meeting Law by requiring the public to provide notice of intent to record prior to its September 9, 2013 and September 13, 2013 meetings. To make this determination, we reviewed the September 10, 2013 complaint; the Board's September 23, 2013 response; and the complaint filed with our office on October 7, 2013.¹ Additionally, we reviewed the October 10, 2013 complaint; the Board's October 22, 2013 response; and the complaint filed with our office December 6, 2013. We also viewed a video recording made by the complainant at the Board's September 13, 2013 meeting as well as audio recordings of both the September 9, 2013 and September 13, 2013 meetings, which were provided by the Board. Finally, we spoke by telephone with the complainant in November 2013.

FACTS

We find the facts to be as follows. At the Board's September 9, 2013 meeting, the Board engaged in a conversation with members of the public about procedures to record a meeting

¹ For the purpose of clarity, we will refer to you in the third person hereafter.



under the Open Meeting Law and to add an item to the agenda. During this conversation, the Chair maintained the position that the Open Meeting Law requires that notification of intent to record a meeting may be given only prior to the start of a meeting. The Chair further stated that those who did not notify him before the meeting began would not be allowed to record. As a result of this announcement, those in the audience, including the complainant, who had not informed the Chair of their intent to record prior to the start of the meeting, ceased recording under the belief that such recording was in violation of the Law. The September 10, 2013 complaint followed this meeting.

At the beginning of the Board's September 13, 2013 meeting, the complainant held up his phone to make a video recording of the proceedings. The Chair, noticing this act, asked that the complainant discontinue filming the meeting because the complainant had not notified the chair before the meeting of his intention to film, as discussed at the September 9, 2013 meeting. The complainant refused by stating that he was acting in conformity with the law. During the ensuing discussion, the Chair determined that the complainant was causing a disruption. The Chair ordered the complainant to withdraw from the meeting. The complainant's refusal prompted the Chair to authorize a police officer to remove him. The police officer escorted the complainant from the meeting. The October 10, 2013 complaint followed.

DISCUSSION

The Open Meeting Law states that, "[a]fter notifying the chair of the public body, any person may make a video or audio recording of an open session of a meeting of a public body, or may transmit the meeting through any medium." G.L. c. 30A, § 20(e). The chair has the authority to set "reasonable requirements . . . as to the number, placement and operation of equipment used so as not to interfere with the conduct of the meeting," but may not prohibit individuals from recording if the recording itself does not disrupt the meeting. G.L. c. 30A, § 20(e), (f); see OML 2013-81; OML 2012-24.² Additionally, if the chair has been notified that a person is recording or transmitting the meeting, he must inform meeting attendees of that fact at the beginning of the meeting. See G.L. c. 30A, § 20(e).

The complaints allege that the Board unlawfully prohibited the complainant from video-recording its September 9, 2013 and September 13, 2013 meetings. Recordings of the two Board meetings demonstrate that the Chair enforced a policy requiring any person wishing to record the meeting to notify him in advance of the start of the meeting. After this policy was conveyed to the complainant during the September 9, 2013 meeting, he understood that, because he had not informed the Chair prior to the meeting, he was not permitted to record and he therefore ceased recording.

In the time after that meeting and before the September 13, 2013 meeting, the complainant came to the conclusion that the Chair was in error. At the September 13, 2013 meeting, he again attempted to record the meeting. The Chair challenged the complainant's right to record and the complainant defended his actions as lawful. The Chair determined that his defense was disruptive to the meeting and authorized a police officer to eject the complainant.

² OML Determinations may be found at the Attorney General's website, www.mass.gov/ago/openmeeting.

While the chair of a public body may request, as a courtesy, that individuals notify him of their intent to record a meeting prior to the beginning of that meeting, advance notice is not required by law. See G.L. c. 30A, § 20(e); OML 2012-24. The chair must inform meeting attendees at the beginning of the meeting of any recordings of which he is aware. Id. A member of the public or press who fails to notify him before the meeting, however, does not lose the right to record or transmit that meeting. If a person wishes to record a meeting but has not notified the chair of that intention prior to the meeting's commencement, that person should attempt to do so prior to beginning recording, ideally in a manner that does not significantly disrupt the meeting in progress (such as passing a note for the chair to the Board administrator or secretary). The chair should endeavor to acknowledge such attempts at notification and announce the fact of any recording to those in attendance. The failure to provide advance notice, however, may not be used to prohibit a person from recording or transmitting a meeting.

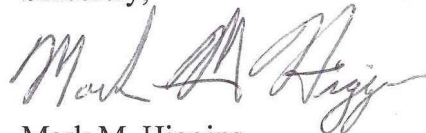
We therefore find that the Board violated the Open Meeting Law by its insistence on advance notice of recording. Additionally, we find that because the complainant had a right to record the September 13, 2013 meeting, it was improper for the Chair to have him removed from the meeting for defending his right to do so. Instead, the Chair should have notified the attendees of the meeting that the meeting was being recorded and continued the business of the Board.

CONCLUSION

We find that the Board violated the Open Meeting Law by requiring notice of recording from an individual before the start of an open meeting. We order the Board's immediate and future compliance with the Open Meeting Law, and caution that similar future violations may be considered evidence of an intentional violation of the law.

We now consider this matter resolved. This determination does not address any other complaints that may be pending with our office or the Board. Please feel free to contact our office at (617) 963-2540 if you have any questions about this letter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mark M. Higgins", written in a cursive style.

Mark M. Higgins
Assistant Attorney General
Division of Open Government

cc: Kevin Zurrin

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.