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June 5, 2018

OML 2018 – 77

Alan F. Taubert, Jr.
Executive Director
South Essex Sewerage District
50 Fort Avenue
P.O. Box 989
Salem, Massachusetts 01970

RE: Open Meeting Law Complaints

Dear Mr. Taubert:

This office received two complaints from Kerry Griffin, dated January 22, 2018 and March 7, 2018, alleging that the South Essex Sewerage Board (the "Board") violated the Open Meeting Law, G.L. c. 30A, §§ 18-25. The complaints were originally filed with the Board on November 5, 2017 and December 21, 2017, and you responded, on behalf of the Board, by letters dated December 13, 2017 and January 11, 2017.¹ Specifically, the complaints allege that the Board's November 1, 2017 and December 13, 2017 meetings were not accessible to the public.

Following our review, we find that the Board violated the Open Meeting Law in the ways alleged. In reaching this determination, we reviewed the original complaints, the Board's responses to the complaints, and the complaints filed with our office requesting further review. In addition, we spoke with the complainant by telephone on March 20, 2018 and April 18, 2018; with you by telephone on March 22, 2018;² and with Board Legal Counsel John Darling by telephone on March 29, 2018, April 4, 2018, and April 19, 2018.

¹ On November 21, 2017, the Board requested further information from Mr. Griffin in order to resolve his November 5, 2017 complaint. Mr. Griffin did not respond to the Board's request within ten business days. The Board subsequently responded to his November complaint by letter dated December 13, 2017. See 950 C.M.R. 29.05(6).

² For purposes of clarity, we will refer to you in the third person hereafter.



FACTS

We find the facts as follows. Kerry Griffin, the complainant, was an employee of the South Essex Sewerage District (the "District"). By letter dated January 2, 2018, in response to the first Open Meeting Law complaint, Board Chairman Michael R. Parsons stated that Mr. Griffin's health professionals had advised the District that he was unable to perform his job duties and could become verbally or physically aggressive towards others. Based on that information, the District placed Mr. Griffin on leave from his position as Assistant Superintendent of Operations on July 5, 2016. On July 7, 2016, Executive Director Alan Taubert issued a memorandum to District Supervisors advising them that Mr. Griffin was "not allowed on District property." District property includes 50 Fort Avenue in Salem. Mr. Griffin retired in January 2017.

On July 26, 2017, Mr. Griffin emailed Mr. Taubert stating that he planned to attend the next Board meeting and inquired whether he was "still locked out" of District property. Mr. Taubert responded that the memorandum of July 7, 2016 was still in effect and that Mr. Griffin was not allowed on District property.

The Board posted notices for, and held meetings on, November 1, 2017 and December 13, 2017. The location of the meetings was the first floor board room in the Administration Building at 50 Fort Avenue in Salem. Mr. Griffin did not attend either meeting.

DISCUSSION

The Open Meeting Law was enacted "to eliminate much of the secrecy surrounding deliberations and decisions on which public policy is based." Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978). The 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. Access to a meeting 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 2017-135; OML 2015-38; OML 2014-3; OML 2013-189.³ A public body must be able to take reasonable steps to ensure the safety and good order of public meetings. See OML 2015-92. By "good order" we mean protection against violent, threatening or abusive behavior, and not merely behavior that may disrupt a meeting. Disruptive behavior should be addressed by removing the person from the meeting. See G.L. c. 30A, § 20(g).

The complaints allege that both the November 1, 2017 and December 13, 2017 meetings of the Board were not open to the public. While we find that the Board's November and December meetings were open meetings accessible to the general public, we conclude that the meetings were not accessible to Mr. Griffin. Both Mr. Taubert and Attorney Darling advised this office that Mr. Griffin would not be allowed to attend Board meetings and that police would be called if he did try to attend. We understand that the Board finds it necessary to exclude Mr. Griffin from its meetings because it is concerned with the public safety of those who do attend its

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

meetings. Although there may be some history of verbal arguments between Mr. Griffin and District employees, no specific evidence was provided to us of physical violence or threats of physical violence by Mr. Griffin. Exclusion of individuals from an open meeting must be based on specific incidents of physical aggression, violence, actual threats of harm, or other conduct that could reasonably place Board members or attendees in imminent fear for his or her personal safety, and based on current information. Here, where we were provided with no evidence of specific incidents of physical aggression, violence or threats of harm, we find that the Board violated the Open Meeting Law by excluding Mr. Griffin from its meetings. However, if circumstances change and Mr. Griffin exhibits a specific, articulable threat to public safety, the Board may take action to exclude him from future open meetings.

We remind the Board that the Open Meeting Law gives clear authority to the chair of a public body to conduct its meetings as “[n]o person shall address a meeting of a public body without permission of the chair, and all persons shall, at the request of the chair, be silent.” G.L. c. 30A, § 20(g). The law further states that, “[n]o person shall disrupt the proceedings of a meeting of a public body. If, after clear warning from the chair, a person continues to disrupt the proceedings, the chair may order the person to withdraw from the meeting and if the person does not withdraw, the chair may authorize a constable or other officer to remove the person from the meeting.” Id.

CONCLUSION

For the reasons stated above, we find that the Board violated the Open Meeting Law by excluding the complainant from its meetings. We order the Board’s immediate and future compliance with the law’s requirements, and we caution that similar future violations could be considered evidence of intent to violate the law.

We now consider the complaints addressed by this determination to be 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 regarding this letter.

Sincerely,



KerryAnne Kilcoyne
Assistant Attorney General
Division of Open Government

cc: Kerry Griffin
John Darling, Esq.

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.